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Thursday
May 2, 1996

Briefings on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

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

WASHINGTON, DC

[Two Sessions]

WHEN: May 14, 1996 at 9:00 am
May 21, 1996 at 9:00 am

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

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

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Presidential Documents

Title 3—

The President

Proclamation 6889 of April 30, 1996

Loyalty Day, 1996

By the President of the United States of America

A Proclamation

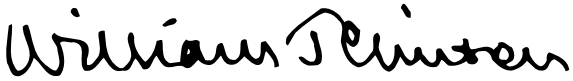
In his inaugural address, President John F. Kennedy said, ''Since this country was founded, each generation of Americans has been summoned to give testimony to its national loyalty.'' The members of our Armed Forces have long responded to such a call, though their task has often been difficult and fraught with peril. Drawing on an abiding devotion to country, America's service men and women have faced loneliness and danger, grave injury and death, to protect our Nation's interests and to reach out to others by providing humanitarian assistance.

In pausing to honor all those who have dedicated their lives to our freedom, let us reflect on their deep commitment to the fundamental ideals of independence, justice, and equality—the very foundations of our way of life—and draw inspiration from their shining example. For more than 200 years, America's shores have embraced immigrants seeking opportunity, while our system of government has encouraged people around the world who struggle against tyranny and oppression. Following the brave men and women who wear our Nation's uniform, let us each do our part to strengthen this legacy and to ensure that future generations will enjoy and cherish the precious liberties we hold so dear.

To nurture loyalty to and love of country, the Congress, by Public Law 85-529, has designated May 1 of each year as ''Loyalty Day.'' We spend this day in celebration of our Constitution and Bill of Rights, and we honor the extraordinary sacrifices made by the members of our Armed Forces throughout our Nation's proud history.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 1, 1996, as Loyalty Day. I call upon all Americans to observe this day with appropriate ceremonies and activities, including recitation of the Pledge of Allegiance. I also call upon government officials to display the flag on all government buildings and grounds.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, 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. 96–11103
Filed 5–1–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Memorandum of April 26, 1996

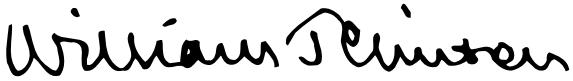
Suspension of Subsection 325(a) and Subsection 325(b) of the Department of the Interior and Related Agencies Appropriations Act, 1996, (''Act'') as Set Forth in Section 101(c) of Title I of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (H.R. 3019) Concerning the Tongass National Forest

Memorandum for the Secretary of Agriculture

By the authority vested in me by subsection 325(c) of the Department of the Interior and Related Agencies Appropriations Act, 1996, (''Act'') as set forth in section 101(c) of title I of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (H.R. 3019), and section 301 of title 3, United States Code, I hereby suspend subsections 325(a) and 325(b) of the Act because I have determined that such suspension is appropriate based upon the public interest in sound environmental management and protection of cultural, biological, or historic resources.

This suspension shall take effect immediately and shall continue in effect for the period in which subsection 325(a) and subsection 325(b) of the Act would otherwise be in effect.

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



THE WHITE HOUSE,
Washington, April 26, 1996.

[FR Doc. 96–11099
Filed 5–1–96; 8:45 am]
Billing code 3410–11–M

Presidential Documents

Memorandum of April 28, 1996

Exports of Alaskan North Slope (ANS) Crude Oil

Memorandum for the Secretary of Commerce [and] the Secretary of Energy

Pursuant to section 28(s) of the Mineral Leasing Act, as amended, 30 U.S.C. 185, I hereby determine that exports of crude oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act are in the national interest. In making this determination, I have taken into account the conclusions of an interagency working group, which found that such oil exports:

—will not diminish the total quantity or quality of petroleum available to the United States; and

—are not likely to cause sustained material oil supply shortages or sustained oil price increases significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including those located in noncontiguous States and Pacific Territories.

I have also considered the interagency group's conclusions regarding potential environmental impacts of lifting the ban. Based on their findings and recommendations, I have concluded that exports of such crude oil will not pose significant risks to the environment if certain terms and conditions are met.

Therefore, pursuant to section 28(s) of the Mineral Leasing Act I direct the Secretary of Commerce to promulgate immediately a general license, or a license exception, authorizing exports of such crude oil, subject to appropriate documentation requirements, and consistent with the following conditions:

—tankers exporting ANS exports must use the same route that they do for shipments to Hawaii until they reach a point 300 miles due south of Cape Hinchinbrook Light and then turn toward Asian destinations. After reaching that point, tankers in the ANS oil trade must remain outside of the 200 nautical-miles Exclusive Economic Zone of the United States as defined in the Fisheries Conservation and Management Act (16 U.S.C. 1811). This condition also applies to tankers returning from foreign ports to Valdez, Alaska. Exceptions can be made at the discretion of the vessel master only to ensure the safety of the vessel;

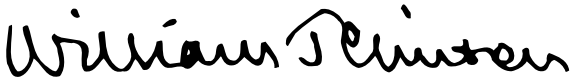
—that export tankers be equipped with satellite-based communications systems that will enable the Coast Guard independently to determine their location. The Coast Guard will conduct appropriate monitoring of the tankers, a measure that will ensure compliance with the 200-mile condition, and help the Coast Guard respond quickly to any emergencies;

—the owner or operator of an Alaskan North Slope crude oil export tankship shall maintain a Critical Area Inspection Plan for each tankship in the trade in accordance with the U.S. Coast Guard's Navigation and Inspection Circular No. 15–91 as amended, which shall include an annual internal survey of the vessel's cargo block tanks; and

—the owner or operator of an Alaskan North Slope crude oil export tankship shall adopt a mandatory program of deep water ballast exchange

(i.e., in 2,000 meters water depth). Exceptions can be made at the discretion of the captain only in order to ensure the safety of the vessel. Recordkeeping subject to Coast Guard audit will be required as part of this regime.

The Secretary of Commerce is authorized and directed to inform the appropriate committees of the Congress of this determination and to publish it in the Federal Register.



THE WHITE HOUSE,
Washington, April 28, 1996.

[FR Doc. 96–11097
Filed 5–1–96; 8:45 am]
Billing code 3501–BP–M

Rules and Regulations

Federal Register
Vol. 61, No. 86
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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AE80

Employment (General); Use of Private Sector Temporaries

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to authorize Federal agencies to use private sector temporaries for 120 workdays instead of 120 calendar days. In addition, agencies are delegated authority to extend the use of private sector temporaries for up to an additional 120 workdays. Agencies purchase temporary help services through the Federal procurement process following all applicable laws and regulations relating to the purchase of goods or services from the private sector.

EFFECTIVE DATE: June 3, 1996.

FOR FURTHER INFORMATION CONTACT: Ellen Russell on 202–606–0830, FAX 202–606–2329, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: On September 8, 1995, (60 FR 46780) OPM published proposed regulations to permit agencies to use temporary help services for 120 workdays instead of 120 calendar days. Under the proposal, the new 120-workday limit would also apply to an agency's use of a *particular individual* from a firm, a change from the previous 45-workday limit.

These changes give agencies more flexibility to conduct their operations, as recommended by the National Performance Review. However, in exercising their discretion to use temporary help services, agencies must honor their labor relations obligations under Chapter 71 of Title 5 of the U.S. Code and Executive Order 12871.

OPM maintains its view that continuing work is most appropriately performed by permanent Federal employees. Thus, the final regulations continue the prohibitions on using temporary help services to displace Federal employees or in place of regular civil service procedures for permanent appointment. The regulations continue previous provisions permitting the use of temporary help services only when there are no current agency employees who could be spared to do the work, when there are no former employees available on the agency's reemployment priority list, or when there are no applicants available for temporary Federal employment within the timeframe needed.

In addition, the final regulations add two new prohibitions against use of temporary help services. First, agencies are not permitted to use such services to circumvent controls on employment levels. This means agencies could not use temporary help services merely because hiring was frozen or ceiling levels were insufficient. Second, agencies are not permitted to use temporary help services in lieu of appointing a surplus or displaced Federal employee as required by the President's memorandum of September 12, 1995, entitled ''Career Transition Assistance for Federal Employees.'' OPM regulations implementing the President's memorandum were published on December 29, 1995. These interim regulations in 5 CFR part 330 provide a new subpart F, Agency Career Transition Assistance Plans for Local Surplus and Displaced Employees and a new subpart G, Interagency Career Transition Assistance Plan for Displaced Employees.

The final regulations replace the annual reporting requirement with a provision for agencies to report to OPM on an as-requested basis. Agencies have to maintain the records necessary for such reports and for their own internal evaluations. Agency adherence to these regulations continues to be subject to review under OPM's oversight function.

Finally, the final regulations make several minor editorial changes.

Comments

We received comments from four Federal agencies, two unions, and one private sector temporary help services firm.

One agency commenter suggested permitting the use of private sector temporaries to accomplish project work to help management more adequately manage changing workloads. We have not adopted this suggestion because agencies can use temporary or term Federal appointments to handle project work. Agencies can make temporary appointments for up to 1 year with one extension of not more than 1 year. Agencies can make term appointments for more than 1 year up to 4 years. Further, the regulations already permit the use of private sector temporaries for temporary work which cannot be delayed because of critical need. If an agency could not accomplish a critical project with current employees or by hiring temporary or term employees, the agency could use private sector temporaries.

Two agency commenters suggested we drop the requirement for OPM approval when agencies need to continue the use of private sector temporaries beyond the 120-workday limit. We agree with this suggestion and have modified the regulations to delegate the agencies authority to extend their use of private sector temporaries for a second period of up to 120 workdays without OPM approval. This change also means that an agency could use a particular individual from a temporary help services firm for the initial 120 workdays plus any extension of up to 120 workdays, as approved by the agency, up to a maximum of 240 workdays in a 24-month period. This limitation on the use of a specific individual from a temporary help services firm applies to multiple situations where the use of temporary help services is appropriate. For example, a major headquarters component of an agency may use a specific individual, Mr. O, to fill in for an ill employee for up to a maximum of 240 workdays. That headquarters component could not use Mr. O again—under any temporary help services contract—until 24 months had passed from the first day of Mr. O's assignment.

One agency commenter suggested the regulations permit OPM to grant additional waivers to the 240-workday limit for major reorganizations due to downsizing, particularly when agencies need clerical support. We have not adopted this suggestion. The final regulations already provide for use of

temporary help services up to a maximum of 240 workdays (nearly a year). We believe the 240-workday maximum gives agencies ample time to locate and hire Federal employees, especially in light of the surplus and displaced Federal employees who will be available as the Government continues downsizing.

One agency commenter suggested we change the regulations to permit agencies to use private sector temporaries when employees are on vacation. Because downsizing has left many agencies shortstaffed, the commenter believes there may be situations where managers would need to use temporary help services when a key employee is on vacation.

We do not think this change is necessary because § 300.503(a)(2) already provides for the use of temporary help services for work which cannot be delayed in the judgment of the agency because of a critical need. Although we do not believe the use of temporary help service is generally appropriate to fill in for Federal employees on vacation, the need to carry out critical work would be sufficient justification for the use of temporary help services even if a particular employee were away on vacation.

One union commenter stated that Federal agencies should be able to use private sector temporaries only when there is a critical need to fill a position. Section 300.503 assures this is the case by permitting use of private sector temporaries only when there are no current agency employees who could be spared to do the work, there are no former employees available on the agency's reemployment priority list, and when there are no applicants available for temporary employment within the timeframe needed.

The same commenter objected to the lengthened time limits on use of temporary help services claiming that the longer timeframe would mean that the private sector temporary employees would become integrated into the day-to-day activities of the Federal office and thus become subject to Federal supervision. Alternatively, the commenter claimed that, as a result of using private sector temporaries for a longer period, agency operations and service would suffer because the Federal manager had *no* supervisory control over these individuals. The commenter suggested agencies be permitted to use private sector temporaries for periods longer than 120 calendar days only when justified by the kind of analysis required when positions are contracted out.

We have not adopted this suggestion. We believe that increasing the maximum time limit from 120 calendar days to 120 workdays, and permitting agencies to extend for up to another 120 workdays, does not pose any risk because the basic requirements and prohibitions of the original regulation remain intact: agencies cannot use temporary help services to displace Federal employees or to fill permanent jobs; agencies can use temporary help services only when the need could not be met with current employees, employees on the agency's reemployment priority list, or through the direct appointment of temporary Federal employees within the timeframe required by the agency. In addition, the final regulations contain additional prohibitions: agencies cannot use temporary help services to circumvent controls on employment levels or in lieu of hiring surplus or displaced Federal employee. Given these conditions, an agency manager would have to determine that using temporary help services is the only way to maintain necessary services and operations.

We have, however, changed a provision in response to the union's concerns. The proposed regulation permitted an agency to use the same individual from a temporary help services firm for up to 240 workdays, with OPM approval, in a 12-month period. Thus, the individual could have worked in an agency office for 240 out of a possible 260 workdays in each year. We have changed the limitation so that an individual from a firm could work in an agency office for only 240 workdays in a 24-month period. The limitation applies to a major organizational element (headquarters or field) of a agency.

The second union commenter suggested that the regulation require agencies to bargain on the use of temporary help services. We did not accept this suggestion because the Federal Labor Relations Authority (FLRA), not OPM, decides duty-to-bargain issues.

The comments from the private sector firm supported the change from 120 calendar days to 120 workdays.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities for the following reasons:

1. OPM is not regulating entities (including businesses) of any size, or imposing record keeping, reporting, or other compliance requirements on them. OPM is regulating the conduct of Federal agencies if they choose to use temporary help firms.

2. The requirements entities must observe are generated through an agency-initiated contracting process featuring competitive bidding under the already-established, statutory Federal procurement system. That system applies to all contractors providing goods and services to the Government. The entities affected by that system are those who seek a contract. Those who win a contract receive a beneficial economic impact.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 300

Freedom of information, Government employees, Reporting and record keeping requirements, Selective Service System.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 300 of title 5, Code of Federal Regulations, as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for part 300 is revised to read as follows:

Authority: 5 U.S.C. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Secs. 300.301 also issued under 5 U.S.C. 1104 and 3341.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Secs. 300.603 also issued under 5 U.S.C. 1104.

Secs. 300.801 through 300.802 issued under 5 U.S.C. 3328.

2. Section 300.502 is revised to read as follows:

§ 300.502 Coverage.

(a) These regulations apply to the competitive service and to Schedules A and B in the excepted service.

(b) Agencies may not use temporary help services for the Senior Executive Service or for the work of managerial or supervisory positions.

3. In § 300.503, paragraphs (c)(3) and (c)(4) are added to read as follows:

§ 300.503 Conditions for using private sector temporaries.

* * * * *

(c) * * *

(3) To circumvent controls on employment levels.

(4) In lieu of appointing a surplus or displaced Federal employee as required by 5 CFR part 330, subpart F (Agency Career Transition Assistance Plan for Displaced Employees) and subpart G (Interagency Career Transition Assistance Plan for Displaced Employees.)

4. In § 300.504, paragraphs (a) and (b) are revised to read as follows:

§ 300.504 Prohibition on employer-employee relationship.

* * * * *

(a) *Time limit on use of temporary help service firm.* An agency may use a temporary help service firm(s) in a single situation, as defined in § 300.503, initially for no more than 120 workdays. Provided the situation continues to exist beyond the initial 120 workdays, the agency may extend its use of temporary help services up to the maximum limit of 240 workdays.

(b) *Time limit on use of individual employee of a temporary help service firm.* (1) An individual employee of any temporary help firm may work at a major organizational element (headquarters or field) of an agency for up to 120 workdays in a 24-month period. The 24-month period begins on the first day of assignment.

(2) An agency may make an exception for an individual to work up to a maximum of 240 workdays only when the agency has determined that using the services of the same individual for the same situation will prevent significant delay.

* * * * *

5. Section 300.505 is revised to read as follows:

§ 300.505 Relationship of civil service procedures.

Agencies continue to have full authority to meet their temporary needs by various means, for example, redistributing work, authorizing overtime, using in-house pools, and making details or time-limited promotions of current employees. In addition, agencies may appoint individuals as civil service employees on various work schedules appropriate for the work to be performed.

6. Section 300.507 is revised to read as follows:

§ 300.507 Documentation and Oversight.

Agencies are required to maintain records and provide oversight to establish that their use of temporary help service firms is consistent with these regulations. As needed, OPM may require agencies to provide information on their use of temporary help service firms.

[FR Doc. 96–10739 Filed 5–1–96; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–96–001]

Revision of User Fees for 1996 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is reducing user fees for cotton producers for 1996 crop cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1995 user fee for the classification service was $1.60 per bale. This final rule will reduce the fee for the 1996 crop to $1.50 per bale. The reduced fee is due to increased efficiency in classing operations, and it is sufficient to recover the costs of providing classification services, including costs for administration, supervision, and development and maintenance of standards.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the Federal Register on February 29, 1996, (61 FR 7756). A 30-day comment period was provided for interested persons to respond to the proposed rule; no comments were received.

This final rule has been determined to be not significant for purposes of Executive Order 12866, and therefore it has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this final rule on small entities pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are about 40,000 cotton growers who voluntarily submit their cotton for the classification service. The majority of the growers are small businesses under the criteria established by the Small Business Administration. The Administrator of AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the RFA because:

(1) the fee reduction reflects a decrease in the cost-per-unit currently borne by those entities utilizing the services;

(2) the cost reduction will not affect competition in the marketplace; and

(3) the use of classification services is voluntary.

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.), the information collection requirements contained in the provisions amended by this final rule have been previously approved by OMB and were assigned OMB control number 0581–0009.*

The changes will be made effective July 1, 1996, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.60 per bale during the 1995 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, cost of equipment and supplies, and other overhead costs, including costs for administration, supervision, development, and maintenance of cotton standards.

This final rule establishes the user fee charged to producers for HVI classification at $1.50 per bale during the 1996 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the

producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1995. Therefore, the 1996 producer's user fee for classification service is based on the 1995 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 1995 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.01 per bale. A 1.4 percent, or three cents per bale increase due to the implicit price deflator of the gross domestic product added to the $2.01 results in a 1996 base fee of $2.04 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 1996 crop is estimated at 19,024,000. The 1996 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 31 cents per bale reduction and was subtracted from the 1996 base fee of $2.04 per bale, resulting in a fee of $1.73 per bale.

Assuming a fee of $1.73 per bale, the projected operating reserve would be 36.9 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.73 must be reduced by 23 cents per bale, to $1.50 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This establishes the 1996 season fee at $1.50 per bale.

Accordingly, § 28.909, paragraph (b) is revised to reflect the reduction in the HVI classification fees.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount will continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents will continue to incur no additional fees if only one method of receiving classification data is requested. The fee for each additional method of receiving classification data in § 28.910(a) will remain at five cents per bale, and it will be applicable even if the same method was requested. Since the Cotton Division will no longer accept returned diskettes to eliminate the possibility of computer virus infection, the cost of computer tapes or diskettes not returned will no longer be billed separately to the requestor. The fee in § 28.910(b) for an owner receiving classification data from the central database will remain at five cents per bale, but a minimum charge of $5.00 for services provided per monthly billing period will be assessed. The provisions of § 28.910 concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 will be reduced from $1.60 per bale to $1.50 per bale.

The fee for returning samples after classification in § 28.911 will remain at 40 cents per sample.

List of Subjects in 7 CFR Part 28

Administrative practice and procedures, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

1. The authority citation for Part 28 is revised to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.50 per bale.

* * * * *

3. Section 28.910 is amended by revising the undesignated text immediately following paragraph (a)(4) and adding a sentence at the end of paragraph (b) to read as follows:

§ 28.910 Classification of samples and issuance of classification data.

(a) * * *

(4) ***

If the issuance of data to growers or to their agents is made by more than one method, the fee for each bale issued by each additional method shall be five cents. If provided as additional method of data transfer, the minimum fee for each tape or diskette issued shall be $10.00.

(b) * * * The minimum charge assessed for services obtained from the central database shall be $5.00 per monthly billing period.

* * * * *

4. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.50 per bale.

* * * * *

Dated: April 29, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–10989 Filed 5–1–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 915

[Docket No. FV96–915–1IFR]

Avocados Grown in South Florida; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate of $0.16 per bushel of assessable avocados under Marketing Order No. 915 for the 1996–97 and subsequent fiscal periods. Authorization to assess avocado handlers enables the Avocado Administrative Committee (committee) to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective April 1, 1996. Comments received by June 3, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and

Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–5127, FAX (202) 720–5698, or Alex Jonas, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813 299–4896, FAX (813) 299–5169.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the order. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable avocados beginning April 1, 1996, and continuing until amended or terminated. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 65 producers of avocados under the order and approximately 95 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of avocado producers and handlers may be classified as small entities.

This continuing rate of assessment, beginning with the 1996–97 fiscal period, was prepared by the committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the committee are producers and handlers of South Florida avocados. They are familiar with the committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of South Florida Avocados. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

The committee met on December 13, 1995, and unanimously recommended an assessment rate of $0.16 per bushel, the same as last season. This rate, when applied to anticipated shipments, should yield sufficient assessment income. This rate, along with interest income and funds from the committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order of one fiscal period's expenses.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this interim final rule, effective April 1, 1996, will continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. Heretofore, assessment rates issued under the marketing order were made effective for a single fiscal period. The change to issuing assessment rates which will continue in effect from fiscal period to fiscal period reflects the fact that assessment rates change infrequently from fiscal period to fiscal period and it is believed unnecessary to issue them for only a single fiscal period. In addition, this rule will result in a reduction in operational costs to the committee and the government. Although this assessment rate is effective for an indefinite period, the committee will continue to meet prior to or during each fiscal period to recommend a budget and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the Department at the address listed under **ADDRESSES**. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Docket Clerk at the address listed above before April 1, each year. The Department will evaluate committee recommendations and information submitted by the committee, comments filed, and other available information, and determine whether modification of the assessment rate on assessable shipments of South Florida Avocados would tend to effectuate the declared policy of the Act.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary,

and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period begins on April 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable avocados handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new section 915.235 is added to read as follows:

Note: This section will not appear in the annual code of Federal Regulations.

§ 915.235 Assessment rate.

On and after April 1, 1996, an assessment rate of $0.16 per bushel of assessable avocados is established for the Avocado Administrative Committee.

Dated: April 26, 1996.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–10871 Filed 5–1–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1280

[No. LS–94–015]

Sheep and Wool Promotion, Research, Education, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a Sheep and Wool Promotion, Research, Education, and Information Order (Order) which is authorized by the Sheep Promotion, Research, and Information Act of 1994 (Act). The program will be funded by assessments collected from sheep producers, sheep feeders and importers of sheep and sheep products. The program will be administered by a National Sheep Promotion, Research, and Information Board (Board).

Implementing regulations will be published separately in the Federal Register.

EFFECTIVE DATE: This final rule is effective May 3, 1996, except that § 1280.224–1280.228 become effective July 1, 1996.

ADDRESSES: Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2606–S; Livestock and Seed Division, AMS–USDA; P.O. Box 96456; Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION: Prior documents: Notice-Invitation to submit proposals published January 4, 1995 (60 FR 381); Proposed Rule-Sheep and Wool Promotion, Research, Education, and Information Order published June 2, 1995 (60 FR 28747); Proposed Rule-Procedures for Conduct of Referendum published August 8, 1995 (60 FR 40313); Notice-Certification of Organizations for Eligibility to Make Nominations to the Proposed Board published August 8, 1995 (60 FR 40343); Proposed Rule-Rules and Regulations published October 3, 1995 (60 FR 51737); Proposed Rule-Sheep and Wool Promotion, Research, Education, and Information Order published December 5, 1995 (60 FR 62298); and Final Rule and Referendum Order-Procedures for the Conduct of Referendum published December 15, 1995 (60 FR 64297).

Regulatory Impact Analysis

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

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

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law, and requesting a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner would have the opportunity for a hearing on the petition. Thereafter the Secretary would issue a decision on the petition. The Act provides that the district court of the United States in the district in which the petitioner resides or carries on business has jurisdiction to review the Secretary's decision, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the decision. The petitioner must exhaust his or her administrative remedies before filing such a complaint in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this final action on small entities.

The purpose of RFA is to fit regulatory actions to the scale of the businesses that are subject to such actions so that small businesses would not be unduly or disproportionately burdened.

According to the January 27, 1995, issue of ''Sheep and Goats,'' published by the Department's National Agricultural Statistics Service, there are approximately 87,350 sheep operations in the United States, nearly all of which would be classified as small businesses under the criteria established by the Small Business Administration (13 CFR § 121.601). Additionally, there are approximately 9,000 importers of sheep and sheep products, nearly all of which would be classified as small businesses.

This final Order will require each person who makes payment to a sheep producer, feeder, or handler of sheep or sheep products to be a collecting person, and to collect an assessment from that sheep producer, feeder, or handler of sheep or sheep products. Any person who buys domestic live sheep or greasy wool for processing must also collect the assessment and remit it to the Board. Each person who processes or causes to be processed sheep or sheep products of that person's own production and who markets the processed products will pay an assessment and remit the assessment to the Board. Any person who exports live sheep or greasy wool will be required to remit an assessment to the Board. Finally, each person who imports into the United States sheep, sheep products, wool, or wool products, other than raw

wool, will pay an assessment. The U.S. Customs Service (Customs) will collect the assessments on imported sheep and sheep products (except raw wool) and forward them to AMS for disbursement to the Board.

The rate of assessment on domestic sheep producers, feeders, and exporters of live sheep and greasy wool will be 1 cent per pound on live sheep sold and 2 cents per pound on greasy wool sold. Importers will be assessed 1 cent per pound on live sheep and the equivalent of 1 cent per pound of live sheep for sheep products and 2 cents per pound of degreased wool or the equivalent of degreased wool for wool and wool products. Imported raw wool will be exempt from assessments. Each person who processes or causes to be processed sheep or sheep products of that person's own production and markets the processed products will be assessed the equivalent of 1 cent per pound of live sheep sold and 2 cents per pound of greasy wool sold. All assessment rates may be adjusted in accordance with the applicable provisions of the Act.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained herein were submitted to OMB for approval and assigned OMB No. 0581–0093. This action sets forth the provisions for establishing a nationwide, industry-funded sheep and wool promotion, research, education, and information program. The information collection requirements required by this action and necessary for the implementation of this Order include:

(1) A report by each collecting person required to remit assessments to the Board for live sheep or greasy wool purchased from the producer, feeder, or handler of sheep or sheep products; by each person marketing sheep or sheep products of that person's own production; and by each exporter of sheep or greasy wool. The estimated number of respondents for this report is 700. Each respondent would submit one report per month, unless otherwise prescribed by the Board, and the estimated average reporting burden is 0.5 hours per response;

(2) A requirement to maintain sufficient records to verify reports submitted under the Order. The estimated number of recordkeepers needed to comply with this requirement is 700, each of whom would have an estimated annual reporting burden of 0.5 hours;

(3) An application for certification of organization, to be completed by eligible organizations that request certification in order to be eligible to nominate producers, feeders, and importers to the Board. The estimated number of respondents is 70 (with each submitting one response), and the estimated average reporting burden is 0.5 hour per response;

(4) A nomination form by which certified organizations will nominate producers, feeders, and importers for membership on the Board. The estimated number of respondents is 60 for the first year of the Order, and 20 each year thereafter. Each respondent would submit one response per year, and the estimated average reporting burden is 0.5 hour per response; and

(5) An advisory committee membership background information form, to be completed by candidates nominated by certified organizations for appointment to the Board. The estimated number of respondents is 240 during the first year of the Order, and 80 each year thereafter. Each respondent would submit one response per year, and the estimated average reporting burden is 0.5 hour per response.

Background

The Act (7 U.S.C. 7101–7111), enacted October 22, 1994, authorizes the Secretary to establish a national sheep and wool promotion, research, education, and information program. The program will be funded by a mandatory assessment on domestic sheep producers, sheep feeders, and exporters of live sheep and greasy wool of 1 cent per pound on live sheep sold and 2 cents per pound on greasy wool sold. Importers will be assessed 1 cent per pound on live sheep imported and the equivalent of 1 cent per pound of live sheep for sheep products imported and 2 cents per pound of degreased wool or the equivalent of degreased wool for wool and wool products imported. Imported raw wool will be exempt from assessments. Each person who processes or causes to be processed sheep or sheep products of that person's own production, and who markets the processed products, will be assessed the equivalent of 1 cent per pound of live sheep sold and 2 cents per pound of greasy wool sold. All assessment rates may be adjusted in accordance with applicable provisions of the Act.

The Act provides for the submission of proposals for a Sheep and Wool Promotion, Research, Education, and Information Order (Order). The Secretary may propose the issuance of an Order, or an association of sheep producers may submit and request the issuance of an Order. The Act provides that when the Secretary decides to propose an Order or receives a request and proposal for an Order, the Secretary shall publish the proposed Order and give due notice and opportunity for public comment. The Act further provides that an order contain certain specified terms and conditions. Such terms and conditions included provisions concerning the establishment of and composition of a Board and the powers and duties of such a Board. Also included under terms and conditions are provisions concerning plans and budgets, contracts and agreements, books and records of the Board, assessments, prohibitions, and reports, books, and records of collecting persons required to remit assessments and each person required to collect the assessment pursuant to the Act and the Order.

As established by the Act, the Order provides for the establishment of a Board comprised of 85 sheep producers, 10 sheep feeders, and 25 importers of sheep and sheep products. The Act further provides that any State with one producer member may have an alternate producer member.

The Department issued an invitation to submit proposals for an initial Order in the January 4, 1995, (60 FR 381) issue of the Federal Register. In response to that invitation, the American Sheep Industry Association (ASI), the sheep industry's producer member organization, submitted a proposed Order. In addition, the New Zealand Meat Producers Board, the Australian Meat and Live-stock Corporation, the Wools of New Zealand, the National Lamb Feeders Association, and the Lamb Committee of the National Livestock and Meat Board each submitted a partial proposal.

The Department also received letters from other interested parties. The Department did not consider these letters to be proposals because they primarily addressed information related to provisions of the Act itself.

The Department published ASI's proposal as Proposal I, the New Zealand Meat Producers Board's proposal as Proposal II, the Australian Meat and Live-stock Corporation's proposal as Proposal III, the Wools of New Zealand's proposal as Proposal IV, and the National Lamb Feeders Association's proposal as Proposal V. The Department modified these proposals slightly in order to (1) make them consistent with the Act and other similar national research and promotion programs supervised by the Department, (2) simplify the language and format of some provisions, and (3) add certain sections necessary for the proper administration of the Order by the

Department. The Department rejected the proposal submitted by the Lamb Committee of the National Livestock and Meat Board and discussed that proposal in the proposed rule. Each proposal was published in the June 2, 1995, issue of the Federal Register (60 FR 28747). Interested persons were invited to submit comments on the proposals until July 17, 1995. On June 26, 1995, a public meeting was held at the Department to afford any interested person the opportunity to comment on the proposed Order.

The Department received 137 written comments concerning the proposed Order from individual sheep producers, sheep feeders, importers of sheep and sheep products, State sheep producer organizations, general farm organizations, universities, and other interested parties. Ninety-three comments were filed on time and forty-four comments were filed after the comment period closed. The comments on the proposed Order were discussed in the December 5, 1995, issue of the Federal Register (60 FR 62298). A nationwide referendum was held on February 6, 1996, among eligible producers, feeders, and importers to determine whether the Order would become effective. Requests for absentee ballots were available from January 16, 1996, through January 26, 1996. An Order becomes effective only if the Secretary determines that the Order has been approved by not less than a majority of the producers, feeders, and importers voting in the referendum or at least two-thirds of the production represented by persons voting in the referendum. The Order was approved by a majority of those persons voting in the referendum.

The Order provisions as proposed by the Department and approved in the referendum are summarized as follows:

Sections 1280.101–1280.136 of the Order define certain words that are used in the Order.

Sections 1280.201–1280.211 of the Order concern the establishment, membership, nominations, method of obtaining nominations, certification of organizations, term of office, compensation, removal, and powers and duties of the Board, which is the governing body authorized to administer the Order subject to the oversight of the Secretary.

Sections 1280.212–1280.214 of the Order provide for budget review and approval, maintenance of books and records by the Board, and the investment of funds.

Section 1280.215 of the Order authorizes the use of assessments which includes expenditures of funds for domestic country of origin specific promotion and reimbursement for expenses incurred for the Department's oversight responsibilities.

Sections 1280.216–1280.222 of the Order establish that the membership of the Executive Committee will be composed of 14 members, including 7 producer members elected from 7 regions reflecting sheep production and sheep producers, 1 sheep feeder, 3 importers of sheep or sheep products, and 3 elected officers of the Board. In addition, these sections authorize the Executive Committee to develop plans and projects of promotion, research, consumer information, education, industry information, and producer information with respect to sheep and sheep products and to develop and submit to the Board budgets of anticipated expenses and disbursements for program projects. The Secretary must approve such plans, projects, or budgets before they are implemented.

Section 1280.223 of the Order holds the Board responsible for expenses of the Board and the Executive Committee, and establish requirements for contracts and agreements that the Board enters into.

Sections 1280.224–1280.228 establish assessment rates on sheep and sheep products as provided by the Act. These sections also provide that the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount.

Section 1280.229 authorizes each Qualified State Sheep Board (QSSB) to receive 20 percent of the total assessments collected by the Board on the marketing of domestic sheep and domestic sheep products in any one year from each State. However, no QSSB will receive less than $2,500 per year.

Section 1280.230 of the Order establishes collection procedures for each person responsible for collecting the assessment, fixes a 2 percent late payment charge for past due assessments, and authorizes the Secretary to receive assessments on behalf of the Board, if the Board is not in place or is otherwise unable to collect assessments.

Section 1280.231 of the Order prohibits funds received under this program from being used to influence Government action or policy, with certain specified exceptions. In addition, funds received under this program that are used to conduct plans or projects shall not (1) make false or misleading claims on behalf of sheep or sheep products or against a competing product or (2) promote or advertise any sheep or sheep products by brand or trade name without the approval of the Board and the concurrence of the Secretary.

Sections 1280.232–1280.235 of the Order contain reporting and recordkeeping requirements for persons subject to the Order, and provide that all information obtained by the Board or the Department from books and reports required by the Order would be kept confidential. A correction is made to § 1280.235(d) by deleting the word ''subpart'' and inserting in its place the word ''section.''

Sections 1280.240–1280.246 of the Order contain miscellaneous provisions, including provisions concerning the Secretary's authority; proceedings after the termination of the Order; the effect of termination or amendment of the Order; personal liability of Board members; patents, copyrights, inventions and publications; amendments to the Order; and separability of Order provisions.

On February 6, 1996, a nationwide referendum was conducted among eligible sheep producers, sheep feeders, and importers of sheep and sheep products to determine whether the Order should become effective. Requests for absentee ballots were available from January 16, 1996, through January 26, 1996. The representative period for establishing voter eligibility was from January 1, 1994, through December 31, 1994.

It is determined that a majority of those persons who voted in the referendum approved the implementation of the Order. To become effective, the Order had to be approved either by a simple majority vote or by those persons voting in the referendum who accounted for at least two-thirds of the production voted.

After consideration of all relevant material presented, including the initial proposals, comments received, the referendum results, and other available information, it is found that the Order and all of the terms and conditions thereof, should be made final.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. Each section of this final rule except, § 1280.224 through § 1280.228 which establish assessment rates on both domestic and imported sheep and sheep products as provided by the Act, will become effective upon publication of this final rule. Sections 1280.224–1280.228 of the Order will become effective July 1, 1996, after regulations implementing the collection and remittance procedures are issued and published in the Federal Register.

Accordingly, no useful purpose would be served in delaying the effective date of the other provisions of the Order. The Act requires implementation of the Order if the Order is approved by the sheep and wool industry and the sheep and wool industry approved the Order in the February 6, 1996, referendum. Further, the Board must be appointed to administer the program as soon as possible. Therefore, this final rule is effective on the day following date of publication in the Federal Register except for the provisions in § 1280.224–§ 1280.228.

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1280 of the Code of Federal Regulations is amended as follows:

PART 1280—SHEEP PROMOTION, RESEARCH, AND INFORMATION

1. The authority citation for Part 1280 continues to read as follows:

Authority: 7 U.S.C. 7101–7111.

2. In Part 1280, Subpart A is added to read as follows:

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Subpart A—Sheep and Wool Promotion, Research, Education, and Information Order

Definitions

§ 1280.101 Act.

The term *Act* means the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C. 7101–7111; Public Law No. 103–107; 108 Statute 4210, enacted October 22, 1994, and any amendments thereto.

§ 1280.102 Board.

The term *Board* means the National Sheep Promotion, Research, and Information Board established pursuant to § 1280.201.

§ 1280.103 Carbonized wool.

The term *carbonized wool* means wool that has been immersed in a bath, usually of mineral acids or acid salts, that destroys vegetable matter in the wool, but does not affect the wool fibers.

§ 1280.104 Certified organization.

The term *certified organization* means any organization that has been certified by the Secretary pursuant to this part as being eligible to submit nominations for membership on the Board.

§ 1280.105 Collecting person.

The term *collecting person* means any person who is responsible for collecting an assessment pursuant to the Act, this subpart and regulations prescribed by the Board and approved by the Secretary, including processors and any other persons who are required to remit assessments to the Board pursuant to this part, except that a collecting person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving such sheep or sheep products for sale on commission for or on behalf of a producer or feeder shall pass the collected assessments on to the subsequent purchaser pursuant to the Act, this subpart and the regulations prescribed by the Board and approved by the Secretary.

§ 1280.106 Consumer information.

The term *consumer information* means nutritional data and other information that would assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, or use of sheep products.

§ 1280.107 Customs Service.

The term *Customs Service* means the U.S. Customs Service of the Department of the Treasury.

§ 1280.108 Degreased wool.

The term *degreased wool* means wool from which the bulk of impurities has been removed by processing.

§ 1280.109 Department.

The term *Department* means the U.S. Department of Agriculture.

§ 1280.110 Education.

The term *education* means activities providing information relating to the sheep industry or sheep products to producers, feeders, importers, consumers, and other persons.

§ 1280.111 Executive Committee.

The term *Executive Committee* means the Executive Committee of the Board established under § 1280.216.

§ 1280.112 Exporter.

The term *exporter* means any person who exports domestic live sheep or greasy wool from the United States.

§ 1280.113 Feeder.

The term *feeder* means any person who feeds lambs until the lambs reach slaughter weight.

§ 1280.114 Greasy wool.

The term *greasy wool* means wool that has not been washed or otherwise cleaned.

§ 1280.115 Handler.

The term *handler* means any person who purchases and markets greasy wool.

§ 1280.116 Importer.

The term *importer* means any person who imports sheep or sheep products into the United States.

§ 1280.117 Industry information.

The term *industry information* means information and programs that would lead to increased efficiency in processing and the development of new markets, marketing strategies, increased marketing efficiency, and activities to enhance the image of sheep or sheep products on a national or international basis.

§ 1280.118 National feeder organization.

The term *national feeder organization* means any organization of feeders that has been certified by the Secretary pursuant to the Act and this part as being eligible to submit nominations for membership on the Board.

§ 1280.119 Part and subpart.

Part means the Sheep and Wool Promotion, Research, Education, and Information Order and all rules and regulations issued pursuant to the Act and the Order, and the Order itself shall be a ''subpart'' of such part.

§ 1280.120 Person.

The term *person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1280.121 Processor.

The term *processor* means any person who slaughters sheep or processes greasy wool into degreased wool.

§ 1280.122 Producer.

The term *producer* means any person, other than a feeder, who owns or acquires ownership of sheep.

§ 1280.123 Producer information.

The term *producer information* means activities designed to provide producers, feeders, and importers with information relating to production or marketing efficiencies or developments, program activities, or other information that would facilitate an increase in the consumption of sheep or sheep products.

§ 1280.124 Promotion.

The term *promotion* means any action (including paid advertising) to advance the image and desirability of sheep or sheep products, to improve the competitive position, and stimulate sales, of sheep products in the domestic and international marketplace.

§ 1280.125 Pulled wool.

The term *pulled wool* means wool that is pulled from the skin of slaughtered sheep.

§ 1280.126 Qualified State Sheep Board.

The term *Qualified State Sheep Board* means a sheep and wool promotion entity that:

(a) Is authorized by State statute or organized and operating within a State;

(b) Receives voluntary contributions or dues and conducts promotion, research, or consumer information programs with respect to sheep or wool, or both; and

(c) Is recognized by the Board as the sheep and wool promotion entity within the State; except that not more than one QSSB shall exist in any State at any one time.

§ 1280.127 Raw wool.

The term *raw wool* means greasy wool, pulled wool, degreased wool, or carbonized wool.

§ 1280.128 Research.

The term *research* means development projects and studies relating to the production (including the feeding of sheep), processing, distribution, or use of sheep or sheep products, to encourage, expand, improve, or make more efficient the marketing of sheep or sheep products.

§ 1280.129 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has been delegated, or to whom authority may be delegated, to act in the Secretary's stead.

§ 1280.130 Sheep.

The term *sheep* means ovine animals of any age, including lambs.

§ 1280.131 Sheep products.

The term *sheep products* means products produced in whole or in part from sheep, including wool and products containing wool fiber.

§ 1280.132 State.

The term *State* means each of the 50 States.

§ 1280.133 Unit.

The term *unit* means each State, group of States, or class designation that is represented on the Board.

§ 1280.134 United States.

The term *United States* means the 50 States and the District of Columbia.

§ 1280.135 Wool.

The term *wool* means the fiber from the fleece of a sheep.

§ 1280.136 Wool products.

The term *wool products* means products produced, in whole or in part, from wool and products containing wool fiber.

National Sheep Promotion, Research, and Information Board

§ 1280.201 Establishment and membership of the Board.

There is hereby established a National Sheep Promotion, Research, and Information Board (Board) of 120 members. Members of the Board shall be appointed by the Secretary from nominations submitted in accordance with this subpart. The seats shall be apportioned as follows:

(a) Producers: For purposes of nominating producers to the Board, each State shall be represented by the following number of members:

Unit	Board members
Alabama	1
Alaska	1
Arizona	1
Arkansas	1
California	5
Colorado	4
Connecticut	1
Delaware	1
Florida	1
Georgia	1
Hawaii	1
Idaho	2
Illinois	1
Indiana	1
Iowa	2
Kansas	1
Kentucky	1
Louisiana	1

Unit	Board members
Maine	1
Maryland	1
Massachusetts	1
Michigan	1
Minnesota	2
Mississippi	1
Missouri	1
Montana	5
Nebraska	1
Nevada	1
New Hampshire	1
New Jersey	1
New Mexico	2
New York	1
North Carolina	1
North Dakota	2
Ohio	1
Oklahoma	1
Oregon	2
Pennsylvania	1
Rhode Island	1
South Carolina	1
South Dakota	4
Tennessee	1
Texas	10
Utah	3
Vermont	1
Virginia	1
Washington	1
West Virginia	1
Wisconsin	1
Wyoming	5

(b) Feeders. The feeder sheep industry shall be represented by 10 members.

(c) Importers. Importers shall be represented by 25 members.

(d) Alternates. A unit represented by only one producer member may have an alternate member appointed to ensure representation at meetings of the Board.

§ 1280.202 Nominations.

(a) Producers. The Secretary shall appoint producers and alternates to represent units as specified under § 1280.201(a) of this subpart from nominations submitted by organizations certified under § 1280.207. A certified organization may submit only nominations for producer representatives and alternates if appropriate from the membership of the organization for the unit in which the organization operates. To be represented on the Board, each certified organization shall submit to the Secretary at least 1.5 nominations for each seat on the Board for which the unit is entitled to representation. If a unit is entitled to only one seat on the Board, the unit shall submit at least two nominations for the appointment.

(b) Feeders. The Secretary shall appoint representatives of the feeder sheep industry to seats established under § 1280.201(b) from nominations submitted by qualified national organizations that represent the feeder sheep industry. To be represented on the Board, the industry shall provide at least 1.5 nominations for each appointment to the Board to which the feeder sheep industry is entitled.

(c) Importers. The Secretary shall appoint importers to seats established under § 1280.201(c) from nominations submitted by qualified organizations that represent importers. The Secretary shall receive at least 1.5 nominations for each appointment to the Board to which importers are entitled.

(d) As soon as practicable, the Secretary shall obtain nominations from certified organizations. If no organization is certified in a unit the Secretary may use other means to obtain nominations. A certified organization shall only submit nominations for positions on the Board representing units in which such certified organization can establish that it is certified as eligible to submit nominations for representation of that unit of individual producers, feeders, or importers residing in that unit.

(e) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nominations shall be initiated not less than 6 months before the expiration of the terms of the members whose terms are expiring, in the manner described in § 1280.205(b). In the case of vacancies due to reasons other than the expiration of term of office, successor Board members shall be appointed pursuant to § 1280.206.

(f) Where there is more than one eligible organization representing producers, feeders, or importers in a State or unit, they may caucus and jointly nominate a minimum of 1.5 qualified persons for each position representing that State or unit on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each certified organization may submit nominations for each appointment to be made to represent that State or unit.

(g) Nominations should be submitted in order of preference and, for the initial Board, in order of preference for staggered terms. If the Secretary rejects any nominations submitted and there are insufficient nominations submitted from which appointments can be made, the Secretary may request additional nominations under paragraphs (a), (b), or (c) of this section.

§ 1280.203 Nominee's agreement to serve.

Any producer, feeder, or importer nominated to serve on the Board, or as an alternate, shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with any organization that operates a qualified State or regional program or has a contractual relationship with the Board; and

(c) Withdraw from participation in deliberations, decision making, or voting on matters that concern the relationship disclosed under paragraph (b) of this section.

§ 1280.204 Appointment.

From the nominations made pursuant to § 1280.202 above, the Secretary shall appoint the members of the Board on the basis of representation provided in § 1280.201 above.

§ 1280.205 Method of obtaining nominations.

(a) Initially Established Board.

(1) Producer and Alternate Nominations. The Secretary shall solicit, from organizations certified under § 1280.207, nominations for each producer's or alternate member's seat on the initially-established Board to which a unit is entitled. If no such organization exist, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate.

(2) Feeder and Importer Nominations. The Secretary shall solicit, from certified organizations that represent feeders and importers, nominations for each seat to which feeders or importers are entitled. If no such organization exists, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate. In determining whether an organization is eligible to submit nominations under this subparagraph, the Secretary shall determine whether:

(A) The organization's active membership includes a significant number of feeders or importers in relation to the total membership of the organization;

(B) There is evidence of stability and permanency of the organization; and

(C) The organization has a primary and overriding interest in representing the feeder or importer segment of the sheep industry.

(b) Subsequent Appointment.

(1) Producer Nominations. The solicitation of nominations for subsequent appointment to the Board from eligible organizations certified under § 1280.207 shall be initiated by the Secretary, with the Board securing the nominations for the Secretary.

(2) Feeder and Importer Nominations. The solicitation of feeder and importer

nominations for subsequent appointment to the Board shall be made by the Secretary from organizations certified in accordance with paragraph (a)(2) of this section.

§ 1280.206 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or from nominations submitted by the Board.

§ 1280.207 Certification of organizations.

(a) In general. The eligibility of any State organization to represent producers and to participate in the making of nominations under this subpart shall be certified by the Secretary. The Secretary shall certify any State organization that the Secretary determines meets the eligibility criteria established under paragraph (b) of this section. An eligibility determination by the Secretary shall be final.

(b) Basis for Certification. Certification shall be based upon, in addition to other available information, a factual report submitted by the organization that shall contain information considered relevant and specified by the Secretary, including:

(1) The geographic territory covered by the active membership of the organization;

(2) The nature and size of the active membership of the organization, including the proportion of the total number of active producers represented by the organization;

(3) Evidence of stability and permanency of the organization;

(4) Sources from which the operating funds of the organization are derived;

(5) The functions of the organization; and

(6) The ability and willingness of the organization to further the aims and objectives of the Act.

(c) Primary Considerations. A primary consideration in determining the eligibility of an organization under this paragraph shall be whether:

(1) The membership of the organization consists primarily of producers who own a substantial quantity of sheep; and

(2) An interest of the organization is in the production of sheep.

§ 1280.208 Term of office.

Each appointment to the Board shall be for a term of 3 years, except that appointments to the initially established Board shall be proportionately for 1-year, 2-year, and 3-year terms. No person may serve more than two consecutive 3-year terms, except that elected officers shall not be subject to the term limitation while they hold office.

§ 1280.209 Compensation.

Board members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as Board members.

§ 1280.210 Removal.

If the Secretary determines that any person appointed under this part fails to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. The Secretary may remove a person appointed or certified under this part, or any employee of the Board, if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1280.211 Powers and duties of the Board.

The Board shall have the following powers and duties:

(a) To elect officers of the Board, including a chairperson, vice chairperson, and secretary/treasurer;

(b) To administer this subpart in accordance with its terms and provisions;

(c) To recommend regulations to effectuate the terms and provisions of this subpart;

(d) To hold at least one annual meeting and any additional meetings it deems appropriate;

(e) To elect members of the Board to serve on the Executive Committee;

(f) To approve or reject budgets submitted by the Executive Committee;

(g) To submit budgets to the Secretary for approval;

(h) To contract with entities, if necessary, to implement plans or projects in accordance with the Act;

(i) To conduct programs of promotion, research, consumer information, education, industry information, and producer information;

(j) To receive, investigate, and report to the Secretary complaints of violations of this subpart;

(k) To recommend to the Secretary amendments to this subpart;

(l) To provide the Secretary with prior notice of meetings of the Board to permit the Secretary or a designated representative to attend such meetings;

(m) To provide not less than annually a report to producers, feeders, and importers, accounting for the funds expended by the Board, and describing programs implemented under the Act; and to make such report available to the public upon request;

(n) To establish seven regions that, to the extent practicable, contain geographically contiguous States and approximately equal numbers of sheep producers and sheep production;

(o) To employ or retain necessary staff; and

(p) To invest funds in accordance with § 1280.214.

§ 1280.212 Budgets.

(a) In general. The Board shall review the budget submitted by the Executive Committee, on a fiscal year basis, of anticipated expenses and disbursements by the Board, including probable costs of administration and promotion, research, consumer information, education, industry information, and producer information projects. The Board shall submit the budget to the Secretary for the Secretary's approval.

(b) Limitation. No expenditure of funds may be made by the Board unless such expenditure is authorized under a budget or budget amendment approved by the Secretary.

§ 1280.213 Books and records of the Board.

The Board shall:

(a) Maintain such books and records, which shall be made available to the Secretary for inspection and audit, as the Secretary may prescribe;

(b) Prepare and submit to the Secretary, from time-to-time, such reports as the Secretary may prescribe; and

(c) Account for the receipt and disbursement of all funds entrusted to it. The Board shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

§ 1280.214 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States. Any income from any such investment may be used for any purpose for which the invested funds may be used.

§ 1280.215 Use of assessments.

(a) Assessments received by the Board shall be used by the Board:

(1) To fund promotion, research, education, and information plans and projects authorized under this subpart, including promotion plans and projects which make specific reference to domestic sheep and sheep products originating or being produced and/or marketed in the U.S., except that the combined expenditures for such promotion plans and projects involving domestic country of origin shall be limited to no more than the combined domestic assessments collected on sheep and sheep products and the percentage of domestic assessments spent on the promotion of domestic sheep and sheep products shall not exceed the percentage of import assessments spent on the generic promotion of sheep and sheep products; and

(2) For the payment of expenses incurred in administering this subpart, including a reasonable reserve.

(b) The Board shall reimburse the Secretary, from assessments collected, for costs incurred in implementing and administering the Order as provided for under the Act.

Executive Committee

§ 1280.216 Establishment.

The Board shall establish an Executive Committee of the Board to assist the Board in the administration of the terms and provisions of this subpart, under the direction of the Board, and consistent with the policies determined by the Board.

§ 1280.217 Membership.

The Executive Committee shall be comprised of 14 members:

(a) Eleven members of the Executive Committee shall be elected by the Board annually. Of these members:

(1) One member shall represent each of the seven regions established under § 1280.211(n) for a total of seven members representing producers;

(2) One member shall represent feeders; and

(3) Three members shall represent importers.

(b) The remaining three members of the Executive Committee shall be the elected officers of the Board.

§ 1280.218 Powers and duties.

(a) Plans and Projects. The Executive Committee shall develop plans or projects of promotion and advertising, research, consumer information, education, industry information, and producer information, which plans or projects shall be paid for with assessments collected by the Board. The plans or projects shall not become effective until approved by the Secretary.

(b) Budgets. The Executive Committee shall be responsible for developing and submitting to the Board, for Board approval, budgets on a fiscal year basis of the Board's anticipated expenses and disbursements, including the estimated costs of advertising and promotion, research, consumer information, education, industry information, and producer information projects. The Board shall approve or disapprove such budgets and, if approved, shall submit them to the Secretary for the Secretary's approval.

§ 1280.219 Term of office.

Terms of appointment to the Executive Committee shall be for 1 year.

§ 1280.220 Chairperson.

The Chairperson of the Board shall serve as chairperson of the Executive Committee.

§ 1280.221 Quorum.

A quorum of the Executive Committee shall consist of eight members.

§ 1280.222 Vacancies.

To fill any vacancy caused by the death, removal, resignation, or disqualification of any member of the Executive Committee, the Board shall elect a successor for the position pursuant to § 1280.217.

Expenses

§ 1280.223 Expenses.

(a) The Board shall be responsible for all expenses of the Board and the Executive Committee.

(b) Contracts and Agreements. Any contract or agreement entered into by the Board shall provide that:

(1) The contracting party shall develop and submit to the Board a plan or project of promotion, research, education, consumer information, industry information, and producer information, together with a budget or budgets that shall show estimated costs to be incurred for such plan or project; and

(2) No plan, project, contract, or agreement shall become effective until it has been approved by the Secretary.

(c) The contracting party shall:

(1) keep accurate records of all of its transactions;

(2) account for funds received and expended, including staff time, salaries, and expenses expended on behalf of Board activities;

(3) make periodic reports to the Board of activities conducted; and

(4) make such other reports as the Board or the Secretary may require.

Assessments

§ 1280.224 Sheep purchases.

(a) In general. Each person making payment to a producer or feeder for sheep purchased from the producer or feeder shall be a collecting person and shall collect an assessment from the producer or feeder on each sheep sold by the producer or feeder. Each such producer or feeder shall pay such assessment to the collecting person at the rate set forth in paragraph (d) of this section.

(b) Remittances. Each processor making payment to a producer, feeder, or collecting person for sheep purchased from the producer, feeder, or collecting person shall be a collecting person and shall collect an assessment from the producer, feeder, or other collecting person on each sheep sold by the producer, feeder, or collecting person, and each such producer, feeder, or collecting person shall pay such assessment to the processor at the rate set forth in paragraph (d) in this section, and such processor shall remit the assessment to the Board.

(c) Processing. Any person who purchases sheep for processing shall collect the assessment from the seller and remit the assessment to the Board.

(d) Rate. Except as otherwise provided, the rate of assessment shall be 1 cent per pound of live sheep sold. The rate of assessment may be raised or lowered no more than 0.15 of a cent in any 1 year as recommended by the Executive Committee and approved by the Board and the Secretary. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount. The rate of assessment shall not exceed 2½ cents per pound.

§ 1280.225 Wool purchases.

(a) In general. Each person making payment to a producer, feeder, or handler of wool for wool purchased from the producer, feeder, or handler shall be a collecting person and shall collect an assessment from the producer, feeder, or handler on each pound of greasy wool sold. The producer, feeder, or handler shall pay such assessment to the collecting person at the rate set forth in (d) of this section.

(b) Remittances. Each processor making payment to a producer, feeder, handler, or collecting person for wool purchased from the producer, feeder, handler, or collecting person shall be a collecting person and shall collect an assessment from the producer, feeder,

handler, or other collecting person on all wool sold by the producer, feeder, handler, or collecting person, and each such producer, feeder, handler, or collecting person shall pay such assessment to the processor at the rate set forth in paragraph (d) of this section and such processor shall remit the assessment to the Board.

(c) Processing. Any person purchasing greasy wool for processing shall collect the assessment and remit the assessment to the Board.

(d) Rate. Except as otherwise provided, the rate of assessment shall be 2 cents per pound. The rate of assessment may be raised or lowered no more than 0.2 of a cent per pound in any 1 year as recommended by the Executive Committee and approved by the Board and the Secretary. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount. The rate of assessment shall not exceed 4 cents per pound of greasy wool.

§ 1280.226 Direct processing.

Each person who processes or causes to be processed sheep or sheep products of that person's own production, and markets such sheep or sheep products, shall pay an assessment on such sheep or sheep products at the time of sale at a rate equivalent to the rate established in § 1280.224(d) or § 1280.225(d), as appropriate, and shall remit such assessment to the Board.

§ 1280.227 Export.

Each person who exports live sheep or greasy wool shall remit the assessment on such sheep or greasy wool at the time of export, at a rate equivalent to the rate established in § 1280.224(d) or § 1280.225(d), as appropriate, and shall remit such assessment to the Board.

§ 1280.228 Imports.

(a) In general. Each person who imports sheep or sheep products or who imports wool or products containing wool (with the exception of raw wool) into the United States shall pay an assessment to the Board.

(b) Collection. Customs is authorized to collect and remit such assessment to the Secretary for disbursement to the Board.

(c) Rate for Sheep and Sheep Products. The assessment rate for sheep shall be 1 cent per pound of live sheep. The assessment rate for sheep products shall be the equivalent of 1 cent per pound of live sheep, as determined by the Secretary in consultation with the domestic sheep industry. Such rates may be raised or lowered no more than 0.15 cent per pound in any 1 year as recommended by the Executive Committee and approved by the Board and the Secretary, but shall not exceed 2½ cents per pound. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount.

(d) Rate for Wool and Wool Products. The assessment rate for wool and products containing wool shall be 2 cents per pound of degreased wool or the equivalent of degreased wool. The rate of assessment may be raised or lowered no more than 0.2 cents per pound in any 1 year, as recommended by the Executive Committee and approved by the Board and the Secretary, but shall not exceed 4 cents per pound of degreased wool or the equivalent. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount.

(e) The Secretary shall issue regulations regarding the assessment rates for imported sheep and sheep products. The Secretary may exclude from assessment certain imported products that contain *de minimis* levels of sheep or sheep products and waive the assessment on such products.

§ 1280.229 Qualified State Sheep Boards.

(a) Except as provided in paragraph (b) of this section, 20 percent of the total assessments collected by the Board on the marketings of domestic sheep and domestic sheep products in any 1 year from a State shall be returned to the QSSB of the State.

(b) No QSSB shall receive less than $2,500 under paragraph (a) of this section in any 1 year.

(c) The Board shall establish procedures with the approval of the Secretary to account for funds expended pursuant to paragraphs (a) and (b) of this section.

§ 1280.230 Collection.

(a) Each person responsible for the collection and remittance to the Board of assessments under this subpart shall do so on a monthly basis, unless the Board, with the approval of the Secretary, has specifically authorized otherwise.

(b) Late Payment Charges. Any unpaid assessments due the Board or from a person responsible for remitting assessments to the Board, shall be increased by 2 percent each month beginning with the day after the date such assessments were due under this subpart. Any assessments or late payment charges that remain unpaid shall be increased at the same rate on the corresponding day of each month thereafter until paid.

(c) Any unpaid assessments due to the Board pursuant to § 1280.224, § 1280.225, § 1280.226, and § 1280.227 shall be increased 2 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment determined at a date later than the date prescribed by this subpart because of a person's failure to submit a timely report to the Board shall be considered to have been payable by the date it would have been due if the report had been timely filed. The date of payment is the applicable postmark date or the date of receipt by the Board, whichever is earlier.

(d) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments and invest them on behalf of the Board, and shall pay such assessments and any interest earned to the Board when it is formed. The Secretary shall have the authority to promulgate rules and regulations concerning assessments and the collection of assessments if the Board is not in place or is otherwise unable to develop such rules and regulations.

§ 1280.231 Prohibition on use of funds.

(a) Except as otherwise provided in paragraph (b) of this section, no funds collected by the Board under this subpart shall be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State Government, or any political subdivision thereof.

(b) The prohibition in paragraph (a) of this section shall not apply:

(1) To the development and recommendation of amendments to this subpart; or

(2) To the communication to appropriate Government officials, in response to a request made by the officials, of information relating to the conduct, implementation, or results of promotion, research, consumer information, education, industry

information, or producer information activities under this subpart;

(c) A plan or project conducted pursuant to this title shall not make false or misleading claims on behalf of sheep or sheep products or against a competing product.

(d) No such plans or projects shall be undertaken to promote or advertise any sheep or sheep products by brand or trade name without the approval of the Board and the concurrence of the Secretary.

Reports, Books, and Records

§ 1280.232 Reports.

(a) Each collecting person, including processors and other persons required to remit assessments to the Board pursuant to § 1280.224(b) for live sheep, each person who markets sheep products of that person's own production and each exporter of sheep shall report to the Board information pursuant to regulations prescribed by the Board and approved by the Secretary. Such information may include:

(1) The number of sheep purchased, initially transferred or which, in any other manner, are subject to the collection of assessment, and the dates of such transaction;

(2) The number of sheep imported or exported, or the equivalent thereof sheep products imported;

(3) The amount of assessment remitted;

(4) An explanation for the remittance of any assessment that is less than the pounds of sheep multiplied by the assessment rate; and

(5) The date any assessment was paid.

(b) Each collecting person, including processors and other persons required to remit assessments to the Board pursuant to § 1280.225(b) for wool purchased from the producer or handler of wool or wool products, each person purchasing greasy wool for processing, each importer of wool or wool products (except raw wool), each exporter of greasy wool, and each person who markets wool of that person's own production shall report to the Board information pursuant to regulations prescribed by the Board and approved by the Secretary. Such information may include:

(1) The amount of wool purchased, initially transferred or in any other manner subject to the collection of assessment, and the dates of such transaction;

(2) The amount of wool imported (except raw wool) or the equivalent thereof of wool products imported or the amount of greasy wool exported;

(3) The amount of assessment remitted;

(4) An explanation for the remittance of an assessment that is less than the pounds of wool multiplied by the assessment rate; and

(5) The date any assessment was paid.

§ 1280.233 Books and records.

(a) Each collecting person, including processors and other persons required to remit assessments to the Board, each importer of sheep or sheep products (except raw wool), and exporter of sheep or greasy wool, and each person who markets sheep products of that person's own production, shall maintain and make available for inspection such books and records as may be required by regulations prescribed by the Board and approved by the Secretary, including records necessary to verify any required reports. Such records shall be maintained for the period of time prescribed by the regulations issued hereunder.

(b) Document Evidencing Payment of Assessments. Each collecting person responsible for collecting an assessment paid pursuant to this subpart, other than a person who slaughters sheep or markets sheep products of his or her own production for sale, is required to give the person or collecting person from whom the collecting person collected an assessment written evidence of payment of the assessments paid pursuant to this subpart. Such written evidence serving as a receipt shall include:

(1) Name and address of the collecting person;

(2) Name of the producer who paid the assessment;

(3) Number of head of sheep or pounds of wool sold;

(4) Total assessments paid by the producer;

(5) Date; and

(6) Such other information as the Board, with the approval of the Secretary, may require.

§ 1280.234 Use of information.

Information from records or reports required pursuant to this subpart shall be made available to the Secretary as is appropriate to the administration or enforcement of the Act, this subpart or any regulation issued under the Act. In addition, the Secretary shall authorize the use under this part of information that is accumulated under laws or regulations other than the Act or regulations issued under the Act regarding persons paying producers, feeders, importers, handlers, or processors.

§ 1280.235 Confidentiality.

(a) All information from records or reports required pursuant to this subpart shall be kept confidential by all officers and employees of the Department and of the Board. Such information may be disclosed only if the Secretary considers the information relevant, the information is disclosed only in a suit or administrative hearing brought at the direction or on the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and the information relates to the Act.

(b) Administration. No information obtained under the authority of this subpart may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of the Act and any investigatory or enforcement action necessary for the implementation of the Act.

(c) General Statements. Nothing in paragraph (a) of this section may be deemed to prohibit:

(1) The issuance of general statements, based on the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; or

(2) The publication, by direction of the Secretary, of the name of any person violating this subpart and a statement of the particular provisions of this subpart violated by such person.

(d) Penalty. Any person who willfully violates the provisions of this section, on conviction, shall be subject to a fine of not more than $1,000, or to imprisonment for not more than 1 year, or both, and if the person is an officer or employee of the Board or the Department, that person shall be removed from office.

Miscellaneous

§ 1280.240 Right of the Secretary.

All fiscal matters, programs or projects, bylaws, rules or regulations, reports, or other substantive actions proposed, and prepared by the Board shall be submitted to the Secretary for approval.

§ 1280.241 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of or under the control of the Board, including any claims of the Board against third parties that exist at the time of such termination.

(b) The trustees shall:

(1) Act as trustees until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by the Board pursuant to § 1280.223(b);

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignment of other instruments necessary or appropriate to transfer to such persons full title and right to all of the funds, property, and claims of the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to pay the necessary costs of liquidation shall be turned over to the Secretary to be used, to the extent practicable, for continuing one or more of the promotion, research, consumer information, education, industry information, and producer information plans or projects authorized pursuant to this subpart.

§ 1280.242 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability that has arisen or may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary or any person with respect to any such violation.

§ 1280.243 Personal liability.

No member, employee, or agent of the Board, including employees, agents, or Board members of the QSSB, acting pursuant to the authority provided in this subpart, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission, of such member, employee, or agent except for acts of dishonesty or willful misconduct.

§ 1280.244 Patents, copyrights, inventions, and publication.

Any patents, copyrights, inventions, or publications developed through the use of funds remitted to the Board under the provisions of this subpart shall be the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1280.240 shall apply to determine disposition of all such property.

§ 1280.245 Amendments.

Amendments to the subpart may be proposed, from time to time, by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1280.246 Separability.

If any provision of this subpart is declared invalid or its applicability to any person or circumstances is held invalid, the validity of the remainder of this subpart of the applicability thereof to other persons or circumstances shall not be affected thereby.

Dated: April 26, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–10887 Filed 5–1–96; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5, 20, and 28

[Docket No. 96–11]

RIN 1557–AB26

International Banking Activities

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is comprehensively revising its regulations governing the international operations of national banks and the operation of foreign banks through Federal branches and agencies in the United States. The revision is part of the OCC's Regulation Review Program, which seeks to simplify OCC regulations and reduce unnecessary compliance costs, consistent with maintaining safety and soundness and furthering the other responsibilities of the OCC. The final rule streamlines and consolidates into one part of the Code of Federal Regulations substantially all provisions relating to international banking, and clarifies and simplifies their various requirements.

The final rule also updates the rules to implement provisions of the Foreign Bank Supervisory Enhancement Act of 1991 (FBSEA) and the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) relating to Federal branches and agencies.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Raija Bettauer, Counselor for International Activities, (202) 874–0680, Raija.Bettauer@OCC.treas.gov.; Laurie Sears, Attorney, International Activities (202) 874–0680, Laurie.Sears@OCC.treas.gov.; Timothy M. Sullivan, Director, International Banking and Finance, (202) 874–4730, Tim.Sullivan@OCC.treas.gov.; Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 1995, the OCC published a notice of proposed rulemaking (60 FR 34907) (proposal) proposing to revise its regulations governing the international operations of national banks and the operation of foreign banks through Federal branches and agencies in the United States (12 CFR parts 20 and 28). The proposal was another component of the OCC's Regulation Review Program (Program). The goal of the Program is to review all of the OCC's rules and to eliminate provisions that impose unnecessary regulatory burden and do not contribute significantly to maintaining the safety and soundness of national banks (and Federal branches and agencies) or to accomplishing the OCC's other statutory responsibilities. Another goal of the Program is to clarify the OCC's regulations and to better communicate the standards that the rules intend to convey.

The proposal sought to achieve those goals and also to update the OCC's rules to implement provisions in the FBSEA (Pub. L. 102–242, title II, 105 Stat. 2286) and Interstate Act (Pub. L. 103–328, 108 Stat. 2338) relating to Federal branches and agencies of foreign banks. It also added a mechanism for the OCC to obtain information on foreign banking organizations to improve the OCC's safety and soundness oversight of Federal branches and agencies.

The proposal further sought to reduce the complexity of the existing regulatory

framework for international banking by referencing provisions in the regulations of the Board of Governors of the Federal Reserve System (FRB) and the Federal Deposit Insurance Corporation (FDIC), and, where possible, using terms and procedures consistent with the provisions in the other agencies' regulations dealing with comparable situations.

Comments Received

The OCC received four comment letters on the proposal: one from a national bank and three from trade associations. The commenters generally supported the OCC's efforts to consolidate and streamline the current regulations and reduce unnecessary regulatory burden. Overall, commenters commended the OCC's efforts, and some commenters offered variations on certain of the proposed changes.

Overview of the Final Rule and Response to Comments Received

The final rule consolidates into a single comprehensive regulation the substantive requirements governing international banking operations supervised by the OCC. The final rule relocates and incorporates what is currently subpart B of part 20, regarding international lending supervision, as subpart C of part 28. The OCC originally drafted this subpart in consultation with the FRB and the FDIC, and the OCC hopes to undertake a review of subpart C of part 28 in the near future in consultation with those agencies.

Under the final rule, the procedural requirements of 12 CFR part 5 continue to apply to Federal branches and agencies, unless otherwise provided, and part 28 cross-references the procedural requirements in part 5, as appropriate. The Comptroller's Manual for Corporate Activities also provides additional and more specific guidance on the application of the general corporate regulations to the Federal branches and agencies.

The four commenters recommended changes that focused on specific sections of the proposal. The OCC carefully considered each of the comments, and has made changes in the final rule in response to the comments received. The following discussion of significant sections identifies and discusses the comments the OCC received on the proposal and the changes the OCC made to the proposal to address those comments. The discussion also notes other changes to the current regulations that the OCC has adopted in the final rule. The preamble concludes by indicating the technical changes that the final rule makes to remove superfluous sections of 12 CFR part 5. A derivation table summarizing sections of former parts 20 and 28 changed by the final rule is included at the end of this preamble.

Subpart A—Foreign Operations of National Banks

Filing Requirements for Foreign Operations of a National Bank (§ 28.3)

The proposal required a national bank to notify the OCC upon establishing, opening, relocating, or closing a foreign branch, or when filing an application, notice, or report with the FRB regarding the acquisition or divestment of certain foreign investments. Under the proposal, a national bank could satisfy this requirement by providing the OCC with a copy of the appropriate filing made with the FRB. Also, the proposal removed the requirement in the current regulation for a national bank to make two separate filings when establishing a foreign branch or acquiring certain foreign investments.

One commenter requested that the OCC clarify the requirement that notice be provided to the OCC when a national bank ''establishes'' a foreign branch. The commenter noted that both the OCC's proposal and FRB's Regulation K, 12 CFR 211.3(a), require notice at the opening, closing, or relocating of a foreign branch. However, the OCC proposal also required a notice for ''establishing'' a foreign branch. The commenter requested that the OCC clarify whether ''establish'' has the same meaning as ''open,'' and, if not, whether the OCC is requesting something beyond that which is required under Regulation K.

Regulation K states that the establishment of a foreign branch generally requires the specific *approval* of the FRB. *See* 12 CFR 211.3(a)(1). Regulation K also requires any member bank that opens, closes, or relocates a foreign branch to *report* those changes in a manner prescribed by the FRB. *See* 12 CFR 211.3(a)(5). In addition, Regulation K requires a member bank to obtain the FRB's approval, or notify the FRB, when it acquires, divests, or disposes of certain foreign investments. *See* 12 CFR 211.5, 211.7.

The final rule makes it clear that whenever a national bank is required to make a filing with the FRB under Regulation K, as described in the paragraph above, it must also provide a copy of that filing or a notice of that filing to the OCC. However, even if not required by the FRB, the final rule requires a national bank to provide a simple notice to the OCC of the opening, closing, or relocation of a foreign branch. As the primary supervisor of the national bank and its consolidated global operations, it is necessary for the OCC to know the basic structure and location of the national bank's operations in order to effectively supervise the consolidated operations of the bank.

Liability for Deposits Maintained at Non-United States Offices

Section 326 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act) (Pub. L. 103–325, 108 Stat. 2160) amends the Federal Reserve Act, 12 U.S.C. 221 *et seq.*, to limit a *United States bank's* liability for deposits in its foreign branches if the branch cannot repay the deposit due to foreign sovereign action, war, insurrection, or civil strife, and the bank has not expressly agreed in writing to repay the deposit under those circumstances. The proposal specifically solicited public comment on whether additional guidance is necessary or desirable to implement this provision of the CDRI Act. The OCC received no comments regarding the effect of the proposal on United States banks.

One commenter, however, urged the OCC to adopt a provision in the final rule applying section 326 to Federal branches and agencies of foreign banks operating in the United States. The suggested provision would state that United States offices of foreign banks will not be subject to liability for deposits maintained at a non-United States office if that non-United States office cannot repay the deposits due to foreign sovereign action, war, insurrection, or civil strife. The commenter argued that its request is consistent with the protection provided United States banks under section 326 and the national treatment principle.

The OCC has decided not to adopt the commenter's suggestion at this time. Subpart B of part 28 contains a general provision regarding United States laws that apply to Federal branches and agencies, and the OCC expects to provide additional and more specific guidance in this area in the future. Section 326 was the product of some particular concerns. The OCC believes that it will be more appropriate to address the commenter's question via a process that better allows those concerns to be considered and, if appropriate, specific guidance to be issued.

Subpart B—Federal Branches and Agencies of Foreign Banks

Authority, Purpose, Scope, and Filing Requirements (§ 28.10)

The proposal set out the legal authority, purpose, and scope of subpart B. The final rule adds a new paragraph (c) to this section to explain that, unless otherwise provided, the rules of general applicability in 12 CFR part 5 apply to a filing by a foreign bank or a Federal branch or agency as they would apply to a similar filing by a national bank. The final rule tells filers where to file and where to obtain forms. The final rule also informs filers that the OCC accepts a copy of an application form, notice, or report submitted to another Federal regulatory agency that covers the proposed action and contains substantially the same information that would be required by the OCC.

Definitions (§ 28.11)

The proposal included new and updated definitions to assist in the implementation of new statutory requirements and to make the definitions more consistent with those of the FRB and FDIC. The final rule adopts the definitions as proposed, except as discussed below.

The final rule includes a new definition for ''affiliate'' that was discussed in the preamble of the proposal. The final rule extends the exemption for those from whom an uninsured Federal branch may take deposits of less than $100,000 to include persons to whom the branch, or foreign bank (including any affiliate thereof) has extended credit or provided other nondeposit banking services within the past 12 months. Therefore, it was necessary to add a definition for ''affiliate.''

The final rule adds a definition of ''capital equivalency deposit'' that refers to section 4 of the International Banking Act of 1978 (IBA), 12 U.S.C. 3102(g).

The final rule also adds a separate definition of ''control'' that was not in the proposal. However, the proposal described this term in two other definitions, so the final rule eliminates this redundancy.

The final rule defines ''initial deposit'' to clarify that ''first deposit'' means any deposit made when there is no current deposit relationship between the depositor and the Federal branch. This issue is discussed more thoroughly in the discussion of § 28.16 in reference to a comment received regarding accounts established with a deposit of $100,000 or more before the effective date of the regulation.

The OCC received a comment suggesting changes to the definition of ''managed or controlled,'' but the final rule adopts the definition as proposed. The Interstate Act, 12 U.S.C. 3105(k), provides that United States branches and agencies of foreign banks cannot manage any type of activity that is conducted through an offshore office of the foreign bank that is managed or controlled by the branch or agency unless a United States bank is permitted to manage that activity at its offshore branch or subsidiary.

The proposal defined ''managed or controlled'' to mean that the majority of the responsibility for business decisions, including decisions with regard to lending, asset management, funding, or liability management, or the responsibility for recordkeeping of assets or liabilities for a non-United States office, resides at the Federal branch or agency. This definition is consistent with the definition used in the Federal Financial Institutions Examinations Council (FFIEC) Supplement to the quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, FFIEC 002S, for the purpose of determining which United States branches and agencies of foreign banks manage or control offshore offices and must complete FFIEC 002S. 57 FR 61907, Dec. 29, 1992.

One commenter proposed that the OCC exclude from the definition of ''managed or controlled'' recordkeeping for a non-United States office by the United States office. The commenter recommended that, for various cost and efficiency reasons, a foreign bank may maintain records at a United States location for non- United States offices that the United States office does not otherwise manage or control, and that FFIEC 002S is intended for other purposes. Therefore, the broad definition of ''managed or controlled'' in FFIEC 002S that is used for reporting purposes should not automatically be used for applying restrictions on the types of activities that may be managed at offshore branches.

The OCC carefully considered this comment and decided not to adopt the commenter's recommendation. The OCC believes that two different definitions of ''managed or controlled'' would be impractical and confusing. In most, if not virtually all, cases where a United States office is performing recordkeeping functions for a non-United States office, the United States office would otherwise satisfy the definition of ''managed or controlled.'' The OCC recognizes, however, that if a United States office of the foreign bank simply compiles or forwards to the parent foreign bank data or information regarding offshore operations in the normal course of business, that activity would not constitute recordkeeping for this purpose. Thus, that United States office of the foreign bank would not ''manage or control'' the foreign bank's offshore activities for purposes of this provision.

Consequently, the final rule defines ''managed or controlled'' to apply to those offshore offices for which a Federal branch or agency has substantial responsibility with regard to assets or liabilities or recordkeeping. For example, consistent with FFIEC 002S, a Federal branch or agency would be deemed to manage or control its offshore office if: (1) The manager for the Federal branch or agency and the manager for the offshore office are the same person or there is other significant overlap in personnel; (2) substantial responsibility for decisions regarding either assets or liabilities of the offshore office resides with staff in the Federal branch or agency; or (3) recordkeeping systems for either assets or liabilities of the offshore office are maintained in the Federal branch or agency. The restrictions, however, generally would not apply to offshore branches that are full-service facilities managed or controlled by staff located at the offshore office or at a location outside the United States.

Approval of a Federal Branch or Agency (§ 28.12)

The proposal updated and clarified criteria for OCC approval of applications to establish a Federal branch or agency, or a limited Federal branch. The proposal also streamlined the procedures and provided for expedited review for certain corporate applications by eligible foreign banks.

Commenters generally commended the OCC's efforts to streamline the approval process. The OCC received no suggestions to improve this section, and the final rule adopts this section as proposed. Commenters especially favored the OCC's proposal to expedite the review procedure for eligible foreign banks.

For purposes of the expedited review procedures in the final rule, a foreign bank is an ''eligible foreign bank'' if each Federal branch and agency of the foreign bank in the United States: (1) Has a composite rating of 1 or 2 under the interagency rating system used by the OCC for United States branches and agencies of foreign banks (ROCA); (2) is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action

directive (*see* 12 CFR part 6) or, if subject to such order, agreement, or directive, is informed in writing by the OCC that the parent foreign bank may be treated as an ''eligible foreign bank'' for purposes of this section; and (3) has, if applicable, a Community Reinvestment Act (CRA), 12 U.S.C. 2906, rating of ''Outstanding'' or ''Satisfactory.'' The OCC will not provide expedited review, however, if it concludes, and advises the applicant in writing, that the filing presents significant supervisory or compliance concerns, or raises significant legal or policy issues.

The final rule also adds a paragraph to allow a foreign bank proposing to establish a Federal branch or agency through acquisition, merger, or consolidation with another foreign bank to obtain after-the-fact approval from the OCC in certain circumstances. This type of an establishment occurs when there is a change in the corporate form of the foreign bank operating the Federal branch or agency, for instance, through a merger of a foreign bank operating a Federal branch or agency into another foreign bank. This could also occur, in certain circumstances, through the acquisition of the assets or operations of a foreign bank operating a Federal branch or agency by another foreign bank.

The regulation provides the minimum requirements for an after-the-fact application, and further criteria and information regarding these transactions and procedures may be contained in the Manual. The OCC reserves, however, the right to deny the application, and an applicant must agree to abide by the OCC's decision, including terminating the activity or activities of an Federal branch or agency, if the OCC so requires.

The final rule expands the types of change of status that may be granted expedited review by including the conversion of a state branch or agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank into a Federal branch, limited Federal branch, or Federal agency.

Permissible Activities (§ 28.13)

In paragraph (a) of this section the proposal restated the general provision on the applicability of domestic law to Federal branches and agencies and requested comment on forms of supplemental guidance that interested parties thought would be most useful. The OCC received no comments on this paragraph and accordingly no substantive changes are made to paragraph (a) in the final rule.

In paragraph (b) of this section, the proposal restated the requirement in the Interstate Act regarding the management of certain offshore activities, 12 U.S.C. 3105(k), and clarified, in general terms, the activities that a United States bank may manage at its offshore branch or subsidiary. The Interstate Act provides that a United States branch or agency of a foreign bank shall not, through an offshore shell branch that it manages and controls, manage the types of activities that a United States bank may not manage at its foreign branch or subsidiary.

A commenter suggested that in accordance with the legislative history of the Interstate Act, the OCC should clarify that § 28.13(b) applies to offshore *shell* branches. The OCC agrees that this clarification is warranted and has changed the title of paragraph (b) of this section to mirror section 107(e) of the Interstate Act, 12 U.S.C. 3105(k).

In the preamble to the proposal, the OCC solicited comment on whether procedural or quantitative supervisory requirements that may apply to an activity of a United States bank at its foreign branches or subsidiaries should also apply to a Federal branch or agency in this context. One commenter noted that the Interstate Act does not require such limits to be imposed and that in other relevant contexts the Federal banking agencies have not imposed such limits. The OCC agrees with the commenter. The final rule refers to the ''types'' of activities and explicitly excludes United States procedural or quantitative supervisory requirements that may apply to the offshore branch or subsidiary of a United States bank.

The OCC notes, however, that the Interstate Act does not confer on a foreign bank the right to manage activities of an offshore office from its Federal branch or agency. The OCC will continue to monitor relationships between Federal branches and agencies and offshore offices of foreign banks and to evaluate the compliance of law and safety and soundness of the United States operations of Federal branches and agencies.

Capital Equivalency Deposit (§ 28.15)

The proposal restated the current provision that eligible capital equivalency deposits (CED) for Federal branches and agencies may include dollar deposits or investment securities that are permissible investments for a national bank. The proposal also stated that high-grade commercial paper and bankers' acceptances are the functional equivalents of deposits. The proposal required that permissible CED instruments be valued at the lower of the principal amount or market value. The proposal provided that if no published source for market value is available, the instruments must be priced by an independent pricing service at least quarterly.

One commenter recommended that the OCC not subject negotiable certificates of deposits or bankers' acceptances issued by United States banks or United States offices of foreign banks to the requirement that the instruments have a market value that is available from either a published source or from an independent pricing service. The commenter was concerned that this requirement may in practice prevent Federal branches and agencies from pledging negotiable certificates of deposit or bankers' acceptances issued by banks that are regulated by United States authorities and that are in a safe and sound financial condition solely because their prices are not published.

The proposal was not intended to make it impractical for Federal branches or agencies to pledge high quality instruments as CED. As mentioned in the proposal, the quality of bank certificates of deposit offered as CED has been occasionally questionable or difficult to ascertain. Also, certain securities used as CED may be volatile or difficult to price at market value. Therefore, the OCC included the published source requirement in the proposal.

The OCC recognizes, however, that this requirement may unnecessarily exclude certain high quality certificates of deposit or other instruments. Therefore, the final rule does not adopt the published source requirement for certificates of deposit and banker's acceptances. Instead, the final rule requires that for an instrument to qualify as CED it must be: (1) An investment security eligible for investment by a national bank; (2) a United States dollar deposit payable in the United States, other than a certificate of deposit; (3) a certificate of deposit, payable in the United States, or bankers' acceptance, provided that, in either case, the issuer or the instrument is rated investment grade by an internationally recognized rating organization, and neither the issuer nor the instrument is rated lower than investment grade by any such rating organization that has rated the issuer or the instrument; or (4) another asset permitted by the OCC to qualify as CED. Although currently under OCC supervisory policy dollar deposits include dollar denominated certificates of deposit payable in the United States, the final rule categorizes certificates of deposits separately to clarify the

treatment of these instruments. The final rule also restates the requirement in section 4 of the IBA, 12 U.S.C. 3102(g)(2), that the obligations used for CED must be valued at principal amount or market value, whichever is lower. The OCC believes that these requirements strike a reasonable balance between the OCC's concerns about the quality of these instruments offered as CED and providing flexibility to Federal branches and agencies in their choice of instruments that can be properly pledged as CED. In addition, the OCC retains the authority to disallow any particular CED investment that it concludes is inappropriate.

The OCC recognizes that, on the effective date of this regulation, CED accounts of some Federal branches and agencies may contain instruments that do not meet the investment grade rating standard of the final rule. In order to avoid unnecessary operational disruption, the OCC will not require immediate replacement of those instruments. Instead, an instrument in the CED account that does not qualify under this regulation must be replaced with a qualifying instrument, *i.e.*, one that satisfies the requirements of this regulation, upon maturity of that instrument. This accommodation applies, however, only to instruments already properly pledged as CED under the current regulation.

Deposit-Taking by an Uninsured Federal Branch (§ 28.16)

The Interstate Act, 12 U.S.C. 3104 note, requires the OCC and the FDIC to review and revise their regulations regarding deposit-taking by foreign branches to ensure that the agencies' regulations are consistent with the principle of national treatment articulated in the IBA, 12 U.S.C. 3104(a). Specifically, the OCC and FDIC are directed to consider whether foreign branches may accept initial deposits of less than $100,000 from six categories of depositors listed in the statute. The Interstate Act also directs the agencies to reduce the amount of deposits of less than $100,000, not otherwise permissible under this regulation, that may be accepted by foreign branches. This exemption, characterized as a ''regulatory *de minimis* exemption'' by the Interstate Act, reduces the amount of those deposits maintained by an uninsured Federal branch under the exemption from 5% to 1% of the average deposits held by that Federal branch.

The Interstate Act also directs the OCC to consider equal competitive opportunities among foreign banks and United States banks and the availability of credit to all sectors of the United States economy, including international trade finance. One objective that Congress expected the agencies to achieve in the implementation of this regulation is to afford equal competitive opportunities to foreign and United States banks by ensuring that foreign banks do not receive an unfair competitive advantage in taking uninsured deposits.

The OCC proposal, in general, adopted the exceptions suggested by Congress in the Interstate Act, but added several limited exemptions. The OCC believes these additional limited exemptions are consistent with the purposes of the Interstate Act. The preamble to the OCC's proposal set forth in detail the information and data that the OCC reviewed in considering this question. *See* 60 FR 34907, July 5, 1995. The final rule adopts this provision as proposed with some changes as described in the following discussion.

Nondeposit Banking Services (§ 28.16(b)(3))

The Interstate Act requires the OCC to consider whether to permit an uninsured Federal branch to accept initial deposits of less than $100,000 from persons to whom the branch or foreign bank has extended credit or provided other nondeposit banking services. The OCC's proposal provided that an uninsured Federal branch may accept initial deposits of less than $100,000 from persons to whom the branch or foreign bank has extended credit or provided other nondeposit banking services within the past 12 months or has entered into an agreement to provide those services within the next 12 months.

The proposal recognized that in a banking relationship a deposit may, in some cases, precede the extension of credit or the provision of other nondeposit banking services by the uninsured Federal branch or foreign bank. In the proposal, the OCC also indicated that it was considering clarifying this exemption to permit uninsured Federal branches to accept deposits from persons, *and their affiliates,* to whom the branch, foreign bank, *or any financial institution affiliate* thereof has extended credit or provided other non-deposit banking service within the past 12 months, or with whom the branch, bank, *or its financial institution affiliate* has a written agreement to extend credit to provide such services. The OCC did not receive any comments opposing the clarification of this exemption.

One commenter strongly supported expanding the scope of this exemption to include nondeposit banking services provided to the depositor, or its affiliates, by financial affiliates of the foreign bank. The commenter noted that, like United States banks, foreign banks provide nondeposit banking services through affiliates for a variety of regulatory and business reasons. Financial affiliates frequently provide banking services to customers that can also be provided directly by the bank. Similarly, depositors frequently conduct their operations through affiliates. The commenter also suggested that the OCC exercise its discretion under the Interstate Act to expand this category to cover *deposit* services provided by the foreign bank or its financial institution affiliates.

The OCC has adopted one of the commenter's recommendations. The final rule expands the scope of this exemption to permit an uninsured Federal branch to accept initial deposits of less than $100,000 from a person to whom the branch, foreign bank, or an affiliate of the foreign bank has extended credit or provided other nondeposit banking services within the past 12 months or has a written agreement to provide credit or those services within the next 12 months. The OCC believes that this expansion is warranted by the connection among the foreign entity's various components. Similarly, a customer who has a business relationship with an affiliate of the foreign bank may prefer the convenience of a deposit relationship with a Federal branch of the foreign bank. Moreover, the deposit relationship with the branch may, in some cases, precede the extension of credit or providing of other nondeposit banking services by the branch or foreign bank or its affiliates.

This expansion is supported by the language of the IBA, which defines ''foreign bank'' to include any affiliate of a foreign bank. *See* 12 U.S.C. 3101(7). Consistent with this exemption, affiliates of a foreign bank include companies that are capable of extending credit or providing some other nondeposit banking service to prospective depositors. For example, affiliates of a foreign bank that provide credit or other nondeposit banking services may include investment advisors, broker-dealers, futures commission merchants, finance companies, Edge corporations and Agreement corporations, commodity trading advisors, other banks, or any other comparable institution.

The OCC does not find equally compelling the commenter's argument to expand the exemption to include affiliates of the *depositor,* or to expand

the transactions triggering the exemption to include providing deposit services. There is no explicit statutory support in the IBA for this expansion, or any indication in the Interstate Act that Congress intended to include affiliates of persons to whom the branch or foreign bank (including its affiliates) has extended credit or provided any other nondeposit banking service. However, as a matter of convenience to depositors, the final rule includes a provision in the exemption to permit a Federal branch to accept deposits from immediate family members of an individual to whom the branch or foreign bank (including its affiliates) has extended credit or other nondeposit banking services within the past 12 months or has entered into a written agreement to provide such services within the next 12 months. The OCC notes that it specifically requested comment on an exemption for immediate family members in this section, and one commenter strongly supported this proposal. The OCC received no opposing comments.

Business Deposits (§ 28.16(b)(4))

The Interstate Act requires the OCC to consider whether to permit an uninsured branch to accept initial deposits of less than $100,000 from a foreign business or large United States business. The OCC has determined that this exemption is consistent with the objectives in section 6(a) of the IBA, 12 U.S.C. 3104. Consequently, the OCC,s proposal provided that an uninsured Federal branch may accept initial deposits of less than $100,000 from foreign businesses and large United States businesses. The proposal defined ''large United States business'' to mean any business entity organized under the laws of the United States, and that has: (1) securities registered on a national securities exchange or quoted on the National Associate of Securities Dealers Automated Quotation System (NASDAQ); or (2) more than $1 million in annual gross revenues. The proposal specifically requested comment on this definition, including the appropriateness of the criteria and suggestions for alternative criteria. Two commenters suggested modifications to this exemption.

One commenter urged the OCC to expand this exemption to permit an uninsured Federal branch to accept deposits from *all businesses.* The commenter believed that the Interstate Act gives the OCC and the FDIC discretion because the Interstate Act directs the agencies to ''consider'' adopting the exemption categories listed in the statute. The commenter noted that the ability of an uninsured Federal branch to accept initial deposits of less than $100,000 from all businesses is significant in maintaining and expanding credit availability to the United States economy. However, the commenter did not offer more specific information to support this assertion.

Alternatively, the commenter recommended that the OCC expand the exemption criteria to include businesses with: (1) $1 million in total assets; (2) 50 or more employees; or (3) affiliates of large United States businesses. The commenter suggested that the OCC expand the proposed criteria for large United States businesses to accommodate the wide range of different circumstances of business entities. For example, a foundation or trust would not be listed on a national securities exchange and may not generate revenues, although it could be considered large in terms of its total assets or employees. Also, the commenter proposed that the OCC should treat a large United States business and its affiliates as a group.

Another commenter, however, recommended narrowing the exemption by increasing the $1 million annual gross revenue amount required for large United States businesses to between $25 and $100 million. Furthermore, the commenter suggested imposing conditions under which a domestic business may open an account with an uninsured Federal branch. The commenter argued that using a $1 million cut-off would include a great number of domestic businesses and would undermine the purpose of the restriction. This commenter did not offer any more specific arguments to support its recommendation.

In the final rule, the OCC clarifies that the definition of ''large United States business'' includes non-profit institutions, such as foundations. In the absence of data supporting an alternative definition of ''large United States business,'' however, the OCC has decided not to make any other changes in the definition in the final rule. The OCC believes that the proposal represents a reasonable balance between Congress' concern that foreign banks and United States banks be provided equal competitive opportunities and the importance of maintaining credit to all sectors of the United States economy. At the same time, additional criteria or more specific conditions under which business deposits can be made, as proposed by one commenter, would make the exemption more complex and difficult to administer by uninsured Federal branches, without clear evidence that it would further the purposes of the Interstate Act.

Other Categories of Depositors (§ 28.16(b) (1), (2), (6) and (8))

One commenter expressed support for the other categories of exempt depositors proposed by the OCC. The proposal included a list of nine types of persons or entities from which an uninsured Federal branch may accept initial deposits of less than $100,000. In particular, the commenter supported the exemptions for Federal and state governments, individuals who are neither citizens nor residents of the United States, individuals who are not United States citizens, but who are residents of the United States and are employed by a foreign bank, foreign business, foreign government or recognized international organization, and deposits made in connection with the issuance of a financial instrument for the transmission of funds. The OCC did not receive any comments suggesting changes to these categories, and the final rule adopts the other depositor exemption categories as proposed.

De minimis Deposits (§ 28.16(b)(9)) and Transition rule (§ 28.16(f))

The Interstate Act, 12 U.S.C. 3104 note, requires that the OCC reduce the amount of deposits of less than $100,000 that an uninsured Federal branch may accept from any party under the *de minimis* exemption from 5% to 1% of the branch's average deposits.[1] The Interstate Act also permits the OCC to establish reasonable transition rules to facilitate the termination of any deposit-taking activities that would no longer be permissible under the new regulatory exemptions.

As required, the OCC's proposal reduced the amount of the *de minimis* exemption from 5% to 1% of an uninsured Federal branch's average deposits. In addition, the proposal provided a five-year transition period for all currently exempted accounts, other than time deposits. During the transition period, branches would have to reclassify deposits accepted under the current set of exemptions into one of the new exemptions, or terminate those deposit accounts that do not qualify for an exemption under this regulation as of the end of the transition period. The transition period for a time deposit would be until maturity of the deposit, at which time the branch must reclassify the deposit under a new exemption,

[1] The *de minimis* calculation methodology remains unchanged from the current rule and is consistent with the calculation methodology used by the FDIC for state-licensed branches.

obtain a special exemption from the OCC for the specific deposit, or terminate the deposit relationship. An uninsured branch may continue to accept deposits for an existing account that does not qualify for an exemption until the end of the transition period.

One commenter addressed the *de minimis* deposit and transition provisions of the proposal. The commenter supported the general approach of the five-year phase-in period. However, the commenter suggested the following modifications. First, the commenter suggested that the reclassification of initial deposits of less than $100,000 that were accepted under the current regulation should apply only to those deposits that were accepted under the current 5% *de minimis* test. In other words, the commenter thought it unnecessary to apply the reclassification requirement to all deposits maintained by uninsured branches under the current set of exemptions as the proposal provided.

The OCC considered this option and decided to adopt the requirement as proposed. The OCC interprets the Interstate Act to require reclassification of all deposits maintained by an uninsured Federal branch under the current exemptions. Those exemptions include deposits received, not only under the 5% *de minimis* exemption, but also deposits received under other current exemptions that no longer apply under the final rule. The OCC believes that its interpretation is more consistent with the Interstate Act and its legislative history which appear to contemplate a transition period for all existing exempted deposits, *i.e.*, not only for the *de minimis* deposits. In addition, the OCC has provided a five-year transition period for reclassification to reduce any disruption imposed by reclassification. In the final rule, the OCC clarifies that accounts accepted under all the existing regulatory exemptions must be reclassified during the transition period.

Second, the commenter requested clarification regarding the transition rule. The commenter requested that the OCC confirm that the reclassification of initial deposits of less than $100,000 could take place at any time during the phase-in period depending on the circumstances of the deposit account. The OCC confirms that a deposit, including a time deposit, may be reclassified at any time during the five-year transition period, but a time deposit is not required to be reclassified until its maturity date.

Third, the commenter addressed the transition period for time deposits. The proposal provided that the transition period for a time deposit would be until maturity of the deposit, at which time the branch must reclassify the deposit under a new exemption or obtain a special exemption from the OCC for the specific deposit. The commenter pointed out that time deposits can be as short as seven days in duration, and, therefore, a branch would have an unreasonably short period of time to reclassify many of its time deposits. The commenter recommended that the OCC delay the effective date for the requirement to begin reclassifying time deposits once they mature until six months after publication of the final rule.

The OCC recognizes that the proposal may provide insufficient time to reclassify time deposits that mature shortly after the effective date of the regulation. Therefore, the final rule provides, in the case of time deposits, that an uninsured Federal branch has until the maturity of the time deposit or 90 days after the effective date of the final rule, whichever is longer, to reclassify the deposit. The OCC believes that 90 days from the effective date of the final rule is a reasonable period of time to reclassify time deposits that mature shortly after the effective date of the regulation.

Fourth, the commenter requested clarification regarding the applicability of § 28.16 to accounts established with deposits of $100,000 or more before the effective date of this regulation. Specifically, the commenter pointed out that the proposed definition of ''initial deposit'' may conflict with the commenter's understanding that accounts established with a deposit of $100,000 or more before the effective date of the final rule would not be subject to the reclassification requirement. The proposal defined ''initial deposit'' as the first deposit received after the effective date of the final rule. The commenter noted that, under the proposal, after the effective date of the final rule the first deposit to an existing account of, for example, $10,000 that was initially opened with a deposit of $100,000 or more would be subject to this section although the original deposit of $100,000 or more was not subject to the current regulation. The commenter requested confirmation that existing deposits that were not subject to the exemptions because the initial deposit was $100,000 or more would not be subject to the revised regulation, even if the first deposit in the account after the effective date of the revised regulation was less than $100,000.

The commenter's interpretation is correct. Only initial deposits of less than $100,000 that were received under one of the current sets of exemptions under the current regulation are subject to the reclassification requirements in the final rule. Accordingly, the OCC changed the proposed definition of ''initial deposit'' to provide that a ''first deposit'' means any deposit when there is no current deposit relationship between the depositor and the Federal branch.

Notice of Change in Activity or Operations (§ 28.17)

The proposal added this section to clarify the OCC's policy regarding notice requirements for certain changes in activities and operations. The proposal required a Federal branch or agency to provide a notice to the OCC when changing its corporate title or mailing address, converting to a state branch, state agency, or a representative office, or when its parent foreign bank changes its home state designation.

The final rule removes proposed paragraphs (b) and (c) of this section concerning where to file and when the OCC would accept notices filed with other banking agencies. In order to provide this information for all filings and requests under this subpart, the final rule contains this information in § 28.10(c).

Recordkeeping and Reporting (§ 28.18)

The proposal restated current OCC policy and practice requiring a parent foreign bank to provide the OCC with information regarding its affairs. The proposal also added a specific requirement that a foreign bank operating a Federal branch or agency in the United States provide the OCC with a copy of regulatory reports that it files with other Federal regulatory agencies that are designated in guidance issued by the OCC. The proposal also clarified that, while a Federal branch or agency does not need to maintain all records in English, it must maintain sufficient records in English to permit examiners to perform their responsibilities. The OCC received no comments on this section and has made no changes in the final rule.

Maintenance of Assets (§ 28.20)

The proposal clarified the current asset maintenance requirements for Federal branches and agencies. Because the OCC believes that the importance of the asset maintenance requirement as a supervisory tool may increase in the future, the proposal requested comment on whether the level of detail provided in the proposal adequately clarified the use and scope of the provision to the industry. The OCC also requested comment on the exclusion of classified assets. The OCC received no comments

on either issue and made no changes in the final rule.

Termination of a Federal Branch or Agency (§ 28.23)

The proposal clarified the OCC's authority to terminate Federal branches and agencies. The proposal explicitly spelled out the grounds for termination in section 4(i) of the IBA, 12 U.S.C. 3102(i), and the grounds for national bank termination in 12 U.S.C. 191 and 12 U.S.C. 1821(c)(5). It also stated that a recommendation from the FRB to terminate a Federal branch or agency could constitute grounds for termination. The OCC received no comments on this section.

The OCC further clarifies this section in the final rule by including a reference to termination of a Federal branch or agency based on the foreign bank's insolvency, as specified in section 4(j)(1) of the IBA, 12 U.S.C. 3102(j)(1). In other respects, the final rule is unchanged from the proposal.

Subpart C—International Lending Supervision

Allocated Transfer Risk Reserve (§ 28.52) and Accounting for Fees on International Loans (§ 28.53)

This subpart implements the requirements of the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*). Subpart C requires national banks and District of Columbia banks to establish reserves against the risks presented in certain international assets and sets forth the accounting for various fees received by the banks when making international loans.

This subpart is subpart B of part 20 in the current regulation. The proposal relocated this subpart to subpart C of part 28. Because subpart B of part 20 was originally promulgated in cooperation with the FRB and the FDIC, the OCC intends to review the subpart with those agencies in the future, and, therefore, the OCC made no substantive changes to this subpart in the proposal. Public comment was invited on the subpart in order to bring particular issues to the OCC's attention.

One commenter recommended that the accounting provisions in the proposal be amended to be uniform among the Federal banking regulatory agencies and consistent with generally accepted accounting principles and various Financial Accounting Standards Board Statements. The commenter also requested clarification of regulatory accounting practices for the allocated transfer risk reserve as it relates to the allowance for loan and lease losses. The OCC will address these issues when the subpart is reviewed with the FRB and the FDIC.

Technical Changes to Part 5

Insofar as the final rule consolidates all substantive rules regarding the corporate activities of Federal branches and agencies into part 28, the OCC removes those sections in 12 CFR part 5 that concern Federal branches and agencies. However, the final rule points out, in § 28.10(c), that the rules of general applicability in part 5 apply to a Federal branch or agency as they would to a national bank undertaking a similar transaction, unless otherwise stated in part 28.

Derivation Table

This table directs readers to the original provision upon which the revised provision is based.

Revised provision	Original provision	Comments
§ 28.2	§ 20.2	Modified.
§ 28.3	§§ 20.3, 20.4	Significant change.
§ 28.4(a)		Added.
§ 28.4(b)	12 CFR 7.7010(b) (1995).	Modified.
§ 28.4(c)	12 CFR 7.1012 (1995).	No change.
	§ 20.5	Removed.
§ 28.11	§ 28.2	Significant change.
§ 28.12	§ 28.3	Significant change.
§ 28.13	§ 28.4	Significant change.
§ 28.14	§ 28.5	Modified.
§ 28.15	§ 28.6	Significant change.
§ 28.16	§ 28.8	Significant change.
§ 28.17		Added.
§ 28.18	§ 28.10	Significant change.
§ 28.19		Added.
§ 28.20	§ 28.9	Significant change.
§ 28.22		Added.
§ 28.23		Added.
Subpart C	Subpart B of part 20.	No change.
	§ 5.23	Removed.
	§ 5.25	Removed.
	§ 5.32	Removed.
	§ 5.41	Removed.
	§ 5.43	Removed .

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks and Federal branches and agencies of foreign banks, regardless of size, by simplifying and clarifying existing regulations.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48 (March 22, 1995) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC has determined that the final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, the final rule has the effect of reducing burden.

Paperwork Reduction Act of 1995

The collection of information requirements contained in this final rule have received approval from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), under OMB control number 1557–0102. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1557–0204, Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division 1557- 0204, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. The OCC will submit the collection of information requirements contained in this final rule for renewal of OMB approval following publication of this final rule.

The collection of information requirements in this rule are found in 12 CFR 28.3, 28.10, 28.13, 28.14, 28.15, 28.16, 28.17, 28.18, 28.20, 28.52, 28.53, and 28.54. The collections of information are necessary for regulatory and examination purposes, for Federal

branches and agencies and national banks with foreign operations to ensure their compliance with Federal law and regulations, and to evidence compliance with various regulatory requirements. This information assists management in its safe and sound operation of the institution. The OCC uses the information to evaluate national banks with international operations and Federal branches and agencies for supervisory, prudential, and legal purposes, and for statistical and examination purposes.

Respondents are not required to respond to the foregoing collection of information unless it displays a currently valid OMB control number. The likely respondents are foreign banks and national banks.

Estimated average annual burden hours per recordkeeper: 36.3 hours.

Estimated number of recordkeepers: 185.

Estimated total annual recordkeeping burden: One per year.

Start-up costs to respondents: none.

List of Subjects

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 20

Foreign banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble and under the authority of 12 U.S.C. 93a, 602, and 3108, chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 5—[AMENDED]

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a.

§ 5.23 [Removed]

2. Section 5.23 is removed.

§ 5.25 [Removed]

3. Section 5.25 is removed.

§ 5.32 [Removed]

4. Section 5.32 is removed.

§ 5.41 [Removed]

5. Section 5.41 is removed.

§ 5.43 [Removed]

6. Section 5.43 is removed.

PART 20—[REMOVED]

7. Part 20 is removed.

8. Part 28 is revised to read as follows:

PART 28—INTERNATIONAL BANKING ACTIVITIES

Subpart A—Foreign Operations of National Banks

Sec.
28.1 Authority, purpose, and scope.
28.2 Definitions.
28.3 Filing requirements for foreign operations of a national bank.
28.4 Permissible activities.
28.5 Filing of notice.

Subpart B—Federal Branches and Agencies of Foreign Banks

28.10 Authority, purpose, scope, and filing requirements.
28.11 Definitions.
28.12 Approval of a Federal branch or agency.
28.13 Permissible activities.
28.14 Limitations based upon capital of a foreign bank.
28.15 Capital equivalency deposits.
28.16 Deposit-taking by an uninsured Federal branch.
28.17 Notice of change in activity or operations.
28.18 Recordkeeping and reporting.
28.19 Enforcement.
28.20 Maintenance of assets.
28.21 Service of process.
28.22 Voluntary liquidation.
28.23 Termination of a Federal branch or agency.

Subpart C—International Lending Supervision

28.50 Authority, purpose, and scope.
28.51 Definitions.
28.52 Allocated transfer risk reserve.
28.53 Accounting for fees on international loans.
28.54 Reporting and disclosure of international assets.

Authority: 12 U.S.C. 1 *et seq.*, 93a, 161, 602, 1818, 3102, 3108, and 3901 *et seq.*

Subpart A—Foreign Operations of National Banks

§ 28.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, and 602.

(b) *Purpose.* This subpart sets forth filing requirements for national banks that engage in international operations and clarifies permissible foreign activities of national banks.

(c) *Scope.* This subpart applies to any national bank that engages in international operations through a foreign branch, or acquires an interest in an Edge corporation, Agreement corporation, foreign bank, or certain other foreign organizations.

§ 28.2 Definitions.

For purposes of this subpart:

(a) *Agreement corporation* means a corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System (FRB) under section 25 of the Federal Reserve Act (FRA), 12 U.S.C. 601 through 604a.

(b) *Edge corporation* means a corporation that is organized under section 25(a) of the FRA, 12 U.S.C. 611 through 631.

(c) *Foreign bank* means an organization that:

(1) Is organized under the laws of a foreign country;

(2) Engages in the business of banking;

(3) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations;

(4) Receives deposits to a substantial extent in the regular course of its business; and

(5) Has the power to accept demand deposits.

(d) *Foreign branch* means an office of a national bank (other than a representative office) that is located outside the United States at which banking or financing business is conducted.

(e) *Foreign country* means one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

§ 28.3 Filing requirements for foreign operations of a national bank.

(a) *Notice requirement.* A national bank shall notify the OCC when it:

(1) Files an application, notice, or report with the FRB to:

(i) Establish, open, close, or relocate a foreign branch; or

(ii) Acquire or divest of an interest in, or close, an Edge corporation, Agreement corporation, foreign bank, or other foreign organization; or

(2) Opens, closes, or relocates a foreign branch, and no application or notice is required by the FRB for such transaction.

(b) *Other applications and notices accepted.* In lieu of a notice under paragraph (a)(1) of this section, the OCC may accept a copy of an application, notice, or report submitted to another Federal agency that covers the proposed action and contains substantially the same information required by the OCC.

(c) *Additional information.* A national bank shall furnish the OCC with any additional information the OCC may require in connection with the national bank's foreign operations.

§ 28.4 Permissible activities.

(a) *General.* Subject to the applicable approval process, if any, a national bank may engage in any activity in a foreign country that is:

(1) Permissible for a national bank in the United States; and

(2) Usual in connection with the business of banking in the country where it transacts business.

(b) *Additional activities.* In addition to its general banking powers, a national bank may engage in any activity in a foreign country that is permissible under the FRB's Regulation K, 12 CFR part 211.

(c) *Foreign operations guarantees.* A national bank may guarantee the deposits and other liabilities of its Edge corporations and Agreement corporations and of its corporate instrumentalities in foreign countries.

§ 28.5 Filing of notice.

(a) *Where to file.* A national bank shall file any notice or submission required under this subpart with the Office of the Comptroller of the Currency, International Banking and Finance, 250 E Street SW, Washington, DC 20219.

(b) *Availability of forms.* Individual forms and instructions for filings are available from International Banking and Finance.

Subpart B—Federal Branches and Agencies of Foreign Banks

§ 28.10 Authority, purpose, scope, and filing requirements.

(a) *Authority.* This subpart is issued pursuant to the authority in the International Banking Act of 1978 (IBA), 12 U.S.C. 3101 *et seq.*, and 12 U.S.C. 93a.

(b) *Purpose and scope.* This subpart implements the IBA pertaining to the licensing, supervision, and operations of Federal branches and agencies in the United States.

(c) *Filing requirements*—(1) *Rules of general applicability.* Except as otherwise provided by the OCC, the rules of general applicability in 12 CFR part 5 apply to any filing by a foreign bank, or Federal branch or agency as they would to a similar filing by a national bank.

(2) *Where to file.* A foreign bank or a Federal branch or agency shall file any notice or submission required under this subpart with the Office of the Comptroller of the Currency, International Banking and Finance, 250 E Street SW, Washington, DC 20219.

(3) *Availability of forms.* Individual forms and instructions for filings are available from International Banking and Finance.

(4) *Other notices accepted.* The OCC accepts a copy of an application form, notice, or report submitted to another Federal regulatory agency that covers the proposed action and contains substantially the same information as would be required by the OCC. The OCC may also require the applicant to submit supplemental information.

§ 28.11 Definitions.

For purposes of this subpart:

(a) *Affiliate* means any entity that controls, is controlled by, or is under common control with another entity.

(b) *Agreement corporation* means a corporation having an agreement or undertaking with the FRB under section 25 of the FRA, 12 U.S.C. 601 through 604a.

(c) *Capital equivalency deposit* means a deposit by a Federal branch or agency in a member bank as described in section 4 of the IBA, 12 U.S.C. 3102(g).

(d) *Change the status of an office* means conversion of a:

(1) State branch or state agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch, limited Federal branch, or Federal agency;

(2) Federal agency into a Federal branch or limited Federal branch;

(3) Federal branch into a limited Federal branch or Federal agency; or

(4) Limited Federal branch into a Federal branch or Federal agency.

(e) *Control.* An entity controls another entity if the entity directly or indirectly controls or has the power to vote 25 percent or more of any class of voting securities of the other entity or controls in any manner the election of a majority of the directors or trustees of the other entity.

(f) *Edge corporation* means a corporation that is organized under section 25(a) of the FRA, 12 U.S.C. 611 through 631.

(g) *Establish a Federal branch or agency* means to:

(1) Open and conduct business through a Federal branch or agency;

(2) Acquire directly or indirectly through merger, consolidation, or similar transaction with another foreign bank, the operations of a Federal branch or agency that is open and conducting business;

(3) Acquire a Federal branch or agency through the acquisition of a foreign bank subsidiary that will cease to operate in the same corporate form following the acquisition;

(4) Change the status of an office; or

(5) Relocate a Federal branch or agency within a state or from one state to another.

(h) *Federal agency* means an office or place of business, licensed by the OCC and operated by a foreign bank in any state, that may engage in the business of banking, including maintaining credit balances, cashing checks, and lending money, but may not accept deposits from citizens or residents of the United States. Obligations may not be considered credit balances unless they are:

(1) Incidental to, or arise out of the exercise of, other lawful banking powers;

(2) To serve a specific purpose;

(3) Not solicited from the general public;

(4) Not used to pay routine operating expenses in the United States such as salaries, rent, or taxes;

(5) Withdrawn within a reasonable period of time after the specific purpose for which they were placed has been accomplished; and

(6) Drawn upon in a manner reasonable in relation to the size and nature of the account.

(i) *Federal branch* means an office or place of business, licensed by the OCC and operated by a foreign bank in any state, that may engage in the business of banking, including accepting deposits, that is not a Federal agency as defined in paragraph (h) of this section.

(j) *Foreign bank* means an organization that is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, and that engages directly in the business of banking in a foreign country.

(k) *Foreign business* means any entity, including a corporation, partnership, sole proprietorship, association, foundation or trust that is organized under the laws of a foreign country, or any United States entity that is controlled by a foreign entity or foreign national.

(l) *Foreign country* means one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

(m) *Home country* means the country in which the foreign bank is chartered or incorporated.

(n) *Home country supervisor* means the governmental entity or entities in the foreign bank's home country responsible for supervising and regulating the foreign bank.

(o) *Home state* of a foreign bank means the state in which the foreign bank has a branch, agency, subsidiary commercial lending company, or subsidiary bank. If a foreign bank has an office in more than one state, the home

state of the foreign bank is the state that is selected to be the home state by the foreign bank or, in default of the foreign bank's selection, by the FRB.

(p) *Immediate family member of an individual* means the spouse, father, mother, brother, sister, son, or daughter of that individual.

(q) *Initial deposit* means the first deposit transaction between a depositor and the Federal branch made on or after July 1, 1996. The initial deposit may be placed into different deposit accounts or into different kinds of deposit accounts, such as demand, savings, or time accounts. Deposit accounts that are held by a depositor in the same right and capacity may be added together for the purpose of determining the dollar amount of the initial deposit. *First deposit* means the deposit made when there is no current deposit relationship between the depositor and the Federal branch.

(r) *International banking facility* means a set of asset and liability accounts segregated on the books and records of a depository institution, a United States branch or agency of a foreign bank, or an Edge corporation or Agreement corporation, that includes only international banking facility time deposits and extensions of credit.

(s) *Large United States business* means any business entity including a corporation, company, partnership, sole proprietorship, association, foundation or trust that is organized under the laws of the United States or any state thereof, and has:

(1) Securities registered on a national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System; or

(2) More than $1 million in annual gross revenues for the fiscal year immediately preceding the year of the initial deposit.

(t) *Limited Federal branch* means a Federal branch that, pursuant to an agreement between the parent foreign bank and the FRB, may receive only those deposits permissible for an Edge corporation to receive.

(u) *Managed or controlled* by a Federal branch or agency means that a majority of the responsibility for business decisions, including decisions with regard to lending, asset management, funding, or liability management, or the responsibility for recordkeeping of assets or liabilities for a non-United States office, resides at the Federal branch or agency. For purposes of this definition, forwarding data or information of offshore operations gathered or compiled by the United States office in the normal course of business to the parent foreign bank does not constitute recordkeeping.

(v) *Manual* means the Comptroller's Manual for Corporate Activities (*see* 12 CFR part 5).

(w) *Parent foreign bank senior management* means individuals at the executive level of the parent foreign bank who are responsible for supervising and authorizing activities of the Federal branch or agency.

(x) *Person* means an individual or a corporation, government, partnership, association, or any other entity.

(y) *State* means any state of the United States and the District of Columbia.

(z) *United States bank* means a bank organized under the laws of the United States or any state.

§ 28.12 Approval of a Federal branch or agency.

(a) *Approval requirements.* A foreign bank shall submit an application to and obtain prior approval from the OCC before it:

(1) Establishes a Federal branch, Federal agency, or limited Federal branch; or

(2) Exercises fiduciary powers at a Federal branch. (A foreign bank may submit an application to exercise fiduciary powers at the time of filing an application for a Federal branch or at any subsequent date.)

(b) *Standards for approval.* Generally, in reviewing an application by a foreign bank to establish a Federal branch or agency, the OCC considers:

(1) The financial and managerial resources and future prospects of the applicant foreign bank and the Federal branch or agency;

(2) Whether the foreign bank has furnished to the OCC the information the OCC requires to assess the application adequately, and provided the OCC with adequate assurances that information will be made available to the OCC on the operations or activities of the foreign bank or any of its affiliates that the OCC deems necessary to determine and enforce compliance with the IBA and other applicable Federal banking statutes;

(3) Whether the foreign bank and its United States affiliates are in compliance with applicable United States law;

(4) The convenience and needs of the community to be served and the effects of the proposal on competition in the domestic and foreign commerce of the United States;

(5) Whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor; and

(6) Whether the home country supervisor has consented to the proposed establishment of the Federal branch or agency.

(c) *Comprehensive supervision or regulation on a consolidated basis.* In determining whether a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis, the OCC reviews various factors, including whether the foreign bank is supervised or regulated in a manner so that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank to assess the foreign bank's overall financial condition and compliance with laws and regulations as specified in the FRB's Regulation K, 12 CFR 211.24.

(d) *Conditions on approval.* The OCC may impose conditions on its approval including a condition permitting future termination of activities based on the inability of the foreign bank to provide information on its activities, or those of its affiliate, that the OCC deems necessary to determine and enforce compliance with United States banking laws.

(e) *Expedited review.* Unless the OCC concludes that the filing presents significant supervisory or compliance concerns, or raises significant legal or policy issues, the OCC generally processes the following filings by an eligible foreign bank, as defined in paragraph (f) of this section, under expedited review procedures:

(1) *Intrastate relocations.* An application submitted by an eligible foreign bank to relocate a Federal branch or agency within a state is deemed approved by the OCC as of the seventh day after the close of the applicable public comment period in 12 CFR part 5, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review.

(2) *Change of status.* An application to change the status of an office submitted by an eligible foreign bank is deemed approved by the OCC 45 days after filing with the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review.

(3) *Fiduciary powers.* An application submitted by an eligible foreign bank to exercise fiduciary powers at an established Federal branch is deemed approved by the OCC 30 days after filing with the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review.

(4) *Other filings.* Any other application submitted by an eligible foreign bank may be approved by the OCC on an expedited basis as described in the Manual.

(f) *Eligible foreign bank.* For purposes of this section, a foreign bank is an eligible foreign bank if each Federal branch and agency of the foreign bank in the United States:

(1) Has a composite rating of 1 or 2 under the interagency rating system for United States branches and agencies of foreign banks;

(2) Is not subject to a cease and desist order, consent order, formal written agreement, Prompt Corrective Action directive (*see* 12 CFR part 6) or, if subject to such order, agreement, or directive, is informed in writing by the OCC that the Federal branch or agency may be treated as an ''eligible foreign bank'' for purposes of this section; and

(3) Has, if applicable, a Community Reinvestment Act (CRA), 12 U.S.C. 2906, rating of ''Outstanding'' or ''Satisfactory''.

(g) *After-the-fact approval.* Unless otherwise provided by the OCC, a foreign bank proposing to establish a Federal branch or agency through the acquisition of, or merger or consolidation with, a foreign bank that has an office in the United States, may proceed with the transaction before an application to establish the Federal branch or agency has been filed or acted upon, if the applicant:

(1) Gives the OCC reasonable advance notice of the proposed acquisition, merger, or consolidation;

(2) Prior to consummation of the acquisition, merger, or consolidation, commits in writing to comply with the OCC application procedures within a reasonable period of time, or has already submitted an application; and

(3) Commits in writing to abide by the OCC's decision on the application, including a decision to terminate activities of the Federal branch or agency.

(h) *Procedures for approval.* A foreign bank shall file an application for approval pursuant to this section in accordance with 12 CFR part 5 and the Manual.

(i) Additional requirements. Nothing in this section relieves a foreign bank of any requirement to obtain the approval of the FRB as may be necessary under the FRB's Regulation K, 12 CFR part 211.

§ 28.13 Permissible activities.

(a) *Applicability of laws*—(1) *General.* Except as otherwise provided by the IBA, other Federal laws or regulations, or otherwise determined by the OCC, the operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Federal branch or agency were a national bank operating at the same location.

(2) *Parent foreign bank senior management approval.* Unless otherwise provided by the OCC, any provision in law, regulation, policy, or procedure that requires a national bank to obtain the approval of its board of directors will be deemed to require a Federal branch or agency to obtain the approval of parent foreign bank senior management.

(b) *Management of shell branches*—(1) *Federal branches and agencies.* A Federal branch or agency of a foreign bank shall not manage, through an office of the foreign bank that is located outside the United States and that is managed or controlled by that Federal branch or agency, any type of activity that a United States bank is not permitted to manage at any branch or subsidiary of the United States bank that is located outside the United States.

(2) *Activities managed in foreign branches or subsidiaries of United States banks.* The types of activities referred to in paragraph (b)(1) of this section include the types of activities authorized to a United States bank by state or Federal charters, regulations issued by chartering or regulatory authorities, and other United States banking laws. However, United States procedural or quantitative requirements that may be applicable to the conduct of those activities by United States banks do not apply.

(c) *Additional guidance regarding permissible activities.* For purposes of section 7(h) of the IBA, 12 U.S.C. 3105(h), the OCC may issue opinions, interpretations, or rulings regarding permissible activities of Federal branches.

§ 28.14 Limitations based upon capital of a foreign bank.

(a) *General.* Any limitation or restriction based upon the capital of a national bank shall be deemed to refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital of the foreign bank.

(b) *Calculation.* Unless otherwise provided by the OCC, a foreign bank must calculate its capital in a manner consistent with 12 CFR part 3, for purposes of this section.

(c) *Aggregation.* The foreign bank shall aggregate business transacted by all Federal branches and agencies with the business transacted by all state branches and state agencies controlled by the foreign bank in determining its compliance with limitations based upon the capital of the foreign bank. The foreign bank shall designate one Federal branch or agency office in the United States to maintain consolidated information so that the OCC can monitor compliance.

§ 28.15 Capital equivalency deposits.

(a) *Capital equivalency deposits*—(1) *General.* For purposes of section 4(g) of the IBA, 12 U.S.C. 3102(g), unless otherwise provided by the OCC, a foreign bank's capital equivalency deposits (CED) must consist of:

(i) Investment securities eligible for investment by national banks;

(ii) United States dollar deposits payable in the United States, other than certificates of deposit;

(iii) Certificates of deposit, payable in the United States, and banker's acceptances, provided that, in either case, the issuer or the instrument is rated investment grade by an internationally recognized rating organization, and neither the issuer nor the instrument is rated lower than investment grade by any such rating organization that has rated the issuer or the instrument; or

(iv) Other assets permitted by the OCC to qualify as CED.

(2) *Legal requirements.* The agreement with the depository bank to hold the CED and the amount of the deposit must comply with the requirements in section 4(g) of the IBA, 12 U.S.C. 3102(g). If a foreign bank has more than one Federal branch or agency in a state, it shall determine the CED and the amount of liabilities requiring capital equivalency coverage on an aggregate basis for all the foreign bank's Federal branches or agencies in that state.

(b) *Increase in capital equivalency deposits.* For prudential or supervisory reasons, the OCC may require, in individual cases or otherwise, that a foreign bank increase its CED above the minimum amount.

(c) *Value of assets.* The obligations referred to in paragraph (a) of this section must be valued at principal amount or market value, whichever is lower.

(d) *Deposit arrangements.* A foreign bank should require its depository bank to segregate its CED on the depository bank's books and records. The funds deposited and obligations referred to in paragraph (a) of this section that are placed in safekeeping at a depository bank to satisfy a foreign bank's CED requirement:

(1) May not be reduced in aggregate value by withdrawal without the prior approval of the OCC;

(2) Must be pledged and maintained pursuant to an agreement prescribed by the OCC; and

(3) Must be free from any lien, charge, right of setoff, credit, or preference in connection with any claim of the depository bank against the foreign bank.

(e) *Maintenance of capital equivalency ledger account.* Each Federal branch or agency shall maintain a capital equivalency account and keep records of the amount of liabilities requiring capital equivalency coverage in a manner and form prescribed by the OCC.

§ 28.16 Deposit-taking by an uninsured Federal branch.

(a) *Policy.* In carrying out this section, the OCC shall consider the importance of according foreign banks competitive opportunities equal to those of United States banks and the availability of credit to all sectors of the United States economy, including international trade finance.

(b) *General.* An uninsured Federal branch may accept initial deposits of less than $100,000 only from:

(1) Individuals who are not citizens or residents of the United States at the time of the initial deposit;

(2) Individuals who are not citizens of the United States, but are residents of the United States, and are employed by a foreign bank, foreign business, foreign government, or recognized international organization;

(3) Persons (including immediate family members of an individual) to whom the branch or foreign bank (including any affiliate thereof) has extended credit or provided other nondeposit banking services within the past 12 months, or with whom the branch or foreign bank has a written agreement to extend credit or provide such services within 12 months after the date of the initial deposit;

(4) Foreign businesses and large United States businesses;

(5) Foreign governmental units, including political subdivisions, and recognized international organizations;

(6) Federal and state governmental units, including political subdivisions and agencies thereof;

(7) Persons who are depositing funds in connection with the issuance of a financial instrument by the branch for transmission of funds, or transmission of funds by any electronic means;

(8) Persons who may deposit funds with an Edge corporation as provided in the FRB's Regulation K, 12 CFR 211.4, including persons engaged in certain international business activities; and

(9) Any other depositor if:

(i) The aggregate amount of deposits received from those depositors does not exceed, on an average daily basis, 1 percent of the average of the branch's deposits for the last 30 days of the most recent calendar quarter, excluding deposits of other offices, branches, agencies, or wholly owned subsidiaries of the foreign bank; and

(ii) The branch does not solicit deposits from the general public by advertising, display of signs, or similar activity designed to attract the attention of the general public.

(c) *Application for an exemption.* A foreign bank may apply to the OCC for an exemption to permit an uninsured Federal branch to accept or maintain deposit accounts that are not listed in paragraph (b) of this section. The request should describe:

(1) The types, sources, and estimated amounts of such deposits and explain why the OCC should grant an exemption; and

(2) How the exemption maintains and furthers the policies described in paragraph (a) of this section.

(d) *Aggregation of deposits.* For purposes of paragraph (b)(9) of this section, a foreign bank that has more than one Federal branch in the same state may aggregate deposits in all of its Federal branches in that state, but exclude deposits of other branches, agencies or wholly owned subsidiaries of the bank. The Federal branch shall compute the average amount by using the sum of deposits as of the close of business of the last 30 calendar days ending with and including the last day of the calendar quarter, divided by 30. The Federal branch shall maintain records of the calculation until its next examination by the OCC.

(e) *Notification to depositors.* A Federal branch that accepts deposits pursuant to this section shall provide notice to depositors pursuant to 12 CFR 346.7, which generally requires that the Federal branch conspicuously display a sign at the branch and include a statement on each signature card, passbook, and instrument evidencing a deposit that the deposit is not insured by the Federal Deposit Insurance Corporation (FDIC).

(f) *Transition period.* (1) An uninsured Federal branch may maintain a deposit lawfully accepted under the exemptions existing prior to July 1, 1996 if the deposit would qualify for an exemption under paragraph (b) of this section, except for the fact that the deposit was made before July 1, 1996.

(2) If a deposit lawfully accepted under the exemption existing prior to July 1, 1996 would not qualify for an exemption under paragraph (b) or (c) of this section, the uninsured Federal branch must terminate the deposit no later than:

(i) In the case of time deposits, the maturity of a time deposit or October 1, 1996, whichever is longer; or

(ii) In the case of all other deposits, five years after July 1, 1996.

(g) *Insured banks in United States territories.* For purposes of this section, the term ''foreign bank'' does not include any bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands whose deposits are insured by the FDIC pursuant to the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

§ 28.17 Notice of change in activity or operations.

Notice. A Federal branch or agency shall notify the OCC if:

(a) It changes its corporate title;

(b) It changes its mailing address;

(c) It converts to a state branch, state agency, or representative office; or

(d) The parent foreign bank changes the designation of its home state.

§ 28.18 Recordkeeping and reporting.

(a) *General.* A Federal branch or agency shall comply with applicable recordkeeping and reporting requirements that apply to national banks and with any additional requirements that may be prescribed by the OCC. A Federal branch or agency, and the parent foreign bank, shall furnish information relating to the affairs of the parent foreign bank and its affiliates that the OCC may from time to time request.

(b) *Regulatory reports filed with other agencies.* A foreign bank operating a Federal branch or agency in the United States shall provide the OCC with a copy of reports filed with other Federal regulatory agencies that are designated in guidance issued by the OCC.

(c) *Maintenance of accounts, books, and records.* (1) Each Federal branch or agency shall maintain a set of accounts and records reflecting its transactions that are separate from those of the foreign bank and any other branch or agency. The Federal branch or agency shall keep a set of accounts and records in English sufficient to permit the OCC to examine the condition of the Federal branch or agency and its compliance with applicable laws and regulations. The Federal branch or agency shall promptly provide any additional records requested by the OCC for examination or supervisory purposes.

(2) A foreign bank with more than one Federal branch or agency in a state shall designate one of those offices to maintain consolidated asset, liability, and capital equivalency accounts for all Federal branches or agencies in that state.

§ 28.19 Enforcement.

As provided by section 13 of the IBA, 12 U.S.C. 3108(b), the OCC may enforce compliance with the requirements of the IBA, other applicable banking laws, and OCC regulations or orders under section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818. This enforcement authority is in addition to any other remedies otherwise provided by the IBA or any other law.

§ 28.20 Maintenance of assets.

(a) *General rule.* (1) For prudential, supervisory, or enforcement reasons, the OCC may require a foreign bank to hold certain assets in the state in which its Federal branch or agency is located. Those assets may only consist of currency, bonds, notes, debentures, drafts, bills of exchange, or other evidence of indebtedness including loan participation agreements or certificates, or other obligations payable in the United States or in United States funds or, with the approval of the OCC, funds freely convertible into United States funds.

(2) If the OCC requires asset maintenance, the amount of assets held by a foreign bank shall be prescribed by the OCC, but may not be less than 105 percent of the aggregate amount of liabilities of the Federal branch or agency, payable at or through the Federal branch or agency. To determine the aggregate amount of liabilities for purposes of this section, the foreign bank shall include bankers' acceptances, but exclude liabilities to the head office and any other branches, offices, agencies, subsidiaries, and affiliates of the foreign bank.

(b) *Valuation.* For the purposes of this section, marketable securities must be valued at principal amount or market value, whichever is lower.

(c) *Credits.* In determining compliance with the asset maintenance requirements, the OCC will give the Federal branch or agency credit for:

(1) Capital equivalency deposits maintained pursuant to § 28.15;

(2) Reserves required to be maintained by the Federal branch or agency pursuant to the FRB's authority under 12 U.S.C. 3105(a); and

(3) Assets pledged, and surety bonds payable, to the FDIC to secure the payment of domestic deposits.

(d) *Exclusions.* In determining eligible assets for purposes of this section, the Federal branch or agency shall exclude:

(1) Any amount due from the head office or any other branch, office, agency, subsidiary, or affiliate of the foreign bank;

(2) Any classified asset;

(3) Any asset that, in the determination of the OCC, is not supported by sufficient credit information;

(4) Any deposit with a bank in the United States, unless that bank has executed a valid waiver of offset agreement;

(5) Any asset not in the Federal branch's actual possession unless the branch holds title to the asset and maintains records sufficient to enable independent verification of the branch's ownership of the asset, as determined at the most recent examination; and

(6) Any other particular asset or class of assets as provided by the OCC, based on a case-by-case assessment of the risks associated with the asset.

(e) *International banking facility.* Unless specifically exempted by the OCC, the eligible assets and liabilities of any international banking facility operated through the Federal branch or agency must be included in the computation of eligible assets and liabilities for purposes of this section.

§ 28.21 Service of process.

A foreign bank operating at any Federal branch or agency is subject to service of process at the location of the Federal branch or agency.

§ 28.22 Voluntary liquidation.

(a) *Procedures.* Unless otherwise provided, a Federal branch or agency that proposes to close its operations shall comply with the requirements in 12 CFR 5.48, as applicable, and the Manual.

(b) *Notice to customers and creditors.* A foreign bank shall provide any customers and known creditors, not previously notified in writing, with written notice of the impending closure of the Federal branch or agency at least 30 days prior to its closure.

(c) *Report of condition.* The Federal branch or agency shall submit a Report of Assets and Liabilities of United States Branches and Agencies of Foreign Banks as of the close of the last business day prior to the start of liquidation of the Federal branch or agency. This report must include a certified maturity schedule of all remaining liabilities, if any.

(d) *Return of certificate.* The Federal branch or agency shall return the Federal branch or agency license certificate within 30 days of closure to the public.

(e) *Reports of examination.* The Federal branch or agency shall send the OCC certification that all of its Reports of Examination have been destroyed or return its Reports of Examination to the OCC.

§ 28.23 Termination of a Federal branch or agency.

(a) *Grounds for termination.* The OCC may revoke the authority of a foreign bank to operate a Federal branch or agency if:

(1) The OCC determines that there is reasonable cause to believe that the foreign bank has violated or failed to comply with any of the provisions of the IBA, other applicable Federal laws or regulations, or orders of the OCC;

(2) A conservator is appointed for the foreign bank, or a similar proceeding is initiated in the foreign bank's home country;

(3) One or more grounds for receivership, including insolvency, as specified in 12 U.S.C. 3102(j), exists;

(4) One or more grounds for termination, including unsafe and unsound practices, insufficiency or dissipation of assets, concealment of books and records, a money laundering conviction, or other grounds as specified in 12 U.S.C. 191, exists; or

(5) The OCC receives a recommendation from the FRB, pursuant to 12 U.S.C. 3105(e)(5), that the license of a Federal branch or agency be terminated.

(b) *Procedures*—(1) *Notice and hearing.* Except as otherwise provided in this section, the OCC may issue an order to terminate the license of a Federal branch or agency after providing notice to the Federal branch or agency and after providing an opportunity for a hearing.

(2) *Procedures for hearing.* The OCC shall conduct a hearing under this section pursuant to the OCC's Rules of Practice and Procedure in 12 CFR part 19.

(3) *Expedited procedure.* The OCC may act without providing an opportunity for a hearing if it determines that expeditious action is necessary in order to protect the public interest. When the OCC finds that it is necessary to act without providing an opportunity for a hearing, the OCC in its sole discretion, may:

(i) Provide the Federal branch or agency with notice of the intended termination order;

(ii) Grant the Federal branch or agency an opportunity to present a written submission opposing issuance of the order; or

(iii) Take any other action designed to provide the Federal branch or agency with notice and an opportunity to present its views concerning the termination order.

Subpart C—International Lending Supervision

§ 28.50 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to 12 U.S.C. 1 *et seq.*, 93a, 161, and 1818; and the International Lending Supervision Act of 1983 (Pub. L. 98–181, title IX, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*).

(b) *Purpose.* This subpart implements the requirements of the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*),

(c) *Scope.* This subpart requires national banks and District of Columbia banks to establish reserves against the risks presented in certain international assets and sets forth the accounting for various fees received by the banks when making international loans.

§ 28.51 Definitions.

For the purposes of this subpart:

(a) *Banking institution* means a national bank or a District of Columbia bank.

(b) *Federal banking agencies* means the OCC, the FRB, and the FDIC.

(c) *International assets* means those assets required to be included in banking institutions' *Country Exposure Report* forms (FFIEC 009).

(d) *International loan* means a loan as defined in the instructions to the *Report of Condition and Income* for the respective banking institution (FFIEC 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(e) *International syndicated loan* means a loan characterized by the formation of a group of *managing* banking institutions and, in the usual case, assumption by them of underwriting commitments, and participation in the loan by other banking institutions.

(f) *Loan agreement* means the document signed by all of the parties to a loan, containing the amount, terms, and conditions of the loan, and the interest and fees to be paid by the borrower.

(g) *Restructured international loan* means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) The terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) A new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

(h) *Transfer risk* means the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

§ 28.52 Allocated transfer risk reserve.

(a) *Establishment of allocated transfer risk reserve.* A banking institution shall establish an allocated transfer risk reserve (ATRR) for specified international assets when required by the OCC in accordance with this section.

(b) *Procedures and standards*—(1) *Joint agency determination.* At least annually, the Federal banking agencies shall determine jointly, based on the standards set forth in paragraph (b)(2) of this section, the following:

(i) Which international assets subject to transfer risk warrant establishment of an ATRR;

(ii) The amount of the ATRR for the specified assets; and

(iii) Whether an ATRR established for specified assets may be reduced.

(2) *Standards for requiring ATRR*—(i) *Evaluation of assets.* The Federal banking agencies shall apply the following criteria in determining whether an ATRR is required for particular international assets:

(A) Whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as whether:

(*1*) Such obligors have failed to make full interest payments on external indebtedness;

(*2*) Such obligors have failed to comply with the terms of any restructured indebtedness; or

(*3*) A foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(B) Whether no definite prospects exist for the orderly restoration of debt service.

(ii) *Determination of amount of ATRR.* (A) In determining the amount of the ATRR, the Federal banking agencies shall consider:

(*1*) The length of time the quality of the asset has been impaired;

(*2*) Recent actions taken to restore debt service capability;

(*3*) Prospects for restored asset quality; and

(*4*) Such other factors as the Federal banking agencies may consider relevant to the quality of the asset.

(B) The initial year's provision for the ATRR shall be 10 percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies. Additional provision, if any, for the ATRR in subsequent years shall be 15 percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies.

(3) *Notification.* Based on the joint agency determinations under paragraph (b)(1) of this section, the OCC shall notify each banking institution holding assets subject to an ATRR:

(i) Of the amount of the ATRR to be established by the institution for specified international assets; and

(ii) That an ATRR to be established for specified assets may be reduced.

(c) *Accounting treatment of ATRR*—(1) *Charge to current income.* A banking institution shall establish an ATRR by a charge to current income and the amounts so charged shall not be included in the banking institution's capital or surplus.

(2) *Separate accounting.* A banking institution shall account for an ATRR separately from the Allowance for Possible Loan Losses, and shall deduct the ATRR from ''gross loans and leases'' to arrive at ''net loans and leases.'' The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

(3) *Consolidation.* A banking institution shall establish an ATRR, as required, on a consolidated basis. Consolidation should be in accordance with the procedures and tests of significance set forth in the instructions for preparation of *Consolidated Reports of Condition and Income* (FFIEC 031, 032, 033 and 034). For bank holding companies, the consolidation shall be in accordance with the principles set forth in the ''Instructions to the Bank Holding Company Financial Supplement to Report F.R. Y–6'' (Form F.R. Y–9). Edge corporations and Agreement corporations engaged in banking shall report in accordance with instructions for preparation of the Report of Condition for Edge corporations and Agreement corporations (Form F.R. 2886b).

(4) *Alternative accounting treatment.* A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value

of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the Allowance for Possible Loan Losses or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset. However, the Allowance for Possible Loan Losses must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan portfolio.

(5) *Reduction of ATRR.* A banking institution may reduce an ATRR when notified by the OCC or, at any time, by writing down such amount of the international asset for which the ATRR was established.

§ 28.53 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge any fee in connection with a restructured international loan unless all fees exceeding the banking institution's administrative costs, as described in paragraph (c)(2) of this section, are deferred and recognized over the term of the loan as an interest yield adjustment.

(b) *Amortizing fees.* Except as otherwise provided by this section, fees received on international loans shall be deferred and amortized over the term of the loan. The interest method should be used during the loan period to recognize the deferred fee revenue in relation to the outstanding loan balance. If it is not practicable to apply the interest method during the loan period, the straight-line method shall be used.

(c) *Accounting treatment of international loan or syndication administrative costs and corresponding fees.* (1) Administrative costs of originating, restructuring, or syndicating an international loan shall be expensed as incurred. A portion of the fee income equal to the banking institution's administrative costs may be recognized as income in the same period such costs are expensed.

(2) The administrative costs of originating, restructuring, or syndicating an international loan include those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: Legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function and, where applicable, the syndication function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(d) *Fees received by managing banking institutions in an international syndicated loan.* Fees received on international syndicated loans representing an adjustment of the yield on the loan shall be recognized over the loan period using the interest method. If the interest yield portion of a fee received on an international syndicated loan by a managing banking institution is unstated or differs materially from the pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest yield adjustment shall be recognized. This amount shall at least be equivalent (on a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentation shall include the loan agreement. Otherwise, the fee shall be deemed an adjustment of yield.

(e) *Loan Commitment fees.* (1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight-line method of amortization. Such fees for revolving credit arrangements, where the fees are received periodically in arrears and are based on the amount of the unused loan commitment, may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee shall be amortized over the term of the combined commitment and expected loan period. The straight-line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(f) *Agency fees.* Fees paid to an agent banking institution for administrative services in an intentional syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

§ 28.54 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of the International Lending Supervision Act of 1983 (title IX, Pub. L. 98–181, 97 Stat. 1153, 12 U.S.C. 3906) (ILSA) a banking institution shall submit to the OCC, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of ILSA (12 U.S.C. 3906), a banking institution shall submit to the OCC information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution, such information to be made publicly available by the OCC on request.

(b) *Procedures.* The format, content, and reporting and filing dates of the reports required under paragraph (a) of this section shall be determined jointly by the Federal banking agencies. The requirements to be prescribed by the agencies may include changes to existing reporting forms (such as the Country Exposure Report, FFIEC 009) or such other requirements as the agencies deem appropriate. The agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the agencies' judgment, have *de minimis* holdings of international assets.

(c) *Reservation of authority.* Nothing contained in this part shall preclude the OCC from requiring from a banking institution such additional or more frequent information on the institution's holdings of international assets as the OCC may consider necessary.

Dated: April 13, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–10432 Filed 5–1–96; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–101–AD; Amendment 39–9584; AD 96–09–08]

RIN 2120–AA64

Airworthiness Directives; Aviat Aircraft Inc. Models S–2A, S–2B, and S–2S Airplanes (Formerly Pitts Models S–2A, S–2B, and S–2S Airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Aviat Aircraft Inc., Models S–2A, S–2B, and S–2S airplanes (formerly Pitts Models S–2A, S–2B, and S–2S airplanes). This action requires inspecting the longerons aft of the rear cabane struts for cracks, and if cracked, prior to further flight, repairing the cracks. Reports of longeron failure caused by fatigue aft of the rear cabane struts prompted this action. The actions specified by this AD are intended to prevent cracking and subsequent failure of the longerons resulting in possible loss of control of the airplane.

DATES: Effective May 20, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 1996.

Comments for inclusion in the Rules Docket must be received on or before June 21, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–101–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Aviat Aircraft Inc., The Airport-Box No. 11240, 672 South Washington Street, Afton, Wyoming, 83110; telephone (307) 886–3151; facsimile (307) 886–9674. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–101–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger Caldwell, Project Engineer, FAA, Denver Aircraft Certification Office, 5440 Roslyn St., suite 133, Denver, Colorado, 80216; telephone (303) 286–5683; facsimile (303) 286–5689.

SUPPLEMENTARY INFORMATION: The FAA has been notified that an unsafe condition may exist on Aviat Models S–2A, S–2B, and S–2S airplanes. The owners/operators of several of these airplanes have reported cracking and failure of the longerons aft of the rear cabane struts. One incident reported that the cracked longeron made it very difficult to control the airplane to a safe landing.

Aviat has issued service bulletin (SB) No. 24, dated February 8, 1996, which specifies inspecting for cracks and repairing any cracks found in the longerons aft of the rear cabane struts.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken in order to prevent cracking and subsequent failure of the longerons resulting in possible loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Aviat Models S–2A, S–2B, and S–2S airplanes of the same type design registered for operation in the United States, this AD requires:

—Inspecting the longerons around the rear cabane struts for cracks,
—If no cracks are found, repetitively inspecting, and
—If cracks are found during any inspection, prior to further flight, contact the Denver ACO manager for an approved repair scheme
—Repair any cracks found according to the approved repair scheme provided by the ACO manger

The inspections are to be done in accordance with the instructions in the Aviat SB No. 24, dated February 8, 1996.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–101–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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–09–08. Aviat Aircraft Inc.: Amendment 39–9584; Docket No. 95–CE–101–AD.

Applicability: Models S–2A, S–2B, and S–2S airplanes (formerly Pitts Models S–2A, S–2B, and S–2S airplanes), all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required at the accumulation of 300 hours total time-in-service (TIS), or within the next 25 hours TIS, whichever occurs later, and thereafter at intervals not to exceed 25 hours TIS, unless already accomplished.

To prevent cracking and subsequent failure of the longerons, which could result in loss of control of the airplane, accomplish the following:

(a) Inspect (using a 10x magnifying glass) the longerons aft of the rear cabane struts for cracks in accordance with paragraphs 1.) through 5.) in the Aviat Service Bulletin (SB) No. 24, dated February 8, 1996. If cracks are found during any inspection required by this AD, prior to further flight, contact the Manager of the Denver ACO for an approved repair scheme.

(b) Prior to further flight, repair any cracks found in accordance with the approved repair scheme provided by the ACO manager.

(c) Report the results of the initial inspection to the Manager of the Denver Aircraft Certification Office (ACO), FAA, Denver Aircraft Certification Office, 5440 Roslyn St., suite 133, Denver, Colorado, 80216, within 10 days of the inspection. The information provided should include airplane model number, serial number, registration number, location of cracks found, number of cracks, and total TIS. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(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 inspection requirements of this AD can be accomplished, provided that aerobatic flying is prohibited.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Denver Aircraft Certification Office, FAA, Denver Aircraft Certification Office, 5440 Roslyn St., suite 133, Denver, Colorado, 80216. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Denver Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Denver Aircraft Certification Office.

(f) The inspections required by this AD shall be done in accordance with Aviat Aircraft Inc. Service Bulletin No. 24, dated February 8, 1996. 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 Aviat Aircraft Inc., The Airport-Box No. 1240, 672 South Washington Street, Afton, Wyoming, 83110. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–9584) becomes effective on May 20, 1996.

Issued in Kansas City, Missouri, on April 22, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10477 Filed 5–1–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–AGL–20]

Establishment of Class E Airspace; Bigfork, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Bigfork Municipal Airport, Bigfork, MN, to accommodate a Nondirectional Radio Beacon (NDB) instrument approach procedure for Runway 15. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach.

EFFECTIVE DATE: 0901 UTC, August 15, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, December 13, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Bigfork Municipal Airport, Bigfork, MN (60 FR 63993). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL for Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Bigfork Municipal Airport, Bigfork, MN, to accommodate a nondirectional Radio Beacon (NDB) instrument approach procedure to Runway 15. Controlled airspace extending upward from 700 to 1200 feet AGL is needed for aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not

a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

AGL MN E5 Bigforks, MN [New]

(Lat. 47°46′45″ N, long. 93°39′01″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Bigfork Municipal Airport.

* * * * *

Issued in Des Plains, Illinois on April 17, 1996.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 96–10972 Filed 5–1–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–7]

Amendment of Class E Airspace; Jackson, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area at Jackson, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 1 has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Westover Field Amador County, Jackson, CA.

EFFECTIVE DATE: 0901 UTC August 15, 1996.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On March 11, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Jackson, CA (61 FR 9657). This action will provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Westover Field Amador County, Jackson, CA.

Interested parties were invited to participate in this rulemaking proceedings by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Jackson, CA. The development of a GPS SIAP at Westover Field Amador County has made this action necessary. The intended effect of this action is to provide adequate Class E airspace for aircraft executing the GPS RWY 1 SIAP at Westover Field Amador County, Jackson, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

AWP CA E5 Jackson, CA [Revised]

Jackson, Westover Field Amador County, CA (Lat. 38°22′36″ N, long. 120°47′38″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Westover Field Amador County.

* * * * *

Issued in Los Angeles, California, on April 18, 1996.

Harvey R. Riebel,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–10971 Filed 5–1–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 500, 582, and 589

[Docket No. 94G–0239]

GRAS Status of Propylene Glycol; Exclusion of Use in Cat Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to exclude from generally recognized as safe (GRAS) status the use of propylene glycol (PG) in or on cat food. This final action is based on FDA's review of currently available information which has raised significant questions about the safety of this use. Semimoist pet foods containing PG were not in existence when the GRAS status of PG for use in animal feeds was established, thus the agency's prior GRAS determination does not apply to the newly intended uses of PG.

EFFECTIVE DATE: June 3, 1996.

FOR FURTHER INFORMATION CONTACT: David A. Dzanis, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0169.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of May 10, 1995 (60 FR 24808), FDA issued a proposed rule to amend the animal drug regulations to exclude from GRAS status the use of PG in or on cat food. In the proposed rule of May 10, 1995, the regulatory history of PG was reviewed as well as the last 13 years of scientific literature on the safety of PG in cat food. FDA concluded that there are significant questions about the safety of PG in cat food. FDA also concluded that PG is not GRAS as an ingredient of cat food, and the use is not subject to a prior sanction. When used in or on cat food, PG is deemed to be a food additive, subject to section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348), and its use in cat food must be in accordance with a published food additive regulation. Comments by the public on the proposed rule were requested to be submitted by July 24, 1995.

II. Comments on the Proposed Rule

In response to publication of the proposed rule to amend the GRAS status of PG to exclude its use in cat foods, three parties submitted comments: Two manufacturers of PG, and one pet food industry association. One party offered unconditional support of the proposed rule. The other two parties offered comments to amend the proposed rule to allow for limited use of PG.

1. One comment argued for the need for PG as a carrier for antioxidants added to cat food. Antioxidants are needed to prevent oxidation of unsaturated fats and other components of cat foods, which could adversely affect nutritional and organoleptic properties of the products. The amount of PG in the finished food stemming from such use was estimated to be 0.0009 to 0.007 percent (9 to 70 milligrams per kilogram (mg/kg).

FDA agrees that the judicious use of antioxidants serves a vital role in preserving the freshness and quality of cat foods. FDA has previously reviewed data relative to the use of PG as an antioxidant carrier and estimates the ''worst case'' inclusion level in the finished food to be less than 0.02 percent (200 mg/kg) on a dry matter basis. In such cases, PG would no longer serve any technical or functional effect in the finished food and would be present at insignificant levels. Regardless, no argument was made that PG was unique in its ability to serve as an antioxidant carrier, or that a suitable substitute for PG was unavailable or impractical.

2. Two comments argued that an establishment of an adequate safety margin below the known ''no-observed-effect-level'' (NOEL) for cats and kittens should allow for limited use of PG. The most conservative known NOEL for growing kittens is 0.135 percent (1,350 mg/kg), well below the expected levels of inclusion resulting from its use as an antioxidant carrier. Thus, establishment of an acceptable daily intake level at some level below the NOEL should allow for safe use of PG in cat foods.

FDA agrees that the estimated level of PG in cat foods resulting from its use as an antioxidant carrier appears to offer an adequate margin of safety relative to the known NOEL. Thus, FDA's primary regulatory concern at this time is limited to cat foods containing PG at levels exceeding 0.02 percent. However, FDA does not believe that a specific level of PG for inclusion in cat food can be based solely on the existing NOEL. This is because the NOEL was determined on the basis of the presence or absence of Heinz bodies in a study performed in 1979, and it has not been subject to reassessment using the more sensitive methods available today to evaluate possible adverse effects. The more current studies using more specific indicators of red blood cell damage did not look at effects near the existing NOEL, nor did they establish an NOEL in and of themselves. Also, although data are known on the effects of PG on adult cats and growing kittens, there are no data on the potential effects of PG on other life stages of cats. For example, the possible congenital effects stemming from the feeding of PG to pregnant cats has not been adequately assessed.

III. Conclusion

The proposed rule has not been changed as a result of received comments. Therefore, the final rule provides that PG for use in cat food is not GRAS and is a food additive subject to section 409 of the act.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

V. Analysis of Impacts

FDA has examined the impacts of the final 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 final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

This assessment analyzes the economic effects of this rule to exclude from GRAS status the use of PG in or on cat food. PG is used as a humectant, plasticizer, and microbiological preservative in semimoist cat food. Semimoist cat foods containing PG did not exist when the GRAS status for its use in animal feeds was established, and this GRAS determination does not apply to the newly intended use of PG. Currently available information on the effects of PG demonstrates serious concerns about its safety in cats.

FDA requested that pet food manufacturers discontinue the use of PG as an ingredient in semimoist cat foods in 1992. The majority of manufacturers in the industry have complied with this request. Agency experts estimate that

PG is currently used in at most 5 percent of semimoist cat foods and at most 10 percent of cat snacks, which are similar in texture and content to semimoist foods. These usage rates continue to decline.

FDA estimates of 1993 sales of semimoist cat foods and snacks to U.S. households are $85 million and $53 million, respectively (Neilsen Marketing Research data). Those sales representing semimoist cat foods and cat snacks which contain PG are approximately $9,550 million (5 percent of $85 million plus 10 percent of $53 million). The effect of this rule would be to replace these sales with other cat foods and cat snacks not containing PG. Most of the industry has already substituted glycerin for PG in semimoist foods and snacks. It is likely that the remaining portion of the industry would make the substitution of glycerin for PG rather than surrender their share of the semimoist cat food and cat snack market. The cost of this substitution to the production process is expected to be small.

Purchases of PG by semimoist cat food and cat snack manufacturers represent a very small percentage of total PG sales, estimated at less than 1 percent. Demand for semimoist cat foods has declined considerably since 1987. Although demand for cat snacks continues to grow, its sales are still a small part of the total pet food industry. Thus, the effect of this final rule on PG manufacturers would also be small. The effects of this final rule on small businesses would not be substantial. Although more small sized companies are involved in manufacturing cat snack foods than in semimoist foods, their costs of compliance would not be significant.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. For the above reasons, the agency certifies that this 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.

VI. Federalism

FDA has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 12612 and has determined that this rule does not warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Polychlorinated biphenyls (PCB's).

21 CFR Parts 582 and 589

Animal feeds, Animal foods, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 500, 582, and 589 are amended as follows:

PART 500—GENERAL

1. The authority citation for 21 CFR part 500 continues to read as follows:

Authority: Secs. 201, 301, 402, 403, 409, 501, 502, 503, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371).

2. New § 500.50 is added to subpart B to read as follows:

§ 500.50 Propylene glycol in or on cat food.

The Food and Drug Administration has determined that propylene glycol in or on cat food is not generally recognized as safe and is a food additive subject to section 409 of the Federal Food, Drug, and Cosmetic Act (the act). The Food and Drug Administration also has determined that this use of propylene glycol is not prior sanctioned.

PART 582—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

3. The authority citation for 21 CFR part 582 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).

4. Section 582.1666 is amended by revising paragraph (b) to read as follows:

§ 582.1666 Propylene glycol.

* * * * *

(b) *Conditions of use*. This substance is generally recognized as safe (except in cat food) when used in accordance with good manufacturing or feeding practice.

PART 589—SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED

5. The authority citation for 21 CFR part 589 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).

6. New § 589.1001 is added to subpart B to read as follows:

§ 589.1001 Propylene glycol in or on cat food.

The Food and Drug Administration has determined that propylene glycol in or on cat food has not been shown by adequate scientific data to be safe for use. Use of propylene glycol in or on cat food causes the feed to be adulterated and in violation of the Federal Food, Drug, and Cosmetic Act (the act), in the absence of a regulation providing for its safe use as a food additive under section 409 of the act, unless it is subject to an effective notice of claimed investigational exemption for a food additive under § 570.17 of this chapter, or unless the substance is intended for use as a new animal drug and is subject to an approved application under section 512 of the act or an effective notice of claimed investigational exemption for a new animal drug under part 511 of this chapter.

Dated: April 23, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–10893 Filed 5–1–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8663]

RIN 1545–AT43

Transfers to Investment Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations amending regulations under section 351(e) of the Internal Revenue Code relating to transfers to investment companies. The final regulations concern the treatment of certain transfers to a controlled corporation. Generally, the final regulations amend the regulations to provide when certain transfers will not cause a diversification of the transferors' interests.

EFFEFCITVE DATE: These regulations are effective May 2, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew M. Eisenberg, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

1. Background

This document contains final regulations under section 351. The final regulations provide for the treatment of

certain transfers to a controlled corporation. Section 351(a) provides that no gain or loss will be recognized if one or more persons transfer property to a corporation solely in exchange for stock in the corporation and immediately after the exchange such person or persons are in control of the corporation. Section 351(e)(1) provides that section 351(a) will not apply to a transfer of property to an investment company.

On August 10, 1995, the Federal Register published a notice of proposed rulemaking (CO–19–95), amending regulations under section 351 of the Internal Revenue Code relating to transfers of property to an investment company (60 FR 40794). The proposed rules were based on the conclusion that transfers of diversified portfolios are not inconsistent with the Congressional purpose of section 351(e)(1).

2. Public Comments and the Final Regulations

The IRS received comments from the public on the proposed regulations. No public hearing was requested and none was held. The comments received were generally supportive of the proposed regulations. After consideration of all the comments, the regulations proposed by CO–19–95 are adopted as revised by this Treasury decision. The principal comments on the proposed regulations are discussed below.

Government securities are not treated as securities of an issuer for purposes of the 25 and 50-percent tests. Several commentators suggested that the final regulations include specific assurance that Government securities are not treated as securities of an issuer in applying the 25 and 50-percent tests contained in section 368(a)(2)(F)(ii). The proposed regulations generally adopt the section 368(a)(2)(F)(ii) tests for purposes of determining whether a portfolio of stocks and securities is diversified. However, the proposed regulations modify the 25 and 50-percent tests of section 368(a)(2)(F)(ii) by including Government securities in total assets (clause (iv) of section 368(a)(2)(F) excludes Government securities from total assets for purposes of the 25 and 50-percent tests in clause (ii) of section 368(a)(2)(F)). The final regulations clarify that Government securities, while included in total assets, are not treated as securities of an issuer for purposes of the numerator of the 25 and 50-percent tests of section 368(a)(2)(F)(ii).

The transfer of a diversified portfolio of stocks and securities by any transferor satisfies the modified diversification test. One commentator suggested that the final regulations should clarify that any person, rather than corporate transferors only, may satisfy the modified diversification test. The commentator is concerned that the use of the section 368(a)(2)(F)(ii) tests, which are adopted from a provision that applies only to transfers by corporations, may imply that the tests as applied in section 351 are limited to corporate transferors.

The Treasury and IRS do not intend to limit application of the final regulations solely to corporate transferors. The final regulations provide that a portfolio will be diversified if it satisfies the 25 and 50-percent tests of section 368(a)(2)(F)(ii) (as modified), rather than section 368(a)(2)(F)(ii), generally.

Transfers of interests in real property to an investment company. One commentator suggested that the final regulations adopt a rule whereby transfers of real property would not result in the diversification of the transferors' interests if each transferor transfers a diversified portfolio of real property to a Real Estate Investment Trust. The subject of real property transfers is beyond the scope of these final regulations.

Retroactive effect of the final regulations. Several commentators suggested that the final regulations include a retroactive effective date. The final regulations allow taxpayers who transfer diversified, but nonidentical, portfolios of stocks and securities before May 2, 1996, to choose to treat the transfers consistent with the final regulations or as transfers resulting in diversification. However, transfers completed on or after May 2, 1996, are subject to the final regulations.

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

Drafting Information. The principal author of these regulations is Andrew M. Eisenberg, Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.351–1 also issued under 26 U.S.C. 351. * * * .

Par. 2. Section 1.351–1 is amended by:

1. Redesignating paragraph (c)(6) as paragraph (c)(7).

2. Adding new paragraph (c)(6) to read as follows:

§ 1.351–1 Transfer to corporation controlled by transferor.

* * * * *

(c) * * *

(6)(i) For purposes of paragraph (c)(5) of this section, a transfer of stocks and securities will not be treated as resulting in a diversification of the transferors' interests if each transferor transfers a diversified portfolio of stocks and securities. For purposes of this paragraph(c)(6), a portfolio of stocks and securities is diversified if it satisfies the 25 and 50-percent tests of section 368(a)(2)(F)(ii), applying the relevant provisions of section 368(a)(2)(F). However, Government securities are included in total assets for purposes of the denominator of the 25 and 50-percent tests (unless the Government securities are acquired to meet the 25 and 50-percent tests), but are not treated as securities of an issuer for purposes of the numerator of the 25 and 50-percent tests.

(ii) Paragraph (c)(6)(i) of this section is effective for transfers completed on or after May 2, 1996. Transfers of diversified (within the meaning of paragraph (c)(6)(i) of this section), but nonidentical, portfolios of stocks and securities completed before May 2, 1996, may be treated either—

(A) Consistent with paragraph (c)(6)(i) of this section; or

(B) As resulting in diversification of the transferors' interests.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: March 6, 1996.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 96–10394 Filed 5–1–96; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[TD 8662]

RIN 1545–AQ64

Diversification of Common Trust Funds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the diversification of common trust funds at the time of a combination or division. The final regulations affect common trust funds and their participants.

EFFECTIVE DATE: May 2, 1996.

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

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1995, a notice of proposed rulemaking (PS–29–92) was published in the Federal Register (60 FR 40796) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 584 of the Internal Revenue Code. Written comments responding to this notice were received. No public hearing was held because no hearing was requested. After consideration of all comments received, the proposed regulations under section 584 are adopted as revised by this Treasury decision.

Explanation of Provisions

The final regulations modify the diversification test applied to combining, dividing, and resulting common trust funds at the time of a combination or division. Under the existing regulations, which incorporate the diversification test of section 368(a)(2)(F)(ii), Government securities are excluded in determining total assets. These final regulations modify the diversification test so that Government securities are included in determining total assets when applying section 368(a)(2)(F)(ii).

This modified diversification test is the same as that in the final regulations under section 351(e), which deals with transfers to investment companies. These corresponding modifications ensure that a uniform diversification test will be applied to common trust funds and similar investment entities.

The final regulations also update the regulations under section 584 to conform to changes in the law.

Changes to the Proposed Regulations in Response to Comments

I. Clarification That Government Securities Are Not Treated as Securities of an Issuer

Two commentators suggested that the final regulations include specific assurance that Government securities are not treated as securities of an issuer in applying the 25 and 50-percent tests contained in section 368(a)(2)(F)(ii) to mergers and divisions of common trust funds. The proposed regulations provide that Government securities are included in total assets in applying the 25 and 50-percent tests to common trust fund combinations and divisions, but do not specifically state that Government securities are not treated as securities of an issuer. The final regulations clarify that Government securities, while included in total assets, are not treated as securities of an issuer for purposes of the numerator of the 25 and 50-percent tests of section 368(a)(2)(F)(ii).

II. Clarification of the Definition of Government Securities

One commentator suggested that the regulations broaden the definition of the term *Government securities* to include state and local government obligations. The final regulations do not adopt the suggestion.

Effective Date

These regulations apply to combinations and divisions of common trust funds completed on or after May 2, 1996.

Special Analyses

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

Drafting Information

The principal author of this regulation is Brian J. O'Connor, formerly of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

§ 1.584–2 [Amended]

Par. 2. Section 1.584–2 is amended by:

1. Removing paragraph (b)(1).
2. Removing the paragraph designation (b)(2).

Par. 3. Section 1.584–4 is amended by:

1. Removing paragraphs (a)(1) and (a)(2).
2. Removing the last sentence in paragraph (a) and adding 6 sentences in its place.
3. Adding paragraph (e).

The additions read as follows:

§ 1.584–4 Admission and withdrawal of participants in the common trust fund.

(a) * * * When a participating interest is transferred by a bank, or by two or more banks that are members of the same affiliated group (within the meaning of section 1504), as a result of the combination of two or more common trust funds or the division of a single common trust fund, the transfer to the surviving or divided fund is not considered to be an admission or a withdrawal if the combining, dividing, and resulting common trust funds have diversified portfolios. For purposes of this paragraph (a), a common trust fund has a diversified portfolio if it satisfies the 25 and 50-percent tests of section 368(a)(2)(F)(ii), applying the relevant provisions of section 368(a)(2)(F). However, Government securities are included in total assets for purposes of the denominator of the 25 and 50-percent tests (unless the Government

securities are acquired to meet the 25 and 50-percent tests), but are not treated as securities of an issuer for purposes of the numerator of the 25 and 50-percent tests. In addition, for a transfer of a participating interest in a division of a common trust fund not to be considered an admission or withdrawal, each participant's pro rata interest in each of the resulting common trust funds must be substantially the same as was the participant's pro rata interest in the dividing fund. However, in the case of the division of a common trust fund maintained by two or more banks that are members of the same affiliated group resulting from the termination of such affiliation, the division will be treated as meeting the requirements of the preceding sentence if the written plans of operation of the resulting common trust funds are substantially identical to the plan of operation of the dividing common trust fund, each of the assets of the dividing common trust fund are distributed substantially pro rata to each of the resulting common trust funds, and each participant's aggregate interest in the assets of the resulting common trust funds of which he or she is a participant in substantially the same as was the participant's pro rata interest in the assets of the dividing common trust fund. The plan of operation of a resulting common trust fund will not be considered to be substantially identical to that of the dividing common trust fund where, for example, the plan of operation of the resulting common trust fund contains restrictions as to the types of participants that may invest in the common trust fund where such restrictions were not present in the plan of operation of the dividing common trust fund.

* * * * *

(e) *Effective date.* The eighth sentence of paragraph (a) of this section is effective for combinations and divisions of common trust funds completed on or after May 2, 1996.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: March 6, 1996.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 96–10393 Filed 5–1–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–060]

RIN 1218–AA71

Personal Protective Equipment for General Industry

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Final rule; technical amendment.

SUMMARY: The final rule on personal protective equipment for general industry was published by OSHA on April 6, 1994 (59 FR 16334). In that rule, the introductory phrase ''the employer shall ensure'' was removed from various proposed requirements for employees to wear different types of protective equipment (final rule §§ 1910.133, 1910.135, and 1910.136). The general requirement for the employer to select and have the employees wear appropriate PPE, including any PPE described in these specific provisions, was retained in § 1910.132. The employer's obligation to assure compliance with the individual requirements for particular types of PPE was intended to remain the same as if the words ''the employer shall ensure'' or similar language were affixed to each substantive PPE provision in the final rule. However, OSHA's compliance staff has encountered difficulties in using §§ 1910.133, 1910.135, and 1910.136 because they do not explicitly assign the employer the responsibility for assuring that employees wear the designated equipment. Therefore, this technical amendment is necessary to restate that obligation within the text of these requirements.

DATES: This amendment is effective June 3, 1996.

FOR FURTHER INFORMATION CONTACT: Anne C. Cyr, Acting Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U. S. Department of Labor, Room N–3647, 200 Constitution Ave., N. W., Washington, DC 20210. Telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION: OSHA's final rule on personal protective equipment (PPE) for general industry was published on April 6, 1994 (59 FR 16334), and became effective July 5, 1994. The PPE standards require the employer to assure that each employee wears appropriate equipment which protects the eyes, head, feet, and hands, from exposure to hazards in the workplace. Section 1910.132 clearly states that where such hazards are present, or are likely to be present, the employer has the obligation both to select proper PPE and to require each affected employee to wear it.

Sections 1910.133, 1910.135, and 1910.136 require that each affected employee wear protective equipment for the eyes and face, head, and feet, respectively, when those parts of the body are exposed to hazards. The proposed version of each of those sections was prefaced with the words ''The employer shall ensure that'' the employees wear the equipment. In the final rule, OSHA deleted the prefatory language in response to various comments. The preamble to the final rule made clear that in making these deletions, the Agency intended to make no change in the substantive requirements between the proposed and final rules. That is, the employer was to be obligated to require the employee to wear eye, face, head and foot protection under §§ 1910.133, 1910.135, and 1910.136, regardless of whether the words ''the employer shall ensure'' were included in those standards. (see final rule preamble, 59 FR at 16335.)

The reason for the language change from the proposal was concern by some commenters that the proposed language would result in their being held liable for violations of these standards, regardless of any exculpatory considerations such as employee misconduct. In making the changes, OSHA emphasized two points: first, that the proposed language would not have affected an employer's ability to raise defenses to a citation; and second, that it was the Agency's intention that the employer's obligations for compliance with standards issued under the OSH Act be unaffected by the changes from the proposed rule to the final rule.

Since the final rule was issued, the revised language has caused difficulty for OSHA's compliance staff with regard to the employer's obligation to have employees wear PPE. That obligation, while specifically stated under § 1910.132 for all PPE, is not explicitly spelled out in the specific provisions of §§ 1910.133, 1910.135 and 1910.136, for eye and head, face, and foot protection, even though it was the Agency's clearly stated intention that the obligation apply there, as well. Accordingly, OSHA has determined that it is necessary to make a technical amendment to those three sections, to bring them into line with the stated intention of the Agency in the preamble to the final rule.

The current language of §§ 1910.133, 1910.135, and 1910.136 contains requirements that employees wear the particular PPE addressed by those sections. However, there is no specific text in any of these sections that directly addresses the employer and the employer's responsibilities for compliance. OSHA compliance staff have dealt with this situation to date by grouping their citations for violations of §§ 1910.133, 1910.135, and 1910.136 with their citation under the general PPE requirement in § 1910.132. Each of these provisions was intended in the final rule to stand on its own, and the Agency has determined that a technical amendment is necessary to correct the problem.

This technical amendment inserts appropriate language into §§ 1910.133, 1910.135, and 1910.136 which states the employer's obligation to ensure that each affected employee wears the specified types of PPE under these sections as well as under § 1910.132, where the employer's responsibility in this area is already spelled out. It should also be noted that this technical amendment does not prevent the employer who is cited for a PPE violation from raising any affirmative defenses which would otherwise be applicable.

Under 5 U.S.C. 553 and 29 CFR 1911.5, this constitutes a minor rule change which does not require public notice and comment. As noted above, it clarifies an obligation under the specific PPE standards which already applies to employers under the general rule in § 1910.132, and implements determinations already made by the Agency in the preamble to the final rule. Accordingly, further public participation is not required. However, in order to allow enough time for information on the technical amendment to be distributed and implemented by employers, OSHA is making the amendment effective June 3, 1996.

List of Subjects in 29 CFR Part 1910

Eye protection; Face protection; Foot Protection; Hand protection; Footwear; Hard hats; Head protection; Occupational safety and health; Occupational Safety and Health Administration; Personal protective equipment; Safety glasses; Safety shoes.

Authority

This document has been prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

Accordingly, pursuant to sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); 5 U.S.C. 553; Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR Part 1911, 29 CFR part 1910 is amended as set forth below.

Signed at Washington, D.C., this 15th day of April, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1910—[AMENDED]

Subpart I—Personal Protective Equipment

1. The authority citation for subpart I of part 1910 is revised to read as follows:

Authority: Sections 4, 6 and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Sections 1910.132, and 1910.138 also issued under 29 CFR part 1911.

Sections 1910.133, 1910.135, and 1910.136 also issued under 29 CFR part 1911 and 5 U.S.C. 553.

§ 1910.133 [Amended]

2. Paragraphs (a)(1), (a)(2), (a)(5) of § 1910.133 are amended by replacing the words ''Each affected employee shall use'' with the words ''The employer shall ensure that each affected employee uses''.

§ 1910.133 [Amended]

3. Paragraph (a)(3) of § 1910.133 is amended by removing the word ''Each'', adding the words ''The employer shall ensure that each'' in its place at the beginning of the paragraph, and by replacing the words ''shall wear'' with ''wears'' both places they appear in the paragraph.

§ 1910.135 [Amended]

4. Paragraph (a)(1) of § 1910.135 is amended by replacing the words ''Each affected employee shall wear protective helmets'' with the words ''The employer shall ensure that each affected employee wears a protective helmet''.

§ 1910.135 [Amended]

5. Paragraph (a)(2) of § 1910.135 is amended by replacing the words ''Protective helmets'' with the words ''The employer shall ensure that a protective helmet'', and by replacing the words ''shall be worn '' with the words ''is worn.''

§ 1910.136 [Amended]

6. Paragraph (a) of § 1910.136 is amended by replacing the words ''Each affected employee shall wear'' with the words ''the employer shall ensure that each affected employee used.''

[FR Doc. 96–10433 Filed 5–1–96; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

RIN 2135–AA00

Seaway Regulations and Rules: Miscellaneous Amendments

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada publish joint Seaway Regulations. As a result of discussions with the Authority, it has been determined that a number of existing regulations need to be amended for clarification or simplification. In addition, several substantive changes are being made, specifically: changing the maximum allowable beam from 23.16 m (76 feet) to 23.8 m (78 feet), with certain, practical conditions applied; reducing the security deposit for certain vessels; requiring permanent fenders, with a phase-in period; and reducing some of the system's speed limits. The first two of these are intended to encourage increased usage of the Seaway, the third is intended to increase the safety for both the Corporation's and the Authority's locks and the vessels transiting, and the fourth is intended to increase both safety and environmental protection.

DATES: This rule is effective on June 3, 1996.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: As a result of discussions with the Saint Lawrence Seaway Authority of Canada, the Saint Lawrence Seaway Development Corporation is amending the Seaway Regulations and Rules in 33 CFR Part 401 as described in the following summary.

Section 401.3, ''Maximum vessel dimensions'', is amended by revising paragraph (a), removing paragraph (d)(1), and adding a new paragraph (e) to change the maximum allowable beam from 23.16 m (76 feet) to 23.8 m (78 feet)

and simplify the approval process for vessels exceeding 23.2 m., with practical conditions applied for such things as vessel configuration and weather conditions.

Section 401.6, ''Markings'', is amended by revising paragraphs (a) and (b) to round off the length requirements from 19.8 m to 20.0 m and from 117 m to 110 m, respectively, for simplification and consistency with the international collision regulations. To alleviate safety problems caused by portable fender usage, § 401.7, ''Fenders'', is revised to require, as a rule, permanent fenders of a specified type, with only occasional deployment of portable fenders allowed on a single transit basis, with a phase-in period until the beginning of the 1997 navigation season to ease transition. One comment suggested the elimination of permanent fenders because they can catch the lock gates and, at certain vessel drafts, can dig into the wooden fenders on the lock approach walls. The Corporation and the Authority are not adopting this suggestion. Permanent fenders are being required to avoid the situation where mooring wires may be crushed between the vessel's side and the lock wall, to prevent steel contact on vessels with hazardous cargo stored in side tanks, and, occasionally for certain vessels, to protect specific structures or provide adequate clearance off bascule bridges. The Authority and the Corporation review vessel plans to ensure that fenders are located as high on the hull as possible, have a maximum size stipulated, and are adequately tapered. If these plans are provided and concurred in before construction or retrofitting, the type of problem suggested by the comment should be avoided.

Section 401.9, ''Radiotelegraph equipment'', is amended by revising paragraph (a) to round off the length requirement for self-propelled vessels from 19.8 m to 20.0 m for simplification.

Section 401.10, ''Mooring lines'', is amended by revising paragraphs (B) and (c) to allow routinely synthetic lines since vessels now use them routinely and safely worldwide.

Section 401.13, ''Hand lines'', is amended by revising paragraph (b) to require hand lines to have a diameter of between 12 and 20 mm and a minimum length of 35 m with uniform thickness throughout to avoid jamming on the car haulers and bollards that has occurred because of splicing of uneven pieces.

Section 401.26, ''Security for tolls'', is amended by revising paragraph (d) to reduce the security required where a number of vessels, for each of which a preclearance application has been approved, are owned or controlled by the same individual or company and have the same representative. Security for tolls for these vessels is not required if every toll account received in the preceding five years has been paid within forty-five days after the vessel enters the Seaway.

Section 401.42, ''Passing hand lines'', is amended by revising paragraph (a)(1) to change ''linesmen'' to ''linehandlers'' for gender neutrality.

Section 401.43, ''Mooring table'', is amended by deleting the unnecessary references to specific locations for simplification.

Section 401.45, ''Emergency procedure'', is amended to requiring the Master to be responsible for giving the signal in an emergency upon entering the locks to make the practice consistent in both Canadian and U.S. locks and, for safety purposes, by requiring mooring lines to be put out as quickly as possible.

Section 401.52, ''Limited of approach to a bridge'', is amended by revising paragraph (b) to change ''Caughnawaga'' to Kahnawake'', as it is now commonly known.

Section 401.64, ''Calling in'', is amended by revising paragraph (e) to make the master solely responsible because it is his or her, not the pilot's responsibility.

Section 401.65, ''Communication—ports, docks, and anchorages'', is amended by revising paragraph (a)(1) to round off 0.87 of a nautical mile to 1 nautical mile for simplification and by removing that part of paragraph (c) that refers to dangerous cargo reporting and placing its substance in § 401.66, which is a more appropriate location.

Section 401.66, ''Applicable laws'', is amended by redesignating the current text as paragraph (a) and adding a new paragraph (b), which is the text removed from § 401.65(c) amended to change the dangerous cargo reporting and filing requirements to reflect the practice instituted by the Canadian Authority under Seaway Notice No. 2 of 1993.

Section 401.71, ''Signals—explosive or hazardous cargo vessels'', is amended by deleting paragraph (b) and revising current paragraph (a) to combine the requirements for explosive and hazardous vessels into one to be consistent with the international collision regulations.

Section 401.72, ''Reporting—explosive and hazardous cargo vessels'', is amended by adding new paragraphs (e), (f), (g), and (h) to require certain information on load plans concerning dangerous cargo to ensure enhanced safety, reflecting the practice instituted by the Authority under Seaway Notice No. 2 of 1993. In response to a comment received by the Authority, the reference to ''IMO'' in subsection (e)(1) is changed to ''IMDG'', which is the correct designation for the International Dangerous Goods Code.

Subsection (g) is also changed in response to a comment received by the Authority. This change covers the situation where an actual Material Safety Data sheet for a cargo carried by a vessel is not on file with a Seaway Traffic Control Center, but the vessel carries sufficient information for its preparation. Either form of compliance will allow the vessel to continue transit through the system.

Section 401.75, ''Payment of tolls'', is amended to provide that every toll invoice shall be paid in Canadian or American funds within forty-five days after the vessel enters the Seaway and any adjustment of the amount payable shall be provided for in a subsequent invoice, which is consistent with the new policy on reduced security in revised § 401.26(d). To be consistent with the text of the Canadian version of these joint regulations, this revised § 401.75 text is redesignated as paragraph (a) and the current §401.77 is redesignated as paragraph (b) of § 401.75 and revised by making non-substantive editorial changes.

Section 401.84, ''Reporting of impairment or other hazard by vessels transiting within the Seaway'', is amended by revising paragraph (c) to reflect that the reporting requirements cover the equipment listed in Schedule I as well.

Section 401.89, ''Transit refused'', is amended by revising paragraph (a)(1) to transit refusal may be based upon the equipment requirements in Schedule I as well when transiting Canadian waters.

Section 401.91, ''Removal of obstructions'', is amended to remove the words ''take such action * * * as the Corporation or the Authority deem necessary'' as superfluous.

Section 401.94, ''Keeping copy of regulations'', is amended to require that, in addition to a copy of the Regulations, a copy of the vessel's latest Ship Inspection Report, and Seaway Notices for the navigation year shall be kept on board each vessel, which reflects the routine requirement for this documentation for inspection and reference purposes.

Schedule I, ''VESSELS TRANSITING U.S. WATERS'', is amended by revising paragraph (d)(3) to require, for each vessel with a fixed propeller, a table of shaft revolutions per minute, for a representative range of speeds, and a notice showing any critical range of revolutions at which the engine

designers recommend that the engine not be operated on a continuous basis because this information is necessary for officers or pilots having conduct of the vessel.

It was proposed to amend Schedule II, ''Table of Speeds'', by revising item 4 to reduce the allowable speeds in the area covered, by revising item 6 to reduce the allowable speeds in the area covered and include the areas that have been covered by items 7 through 10 under item 6's allowable speed limits to eliminate varying speed areas, reduce speeding violations, and reduce vessel wake damages. Items 7 through 10 were to be removed and items 11 through 15 renumbered accordingly. Two comments, both from pilots, objected on the basis that it would increase transit time and thus increase pilot fatigue and stress, resulting in a decrease in the safety margin. They also stated that proffering wake damage as a basis for the change in all areas was unfounded. The Corporation and the Authority agree only in part. The Table of Speeds will now be amended as follows. The speed limit from Eisenhower to Iroquois Lock will be set at 11.5 knots. Presently, the limits for this section are divided into four separate speed zones: 11.5 knots from Eisenhower to Richard's Point Light #55 (5.34 nautical miles); 13.0 knots from Richards Point Light #55 to Doran Shoal Buoy 84 (9.08 nautical miles); 11.5 knots from Doran Shoal Buoy 84 to Ogden Island Buoy 99 (4.24 nautical miles); and 13.0 knots from Ogden Island Buoy 99 to Iroquois Lock (3.54 nautical miles). The speed limit between Richards Point and Doran Shoal will be reduced to 11.5 knots. This increases transit time by 5.5 minutes, not allowing for the time required to speed up or slow down in the original 13.0 knot zone. The speed limit from Buoy 99 to Iroquois Lock will be changed to 11.5 knots, which will have a negligible effect on transit time. This is a short area where a ship must be checked down before unbound entry into the lock or starting from rest while downbound in the lock with checking down required before entering the reduced speed area. The 11.5 knot speed zone presently in effect from ½ mile east of Buoy 162 to Light 186 will be extended to include the area between McNair Island Light 137 to Light 186. This extends the 11.5 knot zone eastward by 8.32 nautical miles and increases transit time by 5 minutes. The section from Iroquois Lock to McNair Island would remain at 13.0 knots. This change results in a lower speed limit for the Brockville Narrows, for which there have been numerous complaints and significant safety concerns because of large ship wakes in close proximity to pleasure and tour boats. Overall, these changes increase transit time in the Snell Lock to Cape Vincent pilotage area by only 10.5 minutes, which should have no real effect on pilot stress and fatigue, while reducing safety and wake concerns in the Brockville Narrows, Mariatown, and Wilson Hill areas. The change from the original proposal is that, instead of maintaining an 11.5 knot limit from Eisenhower Lock to Light 186, a 13.0 knot zone will be retained through the Prescott anchorage, where traditionally vessels have the opportunity to overtake. The Corporation and the Authority believe that these changes are prudent and are justified by experience and observation. Speed limits traditionally are set to protect the shoreline, Seaway channels, and the boating public from damage or injury. Wake complaints are logged and vessel speed spot checks are made from shore positions, with the draw down and surge of each observed vessel measured and recorded. The Authority alone carried out approximately 875 speed checks in 1995. Speed limits are the best tool for controlling damaging wake by setting a standard for the navigation team on each vessel to follow.

Appendix I, ''Vessel Dimensions'', is amended by revising the second undesignated paragraph after paragraph (b) to round off ''23.16 m'' to ''23.2 m'' for simplication and conformity with the amendment to § 401.3.

There are some minor editorial changes to conform with the SLSA version approved under the Canadian regulatory review process that do not have any substantive impact, such as changing the word ''upon'' to ''on'' in § 401.3(e)(1).

Regulatory Evaluation

This final rule inolves a foreign affairs function of the United States, and therefore, Executive Order 12866 does not apply. This final rule has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evalaution is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This final rule does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

Federalism

The Corporation has analyzed this final rule under the principles and criteria in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implicaitons to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Radio reporting and record keeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawerence Seaway Development Corporation amends Part 401—Seaway Regulations and Rules (33 Part 401) as follows:

PART 401—[AMENDED]

1. The authority citation for Part 401 continues to read as follows:

Authority: 68 Stat. 93–96 (33 U.S.C. 981–990), as amended; Sec. 104, Pub. L. 92–340, 86 Stat. 424 (49 CFR 1.50a) (37 FR 21943), unless otherwise noted.

2. Section 401.3 is amended by revising paragraphs (a) and (d) and by adding a new paragraph (e) to read as follows:

§ 401.3 Maximum vessel dimensions.

(a) Subject to paragraph (e) of this section, no vessel of more than 222.5 m in overall length or 23.8 m in extreme breadth shall transit.

* * * * *

(d) No vessel's hull or superstructure when alongside a lock wall shall extend beyond the limits of the lock wall, as illustrated in Appendix I of this Part.

(e) A vessel having a beam width in excess of 23.2 m and having dimensions that do not exceed the limits set out in the block diagram in Appendix I of this Part:

(1) Shall, on application to the Authority, be considered for transit after review of the vessels drawings; and

(2) If accepted, shall transit in accordance with directions issued by the Authority or Corporation.

3. Section 401.6 is amended by revising paragraphs (a) and (b) to read as follows:

§ 401.6 Markings.

(a) Vessels of more than 20.0 m in overall length shall be correctly and distinctly marked and equipped with draft markings on both sides at the bow and stern.

(b) In addition to the markings required by paragraph (a) of this section, vessels of more than 110 m in overall length shall be marked on both sides with midship draft markings.

* * * * *

4. Section 401.7 is revised to read as follows:

§ 401.7 Fenders.

(a) Where any structural part of a vessel protrudes so as to endanger Seaway installations, the vessel shall be equipped with fenders—

(1) That are made of steel, hardwood, or teflon or a combination of two or all of these materials, are of a thickness not exceeding 15 centimeters, with well tapered ends, and are located along the hull, close to the main deck level; and

(2) That by no later than the beginning of the 1997 navigation season are permanently attached to the vessel, except that portable fenders, other than rope hawsers, are allowed for a single transit basis if the portable fenders are—

(i) Made of a material that will float; and

(ii) Securely fastened and suspended from the vessel in a horizontal position by a steel cable or a fiber rope in such a way that they can be raised or lowered in a manner that does not damage Seaway installations.

5. Section 401.9 is amended by revising paragraph (a) to read as follows:

§ 401.9 Radiotelephone equipment.

(a) Self-propelled vessels, other than pleasure craft of less than 20.0 m in overall length, shall be equipped with VHF (very high frequency) radiotelephone equipment.

* * * * *

6. Section 401.10 is amended by revising paragraphs (b) and (c) to read as follows:

§ 401.10 Mooring lines.

* * * * *

(b) Unless otherwise permitted by an officer, only wire rope mooring lines with a breaking strength that complies with the minimum specifications set out in the table in this section shall be used for securing a vessel in lock chambers.

(c) Synthetic lines may be used for mooring at approach walls, tie-up walls and docks within the Seaway.

* * * * *

7. Section 401.13 is amended by revising paragraph (b) to read as follows:

§ 401.13 Hand lines.

* * * * *

(b) Be of uniform thickness and have a diameter of not less than 12 mm and not more than 20 mm and a minimum length of 35 m.

8. Section 401.26 is amended by revising paragraph (d) to read as follows: **Security for tolls.**

* * * * *

(d) Notwithstanding paragraph (c) of this section, where a number of vessels, for each of which a preclearance has been given, are owned or controlled by the same individual or company and have the same representative, the security for tolls is not required if the individual, company, or representative has paid every toll invoice received in the preceding five years within the period set out in § 401.75.

* * * * *

§ 401.42 [Amended]

9. Paragraphs (a) (1) and (2) of section 401.42 are amended by removing the word ''linesmen'' and adding, in its place, the word ''linehandlers''.

10. Section 401.43 is amended by revising the introductory text as follows:

§ 401.43 Mooring table.

Unless otherwise directed by an officer, vessels passing through the locks shall moor at the side of the tie-up wall or lock as shown in the table to this section.

* * * * *

11. Section 401.45 is revised to read as follows:

§ 401.45 Emergency procedure.

When the speed of a vessel entering a lock chamber has to be checked in an emergency, a signal consisting of five blasts on a horn shall be given by the master and all mooring lines shall be put out as quickly as possible.

§ 401.52 [Amended]

12. Paragraph (b) of section 401.52 is amended by removing the word ''Caughnawaga'' and adding, in its place, the word ''Kahnawake''.

§ 401.64 [Amended]

13. Paragraph (e) of section 401.64 is amended by removing the words ''or pilot''.

14. Section 401.65 is amended by revising paragraphs (a) (1) and (2) and paragraph (c) to read as follows:

§ 401.65 Communication—ports, docks and anchorages.

(a) * * *

(1) For the lake ports of Toronto and Hamilton, 1 nautical mile outside the harbor limits; and

(2) For other lake ports, when crossing the harbor entrance.

* * * * *

(c) Every vessel departing from a port, dock or anchorage, shall report to the appropriate Seaway station its destination and the expected time of arrival at the next check point.

15. Section 401.66 is amended by redesignating the current text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 401.66 Applicable laws.

* * * * *

(b) Every vessel carrying dangerous cargo, as described in §§ 401.66 through 401.73, and all tankers carrying liquid cargo in bulk, shall file with the Corporation and the Authority a copy of the current load plan as described in § 401.72(e).

16. Section 401.71 is revised to read as follows:

§ 401.71 Signals—explosive or hazardous cargo vessels.

An explosive or hazardous cargo vessel shall display at the masthead or at an equivalent conspicuous position a ''B'' flag.

17. Section 401.72 is amended by adding new paragraphs (e), (f), (g), and (h) to read as follows:

§ 401.72 Reporting—explosive and hazardous cargo vessels.

* * * * *

(e) Every vessel carrying dangerous cargo, as defined in § 401.66, and all tankers carrying liquid cargo in bulk shall, before transiting any part of the Seaway, file with the Corporation and the Authority a copy of the current load plan that includes the following information:

(1) The name of the cargo, its IMO class and UN number as set out in the IMDG Code, if applicable, or, if the cargo is not classed by the IMO and does not have a UN number, the words ''NOT CLASSED'';

(2) The weight in metric tonnes and the stowage location of each commodity;

(3) The approximate weight in metric tonnes or the approximate volume in cubic meters in each hold or tank;

(4) The flashpoint of the cargo, if applicable; and

(5) The estimated date of entry into the Seaway and the date and time that the load plan was last issued or amended.

(f) For tankers, the information required under this section 401.72 shall

be detailed on a plan showing the general layout of the tanks, and, if a tanker is so fitted, a midship cross-section showing double bottom tanks and ballast side tanks.

(g) If a Material Safety Data Sheet (MSDS) on a hazardous cargo that a vessel is carrying is not available in a Seaway Traffic Control Center, the vessel shall provide information enabling the preparation of an MSDS.

(h) Every vessel shall submit its load plan to the nearest Seaway Traffic Control Center and, if there are subsequent changes in stowage including loading and discharging during a transit, the vessel shall submit an updated plan before departing from any port between St. Lambert and Long Point.

18. Section 401.75 is revised to read as follows:

§ 401.75 Payment of tolls.

(a) Every toll invoice shall be paid in Canadian or American funds, as indicated on the invoice, within forty-five days after the vessel enters the Seaway, and any adjustment of the amount payable shall be provided for in a subsequent invoice.

(b) Tolls, established by agreement between Canada and the United States and known as the St. Lawrence Seaway Tariff of Tolls, shall be paid by pleasure craft in Canadian or American funds for the transit of each Seaway lock.

§ 401.77 [Removed and Reserved]

19. Section 401.77 is removed and reserved.

20. Section 401.84 is amended by revising paragraph (c) to read as follows:

§ 401.84 Reporting of impairment or other hazard by vessels transiting within the Seaway.

* * * * *

(c) Any malfunction on the vessel of equipment required by §§ 401.5 to 401.21 and subsections (e) through (j) of Schedule I of subpart A of this Part;

* * * * *

21. Section 401.89 is amended by revising paragraph (a)(1) to read as follows:

§ 401.89 Transit refused.

(a) An officer may refuse to allow a vessel to transit when,

(1) The vessel is not equipped in accordance with §§ 401.6 to 401.21 and subsections (e) to (j) of Schedule I of subpart A of this part when transiting the Canadian waters of the Seaway;

* * * * *

22. Section 401.91 is revised to read as follows:

§ 401.91 Removal of obstructions.

The Corporation or the Authority may, at the owner's expense, move any vessel, cargo, or thing that obstructs or hinders transit on any part of the Seaway.

23. Section 401.94 is revised to read as follows:

§ 401.94 Keeping copy of regulations.

A copy of these Regulations (subpart A of Part 401), a copy of the vessel's latest Ship Inspection Report, and Seaway Notices for the current navigation year shall be kept on board every vessel in transit.

24. Schedule I to subpart A, part 401 is amended by revising paragraph (d)(3) to read as follows:

Schedule I—Vessels Transiting U.S. Waters

(d) * * *

(3) For each vessel with a fixed propeller, a table of shaft revolutions per minute, for a representative range of speeds, and a notice showing any critical range of revolutions at which the engine designers recommend that the engine not be operated on a continuous basis.

* * * * *

25. Schedule II to subpart A, part 401 is revised to read as follows:

SCHEDULE II.—TABLE OF SPEEDS [1]

From—	To—	Maximum speed over the bottom, knots	
		Col. III	Col. IV
1. Upper Entrance, South Shore Canal	Lake St. Louis, Buoy A13	10.5	10.5.
2. Lake St. Louis, Buoy A13	Lower Entrance, Lower Beauharnois Lock	16	16.
3. Upper Entrance, Upper Beauharnois Lock	Lake St. Francis, Buoy D3	9 upb; 10.5 dnb	9 upb; 10.5 dnb.
4. Lake St. Francis, Buoy D3	Lake St. Francis, Buoy D49	12	12.
5. Lake St. Francis, Buoy D49	Snell Lock	8.5 upb; 10.5 dnb	8 upb; 10.5 dnb.
6. Eisenhower Lock	Iroquois Lock	11.5	10.5.
7. Iroquois Lock	McNair Island, Lt. 137	13	10.5.
8. McNair Island, Lt. 137	Deer Island, Lt. 186	11.5	10.5.
9. Deer Island, Lt. 186..	Bartlett Point, Lt. 227..	8.5 upb; 10.5 dnb	8 upb; 10.5 dnb.
10. Bartlett Point, Lt. 227	Tibbetts Point	13	10.5.
11. Junction of Canadian Middle Channel and Main Channel abreast of Ironsides Island.	Open Waters between Wolfe and Howe Islands through the said Middle Channel.	9.5	9.5.
12. Port Robinson	Ramey's Bend through the Welland Bypass	8	8.
13. All other canals		6	6.

[1] Maximum speeds at which a vessel may travel in identified areas in both normal and high water conditions are set forth in this schedule. The Corporation and the Authority will, from time to time, designate the set of speed limits which is in effect.

26. Appendix I to subpart A, part 401 is amended by revising the first sentence of the second undesignated paragraph after paragraph (b) to read as follows:

Appendix I—Vessel Dimensions

* * * * *

The limits in the block diagram are based on vessels with a maximum allowable beam of 23.2 m. * * *

* * * * *

Issued at Washington, DC on April 25, 1996.

Saint Lawrence Seaway Development Corporation

Gail C. McDonald,

Administrator.

[FR Doc. 96–10941 Filed 5–1–96; 8:45 am]

BILLING CODE 4910–61–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AA65

Disposition of Federal Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is amending its regulations to require reimbursement for certain records maintained in Federal records centers that have exceeded the authorized disposal date. NARA has clarified in this final rule that the requirement will not apply to records whose disposition is stayed pending NARA action on a previously submitted record schedule. NARA is taking this action because the Federal records centers have a serious shortage of storage space and can no longer absorb the cost of storing records beyond their scheduled disposal date. NARA is also updating the addresses of the Federal records centers.

EFFECTIVE DATE: The final rule is effective June 3, 1996.

FOR FURTHER INFORMATION CONTACT: Debra Leahy at 301–713–7210.

SUPPLEMENTARY INFORMATION: On September 26, 1995, NARA published a notice of proposed rulemaking at 60 FR 49532. The 60-day comment period ended on November 27, 1995, but NARA considered all written comments received by December 4, 1995, in developing this final rule. Eight comments, all from Federal agencies, were received. The following major points were raised:

Agencies should not be required to pay for extended storage when the hold on disposal is not under the control of the agency. Five agencies stated that, in most cases, extended retention requirements are levied by another office of the Federal Government in anticipation of litigation, to meet a court order, or to resolve an issue with the Government Accounting Office. One agency suggested that any storage fees should be imposed on the organization that requested the hold on disposal.

It is not NARA's intent to impose a burden on agencies. NARA believes that the reimbursement plan is a reasonable solution that will benefit both the agencies and the Federal records centers. In the past, NARA has absorbed the cost of storing temporary records that have exceeded their authorized disposition date. However, because of the continued growth of records in this category, NARA can no longer pay for the space needed to store such records. Without reimbursement, NARA will be forced, in the near future, to return the records to the agencies for further retention.

Like the agencies, NARA has no means of projecting when a court-ordered or GAO disposal suspension will occur or how many records will be affected. In some cases, entire record groups have been placed under disposal suspension. Legal custody of temporary records remains with the agency even though the records are stored in a Federal records center. Therefore, NARA must request reimbursement from the legal custodian of the records rather than from the imposer of the disposal suspension. NARA recommends that agencies work with their attorneys and records officials, the Department of Justice attorneys and GAO officials when applicable, to narrow the scope of records required for litigations and audits.

Three agencies pointed out circumstances where NARA has rescinded disposal authority pending re-appraisal of potentially permanent records; where an SF 115, Request for Disposition Authority, had been submitted to NARA to approve a change in the scheduled disposition; where unscheduled records accepted for accessioning into a Federal Records Center (FRC) required screening to separate permanent from disposable records; and where an agency must work with NARA to reconcile conflicting mandated retention periods for contractor-generated records. NARA has never intended to require reimbursement for continued storage of records where the disposition of the records is contingent on NARA action. We have clarified § 1228.54(g) on this point.

We have also modified § 1228.54 (g) to provide that NARA will waive fees for extended storage when the administrative cost to NARA for the agreement and billing would exceed the fees expected to be received. For the remainder of FY 1996, the threshold for waiving fees will be $100 based on the agency's total records center holdings subject to the fee. NARA will bill the headquarters office rather than individual offices or units.

One agency noted that occasionally, when NARA sends a destruction notice, an agency will discover that records were retired to the FRC under the wrong disposal authority and that the correct retention period is longer. There will be no charge for the extended storage period for correction of this error.

Removal of records from FRC space. If agencies do not wish to reimburse NARA for continued storage of records for the extended retention period, the proposed rule would require agencies to remove the records within 60 days. One agency recommended that § 1228.54(g) be amended to require removal within 90 days from the date of notification to ensure that agencies had sufficient time to effect the arrangements for removal. NARA has adopted this comment.

Another agency commented that it would be more costly for agencies to store returned records in their office space and that NARA discourages agency records centers in another section of Part 1228 by requiring agencies to obtain NARA approval to establish agency records centers. NARA recognizes the agency's argument that FRC storage space is generally more economical than storage in agency office space. The purpose of the cited regulatory requirement is to ensure that agencies comply with the records storage standards NARA imposes on itself to protect the records and that the agency centers are as cost-effective as FRC's. This regulatory provision is based on 44 U.S.C. which requires NARA approval of agency-operated records centers.

Billing procedures. Two agencies asked for clarification of billing procedures.

The billing procedure will be specified in the reimbursable agreement that the agency and NARA will sign. NARA anticipates billing agencies quarterly, based on the volume of retained holdings in the FRC system on the last day of the quarter. Data for fourth quarter billing will be cut off on August 31 of each year. Agencies may negotiate alternate arrangements with the Office of Federal Records Centers that will better serve the agency and NARA.

Effective date. Five agencies stated that the proposed January 1, 1996, effective date did not give agencies adequate lead time to budget for the unplanned expenditure. Three of these agencies recommended a delay in the effective date until FY 1997. Since agencies have already submitted their FY 1997 budgets to OMB, NARA does not believe that a delay to October 1, 1996, will materially affect the agencies' ability to budget payments for extended storage fees. Moreover, as explained previously, NARA cannot continue to absorb the cost we incur for the extended storage of otherwise disposable records in FRC space. To provide agencies time to enter into a reimbursable agreement with NARA or to plan for the removal of affected records, we have revised the effective date to June 3, 1996, in response to these comments.

Other comments. One agency pointed out that the list of administrative purposes that justify a temporary extension were stated differently in the proposed §§ 1228.32(b) and 1228.54(g) and that a reference in § 1228.54(a) to paragraph (g) in that section should be changed to § 1228.32(b). We have made both of these changes.

Section 1228.54(a) also refers to a procedure specified in § 1228.164 for obtaining a temporary extension in

retention period for a single accession. We have clarified § 1228.164(c) to provide that agencies may use this procedure to extend the retention period for an individual accession for no longer than 6 months. Normally agencies request an extension under § 1228.164(c) to allow time for a review of the records, to request a series level retention period change from the NARA Office of Records Administration (NIR), or to withdraw the records from the records center. No charge would accrue to the agency for extended records storage under this provision; however the extension will not be renewed.

The same agency commented that NARA needs to know about proposed temporary extensions of records retention periods only when the records are stored in an FRC and recommended that this clarification be added to § 1228.32(b). We have not adopted this comment because it is incorrect. A retention period that is specified in a NARA-approved agency records schedule or in a General Records Schedule is mandatory by law; the agency may not retain temporary records beyond that date without NARA approval whether the records are located in agency space, FRC space, or other space.

Addresses of Federal records centers. In this final rule, we are also updating or correcting the addresses of the Federal records centers listed in § 1228.150, and adding the Pittsfield, MA, Federal records center. The introductory paragraph to this section is unchanged.

This rule is a significant regulatory action under E.O. 12866 of September 30, 1993 and has been reviewed by OMB. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1228

Archives and records.

For the reasons set forth in the preamble, 36 CFR part 1228 is amended as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for part 1228 continues to read as follows:

Authority: 44 U.S.C. chs 21, 29, and 33.

2. Section 1228.32 is revised to read as follows:

§ 1228.32 Request to change disposition authority.

(a) Agencies desiring to change the approved retention period of a series or system of records shall submit an SF 115. Disposition authorities contained in approved SF 115 are automatically superseded by approval of a later SF 115 applicable to the same records unless the later SF 115 specified an effective date. Agencies submitting revised schedules shall indicate on the SF 115 the relevant schedule and item numbers to be superseded, the citation to the current printed records disposition schedule, if any, and/or the General Records Schedules and item numbers that cover the records.

(b) Agencies proposing to change the retention period of a series or system of records shall submit with the SF 115 an explanation and justification for the change. The need to retain records longer than the retention period specified in the disposition instructions on an approved SF 115 for purposes of audit, court order, investigation, litigation, study, or any other administrative purpose that justifies the temporary extension of the retention period shall be governed by the procedures set forth in § 1228.54. Agencies shall not submit an SF 115 to change the retention period in such cases.

3. Section 1228.54 is amended by revising paragraphs (a) and (g) and adding paragraph (h) to read as follows:

§ 1228.54 Temporary extension of retention periods.

(a) Approved agency records schedules and the General Records Schedules are mandatory (44 U.S.C. 3303a). Except as specified in § 1228.32(b), records series or systems approved for destruction shall not be maintained longer without the prior written approval of the National Archives and Records Administration (NIR). However, extended retention of an individual shipment of records to a Federal Records Center for a period up to 6 months is governed by procedures in § 1228.164(c).

* * * * *

(g) Except when NARA agrees to continue to store and service records on a reimbursable basis or waives the requirements of this paragraph under a condition specified in paragraph (h) of this section, agencies shall remove from Federal records centers at the agency's expense records that, because of audit, court order, investigation, litigation, study, or any other administrative reason the agency wishes to retain longer than the scheduled retention period for the records. The removal of records must be accomplished within 90 days of the date of the notification from the Federal records center that the retention period has expired. Agencies that wish to establish an agreement or inquire about their records should write to NARA, Office of Federal Records Centers (NC), 8601 Adelphi Road, College Park, MD 20740–6001.

(h) NARA will waive the requirements specified in paragraph (g) of this section when:

(1) The temporary extension of retention period has been imposed by NARA, for instance when NARA plans to reappraise the archival value of records or when NARA is working on a new or revised General Records Schedule item;

(2) The agency has submitted an SF 115, Request for Disposition Authority, to NARA to request a change in the scheduled disposition of a series of records;

(2) NARA and the agency mutually agree that temporary extension is required to meet exceptional records management situations such as a NARA-agency screening project to separate permanent from disposable records or application of a new records disposition schedule to previously unscheduled records; or

(3) The administrative cost to NARA to implement a reimbursable agreement would exceed the reimbursement received.

4. In § 1228.150, the table set forth at the end of the section is revised to read as follows:

§ 1228.150 Authority.

* * * * *

Area served	Federal records center
District of Columbia, Maryland, West Virginia, and Virginia (except U.S. Court records).	Washington National Records Center, 4205 Suitland Rd., Washington, DC 20409–0002.
Designated records of the Military Departments and the U.S. Coast Guard.	National Personnel Records Center (Military Personnel Records), 9700 Page Ave., St. Louis, MO 63132–5100.

Area served	Federal records center
The entire Federal Government personnel records of separated Federal employees; medical and pay records of all Federal employees; designated medical records of Army and Air Force military personnel and their dependents; and records of agencies in the St. Louis area (Missouri only), of Scott AFB, IL, and of the Memphis Service Center, Internal Revenue Service.	National Personnel Records Center (Civilian Personnel Records), 111 Winnebago St., St. Louis, MO 63118–4199.
National collection of long term records	Federal Records Center, 100 Dan Fox Dr., Pittsfield, MA 01201–8230.
Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.	Federal Records Center, 380 Trapelo Rd., Waltham, MA 02154–6399.
New York, New Jersey, Puerto Rico, and the Virgin Islands	Federal Records Center, Military Ocean Terminal, Bldg. 22, Bayonne, NJ 07002–5388.
Delaware, Pennsylvania, and U.S. court records for Maryland, Virginia, and West Virginia.	Federal Records Center, 14700 Townsend Rd., Philadelphia, PA 19154–1025.
North Carolina, South Carolina, Tennessee, Mississippi, Alabama, Georgia, Florida, and Kentucky.	Federal Records Center, 1557 St. Joseph Ave., East Point, GA 30344–2593.
Illinois, Wisconsin, Minnesota, and U.S. court records for Indiana, Michigan, and Ohio.	Federal Records Center, 7358 S. Pulaski Rd., Chicago, IL 60629–5898.
Indiana, Michigan, and Ohio except for U.S. court records	Federal Records Center, 3150 Springboro Drive, Dayton, OH 45439–1883.
Kansas, Iowa, Nebraska, and Missouri except greater St. Louis area	Federal Records Center, 2312 E. Bannister Rd., Kansas City, MO 64131–3060.
Texas, Oklahoma, Arkansas, Louisiana, and New Mexico	Federal Records Center, P.O. Box 6216, Fort Worth, TX 76115–0216.
Colorado, Wyoming, Utah, Montana, North Dakota, and South Dakota	Federal Records Center, Denver Federal Center Bldg. 48, P.O. Box 25307, Denver, CO 80225–0307.
Nevada except Clark County, California except southern California, American Samoa.	Federal Records Center, 1000 Commodore Dr., San Bruno, CA 94066–2350.
Arizona; Clark County, Nevada, and southern California (counties of San Luis Obispo, Kern, San Bernadino, Santa Barbara, Ventura, Orange, Los Angeles, Riverside, Inyo, Imperial, and San Diego).	Federal Records Center, 24000 Avila Rd., P.O. Box 6719, Laguna Niguel, CA 92607–6719.
Washington, Oregon, Idaho, Alaska, Hawaii, and Pacific Ocean area (except American Samoa).	Federal Records Center, 6125 Sand Point Way NE., Seattle, WA 98115–7999.

5. Section 1228.164 is amended by revising paragraph (c) to read as follows:

§ 1228.164 Disposal clearances for records in Federal records centers.

* * * * *

(c) Other records of Federal agencies held by Federal records centers will be destroyed with the concurrence of the agency concerned by use of NA Form 13001, Notice of Intent to Destroy Records, or other written concurrence for each disposal action. If an agency is notified of the eligibility of its records for disposal and the agency fails to respond to this notification within 90 calendar days, the records will be destroyed in accordance with the appropriate disposition authority. If an agency does not concur in the scheduled destruction of an accession, the agency may request extended retention of the records for up to an additional 6 months by submitting written justification, including a new disposal date, within 90 days to the records center director. Further extensions must be requested in accordance with § 1228.54 of this part.

Dated: December 27, 1995

John W. Carlin,

Archivist of the United States.

[FR Doc. 96–10888 Filed 5–1–96; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 070–0001a; FRL–5451–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control VOC emissions from the transfer of gasoline into stationary storage containers, delivery vessels, bulk plants, and vehicle fuel tanks. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on July 1, 1996, unless adverse or critical comments are received by June 3, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, U.S.

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Applicability

The SJVUAPCD rules being approved into the California SIP include: Rule 4621, Gasoline Transfer into Stationary Storage containers, Delivery Vessels, and Bulk Plants, and Rule 4622, Transfer of Gasoline into Vehicle Fuel Tanks. These rules were submitted by the California Air Resources Board (CARB) to EPA on November 18, 1993 and May 24, 1994, respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Joaquin Valley Air Basin which includes the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County APCD,[1] King County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964, 40 CFR 81.305. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.[2] On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182 (a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182 (a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[3] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Joaquin Valley Air Basin is classified as serious[4]; therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on November 18, 1993 and May 24, 1994, including the rules being acted on in this document. This document addresses EPA's direct-final action for SJVUAPCD Rule 4621, Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants, and Rule 4622, Transfer of Gasoline into Vehicle Fuel Tanks. SJVUAPCD adopted Rule 4621 on May 20, 1993 and Rule 4622 on February 17, 1994. These submitted rules were found to be complete on December 23, 1993 and July 14, 1994, respectively, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V[5] and are being finalized for approval into the SIP.

Rule 4621 limits VOC emissions from the transfer of gasoline into stationary storage containers, delivery vessels, and gasoline bulk plants. Rule 4622 limits VOC emissions in gasoline vapors during the transfer of gasoline into vehicle fuel tanks. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of SJVUAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182 (a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 4621 is entitled, Control of Volatile Organic Emissions from Bulk Gasoline Plants, EPA–450/2–77–035; and Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems, EPA–450/2–78–051. Rule 4622 was compared to EPA's draft model Stage II Rule, dated August 17, 1992. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SJVUAPCD's submitted Rule 4621, Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants includes the following significant changes from the current SIP, Rule 411.1, Storage of Gasoline into Stationary Storage Containers:

- The scope of the rule was expanded to include delivery vessels and bulk plants.
- The definitions section was expanded for rule clarity.

[1] At that time, Kern County included portions of two air basins: the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See CFR 81.305 (1991).

[2] This extension was not requested for the following counties: Kern, Kings, Madera, Merced and Tulare. Thus, the attainment date for these counties remained December 31, 1982.

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice'' (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] The San Joaquin Valley Air Basin was retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[5] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

• The exemption section was revised to include a limited exemption for delivery vessels.

• A requirement was added for gasoline bulk plants.

• Recordkeeping and test method requirements were added.

• The compliance schedule was revised.

SJVUAPCD Rule 4622, Transfer of Gasoline into Vehicle Fuel Tanks, includes the following significant changes from the current SIP Rule 411.2:

• An applicability and purpose statement was added to the rule for clarity.

• The definitions section was expanded.

• Recordkeeping and test method requirements were added.

• The compliance schedule was revised.

SJVUAPCD Rules 4621 and 4622 were amended and renumbered several times. A detailed description and history of each rule is contained in the associated technical support document, dated February 8, 1996.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD Rule 4621, Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants, and Rule 4622, Transfer of Gasoline into Vehicle Fuel Tanks are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 1, 1996, unless, by June 3, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 1, 1996.

Regulatory Process

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

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A., 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).*

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 24, 1996.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(C)(*2*) and (197)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(194) * * *

(i) * * *

(C) * * *

(*2*) Rule 4621, adopted on May 20, 1993.

* * * * *

(197) * * *

(i) * * *

(C) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4622, adopted on February 17, 1994.

* * * * *

[FR Doc. 96–10565 Filed 5–1–96; 8:45 am]

BILLING CODE 6560–50–W

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–195; RM–7091, RM–7146, RM–8123, RM–8124]

Radio Broadcasting Services; Beverly Hills, Chiefland, Holiday, Micanopy, Sarasota, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses an Application for Review filed by Dickerson Broadcasting, Inc. directed to an earlier action denying its Petition for Reconsideration. *See* 58 FR 17349 (April 2,1993). Dickerson contended that the Class 3C FM channel at Beverly Hills was allotted without adequate notice. With this action, the proceeding is terminated.

EFFECTIVE DATE: May 2, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 776–1654.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Docket No. 92–195, adopted March 21, 1996, and released April 16, 1996. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–9796 Filed 5–01–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–77; RM–8616]

Television Broadcasting Services; Virginia Beach, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Lockwood Broadcasting, Inc., allots UHF Channel 21 to Virginia Beach, Virginia, as an additional television service. *See* 60 FR 31278, June 14, 1995. Channel 21+ can be allotted to Virginia Beach consistent with the minimum distance separation requirements of Sections 73.610 and 73.698 of the Commission's Rules with a site restriction of 4.0 kilometers (2.5 miles) south to avoid the ATV freeze zone surrounding Washington, DC. The coordinates for Channel 21+ at Virginia Beach are 36–48–38 and 75–58–30. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 10, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–77, adopted March 25, 1996, and released April 24, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Virginia, is amended by adding Channel 21+ at Virginia Beach.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10853 Filed 5–1–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 80

[FCC 96–156]

Conforming the Maritime Service Rules to the Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the maritime service rules, consistent with the statutory mandate of the 1996 Telecommunications Act, to eliminate the radiotelegraph carriage requirement for vessels equipped in accordance with the Global Maritime Distress and Safety System (GMDSS). The effect of this rule is to reduce economic burdens for vessel operators and increase safety at sea by promoting the carriage of GMDSS radio installations.

EFFECTIVE DATE: June 3, 1996.

FOR FURTHER INFORMATION CONTACT: Roger Noel of the Commission's Wireless Telecommunications Bureau at (202) 418–0680 or via email at rnoel@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 96–156, adopted April 5, 1996, and released April 12, 1996. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Order

1. Prior to the enactment of the Telecommunications Act of 1996, Section 351 of the Communications Act required passenger vessels and large cargo vessels to be equipped with a manual Morse code radiotelegraph installation when navigating in the open sea or on international voyages. In 1988, the international maritime community agreed to replace the radiotelegraph as the required installation with the GMDSS—an automated ship-shore distress and safety radio communications system that relies on satellites and advanced terrestrial systems. Accordingly, in the Report and

Order in PR Docket No. 90–480, 57 FR 9063 (March 16, 1992), the Commission adopted rules implementing the new international GMDSS requirements in Part 80 of the Rules. Under the rules, vessels were required to meet certain minimum equipment-carriage implementation dates and were given the option to fully comply with the GMDSS prior to the February 1, 1999 international deadline. The Report and Order, however, did not relieve the requirement for compulsory vessels carrying GMDSS equipment from Section 351's requirement to carry radiotelegraph installations. Thus, compulsory vessels complying with the implementation dates, as well as vessels in full compliance prior to the international deadline, were required to carry components of two distinct safety systems, each with designated radio operators.

2. Section 206 of the Telecommunications Act of 1996 eliminates the radiotelegraph carriage requirement for each GMDSS-equipped vessel, so long as the U.S. Coast Guard determines that each vessel has the GMDSS equipment installed and in good working condition. Thus, this Order provides a general exemption from the radiotelegraph requirements of part II of title III of the Communications Act for GMDSS-equipped vessels that obtain a Safety Certificate or endorsement from the Commission or its designee. The U.S. Coast Guard has informed the Commission that it intends to interpret the Safety Certificate or endorsement as prima facie evidence that each vessel has the GMDSS equipment installed and in good working condition.

3. This rule is necessary in order to make our rules consistent with the requirements of the 1996 Telecommunications Act. Additionally, this action reduces regulatory burdens on vessel owners and eliminates economic disincentives associated with the installation of GMDSS equipment prior to the international deadline. Further, this action increases safety of life at sea by ensuring that reliable distress alerting and communications equipment, compatible with that of the international shipping fleet, may be installed on large oceangoing vessels.

5. This Order is issued under the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

List of Subjects in 47 CFR Part 80

Communications equipment, Marine Safety, Radio, Telegraph, Vessels.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rule

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.836 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding new paragraph (d) to read as follows:

§ 80.836 General exemptions.

* * * * *

(c) Prior to February 1, 1999, cargo ships of 1600 gross tons and upward are exempt from the radiotelegraph requirements of Part II of Title III of the Communications Act, if the following criteria are met:

(1) The ship operates on domestic voyages only. For purposes of this paragraph, the term domestic voyages includes ports in Alaska, U.S. possessions in the Caribbean, and along the coasts of the 48 contiguous states, so long as the vessel does not make port at a foreign destination;

(2) The routes of the voyage are never more than 150 nautical miles from the nearest land; and,

(3) The ship complies fully with all of the following conditions. The ship must:

(i) Be equipped with a satellite ship earth station providing both voice and telex, which has been type accepted for GMDSS use;

(ii) Be equipped with a VHF and MF radiotelephone installation which complies fully with subpart R of this part and has the additional capability of operating on the HF frequencies listed in § 80.369(b) for distress and safety communications (this capability may be added to the MF radiotelephone installation);

(iii) Be equipped with a narrow-band direct-printing radiotelegraph system with SITOR meeting the requirements of § 80.219;

(iv) Be equipped with at least two VHF transceivers capable of being powered by the reserve power supply (one of the VHF transceivers may be the VHF required by paragraph (c)(3)(ii) of this section);

(v) Be equipped with a Category 1, 406 MHz EPIRB meeting the requirements of § 80.1061;

(vi) Be equipped with a NAVTEX receiver meeting the requirements of § 80.1101(c)(1);

(vii) Be equipped with three two-way VHF radiotelephone apparatus and two radar transponders in accordance with § 80.1095;

(viii) In addition to the main power source, be equipped with an emergency power source which complies with all applicable rules and regulations of the U.S. Coast Guard (the satellite earth station, the narrow-band direct-printing equipment and the 500 kHz autoalarm receiver must be capable of being powered by the main and emergency power sources);

(ix) Be equipped with a 500 kHz autoalarm receiver and a means of recording or decoding any distress signal received for relay to the Coast Guard or a public coast station;

(x) Participate in the AMVER system when on voyages of more than twenty-four hours and have the capability of operating on at least four of the AMVER HF duplex channels;

(xi) Carry at least one licensed operator to operate and maintain all the ship's distress and safety radio communications equipment in accordance with §§ 80.159(c) and 80.169; and,

(xii) Maintain a continuous watch on 2182 kHz and 156.8 MHz, in accordance with § 80.305(b), when navigated.

(d) Subject to a determination by the United States Coast Guard pursuant to Public Law No. 104–104, 110 Stat. 56 (1996) at Section 206, each U.S. passenger vessel and each U.S. cargo vessel of 1,600 gross tons and upward is exempt from the radiotelegraph provisions of part II of title III of the Communications Act, provided that the vessel complies fully with the requirements for the Global Maritime Distress & Safety System (GMDSS) contained in subpart W of this part and obtains either a Safety Certificate or endorsement as described in § 80.1067.

Note to paragraph (d): In a letter to the Commission, dated March 13, 1996, the United States Coast Guard noted that it may rely on the Safety Certificate or endorsement described in § 80.1067 as prima facie evidence that the GMDSS has been installed and found to be operating properly. The Coast Guard also stated that it retains the authority for ensuring overall vessel safety and compliance with all applicable domestic

and international laws, regulations and treaties.

* * * * *

[FR Doc. 96–10851 Filed 5–1–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 96–21; Notice 01]

RIN 2127–AF68

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule deletes two owner's manual requirements in Standard No. 210, ''Seat Belt Anchorages.'' Standard No. 210 requires that manufacturers include a diagram in their owner's manuals showing the location of any shoulder belt anchorages required by the standard, if the vehicle is not equipped with shoulder belts at those locations. Standard No. 210 also requires the inclusion of owner's manual information concerning the use and the installation of child safety seats in vehicles equipped with an automatic belt at the right front outboard seating position, if the belt cannot be used to secure a child seat. NHTSA believes it is appropriate to delete these requirements because they are or soon will be obsolete.

DATES: *Effective Dates:* The removal of paragragh S6(c) of § 571.210 is effective June 3, 1996. The removal of S7 of § 571.210 is effective September 1, 1998.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than June 17, 1996.

ADDRESS: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590:

For non-legal issues: Clarke B. Harper, Office of Crashworthiness Standards, NPS–11, telephone (202) 366–4916, facsimile (202) 366–4329, electronic mail ''charper@nhtsa.dot.gov''.

For legal issues: Mary Versailles, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820, electronic mail ''mversailles@nhtsa.dot.gov''.

SUPPLEMENTARY INFORMATION: Pursuant to the March 4, 1995 directive, ''Regulatory Reinvention Initiative,'' from the President to the heads of departments and agencies, NHTSA undertook a review of all its regulations and directives. During the course of this review, the agency identified several requirements and regulations that are potential candidates for amendment or rescission, including two owner's manual information requirements in Standard No. 210, ''Seat Belt Assembly Anchorages.''

NHTSA believes that these requirements should be deleted because they are or soon will be obsolete. The first requirement is in paragraph S6(c), which requires that vehicle manufacturers include a diagram in their vehicle owner's manuals showing the location of any shoulder belt anchorages required by the standard, if their vehicles are not equipped with shoulder belts at those locations. This requirement was intended to ensure that consumers were aware of the existence of beltless anchorages in rear seating locations. The other requirement is in paragraph S7, which requires the inclusion of owner's manual information concerning the use and the installation of child safety seats in vehicles equipped with an automatic belt at the right front outboard seating position, if the belt cannot be used to secure a child seat.

Paragraph S6(c) is currently not applicable to any vehicle. Since September 1, 1991, all rear seating positions which are required by Standard No. 210 to have a shoulder belt anchorage are also required by Standard No. 208, ''Occupant Crash Protection,'' to have shoulder belts installed. As there are no longer any required, but unused, rear outboard shoulder belt anchorages, the agency is deleting this requirement.

With regard to the requirements of S7 of Standard No. 210 requiring information concerning installation of child restraints in a seating position with an automatic belt, several recent amendments to Standard No. 208 will make this owner's manual requirement obsolete after September 1, 1998. First, a final rule published on September 2, 1993, requires an air bag and manual belt at the right front outboard seating position in passenger cars and light trucks by September 1, 1998 (58 FR 46551). After that date, automatic belts will not be installed in those seating positions. Second, a final rule published on October 13, 1993, requires manual belts installed at any seating position other than the driver's position in vehicles manufactured after September 1, 1995, to be capable of tightly securing a child safety seat without the necessity of the user's attaching any device to the safety belt system (58 FR 52922). This ''lockability'' requirement will also be described in the owners manual. The combination of the manual belt requirement and the lockability requirement will make Section 7 of 210 obsolete after September 1, 1998.

NHTSA is not soliciting public comment on these amendments. NHTSA finds for good cause that notice and opportunity to comment are unnecessary because the amendments are technical in nature. They delete requirements addressing circumstances that have been or will be eliminated by other requirements in the Federal Motor Vehicle Safety Standards.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures. Because this rule deletes obsolete provisions, no cost or saving will result.

Regulatory Flexibility Act: NHTSA has also considered the impacts of this rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA does not anticipate any economic impact from this rulemaking action.

Paperwork Reduction Act: In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this rule.

National Environmental Policy Act: NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism): NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and

has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform: This rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. § 571.210 is amended by removing paragraph S6(c) and S7.

Issued on April 25, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–10789 Filed 5–1–96; 8:45 am]

BILLING CODE 4910–59–P

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49 CFR Part 571

[Docket No. 96–29, Notice 01]

RIN 2127–AG28

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule, technical amendment.

SUMMARY: This document deletes an obsolete section of Standard No. 105, *Hydraulic brake systems*, that relates to an optional burnish procedure. This section is obsolete because the time period to which it specifies is in the past.

EFFECTIVE DATE: This rule is effective June 3, 1996.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Mr. Robert M. Clarke, Office of Crash Avoidance, telephone (202) 366–4923.

For legal issues: Mr. Marvin Shaw, Office of Chief Counsel, NCC–20, (202) 366–2992. Both may be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: Pursuant to the President's March 4, 1995, directive, ''Regulatory Reinvention Initiative,'' to the heads of departments and agencies, NHTSA undertook a review of all its regulations and directives. During the course of this review, the agency identified several requirements and regulations that are potential candidates for rescission. In reviewing Standard No. 105, the agency concluded that a section relating to the optional burnish requirements in S7.4.2.1(a) was obsolete and should be deleted.[1] The optional burnish requirements applied to vehicles manufactured before September 1, 1994, because the agency wanted to provide this option for a finite period of time. To improve the clarity and conciseness of Standard No. 105, the agency is deleting S7.4.2.1(a) from the standard.

NHTSA finds good cause to make this amendment effective 30 days after publication of this document. This amendment makes a minor change to Standard No. 105.

NHTSA also finds for good cause that notice and an opportunity for comment on this document are unnecessary. This document does not impose any additional responsibilities on any manufacturer. Instead, this document simply removes an outdated provision in the standard.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' Further, this action has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures. This rule removes an outdated portion of Standard 105 without changing any of the requirements in the standard. Because this rule does not affect any substantive requirement of the hydraulic brake standard, its impacts are so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act: NHTSA has also considered the impacts of this rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, this rule simply removes an outdated portion of Standard 105. It has no effect whatsoever on the manufacture or sale of vehicles.

National Environmental Policy Act: NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism): NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform: This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending 49 CFR 571.105, *Hydraulic brake systems,* to read as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.301 [Amended]

2. Section 571.105 is amended by revising S7.4.2.1 to read as follows:

[1] During this review, the agency identified another obsolete reference in S7 which was deleted in a December 13, 1995, final rule (60 FR 63965).

§ 571.105 Standard No. 105, Hydraulic Brake Systems.

* * * * *

S7.4.2.1 *Burnish.* Vehicles are burnished according to the following procedures. Make 500 snubs between 40 mph and 20 mph at a deceleration rate of 10 f.p.s.p.s. Except where an adjustment is specified, after each brake application accelerate to 40 mph and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If the vehicle cannot attain a speed of 40 mph in 1 mph, continue to accelerate until the vehicle reaches 40 mph or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. The brakes shall be adjusted three times during the burnish procedure, in accordance with the manufacturer's recommendations, after 125, 250, and 375 snubs.

* * * * *

Issued on April 25, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–10790 Filed 5–1–96; 8:45 am]

BILLING CODE 4910–59–P

Federal Transit Administration

49 CFR Parts 604 and 609

RIN 2132–AA46

Charter Service; Transportation for Elderly and Handicapped Persons

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: This rule removes and updates obsolete sections of the Federal Transit Administration's Charter Service and Transportation for Elderly and Handicapped Persons regulations, which have been superseded by the Department of Transportation's regulation implementing the Americans with Disabilities Act of 1990, replaces references to the former Federal Transit Act, as amended (49 U.S.C. app §§ 1601 et seq.) with references to Chapter 53 of Title 49 of the United States Code, and redesignates Appendix B of the Charter Service regulation as Appendix A of the Transportation for Elderly and Handicapped Persons regulation.

EFFECTIVE DATE: May 2, 1996.

FOR FURTHER INFORMATION CONTACT: Richard L. Wong, Attorney-Advisor, Office of the Chief Counsel, Phone: (202) 366–1936 (voice).

SUPPLEMENTARY INFORMATION: Part 609 of 49 CFR set forth regulatory requirements of the Federal Transit Administration on transportation for the elderly and persons with disabilities under sections 5 and 16 of the former Federal Transit Act, as amended (49 U.S.C. app. §§ 1604 and 1612). These requirements included transportation planning in urbanized areas, transportation planning in nonurbanized areas, accessible transportation facilities, and accessible buses, rapid rail vehicles, light rail vehicles, and other vehicles.

The specification for accessible transportation facilities and vehicles have now been superseded by the Department of Transportation's regulation implementing the Americans with Disabilities Act of 1990 (49 CFR Parts 27, 37, and 38), and the special efforts planning requirements for urbanized areas are located in the joint FHWA/FTA Statewide and Metropolitan Planning Rules (49 CFR Part 613 and 23 CFR Part 450, respectively).

In addition, 49 CFR Part 604, Charter Service, Appendix B, contains a series of questions and answers regarding the definitions addressed under 49 CFR Part 609. This final rule moves Appendix B to Part 609, a more appropriate location, and makes several technical amendments reflecting that change and the codification of the former Federal Transit Act (now 49 U.S.C. Chapter 53).

Regulatory Analyses and Notices

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. It does not impose costs on regulated parties. It merely removes several superseded sections of a regulation and consolidates the effective sections. There are not sufficient Federalism implications to warrant a Federalism Assessment. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Under the Administrative Procedure Act (5 U.S.C. 553), FTA determines that notice and an opportunity for comment are impracticable, unnecessary, and contrary to the public interest. The amendments made in this document are ministerial, removing obsolete and redundant material and making minor technical and terminological changes. FTA expects these changes to have no substantive impact and does not anticipate receiving meaningful comments on them. Therefore, because it would be contrary to the public interest to unnecessarily delay this effort to eliminate and revise outdated rules, FTA is not seeking public comment on these changes to 49 CFR.

List of Subjects in 49 CFR Parts 604 and 609

Elderly and handicapped; charter service.

For the reasons set forth, the Department amends 49 CFR Parts 609 and 604 as follows:

PARTS 604 AND 609—[AMENDED]

1. The authority citation for 49 CFR Part 604 continues to read as follows:

Authority: 49 U.S.C. 5323(d); 23 U.S.C. 103(e)(4); 142(a); and 142(c); and 49 CFR 1.51.

2. The authority citation for 49 CFR Part 609 is revised to read as follows:

Authority: 49 U.S.C 5307(d) and 5308(b); 23 U.S.C. 134,135 and 142; 29 U.S.C. 794; 49 CFR 1.51.

Appendix B [Redesignated]

3. 49 CFR Part 604, Appendix B is redesignated as 49 CFR Part 609, Appendix A.

Appendix A [Amended]

4. In newly designated Appendix A to Part 609, the first sentence of the second paragraph is amended by deleting ''§ 604.9(b)(6)'' and replacing it with ''this part''.

5. In newly designated Appendix A to Part 609, the first sentence of Answer 3 is amended by replacing ''section 16 of the FT Act'' with ''section 5302(a)(5) of the Federal transit laws (49 U.S.C. Chapter 53)''.

6. In newly designated Appendix A to Part 609, the second sentence of Answer 5 is amended by replacing ''FTA's elderly and handicapped regulation'' with ''the Department of Transportation's ADA regulation''.

§ 609.5 [Amended]

7. Section 609.5 is amended by replacing ''sections 3, 5, or 9 of the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1602, 1604, or 1607a)'' with ''sections 5307 or 5308 of the Federal transit laws (49 U.S.C. Chapter 53)''.

§ 609.23 [Amended]

8. Section 609.23 is amended by replacing ''section 5 of the Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1604)'' with ''section 5307 of the Federal transit laws (49 U.S.C. Chapter 53).

§§ 609.5 and 609.23 [Amended]

9. Sections 609.5 and 609.23 are amended by removing the words ''Federal Mass Transit Administrator'' and adding in their place, the words ''Federal Transit Administrator''.

10. Sections 609.7, 609.9, 609.11, 609.13, 609.15, 609.17, 609.19, 609.21, and 609.25 are removed.

Issued this 25th day of April 1996, at Washington, D.C.

Gordon J. Linton,

Administrator.

[FR Doc. 96–10743 Filed 5–1–96; 8:45 am]

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Proposed Rules

Federal Register
Vol. 61, No. 86
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 301, 317, 318, 320, and 381

[Docket No. 95–033P]

Performance Standards for the Production of Certain Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry inspection regulations by converting the current regulations governing the production of cooked beef products, uncured meat patties, and certain poultry products into performance standards. The proposed performance standards spell out the objective level of performance establishments must meet during their operations in order to produce safe products, but allow the use of plant-specific processing procedures other than the procedures prescribed in the current regulations.

Performance standards set forth requirements in terms of what is to be achieved by a given regulatory requirement. They represent a shift in focus from ''command-and-control'' regulations in that they specify the ends to be achieved (producing safe meat and poultry products), but not the means to achieve those ends. The command-and-control provisions in the current regulations prescribe the means for producing safe meat and poultry products, specifying step-by-step procedures to be followed by establishments.

All of the command-and-control provisions in the current regulations meet the proposed performance standards. FSIS proposes to maintain the current provisions in the regulations as examples of how an establishment might comply with the proposed performance standards (''safe harbors''). Therefore, establishments would not be required to change any current practices in response to this proposed rule.

The specific categories of products affected follow: cooked beef, roast beef, and cooked corned beef; fully cooked, partially cooked, and char-marked uncured meat patties; and certain fully and partially cooked poultry products. Any establishment producing these products and choosing to develop and use procedures different from those provided in the safe-harbor example would be required to maintain on file a documented process schedule that has been approved by a process authority for safety and efficacy, as required by the performance standard. The process schedule would include control, monitoring, validation, and corrective action activities to be performed by the establishment.

DATES: Comments must be received on or before July 1, 1996.

ADDRESSES: Submit one original and two copies of written comments to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 4352–S, Washington, DC 20250–3700. Please refer to docket number 95–033P in your comments. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act should contact Dr. Paula M. Cohen at (202) 720–7164 so that arrangements can be made. All comments submitted in response to this proposal will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 1:00 p.m., and 2:00 p.m. and 4:30 p.m., Monday through Friday. To review the research and other background information used by FSIS in developing this document, persons may visit the Docket Clerk's office during the times listed above.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Acting Deputy Administrator, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 *et seq.*), FSIS issues regulations governing the production of meat and poultry products prepared for distribution in interstate and foreign commerce. Many of these regulations employ the command-and-control approach, prescribing a precise sequence of steps to be followed to produce food that is safe and not adulterated.

Since 1972, FSIS has promulgated several regulations ensuring the safety of various cooked and partially cooked meat and poultry products. These regulations (9 CFR 318.17, 318.23, and 381.150) prescribe specific steps establishments must follow to ensure harmful bacteria are killed, growth of spore-forming bacteria is controlled, and recontamination of the product is prevented. By describing detailed safety procedures, this approach to rulemaking has provided clear direction and ensured that all establishments are subject to the same rules.

However, command-and-control regulations often do not account for the uniqueness of individual processing procedures and needs within different establishments. FSIS command-and-control regulations require all establishments to produce meat and poultry products in the same manner. Such prescriptive regulations are burdensome in many settings.

Further, command-and-control regulations can have disparate economic effects on establishments producing different volumes of the same product. By mandating the use of specific processes or technologies, FSIS often inadvertently imposes economic burdens on small businesses. Small establishments producing meat and poultry products at low volumes often must pay a high cost per product unit when required to employ a specific process or technology, while large establishments are able to spread the cost over their higher production volumes.

FSIS is now proposing to convert these regulations to performance standards. Performance standards spell out the objective level of performance establishments must meet during their operations in order to produce safe and nonadulterated products, but allow the use of plant-specific processing procedures, other than those prescribed in the current regulations. Accordingly, establishments could employ innovative or unique processing procedures customized to the nature and volume of their production.

The conversion of command-and-control regulations to performance standards is also an important element of the Agency's HACCP (Hazard Analysis and Critical Control Points) initiative.

Performance Standards and HACCP

In the Federal Register of February 3, 1995 (60 FR 6774), FSIS described a new food safety strategy based on clearly defining the responsibility of meat and poultry establishments to produce products that meet FSIS-established food safety performance standards. As a central element of this new food safety strategy, FSIS has proposed that all establishments adopt the science-based system of preventive controls to ensure food safety, known as HACCP. Under HACCP, establishments will be responsible for developing and implementing HACCP plans incorporating the controls determined by the establishment to be necessary and appropriate to produce safe products. HACCP is a flexible system that enables establishments to tailor their control systems to the needs of particular plants and processes.

Clearly defined food safety performance standards and HACCP are both powerful tools for improving food safety. Under FSIS proposals to implement performance standards and HACCP, establishments would have the incentive and flexibility to adopt innovative, science-based food safety processing procedures and controls. Furthermore, by focusing on inspectional oversight of the manner in which establishments are implementing HACCP plans and achieving performance standards, FSIS will have a more effective means of ensuring that establishments are meeting their food safety responsibilities.

Moreover, for HACCP to be successful, FSIS must reconsider its current reliance on command-and-control regulations. As a general matter, such regulations are incompatible with HACCP and the new food safety strategy because they deprive plants of the flexibility to innovate, one of the advantages of HACCP, and undercut the clear delineation of responsibility for food safety on which the FSIS strategy is based. Therefore, to prepare for the implementation of HACCP, FSIS is conducting a thorough review of its current regulations and, to the maximum extent possible, converting its command-and-control regulations to performance standards. This proposal to convert the current regulations governing the production of certain cooked beef products, uncured meat patties, and certain poultry products into performance standards is an important part of this effort.

The Integration of Performance Standards Into Establishment HACCP Plans

Establishments would have the option of developing customized processing procedures designed to meet performance standards prior to their implementation of the HACCP requirements. These establishments would incorporate elements of their customized processing procedures into their HACCP plans and, in fact, probably would develop these processing procedures with HACCP in mind. Specifically, establishments would incorporate the means they use to meet the performance standards into their HACCP plans as critical limits.

When developing a HACCP plan, an establishment must first carry out a hazard analysis to identify and list the physical, biological, or chemical food safety hazards reasonably likely to occur in the production process for a particular product and the preventive measures necessary to control the hazards. The establishment then must identify the critical control points (CCP—s) in each of its processes. A CCP is a point, step, or procedure at which control can be applied and a food safety hazard can be prevented, eliminated, or reduced to an acceptable level.

Next, the critical limits for preventive measures associated with each identified CCP must be established. A critical limit is the maximum or minimum value to which a process control measure must be controlled at a CCP to prevent, eliminate, or reduce to an acceptable level the identified food safety hazard. Critical limits are most often based on process parameters such as temperature, time, water activity, or humidity. Critical limits must be designed to satisfy relevant FSIS regulations (including performance standards), FDA tolerances, and action levels where appropriate.

The proposed performance standards set out quantifiable microbiological pathogen reduction requirements for cooked beef products, uncured meat patties, and certain fully and partially cooked poultry products. Therefore, establishments would develop critical limits based upon these performance standards. Of course, during hazard analysis, establishments probably would identify other hazards not addressed by these performance standards and would be required to develop CCP's and critical limits accordingly. An example of how an establishment might use performance standards to develop critical limits follows.

Establishment X produces ready-to-eat poultry products and, as a result of this proposal, would be required to meet three performance standards: lethality, stabilization, and handling. To meet the lethality standard, the establishment must achieve a 7–D reduction in the microbiological pathogen *Salmonella* (explained below) in their poultry products. As would most, if not all establishments, Establishment X achieves this reduction in *Salmonella* through cooking. Establishment X cooks its poultry at 155 °F for 16 seconds to achieve a 7–D lethality.

As part of its HACCP plan, Establishment X must develop critical limits for the preventive measures addressing the hazards associated with producing ready-to-eat poultry products. *Salmonella* is identified as one of those hazards by the lethality performance standard. Therefore, Establishment X would incorporate the time/temperature combination used to meet the lethality performance standard into its HACCP plan as critical limits.

To meet the second performance standard, stabilization, Establishment X must prevent the germination and multiplication of toxigenic microorganisms such as *C. botulinum* and allow no more than a 1-decimal log multiplication of *C. perfringens* within its ready-to-eat poultry products (further explained below). To meet this performance standard, Establishment X decides to chill its poultry products following cooking, to 80 °F within 1.5 hours and to 40 °F within 5 hours. *C. botulinum* and *C. perfringens* are identified by the stabilization performance standard as hazards that must be addressed during the production of ready-to-eat poultry products. Therefore, Establishment X would incorporate the time/temperature combination used to meet the stabilization performance standard into its HACCP plan as critical limits.

To meet the third performance standard for ready-to-eat poultry, handling, Establishment X must ensure that no infectious pathogens are introduced into the product following processes ensuring lethality and stabilization and after final packaging. To meet the handling standard, Establishment X cooks the packaged, raw poultry product in a room physically separated from other rooms in which raw poultry and ingredients are handled and packaged. Further, Establishment X assures that raw materials entering the room for processing are stored separately from the finished, ready-to-eat product. Finally, Establishment X monitors the integrity of the packaged, ready-to-eat

product to ensure that there are no punctures or incomplete seals that may cause contamination.

The Proposed Performance Standards and Commercial Sterility

As stated above, the performance standards proposed set out quantifiable pathogen reduction requirements for cooked beef products, uncured meat patties, and certain fully and partially cooked poultry products. In the interest of further simplifying the food safety regulations governing these products, FSIS might have proposed a single performance standard: commercial sterility, or the elimination of all microorganisms from these products.

However, achieving commercial sterility within cooked beef products, uncured meat patties, and certain fully and partially cooked poultry products would not be feasible. It would be technically impossible for establishments to produce versions of these products that are both commercially sterile and marketable. For example, using current technology, it would be impossible to produce a ready-to-eat, rare roast beef product that is commercially sterile.

The quantifiable pathogen reduction performance standards proposed for these products would both ensure the production of safe food, with an ample margin of safety, and be readily achievable by industry. Further, as explained in the following section, these proposed performance standards are intrinsic to the current regulations.

Safe Harbors

Products produced in accordance with the command-and-control provisions in the current regulations governing cooked beef products, uncured meat patties, and certain fully and partially cooked poultry products would meet the proposed performance standards. Establishments producing these products therefore would not be required to change any current practices in response to this proposed rule. By proposing performance standards that may be met through adherence to the current regulations, FSIS creates a regulatory ''safe harbor'' for establishments that wish to continue operating as is currently required.

FSIS proposes to retain these regulatory safe harbors in the Code of Federal Regulations (CFR), as examples of how establishments can produce cooked beef products, uncured meat patties, and certain fully and partially cooked poultry products that meet the performance standards. Such examples would assist small or new establishments that do not have the resources to develop customized process schedules for these products. Though these regulatory safe harbors contain many prescriptive and possibly obsolete requirements, the Agency wants to provide options that allow establishments to continue operating as they do under the current regulations. Therefore, in this proposal, the regulatory safe harbors are presented with few changes from the current regulations.

FSIS has announced a comprehensive review of regulatory procedures and requirements to determine which are still needed and which ought to be reconsidered, streamlined, or eliminated. As well as identifying regulatory candidates for reform and repeal in general, this review will establish priorities for revising regulations for compatibility with HACCP and the new FSIS food safety strategy. As explained above, under the new food safety strategy and HACCP, establishments will be responsible for developing and implementing HACCP plans incorporating the controls determined by the establishment to be necessary and appropriate to produce safe products.

Many of the command-and-control provisions, inherent in the current regulations and thus in the proposed safe harbors, must therefore be eliminated, revised, or converted to performance standards. Command-and-control regulations are generally incompatible with HACCP and the new food safety strategy because they deprive establishments of the flexibility to innovate and undercut the clear delineation of responsibility for food safety on which the FSIS strategy is based. FSIS will focus its review of the proposed regulatory safe harbors on the most prescriptive provisions, especially those concerning prior approval of customized processes or product disposition by FSIS program officials. These prior approval requirements would be incompatible with FSIS inspection under HACCP and would need to be eliminated before HACCP implementation. Further, FSIS proposes to retain the safe harbors only as examples of processes establishments can use to produce product meeting the performance standard.

The safe harbors included in this proposal still contain provisions requiring prior approval by FSIS program officials of customized processes or product disposition. As stated above, FSIS must remove these provisions prior to the implementation of HACCP. FSIS invites comment on precisely how safe harbors should be revised in light of HACCP and the new FSIS food safety strategy. FSIS also invites comment on whether the Agency should provide regulatory safe harbors at all, and if so, whether their retention in the Code of Federal Regulations is necessary.

Process Schedule Approval and Validation

Prior to its development and implementation of a HACCP plan, an establishment choosing to develop and use processing procedures different from those provided in the safe-harbor examples would be required to have on file, available to FSIS, a written process schedule describing the specific operations employed by the establishment to accomplish the objectives of the performance standards (FSIS would amend the relevant information requirements in 9 CFR part 320). This process schedule also would be required to contain the related control, monitoring, validation, and corrective action activities associated with the establishment's procedures. These activities are the good sanitation and basic good manufacturing practices generally regarded as essential prerequisites for the production of safe food. Further, these activities would be similar, if not identical, to the control, monitoring, validation, and corrective action activities developed by the establishment as part of its HACCP plan. Accordingly, so not to place duplicative requirements on establishments, FSIS would sunset these process schedule requirements as HACCP is implemented.

The process schedule would have to be evaluated and approved for safety and efficacy by a process authority. FSIS does not propose to preapprove the procedures deemed acceptable by the establishment's process authority. The proposed regulations define a process authority as a person or organization with expert knowledge in meat and poultry process control and relevant regulations.

The process authority would evaluate the establishment's prospective processing procedures and, after using such devices as laboratory challenge studies or comparison to peer-reviewed and -accepted procedures, approve, in writing, the safety and efficacy of the establishment's prospective procedures. The process authority must have access to the establishment in order to evaluate the safety of that establishment's planned production processes.

As stated above, FSIS proposes to sunset these proposed process schedule requirements as establishments develop and implement HACCP plans. These requirements would be duplicative of

what is required by HACCP, that is, an establishment would not need both an approved process schedule and a validated HACCP plan for the same process. FSIS anticipates that if an establishment developed a process schedule for producing one of the aforementioned meat or poultry products prior to implementing HACCP, it would incorporate elements of that process schedule into its HACCP plan.

Also, FSIS proposes to require that prior to the implementation of HACCP, establishments validate the process schedule by testing product to determine that it meets the applicable performance standards. Testing would have to be conducted in accordance with a sampling program designed by the process authority to assure, with at least 95 percent statistical confidence, that an establishment's process schedule will produce product that meets applicable performance standards. Establishments could not release product for commercial use until testing confirmed that the process schedule was producing product meeting applicable performance standards. FSIS would require that results of the product testing, as well as the sampling regimen, be made available as the validation activities contained in the process schedule.

It is an industry convention to confirm that new production processes are safe and effective by holding and testing product prior to its commercial release. Therefore, FSIS believes that this proposed testing requirement for customized and essentially new process schedules would not be burdensome for meat and poultry establishments.

Validation of process schedules through sampling prior to the implementation of HACCP is a necessary step establishments must take to ensure that their processes are producing safe food for commercial distribution. FSIS realizes, however, that this particular form of validation may not be appropriate in every circumstance. Therefore, FSIS invites comment on the validation requirement proposed in this document, specifically as to whether FSIS should prescribe this specific method of validation for these process schedules, and, whether the proposed testing requirement is in fact appropriate for ensuring that an establishment's products meet food safety performance standards.

Like the proposed requirements concerning the development, approval, and maintenance of the process schedule, the process schedule validation requirement would be sunsetted as HACCP is implemented. FSIS would not require an establishment with a validated HACCP plan producing meat and poultry products that meet performance standards also to have on file a validated process schedule.

FSIS Inspection

After a process authority has approved an establishment's planned procedures and before the production of lots to be held and tested, an establishment would be required to notify FSIS that it is implementing procedures different than those contained in the safe harbor provisions of the regulations. This notification would facilitate FSIS inspection in regard to these procedures. FSIS personnel would continue to perform inspection tasks as scheduled by the Performance Based Inspection System, as they do under the current regulations, in order to verify that the product is processed according to the procedures on file and meets the performance standards. FSIS in-plant inspection personnel would not be evaluating the process authority-approved procedures for efficacy, except through these in-plant verification tasks. FSIS inspection of an establishment employing process authority-approved procedures would be as rigorous as inspection of an establishment employing safe-harbor procedures.

At all establishments, FSIS personnel would retain the authority to sample product for verification or to take action on the process in cases where noncompliance with Agency regulations is suspected or when the process is not properly controlled. FSIS personnel would sample products made with process authority-approved procedures at the same frequency they sample products made with safe-harbor procedures.

Should an establishment wish to alter its approved procedures, the process authority must evaluate and approve, in writing, the proposed alterations prior to their implementation. The process authority would approve only alterations that result in the continued production of product meeting performance standards. Prior to the commercial release of any product produced by process authority-approved, altered procedures, testing requirements would again apply.

It is possible that the same process authority may service several establishments owned by a single company. The process authority could approve the same procedures for use at all of the establishments. FSIS would allow such an arrangement, as long as the process authority-approved procedure is on file at each establishment and each establishment complies with the applicable testing provisions for the product in question.

Any establishment operating under a Total Quality Control (TQC) system (§ 318.4) and desiring to employ a processing procedure approved by a process authority would be required to submit the approved procedure through normal channels for incorporation into its TQC system. FSIS would evaluate only the format of the approved procedure, to allow its incorporation into the official FSIS-held copies of the TQC system procedures.

Performance Standards for Cooked/Roast Beef Products, Cooked Uncured Meat Patties, and Certain Cooked Poultry Products

To meet the proposed performance standards for cooked/roast beef products, fully cooked, uncured meat patties, and certain fully cooked poultry products, establishments would need to continue to eliminate pathogenic microorganisms from these products. FSIS is proposing three performance standards reflecting this goal: lethality, stabilization, and handling. An establishment meeting these three standards would produce ready-to-eat, cooked products containing no viable pathogenic microorganisms.

Lethality

To meet the first standard, lethality, establishments must treat ready-to-eat product so as to ensure a specific, significant reduction in the number of pathogenic microorganisms in the product, effectively eliminating the pathogenic microorganisms from the product. FSIS is not proposing to require that any particular means be used to meet the lethality standard. For these cooked products, FSIS would continue to require a heat treatment. However, FSIS is not proposing to require that cooking be the sole means by which lethality is to be achieved. Other applicable treatments, such as curing, might be used in combination with cooking to achieve the required lethality.

For the purpose of the lethality standard, reduction of pathogenic microorganisms would be measured in D-values. A D-value indicates the time required to reduce the viable microbial population by one $\log_{10}$ unit at a given temperature:

$$D=t/\log a-\log b$$

where ''t'' is the time of heating, ''a'' the number of viable organisms at ''t''=0 minutes, and ''b'' the number of surviving organisms. A ''7-D'' process for *Salmonella*, for example, would

reduce *Salmonella* contamination by a factor of 10 million and would ensure the effective elimination of *Salmonella* in a product contaminated with as many as 10 million (10^7) organisms per gram.

For cooked beef, roast beef, and cooked corned beef products, FSIS is proposing that the lethality performance standard be a 7-D reduction in *Salmonella*. Traditionally, the pathogenic microorganism of concern in cooked beef products has been *Salmonella*. Although *E. coli* 0157:H7 has emerged as a significant pathogen of concern in meat products, *Salmonella* is generally slightly more resistant to heat than *E. coli* 0157:H7. Furthermore, while *Salmonella* is not as heat resistant as *Listeria monocytogenes*, the presence of *L. monocytogenes* in finished product is primarily a result of recontamination and the expected levels of *L. monocytogenes* are much lower than those expected of *Salmonella*. Therefore, the thermal destruction of *Salmonella* in cooked beef products would indicate the destruction of the other two pathogens. (To review the research and other background information used by FSIS in developing this document, see **ADDRESSES** above.)

When the current regulations for cooked beef products were promulgated, available research indicated that due to the microbiological profile of beef and other factors, a 7-D reduction in *Salmonella* was necessary to produce a safe cooked beef product, free of pathogens. A 7-D reduction in *Salmonella* does effectively eliminate all pathogenic microorganisms from cooked beef products and provides a significant margin of safety. However, the Agency recognizes that the required 7-D reduction in *Salmonella* may be overly conservative in certain processing environments. For example, if an establishment with an effective system of process controls were processing high quality raw product into roast beef, it might not need to achieve a 7-D reduction in *Salmonella* in order to produce safe product. Given the variety of establishments producing cooked beef products, however, requiring a 7-D reduction of *Salmonella* in these products provides for a significant margin of safety throughout the industry.

FSIS also recognizes that developments in processing technology now may indicate that a safe, ready-to-eat cooked beef product could be produced with a different level of lethality. Raw beef is rarely contaminated with *Salmonella* at levels in excess of three or four logs (1,000–10,000 organisms) per gram of product. It is thus probable that a 3-D or 4-D reduction in *Salmonella* would effectively eliminate all pathogens from a cooked beef product.

The Agency invites submissions on this lethality standard. FSIS would consider revising the lethality performance standard and safe harbor example for cooked beef products in general if presented with compelling data. FSIS also might consider revising the lethality performance standard for cooked beef products produced under certain combinations of conditions, such as those presented in the example above. Such revisions would grant further flexibility to cooked beef processors and encourage innovation, while ensuring the safety of the food produced.

The current regulations in § 318.17, governing the production of cooked beef, roast beef, and cooked corned beef products, require, among other things, that these products be cooked at certain temperatures for certain periods of time (the table in paragraph (a) of § 318.17 lists the approved time/temperature combinations). When applied, all of these time/temperature combinations produce a 7-D lethality. Therefore, as a result of this proposal, establishments continuing to follow the current regulations (the proposed safe harbors) would produce cooked beef products that meet the 7-D lethality standard presented in this document. And, notably, establishments that choose to produce cooked beef products using procedures other than those retained in the safe harbor regulations would be required to meet the same rigorous measure of lethality.

For fully cooked, uncured meat patties, FSIS is proposing that the lethality performance standard be a 5–D reduction in *Salmonella*. FSIS has identified *Salmonella* as the target pathogenic microorganism in fully cooked uncured meat patties, as in fully cooked beef products, because its elimination indicates the elimination of other pathogenic microorganisms. A 5–D reduction in *Salmonella* in cooked, uncured meat patties effectively eliminates all pathogenic microorganisms, provides a significant margin of safety, and allows for the production of a marketable product (achieving a 7-D reduction of *Salmonella* in fully cooked meat patties, as is mandated for cooked beef or poultry products, would require a degree of processing that would render the patties burnt, dry, and unacceptable to consumers).

As in the cooked beef product regulations, the regulations in § 318.23 governing the production of cooked, uncured meat patties require that these products be cooked at certain temperatures for certain periods of time (Table A, in paragraph (b)(1)(i) of § 318.23 lists the approved time/temperature combinations). When applied, all of these time/temperature combinations produce a 5–D lethality. Therefore, as a result of this proposal, establishments continuing to follow the current regulations (the proposed safe harbors) would produce cooked meat patties that meet the 5–D lethality standard proposed in this document. And, establishments that choose to produce cooked meat patties using procedures other than those retained in the safe harbor regulations would be required to meet the same rigorous measure of lethality.

For the cooked poultry products described in § 381.150, FSIS is proposing that the lethality performance standard be a 7-D reduction in *Salmonella*. FSIS has identified *Salmonella* as the target pathogenic microorganism in cooked poultry products, as in fully cooked beef and uncured meat patties, because its elimination indicates the elimination of other pathogenic microorganisms. When the current regulations for cooked poultry products were promulgated, available research indicated that due to the microbiological profile of poultry and other factors, a 7-D reduction in *Salmonella* was necessary to produce a safe cooked poultry product, free of pathogens. (To review the research and other background information used by FSIS in developing this document, see ADDRESSES above.) A 7-D reduction in *Salmonella* does effectively eliminate all pathogenic microorganisms from cooked poultry products and provides a significant margin of safety.

The Agency recognizes that the required 7-D reduction in *Salmonella* may be overly conservative in certain processing environments. For example, if an establishment with an effective system of process controls were processing high quality raw product into ready-to-eat cooked poultry, it might not need to achieve a 7-D reduction in *Salmonella* in order to produce safe product. Given the variety of establishments producing cooked poultry products, however, requiring a 70D reduction of *Salmonella* in these products provides for a significant margin of safety throughout the industry.

Further, FSIS recognizes that developments in processing technology now may indicate that in general, safe, ready-to-eat cooked poultry products could be produced with a different level of lethality. It is possible, for example, that a 3–D or 4–D reduction in

Salmonella would effectively eliminate all pathogens from cooked poultry products.

The Agency invites submissions on the lethality standard for cooked poultry products. FSIS would consider revising the lethality performance standard and safe harbor example for cooked poultry products in general if presented with compelling data. FSIS also might consider revising the lethality performance standard for cooked poultry products produced under certain combinations of conditions, such as those presented in the example above.

The regulations in § 381.150(b) governing the production of cooked poultry products require that these products reach certain internal temperatures prior to being removed from the cooking medium. Meeting these internal temperature requirements ensures a 7-D reduction of *Salmonella.* Therefore, as a result of this proposal, establishments continuing to follow the current regulations (the proposed safe harbors) would produce cooked poultry products that meet the 7-D lethality standard proposed in this document. And, establishments that choose to produce cooked poultry products using procedures other than those retained in the safe harbor regulations would be required to meet the same rigorous measure of lethality.

Stabilization

In order to meet the second performance standard, stabilization, establishments must prevent vegetative spore-forming bacteria from growing within product and producing toxin. If allowed to grow in number, these bacteria can produce high concentrations of toxin, which cause foodborne illness.

Means applied to products to bring about the lethality of certain pathogenic microorganisms, such as *Salmonella,* can create a model environment for the multiplication of spore-forming bacteria. For example, cooking or heat processing is likely to be applied to a product in order to eliminate *Salmonella* and other pathogenic microorganisms. *Clostridium botulinum* spores, *Clostridium perfringens* spores, and spores from other vegetative and spore-forming bacteria can survive cooking and, in fact, thrive in the warm product following cooking when competitive microorganisms, such as *Salmonella,* have been eliminated.

Therefore, it is important that the stabilization conditions are implemented so that vegetative, spore-forming bacteria do not have an opportunity to grow within the product. Accordingly, FSIS is proposing that stabilization, likely to be rapid cooling following cooking, must prevent the germination and multiplication of toxigenic microorganisms such as *C. botulinum,* and allow no more than a 1-decimal log multiplication of *C. perfringens.* Limiting the allowable growth of *C. perfringens* to a 1-decimal log multiplication would effectively limit the multiplication of other, slower growing spore-forming bacteria, such as *Bacillus cereus* and *Staphylococcus aureus.*

The current regulations for cooked beef products and cooked meat patties require, among other things, that these cooked products be quickly cooled following cooking, in order to inhibit the growth of vegetative, spore-forming bacteria. Section 318.17(h)(10) requires that establishments begin chilling cooked beef products within 90 minutes of heat processing. The products must be chilled from 120 °F to 55 °F in no more than 6 hours, chilling must continue until shipment, and the product cannot be packed for shipment until it has reached 40 °F. Section 318.23(b) requires that cooked meat patties be cooled to an internal temperature of 40 °F or below within 2 hours of heat processing. When applied, the chilling requirements for both cooked beef products and cooked meat patties prevent the germination and multiplication of toxigenic microorganisms such as *C. botulinum* and allow no more than a 1-decimal log multiplication of *C. perfringens,* that is, they produce cooked products that meet the stabilization performance standard presented in this document.

The chilling requirements for the cooked poultry products concerned in this proposal are not set out in the regulations for these products, § 381.150, but instead in FSIS Directive 7110.3, ''TIME/TEMPERATURE GUIDELINES FOR COOLING HEATED PRODUCTS.'' This directive states that following heat treatment, cooked poultry products should be chilled to 80 °F within 1.5 hours, and to 40 °F within 5 hours. When applied, this chilling prevents the germination and multiplication of toxigenic microorganisms such as *C. botulinum* and allows no more than a 1-decimal log multiplication of *C. perfringens,* that is, it produces cooked poultry products that meet the stabilization performance standard presented in this document.

Therefore, as a result of this proposal, establishments continuing to follow the current regulations regarding the chilling of cooked beef and meat patty products or the directive regarding the chilling of cooked poultry products (the proposed safe harbors) would produce cooked products that meet the stabilization standard for cooked products presented in this document. And, establishments that choose to produce cooked products using procedures other than those retained in the proposed safe harbors would be required to meet the same rigorous measure of stabilization.

FSIS is proposing to amend the current regulations in § 381.150 (the proposed safe harbor for certain cooked poultry products) by adding the chilling requirements for cooked poultry currently contained in FSIS Directive 7110.3. This proposed amendment would help to clarify and complete in a single section of the Poultry Products Inspection Regulations the proposed safe harbor regulations for certain cooked poultry products.

Handling

To meet the third performance standard for cooked products, establishments would need to handle product to preclude its recontamination by infectious pathogenic microorganisms. This standard requires that no infectious pathogens are introduced into the product following processes ensuring lethality, stabilization, or final packaging.

The current regulations for cooked beef products and cooked meat patties require, among other things, that these cooked products be handled, throughout processing, in a manner precluding their recontamination by infectious pathogenic microorganisms. Section 318.17, paragraphs (i), (j), and (k) require that establishments take various measures to ensure that cooked beef products are not recontaminated by contact with raw product, unsanitary work surfaces or machines, employee gloves or garments, and other sources of contamination. Section 318.23, paragraph (b)(4) requires establishments to take similar measures to ensure that cooked meat patties are not recontaminated.

Therefore, as a result of this proposal, establishments continuing to follow the current regulations regarding handling of cooked beef and meat patty products (the proposed safe harbors) would produce cooked beef products and cooked meat patties that meet the handling standard for cooked products proposed in this document. And, establishments that choose to produce cooked beef products and cooked meat patties using procedures other than those retained in the proposed safe harbors would be required to meet the same rigorous measure of handling.

Section 381.150 of the regulations contains no specific handling requirements for cooked poultry products. FSIS is proposing to amend the regulations contained in § 381.150 by adding specific handling requirements for cooked poultry products. These proposed handling requirements are modeled after those currently in place for cooked beef products and cooked meat patties. Consequently, adherence to these proposed handling requirements for cooked poultry products would assure establishment compliance with the proposed handling performance standard. The addition of these handling requirements to the proposed regulatory safe harbor would clarify existing sanitation requirements and assist establishments that do not have the resources to develop customized process schedules for these products.

FSIS experience with establishments producing the cooked poultry products defined under § 381.150 indicates that the proposed handling requirements represent current good manufacturing practices (GMPs) accepted by industry. These handling GMPs, including the separation of raw and cooked product, sanitation of work surfaces, and appropriate packaging, are generally regarded as essential for preventing the direct and indirect contamination of cooked product.

Poultry establishments already following the proposed handling safe harbor requirements would not have to change their handling procedures in order to meet the proposed handling performance standards. These establishments may wish to take advantage of the flexibility afforded by the proposed performance standards, however, and develop handling procedures that more closely match their unique production practices. Establishments that do not have handling procedures in place that meet the proposed safe harbor requirements, would be required to either adhere to the proposed safe harbor handling requirements or develop procedures that meet the proposed handling performance standard. FSIS is requesting comment on the possible economic impact of these proposed handling requirements (see ''Executive Order 12866 and Regulatory Flexibility Act,'' below).

Performance Standards for Partially Cooked and Char-Marked Meat Patties and Partially Cooked Poultry Breakfast Strips

Unlike the fully cooked, ready-to-eat products described above, partially cooked and char-marked uncured meat patties and partially cooked poultry breakfast strips are essentially raw, and require adequate cooking prior to consumption. A lethality performance standard therefore would not apply to partially cooked and char-marked products, since FSIS does not require that these products be ready-to-eat. Neither would a handling performance standard apply, since these raw products may contain infectious pathogenic microorganisms after processing and prior to cooking. FSIS is proposing, however, that establishments producing these products meet a stabilization performance standard identical to the stabilization standard proposed above for fully cooked products.

During processing, these products are partially cooked and then cooled, which creates a model environment for the growth of *C. perfringens, C. botulinum,* and other spore-forming, toxigenic bacteria. Cooking by the consumer, retailer, or other end-user may not eliminate these bacteria from these products. Therefore, it is important that bacterial growth be controlled in these products to the extent possible while they remain at the producing establishment. Accordingly, FSIS is proposing that in partially cooked and char-marked uncured meat patties and partially cooked poultry breakfast strips, establishments prevent the germination and multiplication of toxigenic microorganisms such as *C. botulinum,* and allow no more than a 1-decimal log multiplication of *C. perfringens.*

The current regulations for partially cooked and char-marked uncured meat patties and partially cooked poultry breakfast strips require, among other things, that these products be quickly chilled following partial cooking or char-marking, in order to inhibit the growth of vegetative, spore-forming bacteria. Section 318.23, paragraph (b)(1)(ii) requires that partially cooked meat patties be cooled to a maximum internal temperature of 40 °F within 2 hours following partial cooking. Section 318.23, paragraph (b)(1)(iii) requires that char-marked meat patties be char-marked and then cooled to a maximum internal temperature of 40 °F within 2 hours. Section 381.150, paragraph (a) requires that following partial cooking, partially cooked poultry breakfast strips be cooled to 80 °F within 1.5 hours and to 40 °F within 5 hours. When applied, these chilling requirements prevent the germination and multiplication of toxigenic microorganisms such as *C. botulinum* and allow no more than a 1-decimal log multiplication of *C. perfringens,* that is, they produce partially cooked and char-marked products that meet the stabilization performance standard presented in this document.

Therefore, as a result of this proposal, establishments continuing to follow the current regulations regarding the chilling of partially cooked and char-marked uncured meat patties and partially cooked poultry breakfast strips (the proposed safe harbors) would produce cooked products that meet the stabilization standard for partially cooked products proposed in this document. And, establishments that choose to produce these products using procedures other than those retained in the proposed safe harbors would be required to meet the same rigorous measure of stabilization.

FSIS requires that partially cooked and char-marked meat patties, as well as partially cooked poultry breakfast strips, be labeled with cooking directions. It is imperative that consumers fully cook these products, as they are essentially raw, and may contain viable pathogenic microorganisms. Therefore, FSIS is proposing that these labeling requirements remain in the regulations governing partially cooked and char-marked meat patties and partially cooked poultry breakfast strips.

Miscellaneous

Section 317.2, paragraph (l) and § 381.125, paragraph (b) of the regulations require that safe handling instructions be provided for beef products, meat patties, and poultry products not heat processed in a manner that conforms to the time and temperature combinations listed in §§ 318.17, 318.23, and 381.150, respectively. This proposal, however, would allow ready-to-eat products to be processed by means other than the time and temperature requirements currently prescribed in these sections, as long as they met the performance standards proposed. Therefore, as a result of this proposal, safe handling label requirements would not be applicable to all ready-to-eat products processed by means other than the currently prescribed time and temperature combinations. FSIS proposes to amend 317.2, paragraph (l) and § 381.125, paragraph (b), to reflect this change.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

This rule would allow individual establishments to employ processing methods other than those currently mandated, as long as those methods yield products that meet the performance standards set out in this rule. Since the currently mandated methods meet the performance standards and would be retained as ''safe harbors,'' establishments could choose to continue using their current methods and probably incur no new expenses (or savings or income) as a result of this rule. Therefore, we anticipate that the rule would have a favorable economic impact on all establishments, regardless of size.

As stated above, FSIS is proposing to amend the current regulations in § 381.150 (the proposed safe harbor for certain cooked poultry products) by adding the chilling requirements for cooked poultry currently contained in FSIS Directive 7110.3. This proposed amendment would help to clarify and complete in a single section of the Poultry Products Inspection Regulations the proposed safe harbor regulations for certain cooked poultry products. Because establishments producing cooked poultry products already must meet the chilling requirements set forth in FSIS Directive 7110.3, FSIS anticipates that codifying these requirements in the regulations would have no economic impact.

Also, because currently there are no explicit handling regulations for cooked poultry products, some establishments may be required to develop new procedures in order to meet the proposed handling performance standard for cooked products. Establishments already following the proposed handling safe harbor requirements would not have to change their handling procedures in order to meet the proposed handling performance standards. These establishments may wish to take advantage of the flexibility afforded by the proposed performance standards, however, and develop handling procedures that more closely match their unique production practices. Establishments that do not have handling procedures in place that meet the proposed safe harbor requirements, would be required to either adhere to the proposed safe harbor handling requirements or develop procedures that meet the proposed handling performance standard.

FSIS anticipates that any impact on these firms would be minimal, because the proposed handling requirements for cooked poultry products represent current GMPs accepted and in general use by industry. Data necessary for a comprehensive analysis of the effects of these proposed handling safe harbors on poultry establishments is not currently available to FSIS. Therefore, FSIS invites public comment concerning potential economic effects of these proposed requirements.

When an establishment wants to use a processing method other than those contained in the safe harbors, either because it will be more efficient or improve its product, we can assume by its decision to incur the expense of using that method (only a small part of which would be to meet the requirements of the proposed rule) that it expects to receive increased revenues in the future from the investment in the method. In that sense, the rule could have favorable economic consequences for firms that choose to innovate. Also, the increased flexibility to innovate allowed by the rule could encourage competition and benefit consumers with lower prices or higher quality products.

It is difficult to quantify the potential benefits of this proposal since it is not possible to predict exactly how many establishments would develop innovative processes and how these innovations would generate revenues or benefits to consumers. There are approximately 1,000 establishments currently producing the cooked beef products, uncured meat patties, and poultry products addressed by this proposal. FSIS expects that only about five to ten percent of these establishments would choose to develop customized process schedules prior to the implementation of HACCP. FSIS anticipates that most, if not all, of these establishments would develop alternative process schedules for the production of ready-to-eat poultry products.

Under the current regulations, FSIS requires that ready-to-eat poultry products reach specific, minimum internal temperatures before being removed from a cooking medium. The products lose water during cooking at these temperatures and consequently, establishments must add water and other ingredients both to make the products palatable and to restore lost yield.

Therefore, FSIS anticipates that most establishments initially taking advantage of the proposed performance standards would develop customized process schedules for ready-to-eat poultry products and would benefit from some cost savings. FSIS expects that most establishments producing roast beef and meat patty products would not develop customized process schedules prior to implementing HACCP, as it would be less duplicative and more cost-effective to use the proposed performance standards to develop critical limits within HACCP plans.

Finally, there is the potential for an increase in the efficiency of the nation's economy in general because the proposed rule encourages businesses to consider a more efficient use of resources. Also, the possibility of reduced prices of meat or poultry products are economic factors that could produce a more efficient use of resources in the economy as a whole. These effects would be small for individual firms and consumers, but could be substantial in the aggregate.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act and the Poultry Products Inspection Act (PPIA) from imposing any marking or packaging requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States.

This proposed rule is not intended to have retroactive effect.

There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule. However, the administrative procedures specified in 9 CFR §§ 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection

services provided under the FMIA or the PPIA.

Paperwork Requirements

Title: Performance Standards for Certain Meat and Poultry Products.

Type of Collection: New.

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this proposed rule in accordance with the Paperwork Reduction Act. Under this proposed rule, establishments choosing to meet performance standards for certain cooked beef products, uncured meat patties, and certain fully and partially cooked poultry products either by means other than those described in the current regulations or under the HACCP requirements, would be required to develop a written process schedule and maintain a copy of the process schedule on file.

The process schedule would detail all the specific, sequential operations that compose the process used by each establishment to produce its specific products. The process schedule would also contain the related control, monitoring, validation, and corrective action activities associated with the procedure. Further, this process schedule must have been evaluated and approved for safety, efficacy, and equivalency by a process authority.

FSIS inspectors would initially, and periodically as required, review the process schedule and any other relevant records to ensure that the product is processed according to the procedures on file. FSIS personnel would not evaluate the process authority-approved procedures for efficacy.

Again, developing and implementing processing procedures different from those in the current regulations would be optional. FSIS assumes that an establishment would develop and implement such processing procedures only if the resulting economic advantages outweighed the accompanying costs, including the paperwork burden.

FSIS is proposing to amend the current regulations in § 381.150 (the proposed safe harbor for certain cooked poultry products) by adding the chilling requirements for cooked poultry currently contained in FSIS Directive 7110.3. The paperwork burden hours for FSIS Directive 7110.3 are approved under OMB control number 0583–0089.

Finally, because currently there are no explicit handling regulations for cooked poultry products, some establishments may be required to develop new procedures in order to meet the proposed handling performance standard for cooked products. FSIS has accounted for the paperwork and recordkeeping burden hours resulting from the proposed handling requirements in the estimate of burden for process schedules below.

Estimate of Burden: FSIS estimates that the process schedule would take an average of 2 days (16 hours) to develop and 5 minutes to file. The written description of the establishment validation procedures, whether conducted for new or altered process schedules, would take no more than 1 day (8 hours) to complete and 5 minutes to file.

Respondents: Meat and poultry product establishments.

Estimated Number of Respondents: 1,000 (this number represents the total number of establishments that could change their operations).

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 24,166 hours.

Copies of this information collection assessment can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, South Agriculture Building, Room 3812, Washington, DC 20250.

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. Comments may be sent to Lee Puricelli, Paperwork Specialist, see address above, and Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Comments are requested by July 1, 1996. To be most effective, comments should be sent to OMB within 30 days of the publication date of this proposed rule.

List of Subjects

9 CFR Part 301

Meat inspection.

9 CFR Part 317

Food labeling.

9 CFR Part 318

Meat inspection, Reporting and recordkeeping requirements.

9 CFR Part 320

Meat inspection, Reporting and recordkeeping requirements.

9 CFR Part 381

Poultry and poultry products inspection, Reporting and recordkeeping requirements.

Accordingly, title 9, chapter III, of the Code of Federal Regulations would be amended as follows:

PART 301—DEFINITIONS

1. The authority citation for part 301 would be revised to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 301.2 would be amended by removing the paragraph designations (a) through (yyy) and adding, in alphabetical order, new definitions for ''Process Schedule'' and ''Process authority'' to read as follows:

§ 301.2 Definitions.

* * * * *

Process authority. A person or organization with expert knowledge in meat production process control and relevant regulations. This definition does not apply to subpart G of this part.

Process schedule. A process schedule is a written description of processing procedures, consisting of any number of specific, sequential operations directly under control of the establishment employed in the manufacture of a specific product, including the control, monitoring, validation, and corrective action activities associated with production. This definition does not apply to subpart G of this part.

* * * * *

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

3. The authority citation for part 317 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

4. In § 317.2, paragraph (l) would be revised to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(l) Safe handling instructions shall be provided for: All meat and meat products of cattle, swine, sheep, goat, horse, or other equine not heat processed in a manner that conforms to the time and temperature combinations in the Table for Time/Temperature

Combination For Cooked Beef, Roast Beef, and Cooked Corned Beef in § 318.17 of this chapter, or that have not undergone other processing that would render them ready-to-eat; and all comminuted meat patties not processed in accordance with the standard for fully cooked patties in § 318.23 of this chapter; except as exempted under paragraph (l)(4) of this section.

* * * * *

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

5. The authority citation for part 318 would be revised to read as follows:

Authority: 7 U.S.C. 138f, 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

6. Section 318.17 would be revised to read as follows:

§ 318.17 Requirements for the production of cooked beef, roast beef, and cooked corned beef products.

(a) Cooked beef, roast beef, and cooked corned beef products must be produced using processes ensuring that the products meet the following performance standards:

(1) *Lethality.* A 7-decimal log reduction of *Salmonella* must be achieved within the product. The lethality process must include a cooking step.

(2) *Stabilization.* There can be no germination and multiplication of toxigenic microorganisms such as *Clostridium botulinum,* and no more than a 1-decimal log multiplication of *Clostridium perfringens* within the product.

(3) *Handling.* There can be no recontamination of product by infectious pathogens at any time from processing through the final packaging.

(b) For each product produced using a process other than the process provided as an example in paragraph (e) of this section or a process conducted in accordance with the Hazard Analysis and Critical Control Point (HACCP) system requirements set, an establishment must develop and have on file, available to FSIS, a process schedule, as defined in § 301.2 of this chapter. Each process schedule must be approved, in writing, by a process authority for safety and efficacy in meeting the performance standards established for the product in question. A process authority must have access to an establishment in order to evaluate and approve the safety and efficacy of each process schedule.

(c) Establishments must validate the process schedule by producing and testing product against applicable performance standards, in accordance with a statistically valid sampling program designed by the process authority. No product can released for commercial use until samples are tested and found to meet the applicable performance standards. After a process authority has approved an establishment's process schedule and before the production of lots to be held and tested, the establishment must notify FSIS that it is implementing a process other than that described in paragraph (e) of this section.

(d) Should an establishment wish to alter any procedures contained in an approved process schedule, a process authority must evaluate and approve, in writing, the proposed alterations prior to their implementation. The process authority can approve only alterations that result in the continued production of product meeting applicable performance standards. Prior to the commercial release of any product produced by approved, altered procedures, the establishment must validate the altered process schedule by sampling and testing product in accordance with a statistically valid sampling program designed by the process authority; the tested product must meet applicable performance standards.

(e) *Example.* An establishment may produce cooked beef, roast beef, and cooked corned beef products using the processes described in the following example, which meets the performance standards listed in paragraph (a) of this section:

(1) Cooked beef and roast beef, including sectioned and formed roasts and chunked and formed roasts, and cooked corned beef shall be prepared by one of the time and temperature combinations in the following table. The stated temperature is the minimum which shall be produced and maintained in all parts of each piece of meat for at least the stated time:

TABLE FOR TIME/TEMPERATURE COMBINATION FOR COOKED BEEF, ROAST BEEF, AND COOKED CORNED BEEF

Minimum internal temperature		Minimum processing time in minutes after minimum temperature is reached
Degrees Fahrenheit	Degrees Centigrade	
130	54.4	121
131	55.0	97
132	55.6	77
133	56.1	62
134	56.7	47
135	57.2	37
136	57.8	32
137	58.4	24
138	58.9	19
139	59.5	15
140	60.0	12
141	60.6	10
142	61.1	8
143	61.7	6
144	62.2	5
145	62.8	(1)

[1] Instantly.

(2) Cooked beef, including sectioned and formed roasts and chunked and formed roasts, and cooked corned beef shall be moist cooked throughout the process or, in the case of roast beef or corned beef to be roasted, cooked as provided in paragraph (e)(3) of this section. The moist cooking may be accomplished by placing the meat in a sealed, moisture impermeable bag, removing the excess air, and cooking, completely immersing the meat, unbagged, in water throughout the entire cooking process, or using a sealed oven or steam injection to raise the relative humidity above 90 percent throughout the cooking process.

(3) Roast beef or corned beef to be roasted shall be cooked by one of the following methods:

(i) Heating roasts of 10 pounds or more in an oven maintained at 250 degrees F. (121 degrees C.) or higher throughout the process;

(ii) Heating roasts of any size to a minimum internal temperature of 145 degrees F. (62.8 degrees C.) in an oven maintained at any temperature if the relative humidity of the oven is maintained either by continuously introducing steam for 50 percent of the cooking time or by use of a sealed oven for over 50 percent of the cooking time, or if the relative humidity of the oven is maintained at 90 percent or above for at least 25 percent of the total cooking time, but in no case less than 1 hour; or

(iii) Heating roasts of any size in an oven maintained at any temperature that will satisfy the internal temperature and time requirements of paragraph (e)(1) of this section if the relative humidity of

the oven is maintained at 90 percent or above for at least 25 percent of the total cooking time, but in no case less than 1 hour.

(iv) The relative humidity may be achieved by use of steam injection or by sealed ovens capable of producing and maintaining the required relative humidity.

(4)(i) Except as provided in paragraph (e)(4)(ii) of this section, establishments producing cooked beef, roast beef, or cooked corned beef shall have sufficient monitoring equipment, including recording devices, to assure that the time (within 1 minute), the temperature (within 1 degree F.), and relative humidity (within 5 percent) limits of these processes are being met. Data from the recording devices shall be made available to a program employee upon request.

(ii) In lieu of recording devices, establishments may propose in the written procedures prescribed in paragraph (e)(6) of this section, an alternative means of providing inspection personnel with evidence that finished product has been prepared in compliance with the humidity requirements of paragraphs (e)(2) and (e)(3) of this section, and the 145 degrees F. (62.8 degrees C.) temperature requirements of paragraph (e)(1) of this section.

(5) Each package of finished product shall be plainly and permanently marked on the immediate container with the date of production either in code or with the calendar date.

(6) In order to assure that cooked beef, roast beef, and cooked corned beef are handled, processed, and stored under sanitary conditions, the establishment shall submit a set of written procedures through the inspector-in-charge for approval by the Regional Director. The written procedures shall include the following information:

(i) The temperature to which raw frozen product is thawed and the time required.

(ii) The lot identification procedure for lots of product during processing.

(iii) The storage time and temperature combinations which the establishment intends to use before cooking, the cooking time and temperature the establishment intends to use, and the time, if any, the establishment intends to wait after cooking and before cooling.

(iv) If a code, instead of the calendar date, is used on the immediate container of the finished product, its meaning shall also be included.

(v) Any other critical control points in the procedures which could affect the safety of the product.

(vi) In lieu of recording devices, the alternate means permitted by paragraph (e)(4)(ii) of this section for providing evidence to inspection personnel that the finished product will be prepared in compliance with temperature or humidity requirements.

(vii) Any other alternate procedure used that is permitted in this section.

(7) The establishment shall maintain records and reports which document the time, temperature, and humidity at which any cooked beef, roast beef, or cooked corned beef is cooked and cooled at the establishment. Such records shall be kept by the establishment for 6 months or for such further period as the Administrator may require for purposes of any investigation or litigation under the Act, by written notice to the person required to keep such records. Such records shall be made available to the inspector or any duly authorized representative of the Secretary upon request.

(8) The handling and processing of cooked beef, roast beef, and cooked corned beef before, during, and after cooking shall be such as to prevent the finished product from being adulterated. As a minimum, they shall be controlled as follows:

(i) The establishment shall notify the inspector-in-charge which processing procedure will be used on each lot, including time and temperature.

(ii) In order to assure uniform heat penetration and consequent adequate cooking of each piece of beef, individual pieces of raw product in any one lot shall either not vary in weight by more than 2 pounds or not vary in thickness by more than 2 inches at the thickest part. Alternate methods of assuring uniform heat penetration may be submitted in writing for approval to the Regional Director.

(iii) A water-based solution that is used for injecting or immersing the meat shall be refrigerated to 50 degrees F. (10 degrees C.) or lower from the time it contacts the meat, and shall be filtered each time it is recirculated or reused.

(iv) A nonmeat ingredient, including the water-based solution in paragraph (e)(8)(iii) of this section, which has contacted meat shall be discarded at the end of that day's production unless it is in continuous contact with one batch of product.

(v) Product prepared for cooking shall be entered into the cooking cycle within 2 hours of completion of precooking preparation, or be placed immediately in a cooler at a temperature of 40 degrees F. (4.4 degrees C.) or lower.

(vi) The time and temperature requirements shall be met before any product in the lot is removed from the cooking units. Unless otherwise specified in the written procedures approved in accordance with paragraph (e)(6) of this section, the heat source shall not be shut off until these requirements are met.

(vii) Other than incidental contact caused by water currents during immersion cooking or cooling, product shall be placed so that it does not touch or overlap other products. This provision does not apply to product that is stirred or agitated to assure uniform heat transfer.

(viii) Temperature sensing devices shall be so placed that they monitor product in the coldest part of the cooking unit; and when an oven temperature is required by paragraph (e)(3) of this section, the oven temperature shall also be monitored in the coldest part of the cooking unit.

(ix) If a humidity sensing device is required in an oven, it shall be placed so that it measures humidity in either the oven chamber or at the exit vent.

(x) Chilling shall begin within 90 minutes after the cooking cycle is completed.

(A) All product shall be chilled from 120 degrees F. (48.8 degrees C.) to 55 degrees F. (12.7 degrees C.) in no more than 6 hours.

(B) Chilling shall continue and the product shall not be packed for shipment until it has reached 40 degrees F. (4.4 degrees C.).

(xi) Any establishment that has experienced a cooking process deviation during preparation of product may either reprocess the product completely, continue the heating to 145 degrees F. (62.8 degrees C.), or contact the Regional Director for a review of the process schedule for adequacy and, if needed, for a cooking schedule to finish that one batch of product.

(xii) An establishment that has experienced a cooling deviation after the product has been cooked shall contact the Regional Director to determine the disposition of that retained product.

(9) Cooked beef, roast beef, and cooked corned beef shall be so handled as to assure that the product is not recontaminated by direct contact with raw product. To prevent direct contamination of the cooked product, establishments shall:

(i) Physically separate areas where raw product is handled from areas where exposed cooked product is handled, using a solid impervious floor to ceiling wall;

(ii) Handle raw and exposed cooked product at different times, with a cleaning of the entire area after the raw material handling is completed and

prior to the handling of cooked product in that area; or

(iii) Submit a written procedure for approval through the inspector-in-charge to the Circuit Supervisor detailing the steps to be taken which would avoid recontamination of cooked product by raw product during processing.

(10) To prevent indirect contamination of cooked product:

(i) Any work surface, machine, or tool which contacts raw product shall be thoroughly cleaned and sanitized with a solution germicidally equivalent to 50 ppm chlorine before it contacts cooked product;

(ii) Employees shall wash their hands and sanitize them with a solution germicidally equivalent to 50 ppm chlorine whenever they enter the heat processed product area or before preparing to handle cooked product, and as frequently as necessary during operations to avoid product contamination; and

(iii) Outer garments, including aprons, smocks, and gloves, shall be especially identified as restricted for use in cooked product areas only, changed at least daily, and hung in a designated location when the employee leaves the area.

(11) Cooked product shall not be stored in the same room as raw product unless it is first packaged in a sealed, water-tight container or is otherwise protected by a covering that has been approved, upon written request, by the Circuit Supervisor.

7. Section 318.23 would be revised to read as follows:

§ 318.23 Requirements for the production of uncured meat patties.

(a) Fully cooked, uncured meat patties must be produced using processes ensuring that the products meet the following performance standards:

(1) *Lethality.* A 5-decimal log reduction of *Salmonella* must be achieved within the product. The lethality process must include a cooking step.

(2) *Stabilization.* There can be no germination and multiplication of toxigenic microorganisms such as *Clostridium botulinum,* and no more than a 1-decimal log multiplication of *Clostridium perfringens* within the product.

(3) *Handling.* There can be no recontamination of product by infectious pathogens at any time from processing through the final packaging.

(b) Partially cooked and char-marked meat patties must be produced using processes ensuring that the products meet the performance standard listed in paragraph (a)(2) of this section.

(1) Partially cooked patties must bear the labeling statement ''Partially cooked: For Safety Cook Until Well Done (Internal Meat Temperature 160 degrees F.)''. The labeling statement must be adjacent to the product name, at least one-half the size of the largest letter in the product name, and prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(2) Char-marked patties must bear the labeling statement ''Uncooked, Char-marked: For Safety, Cook Until Well Done (Internal Meat Temperature 160 degrees F.)''. The labeling statement shall be adjacent to the product name, at least one-half the size of the largest letter in the product name, and prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(c) For each product produced using a process other than the process described in paragraph (f) of this section or a process conducted in accordance with the Hazard Analysis and Critical Control Point (HACCP) system requirements, an establishment must develop and have on file, available to FSIS, a process schedule, as defined in § 301.2 of this chapter. Each process schedule must be approved, in writing, by a process authority for safety and efficacy in meeting the performance standards established for the product in question. A process authority must have access to an establishment in order to evaluate and approve the safety and efficacy of each process schedule.

(d) Establishments must validate the process schedule by producing and testing product against applicable performance standards, in accordance with a statistically valid sampling program designed by the process authority. No product can released for commercial use until samples are tested and found to meet the applicable performance standards. After a process authority has approved an establishment's process schedule and before the production of lots to be held and tested, the establishment must notify FSIS that it is implementing a process other than that described in paragraph (f) of this section.

(e) Should an establishment wish to alter any procedures contained in an approved process schedule, a process authority must evaluate and approve, in writing, the proposed alterations prior to their implementation. The process authority can approve only alterations that result in the continued production of product meeting applicable performance standards. Prior to the commercial release of any product produced by approved, altered procedures, the establishment must validate the altered process schedule by sampling and testing product in accordance with a statistically valid sampling program designed by the process authority; the tested product must meet applicable performance standards.

(f) *Example.* An establishment may produce uncured meat patties using the processes described in this example, which meet the applicable performance standards listed in paragraph (a) of this section.

(1) *Definitions.* For purposes of § 318.23, the following definitions shall apply:

(i) *Comminuted.* A processing term describing the reduction in size of pieces of meat, including chopping, flaking, grinding, or mincing, but not including chunking or sectioning.

(ii) *Heat-processed.* Treatment by a heat source, including, but not limited to, frying, broiling, baking, or roasting, which results in a fully-cooked, partially-cooked, or char-marked product.

(iii) *Patty.* A shaped and formed, comminuted, flattened cake of meat food product.

(2) *Processing procedures for heat-processed patties.* Fully-cooked, partially-cooked, or char-marked patties shall be processed as follows:

(i) *Heat processing.* (A) Official establishments which manufacture fully-cooked patties shall utilize the following heat-processing procedures:

PERMITTED HEAT-PROCESSING TEMPERATURE/TIME COMBINATIONS FOR FULLY-COOKED PATTIES

Minimum internal temperature at the center of each patty		Minimum holding time after maximum temperature is reached	
Degrees Fahrenheit	Degrees Centigrade	Minutes	Seconds
151	66.1	0.68	41
152	66.7	.54	32
153	67.2	.43	26
154	67.8	.34	20
155	68.3	.27	16
156	68.9	.22	13
157 (and up).	69.4 (and up).	.17	10

(B) Official establishments which manufacture partially-cooked patties

shall raise the internal temperature at the center of each patty to a minimum internal temperature of 140 degrees F. and then cool it to a maximum internal temperature of 40 degrees F. within 2 hours.

(C) Official establishments which manufacture char-marked patties (if marked by a heat source) may raise the temperature at the center of each patty, but not above 70 degrees F., when the char-marks are applied to the patty. The process of char-marking the patty and cooling the patty to a maximum internal temperature of 40 degrees F. shall be completed within 2 hours or less.

(D) The official establishment shall measure the holding time and temperature of at least one heat-processed patty from each production line each hour of production to assure control of the heat process. The temperature measuring device shall be accurate within 1 degrees F.

(ii) *Cooling.* (A) Fully-cooked patties shall be cooled to an internal temperature of 40 degrees F. or below within 2 hours after heat-processing.

(B) Cooling requirements for partially-cooked and char-marked patties are combined with those for heat-processing and are contained in paragraph (f)(2)(i)(B) and (C) of this section.

(C) The internal temperature measuring device shall be accurate within 1 degrees F.

(iii) *Cooking instruction label requirement.* (A) Partially-cooked patties shall bear the labeling statement ''Partially-cooked: For Safety Cook Until Well Done (Internal Meat Temperature 160 degrees F.)''. The labeling statement shall be adjacent to the product name, at least one-half the size of the largest letter in the product name, and prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(B) Char-marked patties shall bear the labeling statement ''Uncooked, Char-marked: For Safety, Cook Until Well Done (Internal Meat Temperature 160 degrees F.)''. The labeling statement shall be adjacent to the product name, at least one-half the size of the largest letter in the product name, and prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(iv) *Sanitary handling and storage practices.* Fully-cooked patties shall be handled in accordance with the following provisions so as to assure that the patties are not recontaminated.

(A) To prevent direct contamination of fully-cooked patties, official establishments shall:

(*1*) Physically separate areas where unpackaged, fully-cooked patties are handled from areas where less-than-fully-cooked products are handled using a solid impervious floor to ceiling wall;

(*2*) Handle unpackaged, fully-cooked patties and less-than-fully-cooked product at different times, and cleaning the entire area after handling other products before handling unpackaged, fully-cooked patties; or

(*3*) Submit a written procedure through the inspector-in-charge to the Regional Director detailing the steps to be taken which would avoid recontamination of fully-cooked patties by less-than-fully-cooked product during processing.

(B) To prevent indirect contamination of fully-cooked patties:

(*1*) Any work surface, machine, or tool which contacts other product shall be cleaned and sanitized before it contacts unpackaged fully-cooked patties. The sanitizer shall be germicidally equivalent to 50 ppm chlorine.

(*2*) Employees shall wash their hands with soap and water and sanitize their hands whenever they enter the fully-cooked patty area or before handling unpackaged, fully-cooked patties. They must also wash and sanitize their hands whenever they become contaminated during operations to avoid contamination of fully-cooked patties. The sanitizer shall be germicidally equivalent to 50 ppm chlorine.

(*3*) All employee outer garments, including aprons, smocks, and gloves shall be identified as restricted for use in the fully-cooked area only. The employee shall change garments at least daily. The garments shall be hung in a designated location before the employee leaves the area.

(C) Fully-cooked patties stored in the same room with other product, shall first be packaged or covered to prevent microbial contamination.

(D) Fully-cooked, partially-cooked, and char-marked patties shall be stored at a chamber temperature of 40 degrees F. or below.

(3) Requirements for Handling Heating or Cooling Deviations.

(i) If for any reason a heating or cooling deviation has occurred, the official establishment shall investigate and identify the cause; take steps to assure that the deviation will not recur; and place on file in the official establishment, available to any duly authorized representative of the Secretary, a report of the investigation, the cause of the deviation, and the steps taken to prevent recurrence; and

(ii) In addition, in the case of a heating deviation, the official establishment may reprocess the affected product, by a method in paragraph (f)(2)(i)(A) in this section; use the affected product as an ingredient in another product processed to one of the temperature and time combinations in paragraph (f)(2)(i)(A) in this section, provided this does not violate the final product's standard of composition, upset the order of predominance of ingredients, or perceptibly affect the normal product characteristics; or relabel the affected product as a partially-cooked patty product, if it meets the partially-cooked requirements in paragraph (f)(2)(i)(B) of this section.

(iii) In addition, in the case of a cooling deviation, contact the Regional Director to determine the disposition of the product.

PART 320—RECORDS, REGISTRATION, AND REPORTS

8. The authority citation for part 320 would be revised to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 320.1 [Amended]

9. In § 320.1, paragraph (b)(4), the phrase ''§ 318.17(d)'' would be removed and the phrase ''§ 318.17(e)(4)'' would be added in its place.

§ 320.4 [Amended]

10. In § 320.4, the first sentence would be amended by adding the phrase ''process schedules,'' immediately before the phrase ''facilities and inventory''

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

11. The authority citation for part 381 would be revised to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

12. Section 381.1 would be amended by adding new paragraphs (b)(63) and (b)(64) to read as follows:

§ 381.1 Definitions.

* * * * *

(b) * * *

(63) *Process schedule.* A process schedule is a written description of processing procedures, consisting of any number of specific, distinct, and ordered operations directly under control of the establishment employed in the manufacture of a specific product, including the control, monitoring,

validation, and corrective action activities associated with production.

(64) *Process authority*. A person or organization with expert knowledge in poultry production process control and relevant regulations.

* * * * *

§ 381.125 [Amended]

13. In § 381.125, the introductory text of paragraph (b) would be amended by removing the phrase ''§ 381.150(b)'' and by adding the phrase ''§ 381.150(f)(2)(i)'' in its place; and by removing the word ''further''.

14. Section 381.150 would be revised to read as follows:

§ 381.150 Requirements for the production of cooked poultry products and partially cooked poultry breakfast strips.

(a) Cooked poultry products must be produced using processes ensuring that the products meet the following performance standards:

(1) *Lethality*. A 7-decimal log reduction of *Salmonella* must be achieved within the product. The lethality process must include a cooking step.

(2) *Stabilization*. There can be no germination and multiplication of toxigenic microorganisms such as *Clostridium botulinum*, and no more than a 1-decimal log multiplication of *Clostridium perfringens* within the product.

(3) *Handling*. There can be no recontamination of product by infectious pathogens at any time from processing through the final packaging.

(b) Partially cooked poultry breakfast strips must be produced using processes ensuring that the products meet the performance standard listed in paragraph (a)(2) of this section. Labeling for these products must comply with section 381.125. In addition, the statement ''Partially Cooked: For Safety, Cook Until Well Done'' must appear on the principal display panel in letters no smaller than ½ the size of the largest letter in the product name. Detailed cooking instructions shall be provided on the immediate container of the products.

(c) For each product produced using a process other than the process described in paragraph (f) of this section or a process conducted in accordance with the Hazard Analysis and Critical Control Point (HACCP) system requirements, an establishment must develop and have on file, available to FSIS, a process schedule, as defined in § 381.1. Each process schedule must be approved, in writing, by a process authority for safety and efficacy in meeting the performance standards established for the product in question. A process authority must have access to an establishment in order to evaluate and approve the safety and efficacy of each process schedule.

(d) Establishments must validate the process schedule by producing and testing product against applicable performance standards, in accordance with a statistically valid sampling program designed by the process authority. No product can be released for commercial use until samples are tested and found to meet the applicable performance standards. After a process authority has approved an establishment's process schedule and before the production of lots to be held and tested, the establishment must notify FSIS that it is implementing a process other than that described in paragraph (f) of this section.

(e) Should an establishment wish to alter any procedures contained in an approved process schedule, a process authority must evaluate and approve, in writing, the proposed alterations prior to their implementation. The process authority can approve only alterations that result in the continued production of product meeting applicable performance standards. Prior to the commercial release of any product produced by approved, altered procedures, the establishment must validate the altered process schedule by sampling and testing product in accordance with a statistically valid sampling program designed by the process authority; the tested product must meet applicable performance standards.

(f) *Example*. An establishment may produce partially cooked poultry breakfast strips and cooked poultry products using the processes described in the following example, which meet the applicable performance standards listed in paragraph (a) of this section.

(1) Poultry breakfast strips are cured and smoked products which require special handling during distribution and additional cooking before consumption. These products shall be heated to an internal temperature of 140 degrees F. After heating in the establishment, these products must be cooled to 80 degrees F. within 1.5 hours and to 40 degrees F. with 5 hours. Labeling for these products shall comply with § 381.125. In addition, the statement ''Partially Cooked: For Safety, Cook Until Well Done'' shall appear on the principal display panel in letters no smaller than ½ the size of the largest letter in the product name. Detailed cooking instructions shall be provided on the immediate container of the products.

(2) Except for product produced in accordance with paragraph (f)(1) of this section, poultry rolls and other poultry products produced in accordance with this example shall meet the following requirements:

(i) *Heat processing*. Poultry rolls and other poultry products that are heat processed in any manner shall reach an internal temperature of at least 160 degrees F. prior to being removed from the cooking medium, except that cured and smoked poultry rolls and other cured and smoked poultry products shall reach an internal temperature of at least 155 degrees F. prior to being removed from the cooking medium. Notwithstanding the other provisions of this section, product to which heat will be applied incidental to a subsequent processing procedure may be removed from the media for such processing provided it is immediately fully cooked to the required 160 degrees F. internal temperature.

(ii) *Cooling*. After heating in the establishment, these products must be cooled to 80 degrees F. within 1.5 hours and to 40 degrees F. with 5 hours.

(iii) *Handling*. The product must be so handled as to assure that the cooked product is not recontaminated. To prevent direct contamination of the cooked product, establishments shall:

(A) Physically separate areas where raw product is handled from areas where exposed cooked product is handled, using a solid impervious floor to ceiling wall.

(*1*) Handle raw and exposed cooked product at different times, with a cleaning of the entire area after the raw material handling is completed and prior to the handling of cooked product in that area; or

(*2*) Submit a written procedure for approval through the inspector-in-charge to the Circuit Supervisor detailing the steps to be taken which would avoid recontamination of cooked product by raw product during processing.

(B) To prevent indirect contamination of cooked product:

(*1*) Any work surface, machine, or tool which contacts raw product shall be thoroughly cleaned and sanitized with a solution germicidally equivalent to 50 ppm chlorine before it contacts cooked product;

(*2*) Employees shall wash their hands and sanitize them with a solution germicidally equivalent to 50 ppm chlorine whenever they enter the heat processed product area or before preparing to handle cooked product, and as frequently as necessary during operations to avoid product contamination; and

(3) Outer garments, including aprons, smocks, and gloves, shall be especially identified as restricted for use in cooked product areas only, changed at least daily, and hung in a designated location when the employee leaves the area.

(C) Cooked product shall not be stored in the same room as raw product unless it is first packaged in a sealed, water-tight container or is otherwise protected by a covering that has been approved, upon written request, by the Circuit Supervisor.

Done in Washington, DC: April 29, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–10796 Filed 5–01–96; 8:45 am]

BILLING CODE 3410–DM–P

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9 CFR Parts 304, 308, 317, 318, 319, and 381

[Docket No. 95–032P]

RIN 0583–AB93

Elimination of Prior Approval Requirements for Establishment Drawings and Specifications, Equipment, and Certain Partial Quality Control Programs

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations by removing current requirements for prior approval by FSIS of establishment drawings, specifications, and equipment prior to their use in official establishments. Requirements involving the comparison of blueprints and specifications with actual facilities and equipment would end. These amendments would provide the regulated industry with the flexibility to design facilities and equipment in the manner they deem best to maintain a sanitary environment for food production. FSIS would continue to verify through inspection that good sanitation is being achieved. Similarly, FSIS is proposing to end its prior approval of most establishment-operated partial quality control programs, which are used by establishments to control certain kinds of food processing and product characteristics. This change would make it possible for establishments to develop and implement quality control programs without first having to receive permission from FSIS to do so. This action is being taken to streamline and modernize the meat and poultry food safety regulations, to separate the roles of Government and the regulated industry, to encourage innovations that will improve food safety, and to remove unnecessary regulatory burdens on inspected meat and poultry establishments. In addition, the proposal represents an important shift away from FSIS's ''command-and-control'' regulatory approach and toward a less bureaucratic approach consistent with the Agency's food safety mission.

DATES: Comments must be received on or before: July 1, 1996.

ADDRESSES: Please send an original and two copies of comments on this proposed rule to FSIS Docket Clerk, DOCKET #93–032P, Room 4352 South Agriculture Building, Washington, DC 20250–3700. Oral comments, as provided under the Poultry Products Inspection Act, should be directed to the person listed under **FOR FURTHER INFORMATION CONTACT.** Copies of FSIS reference materials cited in this proposal are available for review in the FSIS docket room.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia F. Stolfa, Acting Deputy Administrator, Science and Technology, FSIS, Room 402 Annex Building, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) direct the Secretary of Agriculture to maintain inspection programs designed to assure the public that meat and meat food products (meat products) and poultry and poultry products (poultry products) are safe, wholesome, not adulterated, and properly marked, labeled, and packaged. FSIS carries out the mandates of these statutes by administering a continuous in-establishment inspection program for meat and poultry products that are shipped in interstate and foreign commerce or in ''designated'' States. A number of the States operate meat and poultry inspection programs for product shipped intrastate. Under the FMIA and PPIA, such programs must impose requirements ''at least equal'' to the Federal requirements.

The FMIA and PPIA require the Secretary to provide, among other things, for the inspection of establishments to assure that the conditions under which meat and poultry products are produced are sanitary. The Acts also require the Secretary to prescribe rules and regulations governing the sanitary conditions of official establishments (21 U.S.C. 608 and 456). Pursuant to these provisions, the meat and poultry inspection regulations currently prescribe ''prior approval'' or approval-before-use by FSIS of facility drawings and specifications and of equipment used in official establishments. The regulations also provide for the prior approval of certain quality control programs, known as partial quality control (PQC) programs, before their use by official establishments.

Current Prior Approval Procedures

Currently, applicants seeking Federal inspection must submit to FSIS blueprints and drawings with specifications that exactly illustrate the applicant's establishment as it exists or is proposed to exist (9 CFR 304.2(a), 308.2, and 381.19). Before inspection is granted, FSIS officials in the field and in Washington, D.C., review the blueprints and drawings and the facility they represent to determine whether the facility meets the requirements of the meat and poultry inspection regulations, which are intended to ensure that products can be produced in a sanitary environment. Owners or operators of establishments intending to add structures or remodel their existing facility must also submit blueprints and drawings with specifications to FSIS for review before beginning any new construction (9 CFR 404.2, 308.2, and 381.19). During FY 1994, FSIS technical personnel reviewed about 2,900 sets of blueprints for new or modified facilities.

Federally inspected establishments or equipment manufacturers must go through a similar process of prior submission for review and approval of most equipment used in preparing or handling edible meat and poultry products or ingredients (9 CFR 308.5 and 381.53). FSIS requires that establishment owners or operators wishing to use new equipment submit any information FSIS needs to review new equipment, including assembly-type drawings and a list showing the materials of which parts are made. The primary objectives of the FSIS review are to determine whether the equipment can be readily cleaned and inspected for its sanitary condition. In some instances, FSIS also requires that the equipment be used on a trial basis before approval is granted (9 CFR 308.5(d) and 381.53(a)(4)). FSIS technical personnel review more than 2,500 submissions of equipment specifications each year, and approximately 650 pieces of new equipment require a trial installation before being accepted for use.

Also, prior-approval procedures exist for numerous establishment-operated partial quality control programs. This means that companies must come to FSIS for permission before they can initiate or modify processes or controls intended to ensure that products have desired characteristics and that processes are stable.

The prior-approval process is a feature of FSIS's traditional ''command-and-control'' regulatory approach. While prior approval provides assurance that equipment, facilities, or processes, as designed, meet certain requirements that are intended to assure food safety or quality, they reflect the emphasis of the current system on closely observing the means by which establishments maintain sanitation and produce safe food. This feature of the current system is an inappropriate allocation of responsibility between the Agency and establishments. It is an obstacle and too often a deterrent to innovation by establishments seeking to improve operations, and contributes to unproductive use of FSIS resources both in managing the approval system and policing establishment compliance with approved facility and equipment specifications.

In addition, elimination of prior-approval requirements is consistent with the principles articulated in FSIS's February 3, 1995, Pathogen Reduction/Hazard Analysis and Critical Control Points (HACCP) proposal (60 FR 6774). HACCP and the FSIS food safety strategy are based on the principle that sanitary measures and science-based preventive process controls should be built into the food production system to reduce or eliminate food safety hazards. Establishment management should be responsible for designing and implementing such process controls, as well as for developing and maintaining standard operating procedures (SOP's) for its sanitation programs. However, the current system imposed by FSIS inappropriately allocates responsibility between the Agency and the industry and impedes the ability of establishment management to implement innovative food safety strategies. Establishments conducting their own hazard analyses and developing the HACCP plans to meet FSIS's food safety objectives will determine whether facility layouts, equipment operating characteristics, and other technical components of the manufacturing process will result in products that meet required standards.

FSIS's reliance on prior approvals also contrasts with both the practices of the remainder of the food industry as regulated by the U.S. Food and Drug Administration and the practices of a significant number of countries that have meat and poultry inspection systems that provide a level of food safety assurance equivalent to that of the United States. With the single exception of Canada, whose meat and poultry regulatory system is intertwined with that of the United States, none of these other countries relies on prior-approval systems to ensure that equipment does not adulterate product.

Anticipated Changes in Inspection

The elimination of the prior approval systems proposed here would change the manner in which FSIS conducts certain aspects of its inspection. Under the current prior approval system, FSIS focuses substantial attention on identifying specific design-related conditions affecting food safety, which should be the responsibility of the establishment. For example, FSIS not only performs prior approval of facility blueprints and equipment, but also inspection tasks to verify that the facility as constructed conforms to the blueprint and that equipment meets approved design specifications. This reflects the fact that the FSIS regulatory system has, in effect, taken responsibility for these matters. Similarly, many establishments currently lack a written sanitation plan and do not systematically ensure daily maintenance of good sanitation. In order to compensate for this lack, FSIS inspectors focus considerable attention on sanitation conditions and practices that are more appropriately the establishment's responsibility.

Under this proposal, FSIS would no longer control through prior approval the design specifications for buildings and equipment. Instead, FSIS would focus its regulatory and inspectional attention on determining whether an establishment is successfully meeting sanitation standards. Establishments would ensure that the design of buildings and equipment is appropriate for sanitary food production and for maintaining good sanitary conditions in accordance with broad sanitation principles. In addition, the FSIS proposal to require establishments to adopt sanitation SOP's of their own design, requires establishments to identify the elements of good sanitation required to prevent direct product contamination, carry out the SOP's on a daily basis, and achieve acceptable sanitation results. Concurrent with this action, FSIS inspection activities under SOP's and HACCP would be restructured to focus not on the building or equipment design, or on FSIS approval status, but on whether good sanitation is, in fact, being maintained.

In concert with this proposal, FSIS would review and revise its existing regulations and guidelines to avoid real or *de facto* prescriptions that are inconsistent with the approach outlined here. This review is underway and public comments on this process were invited in an advance notice of proposed rulemaking, the ''FSIS Agenda for Change,'' published in the December 29, 1995, issue of the Federal Register (60 FR 67469).

Prior-Approval Requirements To Be Eliminated

A. Establishment Facilities

The demand for Federal inspection of sanitary conditions of slaughterhouses was one of the principal concerns leading to enactment of the 1906 Meat Inspection Act. Leading experts of the day in the field of meat inspection advocated the approval of slaughterhouse plans by qualified veterinary inspectors. Facilities for slaughtering, dressing, and meat preparation that were properly designed and built with sound materials that could be effectively cleaned and not contaminate product were considered essential to help prevent the spread of disease and protect the health and safety of the animal and human populations. While the Meat Inspection Act itself did not mandate prior approval of drawings as a condition of inspection, early regulations issued under that law required the submission to the Agency of plans for new and remodeled establishments for review and approval before inspection could be granted.

The FMIA, the current law governing meat inspection, continues with slight modification the provision in the original meat act assigning to USDA the responsibility for regulating the sanitary conditions of inspected establishments (see 21 U.S.C. 608). The PPIA contains similar provisions, but neither of the Acts mandates prior approval of establishment blueprints.

As a means of assuring sanitary conditions in inspected establishments, the meat and poultry inspection regulations require that applicants for inspection submit to FSIS the drawings and specifications of establishments where inspected operations are to be conducted for review and approval (9 CFR 304.2, 381.19). The regulations also require that drawings reflecting any remodeling be submitted in advance of construction (§§ 308.2 and 381.18), and prescribe specifications for facilities of inspected establishments (at §§ 307, 308, and 381, subparts G and H). This procedure was required to help avoid costly changes in construction in the

event that FSIS determined facilities could create insanitary conditions that could lead to food adulteration.

To comply with the prior-approval regulations, the applicant completes a request form and provides a blueprint with specifications to the FSIS inspector-in-charge. The blueprint and specifications are then reviewed by the inspection circuit supervisor, the first level of supervision outside inspected establishments, and sent directly to FSIS headquarters in Washington, D.C. FSIS's area office—the second level of supervision in the field organizational structure, which stands between the circuit supervisors and the five Regional Offices—may also review plans referred to it by the circuit supervisor before sending them on to FSIS headquarters. In Washington, FSIS's facilities branch reviews the information and decides whether to approve or reject the drawings and specifications, seek further information, or return the materials to the applicant. When changes are made in the facilities of an establishment, the changes must be reflected in revised blueprints for the establishment. The remodeled facilities are then reviewed by the FSIS inspector-in-charge and the circuit supervisor to assure compliance with the approved blueprints and that there will be no product adulteration.

Currently, about 2,900 blueprints (both from new applicants and from establishments remodeling their facilities) are reviewed each fiscal year. About 38% of the submissions, or about 1,100 sets, are rejected due to various deficiencies. Most rejections result from errors in paperwork rather than design flaws that will compromise food safety. The Agency works with the submitting establishments to see that the deficiencies are corrected. Under prior approval, establishments are urged to delay construction until drawings and specifications have been approved, in order to avoid costly changes in construction or remodeling.

Experience has shown that FSIS prior approvals are of limited value in assuring good sanitation, because they are limited in both scope—dealing only with establishment facilities as presented in drawings—and time—they are given once, on the condition that establishments will maintain a sanitary operating environment after their facilities are approved. Ultimately, the establishments' implementation of good sanitation operating procedures on a continuing basis is more critical than the actual design of a facility. Also, with the elimination of prior approval requirements, production time that previously was lost in obtaining FSIS approval of blueprints and specifications would become available to the industry.

Under the proposal, establishments would continue to be expected to establish and maintain a sanitary environment for slaughtering and processing by adhering to the general principles and requirements for lighting, ventilation, drainage, plumbing, toilets, and condensation found in §§ 308.3(a)–(c), 308.4, 308.7, 308.8 (a) and (b), 381.46, and 381.47 of the meat and poultry inspection regulations.

All official establishments (about 6,200 establishments), would be affected by the proposal, except food irradiation facilities. There is no requirement for prior approval of blueprints for food irradiation facilities, because only prepackaged product is permitted to be irradiated under current regulations.

Although FSIS's prior-approval procedures for drawings and specifications would change under the proposal, its sanitation standards would not. Establishments would be responsible for ensuring that the design of facilities creates a sanitary environment and that such an environment can be and is maintained. If field inspectors carrying out their routine inspection tasks found product to be adulterated or prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth or may have been rendered injurious to health because of deficient facilities, all product subject to such conditions would be either retained and reworked or condemned, and the establishment would be required to take corrective action or cease operations. As under current regulations, such corrective action, which might involve repair or reconstruction of facilities, would be triggered only by an actual finding of product adulteration or insanitary conditions. Such a finding would constitute evidence of deviation from regulatory standards. Therefore, FSIS is proposing to remove the current requirements for prior approval of facility drawings and specifications. Requirements at 9 CFR 304.2(a), 308.2, and 381.19(a)–(f) for submission of blueprints and drawings before inspection can be granted or changes made in facilities at official establishments would be eliminated. Establishments would initiate and complete construction without prior approval by FSIS.

Although there would no longer be a requirement for an establishment to submit facility drawings and specifications in applying for a grant of Federal inspection, FSIS would continue to have a specific process through which the decision on granting inspection would be made. This process would still include an on-site review, or ''walk-through,'' of the establishment's facilities by the FSIS circuit supervisor as part of the predecisional review of the establishment's capability to produce ''complying'' product. However, the decisionmaking process would no longer include the review and prior approval of establishment facility blueprints and specifications by the Agency. The on-site review would not involve matching items on the blueprints with the actual facilities represented. Instead, the focus of the review would be on the extent to which the establishment is able to maintain a sanitary environment for food production. This change would be intended to parallel other changes in establishment-inspector relationships that FSIS is contemplating in its reinvention of meat and poultry inspection.

If this proposal is adopted, FSIS would plan to:

(1) maintain a small number of personnel who would assist inspectors in performing in their in-plant roles. These roles would eventually include the monitoring of establishment-operated sanitation SOP's and HACCP systems;

(2) provide general guidance regarding establishment layout and design to assist establishments in meeting food safety standards; and,

(3) publish one final edition of Agriculture Handbook 570, ''U.S. Inspected Meat and Poultry Packing Establishments: A Guide to Construction and Layout'', [1] and make it available to industry as a guidebook to construction of facilities. Handbook 570, an FSIS reference guide (not a set of regulatory requirements per se), is provided to assist industry, architects, and inspectors.

A small staff in Washington would maintain FSIS's technical expertise and capability in this important aspect of food science and technology. This staff would be responsible for keeping abreast of developments in the field and updating FSIS's new, HACCP-oriented guidelines and communicating technical information to Agency personnel. The Agency will not approve industry decisions in these areas.

In addition, implementation of the proposed Pathogen Reduction/HACCP rule's sanitation standard operating procedures, would render prior-approval procedures unnecessary.

[1] A copy of Agriculture Handbook 570 is on file for review in the FSIS Docket Clerk's office, 4352 South Agriculture Building, Washington DC, 20250.

Establishment-operated sanitation procedures and HACCP systems would accomplish, without prior approval, the same objectives as the FSIS prior approvals. Thus, under HACCP-based inspection, the FSIS prior approvals could no longer be considered an efficient and cost-effective way to achieve sanitation objectives.

B. Equipment Approval

As in the case of the facilities regulations, the regulations governing equipment (9 CFR 308.5, 381.53) were promulgated with a view to having the Agency assure sanitation in slaughtering, dressing, and processing operations. Requirements for sanitary equipment and utensils have been in force since the 1906 Meat Inspection Act. However, unlike prior approval of facility blueprints and drawings, the approval of types of equipment prior to use has not always been a requirement.

Under regulations that have been in force since 1975 (9 CFR 308.5, and 381.53), the FSIS Equipment Branch formally evaluates equipment and utensils proposed by manufacturers or suppliers before they can be used in official establishments to assure they can be maintained in a sanitary condition. The program focuses on identifying and correcting problems during the initial development of equipment, instead of resolving problems after equipment is put into widespread use.

FSIS's acceptance of new, modified, or reconditioned equipment for use in federally inspected meat and poultry establishments is a two-step process. First, FSIS Equipment Branch personnel evaluate the design and construction of equipment by reviewing assembly-type drawings and corresponding parts and material lists submitted to the Branch by the equipment manufacturer. Then, if necessary, FSIS inspectors review the in-establishment operation of the equipment and report their findings to the Equipment Branch. Commercially available equipment is accepted and listed in an FSIS reference guide, ''Accepted Meat and Poultry Equipment,'' [1] known as the FSIS Equipment Book. Once equipment is listed in this reference as acceptable, no further approval is needed on an establishment-by-establishment basis. Certain categories of equipment, such as simple tools and cleaning equipment, are exempt from prior approval. Among the types of equipment that are evaluated through FSIS's prior-approval procedure are clean-in-place systems, piping used with establishment machinery, automatic eviscerators, heat exchangers, smokehouses and ovens, air compressors, and water recycling equipment.

FSIS processes about 2,500 equipment applications, rejections, and acceptances each year. About 200 equipment applications are rejected on first review for lack of sufficient information. About 650 acceptance decisions are based on the results of in-plant trials. About 18 equipment applications are rejected after in-plant trials reveal deficiencies.

The principal cost of the prior-approval process to the private sector is considered to be that resulting from lost or delayed equipment sales caused by delay in obtaining approval. This cost falls mainly on equipment sellers and manufacturers and can be considerable if the introduction of promising new technology is delayed. The productivity of meat and poultry establishments could also be adversely affected by delays in approving efficient new equipment.

Furthermore, FSIS's one-time approval does not address daily operational issues such as proper maintenance and adjustment of equipment to prevent product contamination. Such issues are covered by the requirement that equipment and utensils be of such material and construction that they can be easily cleaned to prevent product adulteration (9 CFR 308.5, 381 subpart H), as well as by other general requirements, independently of any prior approval.

The prior-approval review for equipment may sometimes involve the evaluation of machinery, including scientific instrumentation, that will not itself have contact with a food product or have other direct effects on health or safety, but that may be part of an innovative approach to food processing or product safety. The Agency's review may delay testing or introduction of the innovation by weeks or months. The delay can be costly to a company in a highly competitive environment.

FSIS is therefore proposing to eliminate the requirement at 9 CFR 308.5 and 381.53 for prior evaluation and approval of equipment and utensils used in official meat and poultry establishments. The general principles and requirements for such equipment and utensils provided at 9 CFR 308.5(a) and 381.53(a) would be preserved.

Under this proposal, equipment and utensils would still have to be constructed so as to facilitate thorough cleaning and operational cleanliness and not adulterate edible product. Also, they would still have to be constructed, maintained, and used in a manner that does not interfere with inspection.

However, FSIS would no longer conduct its acceptance program before equipment could be used in an official establishment. Establishments would be able to use equipment based on their own evaluation of their ability to utilize the equipment in a sanitary way. The general requirements for equipment already in the regulations (9 CFR 308.5 and 381.53) would not change. In its inspection activities, FSIS would continue to judge establishment equipment by those same general standards. Equipment must be cleanable, it must be capable of being disassembled and inspected, and it must not interfere with inspection or adulterate product. FSIS inspectors would continue to reject equipment they find posing a sanitary hazard.

For calendar year 1996, the Agency will separate the general guidance material from its list of approved equipment and publish the guidance material separately. The final edition of the equipment list, which FSIS published in 1995, is available to current subscribers and to anyone who requests a copy before the effective date of the final rule.

Operational procedures and appropriate sanitation process controls would be developed by the inspected establishment. In this area, as in facilities, official establishments would be required to meet the general requirements prescribed in the regulations, but would be allowed the flexibility to determine the specific steps to be taken to comply with those requirements. The sanitation SOP's proposed for official establishments in FSIS's Pathogen Reduction/HACCP proposal would provide plans for applying the general principles for maintaining sanitary conditions to specific establishment situations. The establishment would also be required to maintain any controls appropriate to the HACCP plans for the establishment's products (e.g., raw beef), such as making sure the facilities and equipment (structures and machinery for evisceration) are designed, built, and operated so that any necessary action (sanitary dressing procedures) can be taken at critical control points in the HACCP plan.

The equipment prior-approval process proposed here for elimination is to be distinguished from the program, announced by FSIS last year, for reviewing experimentation with new technologies (''Guidelines for Preparing and Submitting Experimental Protocols for In-Plant Trials of New Technologies and Procedures; 60 FR 27714; May 25, 1995) under commercial conditions. The purpose of the new program is to

encourage the adoption by industry of innovative technologies that will help reduce the risk of foodborne disease. The Agency has established procedures (see FSIS Directive 10,700.1) for reviewing protocols for experimentation with new technologies in official establishments if there is a possibility the experimentation could adversely affect product, environmental, or worker safety, or interfere with inspection.

For example, in experiments involving the artificial contamination of carcasses with fecal matter to test the effectiveness of a carcass cleaning process, any products from these carcasses must be removed from commercial channels or reconditioned to be wholesome or fit for sale. Protocols for experiments involving the use of materials that could pollute the environment or affect worker safety must include appropriate regulatory citations or be accompanied by written approval of the Environmental Protection Agency or the Occupational Safety and Health Administration. Although new technologies can be expected to include the use of equipment, the FSIS review program is primarily intended to enable the experimentation to proceed rather than to approve the equipment used.

Further Regulatory Reform

As stated in FSIS Docket #95–008A, ''FSIS Agenda for Change; Regulatory Review'' (60 FR 67469; December 29, 1995), FSIS is reviewing all of its regulations, policies, and inspection procedures, including those concerning establishment sanitation (as presented in handbooks, notices, directives, etc.). Although implementation of FSIS's proposal for sanitation SOP's would not depend on revisions to the Agency's sanitation regulations, because this is an area where inspectors have traditionally exercised discretion and provided direct oversight and direction to establishments, the Agency recognizes the need to more clearly state its performance standards in this area. The Agency believes that the regulations can be made much clearer in describing the establishments' responsibilities, that doing so will relieve inspectors of much of the routine work they do that should be done by establishment employees, and that inspection resources can then be freed up and reapplied in performing new, HACCP-related food safety functions.

C. Partial Quality Control Programs

Quality control, in general, is a planned, documented system of activities intended to assure the stability of processes and uniformity of products. Quality control programs are based on the assumption that there is normal variation in any process and that the process is under control if that variation is not exceeded. Quality control is used in manufacturing to assure that components and products from ball bearings to microcomputer circuits, which are made in huge quantities, will all have the same desired characteristics. In the food industry, quality control systems are used in processing operations to make sure that each product produced, from TV dinners to hotdogs, will be exactly the same—will have the same content, flavor, color, texture, and so forth, no matter how many thousands are made in a production run.

In applications relevant to food safety, quality control programs can be used to maintain normal process variation around a standard, such as a time-temperature standard for cooked beef or a moisture-protein ratio for dry sausage. If the expected variation is exceeded, corrective action must be taken to restore process stability and ensure food safety.

Under current FSIS regulations, a company may choose to place all of the processes and products in an establishment under a comprehensive quality control system. Such a system, known as total quality control (TQC), integrates an establishment's quality development, maintenance, and improvement efforts to enable engineering, production, marketing, and service to take place at the most efficient levels that meet consumer expectations. A quality control system for only one process or product in an establishment is known as a partial quality control system (PQC). The quality control systems are, in a sense, precursors of the HACCP system FSIS envisions in that they are establishment-operated process control systems.

In 1980, FSIS promulgated regulations establishing procedures for meat and poultry establishments to follow in obtaining Agency approval of their voluntary TQC and PQC systems. FSIS approved several thousand PQC programs during the 1980's. Since 1990, FSIS has approved an additional 4,000 PQC programs and more than 3,000 amendments to those programs. There are now more than 8,200 approved PQC programs.

An approved quality control program is typically a voluntary activity in which an establishment is allowed to establish its own control procedures (provided these conform with the regulations). Approved PQC programs have provided FSIS with a tool or method for maintaining assurances that label claims, composition declarations, and many other standards are met, and that food products are safe. They also allow FSIS to regulate processes for which specific criteria have not been prescribed by the regulations. Verification inspection of the PQC programs enables FSIS to determine whether or not the programs are functioning. If they are shown to be malfunctioning, the establishment takes corrective action.

There are several types of FSIS-approved PQC programs; most are voluntary, some are mandatory. Voluntary PQC's generally fit into two broad categories. The first type includes those that need not be used to produce a product. For example, an approved PQC program for controlling the percentage of fat and water in a product is not necessary for an establishment to be allowed to make hotdogs. The establishment could produce the product without the PQC program. However, the PQC program helps assure that the establishment produces the hotdog and other products in accordance with the regulatory standards. Without a PQC program, an establishment runs a higher risk of producing noncompliant product subject to retention by the FSIS inspector.

The second type of voluntary PQC includes product labeling-related programs intended to ensure production of a product that is in compliance with a compositional requirement. For example, some PQC's are designed to meet the requirements of vignette labeling (labeling that shows an image of the food product either as it is in the container or as served, such as labeling that shows a specific number of meatballs in or pepperoni slices on a product); other PQC's are designed to comply with product composition requirements that must be met if certain labeling is used (such as the protein-fat-free requirement for a product labeled ''ham, water added'').

There are also mandatory PQC programs. Some are compulsory for certain types of food processing or are required to produce certain products; others are required for an establishment to operate under a certain inspection system. For example, the PQC for on-line carcass quality control is a mandatory component of the New Line Speeds (NELS) poultry inspection system. FSIS also requires approved PQC programs for the testing of new or not-previously-approved antimicrobial treatments in slaughtering establishments (to monitor equipment and process controls for experimental design and safety reasons); for product

identification and control during slaughter, dressing, and processing to support labeling statements; and for monitoring chlorine concentrations in product intended for export to Canada.

There are also PQC programs to control products for so-called economic factors. These programs are intended to prevent the marketing of products that are misbranded or that lack the quality or value that the product standard imposes. These economic PQC's are intended to serve two main purposes: (1) to take the place of lot inspection of product (the sampling and testing of a shift's production for certain characteristics) by the FSIS inspector; and (2) to assure that products meet requirements associated with their labeling.

Establishments operating the first type of economic PQC generate data that are subject to random verification by the FSIS inspector. Examples of these include programs for net weight, fat and water in frankfurters, and boneless meat (mainly for aesthetic defects). An establishment operating under a PQC for net weight keeps records of its checks and corrective actions to avoid lot inspection. Under PQC's for fat and water in frankfurters, establishments keep ingredient records by lot and results of laboratory tests for random verification by FSIS inspectors. An establishment operating a PQC for boneless meat inspections does its own on-line inspections and keeps records. The FSIS inspector randomly selects samples of product the establishment has already inspected to assure that the establishment's records are accurate.

Examples of the second kind of economic PQC include those for controlling the amount of added ingredients in corned beef, the amount of basting or marinating solutions in certain poultry products, and the truthfulness or accuracy of certain label claims. The PQC programs for basting or marinating solutions in certain poultry products assure that the amount of added solution in such products does not exceed the standards set forth in 9 CFR 381.169. The establishment accomplishes the objective of these programs by controlling the pumping procedure at the time of product formulation.

The PQC program for an establishment making a product bearing a label claim that only sirloin cuts have been used in the meat portion of the product must include an approved procedure with records for assuring the veracity of the claim. The PQC's for vignette labeling assure that product characteristics conform with the graphic display on the product label, in accordance with 9 CFR 317.8(a) and 381.121. If a product label shows four meat balls, the PQC for the product would have to document that each package contains four meat balls. The programs are carried out through in-plant sampling and visual inspection, with verification checks by FSIS inspectors.

Although about 70 percent of PQC's are intended to support labeling claims, not all have this purpose. Some support alternative processing procedures that have become so routine that very specific guidelines are followed in preparing the PQC program. FSIS has developed 64 guidelines detailing the essential elements of the most commonly used PQC programs. Many of these are procedures that substitute for more direct controls on economic or quality features of products such as declared count, vignette labeling, or the ''popping'' of pork rinds. These are not connected with food safety.

Under the current system, no matter how routine the preparation, review, and subsequent approval of the PQC program, each must be submitted to either the Washington office or a Regional Office and be stamped ''approved.'' FSIS has assigned 11 staff-years to the review and approval of establishment PQC programs. Approximately 1,800 quality control programs and amendments are handled each year by the Regional Offices; approximately 50 programs for complex processes or requiring specialized knowledge (such as programs for thermal processing) are approved each year by the Washington office. The purpose of the review is to assure that the programs contain all the necessary elements of a quality control program and are appropriate for their intended purpose. The programs must describe the product and process for which they are intended, and the materials to be used. They must identify any hazards, define process deviations, indicate the control points to be monitored, and procedures for checking processes. They must also state the methods for gathering data and determining results, and the corrective actions to be taken if process deviations are found. Finally, the programs must bear the names and locations of responsible establishment quality control officials and authorized USDA employees must have access to records generated by the programs. The time for a PQC prior approval to be obtained is typically 2 weeks.

FSIS considers this administrative burden on the industry and the Agency to be unnecessary to achieve food safety or nonadulteration objectives. Under HACCP-based inspection, establishments would assume responsibility for developing process control procedures in advance without having to depend on Agency approval for every step in their procedures. FSIS would evaluate or verify the effectiveness of the procedures through normal inspection operations and take action when necessary to prevent product adulteration.

By relying on general requirements for the design of all PQC programs, but not requiring prior approval of such programs, FSIS could use its resources (staff-years) more efficiently and effectively than it does now in its PQC prior-approval activities. This approach would also provide establishments with ample flexibility to develop their own process control techniques.

For these reasons, FSIS is proposing to eliminate the requirements at 9 CFR 318.4(d) and 381.145(d) for prior approval of PQC programs. Prior approval of most voluntary or ''economic'' PQC programs would be discontinued and an unnecessary regulatory burden would thus be lifted. However, the current requirements governing the content of PQC programs would remain (§§ 318.4(d)(2)(i) and 381.145(d)(2)(i)), as would existing mandatory-PQC requirements. Prior approval of PQC programs would be eliminated for all but a few of the mandatory PQC programs, such as those required for certain slaughter inspection systems, or those requiring special expertise, such as PQC's for thermal processing or other complex processing. The Agency, however, is planning to change these areas of its regulations to eliminate prior reviews and make them compatible with HACCP. This proposal would eliminate at least 90 percent of the approximately 1,900 PQC submissions made to FSIS each year. Cross-references to the existing prior-approval requirement would also be eliminated (in 9 CFR 318.7(b)(3), 318.7(c)(4), 317.21, 318.19, 318.309, 319.5, 319.104, 381.121d, and 381.309).

In addition, the regulations would be revised to provide (in 9 CFR 318.4(d)(2)(ii) and 381.145(d)(2)(ii)) for the design of PQC programs to assure, with at least 85 percent statistical confidence, that the lot or process means do not exceed the product or label limits to which the PQC programs apply. This requirement, which is already observed in the design of FSIS-approved PQC programs now in use, would also provide for control of individual sublot samples to within plus-or-minus 3 standard errors (standard deviations of the sampling distribution) of the process mean. At least 3 sublot samples representing a

production lot would have to be drawn for each lot of product subject to the PQC program. Further, each sublot sample would have to contain at least 5 samples representing the sublot. No individual sample mean or sublot-sample mean could be more than 3 standard errors above or below the process mean. (A lot is ordinarily a shift's production, but may be defined differently by different establishments. A sublot is a fraction of a lot, and may represent an hour's production, or a quarter-hour's production, or other portion of a production lot from which quality control samples may be drawn.)

For example, a PQC program prepared according to the FSIS guideline for the injection of corned beef labeled as having 30-percent added solution would be designed to assure with greater than 85 percent confidence that the 30-percent limit is not exceeded. In other words, the lot average must not be above this limit. A batch, a portion of the lot, must not be more than 1.2 percent above the declared value on the label. Samples drawn from individual batches of the production lot would have to show that the 3-standard-errors limit (in this example, 1.2 percent, or 31.2 percent added solution) is not exceeded.

PQC programs thus designed would provide process control, and hence a degree of food safety or food nonadulteration assurance, that is comparable to that provided currently by PQC programs individually approved by FSIS. Official establishments would have a less prescriptive set of conditions to meet in designing and implementing their PQC programs, and more latitude for innovation. Because the unnecessary regulatory burden of prior approval would no longer exist, establishments would be able to implement their programs sooner than the current prior-approval process allows.

Establishments would be required to comply with the requirements in proposed 9 CFR 318.4(d)(2)(ii) and 381.145(d)(2)(ii) in designing their PQC programs. Prior approval would still be required for quality control programs and systems referred to elsewhere in the regulations (e.g., 9 CFR 318.4 (c), (e), (f), and (h); and 381.145 (c), (e), (f), and (h)), including those associated with, and required for, such slaughter inspection systems as the NELS and the NTIS (9 CFR 381.76(c)). Proposals addressing these programs and systems will be published in the near future. This proposed rule would amend paragraphs 9 CFR 318.4(e) and 381.145(e) to delete references to prior approval requirements for PQC programs.

Proposed 9 CFR 318.4(d)(1) and 381.145(d)(1) would retain the current requirement for official establishments with PQC's to make the programs and data and information generated by them available to FSIS inspectors. Formal notification would not be required because establishment operators typically notify FSIS personnel of the products and processes operated under establishment-operated PQC programs during their regular interactions with FSIS personnel. Establishment operators recognize the advantage of making their quality control programs and data available to FSIS. FSIS personnel who have not been advised that a product is being produced under a PQC program would perform traditional lot inspection procedures, rather than quality control evaluation and verification tasks. The results of lot inspection may differ technically from those obtained under a PQC inspection. A product lot could be subject to retention even though the process for the product is under control, requiring no corrective action to restore controls.

FSIS, therefore, is not proposing to terminate the use of PQC's as a mechanism for organizing the collection and review of data which document outcomes. FSIS is, however, proposing to end its role as the approver of paperwork describing data collection to support alternative processing procedures.

Establishments operating under approved PQC programs would continue to keep the programs on file and available for use by FSIS employees. FSIS would adjust verification inspection tasks to reflect an approach that is appropriate to the process control procedure being used by the establishment.

It is likely that establishments will find the continued use of PQC programs to be advantageous under the inspection system envisioned by the Agency in its ''Pathogen Reduction/HACCP'' proposal. Although most PQC programs currently used by inspected establishments control products and processes for economic factors, e.g., fat and moisture content or the amount of marinating solution a product can absorb, there are some that have public health implications. Such PQC programs would be compatible with establishment-operated HACCP plans and establishments would continue to use them under HACCP-oriented inspection. Moreover, because establishments operating HACCP plans would be concerned about maintaining stability in all their processes, they would be likely to continue many of their economic PQC's or develop new ones. But they would no longer need prior approval from FSIS before implementing them.

FSIS considers relief from the prior-approval aspect of these PQC's to be the first in a series of steps to realign inspection and company responsibilities in the area of process control systems. As FSIS progresses in its review and adjustment of its inspection regulations, it will take more steps in this area. Regulations will be rewritten as performance standards, facilitating innovation. Establishments will be free to develop establishment-specific approaches as long as the regulatory objectives are met. Therefore, as FSIS reinvents its regulations in accordance with its stated plans (see docket #95–008A, ''FSIS Agenda for Change; Regulatory Review''), the need for Agency-developed guidelines should decrease. Companies will be able to call on a full range of technical resources to develop alternatives and design systems to demonstrate their efficacy.

Other Prior Approvals

This proposal addresses the removal of the requirements for prior approval of facility blueprints, equipment, and PQC programs for inspected meat and poultry establishments. In addition to the prior approvals discussed in this proposal, FSIS plans to eliminate its remaining centralized prior approval procedures. These include the procedures for: PQC's for water reuse, on-line PQC's used in the NELS and NTIS poultry inspection systems, nonfood compounds and proprietary additives, and possibly labeling. FSIS intends to publish proposals on these topics in the near future.

Like the regulations governing meat and poultry inspection, the egg products inspection regulations, promulgated under the Egg Products Inspection Act (21 U.S.C. 1031, *et seq.*) (EPIA), also contain prior-approval procedures for facilities and blueprints (7 CFR 59.146, 59.500, 59.506, 59.520, 59.538, 59.540, and 59.550), labels (7 CFR 59.411), equipment and utensils (7 CFR 59.502, 59.506, 59.515, 59.520, 59.522, 59.540, 59.540, 59.547, and 59.552), nonfood compounds (7 CFR 59.504 and 59.552), and various processing procedures for egg products. FSIS is not prepared to propose to remove these requirements because FSIS has only recently acquired responsibility for administering the EPIA and the egg products inspection regulations promulgated under that Act. FSIS has just begun reviewing the prior-approval requirements in the egg products regulations to see which, if any, are still necessary and should be maintained, and which are obsolete or burdensome and should be amended or

rescinded. As appropriate, FSIS will propose changes in the egg products inspection regulations.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking or packaging requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA or, in the case of imported articles, which are not at such an establishment after their entry into the United States.

This proposed rule is not intended to have retroactive effect.

If this proposed rule is adopted, administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR §§ 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

Executive Order 12866 and Effect on Small Entities

This proposed rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

FSIS is proposing to eliminate prior approval requirements for establishment drawings and specifications, equipment, and certain partial quality control programs. Concurrent with this proposal, FSIS would restructure inspection activities to focus more attention on the ability of establishments to maintain a sanitary environment. These actions, in addition to implementation of the sanitary standard operating procedures, which were proposed by the Agency as part of the Pathogen Reduction/HACCP proposal, would provide the industry the flexibility for creating and maintaining a sanitary working environment without prescriptive command-and-control requirements.

Removing these requirements would affect establishments subject to official inspection, firms producing and selling equipment currently subject to prior approval, firms providing expediting services to businesses seeking prior approval, and consumers. The proposal would reduce demands on FSIS resources which could be redirected to functions more critical to improving food safety.

Alternatives to this rulemaking that FSIS considered for facilities and equipment prior approvals included development by FSIS of detailed standards to be published in booklets with periodic updates, recognizing industry organizations as prior approval authorities, and establishing general performance standards similar to FDA-recognized good manufacturing practices. Another alternative which would have provided these services on a voluntary, user-fee basis, was considered but not adopted. FSIS has chosen the option of eliminating prior approval requirements while maintaining the general food safety standards in the existing regulations.

For PQC prior approvals, the alternatives to no rulemaking were market sampling of finished products, mandating additional in-plant controls, sampling of finished products for chemical analysis, and maintaining general requirements and a standard for the design of PQC programs. The last option was chosen because it would provide official establishments with the most flexibility in implementing PQC programs.

Benefits of the Rule

Approximately 6,200 federally inspected meat and poultry establishments would no longer be required to submit blueprints, drawings, and specifications to FSIS for review and approval. FSIS reviewed about 2,900 submissions in FY 1994. The cost of receiving FSIS approval for drawings and specifications and changes they represent includes the administrative, mailing, and labor costs associated with preparing the required Agency forms. The labor cost is estimated at 30 minutes for each submission. Assuming an hourly wage or per-hour salary of $20-$25 for each person submitting blueprints and specifications and the FSIS form, the annual cost to the industry for making these submissions is in the range of $30,000 to $40,000. This, then, is an estimate of the savings accruing to industry from removing the requirement for prior approval that FSIS is proposing.

As many as 1,500 establishments per year submit for approval PQC programs or amendments to PQC programs. FSIS receives a total of 1,900 submissions each year. A typical PQC program, prepared according to FSIS guidelines, can be written up in about 4 hours by an individual earning $20 to $25 per hour. Thus, removing the requirement for prior approval of PQC plans is estimated to save the industry $150,000 to $190,000 per year.

FSIS receives approximately 2,500 submissions for approval of equipment each year. The costs of these applications generally fall on equipment manufacturers rather than the meat and poultry firms subject to inspection, although a few meat and poultry establishments make some of their own equipment or equipment modifications. FSIS has no estimate that specifically pertains to the costs to manufacturers of applying for equipment approval, but these costs are assumed to be comparable to the costs to official establishments of submitting blueprint and establishment specification approvals. FSIS recognizes that actual costs to firms seeking equipment approval may differ and welcomes comments on this. Based on 30 minutes per submission, a labor cost of $20–$25 per hour, and 2,500 submissions annually, the annual cost savings from removing the prior approval requirement for equipment would be in the range of $25,000 to $32,500. In addition, approximately 650 applications for approval are contingent on in-plant trials. These trials involve some added costs to manufacturers and meat and poultry establishments, but the Agency has no estimates of these costs to include in this analysis. FSIS invites commenters to present information indicating what these costs are.

The proposal to eliminate blueprint prior approvals would remove a source of income for approximately 20 small firms that represent official establishments for the purpose of labeling and blueprint approval. These firms are known as ''expediters.'' It is estimated that approximately 20 percent of the annual blueprint submissions (about 600) are made to the Agency using the services of expediters. The estimated annual total value of blueprint expediting is about $240,000 for the companies involved. While this would be lost income to the expediters, it would be a transfer to meat and poultry firms, which is not a social cost of the proposed rule.

The social benefits directly resulting from the elimination of prior approval requirements as proposed in this rulemaking are indicated in Table 1. There would be additional but unquantifiable social benefits from the proposals to eliminate prior approvals.

These benefits derive from efficiencies arising from fewer demands on management, greater incentives to adopt innovative practices, and the enhanced ability to make changes quickly which the prior approval system and its inherent delays inhibit. Also, the delays inherent in the prior approval process, which can be translated into lost production time, would be eliminated.

However, it is unlikely that an inspection finding of adulterated product or insanitary conditions under the amended regulations would result in increased costs to the industry for rebuilding or remodeling facilities. Establishments planning substantial investments in new construction typically consult with local authorities and experts with up-to-date knowledge of food establishment construction before beginning major projects.

In addition to the benefits to firms from elimination of these prior approval requirements, FSIS could be expected to benefit by reallocating about $2.3 million to high priority food safety needs. Currently, the Agency allocates about 15 staff-years ($750,000) to reviews of equipment, 20 staff-years (about $1 million) to reviews of drawings and specifications, and 11 staff-years ($550,000) to review and approval of PQC programs. The true social benefits to be expected are the improvements in food safety that would logically flow from reallocating these resources to more important food safety-related tasks.

Costs of the Proposed Rule

As is currently the practice, inspectors would continue to require establishments to take corrective action or cease operations if any product has been adulterated or prepared, packed or held under insanitary conditions whereby it may have been contaminated with filth or may have been rendered injurious to health, because of deficient facilities and equipment. Corrective action, which might include reconstruction, remodeling, and redesign would only be triggered by an actual finding of product adulteration or insanitary conditions. However, it is unlikely that this proposal will increase the level of inspection findings that result in reconstruction, remodeling, and redesign of facilities and equipment.

Currently, facility and equipment plans submitted to FSIS for prior approval are rejected due either to errors in paperwork or to deviation from specific design criteria developed by FSIS. Under the proposal, establishments would not have to submit applications for approval. Instead, establishments would be permitted to initiate and complete construction or introduce new equipment without submitting any paperwork to FSIS. In addition, FSIS would eliminate design-related criteria currently utilized to evaluate the acceptability of facilities and equipment. Inspectors would no longer require establishments to incur costs for reconstruction, remodeling, and redesign, because the actual facility or piece of equipment does not match a specified design criterion, blueprint, or equipment specification.

In the absence of prior approval, FSIS would focus inspection on whether establishments are maintaining a sanitary environment. Under this proposal and the proposed rule on sanitation standard operating procedures, establishments would assume greater control over their production practices to ensure that a sanitary environment is maintained. Currently, many establishments utilize the services of knowledgeable architects, engineers, and other experts to design facilities and equipment for use in meat and poultry establishments. Under prior approval, these experts ensure, among other things, that FSIS design specifications are met. Without prior approval, establishments may require these experts to provide more information on the procedures necessary for maintaining facilities and equipment in a sanitary condition, which could increase the costs for these services. However, this is consistent with the need for the industry to assume greater responsibility for its operations. Any cost increases for these services would be commensurate with the transfer of responsibility from FSIS to the industry, and would not be a social cost attributable to the rule.

TABLE 1.—BENEFITS TO FIRMS FROM ELIMINATING PRIOR APPROVAL REQUIREMENTS

Action	Firms with more than 500 employees	Firms with fewer than 500 employees	All firms
Remove blueprint and specification approval	$1,800–$2,400	$28,200–$37,600	$30,000–$40,000
Remove equipment approval	$2,500–$3,250	$22,500–$29,250	$25,000–$32,500
Remove PQC approval	$9,000–$11,400	$141,000–$178,600	$150,000–$190,000
Total	$13,300–17,050	$191,700–$245,450	$205,000–262,500

Regulatory Flexibility Assessment

The Administrator has determined that, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601–12), this proposed rule would not have a significant economic impact on a substantial number of small entities. The entities that would be affected by this proposal are inspected meat and poultry establishments, equipment suppliers, and companies representing official establishments to the Agency for the purpose of obtaining blueprint approvals. Most of these are small entities.

The proposed rule is expected to have a beneficial effect on small and large entities, on both those regulated under the FMIA and PPIA and some that are not regulated under the inspection laws but which are affected by the Agency's review of their products, e.g., suppliers of equipment used in inspected meat and poultry establishments.

There are about 5,800 federally inspected small establishments. In this analysis, FSIS is using the Small Business Administration (SBA) business size standards (at 13 CFR 121.601) for meat packing establishments, establishments that produce sausages and other prepared meats, and poultry slaughtering and processing establishments. A small establishment in any of these categories is considered to be one with 500 or fewer employees. Under current regulations, all official establishments are required, as a condition of receiving inspection services, to submit blueprints, drawings, and specifications of new or remodeled facilities to FSIS for review and approval. Under this proposal, the establishments would, of course, not be spared the cost of preparing for themselves blueprints and specifications for construction and major installations. However, they would no longer bear the cost of submitting these drawings and specifications to the Agency for review

because the requirement to do so would be eliminated.

The savings to be obtained by eliminating FSIS approval for drawings and specifications and the changes they represent includes the administrative and mailing costs and the time (resources) required to fill out the required Agency form (''Submission and Approval of Plans and Specifications,'' FSIS –5200–S), which is estimated at 30 minutes each submission. As mentioned above, the annual savings to the meat and poultry products industry from eliminating the requirement of making the submissions would be in the neighborhood of $30,000–40,000. FSIS does not consider this savings to be significant. But in addition to such direct savings, the largest potential savings to the industry resulting from the prior approval process for blueprints and specifications would be those associated with the elimination of delays—of up to several weeks per submission—in obtaining approval. This estimated delay includes the time needed to resolve disagreements over plans and specifications, should such disagreements arise between the Agency and the establishment. This savings could be significant for some small entities, but there is no information to indicate that it would be so for a substantial number of them.

The savings would not be significant for at least two reasons. First, establishments engaged in construction projects plan for the eventuality of an FSIS review, or at least are advised by knowledgeable food establishment architects and engineers to build FSIS review time into their project timelines. Costs are minimized because delays that do occur are anticipated. Second, under the current prior review and approval system, the Agency is able to exercise discretion expediting reviews of blueprints and facilities in specific cases to prevent economic hardship from occurring. The proposal is intended to eliminate the costs attributable to the delays associated with prior review and approval.

While eliminating the cost of blueprint prior approvals to small establishments producing meat and poultry products, the proposal would at the same time remove a source of income for about 20 small expediting firms that represent official establishments for the purpose of labeling and blueprint approvals. These expediters are frequently able to shorten the time for these approvals and reduce the rejection rate on submissions because of their knowledge of Agency requirements and proximity to Agency offices. As mentioned above, the estimated annual total value of blueprint expediting is about $240,000 for the companies involved. This is a small part of the expediters' total business, which is mainly that of expediting label approvals and consulting work. These 20 entities, in any event, do not constitute a substantial number of small entities unfavorably affected by this rule.

By the same reasoning that the Agency used to determine that these prior approvals do not serve to increase the safety of meat and poultry products, the expediting activities of these firms that will be reduced by the rule would no longer be a productive use of resources. These firms may, however, experience an increased demand for their consulting services from inspected establishments who depended upon the Government's prior approval to assure they were in compliance with the regulations, who now need help from a third party to assure they are in compliance with the regulations.

The equipment acceptance procedure principally affects manufacturers or other vendors of equipment. The equipment manufacturers range in size from small to large concerns and, under the current regulations, depend on FSIS prior approval to be able to sell their products to inspected establishments. It is estimated that up to 90 percent of the equipment manufacturers and other applicants for FSIS equipment acceptance are small entities. According to the SBA business size standards (13 CFR 121.601), a small food products machinery manufacturer is one that employs 500 or fewer people.

Also favorably affected by the approval process are inspected establishments that may require machinery or other equipment to improve or continue their operations. As is the case in the blueprint review process for inspected facilities, the savings from avoiding a delay before installation and operation of a newly developed piece of equipment, although it could be significant for a few entities, large or small, but will not be significant for most establishments.

Finally, FSIS has determined that the proposal to eliminate prior approval of most voluntary PQC programs would not have a significant economic impact on a substantial number of small entities. Both large and small establishments subject to FSIS inspection would be permitted to continue to develop and implement PQC programs for their products and processes but would no longer be required to submit the PQC's to FSIS for review and approval in advance of use. Accordingly, the administrative delay for review that occurs under the present system would be eliminated.

It takes a minimum of 2 weeks for the Agency to review a typical PQC program, and as many as 1,500 establishments per year submit such programs or amendments to programs—a total of nearly 1,900 submissions per year—and about 90 percent of these establishments could be regarded as small entities. Therefore, roughly 1,100 establishments would avoid the costs associated with having to wait a minimum of 2 weeks for PQC approval, but it is not possible to identify what costs would be saved under these circumstances.

For these reasons, the Administrator has determined that this proposal would not result in a significant economic impact on a substantial number of small entities. The economic impact on such entities would in most cases involve the elimination of certain costs—some quantifiable, some not quantifiable—associated with doing business subject to Federal regulation and hence would be beneficial to those entities. Though non-quantifiable, increasing the benefits that come from reducing an establishment's dependence on Government decisions is an important objective of the proposed rule.

Paperwork Requirements

FSIS has reviewed the paperwork and recordkeeping requirements in this proposed rule in accordance with the Paperwork Reduction Act. This proposed rule would substantially reduce ''reporting'' requirements for official establishments and other entities. FSIS estimates the total reduction in reporting to be 4,291 burden hours. The reductions would occur in the following information collection reports:

- 0583–0082, ''Meat and Poultry Inspection; Application for Inspection, Sanitation, and Equipment Requirements and Exemptions'': Establishments subject to inspection would no longer have to submit blueprints and specifications along with Form FSIS–5200–5. The response time is estimated to be 30 minutes, and there are 701 total burden hours approved by the Office of Management and Budget (OMB) for this activity. Therefore, FSIS would request OMB to remove the 701 approved burden hours.
- 0583–0082, ''Meat and Poultry Inspection; Application for Inspection, Sanitation, and Equipment Requirements and Exemptions'': FSIS prior approval would no longer be required for the products of these companies that are used in official establishments. The response time is

estimated to be 30 minutes for the prior approval of equipment. There are 2,990 total burden hours approved by OMB for this activity. Therefore, FSIS would request OMB to remove the 2,990 approved burden hours.

• 0583–0089, ''Processing Procedures and Quality Control Systems'': Establishments could continue to develop and implement PQC programs according to Agency guidelines. These establishments, with the exception of poultry irradiation facilities, would no longer be required to submit a letter requesting approval of a proposed PQC program and a copy of the program to the Agency for approval prior to implementation. The response time is estimated to be 30 minutes for writing the request letter and sending the PQC program to FSIS. There are 600 total burden hours approved by OMB for this activity. In consideration of poultry irradiation facilities 60 hours of burden would remain. FSIS does not foresee more than two irradiation facilities requesting FSIS approval of PQC programs. Therefore, FSIS would request OMB to remove 540 approved burden hours. The burden hours for PQC program development and reporting would remain the same.

Copies of this information collection assessment can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, South Agriculture Building, Room 3812, Washington, DC 20250.

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. Comments may be sent to Lee Puricelli, Paperwork Specialist (see address above), and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Comments are requested by July 1, 1996. To be most effective, comments should be sent to OMB within 30 days of the publication date of this proposed rule.

List of Subjects

9 CFR 304

Drawings, Information to be furnished, Grant or refusal of inspection, Meat inspection.

9 CFR 308

Meat inspection, Sanitation.

9 CFR 317

Meat inspection, Reporting and recordkeeping requirements.

9 CFR 318

Meat inspection, Establishment-operated quality control.

9 CFR 319

Food grades and standards, food labeling.

9 CFR 381

Poultry and poultry products.

For the reasons set forth in the preamble, FSIS is proposing to amend 9 CFR Chapter III, the Federal meat and poultry inspection regulations, as follows:

PART 304—APPLICATION FOR INSPECTION; GRANT OR REFUSAL OF INSPECTION

1. The authority citation for Part 304 would be revised to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. The heading of section 304.2 would be revised to read as follows:

§ 304.2 Information to be furnished; grant or refusal of inspection.

* * * * *

3. Section 304.2 would be amended by removing paragraph (a) and redesignating paragraphs (b) through (f) as paragraphs (a) through (e), respectively.

PART 308—SANITATION

4. The authority citation for Part 308 would be revised to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 308.2 [Removed]

5. Section 308.2 would be removed and reserved.

6. Section 308.5 would be amended by removing '', in the judgment of the Administrator,'' from the first and third sentences of paragraph (a); removing paragraphs (b) through (f); redesignating paragraph (g) as (b); and revising the section heading to read as follows:

§ 308.5 Equipment and utensils to be easily cleaned; those for inedible products to be so marked; PCB-containing equipment.

* * * * *

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

7. The authority citation for part 317 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

8. Section 317.21 would be amended by removing the words ''or Partial Quality Control Program'' from paragraph (b).

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

9. The authority citation for part 318 would be revised to read as follows:

Authority: 7 U.S.C. 138f, 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

10. Paragraph (d) of § 318.4 would be revised to read as follows:

§ 318.4 Preparation of products to be officially supervised; responsibilities of official establishments; plant operated quality control.

* * * * *

(d) *Partial Quality Control Programs.* (1) Any owner or operator of an official establishment preparing meat food products who is using a quality control program for a product, operation, or part of an operation shall make the written program and data and information generated by the program available to Program employees.

(2) (i) Such quality control program shall include, as appropriate for the product, operation, or part of an operation which the program concerns, detailed information on: raw material control, the critical check or control points, the nature and frequency of tests to be made, the charts and records that will be used, the length of time such charts and records will be maintained in the custody of the official establishment, the limits which will be used and the points at which corrective action will be taken to prevent recurrence of a loss of control, and the nature of the corrective action—ranging from the least to the most severe.

(ii) Such quality control program shall be designed so as to provide, with at least 85 percent statistical confidence, that the lot mean (process mean) is within the product or label limit used and that, of a minimum of 3 sublot samples representing the lot, with each sublot sample containing at least 5 samples representing the sublot, no

individual sample mean or sublot-sample mean shall be greater than three standard errors above, nor less than three standard errors below, the process mean.

* * * * *

11. Paragraph (e) of § 318.4 would be amended by removing the words ''or Partial Quality Control'' from the paragraph heading, the words ''or (d)'' from the first sentence of paragraph (e)(1) and both occurrences of the words ''or partial quality control program'' from the second sentence of the same paragraph (e)(1); by removing the words ''or program'' from the first and second sentences of paragraph (e)(2); by removing the words ''or partial quality control program'' from paragraph (e)(3); and by revising the heading of paragraph (g) and removing the words ''or partial quality control program'' from paragraphs (g)(1) and the introductory text of (g)(2) and revising paragraph (g)(3) to read as follows:

§ 318.4 Preparation of products to be officially supervised; responsibilities of official establishments; establishment operated quality control.

* * * * *

(g) *Termination of Total Establishment Quality Control.*

* * * * *

(3) If approval of the total establishment quality control system has been terminated in accordance with the provisions of this section, an application and request for approval of the same or a modified total establishment quality control system will not be evaluated by the Administrator for at least 6 months from the termination date.

* * * * *

12. Paragraphs (b)(3)(i) and (b)(3)(ii) of § 318.7 would be revised to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(b) * * *

(3) * * *

(i) 100 ppm ingoing (potassium nitrite at 123 ppm ingoing); and 500 ppm sodium ascorbate or sodium erythorbate (isoascorbate) shall be used; provided that the establishment has a partial quality control program as provided in § 318.4(d) such as to result in compliance with this provision, or

(ii) A predetermined level between 40 and 80 ppm (potassium nitrite at a level between 49 and 99 ppm); 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate); and additional sucrose or other similar fermentable carbohydrate at a minimum of 0.7 percent and an inoculum of lactic acid producing bacteria such as *Pediococcus acetolactii* or other bacteria demonstrated to be equally effective in preventing the growth of botulinum toxin at a level sufficient for the purpose of preventing the growth of botulinum toxin; provided that the establishment has a partial quality control program as provided in § 318.4(d) such as to result in compliance with this provision.

* * * * *

13. In the table in § 318.7(c)(4) under the Class of substance ''Miscellaneous,'' the entry under the Substance ''Ascorbic Acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate'' would be revised to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Product	Amount
*	*	*	*	* * *
Miscellaneous	Ascorbic acid, erythorbic acid, citric acid, sodium ascorbate and sodium citrate, singly or in combination under quality control.	To delay discoloration.	Fresh beef cuts, fresh lamb cuts, and fresh pork cuts.	Not to exceed, singly or in combination, 500 ppm or 1.8 mg/sq inch of product surface of ascorbic acid (in accordance with 21 CFR 182.3013), erythorbic acid (in accordance with 21 CFR 182.3041), or sodium ascorbate (in accordance with 21 CFR 182.3731); and/or not to exceed, singly or in combination, 250 ppm or 0.9 mg/sq inch of product surface of citric acid (in accordance with 21 CFR 182.6033), or sodium citrate (in accordance with 21 CFR 182.6751).
*	*	*	*	* * *

14. Section 318.19 would be amended by removing the words ''or partial quality control program'' from paragraph (e).

15. Paragraph (a) of § 318.309 would be amended by removing the words ''an approved'' and ''program'' and paragraphs (b) and (c) of § 318.309 would be amended by removing ''and submitted to the Administrator for approval''.

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

16. The authority citation for Part 319 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

17. Section 319.5 would be amended by removing the second sentence of paragraph (e)(2) and revising the first sentence to read as follows:

§ 319.5 Mechanically Separated (Species).

* * * * *

(e) * * *

(2) A prerequisite for label approval for products consisting of or containing ''Mechanically Separated (Species)'' is that such ''Mechanically Separated (Species)'' shall have been produced by an establishment under a establishment quality control system. * * *

18. The last sentence in footnote 3 to the chart in § 319.104 would be amended by removing the words ''approved by the Administrator under § 318.4 of this subchapter.''

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

19. The authority citation for Part 381 would be revised to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

20. Section 381.19 would be revised to read as follows:

§ 381.19 Application for inspection; irradiation facilities.

All applicants for inspection whose operations include irradiation and other processing would submit, to the Administrator, a proposed quality control system as specified in § 381.149.

§ 381.20 [Amended]

21. Section 381.20 would be amended by removing ''the approved drawings,

specifications, and'' from the first sentence.

22. Section 381.53 would be amended by removing paragraph (b); redesignating paragraphs (c) through (m) as paragraphs (b) through (l), respectively; and revising paragraph (a) to read as follows:

§ 381.53 Equipment and utensils.

(a) Equipment and utensils used for processing or otherwise handling any edible poultry product or ingredient thereof, in any official establishment, shall comply with any applicable provisions of paragraphs (b) through (l) of this section and otherwise shall be of such material and construction as will facilitate their thorough cleaning, insure cleanliness in the preparation and handling of all edible poultry products, and avoid adulteration and misbranding of such products. In addition to these requirements, equipment and utensils shall not in any way interfere with or impede inspection procedures. Receptacles used for handling inedible products shall be of such material and construction that their use will not result in adulteration of any edible product or in unsanitary conditions at the establishment, and they shall bear conspicuous and distinctive marking to identify them as only for such use and shall not be used for handling any edible poultry products.

* * * * *

§ 381.121d [Amended]

23. Section 381.121d would be amended by removing the words ''or Partial Quality Control Program'' from paragraph (b).

24. The section heading and paragraph (d) of § 381.145 would be revised to read as follows:

§ 381.145 Preparation of products to be officially supervised; responsibilities of official establishments; establishment operated quality control.

* * * * *

(d) *Partial Quality Control Programs.* (1) Any owner or operator of an official establishment preparing meat food products who is using a quality control program for a product, operation, or part of an operation shall make the written program and data and information generated by the program available to Program employees.

(2) (i) Such quality control program shall include, as appropriate for the product, operation, or part of an operation which the program concerns, detailed information on: raw material control, the critical check or control points, the nature and frequency of tests to be made, the charts and records that will be used, the length of time such charts and records will be maintained in the custody of the official establishment, the limits which will be used and the points at which corrective action will be taken to prevent recurrence of a loss of control, and the nature of the corrective action—ranging from the least to the most severe.

(ii) Such quality control program shall be designed so as to provide, with at least 85 percent statistical confidence, that the lot mean (process mean) is within the product or label limit used and that, of a minimum of 3 sublot samples representing the lot, with each sublot sample containing at least 5 samples representing the sublot, no individual sample mean or sublot-sample mean shall be greater than three standard errors above, nor less than three standard errors below, the process mean.

* * * * *

25. Paragraph (e) of § 381.145 would be amended by removing the words ''Programs or'' from the paragraph heading, the words ''or (d)'' from the first sentence of paragraph (e)(1) and both occurrences of '', partial quality control program,'' from the second sentence of the same paragraph (e)(1); by removing the words ''or program'' from the first and second sentences of paragraph (e)(2); by removing '', partial quality control program,'' from paragraph (e)(3); by revising the heading of paragraph (g) and removing the words ''or a partial quality control program'' from paragraph (g)(1); by removing '', partial quality control program,'' from paragraph (g)(2) introductory text and the words ''or program'' from the first sentence of paragraph (g)(2)(ii); and by revising paragraph (g)(3) to read as follows:

§ 381.145 Preparation of products to be officially supervised; responsibilities of official establishments; establishment operated quality control.

* * * * *

(g) *Termination of Total Establishment Quality Control.*

* * * * *

(3) If approval of the total establishment quality control system has been terminated in accordance with the provisions of this section, an application and request for approval of the same or a modified total establishment quality control system will not be evaluated by the Administrator for at least 6 months from the termination date.

* * * * *

§ 381.309 [Amended]

26. Paragraph (a) of § 381.309 would be amended by removing the words ''an approved'' and ''program'' and paragraphs (b) and (c) of § 381.309 would be amended by removing ''and submitted to the Administrator for approval''.

Done, at Washington, DC April 25, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–10795 Filed 5–1–96; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AGL–5]

Establishment of Class E Airspace; Sturgis, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Sturgis, SD. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 29 has been developed for the Sturgis Municipal Airport. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed for aircraft executing the approach.

DATES: Comments must be received on or before June 6, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–5, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7459.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AGL–5.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Air Traffic Division, Operations Branch, 2300 East Devon Avenue, Des Plaines, Illinois 60018, or by calling (847) 294–7568. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Sturgis, SD. This proposal would provide adequate Class E airspace for operators executing the GPS Runway 29 SIAP at Sturgis Municipal Airport. Controlled airspace extending upward from 700 feet AGL is needed for aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, purusant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

AGL SD E5 Sturgis, SD [New]

(Lat. 44°25′06″N, long. 103°22′38″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Sturgis Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on April 17, 1996.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 96–10965 Filed 5–1–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AGL–6]

Revision of Class E Airspace; LA Porte, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise Class E airspace at La Porte Municipal Airport, La Porte, IN, to accommodate a localizer (LOC) Instrument Approach Procedure to Runway 2. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to for aircraft executing the approach.

DATES: Comments must be received on or before June 6, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–6, 2300 East Devon Avenue, Des Plaines, Illinois 60018

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AGL–6.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Air Traffic Division, Operations Branch, 2300 East Devon Avenue, Des Plaines, Illinois 60018, or by calling (847) 294–7568. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace at La Porte Municipal Airport, La Porte, IN, to accommodate a localizer (LOC) Instrument Approach Procedure to Runway 2. Controlled airspace extending upward from 700 to 1200 feet AGL is needed for aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

AGL IN E5 La Porte, IN [Revised]

La Porte Municipal Airport, IN
(Lat. 41°34′22″ N., long. 86°44′03″ W.)
La Porte NDB
(Lat. 41°29′56″ N., long. 86°44′17″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the La Porte Municipal Airport and within 2.5 miles each side of the 201° bearing from the La Porte NDB extending from the 7.3-mile radius to 11.4 miles south of the airport, excluding that airspace within the Michigan City, IN and Knox, IN Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on April 17, 1996.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 96–10966 Filed 5–1–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AGL–4]

Establishment of Class E Airspace; Menomonie, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Score Field, Menomonie, WI, to accommodate a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) instrument ??? procedure for Runway 27. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach.

DATES: Comments must be received on or before June 6, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–4, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AGL–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Air Traffic Division, Operations Branch, 2300 East Devon Avenue, Des Plaines, Illinois 60018, or by calling (847) 294–7568. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Score Field, Menomonie, WI, to accommodate a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Instrument Approach Procedure for Runway 27. Controlled airspace extending upward from 700 to 1200 feet AGL is needed for aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 206(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

AGL WI E5 Menomonie, WI [New]

Menomonie, Score Field, WI
(Lat. 44°53′29″ N, long. 91°52′00″ W)

That airspace extending upward from 700 feet above the surface within a 6.4 mile radius of Score Field.

* * * * *

Issued in Des Plaines, Illinois on April 17, 1996.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 96–10967 Filed 5–1–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ANM–008]

Proposed Amendment of Class E Airspace; La Grande, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposed rule would amend the La Grande, Oregon, Class E airspace to accommodate a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the La Grande/Union County Airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before June 14, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 96–ANM–008, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James C. Frala, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–008, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be

submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ANM–008.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at La Grande, Oregon, to accommodate a new GPS SIAP to the La Grande/Union County Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * * *

ANM OR E5 La Grande, OR

La Grande/Union County Airport, OR
(Lat 45°17′25″ N, long. 118°00′26″ W)
Walla Walla VOR/DME
(Lat 46°05′13″ N, long. 118°17′33″ W)

That airspace extending upward from 700 feet above the surface bounded on the north by a line beginning at lat. 45°38′59″ N, long. 118°02′04″ W, extending eastwardly to lat. 45°37′00″ N, long. 117°44′34″ W, on the east by a line extending to lat. 45°15′29″ N, long. 117°49′04″ W, on the south by a line extending to lat. 45°17′29″ N, long. 118°07′04″ W, on the west by a line extending to the point of beginning, and within a 4.3-mile radius of the La Grande/Union County Airport, that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 45°38′59″ N, long. 118°02′04″ W, extending northwest along V–357 to the Walla Walla VOR/DME 16.6-mile radius, thence north along the Walla Walla VOR/DME 16.6-mile radius until intercepting lat. 46°00′00″ N, thence eastward along lat. 46°00′00″ N, to long. 117°02′00″ W, thence south along long. 117°02′00″ W until intercepting V–298, thence westward along V–298 to lat. 45°23′30″ N, long. 117°47′10″ W, to lat. 45°37′00″ N, long. 117°44′34″ W, thence to the point of beginning, and that airspace bounded on the north by the southwest edge of V–298, on the east by the Boise, ID Enroute Domestic Airspace Area, on the south by the north edge of V–121, on the west by the east edge of V–182–397, excluding that airspace within Federal airways and the Baker, OR, Class E airspace area.

* * * * *

Issued in Seattle, Washington, on April 19, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–10968 Filed 5–1–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 946

[Docket No. 960418114–6114–01]

RIN 0648–AF72

Weather Service Modernization Criteria

AGENCY: National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Proposed amendment; request for comments.

SUMMARY: In accordance with the Weather Service Modernization Act, (the Act), the National Weather Service (NWS) is publishing a proposed amendment to its criteria for modernization actions requiring certification. This amendment adds criteria unique to automating a field office to ensure that automation actions will not result in any degradation of service. Automating a field office occurs after automated surface observing system (ASOS) equipment is installed and commissioned at a field office and the NWS employees that were performing surface observations at that office are removed or reassigned. At sites where NWS will remain, such as Weather Forecast Offices, NWS will perform the necessary augmentation and back-up, therefore no automation certification is required.

DATES: Comments are requested by June 1, 1996.

ADDRESSES: Requests for copies of documents stated in the preamble as being available upon request and comments should be sent to Julie Scanlon, NOAA/NWS, SSMC2, Room

9332, 1325 East—West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Nicholas Scheller, 301–713–0454.

SUPPLEMENTARY INFORMATION: Section 704(a) of the Act requires the NWS to contract with the National Research Council (NRC) for a review of the scientific and technical criteria for specified modernization actions. The NRC conducted this review and submitted the required report assessing the criteria to the Secretary of Commerce on July 28, 1993. Readers may obtain a copy of this Report from the contact and at the address provided above.

Section 704(b) of the Act requires the NWS to publish the criteria in the Federal Register, based on the NRC Report, after providing an opportunity for public comment and after consulting with the NRC and the Modernization Transition Committee (the Committee) established by section 707 of the Act. On March 2, 1994 the NWS published many of the required criteria as Appendix A to the general modernization regulations at 15 CFR 946 (*see* 59 FR 9921). These criteria were published in four categories as follows:

(1) those for modernization actions that do not require prior certification of no degradation of service, i.e., commissioning new weather observation systems and decommissioning outdated NWS radars (Appendix A, Section I.);

(2) those for modernization actions that require certification and that are common to all such actions, e.g., providing appropriate notification in the National Implementation Plan, describing local weather characteristics and related weather concerns; comparing services before and after the action (Appendix A, Section II.A.);

(3) those for modernization actions that require certification and that are unique to consolidating field offices (Appendix A, Section II.B.); and

(4) those for modernization actions that require certification and that are unique to relocating field offices (Appendix A, Section II.C.).

Besides the proposed new criteria, the criteria for commissioning an ASOS and the criteria common to all modernization actions requiring certification are applicable to automation actions. These sections of the previously published criteria are attached for reference (see Attachment 1).

At the time these criteria were published, the remaining criteria unique to automating field offices and the criteria for losing these offices required further development. Since no actions to automate or close field offices were imminent, the publication of these additional criteria was deferred.

Developing the automation criteria required further coordination with the Federal Aviation Administration (FAA) and the aviation industry to ensure that they would adequately promote aviation requirements. Developing these criteria also required further refinement of the NWS' Supplementary Data Program. There now appears to be general agreement between the FAA and the industry on aviation service levels suitable for incorporation into the criteria. In addition, the NWS has published a Notice setting forth its Supplementary Data Program (60 FR 64020, Dec. 13, 1995. Consequently the NWS is now proposing the remaining criteria unique to automation actions at NWS field offices. These criteria would be added to Section II of Appendix A to 15 CFR Part 946 as a new subsection D. The NWS will continue to defer publication of the criteria for closing field offices.

As set forth in the NWS's general modernization regulations, automation consists of removing or reassigning the NWS employees responsible for taking surface observations after an ASOS has been commissioned. This process generally occurs in two stages.

During the first state, an ASOS is installed and commissioned and begins to provide the official observations for the relevant office. Thee primary criterion at this stage is successful commissioning of the ASOS in accordance with the previously published criteria (*see* Appendix A. Section I.A.1). In addition, where the ASOS is located on an airport, the Secretary of Commerce, in consultation with the Secretary of Transportation, must determine that the weather services provided after commissioning will continue to be in full compliance with applicable flight aviation rules promulgated by the FAA. Providing this determination is an additional criterion at these sites. This determination was completed on a programmatic basis per a series of letters between Dr. Elbert W. Friday, Jr., Assistant Administrator for Weather Services and Mr. Anthony J. Broderick, Associate Administrator for Regulation and Certification, FAA, dated, November 18, 1992, December 20, 1992, and January 15, 1993. These letters will be included with each automation certification in compliance with 15 CFR 946.5(b).

At this first stage, the ASOS observation alone often does not provide a replacement for the manual observations sufficient to maintain equivalent-services. NWS employees and/or contract personnel have continued to augment the ASOS observation pending a determination of what weather observations, in addition to those provided by ASOS, may be needed and certification that the needed observations can be provided by other sources without degrading service.

During the second state of automation, the NWS employees are relieved of their remaining surface observing responsibilities. The proposed criteria are intended to provide the basis for certifying that this action will not result in any degradation of service, i.e., that the data from the ASOS, together with the data available from other sources are adequate to support equivalent services. Automation of NWS field offices will only occur at those sites where there will no longer be an NWS presence. At sites where NWS will remain, such as Weather Forecast Offices, NWS will perform the necessary augmentation and back-up, therefore no automation certification is required.

For aviation services, an important source of additional data at many airports is that provided by on-site augmentation appended to the ASOS observation. The extent of what level of augmentation is necessary has been the subject of extensive consultations between the FAA and the aviation industry. Beginning in June of 1994, the FAA, the NWS, and the aviation industry held a series of workshops to define such requirements in a manner acceptable to the broad range of aviation users. The participants in these workshops established the objectives and framework for a joint demonstration project which was conducted over a six month period at 25 sites with bi-monthly reviews by industry.

During this process, the FAA and the aviation industry refined the FAA's historical practice of tailoring services to the specific requirements of individual airports, ranking all airports, including the 143 airports served by NWS field offices that are subject to certification. This ranking was done according to a composite score that reflected three separate scores: one for Bad Weather Operations, which factored in both the percentage of time that the airport is subject to specified adverse weather conditions and total operations at the airport; a second for distance to the nearest suitable alternate airport; and the third for certain airport characteristics, such as categories of Instrument Flight Rules (IFR) approach capabilities, and operational designations.

Based on this composite score, the FAA and the aviation industry identified four categories of airports and the optimum level of augmentation for each. The levels agreed to are set forth in the Aviation Service Standards Summary chart in Criterion II.D.4 and those NWS airports in each category are listed in Appendix B to the regulations.

The first category encompasses approximately 300 nontowered airports (involving 27 NWS field offices) referred to as ''D'' Level Service airports, at which the parties agreed that the ASOS observation should constitute the entire observation, i.e., no additional parameters would be augmented, and there would be no manual back-up. Those 27 airports with NWS field offices for which this level of service is proposed are listed as ''D'' Level Service airports in Appendix B.

The parties then agreed on the basic level of augmentation that was needed for purposes of aviation safety at all commercial airports. This level, referred to as ''C'' Level Service, would include augmentation of the following parameters: thunderstorms, tornados, hail, virga, volcanic ash, and tower visibility. In addition, there would be on-site backup for the ASOS. This ''C'' Level Service of augmentation would be provided at all towered airports. ''C'' Level Service was determined to be the optimum level of augmentation at approximately 300 towered airports, including 51 airports with NWS field offices. Those 51 airports with NWS field offices are listed as ''C'' Level Service airports in Appendix B.

At 135 airports, augmentation beyond that required for aviation safety was considered optimum. These airports were divided into two categories: (1) those 78 airports (involving 40 NWS field offices) which received the highest score, i.e., major aviation hubs and high traffic volume airports with average or worse weather, referred to as ''A'' Level Service airports; and (2) the remaining group of 57 airports (involving 25 NWS field offices) that are smaller hubs or special airports in other ways, that have worse than average bad weather operations for thunderstorms and/or freezing/frozen precipitation, and/or that are remote airports, referred to as ''B'' Level Service airports. The NWS airports designated for these two levels of service are listed in Appendix B under ''A'' Level Service and ''B'' Level Service respectively.

The maximum level of service, ''A'' Level Service, would involve augmenting an ASOS observation by a comprehensive suite of manual observations including either long-line Runway Visual Range (RVR) readings at airports equipped with remote RVR capability or, at other airports, observed visibility increments down to an eighth of a mile, sixteenth of a mile and zero. The ''B'' Level Service would add parameters such as ice pellets and snow depth to the ''C'' Level Service, but would not include certain parameters, e.g., cloud types and cloud layers above 12,000 feet which are part of the ''A'' Level Service, but which were found unnecessary because of less crowded traffic patterns and/or the less diverse and/or severe weather conditions at these airports. Both ''A'' and ''B'' Level Service airports (as well as ''C'' Level Service airports, mentioned previously) would have on-site backup for the ASOS.

Criterion II.D.4a incorporates the above augmentation levels into the certification process for the NWS field offices involved.

It should be noted that FAA funds, not NWS funds, would be used to provide the required level of augmentation at airports transitioning to the FAA. At the present time, funds are available to provide augmentation beyond the ''C'' Level only at those 22 airports with the maximum level of aviation activity, commonly referred to as FAA level 5 airports. The 10 NWS field offices subject to automation certification among these 22 airports are denoted in Appendix B with a ''+''. Consequently, for those ''A'' and ''B'' Level airports at which funding is not available, the criterion would be that augmentation would continue to be provided at the existing, level (''C'' Level Service), but would be upgraded to the optimum level if funds became available.

The delay in achieving the desired level of service at these airports should not be confused with a degradation of service related to any automation action. To the extent that there may be any perceived *reduction* in the level of service, it would be the result of funding limitations and would occur (or already has occurred) independently of the automation.

As stated above, the FAA will be responsible for ensuring the required level of augmentation, by their own employees, by Limited Aviation Weather Reporting Station (LAWRS), or by contract, at all NWS sites being transitioned to the FAA and subject to automation certification. The NWS has developed a checklist to ensure the smooth transition of augmentation/back-up responsibility from the NWS to the FAA for those sites being transitioned. The checklist specifically takes into consideration the FAA service level standards and documents that the needed steps have been completed, e.g., ASOS equipment is properly configured. After site transition to the FAA, the NWS will retain responsibility for ASOS maintenance, observer certification and site inspection. Completion of this checklist is specifically included as an element of proposed Criterion II.D.4.

Some weather parameters observed manually today will not be observed by ASOS or appended to those augmented observations supporting aviation services, at least initially. To ensure equivalent services, the NWS has introduced two new classes of observations: Supplementary Data Observations (SDOs), which are event driven, i.e., taken only when a phenomenon is observed and not at any scheduled time; and Supplementary Climate Data (SCDs), which are routinely scheduled observations useful for climatological applications and hydrometeorological operations. Both types of observations will originate at the 118 NWS Weather Forecast Offices (WFOs) and be disseminated through normal NWS communications systems, the Family of Services, the NOAA Weather Wire, and various commercial vendor services. The full suite of elements which could be reported as Supplementary Data are described in the December 13, 1995 Federal Register notice. Of course, each WFO will report only those elements that it observes, i.e., those phenomena that occur in its area.

Additional surface observational data in the ASOS era will also continue to be available from over 20,000 automatic and manual hydrometeorological sites, including cooperative and hydrological networks.

Proposed Criterion II.D.5 requires that the certification include a determination that these data reported from adjacent WFO(s) together with the ASOS observation as augmented and any complementary data such as satellite and lightning detection data are adequate to ensure no degradation of service for all users.

A. Classification Under Executive Order 12866

These proposed regulations establish procedures and criteria for certifying that certain actions to modernize NWS will not result in any degradation of weather services to the affected service area. They will not result in any direct or indirect economic impacts, and have been determined not to be significant for purposes of E.O. 12866.

B. Regulatory Flexibility Act Analysis

These regulations set forth the criteria for certifying that certain modernization

actions will not result in a degradation of service to the affected area. These criteria will be appended to the Weather Service Modernization regulations. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these criteria, if adopted as proposed, will not have a significant economic impact on a substantial number of small entities. These proposed criteria are intended for internal agency use, and the impact on small business entities will be negligible. The proposed criteria do not directly affect ''small government jurisdictions'' as defined by Pub. L. 96–354, the Regulatory Flexibility Act. Accordingly, no initial regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act of 1980

These regulations will impose no information collection requirements of the type covered by Pub. L. 96–511, the Paperwork Reduction Act of 1980.

D. E.O. 12612

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

E. National Environmental Policy Act

NOAA has concluded that publication of this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. A programmatic Environmental Impact Statement (EIS) regarding NEXRAD was prepared in November 1984, and an Environmental Assessment to update the portion of the EIS dealing with the bioeffects of NEXRAD non-ionizing radiation was issued in 1993.

List of Subjects in 15 CFR Part 946

Administrative practice and procedure, certification, Commissioning, Decommissioning, National Weather Service, Weather service modernization.

Dated: April 29, 1996.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

For the reasons set out in the preamble, 15 CFR part 946 is proposed to be amended as follows:

PART 946—[AMENDED]

1. The authority citation for part 946 continues to read as follows:

Authority: Title VII of Pub. L. 102–567, 106 Stat 4303 (15 U.S.C. 313n.)

2. Appendix A is amended by adding a new subsection (D) under section II. Criteria for modernization actions requiring certification, to read as set forth below. Subsections I. (A)(*1*) and II. (A) are republished without change for the convenience of the reader.

Appendix A to Part 946—National Weather Service Modernization Criteria

I. Modernization Criteria for Actions Not Requiring Certification

(A) Commissioning of New Weather Observation Systems

(1) Automated Surface Observation Systems (ASOS)

Purpose: Successful commissioning for full operational use requires a demonstration, by tests and other means, that the ASOS equipment, as installed in the field office, meets its technical requirements; that the prescribed operating, maintenance, and logistic support elements are in place; that operations have been properly staffed with trained personnel and that the equipment can be operated with all other installed mating elements of the modernized NWS system.

Note: It may be necessary to incorporate work-arounds to complete some of the items listed below in a timely and cost-effective manner. A work-around provides for an alternative method of meeting a commissioning criteria through the application of a pre-approved operational procedure implemented on a temporary basis, for example, by human augmentation of the observation for the occurrence of freezing rain, until such time as a freezing rain sensor has been accepted for operational use with ASOS. The ASOS Plan referenced below includes a process for recommending, approving, and documenting work arounds and requires that they be tracked as open items until they can be eliminated by implementation of the originally intended capability.

References: The criteria and evaluation elements for commissioning are set forth and further detailed in the NWS-Sponsored Automated Surface Observing System (ASOS) Site Component Commissioning Plan (the ASOS Plan), more specifically in Addendum I, Appendix D of the ASOS Site Component Commissioning Evaluation Package (the ASOS Package).

Criteria: a. ASOS Acceptance Test: The site component acceptance test, which includes objective tests to demonstrate that the ASOS, as installed at the given site, meets its technical specifications, has been successfully completed in accordance with item 1a, p. D–2 of Appendix D of the ASOS Package.

b. Sensor Siting: Sensor sitings provide representative observations in accordance with Appendix C of the ASOS Package, Guidance for Evaluating Representativeness of ASOS Observations and item 1b, p. D–2 of Appendix D of the ASOS Package.

c. Initialization Parameters: Initialization parameters are in agreement with source information provided by the ASOS Program Office, in accordance with item 1c, pp. D–2 & D–3 of Appendix D of the ASOS Package.

d. Sensor Performance Verification: Sensor performance has been verified in accordance with the requirements stated in the ASOS Site Technical Manual and item 1d, p. D–3 of the ASOS Package.

e. Field Modification Kits/Firmware Installed: All critical field modification kits and firmware for the site as required by attachments 3a & b (pp. D–45 & D–46) or memorandum issued to the regions, have been installed on the ASOS in accordance with item 1e, p. D–4 of Appendix of the ASOS Package.

f. Operations and Maintenance Documentation: A full set of operations and maintenance documentation is available in accordance with items 2a–h, pp. D–5 & D–6 of Appendix D of the ASOS Package.

g. Notification of and Technical Coordination with Users: All affected users have been notified of the initial date for ASOS operations and have received a technical coordination package in accordance with item 2i, pp. D–6 & D–7 of Appendix D of the ASOS Package.

h. Availability of Trained Operations Personnel: Adequate operations staff are available, training materials are available, and required training has been completed, per section 3.2.3.1 of the ASOS Plan, in accordance with items 3a–c, p. D–8 of Appendix D of the ASOS package.

i. Maintenance Capability: Proper maintenance personnel and support systems and arrangements are available in accordance with items 4a–e, pp. D–9 & D–10 of Appendix D of the ASOS Package.

j. Performance of Site Interfaces: The equipment can be operated in all of its required modes and in conjunction with all of its interfacing equipment per the detailed checklists of items 5a–b, pp. D–11 & D–19 of Appendix D of the ASOS Package.

k. Support of Associated NWS Forecasting and Warning Services: The equipment provides proper support of NWS forecasting and warning services and archiving, including operation of all specified automatic and manually augmented modes per the checklist, items 6a–e, pp. D–20 to D–29, of Appendix D of the ASOS Package.

l. Service Backup Capabilities: Personnel, equipment, and supporting services are available and capable of providing required backup readings and services in support of operations when primary equipment is inoperable in accordance with items 7a–g, pp. D–30 to D–32, to Appendix D of the ASOS Package.

m. Augmentation Capabilities: Personnel are available and trained to provide augmentation of ASOS observations in accordance with augmentation procedures, items 8a–c, p. D–33 of Appendix D of the ASOS Package.

n. Representativeness of Observations: Observations are representative of the hydrometeorological conditions of the observing location as determined by a period of observation of at least 60 days prior to commissioning in accordance with Appendix

C and item 6e, pp. D–27 to D–29 of Appendix D of the ASOS Package.

* * * * *

II. Criteria for Modernization Actions Requiring Certification

(A) Criteria Common to all Types of Certifications (Except as Noted)

1. Notification: Advanced notification and the expected date of the proposed certification have been provided in the National Implementation Plan.

2. Local Weather Characteristics and Weather Related Concerns: A description of local weather characteristics and weather related concerns which affect the weather services provided to the affected service area is provided.

3. Comparison of Services: A comparison of services before and after the proposed action demonstrates that all services currently provided to the affected service area will continue to be provided.

4. Recent or Expected Modernization of NWS Operations in the Affected Service Area: A description of recent or expected modernization of NWS operations in the affected service area is provided.

5. NEXRAD Network Coverage: NEXRAD network coverage or gaps in coverage at 10,000 feet over the affected service area are identified.

6. Air Safety Appraisal (applies only to relocation and closure of field offices at an airport): Verification that there will be no degradation of service that affects aircraft safety has been made by conducting an air safety appraisal in consultation with the Federal Aviation Administration.

7. Evaluation of Services to In-State Users (applies only to relocation and closure of the only field office in a State): Verification that there will be no degradation of weather services provided to the State has been made by evaluating the effect on weather services provided to In-State Users.

8. Liaison Officer: Arrangements have been made to retain a Liaison Officer in the affected service area for at least two years to provide timely information regarding the activities of the NWS which may affect service to the community, including modernization and restructuring; and to work with area weather service users, including persons associated with general aviation, civil defense, emergency preparedness, and the news media, with respect to the provision of timely weather warnings and forecasts.

9. Meteorologist-In-Charge's (MIC) Recommendation to Certify: The MIC of the future WFO that will have responsibility for the affected service area has recommended certification in accordance with 15 CFR 946.7(a).

10. Regional Director's Certification: The cognizant Regional Director has approved the MIC's recommended certification of no degradation of service to the affected service area in accordance with 15 CFR 946.8.

* * * * *

(D) Proposed Modernization Criteria Unique to Automation Certifications

1. Compliance with flight aviation rules (applies on airports only): Consultation with the Federal Aviation Administration (FAA) has verified that the weather services provided after the commissioning of the relevant ASOS unit(s) will be in full compliance with applicable Federal Aviation Regulations promulgated by the FAA.

2. ASOS Commissioning: The relevant ASOS unit(s) have been successfully commissioned in accordance with the criteria set forth in section I.A.1 of this Appendix.

3. User Confirmation of Services: Any valid user complaints related to actual system performance received since commissioning of the ASOS have been satisfactorily resolved and the issues addressed in the MIC's recommendation for certification.

4. Aviation Observation Requirement: At sites subject to automation certification, all surface observations and reports required for aviation services can be generated by an ASOS augmented as necessary by non-NWS personnel.

a. The ASOS observation will be augmented/backed-up to the level specified in Appendix B as described in the Aviation Service Standards Summary chart, except that, if funds needed for such level of service are not available at those airports listed as ''A'' or ''B'' Level Service airports in Appendix B, the ASOS will be augmented/backed-up at the ''C'' Level Service until funds become available.

b. The transition checklist has been signed by the appropriate Region Systems Operations Division Chief.

5. General Surface Observation Requirement: The total observations available are adequate to support the required inventory of services to users in the affected area. All necessary hydrometeorological data and information are available through ASOS as augmented in accordance with this section, through those elements reported as supplementary data by the relevant Weather Forecast Office(s), or through other complementary sources. The adequacy of the total surface observation is addressed in the MIC's recommendation for certification.

BILLING CODE 3510–12–M

Aviation Service Standards Summary

"D" Level Service
Stand-Alone ASOS

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v

"C" Level Service Add-Ons
- Backup basic service
- Augmentation of:
  - Thunderstorm occurence
  - Tornadic activity
  - Hail
  - Virga
  - Volcanic ash
  - Tower visibility

|
v

"B" Level Service Augmentation Add-Ons
- Long-line Runway Visual Range (RVR) at designated sites* (may be instantaneous readout)
- Freezing drizzle
- Ice pellets
- Snow depth on ground
- Snow increasing rapidly remark
- Thunderstrom/lightning location remark
- Observed significant weather not at station

|
v

"A" Level Service Augmentation Add-Ons
- Either 10-minute long-line RVR or visibility increments down to 1/8, 1/16, and 0
- Sector visibility
- Variable sky
- Cloud types
- Cloud layers above 12,000 feet
- Widespread dust, sand, and smoke obstructions
- Volcanic eruptions

* - in Appendix B, indicates site that will provide long-line RVR

3. Appendix B is added to Part 946 to read as follows:

APPENDIX B TO PART 946—AIRPORT TABLES

"A" Level Service Airports

Akron, OH*	CAK.
Albany, NY*	ALB.
Atlanta, GA* +	ATL.
Baltimore, MD*	BWI.
Boston, MA + *	BOS.
Charlotte, NC +	CLT.
Chicago-O'Hare (AV), IL + *	ORD.
Cincinnati, OH +	CVG.
Columbus, OH	CMH.
Dayton, OH*	DAY.
Des Moines, IA*	DSM.
Detroit, MI + *	DTW.
Fairbanks, AK*	FAI.
Fresno, CA*	FAT.
Greensboro, NC*	GSO.
Hartford, CT*	BDL.
Indianapolis, IN*	IND.
Kansas City, MO*	MCI.
Lansing, MI*	LAN.
Las Vegas, NV	LAS.
Los Angeles (AV), CA +	LAX.
Louisville, KY*	SDF.
Milwaukee, WI*	MKE.
Minneapolis, MN*	MSP.
Newark, NJ + *	EWR.
Oklahoma City, OK*	OKC.
Phoenix, AZ +	PHX.
Portland, OR*	PDX.
Providence, RI*	PVD.
Raleigh, NC*	RDU.
Richmond, VA*	RIC.
Rochester, NY*	ROC.
Rockford, IL*	RFD.
San Antonio, TX*	SAT.
San Diego, CA	SAN.
San Francisco, CA + *	SFO.
Spokane, WA*	GEG.
Syracuse, NY*	SYR.
Tallahassee, FL	TLH.
Tulsa, OK	TUL.

"B" Level Service Airports

Baton Rouge, LA*	BTR.
Billings, MT*	BIL.
Charleston, WV*	CRW.
Chattanooga, TN*	CHA.
Colorado Springs, CO	COS.
Daytona Beach, FL	DAB.
El Paso, TX	ELP.
Flint, MI	FNT.
Fort Wayne, IN	FWA.
Honolulu, HI	HNL.
Huntsville, AL*	HSV.
Knoxville, TN*	TYS.
Lincoln, NE*	LNK.
Lubbock, TX	LBB.
Madison, WI*	MSN.
Moline, IL*	MLI.
Montgomery, AL*	MGM.
Muskegon, MI*	MKG.
Norfolk, VA*	ORF.
Peoria, IL	PIA.
Savannah, GA*	SAV.
South Bend, IN*	SBN.
Tucson, AZ	TUS.
West Palm Beach, FL*	PBI.

APPENDIX B TO PART 946—AIRPORT TABLES—Continued

Youngstown, OH*	YNG.

"C" Level Service Airports

Abilene, TX	ABI.
Alltentown, PA	ABE.
Asheville, NC	AVL.
Athens, GA	AHN.
Atlantic City, NJ	ACY.
Augusta, GA	AGS.
Austin, TX	AUS.
Bakerfield, CA	BFL.
Bridgeport, CT	BDR.
Bristol, TN	TRI.
Casper, WY	CPR.
Columbia, MO	COU.
Columbus, GA	CSG.
Dubuque, IA	DBQ.
Erie, PA	ERI.
Eugene, OR	EUG.
Evansville, IN	EVV.
Fargo, ND	FAR.
Fort Smith, AR	FSM.
Grand Island, NE	GRI.
Helena, MT	HLN.
Huntington, WV	HTS.
Kahului, HI	OGG.
Key West, FL	EYW.
Lewiston, ID	LWS.
Lexington, KY	LEX.
Lynchburg, VA	LYH.
Macon, GA	MCN.
Mansfield, OH	MFD.
Meridian, MS	MEI.
Olympia, WA	OLM.
Port Arthur, TX	BPT.
Portland, ME	PWM.
Rapid City, SD	RAP.
Redding, CA	RDD.
Reno, NV	RNO.
Roanoke, VA	ROA.
Rochester, MN	RST.
Salem, OR	SLE.
Santa Maria, CA	SMX.
Sioux City, IA	SUX.
Springfield, IL	SPI.
Stockton, CA	SCK.
Toledo, OH	TOL.
Waco, TX	ACT.
Waterloo, IA	ALO.
Wilkes-Barre, PA	AVP.
Williamsport, PA	IPT.
Wilmington, DE	ILG.
Worcester, MA	ORH.
Yakima, WA	YKM.

"D" Level Service Airports

Alamosa, CO	ALS.
Alpena, MI	APN.
Astoria, OR	AST.
Beckley, WV	BKW.
Caribou, ME	CAR.
Concordia, KS	CNK.
Concord, NH	CON.
Elkins, WV	EKN.
Ely, NV	ELY.
Havre, MT	HVR.
Homer, AK	HOM.
Houghton Lake, MI	HTL.
Huron, SD	HON.
International Falls, MN	INL.

APPENDIX B TO PART 946—AIRPORT TABLES—Continued

Kalispell, MT	FCA.
Lander, WY	LND.
Norfolk, NE	OFK.
Sault Ste. Marie, MI	SSM.
Scottsbluff, NE	BFF.
Sheridan, WY	SHR.
St. Cloud, MN	STC.
Tupelo, MS	TUP.
Valentine, NE	VTN.
Victoria, TX	VCT.
Wichita Falls, TX	SPS.
Williston, ND	ISN.
Winnemucca, NV	WMC.

+—Maximum activity (level 5) airport.
*—Long-line RVR designated site.

[FR Doc. 96–11010 Filed 5–1–96; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 250

RIN 1076–AD68

Indian Fishing—Hoopa Valley Indian Reservation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) proposes to eliminate 25 CFR Part 250 as mandated by Executive Order 12866 to streamline the regulatory process and enhance the planning and coordination of new and existing regulations. The necessity for this rule no longer exists.

DATES: Comments must be received on or before July 1, 1996.

ADDRESSES: Mail comments to Gary Rankel, Chief, Branch of Fish, Wildlife and Recreation, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of the Interior, 1849 C St. NW, Mail Stop 4513–MIB, Washington, DC 20240; OR, hand deliver them to Room 4513 at the above address. Comments will be available for inspection at this address from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately 2 weeks after publication of this document in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary Rankel, (202) 208–4088.

SUPPLEMENTARY INFORMATION:

Background

The purpose for which this rule was promulgated has been fulfilled and the rule is no longer required. The Hoopa

Valley Tribe has established regulations to protect the fishery resources and fishing rights of Indians of the Hoopa Valley Indian Reservation. The Yurok Tribe, which is also covered under these regulations, is in the final stages of drafting regulations covering fishing by their members. This proposed rule will eliminate 25 CFR Part 250, Indian Fishing—Hoopa Valley Indian Reservation.

Public Participation Statement

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this document.

Evaluation and Certification

The Department has certified to the Office of Management and Budget (OMB) that the elimination of this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The Office of Management and Budget has determined the elimination of this rule is not a significant regulatory action under Executive Order 12866.

There will be no economic effect on each tribal government and tribal organization under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and no additional outlays will be required of tribal governments, tribal organizations, and the Federal Government.

In accordance with Executive Order 12630, the Department has determined that the elimination of this rule will not have ''significant'' takings implications. The elimination of this rule does not pertain to ''taking'' of private property interests, nor does it impact private property.

The Department has determined that the elimination of this rule will not have significant federalism effects under Executive Order 12612 and will not interfere with the roles, rights and responsibilities of states.

The Department has determined that the elimination of this rule will not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

No information collection is required in the elimination of this rule that would require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Drafting Information

The primary author of this document is Bettie Rushing, Bureau of Indian Affairs.

List of Subjects in 25 CFR Part 250

Indians, Indian—fishing rights.

Under the authority of Executive Order 12866, and for the reasons stated above, it is proposed to remove 25 CFR part 250.

Dated: April 11, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–10838 Filed 5–01–96; 8:45 am]

BILLING CODE 4310–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–070–0001b; FRL–5452–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from the transfer of gasoline in stationary storage containers, delivery vessels, bulk plants, and vehicle fuel tanks.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by June 3, 1996.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section [A–5–3], Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION: This document concerns San Joaquin Valley Unified Air Pollution Control District Rule 4621, Gasoline Transfer into Stationary Containers, Delivery Vessels, and Bulk Plants, and Rule 4622, Transfer of Gasoline into Vehicle Fuel Tanks, submitted to EPA on November 18, 1993 and May 24, 1994 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 24, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–10569 Filed 5–01–96; 8:45 am]

BILLING CODE 6560–50–W

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–79; RM–8779]

Television Broadcasting Services; Kearney, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Citadel Communications, L.L.C. seeking the allotment of UHF Channel 20– to Kearney, NE, as the community's second local television service. Channel 20– can be allotted to Kearney in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 40–41–54 North Latitude and 99–05–00 West Longitude. The proposed allotment at Kearney is not affected by the Commission's temporary freeze on new television allotments in certain metropolitan areas.

DATES: Comments must be filed on or before June 17, 1996, and reply comments on or before July 2, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Eric L. Bernthal, Esq., Kevin C. Boyle, Esq., Steven H. Schulman, Esq., Latham & Watkins, 1001 Pennsylvania Avenue, NW., Suite 1300, Washington, DC 20004 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–79, adopted March 25, 1996, and released April 24, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10852 Filed 5–1–96; 8:45 am]

BILLING CODE 6712–10–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–06; Notice 11]

RIN [2127–AG35]

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems; Light Vehicle Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to extend the requirements of Federal motor vehicle safety standard (FMVSS) No. 135, *Passenger Car Brake Systems,* to trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds (4,536 kilograms) or less. As a result, manufacturers of such vehicles have the option of complying with either FMVSS No. 105 or FMVSS No. 135 for an interim five year period, after which all light vehicles would have to comply with FMVSS No. 135. The agency believes that such an amendment would be consistent with the agency's policy of achieving international harmonization whenever possible, consistent with the statutory mandate to ensure motor vehicle safety.

DATES: *Comment Period:* Comments on this notice must be received by NHTSA no later than July 1, 1996.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Mr. Robert M. Clarke, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 366–5278.

For legal issues: Mr. Marvin L. Shaw, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 366–2992.

SUPPLEMENTARY INFORMATION:

I. Background

On February 2, 1995, the National Highway Traffic Safety Administration (NHTSA) published a final rule establishing a new Federal motor vehicle safety standard (FMVSS) No. 135, *Passenger Car Brake Systems* (60 FR 6411). This standard resulted from the agency's efforts to harmonize U.S. brake standards with international brake standards. FMVSS No. 135 applies only to passenger cars. Between March 6, 1995 and August 31, 2000, manufacturers of passenger cars have the option of complying with either FMVSS No. 105 or FMVSS No. 135. After September 1, 2000, all passenger cars must comply with the requirements of FMVSS No. 135, while all other vehicles with hydraulic brakes, including light vehicles [1] other than passenger cars, still must meet the requirements of FMVSS No. 105.

NHTSA is considering whether to extend the applicability of FMVSS No. 135 to all light vehicles. FMVSS No. 105 would continue to apply to vehicles with a GVWR greater than 10,000 pounds (i.e., medium and heavy hydraulically-braked vehicles). If this change is adopted, FMVSS No. 135 would be retitled *Light Vehicle Brake Systems.*

In comments submitted in response to the agency's July 3, 1991 supplemental proposed rulemaking (SNPRM) on this subject (56 FR 30528), Kelsey-Hayes asked whether the rule would apply to all purpose vehicles, mini-vans, and light trucks, as well as to passenger cars. In the final rule, NHTSA decided to apply FMVSS No. 135 only to passenger cars, but stated it might consider applying FMVSS No. 135 to all light vehicles at a later date.

In its petition for reconsideration to the final rule, General Motors (GM) requested, among other things, that the agency consider applying FMVSS No. 135 to all hydraulically-braked light vehicles. GM stated that the United Nations Economic Commission for Europe (ECE) Regulation R13–H was being developed with the intention of applying it to all light vehicles. That company further stated that ''it would be desirable to have a single brake

[1] Those vehicles with a gross vehicle weight rating (GVWR) of 10,000 lbs. (4,536 kilograms) or less.

standard applicable to all hydraulically-braked vehicles, as has traditionally been the case with FMVSS No. 105.'' GM stated its belief that FMVSS No. 135 was superior to FMVSS No. 105 and that extending its applicability ''* * * could lead to genuinely improved brake systems for MPV and LTV customers.''

II. Agency Proposal

After reviewing GM's petition, NHTSA has decided to propose applying FMVSS No. 135 to all light vehicles. As a result, manufacturers of such vehicles have the option of complying with either FMVSS No. 105 or FMVSS No. 135 for an interim five year period, after which all light vehicles would have to comply with FMVSS No. 135. The agency believes that such an amendment would be consistent with the agency's policy of achieving international harmonization whenever possible and appropriate, consistent with the statutory mandate to promote motor vehicle safety. In establishing FMVSS No. 135, NHTSA stated that the new standard would differ from the existing one (FMVSS No. 105) primarily in containing a revised test procedure based on harmonized international procedures developed during discussions held between NHTSA and the Meeting of Experts on Brakes and Running Gear (GRRF) of the ECE. NHTSA stated that the new FMVSS would ensure the same level of safety for the aspects of performance covered by FMVSS No. 105, while improving safety by addressing some additional safety issues.

At the agency's June 28, 1995 and September 22, 1995 quarterly public meetings addressing NHTSA's regulatory activities, agency personnel requested comments about whether the agency should apply FMVSS No. 135 to all light vehicles. The agency has received no comments, either in favor or in opposition to such an action. The agency further notes that in 1995, domestic light truck manufacturers were voluntarily equipping 56 percent of their annual production with 4-wheel antilock brake systems (ABS). The agency notes that a light vehicle equipped with ABS would more easily comply with FMVSS No. 135, particularly the adhesion utilization requirements. Market trends and manufacturers' public pronouncements indicate that a significant majority of light vehicles will be equipped with four-wheel ABS in the near future. Based on these considerations, NHTSA believes that vehicle manufacturers are already planning to voluntarily design and equip their products with brake systems that would comply with FMVSS No. 135's requirements, including those dealing with adhesion utilization and variable proportioning functional failures.

Accordingly, the agency proposes to amend Section S3. *Application,* to apply FMVSS No. 135 to trucks, buses, and multipurpose passenger vehicles with a GVWR of 10,000 pounds (4,536 kilograms) or less. The agency notes that FMVSS No. 105 has some requirements that differ depending on the vehicle's GVWR. Nevertheless, the agency is aware of no reasons why the requirements of FMVSS No. 135 which relate to equipment, dynamic road test procedures and required stopping performance, system failures, and parking brake test procedures and performance should be different for these vehicles than they are for passenger cars. Nevertheless, the agency specifically invites comments, along with supporting data, that might alter that tentative conclusion.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impacts of this rulemaking action and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The agency believes that FMVSS No. 135 would ensure an equivalent level of safety for those aspects of performance covered by FMVSS No. 105 and that it would also address additional areas of brake performance which offer added safety benefits. The agency believes that manufacturers are already planning, prior to the date on which compliance with this standard would become mandatory, to voluntarily equip their light vehicles with brake systems that would meet the requirements of FMVSS No. 135. Thus, the application of this standard to those vehicles would not impose costs on manufacturers beyond those they otherwise voluntarily plan to incur. Applying this rule to all light vehicles would offer the possibility of reducing the production costs for these vehicles. Further, the agency believes that manufacturers' compliance verification costs, attributable to the full test procedure in the new standard, would be approximately the same as those attributable to the existing procedure under FMVSS No. 105. Based on the above considerations, NHTSA believes that the impacts are so minimal as not to warrant preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of both this proposal under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

NHTSA concluded that the February 1995 final rule had no significant impact on a substantial number of small entities. That conclusion is equally valid for this proposal to extend the application of this rule to include all light vehicles. Accordingly, the cost savings would be so small that they would not likely affect vehicle sales.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act of 1969. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment. No changes in existing production or disposal processes result.

D. Executive Order 12612 (Federalism)

NHTSA has analyzed this action under the principles and criteria in Executive Order 12612. The agency believes that this rulemaking action would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. No State laws would be affected.

E. Civil Justice Reform

This rulemaking would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of rulemakings establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50

2. Section 571.105 would be amended by revising S3, to read as follows:

§ 571.105 Standard No. 105; Hydraulic Brake Systems.

* * * * *

S3. *Application*. This standard applies to hydraulically-braked vehicles with a GVWR greater than 10,000 pounds. This standard applies to hydraulically-braked passenger cars manufactured before September 1, 2000, and to hydraulically-braked multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less that are manufactured before September 1, 2002. At the option of the manufacturer, hydraulically-braked passenger cars manufactured before September 1, 2000, and hydraulically-braked multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less manufactured before September 1, 2002, may meet the requirements of Federal Motor Vehicle Safety Standard No. 135, *Light Vehicle Brake Systems* instead of this standard.

* * * * *

3. Section 571.135 would amended by revising the heading and section S3. to read as follows:

§ 571.135 Standard No. 135; Light Vehicle Brake Systems

* * * * *

S3. *Application*. This standard applies to hydraulically-braked passenger cars manufactured on and after September 1, 2000, and to hydraulically-braked multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating (GVWR) of 10,000 pounds (4,536 kilograms) or less, manufactured on and after September 1, 2002. In addition, at the option of the manufacturer, passenger cars manufactured before September 1, 2000, and multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less. (4,536 kilograms), manufactured before September 1, 2002, may meet the requirements of this standard instead of Federal Motor Vehicle Safety Standard No. 105, *Hydraulic Brake Systems*.

* * * * *

Issued on: April 25, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–10793 Filed 5–1–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[I.D. 041996D]

Mid-Atlantic Fishery Management Council; Public Hearing

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

ACTION: Public hearing; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold a public hearing to allow for input on Amendment 9 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (FMP).

DATES: Written comments will be accepted until May 10, 1996. The hearing will be held on Tuesday, May 14, 1996, at 6 p.m.

ADDRESSES: Send comments to David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The public hearing will be held at the Doubletree Inn, 4101 Island Avenue, Philadelphia, PA (1–800–222–TREE).

FOR FURTHER INFORMATION CONTACT: David R. Keifer, (302) 674–2331; fax (302) 674–5399.

SUPPLEMENTARY INFORMATION: The Council proposes to revise the overfishing definitions for surf clams and ocean quahogs under Amendment 9. The amendment is intended to bring the FMP into compliance with the guidelines in 50 CFR 602 that mandate a quantifiable definition of overfishing in all FMPs. Overfishing is currently defined as the catch of surf clams or ocean quahogs exceeding the annual quota for each species. The provisions of the FMP contain annual quotas, vessel allocations, and other provisions for cage identification, minimum size limits, closed areas, and reporting. Overfishing of surf clams and ocean quahogs has not occurred, given the existing stock conditions during the past two decades of management. However, NMFS has concluded that a stronger biological basis is needed for the overfishing definitions for these species, in part due to the lack of strong recruitment in recent years.

The preferred alternative overfishing definition for surf clams is a fishing mortality rate of $F_{20\%}$ (20 percent of the maximum spawning potential (MSP), which equates to an annual exploitation rate of 15.3 percent. The preferred alternative overfishing definition for ocean quahogs is a fishing mortality rate of $F_{25\%}$ (25 percent of the MSP), which equates to an annual exploitation rate of 4.3 percent.

Alternative overfishing definitions for surf clams are:

1. A fishing mortality rate of F_{max}, which corresponds to an annual exploitation rate of 16.5 percent.

2. The Council's current optimum yield (OY) for surf clam ranges from 1,850,000 to 3,400,000 bushels. The Council policy is to set the quota within an OY range that will allow fishing to continue at that level for at least 10 years. Within the above constraint, the quota is set at a level that will meet estimated annual demand.

Alternative overfishing definitions for ocean quahogs are:

1. A fishing mortality rate of $F_{20\%}$, which corresponds to an annual exploitation rate of 5.8 percent.

2. A fishing mortality rate of $F_{30\%}$, which corresponds to an annual exploitation rate of 3.5 percent.

3. A fishing mortality rate of F_{max}, which corresponds to an annual exploitation rate of 6.8 percent.

4. The Council's current OY for ocean quahog ranges from 4,000,000 to 6,000,000 bushels. The Council policy is to set the quota within an OY range that will allow fishing to continue at that level for at least 30 years. Within the above constraint, the quota is set at a level that will meet estimated annual demand.

This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to David R. Keifer (see **ADDRESSES**) at least 5 days prior to the meeting date.

The hearing will be tape recorded with the tapes filed as the official transcript of the hearing.

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

Dated: April 25, 1996.

Richard W. Surdi,

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

[FR Doc. 96–10841 Filed 5–1–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 86
Thursday, May 2, 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

Forest Service

GRIFFON Project; Humboldt-Toiyabe National Forests, White Pine County, Nevada

AGENCY: Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will be directing the preparation of an Environmental Impact Statement (EIS) for the proposed development of an open pit gold mining project in the White Pine Range northwest of Ellison Guard Station in White Pine County, Nevada (T14N, R58N, sec 24 & 25). This EIS will be prepared by contract and funded by the proponent, Alta Gold Company. (Alta).

DATES: Written comments concerning the scope of the analysis should be received by May 31, 1996 to ensure timely consideration.

ADDRESSES: Send written comments to: David Valenzuela, Project Team Leader, Ely Ranger District, Humboldt-Toiyabe National Forests, PO Box 539, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed project and preparation of the EIS to David Valenzuela, Project Team Leader, at the same address, Telephone: 702–289–3031.

SUPPLEMENTARY INFORMATION: Alta has submitted to the Humboldt-Toiyabe National Forests, a Proposed Plan of Operations (POO) for a new mine in White Pine County, Nevada. The POO describes the proposed mining development activities and operational and reclamation procedures for the GRIFFON Project. The proposal includes developing two open pits. Waste rock dumps, soil stockpiles, ore stockpile, haul roads and support facilities would also be developed. Ore would be processed at a proposed mill-site located on the project site.

The proposal would affect approximately 161 acres of public lands. Preliminary internal scoping has identified several issues which would be addressed in the analysis process. The following list of issues is not intended to be all inclusive. They are: impacts to ground and surface water resources; impacts to grazing resources; impacts to Waters of the United States including wetlands; mine economics; threatened, endangered, and sensitive plant and wildlife species; and visual resources. These issues and any others identified during the scoping process may be used to develop alternatives to the proposed action. In addition, the No Action alternative will be considered in the analysis.

Public participation is important during the EIS scoping process. As part of the scoping process, the Forest Service will be seeking information and comments from Federal, State, County and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. This input will be used in the preparation of the draft EIS and Final EIS.

Several government agencies will be invited to participate in this project as cooperating or participating agencies. These agencies include, but are not limited to, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Nevada Division of Environmental Protection, Nevada Division of Wildlife, and White Pine County Board of Commissioners. In addition to the Plan of Operations, various Federal, State, and local permits and licenses may be required to implement the proposed action. These may include, but are not limited to, a Section 404 permit, Water Pollution Control Permit, Reclamation Permit for Mining Operations, and a General Discharge Permit for Stormwater.

The Forest Service is the lead agency for this project and Monica J. Schwalbach, Assistant Forest Supervisor for the Central Nevada Ecosystem of the Humboldt-Toiyabe National Forests is the responsible official. She will make a decision to approve the proposed Plan of Operations or one of the alternatives analyzed. Alta's rights under the 1872 Mining Law as amended, applicable Forest Service regulations and the Humboldt National Forest Land and Resource Management Plant (1986) will be taken into account throughout the analysis.

The Draft EIS is expected to be filed with the U.S. Environmental Protection Agency (EPA) and be available for review in November 1996. At that time, EPA will publish a Notice of Availability of the Draft EIS in the Federal Register.

The comment period on the Draft EIS will be at least 45 days from the date the EPA's notice of availability appears in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated or discussed in the statement. Reviewers may wish to refer to the Council on Environmental

Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Pursuant to 7 CFR, Part 1, Subpart B, Section 1.27, all written submissions in response to this notice shall be made available for public inspection including the submitter's name, unless the submitter specifically requests confidentiality. Anonymous comments will be not accepted. All written submissions from business entities and organizations, submitted on official letterhead, in response to this notice shall be made available for public inspection in their entirety.

Dated: April 22, 1996.

Monica J. Schwalbach

Assistant Forest Supervisor, Central Nevada Ecosystem, Humboldt-Toiyabe National Forests.

[FR Doc. 96–10847 Filed 5–1–96; 8:45 am]

BILLING CODE 3410–11–M

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on May 6 and May 7, 1996 at the Best Western Miner's Inn Conference Room, 122 East Miner Street, Yreka, California. The meeting will begin at 10 a.m. on May 6 and adjourn at 4:30 p.m. The meeting will reconvene at 8 a.m. on May 7 and continue until 4:00 p.m. Agenda items to be covered include: (1) Monitoring (both President's Forest Plan and Forest Plan); (2) salvage timber sale monitoring; (3) Trinity County proposed special legislation; (4) land management services contracting and existing timber contract authorities; (5) standing committee reports; and (6) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1309.

Dated April 26, 1996.

Barbara Holder,

Designated Federal Official.

[FR Doc. 96–10883 Filed 5–1–96; 8:45 am]

BILLING CODE 3410–11–M

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on May 21, 1996, at the Visiting Nursing Bingo Hall (near the SW Washington Fairgrounds), in Chehalis, Washington. The purpose of the meeting is to review the Advisory Committee vision, role and function. The meeting will begin at 9 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Determine actions on Advisory Committee recommendations, (2) Develop ''Vision'' for the Southwest Washington Province, (3) Reassess Watershed Restoration Priorities, (4) U.S. Fish and Wildlife Service presentation on watershed restoration activities on non-Federal lands, (5) Presentation on Forest Plan Allocations and their relationship to timber harvest levels, and (6) Public Open Forum.

All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The open forum is scheduled as part of agenda item (1) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Sue Lampe, Public Affairs, at (360) 750–5091, or write Forest Headquarters Office, Gifford Pinchot National Forest, P.O. Box 8944, Vancouver, WA 98668–8944.

Dated: April 25, 1996.

Robert L. Yoder,

Designated Federal Official.

[FR Doc. 96–10912 Filed 5–1–96; 8:45 am]

BILLING CODE 3410–11–M

Rural Telephone Bank

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Wednesday, May 8, 1996.

PLACE: Room 5066, South Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: General discussion involving privatization planning; update on legislative issues affecting the Bank and RUS telecommunications loan programs; retirement of Class A stock; draft Annual Report of the Board for FY 1995; status of State Telecommunications Modernization Plans; and schedule of events for upcoming election of Board Directors.

ACTION: Regular meeting of the Board of Directors.

TIME AND DATE: 9 a.m., Thursday, May 9, 1996.

PLACE: Williamsburg Room, Jamie L. Whitten Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order.
2. Action on Minutes of February 2, 1996, Board meeting.
3. Report on loans approved second quarter FY 1996.
4. Summary of financial activity for second quarter FY 1996.
5. Report of ad hoc committee on privatization of the Bank.
6. Board direction to the RUS staff as to future actions the staff should be taking regarding privatization planning.
7. Consideration of resolution to adopt schedule for various actions in connection with the November 1996 Board of Directors election.
8. Consideration of resolution to appoint Tellers for the November 1996 Board of Directors election.
9. Action on the Bank's Annual Report for FY 1995.
10. Establish date and location of next regular Board meeting.
11. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Barbara L. Eddy, Deputy Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: April 29, 1996.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 96–11098 Filed 4–30–96; 2:21 pm]

BILLING CODE 3410–15–M

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATES: May 13–14, 1996.

PLACE: ARRB, 600 E Street, NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting.
2. Review of Assassination Records.
3. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

T. Jeremy Gunn,

General Counsel.

[FR Doc. 96–11096 Filed 4–30–96; 2:21 pm]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

2000 Census Advisory Committee

AGENCY: Economics and Statistics Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Public Law 94–409), we are giving notice of a meeting of the 2000 Census Advisory Committee. The meeting will convene on Thursday, May 16, 1996, at 8:30 a.m. at the Embassy Row Hotel, 2015 Massachusetts Avenue NW., Washington, DC 20036, and adjourn on Friday, May 17 at 4:30 p.m.

The Advisory Committee is composed of a Chair, Vice Chair, and up to thirty-five member organizations, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of Census 2000 and user needs for information provided by that census, and provide a perspective from the standpoint of the outside user community about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the 2000 census of population and housing, and shall make recommendations for improving that census.

DATES: On Thursday, May 16, 1996, the meeting will begin at 8:30 a.m. and adjourn for the day at 4:30 p.m. On Friday, May 17, 1996, the meeting will begin at 8:30 a.m. and adjourn at 4:30 p.m.

ADDRESS: The meeting will take place at the Embassy Row Hotel, 2015 Massachusetts Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Anyone wishing additional information about this meeting, or who wishes to submit written statements or questions, may contact Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 3039, W. Edwards Deming Building, Washington, D.C. 20233, telephone: 301–457–2308.

SUPPLEMENTARY INFORMATION: A brief period will be set aside for public comment and questions. However, individuals with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Maney; her telephone number is 301–457–2308.

Dated: April 26, 1996.

Everett M. Ehrlich,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 96–10973 Filed 5–1–96; 8:45 am]

BILLING CODE 3510–BS–M

International Trade Administration

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 May 1996.

EFFECTIVE DATE: May 2, 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

Argentina, Rectangular Carbon Steel Tubing, A–357–802, 54 FR 22794, May 26, 1989, Contact: Tom Killiam at (202) 482–2704

Brazil, Iron Construction Castings, A–351–503, 51 FR 17220, May 9, 1986, Contact: Hermes Pinilla at (202) 482–3477

India, Pipes and Tubes, A–533–502, 51 FR 17384, May 12, 1986, Contact: Davina Hashmi at (202) 482–4733

Japan, Impression Fabric, A–588–066, 43 FR 22344, May 25, 1978, Contact: Lyn Johnson at (202) 482–5287

South Korea, Malleable Cast Iron Pipe Fittings, Other than Grooved, A–580–507, 51 FR 18917, May 23, 1986, Contact: Thomas Schauer at (202) 482–4852

Taiwan, Certain Welded Carbon Steel Pipe & Tubes, A–583–008, 49 FR 19369, May 7, 1984, Contact: Michael Heaney at (202) 482–4475

Taiwan, Malleable Cast Iron Pipe Fittings, Other Than Grooved, A–583–507, 51 FR 18918, May 23, 1986, Contact: Laurel LaCivita at (202) 482–4740.

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 May 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: April 26, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–10986 Filed 5–01–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 042696B]

Small Takes of Marine Mammals Incidental to Specified Activities; Lockheed Launch Vehicles at Vandenberg Air Force Base, CA

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the U.S. Air Force for continuation of an authorization to take small numbers of harbor seals by harassment incidental to launches of Lockheed launch vehicles (LLVs) at Space Launch Complex 6 (SLC–6), Vandenberg Air Force Base, CA (Vandenberg). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to continue to authorize the incidental take, by harassment, of small numbers of harbor seals in the vicinity of Vandenberg for a period of 1 year.

DATES: Comments and information must be received no later than June 3, 1996.

ADDRESSES: Comments on the application should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the application and previous Federal Register notices on this action may be obtained by writing to this address or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Irma Lagomarsino, Southwest Regional Office at 310–980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

Public Law 103–238, the Marine Mammal Protection Act Amendments of 1994, added a new subsection 101(a)(5)(D) to the MMPA to establish an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to 1 year. The MMPA defines ''harassment'' as:

> '' * * *any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.''

New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On April 1, 1996, NMFS received an application from the U.S. Air Force, Vandenberg, requesting continuation of an authorization for the harassment of small numbers of harbor seals incidental to launches of LLVs at SLC–6, Vandenberg. These launches would place commercial payloads into low earth orbit using its family of vehicles (LLV–1, LLV–2 and LLV–3). Because of the requirements for circumpolar trajectories of the LLV and its payloads, the use of SLC–6 is the only feasible alternative within the United States. As a result of the noise associated with the launch itself and the resultant sonic boom, these noises have the potential to cause a startle response to those harbor seals that haul out on the coastline south and southwest of Vandenberg and may be detectable to marine mammals west of the Channel Islands. Launch noise would be expected to occur over the coastal habitats in the vicinity of SLC–6 while low-level sonic booms could be heard west of the Channel Islands.

Description of Habitat and Marine Mammals Affected by LLVs

The only marine mammal anticipated to be incidentally harassed by LLV launches is the harbor seal (*Phoca vitulina*). A description of the Southern California Bight population of harbor seals was provided on May 10, 1995 (60 FR 24840) in conjunction with publication of the previous notice of application for this activity. Interested reviewers are encouraged to refer to that document for the appropriate discussion. This document is available from NMFS (see **ADDRESSES**).

Potential Effects of LLV Launches on Marine Mammals

The effect on harbor seals would be disturbance by sound which is anticipated to result in a negligible short-term impact to small numbers of harbor seals that are hauled out at the time of LLV launches. No impacts are anticipated to animals that are in the water at the time of launch. Detailed descriptions of the expected impact from rocket launches on harbor seals and other marine mammals have been provided in previous notices (60 FR 24840, May 10, 1995; 60 FR 38308, July 26, 1995; 60 FR 43120, August 18, 1995; 60 FR 52653, October 10, 1995; and 61 FR 10727, March 15, 1996) and are not repeated here. These documents are available from NMFS (see **ADDRESSES**).

Conclusions

Based upon information provided by the applicant, and previous reviews of the incidental take of harbor seals by this activity, NMFS believes that the short-term impact of the launching of

LLVs is expected to result at worst, in a temporary reduction in utilization of the haulout as seals leave the beach for the safety of the water. The launching is not expected to result in any reduction in the number of harbor seals, and they are expected to continue to occupy the same area. In addition, there will not be any impact on the habitat itself. Based upon studies conducted for previous space vehicle launches at Vandenberg, significant long-term impacts on harbor seals at Vandenberg are unlikely.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization for 1 year for launches of LLVs at SLC–6 provided the monitoring and reporting requirements currently in effect are continued. NMFS has preliminarily determined that the proposed launches of LLVs at SLC–6 would result in the harassment taking of only small numbers of harbor seals, will have a negligible impact on the harbor seal stock and will not have an unmitigable adverse impact on the availability for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see ADDRESSES).

Dated: April 25, 1996.

Patricia A. Montanio,

Acting Office Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–10867 Filed 5–1–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 042296B]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will convene a public meeting of its salmon stock review team for Puget Sound chinook and Strait of Juan de Fuca coho salmon stocks.

DATES: The meeting will be held on May 15, 1996, beginning at 10 a.m.

ADDRESSES: The meeting will be held at the Point-No-Point Treaty Council office, 7999 NE Salish Lane, Kingston, WA 98346; telephone: (360) 297–3422.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Fishery Management Coordinator (Salmon); telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to complete a review of the status of some Puget Sound chinook and Strait of Juan de Fuca coho stocks as required under the Council's salmon fishery management plan when a stock fails to meet its spawning escapement objective for three consecutive years. This meeting will focus on Strait of Juan de Fuca coho.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Lawrence D. Six at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: April 24, 1996.

Richard W. Surdi,

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

[FR Doc. 96–10842 Filed 5–1–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 042396A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will convene a public meeting of an ad-hoc work group to review, prioritize and recommend a schedule for developing amendments to the salmon fishery management plan.

DATES: The meeting will be held on May 13, 1996, beginning at 10 a.m.

ADDRESSES: The meeting will be held at the Council office.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Fishery Management Coordinator (Salmon); telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: Several potential amendments to the salmon fishery management plan were raised during a scoping session at the Council's April 1996 meeting. Due to the number and complexity of the issues and the limited time available, the Council elected to convene a work group to provide an initial review of the amendment issues and provide recommendations to the Council at the next Council meeting. The amendment issues include:

(1) incorporating formal management objectives for stocks listed under the Endangered Species Act;

(2) allowing the landing of salmon caught incidentally in the Pacific whiting trawl fishery for the purpose of monitoring the bycatch;

(3) updating the framework plan;

(4) responding to requirements resulting from the reauthorization of the Magnuson Fishery Conservation and Management Act;

(5) review of the overfishing definition; and

(6) consideration of management recommendations from the recent National Research Council report on salmon.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: April 23, 1996.

Richard W. Surdi,

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

[FR Doc. 96–10843 Filed 5–1–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 042496A]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint public meeting of its Snapper Grouper Committee, Controlled Access Committee, Snapper Grouper Advisory Panel; and a joint meeting of its Executive and Finance Committees.

DATES: The meetings will be held on May 20–22, 1996. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (803) 571-1000.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information

Officer; telephone: (803) 571-4366; fax: (803) 769-4520; E-mail: Susan_Buchanan@safmc.nmfs.gov.

SUPPLEMENTARY INFORMATION:

Meeting Dates

May 20, 1996, 1:30 p.m. to 5:30 p.m. and May 21, 1996, 8:30 a.m. to 12:00 noon.

The Snapper Grouper and Controlled Access Committees will meet jointly with the Snapper Grouper Advisory Panel to review the draft options paper for Amendment 9 to the Snapper Grouper Fishery Management Plan (FMP), and develop recommendations for options to be included in the amendment for public hearing.

May 21, 1996, 1:30 p.m. to 5:30 p.m. and May 22, 1996, 8:30 a.m. to 12:00 noon.

The Snapper Grouper and Controlled Access Committees will meet jointly with the Snapper Grouper Advisory Panel to review a videotape on the Oculina Bank HAPC (Habitat Area of Particular Concern). They will then review the draft options paper for Amendment 8 to the Snapper Grouper FMP and develop recommendations for options to be included in the amendment for public hearing.

May 22, 1996, 1:30 p.m. to 5:00 p.m.

The Executive and Finance Committees will meet jointly. The Executive Committee will review and develop recommendations for the Fiscal Year 1997 Council activities schedule. The Finance Committee will develop the Fiscal Year 1997 budget for presentation to the Council in June.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by May 14, 1996.

Dated: April 25, 1996.

Richard W. Surdi,

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

[FR Doc. 96–10844 Filed 5–1–96; 8:45 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

Notice of Hearing and Request for Comments on a Technical Documentation Strategy

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of a hearing and request for public comments.

SUMMARY: The Patent and Trademark Office (PTO) will hold a public hearing and is seeking written comments to obtain views of the public on the effort of the PTO to make technical documentation accessible to patent examiners and the public while adhering to certain constraints on financial and personnel resources. Interested members of the public are invited to testify at a public hearing and to present written comments on the topics outlined in this notice or on any aspect of this effort.

DATES: A public hearing will be held at 9:00 a.m. on Friday, May 31, 1996

Requests to present oral testimony at the public hearing should be received on or before May 30, 1996.

Any written comments by those persons offering testimony at the hearings and related to that testimony should be submitted on or before May 30, 1996.

Other written comments will be accepted until June 7, 1996.

ADDRESSES: The hearing will be held in the Commissioner's Conference Room (Room 912), Crystal Park Two, 2121 Crystal Drive, Arlington, Virginia.

Persons wishing to speak at the hearings must notify Mr. Lee Schroeder, in writing marked to his attention at Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231, or by telephone (703) 305–9300 or by telefax at (703) 305–8885, in order to be placed on a list of speakers for the hearing.

Persons wishing to offer written comments should address those comments to the Commissioner of Patent and Trademarks, Box 4, Patent and Trademark Office, Washington, DC 20231, marked to the attention of Mr. Lee Schroeder.

Written comments and transcripts of the hearing will be available for public inspection in Room 902 of Crystal Park Two, at 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Schroeder by telephone at (703) 305–9300, by telefax at (703) 305–8885 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

1. Background

The PTO currently makes technical documentation (foreign and domestic patent and non-patent literature in many forms) available to persons within the PTO for use in the patent examination process. Much of the documentation is accessible through use of the United States Patent Classification System (USPCS). The same documentation is made available to members of the public for use as a source of technical information or for other patent-related uses.

To better use the limited financial and personnel resources available to the PTO, certain changes have been made in the documentation area. Less emphasis is being placed on the continuing reclassification of the documentation in the USPCS and the classification of new foreign patent copies and more reliance is being placed on the classification efforts of other countries and the use of more sophisticated electronic search tools.

To be more specific, the PTO is placing increased reliance on the many commercial data bases of technical information as well as data bases maintained by the PTO. These data bases cover foreign and domestic patent and non-patent literature. The PTO is also placing increased reliance on the classifying, abstracting and summarizing efforts of documentation by both domestic and foreign private entities and also by foreign government or intergovernmental entities. Consequently, less reliance is being placed on the reclassification effort within the PTO. Also, the PTO no longer classifies new foreign patents in the USPCS.

The public's views are sought on the increased reliance on the work of others in the classifying, abstracting and summarizing of documentation and less reliance on the USPCS and classification efforts of persons within the PTO. Public views are also sought on the increased reliance on computerized searching aids, be they full text data bases or data bases of abstracted material, classified or not. Public views are also sought on placing increased reliance on data bases and other sources to at least identify such documents after which a full-text copy of the document could be obtained.

Written comments may be offered on the questions posed below. Comments will also be accepted on any other aspects of the approach of the PTO to make technical information available both to patent examiners and the public.

2. Questions for the Hearing

The public hearing will be held to receive comments on the following specific questions:

A. Are the classification efforts of others (using systems or data bases of classification different from the United States Patent Classification System) able to replace, or partially replace the

United States Patent Classification System?

B. Are the public users of the classified technical information systems of the Patent and Trademark Office willing to contribute, or contribute more, toward ever increasing costs of maintaining these systems?

C. Since the usefulness of automated search tools is affected by the characteristics of the technology being searched, should the Patent and Trademark Office tailor the search system by technology rather than maintaining the USPCS for all technologies?

D. Since it is known that different search tools and techniques lead to different search results (e.g., different results from text or structure search vs. classified image search), are automated assisted searches acceptable if there is an overall improvement in the quality of the patentability search?

E. Advances contemplated in future search systems permit the examiner to add value to the data base while conducting a search by adding or changing classifications for a document, inserting markers and notes on a document, adding documents, etc. This value-added capability leads to search files that exist only in electronic form and which are constantly being upgraded.

1. Does the public need access to the examiner's search file?

2. For post-prosecution/litigation purposes, does the public need to know what is in the examiner's search file at the time the examiner made the search?

F. How should the Patent and Trademark Office approach the issue of classification and retrieval of prior art in view of the current state of the art in the electronic document search and retrieval area, and expected developments in this area, including fully paperless patent and non-patent data bases?

Dated: April 26, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–10930 Filed 5–1–96; 8:45 am]

BILLING CODE 3510–16–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 3, 1996.

PLACE: 1155 21st St. N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–11104 Filed 4–30–96; 3:03 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 10, 1996.

PLACE: 1155 21st St. NW., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–11105 Filed 4–30–96; 3:03 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Tuesday, May 14, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–11106 Filed 4–30–96; 3:03 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Thursday, May 30, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–11107 Filed 4–30–96; 3:03 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 31, 1996.

PLACE: 1155 21st St. NE., Washington, DC. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–11108 Filed 4–30–96; 3:03 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 24, 1996.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–11109 Filed 4–30–96; 3:03 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 17, 1996.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–11110 Filed 4–30–96; 3:30 pm]

BILLING CODE 6351–01–M

Privacy Act of 1974: System of Records

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of new system of records.

SUMMARY: The Commodity Futures Trading Commission is updating its systems of records maintained under the Privacy Act to include data from the electronic key card systems used by the Commission in its Headquarters Office in Washington, D.C. and its regional offices in Chicago, Los Angeles and Kansas City. A similar electronic system is expected to be in place in the Commission's Minneapolis, Minnesota office in 1997. This notice is intended to inform the public of the existence and character of this system of records. The Commission is also proposing routine uses for this system.

DATES: Effective date of system: June 11, 1996, unless comments are received by the Commission which require a different determination.

Comments concerning routine uses must be received on or before June 3, 1996.

ADDRESSES: Comments concerning routine uses should be addressed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Susan Nathan, Office of General Counsel, (202) 418–5120, Lisa La Chance, Office of Administrative Services, (202) 418–5167, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and the Commission's implementing regulations, 17 CFR part 146, the Commission is publishing a description of a new system of records. The Commission's Office of Administrative Services is responsible for the Commission's physical plant, including leasing, maintenance and physical security. Generally, leases for Commission office space include provisions that the landlord is to provide adequate security, at least comparable to industry norms for the geographic area, to include an electronic key card system which will, *inter alia,* limit physical access to some or all of the space leased by the Commission. The key card systems for the headquarters, Kansas City and Los Angeles locations are maintained by the respective landlords. The key card system for the office suites in the Commission's Chicago office is maintained by the Commission, while the after business hours key card system for the elevators in the Chicago office is maintained by the landlord.

As part of such a system, Commission employees are each provided with separately identifiable key cards and each use of any key card is recorded on the landlord's computerized tracking system, or the Commission's system in the case of the Chicago office. Similarly, representatives of the landlords, including maintenance and custodial personnel have key cards. Visitors may be temporarily issued key cards by the Commission.

Upon request to a landlord by the Director, Office of Administrative Services (or his/her designee), the landlord will provide a print-out of recorded use of one or more key cards within a block of time. Printouts usually contain the number of the key card and the name of the person to whom that key card is assigned.

Principally this system of records consist of the data obtained from a landlord. It also includes, however, the records maintained by the Commission for the Chicago office suite. None of the Commission's landlords is a government entity, and the system of records does not include any information on usage of key cards held solely by a landlord. Accordingly, no person may, under section 552a(d), obtain information concerning material solely in a landlord's possession concerning themselves, *see* Notification Procedures, *infra.* If should be noted, however, that the Commission's landlords represent that in the ordinary course they retain this data for no more than six months. The Commission retains its records for the Chicago office for about 90 days.

The principal purposes of the key card system relate to security of personnel and property. Information about usage may, however, be accessed for security and non-security purposes.

Thus, in the case of a theft on agency premises, a printout or similar document would be obtained showing entries into the relevant portion of the premises. This information might be conveyed to local or other law enforcement authorities. If a question arose whether an agency employee had in fact been at his or her workstation during non-business hours for purposes of a claim for overtime pay, the records of key card usage might be accessed to confirm or rebut the claim. The Commission does not, however, use the key card system for regular, routine time and attendance purposes. See 5 U.S.C. 6106. The system may also be used for analysis of traffic and similar space usage purposes and may be accessed as part of service of data processing systems.

Accordingly, the Commission proposes the establishment of the following system of records:

CFTC–33

SYSTEM NAME:

Electronic key card usage.

SYSTEM LOCATION:

Office of Administrative Services, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW., Washington, DC 20581.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 2(a)(2)(A)(b) and 12(b)(3), Commodity Exchange Act, 7 U.S.C. 4a(e) and 16(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Commission's ''General Statement of Routine Uses,'' Nos. 1, 2, 6 and 7, Privacy Act Issuances, 1991 Comp., Vol. IV, p. 144. In addition, information contained in this system may be disclosed by the Commission (1) to any person in connection with architectural, security or other surveys concerning use of office space and (2) to employees and contractors for the purpose of maintenance or service of data processing systems.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer diskettes and computer memory.

RETRIEVABILITY:

By name of the subject, by assigned key card number, by time period and by entry point.

SAFEGUARDS:

Information from the Commission's landlords' data bases may only be requested from the landlords by the Director of the Office of Administrative Services, or his/her designee. The Commission maintains all key card usage records in limited access areas at all times.

RETENTION AND DISPOSAL:

In accordance with the general record schedules and the Commission's record management handbook the records in the system are considered temporary and are destroyed when no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administrative Services, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records or contesting the content of records about themselves should address written inquiries to the FOIA, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581. The system of records and the notification, access and challenge procedures apply only to records of key card usage in the Commission's actual possession. None of these applies to any information solely in a landlord's possession.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures,'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures,'' above.

RECORD SOURCE CATEGORIES:

With one exception, information in the system is supplied by the Commission's landlords, typically on request. Information supplied is a record of use of electronic key cards and in that sense the information is obtained directly from the users of the key cards. Information in the data base maintained in Chicago by the Commission itself is also merely recorded usage of electronic key cards and similarly is obtained directly from the user of the key card.

Issued in Washington, DC, on April 26, 1996, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–10866 Filed 5–1–96; 8:45 am]

BILLING CODE 6351–01

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, May 10, 1996, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of April 12, 1996 Meeting
III. Announcements
IV. Staff Director's Report
V. General Programmatic Theme—FY 1998—
VI. Commission's Subpoena Power
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION:

Barbara Brooks, Press and Communications (202) 376–8312.

Dated: April 30, 1996.

Stephanie Y. Moore,

Acting Solicitor.

[FR Doc. 96–11095 Filed 4–30–96; 2:21 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated For Realignment: Naval Air Station, Key West, FL

SUMMARY: This Notice provides information regarding the Redevelopment Authority that has been established to plan the reuse of portions of the Naval Air Station, Key West, Florida, and the surplus property that is located at that base closure site.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Mr. E. R. Nelson Jr., Director, Real Estate Division, Southern Division, Naval Facilities Engineering Command, North Charleston, S.C. 29419–9010, telephone (803) 820–7494. For more detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Mr. Richard Davis Air Station, Key West, FL. 33040–9001, telephone (305) 293–2133.

SUPPLEMENTARY INFORMATION: In 1995, the Naval Air Station, Key West, Florida was designated for realignment pursuant to the Defense Base closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, on 27 September 1995, land and facilities at this installation were declared excess to the Department of the Navy and available for use by other federal agencies. Approximately 35 acres of land improved with 10 buildings has been requested for transfer by other federal agencies. That property is not included in this notice.

Notice of Surplus Property

Pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the redevelopment authority for and surplus property at the Naval Air Station, Key West, FL. is published in the Federal Register:

Redevelopment Authority: The redevelopment authority for the Naval Air Station, Key West, FL. for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Naval Properties Local Redevelopment Authority, Mr. Paul Cates, of Key West, 525 Angela Street, Key West, FL 33040–1409. telephone (305) 294–8100 is the point of contact.

Surplus Property Descriptions: The following is a listing of the land and facilities at the Naval Air Station, Key West, Fl. that are declared surplus to the federal government. The property is located at 10 separate sites as identified below.

Old Commissary Building: Land—1.82 acres; Buildings—One 43,130 square foot historical commissary building. Two miscellaneous utility plant buildings, one is 40 square feet, the other is 170 square feet; Structures—3.024 square yards of parking areas. 139 linear feet of fencing. The property will be available September 1998.

Poinciana-Housing: Land—36.16 acres; Buildings—Forty Eight (48) family housing buildings comprising 204 Housing Units, totaling approximately 252,272 square feet. Buildings, utilities, streets, parking areas, recreation area, sidewalks, fencing, and all other Class II property at Poinciana Housing. Housing area estimated to be vacated in 1999.

Hawk Missile Site—(KW–65): Land—23.77 acres; The site is currently vacant and available.

East Martello Battery: Land—43.73 acres including earth covered, reinforced, concrete magazine structure. Area will be available sometime in 1997.

Maine Memorial Cemetery Plot: Land—0.12 acres; Area is available immediately.

Peary Court Cemetery: Land—1 acre; Area is available immediately.

Portion of Trumbo Point Annex—Tank Farm Area: Land—16 acres Including Diesel Tank Farm Maintenance Facilities, etc.;

Comments—Easements will be retained for electricity, water, sewers, etc.; Area

will be available in 1997, however, major environmental cleanup will be necessary.

Portion of Trumbo Point Annex—Trumbo Road: Land—0.64 acres. Comments—Easements will be retained for vehicular access and utilities; Area is available immediately.

Portion of Truman Annex: Land—Approx. 37.3 acres; Buldings—Approx. 124,867 sq. ft.; Including: 10 Storage Bldgs.—Approx. 74,867 SF; 9 Other Structures, including Bomb Shelter, Enlisted Dining Facilities, Fire Station, Port Operations Building, NEX Branch—Approx. 50,000 SF; Comments: Easements will be retained for vehicular access, electricity, water, sewer, etc.; Area will be available upon relocation of DRMO now estimated in 1997.

Portion of Truman Annex—Mole Pier (Waterfront Area): Land—7.6 Acres (Four (4) Acres of this 7.6 Acres is the Pier). Buildings—Two (2) Buildings Totaling 1,679 Sq. Ft. Also includes Breakwater, Berthing Wharf, Electrical Distribution Line, Sanitary Sewer, Water Distribution Line, POL Pipeline, Telephone Lines, Street Lighting, Paved Roads, Etc. Restrictions to be imposed: Deed Restrictions to allow Transient Navy Vessels to use Berthing Wharf. The property will be vacated and available in 1997.

Expressions of Interest: Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Air Station, Key West, Florida, shall submit to the said Redevelopment Authority (Naval Properties Local Redevelopment Authority) a notice of interest, of such governments, representatives and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraph 7(C) of said Section 2905(b), the Redevelopment Authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Florida the date by which expressions of interest must be submitted.

Dated: April 23, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–10859 Filed 5–1–96; 8:45 am]

BILLING CODE 3810–FF–P

Department of the Navy, DoD

Community Redevelopment Authority And Available Surplus Buildings And Land At Military Installations Designated For Closure: Yerba Buena Island, Naval Station Treasure Island, San Francisco, CA

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of Yerba Buena Island, Naval Station Treasure Island, San Francisco, California, and the surplus property that is located at that base closure site.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or K. Spake, Realty Specialist, Real Estate Division, Engineering Field Activity-West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, CA 94066–2402, telephone (415) 244–3808. For more detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact LTJG Ray Pyle, Staff Civil Engineer, Naval Station Treasure Island, 410 Palm Avenue, Building 1, San Francisco, CA 94130–0410, telephone (415) 395–5448.

SUPPLEMENTARY INFORMATION: Yerba Buena Island is a part of the Naval Station Treasure Island base closure site. In 1993, the Naval Station Treasure Island, San Francisco, CA was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, on November 27, 1995, the land and facilities at Yerba Buena Island were declared excess to the Department of Defense and made available for use by other federal agencies. Approximately 8.7 acres of land and improvements were requested for transfer by another federal agency. That property is not included in this notice.

Notice of Surplus Property and Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 14, 1994, the City of San Francisco submitted a request to proceed under the new procedures for all of the Naval Station Treasure Island. Accordingly, this notice fulfills the Federal Register publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the redevelopment authority for and surplus property at the Yerba Buena Island, is published in the Federal Register:

Redevelopment Authority: The redevelopment authority for Yerba Buena Island, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of San Francisco. The City of San Francisco has established a committee to provide advice to the redevelopment authority on the redevelopment plan for the closing station. A cross section of community interests are represented on the committee. Day to day operations of the committee are handled by a Project Manager. The address of the redevelopment authority: San Francisco Redevelopment Agency, 770 Golden Gate Avenue, San Francisco, CA 94102, telephone (415) 749–2400.

Surplus Property Descriptions: The following is a listing of the land and facilities at Yerba Buena Island, that were declared surplus to the federal government on November 27, 1995.

Land: Approximately 349.85 acres (106.25 acres of uplands and 243.60 acres tide and submerged lands) of improved and unimproved fee simple land on Yerba Buena Island. In general, areas will be available when the Naval Station Treasure Island closes on September 30, 1997.

Buildings: The following is a summary of the facilities located on the above described land that will also be available when the Naval Station Treasure Island closes on September 30, 1997, unless otherwise indicated:

—Operational Storage Building, 12,150 square feet; —Storage Building 2,070 square feet; —Fire Station, 10,247 square feet; —Officers Club 2,116 square feet; —Temporary Lodging Building, 1,449 square feet; —Administrative Space, 3,578 square feet; —Family Housing Junior Grade Officer, 78 units; —Family Housing Field Grade Officer, 35 units; —Family Housing Senior Grade Officer, 14 units; —Detached Garages, 46 units; —Family Housing Outbuildings, 6 buildings, 2,508 square feet; —Miscellaneous water storage tanks totaling 6.5 million gallons, associated utility equipment buildings and systems, other utility support structures, retaining walls, roads, parking, sidewalks, bridge ramps and security posts (guard houses).

Expressions of Interest: Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Yerba Buena Island, San Francisco, CA, shall submit to the said redevelopment authority (City of San Francisco) a notice of interest, of such governments, representatives and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) of said Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in San Francisco, CA, the date by which expressions of interest must be submitted. Under Section 2(e)(6) of said Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one or more than six months from the date of this notice.

Dated: April 23, 1996.

M. A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–10860 Filed 5–1–96; 8:45 am]

BILLING CODE 3810–FF–P

Notice of Intent to Grant Partially Exclusive Patent License; Research International, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Research International, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government owned inventions described in U.S. Patents Nos. 5,061,857 entitled ''Waveguide-Binding Sensor for use with Assays'' issued October 29, 1991, and 5,430,813 entitled ''Mode-Matched, Combination Taper Fiber Optic Probe,'' issued July 4, 1995 in the field of bioassay analyses.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22175–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: April 23, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–10861 Filed 5–1–96; 8:45 am]

BILLING CODE 3810–FF–P

Notice of Intent to Grant Partially Exclusive Patent License; Zesto Therm, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its grant to Zesto Therm, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government owned invention described in U.S. Patent No. 4,264,362 entitled ''Supercorroding Galvanic Cell Alloys for Generation of Heat and Gas'' issued April 28, 1981.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22175–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: April 23, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–10862 Filed 5–1–96; 8:45 am]

BILLING CODE 3810–FF–P–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3021–073]

Allegheny Hydro No. 8 & 9 Limited Partnership and Connecticut National Bank; Notice of Availability of Environmental Assessment

April 26, 1996.

An environmental assessment (EA) is available for public review. The EA reviews an application to amend the license for the Allegheny River Lock and Dams No. 8 & 9 Hydroelectric Project. The license would be amended to allow the installation of 15-inch flashboards at Lock and Dam 9 from about May 1 through October 31, 1996. Flashboards would raise the Lock and Dam 9 navigation pool to benefit recreational boating. The EA finds that approving the application to install 15-inch flashboards from about May 1 through October 31, 1996 would not constitute a major federal action significantly affecting the quality of the human environment. The Allegheny River Lock and Dams 8 & 9 Hydroelectric Project is located on the Allegheny River at river mile 62.2 in Armstrong County, Pennsylvania.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–10878 Filed 5–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1283–000]

Btu Power, Inc.; Notice of Issuance of Order

April 26, 1996.

On February 23, 1996, as amended March 21, 1996, Btu Power, Inc. (Btu Power) submitted for filing a rate schedule under which Btu Power will engage in wholesale electric power and energy transactions as a marketer. Btu Power also requested waiver of various Commission regulations. In particular, Btu Power requested that the

Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Btu Power.

On April 24, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Btu Power 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 385.214).

Absent a request for hearing within this period, Btu Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Btu Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 24, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–10876 Filed 5–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–924–000]

Direct Access Management, LP; Notice of Issuance of Order

Arpil 26, 1996.

On January 25, 1996, as supplemented on February 20, 1996, Direct Access Management, LP (Direct Access) submitted for filing a rate schedule under which Direct Access will engage in wholesale electric power and energy transactions as a marketer. Direct Access also requested waiver of various Commission regulations. In particular, Direct Access requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Direct Access.

On April 25, 1996, the Commission issued a letter order that granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Direct Access 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 385.214).

Absent a request for hearing within this period, Direct Access is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Direct Access' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 28, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–10873 Filed 5–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–63–003]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changed in FERC Gas Tariff

April 26, 1996.

Take notice that on April 24, 1996, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to be part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet, with an effective date of January 1, 1996:

Second Substitute First Revised Sheet No. 38

Iroquois states that the purpose of the instant filing is to comply with the Commission's April 9, 1996, order in the captioned proceeding conditionally accepting one tariff sheet filed on January 16, 1'996. The revised tariff sheet reflects that sharing of revenues under Rate Schedule PAL will be calculated on an annual basis.

Iroquois states that copies of its filing were served on all parties to the proceeding as well as all jurisdictional customers and interested state commissions.

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 18 CFR 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–10879 Filed 5–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1119–000]

Kibler Energy Ltd. Notice of Issuance of Order

April 26, 1996.

On February 20, 1996, as amended March 20, 1996, Kibler Energy Ltd. (Kibler) submitted for filing a rate schedule under which Kibler will engage in wholesale electric power and energy transactions as a marketer. Kibler also requested waiver of various Commission regulations. In particular, Kibler requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Kibler.

On April 24, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Kibler 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 385.214).

Absent a request for hearing within this period, Kibler is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Kibler's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 24, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–10874 Filed 5–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1156–000]

North American Power Brokers, Inc., Notice of Issuance of Order

April 26, 1996.

On February 23, 1996, as amended March 20, 1996, North American Power Brokers, Inc. (NAPB) submitted for filing a rate schedule under which NAPB will engage in wholesale electric power and energy transactions as a marketer. NAPB also requested waiver of various Commission regulations. In particular, NAPB requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NAPB.

On April 24, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NAPB 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 385.214).

Absent a request for hearing within this period, NAPB is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NAPB's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 24, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–10875 Filed 5–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–10–000]

NORSTAR Energy Limited Partnership; Notice of Issuance of Order

April 26, 1996.

On October 2, 1995, NORSTAR Energy Limited Partnership (NORSTAR) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, NORSTAR requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by NORSTAR. On April 25, 1996, the Commission issued an Order Accepting For Filing Open Access Transmission Tariffs And Conditionally Accepting For Filing Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's April 25, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (F), (G), and (I):

(F) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by NORSTAR 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 (1995).

(G)Absent a request to be heard within the period set forth in Ordering Paragraph (F) above, NORSTAR is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of NORSTAR's issuances of securities or assumptions of liabilities. . . .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 28, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–10872 Filed 5–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1316–000]

TransAlta Enterprises Corporation; Notice of Filing

April 26, 1996.

Take notice that on April 24, 1996, TransAlta Enterprises Corporation (TEN), tendered for filing supplemental information related to its petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1. TEN requests that Rate Schedule No. 1 become effective at the earliest possible date.

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

May 6, 1996. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–10877 Filed 5–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–13–29–001]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 26, 1996.

Take notice that on April 23, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 which tariff sheets are enumerated in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to supplement Transco's April 12, 1996, Tracker Filing in Docket No. TM96–13–29–000 (April 12 Filing) in order to reflect the currently effective demand rates charged by Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT, the cost of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. Transco's April 12 Filing eliminated Texas Gas' ISS Revenue Credit in error and therefore did not reflect the demand rates currently being charged by Texas Gas. In order to correct this, Transco is submitting substitute tariff sheets therein as replacements for the Rate Schedule FT–NT tariff sheets included in the April 12 Filing. This tracking filing is being made pursuant to Section 4 of Transco's Rate Schedule FT–NT.

Transco also states that included in Appendix A attached to the filing are explanations of the rate changes and details regarding the computation of the revised Rate Schedule FT–NT.

Transco states that copies of the filing are being mailed to each of its FT–NT customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with Section 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–10880 Filed 5–1–96; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

April 25, 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 [insert date 30 days after date of publication in the Federal Register]. 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.: None.

Title: Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force.

Form No.: None.

Type of Review: New Collection.

Respondents: Businesses or other for Profit.

Number of Respondents: 60.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 60 Hours.

Needs and Uses: In the Declaratory Ruling issued in RM-8181, the Commission requires that local exchange carriers, among other things, notify their customers of the change in status of inmate-only customer premises equipment (CPE). This is necessry to ensure that correctional facility customers are aware of change in regulatory status of inmate-only payphones.

Federal Communications Commission

William F. Caton,

Acting. Secretary

[FR Doc. 96–10849 Filed 5–1–96; 8:45 am]

BILLING CODE 6712–01–F

Licensee Order to Show Cause

The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him the following matter:

Licensee	City/State	MM docket No.
Great American Broadcasting of Hutchinson, Inc. Licensee of KWHK(AM).	Hutchinson, Kansas.	96–99

(Regarding the silent status of Station KWHK(AM))

Pursuant to Section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Great American Broadcasting of Hutchinson, Inc. has been directed to show cause why the license for Station KWHK(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Great American Broadcasting of Hutchinson, Inc. has the capability and intent to

expeditiously resume broadcast operations of KWHK(AM) consistent with the Commission's Rules.

2. To determine whether Great American Broadcasting of Hutchinson, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commissions Rules.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Great American Broadcasting of Hutchinson, Inc. is qualified to be and remain the licensee of Station KWHK(AM).

A copy of the complete Show Cause Order and Hearing Designation Order in this proceeding is available for inspection and copying during normal business hours in the dockets section of the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 96–10850 Filed 5–1–96; 8:45 am]

BILLING CODE 6712–01–P

Public Safety Wireless Advisory Committee; Subcommittee Meetings

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the Next Meetings of the Spectrum Requirements, Interoperability, Technology, Operational Requirements and Transition Subcommittees.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the next meetings of the five Subcommittees of the Public Safety Wireless Advisory Committee. The NTIA and the FCC established a Public Safety Wireless Advisory Committee, Subcommittees, and Steering Committee to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. All interested parties are invited to attend and to participate in the next round of meetings of the Subcommittees.

DATES: May 29, 30, 31 (Wed.–Fri.).

ADDRESSES: Scott Air Force Base, Illinois (near St. Louis, MO), Global Reach Planning Center, Bldg. 1907, Main Conference Room.

FOR FURTHER INFORMATION CONTACT: For information regarding the Subcommittees, contact:

Interoperability Subcommittee: James E. Downes at 202–622–1582

Operational Requirements Subcommittee: Paul H. Wieck at 515–281–5261

Spectrum Requirements Subcommittee: Richard N. Allen at 703–630–6617

Technology Subcommittee: Alfred Mello at 401–738–2220

Transition Subcommittee: Ronnie Rand at 904–322–2500 or 800–949–2726 ext. 600

For information regarding accommodations and transportation, contact: Deborah Behlin at 202–418–0650 (phone), 202–418–2643 (fax), or dbehlin@fcc.gov (email). You may also contact Ms. Behlin for general information concerning the Public Safety Wireless Advisory Committee. Information is also available from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov).

SUPPLEMENTARY INFORMATION: The five Subcommittees of the Public Safety Wireless Advisory Committee will hold consecutive meetings over a three day period, Wednesday through Friday, May 29, 30, and 31, 1996. The expected arrangement of the meetings, which is subject to change at the time of the meetings, is as follows:

May 29: The Interoperability Subcommittee and then the Spectrum Requirements Subcommittee will meet consecutively starting at 9:00 a.m.

May 30: The Technology Subcommittee and then the Operational Requirements Subcommittee will meet consecutively starting at 9:00 a.m.

May 31: The Transition Subcommittee will meet starting at 9:00 a.m.

Visitor passes will be required to gain entrance to Scott AFB. These passes will be mailed to the membership after the April San Diego meetings. Additionally, there will be an off-site registration established at one of the host hotels in the area and details will be made available on the PSWAC Homepage as soon as possible. For further information contact Don Speights, NTIA, directly at 202–482–1652 or by email at wspeights@ntia.doc.gov.

The tentative agenda for each subcommittee meeting is as follows:

1. Welcoming Remarks.
2. Approval of Agenda.
3. Administrative Matters.
4. Work Program/Organization of Work.
5. Meeting Schedule.
6. Agenda for Next Meeting.
7. Other Business.
8. Closing Remarks.

The tentative schedule and general location of future meetings of the Subcommittees of the Public Safety Wireless Advisory Committee is as follows: June 1996, in Washington, D.C.

The tentative schedule and general location of the next full meeting of the Public Safety Wireless Advisory Committee is: June 1996, in Washington, D.C.

The Co-Designated Federal Officials of the Public Safety Wireless Advisory Committee are William Donald Speights, NTIA, and John J. Borkowski, FCC. For public inspection, a file designated WTB–1 is maintained in the Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, Room 8010, 2025 M Street, N.W., Washington, D.C. 20554.

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 96–10848 Filed 5–1–96; 8:45 am]

BILLING CODE 6712–01–M

[FCC 96–140]

Applications for A and B Block Broadband PCS Licenses

AGENCY: Federal Communications Commission.

ACTION: Determination or application for review.

SUMMARY: The Commission released this Memorandum Opinion and Order (MO&O) to address an Application for Review filed by the National Association of Black Owned Broadcasters, Percy E. Sutton, and the National Association for the Advancement of Colored People. This MO&O denies the application. The MO&O is necessary to answer the issues addressed in the application. The intended affect of this action is to resolve the issues set forth in the application.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: John Greenspan, (202) 418–0620, Wireless Telecommunications Bureau, Commercial Wireless Division.

SUPPLEMENTARY INFORMATION: This is the text of the MO&O, adopted March 28, 1996, released April 1, 1996. This order is available for inspection and copying during normal business hours at the Commercial Wireless Division Legal

Branch, Room 7130, 2025 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Memorandum Opinion and Order

I. Introduction

1. The Commission has before it an Application for Review filed on July 21, 1995 by the National Association of Black Owned Broadcasters, Percy E. Sutton, and the National Association for the Advancement of Colored People (collectively ''Petitioners''), and an erratum filed by Petitioners on August 24, 1995, seeking review of an Order by the Chief, Wireless Telecommunications Bureau (the ''Bureau'') granting the applications filed by the auction winners of 99 broadband Personal Communications Services (''PCS'') licenses for the A and B block frequencies. In a separate pleading, Petitioners seek review of a Bureau Order that declined to stay the licensing of the A and B block winners until the licensing of the ultimate winners of the C block auction. See Deferral of Licensing of MTA Commercial Broadband PCS, Memorandum Opinion and Order, DA 95–1410, 1995 WESTLAW 379480 (Wireless Telecom. Bur. June 23, 1995). We address that by a separate order adopted today; in this Order, we deal exclusively with Petitioners' Application for Review of the A and B Block Order.

II. Background

2. On May 12, 1995, Petitioners filed a Petition to Deny the applications of the eighteen winning bidders in the A and B block auction. Petitioners alleged that the Commission violated Section 309(j) of the Communications Act, 47 U.S.C. § 309(j), by failing to provide adequate opportunities for minorities to acquire PCS licenses in the A and B blocks. Petitioners further alleged that this failure to provide incentives has allowed a few dominant carriers to divide A and B block PCS licenses in an unlawful territorial allocation in violation of the antitrust laws. Petitioners contended that the distribution of licenses in the top markets indicated a pattern of collusion by these carriers to ''dominate the wireless telephone industry, both PCS and cellular.''

3. The Bureau dismissed the Petition to Deny. First, the Bureau concluded that Petitioners had failed to demonstrate standing under Section 309(d)(1) of the Communications Act and applicable Commission precedent. Then, treating the petition as an informal objection, the Bureau further held that Petitioners had failed to show that a grant of the A and B block licenses would be inconsistent with the public interest. It rejected Petitioners' contention that the Commission had failed to comply with 47 U.S.C. § 309(j) and deemed that contention ''a belated attempt to revisit the Commission's auction rules for licensing of the A and B blocks.'' The Bureau also rejected Petitioners' argument that the major bidders colluded to allocate territory among themselves.

III. Contentions of the Parties

4. Petitioners present the same contentions before the Commission that were previously rejected by the Bureau. They allege that the Commission has failed to comply with its statutory mandate to provide adequate opportunities for minorities to bid for PCS licenses. Petitioners also repeat their allegation that the Commission ''appears to have allowed the dominant carriers to divide the PCS licenses in an unlawful territorial allocation.'' Petitioners further dispute the Bureau's conclusion that Petitioners' lacked standing to raise the issues presented in its Petition to Deny.

5. In opposition, Western PCS Corporation (''Western'') alleges that Petitioners' Application for Review is procedurally defective because it does not specify the factors that warrant Commission review. Further, Wirelessco, L.P. and Phillieco, L.P. argue that Petitioners lacked standing. Several parties asserted that Petitioner's petition claimed no acts of misconduct by them and that the petition should, therefore, not affect their license grant. Pacific Telesis Mobile Services (''Pacific Telesis'') accuses Petitioners of improperly seeking reconsideration of prior rulemaking proceedings. Pacific Telesis also argues that the Commission fully complied with its statutory mandate by providing for the rapid deployment of services without undue administrative delay. Finally, several parties contend that the Bureau properly rejected Petitioners' claims of collusion.

IV. Discussion

6. We agree with Western that Petitioners' Application for Review is procedurally defective and must be dismissed. Section 1.115(b)(2) of the Commission's rules, 47 CFR § 1.115(b)(2), requires Applications for Review to: Specify with particularity, from among the following, the factors which warrant Commission consideration of the questions presented:

(i) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy.

(ii) The action involves a question of law or policy which has not previously been resolved by the Commission.

(iii) The action involves application of precedent or policy which should be overturned or revised.

(iv) An erroneous finding as to an important or material question of fact.

(v) Prejudicial procedural error. Petitioners' pleading is defective because it fails to ''specify with particularity'' any of the above subsections as grounds for granting its Application for Review. See Chapman S. Root Revocable Trust, 8 FCC Rcd 4223, 4224 (1993). (''Chapman''). The Commission held in Chapman that a party that fails to identify one of the above factors in support of an application for review will have its application dismissed. Accordingly, we are dismissing Petitioners' Application for Review because it does not comply with 47 CFR § 1.115(b)(2). Although we are dismissing Petitioners' pleading, we briefly will address the issues raised therein.

7. The Bureau held that Petitioners lacked standing to challenge the A and B Block licensees on a blanket basis as it seeks to do here. We agree. To establish standing to file a petition to deny, the petitioners must allege sufficient facts to demonstrate that grant of the subject application would cause them to suffer a direct injury. AmericaTel Corporation, 9 FCC Rcd 3993, 3995 (1994) (citing Sierra Club v. Morton, 405 U.S. 727, 733 (1972)). The premise of Petitioners' standing argument is that the award of licenses to the A and B block applicants threatens their interests (or those of their members) as potential C block licensees as well as the interests of the public. We find, as did the Bureau, that these allegations are too contingent and speculative to support the required finding of a direct injury causally linked to the challenged action. First, there is no certainty that Petitioners or any of their members will in fact participate in the C block auction or that they will win licenses if they do. Both of these events must occur for any injury to even be possible. Second, we have previously held that the mere fact that a petitioner has applied to be a licensee in the same service does not confer standing. See Pittsburgh Partners, L.P., 10 FCC Rcd 2715 (1994), para. 4 (mere status as applicant in one proceeding in the FM broadcast service does not confer

standing as a party in interest in another proceeding in the FM broadcast service); WIBF Broadcasting, 17 FCC 2d 876, 877 (1969) (same).

8. In their Application for Review, Petitioners rely on the holding in United Church of Christ v. FCC, 359 F.2d 994, 1005 (D.C. Cir. 1966) (''UCC''). for the proposition that they have standing as representatives of the public interest. As Pacific Telesis points out, in UCC there were specific allegations by the party filing the petition to deny that the broadcast station in question was ignoring the needs of a major segment of the listening audience. In this case, Petitioners make no allegations and no party has submitted any evidence that the A and B block licensees will fail to provide adequate service to any segment of the population. Petitioners' major complaint appears to be that they would have preferred entities other than the successful bidders to have received the A and B block licenses. This is not sufficient to support a petition to deny. Petitioners fail to demonstrate how they will be harmed, either as consumers or potential bidders, by the granting of licenses to the A and B block winners. Accordingly, we conclude, as did the Bureau, that Petitioners have not alleged sufficient facts in this case to demonstrate that it has standing to challenge the A and B block licenses. We agree with the Bureau that a potential PCS bidder could allege facts sufficient to establish standing to challenge another PCS application by showing that grant of that application would cause them demonstrable injury. See A & B Block Order at 5.

9. Petitioners repeat the argument previously made to the Bureau that the Commission failed to adopt specific provisions in the A and B block auction, which Petitioners contend is a violation of Section 309(j) of the Act. Pacific Telesis points out in opposition that Petitioners fail to address the Bureau's holding that this argument constitutes an untimely petition for reconsideration of the Commission's broadband PCS auction rules rather than a valid basis for a petition to deny. We agree. The Bureau properly concluded that the purpose of the petition to deny process is to assess challenges to applicants' qualifications to be Commission licensees. Petitioners' statutory argument does not address licensee qualifications, however, but challenges the structure of the A and B block auction itself. We agree with the Bureau that Petitioners' argument was not a valid petition to deny, but was instead a belated attempt to revisit the Commission's auction rules for licensing of the A and B blocks. In the Fifth Report and Order in Docket No. 93–253, 59 FR 37566 (July 22, 1994), the Commission decided against making special provisions for designated entities on the A and B blocks. We determined that this approach fully complied with Section 309(j) and affirmed this conclusion on reconsideration more than ten months before Petitioners filed their petition. Petitioners' attempt to challenge the rules again through the petition to deny process is therefore untimely and procedurally improper.

10. Petitioners also reiterate their allegation that the dominant carriers have divided the PCS licenses in an unlawful territorial allocation. We agree with the Bureau that Petitioners have failed to provide evidence supporting this allegation or otherwise to demonstrate that a grant of the A and B block applications would be inconsistent with the public interest. Under Section 309(d)(1) of the Communications Act, 47 U.S.C. § 309 (d)(1), parties filing a petition to deny must make specific allegations of fact sufficient to show that a grant of the application would be prima facie inconsistent with the public interest, convenience, and necessity. Except where official notice may be taken, such allegations must be supported by affidavits of persons with personal knowledge of the facts alleged. Section 309(d)(2) states that if the pleadings and affidavits fail to raise substantial and material questions of fact and the Commission concludes that grant of the application would be in the public interest, the Commission shall deny the petition. 47 U.S.C. § 309(d)(2).

11. In support of their claim of territorial allocation both before the Bureau and now before the Commission, Petitioners allege only that three companies—AT&T Wireless PCS, PCS Primeco, and WirelessCo—won 61% of the A and B block licenses. Petitioners suggest that this constitutes ''circumstantial evidence'' that is not only enough to support a petition to deny, but ''a jury verdict finding a conspiracy which violates antitrust laws.'' A petition to deny must ''contain specific allegations of fact sufficient to show * * * that a grant of the application would be prima facie inconsistent with [the public interest].'' Where the Commission finds that such a showing has not been made, it may refuse the petition to deny on the basis of ''a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition.'' In this instance, we find that petitioners' allegation of territorial allocation does not constitute a showing that the grant to the A and B block winners was prima facie inconsistent with the public interest. We agree with the Bureau that Petitioners have failed to raise a substantial or material question of fact based on these allegations. First, Petitioners offer no grounds for denying the applications of the fifteen auction winners other than AT&T, PCS Primeco, and WirelessCo. Second, with respect to these latter three applicants, Petitioners fail to provide any factual evidence of collusion. Contrary to Petitioners' contention that the Bureau improperly required a ''smoking gun,'' we agree with the Bureau's conclusion that Petitioners must provide a modicum of a factual showing that collusion occurred—particularly in an auction that lasted over three months and resulted in aggregate winning bids of nearly $8 billion by 18 different parties. Petitioners introduce no evidence showing that AT&T, PCS Primeco, WirelessCo, or any other A or B block winner has violated any of the Commission's rules, including the collusion rules or the rules regarding aggregation of PCS spectrum. We also agree with Western that the bidding patterns were determined to a large degree by the desire of individual applicants to acquire national wireless footprints and/or to acquire markets complementing their existing telecommunications holdings. We therefore find Petitioners' allegation of collusion to be without merit.

V. Conclusion

12. For the reasons discussed above, we are dismissing Petitioners' Application for Review for failure to comply with Section 1.115(b)(2) of our rules. Although our action renders further discussion unnecessary, we agree with the Bureau's disposition of the issues Petitioners raised in their original Petition to Deny.

V. Ordering Clause

13. Accordingly, it is ordered pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.115(b)(2) of the Commission's Rules, 47 CFR § 1.115(b)(2), that the Application for Review filed by Petitioners on July 21, 1995, is denied.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–10615 Filed 5–01–96; 8:45 am]

BILLING CODE 6712–01–P

[PP Docket No. 93–253; ET Docket No. 92–100; FCC 96–139]

Deferral of Licensing of MTA Commercial Broadband PCS

AGENCY: Federal Communications Commission.

ACTION: Determination on application for review.

SUMMARY: The Commission released this Memorandum Opinion and Order (MO&O) to address an Application for Review filed by the National Association of Black Owned Broadcasters, Percy E. Sutton, and the National Association for the Advancement of Colored People. This MO&O denies the application. The MO&O is necessary to answer the issues addressed in the application. The intended affect of this action is to resolve the issues set forth in the application.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: John Greenspan, (202) 418–0620, Wireless Telecommunications Bureau, Commercial Wireless Division.

SUPPLEMENTARY INFORMATION: This is the text of the MO&O, adopted March 28, 1996, released April 1, 1996. This order is available for inspection and copying during normal business hours at the Commercial Wireless Division Legal Branch, Room 7130, 2025 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Memorandum Opinion and Order

I. Introduction

1. The Commission has before it an Application for Review filed on July 21, 1995 by the National Association of Black Owned Broadcasters, Percy E. Sutton, and the National Association for the Advancement of Colored People (collectively ''Petitioners''). Petitioners seek review of a June 23, 1995 Order by the Chief, Wireless Telecommunications Bureau (''the Bureau'') denying two previous requests, one filed by Petitioners, to delay the licensing of all MTA license winners in the Commission's PCS A and B block auction until the future C block auction winners were ready to be licensed.

II. Background

2. On April 12, 1995, the Wireless Telecommunications Bureau issued an Order denying the ''Emergency Motion to Defer MTA PCS Licensing'' filed by Communications One., Inc. (''CommOne''), which sought to delay issuance of the 99 A and B block licenses in the 2 GHz Personal Communications Service (''broadband PCS''). Two pleadings sought review of the CommOne Order and a stay of some or all grants of A and B block licenses until the conclusion of the broadband PCS C block auction. First, on May 12, 1995, CommOne, joined by GO Communications Corporation (''GO''), filed a petition for reconsideration of the CommOne Order and requested a stay of licensing of the three largest A and B block auction winners: AT&T Wireless PCS, Inc. (''AT&T Wireless''), PCS Primeco, L.P. (''PCS Primeco''), and WirelessCo, L.P. (''WirelessCo''). Second, on May 12, 1995, Petitioners filed an application for review of the CommOne Order and a stay of all A and B block licensing. The Bureau denied both requests for relief. Petitioners have also filed an Application for Review of the A and B Block Order. We are dismissing the Application for Review of the A and B Block Order in a separate Order adopted today. Although both parties sought Commission review, the Bureau determined that because CommOne/GO presented arguments not previously considered by the Bureau, Commission review would be inappropriate. In addition, the Bureau felt that it should reevaluate the arguments of all parties in light of the decision by the United States Supreme Court in Adarand Constructors, Inc. v. Peña, 115 S. Ct. 2097 (1995).

3. In the Stay Denial Order, the Bureau rejected Petitioners' claim that the decision to hold the C Block auction after the A and B block auction, combined with the absence of specific provisions for women and minorities in the A and B block auction, violated 47 U.S.C. § 309(j). The Bureau deemed Petitioners' stay request an untimely attempt to seek reconsideration of the Commission's rules adopted in PP Docket No. 93–253 with respect to the structure and sequencing of the PCS auctions. The Bureau noted that these rules were adopted in the Fifth Report and Order, 59 FR 37566 (July 22, 1994), and reviewed on reconsideration in the Fourth Memorandum Opinion and Order, 59 FR 53364 (October 24, 1994), in that docket, and that the deadline for reconsideration had long since passed. Finally, in addressing the stay request, the Bureau held that Petitioners and CommOne/Go failed to satisfy the Holiday Tours test for determining whether a stay is appropriate. The test includes four elements: (1) likelihood of success on the merits; (2) the probability of irreparable harm in the absence of relief; (3) the probability of harm to third parties if a stay is granted; and (4) whether a stay would serve or disserve the public interest. Washington Metropolitan Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977)).

4. First, the Bureau determined that the parties were unlikely to prevail on the merits. It rejected the contention that licensing of the A and B Block winners should be delayed until the C Block winners were ready to be licensed. The Bureau concluded that the statute did not require the Commission ''to promote diversity at the cost of delaying much needed service that could otherwise be provided to the public.'' The Bureau also rejected an economic analysis submitted by CommOne/GO purporting to show excessive concentration of PCS licenses. The Bureau determined that the study was flawed because, inter alia, it improperly assumed that the relevant product market was PCS, thus excluding the potential competitive impact of cellular and other wireless services from the model. The Bureau also found that the analysis ignored the fact that licensing of the A and B blocks would substantially increase competition while staying the license grants would perpetuate a more highly concentrated market. Second, the Bureau disagreed with Petitioners' claim of irreparable harm resulting from a headstart given to the A and B block winners. It noted that the Commission's decision to license the A and B blocks before the C block was not contingent upon any particular timetable or date for the C block auction. It also noted that the C block bidders could adjust their bids to account for any impact on the value of the C block licenses as a result of prior licensing of the A and B blocks. Third, the Bureau concluded that a stay would significantly harm the A and B block winners. The Bureau noted that at the time of the Stay Denial Order, the A and B block winners had already paid $1.4 billion to the United States Treasury as a downpayment (they paid the balance of approximately $5.6 billion on June 30, 1995) and did not earn interest on their deposits. The Bureau further found that the winners had already invested significant funds in start-up costs. Finally, the Bureau concluded that the public interest would best be served by not delaying a new service to the public. It found that ''rapidly providing new competitive sources of wireless services outweighs any possible competitive harm that might result from the A and B block winners being licensed ahead of auction winners in other PCS blocks.''

Accordingly, it refused to stay the licensing of the A and B block winners.

5. Petitioners filed the instant Application for Review on July 21, 1995. On August 24, 1995, Petitioners filed an Erratum to their application. On August 3, 1995, Petitioners filed an Emergency Motion for Stay with the United States Court of Appeals for the District of Columbia Circuit asking the court to stay issuance of the A and B block licenses (which had, in fact, been issued six weeks earlier) until the Commission was ready to license the winners in the C block auction as well. The Court denied the stay request on August 10, 1995.

III. Contentions of the Parties

6. In their Application for Review, Petitioners repeat the same arguments rejected by the Bureau in the Stay Denial Order. They claim that the Commission failed to comply with its statutory mandate under 47 U.S.C. § 309(j) to provide adequate opportunities for minorities. The failure to provide specific incentives for minorities in the A and B blocks, according to Petitioners, has resulted in an unlawful territorial allocation. Petitioners also assert that they have met all of the requirements for obtaining a stay. They allege irreparable harm in the absence of a stay, including loss of access to capital, loss of base station cell sites, loss of access to distributors and retailers, and loss of market share. They also allege that the A and B block auction winners would not be harmed by issuance of a stay. Initially, Petitioners based this argument on the erroneous assumption that the A and B block winners had not received their licenses, and therefore would not be required to pay the 80% balance of their bids while a stay was in effect. In their Erratum Petitioners acknowledge that the Commission granted licenses to the A and B block winners on June 23, 1995 and that all of the auction winners timely paid their balances on June 30, 1995. Nevertheless, Petitioners continue to assert that this does not constitute irreparable harm to the A and B block winners. Petitioners also allege that all of the A and B block winners were on notice that the legality of their licenses was subject to challenge. Petitioners further assert that they are likely to prevail on the merits of their claim that the Commission violated its statutory mandate to disseminate licenses to and promote economic opportunity for minorities. Finally, Petitioners assert that a stay would serve the public interest by furthering the statutory obligation of the FCC to promote participation in PCS by minorities and other designated entities.

7. In a Supplement filed on August 4, 1995, Petitioners note that on July 27, 1995, the United States Court of Appeals for the District of Columbia Circuit stayed the C block auction. Omnipoint Corporation v. FCC, No. 95–1374 (D.C. Cir., July 27, 1995). Omnipoint Corporation objected to the Commission's extension of the 50.1% equity option to all applicants rather than to just women and minority applicants. This meant that the applicant's control group must hold at least 50.1% of the applicant's equity, and a single investor could hold the remaining 49.9% equity. Omnipoint argued that despite the facial neutrality of the rule, it violated the equal protection guarantee because business not owned by women or minorities did not have adequate time to take advantage of the rule change prior to the filing deadline for C block bidders. Petitioners cite a statement by Chairman Hundt that this delay could push back the start of the C block auction for at least six months. Petitioners allege that ''[T]he longer the time period between the date of the A and B block licenses are issued and the date the C block licenses are issued, the greater and more profound this irreparable injury will become.'' The court dissolved the stay on September 28, 1995, and the C block auction began on December 18, 1995. Omnipoint Corp. v. FCC, No. 95–1374 (D.C. Cir., September 28, 1995).

8. All of the parties filing oppositions allege that Petitioners have not satisfied the four prong test for a stay as set forth in Holiday Tours. Western PCS Corporation (''Western'') asserts that Petitioners would not succeed on the merits because they ''misread the Congressional directives of 309(j).'' PCS PRIMECO, L.P. (''Primeco'') disputes Petitioners' claim of excessive harm. It contends that the granting of a stay of the A and B block licensing would not remove the uncertainty concerning the timing of the C block auction nor would it remedy the problem of losing base station cell sites if indeed such a problem did exist. Primeco argues that it is unclear how the A and B block licensees could preclude the eventual C block licensees from entering into distribution, resale, or other agreements and that Petitioners' claim of loss of market share was ''purely speculative and unsupported by the facts.'' WirelessCo, L.P. and PhillieCo, L.P. (''WirelessCo'') dispute Petitioners' claim that a stay would not harm other parties. WirelessCo submits that it already paid over $2.1 billion and PhillieCo paid $85 million to the United States Treasury. WirelessCo indicates that it has taken significant steps toward providing PCS service, including entering into negotiations with equipment manufacturers for subscriber equipment, network equipment, switching equipment and cell sites. It also submits that it has hired employees in more than 20 cities and is presently negotiating facility leases in multiple locations. Finally, WirelessCo argues that a stay would harm the public interest by delaying the realization by potential customers of the benefits of a new and innovative technology that would provide needed competition to incumbent cellular providers. Western raises the additional argument that Petitioners failed to comply with Section 1.115(b)(2) of the Commission's rules, 47 CFR § 1.115(b)(2), pertaining to the requirements for filing applications for review by not stating the grounds upon which review should be granted and then citing the appropriate section.

IV. Discussion

9. We agree with Western that Petitioners' Application for Review is procedurally defective and must be dismissed. Section 1.115(b)(2) of the Commission's rules, 47 CFR § 1.115(b)(2), requires applications for review to:

> specify with particularity, from among the following, the factors which warrant Commission consideration of the questions presented:
>
> (1) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy.
>
> (ii) The action involves a question of law or policy which has not previously been resolved by the Commission.
>
> (iii) The action involves application of precedent or policy which should be overturned or revised.
>
> (iv) An erroneous finding as to important or material question of fact.
>
> (v) Prejudicial or procedural error.

As we indicate in the companion order we are adopting today, Petitioners' pleading is defective because it fails to ''specify with particularity'' any of the above subsections as grounds for granting its Application for Review. See Chapman S. Root Revocable Trust, 59 FR 44340 (August 29, 1994), where we held that procedurally defective applications for review will be dismissed. Petitioners' statement of general disagreement with the Bureau's Stay Denial Order will not suffice. Accordingly, we will dismiss petitioners' Application for Review. Although we are dismissing Petitioners' pleading, we also conclude on the merits that the Bureau correctly determined that Petitioners failed to

meet the strict standards for obtaining a stay as requested here.

A. Likelihood of Success on the Merits

10. Petitioners' assertion that they will ultimately prevail on the merits is based upon their erroneous contention that the Commission has failed to comply with its statutory mandate. That mandate includes, according to Petitioners, the obligation to disseminate licenses to a wide variety of applicants, including businesses owned by minorities. Petitioners state that only way under Section 309(j)(3)(B) of the Act to implement this goal in a meaningful way is to delay licensing the A and B block auction winners until the Commission is ready to license the eventual C block auction winners. Otherwise, according to Petitioners, the value of the C block licenses will decrease as a result of the headstart granted to the A and B block licensees. Nothing in the statute or legislative history requires such a result. In directing the Commission to establish bidding rules for PCS, Congress enumerated three other objectives in Section 309(j)(3) besides the one Petitioners cite: (1) development and rapid deployment of services with a minimum of administrative and judicial delay; (2) recovery for the public of a portion of the value of the spectrum; and (3) promoting efficient and intensive use of the spectrum. In its auction rules, the Commission has properly balanced these objectives with the Section 309(j)(3)(B) goal of diversity of ownership by establishing PCS frequency blocks of varying sizes and service areas, reserving certain of these blocks for entrepreneurs, and creating special provisions for designated entities to bid for licenses in those blocks. We do not believe the statute further requires the Commission to promote diversity at the cost of delaying much needed service that could otherwise be provided to the public. A stay would serve the individualized interest of Petitioners rather than the broader public interest. The Commission is not at liberty to subordinate the public interest to the interest of ''equalizing competition.'' SBC Communications, Inc. v. FCC, 56 F.3d 1484, 1491 (D.C. Cir. 1995) quoting Hawaiian Telephone v. FCC , 498 F.2d 771, 776 (D.C. Cir. 1974). The Bureau correctly rejected Petitioners' argument that minorities will be unable to enter the PCS market because of illegal and unfair ''territorial allocations'' in violation of the antitrust laws by the A and B block bidders. In our companion order, we find that the Bureau correctly concluded that these allegations were too vague to meet the requirements of a petition to deny. We conclude here that Petitioners have not shown any likelihood of success on the merits.

B. Irreparable Harm

11. We agree with the Bureau that Petitioners' allegations of irreparable harm are speculative, and that Petitioners have overstated the ''headstart'' advantage of the A and B block winners over prospective C block winners. First, the A and B block winners themselves will have to compete with well-entrenched cellular companies, who enjoy a ten-year headstart over all broadband PCS in terms of business arrangements, market share, and investment in infrastructure. Furthermore, Petitioners' alleged injuries from loss of cell sites, loss of access to distributors, and difficulty in obtaining market share do not constitute ''irreparable'' harm of the type that would warrant grant of a stay. Nothing prevents Petitioners and other prospective C block bidders from entering into agreements that are contingent upon their winning the auction. As the Bureau noted, to the extent that late entry in fact disadvantages C block winners, that disadvantage will translate into lower prices at auction as bids are adjusted downward to compensate for any such detriment. Finally, C block entrants may actually benefit from late entry because they will be able to evaluate the business strategies and performances of the A and B block winners.

C. Harm to Others

12. The third prong of the Holiday Tours test is the potential harm a stay would cause to others. Petitioners acknowledge that the A and B block winners have paid over $7 billion to the United States Treasury for their PCS licenses. Since winning the licenses, A and B block winners have also invested significant funds to cover start-up and development costs which they cannot begin to recoup until they are able to use their licenses to provide service. In light of these considerations, we believe that a stay would cause significant harm to other parties.

D. Public Interest

13. Finally, we conclude that a stay of A and B block licensing would not be in the public interest. The Bureau correctly found that besides imposing a financial burden on the A and B block winners themselves, a stay would delay the introduction of new competition and new services to the public. Conversely, granting the licenses will further the Congressional directive to promote the development and rapid deployment of PCS for the benefit of the public with a minimum of administrative or judicial delay. 47 U.S.C. § 309(j)(3)(A) We continue to believe that the public interest in rapidly providing new competitive sources of wireless services outweighs any possible competitive harm that might result from the A and B block licensees being licensed ahead of auction winners in other PCS blocks.

V. Conclusion

14. For the reasons discussed above, we are dismissing Petitioners' Application for Review for failure to comply with Section 1.115(b)(2) of our rules. Although our action renders further discussion unnecessary, we agree with the Bureau's disposition of the issues Petitioners raised in their original stay request.

VI. Order Clauses

15. Accordingly, it is ordered that, pursuant to Section 4 (i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and 47 CFR § 1.115(c)(2), the Application for Review filed by Petitioners on July 21, 1995, is denied

16. It is further ordered that pursuant to Section 4 (i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) the Motion for Leave to File Supplement to Application for Review filed by Petitioners on August 4, 1995, is granted.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–10614 Filed 5–01–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

DATE AND TIME: Tuesday, May 7, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration

Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, May 9, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1996–8: Pamela Rochester on behalf of Jefferson County Democratic Executive Committee.
Advisory Opinion 1996–10: Bruce E. Lammel on behalf of USX Corporation.
Advisory Opinion 1996–11: James Bopp, Jr. on behalf of the National Right to Life Conventions, Inc.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 96–11100 Filed 4–30–96; 2:21 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Expeditors International (Puerto Rico), Inc., 65 Infantry Station, San Juan, Puerto Rico 00929, Officers: Kevin M. Walsh, President, Mario Alfonso, Treasurer/Secretary/Director

Unitrans International, Inc., 1851 Alexander Bell Drive, #400, Reston, VA 22091, Officers: A. Huda Farouki, Director, Mazen T. Farouki, President

Barnettt Trading, Inc. d/b/a C2C Ocean Freight Forwarding, 217 Humphrey Street, Marblehead, MA 01945–1620, Officers: Andrew L. Barnett, President, Michael Ohsman, Director

G & B International, Inc., 755 Route 83, Suite #215, Bensenville, IL 60106, Officer: Joon Hwan Tae, President

Pacific Wells Crop. d/b/a Pelican Shipping Line, 250 W. Walnut Street, Compton, CA 90220, Officer: Woon K. Paik, President

Rimtech Int'l Transport, 460 E. Carson Plaza Drive, #103, Carson, CA 90746, Officer: Yon S. Kim, President

EMC Shipping, Inc., 4034 E. Mercer Way, Mercer Island, WA 98040, Officer: Elizabeth Finch Miller, President

Dated: April 29, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–10894 Filed 5–1–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

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 May 16, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. C. Gage Overall and Mary C. Overall, both of Caldwell, Kansas; to acquire an additional 31.9 percent, for a total of 43.4 percent of the voting shares of Stock Exchange Financial Corporation, Caldwell, Kansas, and thereby indirectly acquire Stock Exchange Bank, Caldwell, Kansas.

Board of Governors of the Federal Reserve System, April 26, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–10909 Filed 5–1–96; 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 May 28, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Banco Santander, S.A., Madrid, Spain; to acquire 99.248 percent of the voting shares of Banco Central Hispano Puerto Rico, Hato Rey, Puerto Rico.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First National Corporation, Orangeburg, South Caroina; to acquire 100 percent of the voting shares of National Bank of York County, Rock Hill, South Carolina (an organizing bank).

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice

President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Sooner Southwest Bankshares, Inc., Bristow, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Sooner Southwest Bancshares, Inc., Bristow, Oklahoma, and thereby indirectly acquire Community Bank, Bristow, Oklahoma, and Security First National Bank, Hugo, Oklahoma.

In connection with this application, Applicant also has applied to acquire Southwest Consolidated Life Insurance Company, Bristow, Oklahoma, and thereby engage in acquiring an insurance company subsidiary that engages in credit-related insurance activities, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Comments on this application must be received not later than May 2, 1996.

Board of Governors of the Federal Reserve System, April 26, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–10905 Filed 5–1–96; 8:45 am]

BILLING CODE 6210–01–P

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 16, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Anita Bancorporation, Newton, Iowa; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; through Norwest Financial Services, Inc., Des Moines, Iowa, to acquire Aman Collection Service, Inc., Aberdeen, South Dakota, and thereby engage in operating a collection agency, pursuant to § 225.25(b)(23) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 26, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–10906 Filed 5–1–96; 8:45 am]

BILLING CODE 6210–01–F

The Bank of New York Company, Inc.; Notice to Engage in Certain Nonbanking Activities

The Bank of New York Company, Inc., New York, New York (BNY), has applied for Board approval pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), to engage *de novo* through its indirect wholly owned subsidiary, BNY Capital Markets, Inc., New York, New York (Company), in the following nonbanking activities: (i) providing investment and financial advisory services pursuant to 12 CFR 225.25(b)(4); (ii) providing full-service brokerage services pursuant to 12 CFR 225.25(b)(15); underwriting and dealing in government obligations and other obligations that state member banks may underwrite and deal in pursuant to 12 CFR 225.25(b)(16); making, acquiring and servicing loans or other extensions of credit pursuant to 12 CFR 225.25(b)(1); underwriting and dealing in, to a limited extent, certain municipal revenue bonds (including unrated and certain ''private ownership'' municipal revenue bonds), mortgage-related securities, commercial paper and consumer-receivable-related securities (Tier 1 Securities); buying and selling all types of debt and equity securities on the order of customers as a ''riskless principal;'' and acting as agent in the private placement of all types of debt and equity securities. Company currently is a subsidiary of BNY's bank subsidiary, The Bank of New York, New York, New York. Company would engage in the proposed activities on a worldwide basis following a reorganization in which it would become a subsidiary of BNY's wholly owned nonbank subsidiary, BNY Capital Markets Holdings, Inc., New York, New York.

The Board previously has determined that the proposed activities are closely related to banking. *See* 12 CFR 225.25(b)(1), (4), (15) and (16); *Citicorp et al.*, 73 Fed. Res. Bull. 473 (1987) (underwriting and dealing in, to a limited extent, Tier 1 Securities); *Bank South Corporation*, 81 Fed. Res. Bull. 1116 (1995); *Letter Interpretating Cross-Marketing Firewall*, 81 Fed. Res. Bull. 198 (1995). *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989)(Bankers Trust); *J.P. Morgan & Company Incorporated*, 76 Fed. Res. Bull. 26 (1990) (J.P. Morgan) (riskless principal and private placement activities). BNY proposes to engage in these activities in accordance with the limitations and conditions established by the Board in Regulation Y and in its prior orders approving these activities.

In authorizing bank holding companies to engage in riskless principal activities under section 4(c)(8) of the BHC Act, the Board previously has relied upon a commitment that the applicant would conduct the proposed riskless principal activities in accordance with most of the prudential limitations governing the bank-ineligible securities underwriting and dealing activities of section 20 companies (Section 20 Firewalls). *See Bankers Trust*, 75 Fed. Res. Bull. at 834; *J.P. Morgan*, 76 Fed. Res. Bull. at 27. BNY, however, does not propose to conduct the riskless principal activities of Company in accordance with the Section 20 Firewalls. BNY states that riskless principal transactions are essentially equivalent to brokerage transactions, and notes that the Board

has not imposed similar limitations on the securities brokerage activities of bank holding companies. *See* 12 CFR 225.25(b)(15). BNY also contends that riskless principal transactions do not involve the potential conflicts of interests, unsound banking practices and other adverse effects that are sought to be addressed by the Section 20 Firewalls. Furthermore, BNY asserts that compliance with the section 20 Firewalls would place a bank holding company engaged in riskless principal transactions at a competitive disadvantage to other broker-dealers engaged in such activity.

Company, however, would conduct its riskless principal activities subject to the other conditions established by the Board in previous orders, including those conditions that are designed to assure that a bank holding company's riskless principal activities do not constitute the underwriting, public sale, or distribution of securities for purposes of the Glass-Steagall Act. *See Bankers Trust; J.P. Morgan; BankAmerica Corporation*, 79 Fed. Res. Bull. 1163 (1993). For example, Company would engage in riskless principal transactions only in the secondary market and would not engage in riskless principal transactions for any security carried in its inventory. Company also would not act as riskless principal with respect to registered investment company securities or the securities of investment companies advised by BNY or any of its affiliates.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by BNY ''can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' 12 U.S.C. 1843(c)(8). BNY believes that the proposal would produce public benefits that outweigh any potential adverse effects. In particular, BNY maintains that the proposal would increase competition for the proposed services.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 28, 1996. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, April 26, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–10907 Filed 5–1–96; 8:45 am]

BILLING CODE 6210–01–F

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-9809) published on pages 17704 and 17705 of the issue for April 22, 1996.

Under the Federal Reserve Bank of Atlanta heading, the entry for Bradley County Financial Corp., Cleveland, Ohio, is revised to read as follows:

1. Bradley County Financial Corp., Cleveland, Tennessee; to engage *de novo* through its subsidiary, Tennessee Financial Services, Inc., Cleveland, Tennessee, in consumer finance and insurance agency activities, pursuant to §§ 225.25(b)(1)(i), 225.25(b)(8)(i), and 225.25(b)(8)(ii) of the Board's Regulation Y. The proposed activities will be conducted throughout the States of Tennessee and Georgia.

Comments on this application must be received by May 6, 1996.

Board of Governors of the Federal Reserve System, April 26, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–10908 Filed 5–1–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Review of the research protocol for the study: ''Evaluation of Prevention Strategies to Reduce Back Pain and Injury Among Nursing Home Workers.''

Time and Date: 1 p.m.–5 p.m., June 5, 1996.

Place: Suncrest Facility, Large Conference Room, NIOSH, CDC, 3040 University Avenue, Morgantown, West Virginia 26505–2888.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 60 people.

Purpose: The purpose of this meeting is to obtain comments and input regarding the technical and scientific merits of the study, ''Evaluation of Prevention Strategies to Reduce Back Pain and Injury Among Nursing Home Workers,'' being conducted by NIOSH. The purpose of the proposed research is to evaluate lifting equipment and medical management programs for their effectiveness in reducing the incidence, cost, and subsequent disability associated with work-related injuries and reports of pain. Participants will review the proposed study protocol, provide recommendations for scientific changes, and provide advice to NIOSH on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other government agencies and the public are invited. Written comments will be part of the review, and should be received by the contact person listed below no later than May 21, 1996.

Contact Person for Additional Information: James W. Collins, NIOSH, CDC, 1095 Willowdale Road, M/S 1133, Morgantown, West Virginia 26505–2888, telephone 304/285–5998.

Dated: April 25, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–10884 Filed 5–1–96; 8:45 am]

BILLING CODE 4160–19–M

Health Care Financing Administration

[R–131]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the

Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Information Collection Requirements in BPD–458–F, Section 411.408(d)(2) and (f); *Form No.:* HCFA–R–131; *Use:* Physicians who do not accept assignment may bill a patient for services denied by Medicare as ''not reasonable and necessary,'' if they informed the patient, prior to furnishing the services, that Medicare was likely to deny part B payments for services and the patient, after being so informed, agrees to pay for the services. *Frequency:* On occasion; *Affected Public:* Individuals or Households; *Number of Respondents:* 237,322; *Total Annual Responses:* 925,904; *Total Annual Hours Requested:* 115,738.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources Management Planning and Analysis Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 24, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources.

[FR Doc. 96–10864 Filed 5–1–96; 8:45 am]

BILLING CODE 4120–03–P

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc. 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd. Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

CORNING Clinical Laboratories, 4771 Regent Blvd., Irving, TX 75063, 800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath)

CORNING Clinical Laboratories, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–284–7515 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories)

CORNING Clinical Laboratories, 24451 Telegraph Rd., Southfield, MI 48034, 800–444–0106, ext. 650 (formerly: HealthCare/Preferred Laboratories, Health Care/MetPath)

CORNING Clinical Laboratories Inc., 1355 Mittel Blvd., Wood Dale, IL

60191, 708–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories)
CORNING Clinical Laboratories, South Central Divison, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 (formerly: Metropolitan Reference Laboratories, Inc.)
CORNING Clinical Laboratory, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories)
CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science)
CORNING Nichols Institute, 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT))
Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093
Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171
Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813–936–5446/800–735–5416
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468
Drs. Weber, Palmer, Macy, Chartered, 338 N. Front St., Salina, KS 67401, 913–823–9246
DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)
Jewish Hospital of Cincinnati, Inc. 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051
LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100 (Formerly: National Health Laboratories Incorporated)
Laboratory Corporation of America, 21903 68th Ave. South, Kent, WA 98032, 206–395–4000 (Formerly: Regional Toxicology Services)
Laboratory Corporation of America Holdings, 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286 (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961
Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835
MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213
Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199
MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512)
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272
Premier Analytical Laboratories, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784 (formerly: Drug Labs of Texas)
Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–244–8800, 800–999–LABS
Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–989–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 904–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 1737 Airport Way South, Suite 200, Seattle, WA 98134, 206–623–8100
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N.

Lee St., Oklahoma City, OK 73102, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 314–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory)

The following laboratory withdrew from the National Laboratory Certification Program on April 15, 1996:

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352

The following laboratory withdrew from the National Laboratory Certification Program on April 26, 1996:

Holmes Regional Medical Center Toxicology Laboratory, 5200 Babcock St., N.E., Suite 107, Palm Bay, FL 32905, 407–726–9920

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 96–10846 Filed 5–1–96; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4051–N–01]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1515 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub.L. 101–235), approved December 15, 1989, requires that HUD ''publish in the Federal Register a description of and the cause for administrative action against a HUD-approved mortgagee'' by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from October 1, 1995 through March 31, l996.

1. Associate Trust Financial Services; Camp Springs, Maryland

Action: Proposed withdrawal of HUD-FHA mortgagee approval.

Cause: Alleged submission of false information to the Department in connection with three HUD-FHA insured mortgage loan transactions.

2. Directors Mortgage Loan Corporation/Norwest Mortgage, Inc.; Des Moines, Iowa

Action: Settlement agreement that includes indemnification to the Department for any claim losses in connection with 56 improperly originated FHA insured mortgages; payment of a civil money penalty in the amount of $56,000; and an independent CPA review in the future to determine compliance with the HUD-FHA Section 203(k) program requirements.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA Section 203(k) program requirements by Directors Mortgage Loan Corporation, which was subsequently purchased by Norwest Mortgage, Inc. The violations included: calculating maximum mortgage amounts using a purchase contract that did not reflect the true purchase price; violating the seven unit limitation; improperly adding mortgage payments in the property rehabilitation cost; failure to perform field reviews of appraisals involving investor loans; permitting the seller to loan the required investment for the benefit of the mortgagor; miscalculating maximum mortgage amounts by failing to deduct seller concessions from the purchase price; and permitting loans to close that contained alleged false statements.

3. The Money Store; Sacramento, California

Action: Settlement agreement that includes: cancellation of HUD-FHA insurance in connection with six improperly originated Title I loans; payment to the Department in the amount of $35,000; and a future review by a CPA or other independent party to determine compliance with HUD-FHA Title I program requirements.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA Title I property improvement loan program requirements that included: failure to properly service Title I loans; failure to timely submit insurance claims; and failure to timely report the sale of Title I notes and transfers of insurance reserves.

4. Empire Funding Corporation; Austin, Texas

Action: Settlement agreement that includes: cancellation of HUD-FHA insurance in connection with seven improperly originated Title I loans; indemnification for the Department's claim loss on one improperly originated Title I loan; payment of a civil money penalty in the amount of $13,000; and corrective action to assure compliance with HUD-FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA Title I property improvement loan program requirements that included: accepting falsified completion certificates; alleged falsified lender inspection reports; failure to resolve borrower complaints; permitting dealers to participate without regard to performance; and failure to report dealer irregularities.

5. TMI Financial, Inc.; Austin, Texas

Action: Settlement agreement that includes a voluntary exclusion from participation in the HUD-FHA Title I property improvement loan program for a period of one year and a civil money penalty of $132,000.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA Title I property improvement loan program requirements that included: submitting alleged false insurance claims; accepting falsified completion certificates; alleged falsified lender inspection reports; failure to resolve borrower complaints; and failure to report dealer irregularities.

6. New England Mortgage Brokers, Inc.; North Andover, Massachusetts

Action: Settlement agreement that includes: payment to the Department of a civil money penalty in the amount of $3,000; corrective action to assure compliance with HUD–FHA

requirements; and a future review by an independent CPA to determine compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA requirements that included: failure to implement an adequate Quality Control Plan; failure to perform quality control reviews of loan correspondents; permitting non-exclusive employees to originate HUD–FHA insured mortgages; failure to conduct face-to-face interviews with mortgagors; and paying a referral fee to an independent contractor.

7. State Funding, Inc.; Orange, California

Action: Probation and a civil money penalty in the amount of $10,000.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA requirements that included: failure to implement and maintain a Quality Control Plan for the origination of HUD–FHA insured mortgages; failure to remit Up-Front Mortgage Insurance Premiums within 15 days from the date of loan closing and to remit late charges and interest penalties; establishing subordinate notes in originating HUD–FHA streamline refinances; and failure to timely submit loans for endorsement.

8. Calcorp Finance, Inc.; Bell, California

Action: Settlement agreement that includes: indemnification to the Department in connection with three improperly originated mortgages; and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that cited violations of HUD–FHA requirements that included: failure to conduct face-to-face interviews with borrowers; submitting alleged false information to HUD–FHA; and failure to close loans in the company's name.

9. Pacific Inland Mortgage Corporation; Anaheim Hills, California

Action: Settlement agreement that includes: indemnification to the Department for any claim losses in connection with two improperly originated loans; payment of a civil money penalty in the amount of $1,000; and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA requirements including: failure to implement a Quality Control Plan for the origination of HUD–FHA insured mortgages; submission of alleged false information to HUD–FHA; and permitting borrowers to sign loan documents in blank.

l0. Western Fidelity Mortgage Company; Salt Lake City, Utah

Action: Settlement agreement that includes: payment of a civil money penalty in the amount of $2,000; and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA requirements including: failure to comply with reporting requirements under the Home Mortgage Disclosure Act (HMDA); and failure to implement an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages.

11. First American Mortgage Company; Sulphur Springs, Texas

Action: Settlement agreement that includes: indemnification to the Department for claim losses in connection with two improperly originated loans; and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA requirements including: failure to perform face-to-face interviews with borrowers; permitting borrowers to handcarry verifications of employment; and failure to implement a Quality Control Plan.

12. Seacoast Equities, Inc.; La Mesa, California

Action: Probation and payment of a civil money penalty in the amount of $25,000.

Cause: Failure to comply with the terms of a Settlement Agreement with the Mortgagee Review Board with respect to the use of false and misleading advertising in connection with the HUD–FHA Title I property improvement loan program.

13. American Mortgage Professionals; Escondido, California

Action: Settlement agreement that includes: payment of a civil money penalty in the amount of $2,000; and corrective action to assure compliance with HUD–FHA requirements.

Cause: Use of false and misleading advertising in connection with the HUD–FHA Title I program.

14. Classic Financial Corporation; Tustin, California

Action: Settlement agreement that includes: payment of a civil money penalty in the amount of $2,000; and corrective action to assure compliance with HUD–FHA requirements.

Cause: Use of false and misleading advertising in connection with the HUD–FHA Title I program.

15. Interbank Funding Group; San Diego, California

Action: Settlement agreement that includes: payment of a civil money penalty in the amount of $2,000; and corrective action to assure compliance with HUD–FHA requirements.

Cause: Use of false and misleading advertising in connection with the HUD–FHA Title I program.

16. Mortgage America Nationwide; Grand Terrace, California

Action: Settlement agreement that includes: payment of a civil money penalty in the amount of $2,000; and corrective action to assure compliance with HUD–FHA requirements.

Cause: Use of false and misleading information in connection with the HUD–FHA Title I program.

17. Unifed Mortgage Corporation; San Diego, California

Action: Settlement agreement that includes: payment of a civil money penalty in the amount of $2,000; and corrective action to assure compliance with HUD–FHA requirements.

Cause: Use of false and misleading advertising in connection with the HUD–FHA Title I program.

18. Z and Z Funding Group; San Diego, California

Action: Settlement Agreement that includes: payment of a civil money penalty in the amount of $2,000; and corrective action to assure compliance with HUD–FHA requirements.

19. K Mortgage Corporation; Wall Township, New Jersey

Action: Settlement Agreement that includes: indemnification and/or buydown of mortgage amounts of three overinsured mortgages; indemnification for any claim loss for one improperly originated mortgage; refunds to borrowers of excessive discount points; and payment of a civil money penalty of $500.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA requirements including: originating HUD–FHA insured mortgages prior to obtaining the required branch office approvals; failure to implement and maintain an adequate Quality Control Plan; using an identity of interest closing agent; closing loans that exceed HUD–FHA maximum mortgage amounts; unallowable credits to the borrowers for repairs; charging the borrowers excessive discount points;

failure to determine the source of funds required for closing; and failure to give full credit for an earnest money deposit.

20. Davis-Penn Mortgage Company; Houston, Texas

Action: Settlement Agreement that includes: payment to the Department of a civil money penalty in the amount of $8,000; and submission of acceptable rental use agreement with respect to two multifamily projects.

Cause: Violation of HUD–FHA multifamily mortgage insurance program requirements resulting from improperly accepting payment in full of two multifamily project mortgages without obtaining the prior approval of HUD–FHA.

21. MP Inc. d/b/a Mortgage Professionals; Irvine, California

Action: Settlement Agreement that would include: payment of a civil money penalty in the amount of $2,000; and corrective action to assure compliance with HUD–FHA requirements.

Cause: Use of false and misleading advertising in connection with the HUD–FHA Title I program.

22. Mortgage America Nationwide; Grand Terrace, California

Action: Settlement Agreement that includes: indemnification to the Department for any claim losses in connection with two improperly originated loans; payment of a civil money penalty in the amount of $500; and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA requirements including: failure to implement and maintain an adequate Quality Control Plan; approval of an ineligible borrower for an insured loan; failure to properly verify the source and/or adequacy of the funds to close; originating a loan that exceeded HUD–FHA maximum mortgage amount; and failure to accurately reflect all charges to the buyers and sellers on the HUD–1 Settlement Statement.

23. Statewide Mortgage Company; Houston, Texas

Action: Proposed Settlement Agreement that would include: indemnification to the Department for any claim losses in connection with 35 improperly originated Title I property improvement loans; corrective action to assure compliance with HUD–FHA requirements; and a future review by an independent CPA to determine compliance by the company's Bellevue, Washington branch office with HUD–FHA Title I program requirements.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA Title I program requirements including: failure to conduct a face-to-face or telephone interview with the borrowers; approving loan applicants based on alleged false leases; failure to present the Title I loan proceeds directly to the borrowers; alleged falsified property inspection reports; failure to establish required equity; and reporting loans for insurance that contained inaccurate information.

24. Alliance Mortgage Corporation; Villa Park, Illinois

Action: Proposed Settlement Agreement that would include: indemnification to the Department for any claim losses in connection with six improperly originated loans; and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD Office of Inspector General audit report that disclosed violations of HUD–FHA requirements including: failure to conduct face-to-face interviews with mortgagors; failure to properly verify borrowers' gift funds; failure to properly verify borrower's income; understating a borrower's liabilities; and failure to maintain an adequate Quality Control Plan.

25. American City Mortgage Corporation; Carson, California

Action: Settlement Agreement that includes: indemnification to the Department for any claim losses in connection with 10 improperly originated loans; payment of a civil money penalty in the amount of $7,000; and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA requirements including: submitting loans involving ''strawbuyers'' to HUD–FHA for mortgage insurance; using alleged false information in originating HUD–FHA insured mortgages; failure to conduct face-to-face interviews with mortgagors; failure to document borrower's source of funds used for downpayment and closing costs; deleting a mortgagor from the title in a Rate Reduction Refinance transaction; submitting a defaulted loan to HUD–FHA for mortgage insurance endorsement; submitting loans to HUD–FHA for insurance endorsement that were overinsured; failure to properly implement a Quality Control Plan; failure to properly underwrite loans submitted by Loan Correspondents; and closing loans submitted by Loan Correspondents in the company's own name.

26. Home Federal Savings Bank; Cleveland, Ohio

Action: Proposed Settlement Agreement that would include indemnification to the Department for any claim losses in connection with 21 improperly originated loans.

Cause: Violation of HUD–FHA requirements by a former employee that included failure to perform face-to-face interviews with borrowers; and submission of false information to the Department.

27. Western States Mortgage Corporation; Bellevue, Washington

Action: Settlement Agreement that includes: payment of a civil money penalty in the amount of $500; and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA requirements including: failure to implement and maintain an adequate Quality Control Plan; failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); sharing office space and commingling employees with another firm; failure to comply with disclosure requirements under the Real Estate Settlement Procedures Act (RESPA); annual audit report not in compliance; originating a loan that exceeded the HUD–FHA maximum mortgage amount; failure to maintain complete mortgage origination files; and failure to utilize proper gift letters.

Dated: April 26, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–10845 Filed 5–1–96; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1020–001]

Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management.

ACTION: Resource Advisory Council meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior,

Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council will be held as indicated below. The agenda includes a public comment period, discussion of laws and regulations that pertain to grazing, and an update of standards and guidelines.

All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Michael Dwyer at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone, (702) 647–5000.

DATES, TIMES: Dates are May 9 and 10, 1996. The council will meet at the Las Vegas District Office, located at 4765 Vegas Drive, Las Vegas, NV 89108, from 8:30 a.m. to approximately 4:30 p.m. The public comment period will begin at 2 p.m. on May 9.

SUPPLEMENTARY INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION CONTACT: Lorraine Buck, Public Affairs Specialist, Las Vegas District, telephone: (702) 647–5000.

Dated: April 22, 1996.

Michael F. Dwyer,

District Manager.

[FR Doc. 96–10937 Filed 5–1–96; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–015–96–1430–01; AZA–29525]

Recreation and Public Purposes Act Classification, Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: Applicable to notice 96–8528 published in the Federal Register Monday, April 8, 1996, Volume 61, Page 15512, make corrections as follows. In the legal description, change T. 40 N. to T. 42 N.

DATES: The comment period end date should be changed from May 20, 1996, to May 23, 1996.

FOR FURTHER INFORMATION CONTACT: Laurie Ford, Vermillion Resource Area Realty Specialist, 345 E. Riverside Drive, St. George, UT 84790; phone (801) 628–4491, ext. 271.

Roger G. Taylor,

Arizona Strip District Manager.

[FR Doc. 96–10939 Filed 5–1–96; 8:45 am]

BILLING CODE 4310–32–M

[NV–930–1430–01; N–60478]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management.

ACTION: Non-competitive sale of public lands in Clark County, NV.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA).

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E., sec. 20, NW¼NE¼NE¼SE¼, S½NE¼NE¼SE¼, NW¼NE¼SE¼, S½NE¼SE¼, and NW¼SE¼, Containing 77.5 acres, more or less.

This parcel of land, situated in Las Vegas, Nevada is being offered as a direct sale to Clark County Department of Aviation. This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals; and will be subject to an easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County/the City of Las Vegas; and subject to:

1. Those rights for roadway purposes which have been granted to Nevada Department of Transportation by Permit Nos. CC–020584 under the Act of November 11, 1921 (42 Stat. 261), and Nev–055091, under the Act of August 27, 1958, (23 U.S.C. 317).

2. Those rights for roadway purposes which have been granted to Clark County by Permit No. N–55134 under the Act of October 21, 1976 (243 U.S.C. 1761).

3. Those right for telephone line purposes which have been granted to Sprint Telephone Company by Permit No. N–47888 under the Act of October 21, 1976 (43 U.S.C. 1761).

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, 4765 Vegas Dr., Las Vegas, Nevada 89108. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Dated: April 19, 1996.

Gary Ryan,

Acting District Manager, Las Vegas, NV.

[FR Doc. 96–10863 Filed 5–1–96; 8:45 am]

BILLING CODE 4310–HC–P

National Park Service

National Historic Landmarks Survey; Notification of Pending Nomination

A nomination for National Historic Landmark designation for the EDWARD M. COTTER, Buffalo, New York, was received by the National Park Service before April 12, 1996. Pursuant to Section 65.5 of 36 CFR Part 65, written comments concerning the significance of this property under the National Historic Landmarks criteria for evaluation may be forwarded to the National Historic Landmarks Survey, National Park Service, P.O. Box 37127, Suite 310, Washington, D.C. 20013–7127. Written comments should be submitted by [15 days after publication]. After this date, the nomination will be forwarded to the Secretary of the Interior for designation as a National Historic Landmark.

Rowland Bowers,

Assistant Director, Cultural Resources Stewardship and Partnership Programs.

[FR Doc. 96–10962 Filed 5–1–96; 8:45 am]

BILLING CODE 4310–70–P

Notice of Inventory Completion for Native American Human Remains and an Associated Funerary Object from Arizona in the Possession of the Hood Museum of Art, Dartmouth College, Hanover, NH

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 an associated funerary object from Arizona in the Possession of the Hood Museum of Art, Dartmouth College, Hanover, NH

A detailed assessment of the human remains was made by the museums professional staff in consultation with representatives of the Gila River Indian Community.

Both of the items described below were collected in 1906 at Sacaton, Arizona by Frank and Clara Churchill. Frank Churchill was a Special Federal Inspector of Indian Schools who bequeathed his collection to Dartmouth College in 1946. Both items were further identified as having been ''found six inches beneath the surface, Sacaton, Arizona''.

The human remains include about 200 ''human bone fragments from a burial jar'' based on Hood Museum records. Information from the professional staff indicate that these remains are from at least three individuals and that some of the fragments appear to be from fetal bones. Due to the very fragmentary nature of the remains no further information was available.

The burial jar is an Olla (water jar) decorated with red on white floral designs. The jar is 5 3/4 in. high by 7 1/2 in. in diameter at the belly. The neck has a 4 1/4 in. diameter. In 1979 this vessel was mistakenly identified as stylistically similar to those produced by the Tarahumara of Chihuahua, Mexico. Officials of the Gila River Indian Community have, based on their evaluation of photographic materials, confirmed that this jar is consistent with the pottery of the Gila River Indian Community.

Based on the above mentioned information, officials of the Hood Museum of Art have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of at least three individuals of Native American ancestry. Officials of the Hood Museum of Art have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the object listed above is 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 Hood Museum of Art 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 Native American human remains and associated funerary object and the Gila River Indian Community.

This notice has been sent to officials of the Gila River Indian Community. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary object should contact Kellen G. Haak, Registrar and repatriation Coordinator, Hood Museum of Art, Dartmouth College, Hanover, NH 03755; telephone: (603) 646–3109, before June 3, 1996. Repatriation of the human remains and associated funerary object to the Gila River Indian Community may begin after that date if no additional claimants come forward.

Dated: April 26, 1996

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeology and Ethnography Program

[FR Doc. 96–10957 Filed 5–1–96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains from Florida in the Possession of the Hood Museum of Art, Dartmouth College, Hanover, NH

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 from Florida in the Possession of the Hood Museum of Art, Dartmouth College, Hanover, NH

A detailed assessment of the human remains was made by the museums professional staff in consultation with representatives of the Seminole Nation of Oklahoma. The Seminole Tribe of Florida declined to participate in consultation. However, the Seminole Nation of Oklahoma was consulted, and an official for the Nation confirmed that the Seminole of Oklahoma are very interested in repatriation and firmly believe that Seminole remains removed from Oklahoma should be returned to Oklahoma, and that remains removed from Florida should be returned to Florida.

This set of human remains include 17 bones. Hood Museum records indicate that these remains entered the collection prior to 1913 from an unknown source. The remains are further identified as coming from a ''Seminole Burial Ground'' in ''Oak Lodge, Florida''.

Based on the above mentioned information, officials of the Hood Museum of Art have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Hood Museum of Art have also 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 Native American human remains and the Seminole Tribe of Florida.

This notice has been sent to officials of the Seminole Tribe of Florida and the Seminole Nation of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Kellen G. Haak, Registrar and repatriation Coordinator, Hood Museum of Art, Dartmouth College, Hanover, NH 03755; telephone: (603) 646–3109, before June 3, 1996. Repatriation of the human remains to the Seminole Tribe of Florida may begin after that date if no additional claimants come forward.

Dated: April 26, 1996

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeology and Ethnography Program

[FR Doc. 96–10958 Filed 5–1–96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Alaska in the Possession of the Hood Museum of Art, Dartmouth College, Hanover, NH

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 from Alaska in the Possession of the Hood Museum of Art, Dartmouth College, Hanover, NH

A detailed assessment of the human remains was made by the museums professional staff in consultation with representatives of the Tetlin Native Corporation.

The human remains and associated funerary objects include three bone fragments and thirty five beads. Hood Museum records indicate that these items were collected from ''an old grave'' on the edge of Tetlin Village by Robert A. McKennan. No known individuals were identified.

All of the items described above were collected by the anthropologist Robert A. McKennan in 1929–30 from Tetlin Village, Alaska. McKennan describes the excavation of these remains and funerary objects on page 146 of his 1959 monograph *The Upper Tanana Indians* (Yale University Publications in Anthropology, #55). He attributes the burial to the post 1870 period based on the position of the body and the artifacts associated with the burial and the location of the grave site.

Based on the above mentioned information, officials of the Hood Museum of Art have determined, in consultation with representatives of the Tetlin Native Corporation, that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Hood Museum of Art have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the thirty five objects 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 Hood Museum of Art 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 Native American human remains and associated funerary objects and the Tanana of Tetlin Village, Alaska.

This notice has been sent to officials of the Tetlin Native Corporation and the Tanana Chiefs Conference. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Kellen G. Haak, Registrar and repatriation Coordinator, Hood Museum of Art, Dartmouth College, Hanover, NH 03755; telephone: (603) 646–3109, before June 3, 1996. Repatriation of the human remains and associated funerary objects to the Tetlin Native Corporation may begin after that date if no additional claimants come forward.

Dated: April 26, 1996

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeology and Ethnography Program

[FR Doc. 96–10959 Filed 5–1–96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains in the possession of the Washington State Historical Society, Tacoma, WA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory of Native American human remains currently in the possession of the Washington State Historical Society, Tacoma, WA.

A detailed inventory and assessment has been made by the Washington State Historical Society staff and representatives of the Puyallup Tribe of Indians of Washington.

The human remain consists of one isolated skull from a male, 20 to 30 years of age which was recovered near Rodondo, Washington. The skull was donated to the museum in 1930 by Dr. W. T. Thomas of Tacoma, Washington. A second skull from a male, 35 to 45 years, was recovered in 1908 on the Puyallup Indian Reservation. This skull was donated to museum's possession in 1915 by C. Arthur Foss of Tacoma, Washington. No known individuals were identified.

Redondo, WA is within the boundaries of the original Puyallup reservation as defined in the Medicine Creek Treaty of 1854. Robert Hunt in ''Tacoma, Its History and its Builders, A Half a century of Activity'', 1916, identifies the Puyallup as occupying of the area for '' * * *unnumbered centuries, * * *''. Archeological evidence is consistent with long uninterrupted occupation of the area.

Based on the available records as well as ethno-historical and geographical evidence reviewed by the Tribe during consultation, officials of the Washington State Historical Society have determined that, pursuant to 43 CFR 10 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Washington State Historical Society 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 the human remains and the Puyallup Tribe of Indians of Washington.

This notice has been sent to Puyallup Tribe of Indians of Washington. Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Lynn D. Anderson, Head of Collections, Washington State Historical Society, 315 N. Stadium Way, Tacoma, WA 98403, telephone (206) 597–4232, before June 3, 1996. Repatriation of the human remains to the Puyallup Tribe may begin after that date if no additional claimants come forward.

Dated: April 26, 1996

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeology and Ethnography Program

[FR Doc. 96–10960 Filed 5–1–96; 8:45 am]

BILLING CODE 4310–70–F

Bureau of Reclamation

Notice of Availability; Animas-La Plata Project, Colorado and New Mexico

AGENCY: Bureau of Reclamation (Interior).

ACTION: Notice of availability of Final Supplement to the 1980 Final Environmental Statement (FSFES): FSFES 96–23.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a FSFES for the Animas-LaPlata Project in Colorado and New Mexico. The FSFES addresses additional information concerning environmental effects of the Project initially described in the 1980 Final Environmental Statement.

ADDRESSES: Single copies of the FSFES may be obtained on request to the addresses below. Western Colorado Area Office—Southern Division, Bureau of Reclamation, Resource Management Division, P.O. Box 640, Durango, Colorado 81302

Copies of the FSFES are available for inspection at the following locations:

Bureau of Reclamation, U.S. Department of the Interior, Room 7455, 18th & C Streets, NW., Washington, DC 20240

Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver, Colorado 80225

Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138

Bureau of Reclamation, Western Colorado Area Office—Southern Division, 835 East 2nd Avenue, Durango, Colorado 81302

Bureau of Reclamation, Western Colorado Area Office—Northern Division, 2764 Compass Drive, Grand Junction, Colorado 81506

Libraries

Colorado

Colorado State University Library, Ft. Collins

Cortez City Library
Denver City Library
Durango High School Library
Durango Public Library
Ft. Lewis College Library, Durango
University of Northern Colorado Library, Greeley
University of Denver, Penrose Library, Denver
University of Colorado, Norlin Library, Boulder
New Mexico
Albuquerque Public Library
Alturian Public Library, Aztec
Bloomfield City Library
Farmington Public Library
Navajo Community College Library, Shiprock
New Mexico State Library, Santa Fe
New Mexico State University Library, Las Cruces
San Juan College Library, Farmington
University of New Mexico Library, Albuquerque
Zimmerman Library, Albuquerque

FOR FURTHER INFORMATION CONTACT: Mr. Ken Beck, Planning Team Leader, Bureau of Reclamation, P.O. Box 640, Durango, Colorado 81301, telephone (970) 385–6558.

SUPPLEMENTARY INFORMATION: The Project would divert flows of the Animas and LaPlata Rivers for irrigation, municipal, and industrial uses in Colorado and New Mexico. The Project would satisfy a portion of the Colorado Ute Indian reserve water right claims as specified by the 1988 Colorado Ute Indian Water Rights Settlement Act. Additionally, the project would provide for fish and wildlife preservation, recreation facilities, and a cultural resources program. Two reservoirs are included in the plan—Ridges Basin and Southern Ute Reservoirs.

The FSFES provides additional information concerning environmental effects initially described in the 1980 Final Environmental Statement and incorporates revisions as a result of new studies, Project refinements and public input received on the 1992 Draft Supplement to the Final Environmental Statement. The new or updated information relates geology, soils, water quality, aquatic resources, Wild and Scenic River issues, wildlife habitat, endangered species, wetlands, cultural resources, recreation and tourism, socioeconomic issues, environmental justice, Indian Trust Assets, and the operation of Navajo Dam.

Dated: April 26, 1996.

Charles A. Calhoun,

Regional Director.

[FR Doc. 96–10868 Filed 5–1–96; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Notice of Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to the Government of Zimbabwe (''Borrower'') as part of USAID's development assistance program. The proceeds of these loans will be used for mortgage finance and to finance shelter-related infrastructure for low-income families in Zimbabwe. At this time, the Government of Zimbabwe has authorized USAID to request proposals from eligible lenders for a loan under this program of Fifteen Million U.S. Dollars (US $15,000,000). The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Zimbabwe

Project No.: 613–HG–004—Amount: US $15,000,000
Housing Guaranty Loan No.: 613–HG–005 A01
Attention: Mr. C.T. Kuwaza, Senior Secretary for Finance Ministry of Finance (Street address: Munhumutapa Building, Samora Machel Avenue, Private Bag 7705 Causeway, Harare, Zimbabwe). Telex No.: 22141 ZIMGOV
Telefax: 011–263–4–792–750 (preferred communication)
Telephone Nos.: 011–263–4–794–571 through 9

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to the Borrower's representative by *Tuesday, May 14, 1996, 12:00 noon Eastern Daylight Time.* Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Michael Enders, Mission Housing Officer, Regional Housing and Urban Development Office, USAID/Harare, 1 Pascoe Avenue, Harare, Zimbabwe. Telefax No.: 011–263–4–720–722 (preferred communication) Telephone No.: 011–263–4–720–757
and
Mr. Peter Pirnie, Financial Advisor, U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 409, SA–18, Washington, DC 20523–1822, Telex No.: 892703 AID WSA, Telefax Nos.: 703/875–4639 or 875–4384 (preferred communication) Telephone Nos.: 703/875–4300 or 875–4510.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $15 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal. (During grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate:* Alternatives of both *fixed* and *variable* rate loans are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond yield, specifically the 6% U.S. Treasury Bond due February 15, 2026. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.

(5) *Prepayment:*

(a) Offers should include any options for prepayment and mention prepayment premiums, if any.

(b) Federal statutes governing the activities of USAID require that the proceeds of USAID-guaranteed loans be used to provide affordable shelter and related infrastructure and services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this requirement, USAID reserves the right, among its other rights and remedies, to accelerate the loan.

(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees, Paying and Transfer Agent fees. Lenders are requested to include all legal fees and out-of-pocket expenses in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date:* As early as practicable, but not to exceed 60 days from date of selection lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and thereafter, subject to approval by

USAID. Disbursements under the loan will be subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the ''Act'').

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from: Ms. Viviann Gary, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 409, SA–18, Washington, D.C. 20523–1822, Fax Nos: 703/875–4384 or 875–4639, Telephone: 703/875–4300.

Dated: April 26, 1996.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 96–11008 Filed 5–1–96; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993, Joint Research and Development Program for the Production of Resistor Packs, Dow Chemical Company/VisPro Corporation

Notice is hereby given that, on March 29, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), The Dow Chemical Company filed notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of a Joint Research and Development Program in the area of computer hard drive, disk drive, substrates. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are The Dow Chemical Company, Midland, MI and VisPro Corporation, Beavertown, OR. The nature and objectives of the venture are to engage in research and development on a process for the efficient manufacture of deslaged substrates of an aluminum-boron-carbon composite for deposit of magnetic recording medium; with the substrates being used for computer, hard disk drives having greater memory capacities and improved performance.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–10854 Filed 5–1–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Information Infrastructure Testbed

Notice is hereby given that, on January 30, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seg.* (''the Act''), the National Information Infrastructure Testbed (''NIIT'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identity of the additional members of NIIT are: Bay Area Multimedia Technology Association (BAMTA), Santa Clara, CA; Information Systems Branch, British Columbia, CANADA; Information Technology Service, U.S. General Services Administration, Washington, DC; Medical Records Institute, Newton, MA; National Biological Survey, U.S. Department of the Interior, Washington, DC; Texas Instruments, Dallas, TX; University of California at Berkeley, Berkeley, CA; United States Fish and Wildlife Service, Washington, DC; West Virginia University, Morgantown, WV.

Organizations that are no longer NIIT members are: C&M Science Innovations; Cabletron Systems, Inc.; Consortium for International Earth Science Information Network; Cornell University/Cornell Theory Center; Covia Technologies, Inc.; Earth Observation Satellite Company; Entergy Services, Inc.; Intel Corporation; Lancet Online; Lawrence Berkeley Laboratory; Lotus Development Corporation; Methodist Health Network of Iowa; NASA Commercial Remote Sensing Program; National Institute for Standards and Technology; Novell, Inc.; StrataCom, Inc.; Syracuse University/ Northeast Parallel Architecture Center; WilTel, Inc.; University of Illinois/ National Center for Supercomputing Applications.

No other changes have been made in the membership, nature or objectives of the consortium. Membership in NIIT remains open. The consortium intends to file additional written notifications disclosing all changes in membership.

On December 7, 1993, NIIT filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on May 18, 1994 (59 FR 25960).

The last notification was filed with the Department of Justice on April 11, 1995. A notice has not yet been published in the Federal Register.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–10857 Filed 5–1–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Storage Industry Consortium—Ultrahigh Capacity Optical Disk (''UCOD'') Project

Notice is hereby given that, on December 12, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the National Storage Industry Consortium (''NISC'') has filed written notifications on behalf of Carnegie Mellon University; Eastman Kodak Company; and SDL Inc., simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the project are NSIC, San Diego, CA; Carnegie Mellon University, Pittsburgh,

PA; Eastman Kodak Company, Rochester, NY; and SDL, Inc., San Jose, CA.

The area of planned activity for the UCOD Project is to engage in research in the area of optical disk technology.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–10858 Filed 5–1–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Fuel Filtration Cooperative Research Project II (Southwest Research Institute)

Notice is hereby given that, on April 9, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI'') filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to and (2) the nature and objectives of the program. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Allied Signal, Inc., Perrysburg, OH; Caterpillar Inc., Mossville, IL; Cummins Engine Company, Columbus, IN; DAVCO Manufacturing, L.L.C., Saline, MI; Donaldson Co., Inc., Minneapolis, MN; Fleetguard, Inc., Cookeville, TN; Kaydon Filtration, LeGrange, GA; Pall Corporation, Port Washington, NY; and United Defense, LP, San Jose, CA. Its general areas of planned activities are to establish the sensitivity of high-pressure diesel fuel injection equipment to harmful particulate fuel contamination as well as to determine what level of water contamination is harmful; what is the form of a typical bad water/fuel mixture and duplicate such mixture in the laboratory to aid in the development of test methodologies for the rotary injection and high-pressure fuel systems.

Membership in the program remains open, and SwRI intends to file additional written notifications disclosing all changes in the membership or planned activities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–10855 Filed 5–1–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Wilfred Baker Engineering, Inc.; Petroleum Chemical Processing—Joint Agreement

Notice is hereby given that, on March 20, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Wilfred Baker Engineering, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership of a cooperative research agreement. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, B.P. Oil Company, Cleveland, OH has joined the joint venture.

No other changes have been made in either the membership or planned activities of the joint venture.

On March 14, 1995, Wilfred Baker Engineering, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on May 11, 1995 (60 FR 25252).

The last notification was filed on July 24, 1995. A notice was published in the Federal Register on February 23, 1996 (61 FR 7020–7021).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–10856 Filed 5–1–96; 8:45 am]

BILLING CODE 4410–01–M

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Application for Employment/Federal Bureau of Investigation.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the propose performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance of quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Patrick M. Maloy, (202) 324–4960, Federal Bureau of Investigation, U.S. Department of Justice, Room 6329, 935 Pennsylvania Avenue, N.W., Washington, DC 20535.

Overview of this information collection:

(1) Type of Information Collection: Revision of a currently approved collection.

(2) Title of the Form/Collection: Application for Employment/Federal Bureau of Investigation.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: FD–140. Federal Bureau of Investigation, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Individuals seeking employment with the FBI will be required to complete the FD–140. The information collected is used to address suitability, trustworthiness, and other security issues beyond the seven year scope of Standard Form 86.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 50,000 annual responses at 1.5 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 75,000 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center,

1001 G Street, N.W., Washington, DC 20530.

Dated: April 26, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–10881 Filed 5–1–96; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–31,882, 882A]

American Contract Sewing Corporation, Eufaula, OK and Mid-Western Industries, Tahlequah, OK; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on March 11, 1996, applicable to all workers of American Contract Sewing Corporation, located in Eufaula, Oklahoma. The notice was published in the Federal Register on March 25, 1996 (61 FR 12101).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm, Based on new information received by the State Agency, the Department is amending the certification to cover workers at the sister plant of the subject firm, Mid-Western Industries located in Tahlequah, Oklahoma. The production facility closed March 15, 1996. The workers at Tahlequah were engaged in employment related to the production of apparel.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of apparel.

The amended notice applicable to TA–W–31,882 is hereby issued as follows:

''All workers of American Contract Sewing Corporation, Eufaula, Oklahoma (TA–W–31,882) and Mid-Western Industries, Tahlequah, Oklahoma (TA–W–31,882A) who became totally or partially separated from employment on or after January 2, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 19th day of April 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–10952 Filed 5–1–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31, 901]

Anchor Glass Container; Cliffwood, New Jersey; Notice of Revised Determination on Reconsideration

On March 5, 1996, the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to all workers of Anchor Glass Container, located in Cliffwood, New Jersey. The notice was published in the Federal Register on March 25, 1996 (FR 61 12100).

By letter of March 22, 1996, counsel to the petitioner, Glass, Molders, Pottery, Plastics & Allied Workers International Union AFL–CIO and its Local 119, requested administrative reconsideration of the Department's findings.

The petitioners presented new evidence that was not considered in the original determination. The petitioners claim that the introduction of Mexican glass containers in the U.S. resulted in a substantial loss of work for Anchor Glass production facilities, and ultimately contributed to worker separations at the Cliffwood plant. Anchor Glass Container is a subsidiary of Vitro Glass, which has production facilities in Mexico. The petitioners claim that the Mexican production facilities contributed importantly to the declines in sales, production, and employment at the Cliffwood plant.

Investigation findings revealed that sales, production and employment at the subject firm declined. The plant ceased production in December 1995, and the plant is scheduled to close in April 1996. The workers were engaged in the production of glass bottles.

New findings on reconsideration show that the aggregate value of U.S. imports of glass bottles increased annually from 1993 to 1995.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with glass bottles contributed importantly to the declines in sales or production and to the total or partial separation of workers of Anchor Glass Container, Cliffwood, New Jersey. In accordance with the provisions of the Act, I make the following certification:

All workers of Anchor Glass Container, Cliffwood, New Jersey who became totally or partially separated from employment on or after January 5, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of April 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–10947 Filed 5–1–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,737]

B&A MFG., INC.; Weaver, AL, Including Leased Workers of Skil Staff, Alexander City, AL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 23, 1996, applicable to all workers at B&A Mfg., Inc. located in Weaver, Alabama. The notice was published in the Federal Register on March 19, 1996 (61 FR 11224).

At the request of the company official, the Department reviewed the certification for workers of the subject firm. Based on the new findings, the Department is amending the certification to include leased workers from Skil Staff, Alexander City, Alabama. B&A Mfg., Inc., a children's sportswear and t-shirt producer, contracted with Skil Staff for workers and payroll services. Accordingly, some of the workers at B&A Mfg., Inc. had their Unemployment Insurance (UI) wages paid by Skil Staff.

The intent of the Department's certification is to include all workers of B&A Mfg., Inc. adversely affected by imports.

The amended notice applicable to TA–W–31,737 is hereby issued as follows:

All workers of the B&A Mfg., Inc., Weaver, Alabama, and workers from Skil Staff, Alexander City, Alabama who were laid off for lack of work in adversely affected employment by B&A Mfg., Inc., who became totally or partially separated from employment on or after November 27, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of April 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–10953 Filed 5–1–96; 8:45 am]

BILLING CODE 4510–30–M

Haggar Clothing Company; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 11, 1995, applicable to all workers of Haggar Clothing Company, Robstown Manufacturing Company, located in Robstown, Texas. The notice was published in the Federal Register on May 25, 1995 (60 FR 27793). The worker certification was amended June 20, 1995, to show that some of the Robstown workers had their unemployment insurance (UI) taxes paid to Greenville Pant Manufacturing Company. The amended notice was published in the Federal Register on June 29, 1995, (60 FR 33850).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at other production facilities of the subject firm, Edinburg Manufacturing Company, a/k/a Waxahachie Garment Company, Edinburg, Texas, and Weslaco Manufacturing Company, a/k/a Bowie Manufacturing Company, Weslaco, Texas. The workers at the Edinburg plant produce men's pants, and the workers in Weslaco are engaged in employment related to the production of men's pants and coats.

The intent of the Department's certification is to include all workers of the Haggar Clothing Company who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include all workers of Haggar Clothing Company production facilities in Edinburg and Weslaco, Texas.

The amended notice applicable to TA–W–30,850 is hereby issued as follows:

All workers of Haggar Clothing Company, Robstown Manufacturing Company, a/k/a Greenville Pant Manufacturing Company, Robstown, Texas (TA–W–30,850); Edinburg Manufacturing Company, a/k/a Waxahachie Garment Company, Edinburg, Texas (TA–W–30,850A); and Weslaco Manufacturing Company, a/k/a Bowie Manufacturing Company, Weslaco, Texas (TA–W–30,850B) who became totally or partially separated from employment on or after March 16, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of April 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–10950 Filed 5–1–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,976]

Hudson Valley Tree, Incorporated, a/k/a Norma International Newburgh, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 15, 1995, applicable to all workers of Hudson Valley Tree, Incorporated, Newburgh, New York. The notice was published in the Federal Register on May 25, 1995 (60 FR 27793).

The State Agency reports that on January 1, 1996, a successor employer, Norma International, took over production operations at the subject firm. The workers are engaged in employment related to the production artificial Christmas trees, wreaths and garland.

The intent of the Department's certification is to include all workers of Hudson Valley Tree, Incorporated who were adversely affected by increased imports. Accordingly, the Department is amending the certification for workers of the subject firm to indicate the successor employer.

The amended notice applicable to TA–W–30,976 is hereby issued as follows:

All workers of Hudson Valley Tree, Incorporated, a/k/a Norma International, Newburgh, New York who became totally or partially separated from employment on or after April 20, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of April 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–10945 Filed 5–1–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,579]

Indian Refining Lawrenceville, IL; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Indian Refining, Lawrenceville, Illinois. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–31,579; Inidan Refining Lawrenceville, Illinois (April 17, 1996)

Signed at Washington, D.C. this 23rd day of April, 1996.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–10951 Filed 5–1–96; 8:45 am]

BILLING CODE 4510–30–M

Palm Beach Company; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 6, 1995, applicable to all workers of Palm Beach Company located in Eastaboga, Alabama. The notice was published in the Federal Register on January 26, 1996 (61 FR 2537).

At the request of petitioners, the Department reviewed the certification for workers at the subject firm. The workers are engaged in employment related to the production of men's suits. New information shows that worker separations have occurred at the subject firm's production facilities in Knoxville, Tennessee, and Somerset and Erlanger, Kentucky. Based on these new findings, the Department is amending the certification to cover workers of Palm Beach Company at those facilities.

The intent of the Department's certification is to include all workers of Palm Beach Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–31,600 is hereby issued as follows:

All workers of Palm Beach Company, Eastaboga, Alabama (TA–W–31,600); Knoxville, Tennessee (TA–W–31,600A);

Somerset, Kentucky (TA–W–31,600B) and Erlanger, Kentucky (TA–W–31,600C) who became totally or partially separated from employment on or after October 20, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of April 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–10946 Filed 5–1–96; 8:45 am]

BILLING CODE 4810–30–M

[TA–W–32,161]

Palm Beach Company, Knoxville, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an Investigation was initiated on April 8, 1996 in response to a worker petition which was filed March 14, 1996 on behalf of workers at Palm Beach Company, Knoxville, Tennessee (TA–W–32,161).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–31,600A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 17th day of April 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–10954 Filed 5–1–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00737]

Anchor Glass Container, Cliffwood, New Jersey; Notice of Revised Determination on Reconsideration

On March 5, 1996, the Department issued a Negative Determination Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance (NAFTA–TAA) applicable to all workers of Anchor Glass Container located in Cliffwood, New Jersey. The notice was published in the Federal Register on March 25, 1996 (FR 61 12101)

By letter of March 22, 1996, counsel to the petitioner, Glass, Molders, Pottery, Plastics & Allied Workers International Union AFL–CIO and its Local 119, requested administrative reconsideration of the Department's findings.

The petitioners presented new evidence that was not considered in the original determination. The petitioners claim that the introduction of Mexican glass containers in the U.S. resulted in a substantial loss of work for Anchor Glass production facilities, and ultimately contributed to worker separations at the Cliffwood plant. Anchor Glass Container is a subsidiary of Vitro Glass, which has production facilities in Mexico. The petitioners claim that the Mexican production facilities contributed importantly to the declines in sales, production, and employment at the Cliffwood plant.

Investigation findings revealed that sales, production and employment at the subject firm declined. The plant ceased production in December 1995, and the plant is scheduled to close in April 1996. The workers were engaged in the production of glass bottles.

New findings on reconsideration show that the aggregate value of U.S. imports of glass bottles from Mexico and Canada increased annually from 1993 to 1995.

Conclusion

After careful, review of the additional facts obtained on reconsideration, I conclude that increased imports of glass bottles from Mexico or Canada contributed importantly to the declines in sales or production and to the total or partial separation of workers of Anchor Glass Container, Cliffwood, New Jersey. In accordance with the provisions of the Act, I make the following certification:

All workers of Anchor Glass Container, Cliffwood, New Jersey who became totally or partially separated from employment on or after January 5, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of April 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–10948 Filed 5–1–96; 8:45 am]

BILLING CODE 4510–30–M

Haggar Clothing Company; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Notice of Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on June 7, 1995, applicable to all workers at the subject firm. The notice was published in the Federal Register on June 21, 1995 (60 FR 32347). The certification for workers of the subject firm was amended June 20, 1995, to show that some of the Robstown workers had their unemployment insurance (UI) taxes paid to Greenville Pant Manufacturing Company. The amended notice was published in the Federal Register on June 29, 1995, (60 FR 33849).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at other production facilities of the subject firm, Edinburg Manufacturing Company, a/k/a Waxahachie Garment Company, Edinburg, Texas, and Weslaco Manufacturing Company, a/k/a Bowie Manufacturing Company, Weslaco, Texas. The workers at the Edinburg plant produce men's pants, and the workers in Weslaco are engaged in employment related to the production of men's pants and coats.

The intent of the Department's certification is to include all workers of the Haggar Clothing Company who were adversely affected by increased imports from Mexico or Canada. Accordingly, the Department is amending the certification to include all workers of the Haggar Clothing Company production facilities in Edinburg and Weslaco, Texas.

The amended notice applicable to NAFTA—00444 is hereby issued as follows:

All workers of workers of Haggar Clothing Company, Robstown Manufacturing Company, a/k/a Greenville Pant Manufacturing Company, located in Robstown, Texas (NAFTA–00444); Edinburg Manufacturing Company, a/k/a Waxahachie Garment Company, Edinburg, Texas (NAFTA–00444A); and Weslaco Manufacturing Company, a/k/a Bowie Manufacturing Company, Weslaco, Texas (NAFTA–00444B) who became totally or partially separated from employment on or after April 27, 1994 are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of April 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–10955 Filed 5–1–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00854]

United Technologies Automotive Interior Systems Division Morganfield, Kentucky; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance issued by the Department on March 28, 1996, for all workers of United Technologies Automotive, Interior Systems Division, Morganfield, Kentucky. The notice was published in the Federal Register on April 9, 1996 (61 FR 15833).

At the request of the company official, the Department reviewed the certification for workers of the subject firm. The workers at Morganfield, Kentucky were engaged in employment related to the production of automotive interior plastic consoles. New findings show that the imports from Canada reported by the company official were components, not interior plastic consoles. Therefore, criterion (2) of paragraph (a)(1) of Section 250 of the Trade Act of 1974 was not met. The imports of components from Mexico or Canada cannot be considered like or directly competitive with interior plastic consoles.

Since the workers of the subject firm have been determined not to be adversely affected by imports from Mexico or Canada and the company did not shift production of interior plastic consoles to Mexico or Canada, the continuation of the certification would serve no purpose and the certification has been terminated.

A Trade Adjustment Assistance investigation (TA–W–32,264) to determine worker eligibility for benefits under the Trade Act of 1974, will be instituted on April 22, 1996. A determination on worker eligibility should be made within 60 days of the institution date.

Signed at Washington, D.C., this 19th day of April 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–10949 Filed 5–1–96; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–045]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Subcommittee on Propulsion 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 NAC, Aeronautics Advisory Committee, Subcommittee on Propulsion meeting.

DATES: May 29, 1996, 8:30 a.m. to 5 p.m.; and May 30, 1996, 8:30 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Lewis Research Center, Administration Building, Room 215, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Dr. Carol J. Russo, National Aeronautics and Space Administration, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135, 216/433–2965.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—NASA Aeronautics Program Overview

—NASA Aeropropulsion Program Overview and Status

It is imperative that he meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: April 25, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer.

[FR Doc. 96–10935 Filed 5–1–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before June 17, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority,

includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Army (N1–335–96–1). Routine administrative records of the 50th Anniversary of World War II Commemoration Committee.

2. Department of Energy (N1–434–96–5). Administrative, housekeeping, production, shipping, and stockpile support records for the nuclear weapons program. Historically significant policy direction, program management, weapon effects testing, and nuclear surety files are retained as permanent. Records relating to accidental exposure or other epidemiological concerns will be retained for 75 years.

3. Department of Justice, Federal Bureau of Investigation (N1–065–95–01). Administrative field files relating to applicant matters.

4. Department of Justice, Federal Bureau of Investigation (N1–065–95–02). Administrative field files relating to training matters.

5. Department of Justice, Immigration and Naturalization Service (N1–085–96–4). Consenting Alien Program records.

6. Department of State, Bureau of Public Affairs (N1–059–95–27). Routine, facilitative, and duplicative records of the office of the assistant secretary.

7. Department of Transportation, Federal Aviation Administration (N1–237–96–6). Administrator's Consumer Hotline files.

8. Department of the Treasury, Internal Revenue Service (N1–058–95–3). Tracking reports and work papers relating to the operations of the Taxpayer Ombudsman's Problem Resolution Program.

9. National Archives and Records Administration (N2–260–96–1). Duplicated motion picture film relating to the administration of the Ryukyu Islands, accumulated by the U.S. Civil Administration Ryukyu Islands.

10. Social Security Administration (N1–047–96–2). Records of the office of the Inspector General.

11. Social Security Administration (N1–047–96–3). Records of the Office of the General Counsel.

Dated: April 25, 1996.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 96–10938 Filed 5–1–96; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR) #1203.

Dates, and Times: May 12, 1996, 6 p.m.–9 p.m.; May 13–17, 1996, 8 a.m.–9 p.m.; May 19, 6 p.m.–9 p.m.; May 20–24, 1996, 8 a.m.–9 p.m.

Place: National Science Foundation; 4201 Wilson Blvd., Arlington, VA; Rooms 360, 375, 390, & 430.

Type of Meetings: Closed.

Contact Person: Dr. W. Lance Haworth, Dr. Carmen Huber, or Dr. Ulrich Strom, Program Directors, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, National Science Foundation, Arlington, VA 22230. Telephone (703) 306–1810.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for Materials Research Science and Engineering Center awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Times and dates could not be finalized until approval by Dr. William C. Harris, Assistant Director, Directorate for Mathematical and Physical Sciences. This approval was contingent upon Program Director recommendations based upon the MRSEC Special Emphasis Panel which met April 15–17, 1996.

Dated: April 29, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–10944 Filed 5–1–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282, 50–306]

Receipt of Addendum to Petition for Director's Decision Under 10 CFR 2.206

In the matter of Northern States Power Company; Prairie Island Nuclear Generating Plant.

Notice is hereby given that by letter dated March 13, 1996, the Nuclear Information and Resource Service and the Prairie Island Coalition request that the U.S. Nuclear Regulatory Commission (NRC) take immediate action with regard to steam generator tube inspections at the Prairie Island Nuclear Generating Plant. The letter was a second addendum to an earlier Petition dated June 5, 1995. A first addendum was received from the Petitioners in a letter dated February 19, 1996.

The Petitioners request that the NRC require Northern States Power Company to place Prairie Island Nuclear Generating Plant Units 1 and 2 in mid-cycle outages to inspect the full length of the steam generator tubes using the Zetec Plus Point Probe and any state-of-the-art eddy current test capable of finding circumferentially oriented cracking. If these inspections are not performed, the Petitioners request that the NRC hold an informal public hearing in or near Red Wing, Minnesota, to inform the public why such inspections are not needed.

As the basis for this request, the Petitioners state that the NRC and nuclear utilities operating pressurized-water reactor facilities in the U.S. have known for years that the bobbin coil eddy current inspection probe is not effective at finding circumferentially oriented cracking. Circumferential and axial cracks have been found in the tubesheet region of steam generators; inspections with advanced technology probes that are effective in detecting circumferential cracks, such as the Plus Point Probe, are performed in the tubesheet region. The Petitioners state that since axially oriented cracks have been identified in steam generator free-span regions, circumferentially oriented cracks may also be present there. Thus a full-length tube inspection using state-of-the-art eddy current probe technology would be prudent.

This addendum to the Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations and has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, appropriate action will be taken on the Petition within a reasonable time. By letter dated April 22, 1996, the Director denied the request for immediate action to require that Prairie Island Units 1 and 2 be placed in mid-cycle outages to inspect the full length of the steam generator tubes.

Copies of the addenda to the Petition and the Director's letter are available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC, and at the Local Public Document Room, Minneapolis Public Library, Technology and Science

Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 22nd day of April 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–10899 Filed 5–1–96; 8:45 am]

BILLING CODE 7590–01–P

Notice of Availability of Draft Regulatory Guide and Public Meeting

SUMMARY: The NRC is announcing the availability for public comment of Draft Regulatory Guide DG–1046, ''Guidelines for Reporting Reliability and Availability Information for Risk-Significant Systems and Equipment in Nuclear Power Plants.''

The NRC is also announcing a public meeting on June 4, 1996, to discuss both Draft Regulatory Guide DG–1046 and a proposed regulation, ''Reporting Reliability and Availability Information for Risk-Significant Systems and Equipment,'' Section 50.76, which is proposed for 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities.'' The agenda for the meeting appears in the Supplementary Information Section.

DATES: Comments regarding any aspect of the draft regulatory guide are due to the NRC by July 5, 1996. Comments received after that date will be considered if it is practicable to do so, but the NRC can give no assurance of consideration for late comments. Comments on the proposed rule, Section 50.76, are due by June 11, 1996.

The public meeting is scheduled for Tuesday, June 4, 1996, from 8:30 AM to 5:00 PM in the auditorium of NRC's headquarters at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. Comments on the proposed rule and the draft regulatory guide may be presented at the public meeting.

ADDRESSES: Mail written comments to Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Copies of DG–1046, the proposed rule Section 50.76, and all comments received may be examined or copied for a fee at the NRC Public Document Room, 2120 L Street NW., Washington, DC.

A free single copy of DG–1046 may be requested by writing to the Distribution and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2260.

FOR FURTHER INFORMATION CONTACT: Dennis Allison, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6835, e-mail DPA@NRC.GOV.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has issued for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Draft Regulatory Guide DG–1046

The draft guide, temporarily identified by its task number, DG–1046 (which should be mentioned in all correspondence concerning this draft guide), is titled ''Guidelines for Reporting Reliability and Availability Information for Risk-Significant Systems and Equipment in Nuclear Power Plants.'' The guide will be in Division 1, ''Power Reactors.'' This regulatory guide is being developed to provide guidance on methods acceptable to the NRC staff for meeting the requirements of a proposed regulation, Section 50.76, which was published for public comment in the Federal Register on February 12, 1996 (61 FR 5318). Section 50.76 would require that licensees for commercial nuclear power reactors report plant-specific summaries of reliability and availability data for selected systems and equipment to the NRC. It would also require that records and documentation of each occurrence of a demand, failure, or unavailable period that provides the basis for the summary data that was reported to the NRC be maintained on site and be made available for NRC inspection.

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Comments may be submitted as proposed modified text for the regulatory guide that incorporates the comments, or as discussions of examples of particular recordkeeping methods, equipment operation, or reportable events that illustrate a particular point regarding collecting and submitting the summary data. To assist efficient and complete comment resolution, commenters are requested to reference the numbered sections in DG–1046 (for example, Regulatory Position 1.1), with page numbers related to their comments as appropriate.

Electronic Submittal of Comments

Comments also may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus,

including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Participation and Comments at Public meeting

Interested individuals may attend the public meeting and address relevant remarks or comments to the NRC staff at the meeting. To facilitate the scheduling of available time for speakers and orderly conduct of the meeting, members of the public who wish to speak at the meeting should request the opportunity to speak in advance of the meeting.

To request the opportunity to speak at the public meeting, contact the cognizant NRC staff member listed in the For Further Information Contact section. Indicate as specifically as possible the topic of your comment. Provide your name, telephone number, and possibly e-mail address at which you can be reached, if necessary, before the meeting. Registration will be available at the meeting for a limited number of additional speakers on a first-come basis.

The agenda for the public meeting on June 4, 1996, to discuss reporting reliability and availability information for risk-significant systems and equipment in nuclear power plants follows.

8:30 AM Introductory Remarks
9:00 AM Need and Uses of Reliability and Availability Data and Description of Proposed Rule
10:00 AM Public Comments and Statements
10:30 AM Overview of Draft Regulatory Guide DG–1046
11:00 AM Reliability/Availability Data Pilot Study
12:00 Noon Lunch
1:00 PM Discussion of Draft Regulatory Guide DG–1046
3:30 PM Public Comments and Statements
4:00 PM Implementation
5:00 PM Adjourn

In allocating discussion time at the meeting, priority will be given to major issues. Other matters will also be discussed if time permits.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 26th day of April 1996.

For the Nuclear Regulatory Commission.

Frank A. Costanzi,

Deputy Director, Division of Regulatory Application, Office of Nuclear Regulatory Research.

[FR Doc. 96–10898 Filed 5–1–96; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Notice of Commission Visit

April 29, 1996.

Notice is hereby given that members of the Postal Rate Commission and certain advisory staff members will visit the following business to observe its operation.

Mailboxes, Etc., Washington, D.C., May 2, 1996.

A report of this visit will be placed on file in the Commission's Docket Room.

For further information, contact Margaret P. Crenshaw, Secretary of the Commission at 202/789–6840.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 96–10889 Filed 5–1–96; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form ADV–S, SEC File No. 270–43, OMB Control No. 3235–0046.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is publishing the following summary of collection for public comment.

Form ADV–S is the form for annual reports for registered investment advisers under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1). There are approximately 22,500 registrants filing annually on Form ADV–S. Approximately 22,500 hours are used to meet the requirements of Form ADV–S. This represents one hour per registrant per year.

Written 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 in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: April 24, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–10926 Filed 5–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21920; 812–10080]

Morgan Grenfell Investment Trust; Notice of Application

April 26, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''Act'').

APPLICANT: Morgan Grenfell Investment Trust (the ''Trust''), on behalf of Morgan Grenfell International Small Cap Equity Fund (''International Small Cap Fund'') and Morgan Grenfell Emerging Markets Equity Fund (''Emerging Markets Fund'') (collectively, the ''Funds'').

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act for an exemption from the provisions of section 17(a).

SUMMARY OF APPLICATION: Applicant seeks an order to permit the in-kind redemption of Fund shares held by a shareholder who is an ''affiliated person'' of the Funds solely by reason of owning, controlling, or holding with power to vote 5% or more of the Funds' outstanding shares.

FILING DATE: The application was filed on April 11, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 21, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 885 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, 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 at the SEC's Public Reference Branch.

Applicant's Representations

1. The Trust, an open-end management investment company established as a Delaware business trust under an agreement and declaration of trust dated September 13, 1993, currently offers twelve investment portfolios. The investment objective of two of these portfolios, the International Small Cap Fund and the Emerging Markets Fund, is to maximize capital appreciation. The International Small Cap Fund seeks to achieve this objective by investing primarily in equity and equity-related securities of small capitalization companies in countries other than the United States. The Emerging Markets Fund seeks to achieve its objective by investing primarily in equity and equity-related securities of companies in countries with emerging securities markets.

2. Morgan Grenfell Investment Services Limited (the ''Adviser'') has acted as the Funds' investment adviser since their respective dates of inception pursuant to an advisory agreement dated January 3, 1994. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940.

3. Allied Signal Inc. Master Pension Trust (the ''Pension Trust''), a trust fund that is exempt from federal income tax pursuant to section 501(a) of the Internal Revenue Code of 1986 (''Code''), consists of all the assets of certain pension plans qualified under the Code and adopted by Allied Signal Inc. (''Allied Signal'').[1] As of March 1, 1996, the Pension Trust owned beneficially and of record approximately 26.73% of the outstanding shares of the International Small Cap Fund (which were then valued at approximately $31,474,738.44), and approximately 20.94% of the outstanding shares of the Emerging Markets Fund (which were then valued at approximately $22,385,901.35). At such time, the Pension Trust was an ''affiliated person'' of each Fund, as defined in section 2(a)(3)(A) of the Act because it owned more than 5% of the shares of each Fund. The Pension Trust will continue to be an affiliated person of each Fund until the redemptions described herein are effected.

4. Allied Signal, acting in its fiduciary capacity with respect to the Pension Trust, has concluded that the assets of the Pension Trust currently managed by the Adviser indirectly through investment in the Funds should be managed directly by the Adviser in the form of two separate investment advisory accounts with investment objectives similar to those of the Funds. Consequently, Allied Signal, on behalf of the Pension Trust, has notified the Trust that it expects to redeem the Pension Trust's share of each Fund and place the respective proceeds in two separate investment advisory accounts to be managed by the Adviser.

5. Shares of each Fund may be redeemed at the net asset value per share next determined after the Funds' transfer agent receives a proper redemption request. The Funds' prospectus and statement of additional information provide that either Fund may satisfy all or part of a redemption request by delivering portfolio securities to a redeeming shareholder if the board of trustees of the Trust (the ''Board'') determines that it is appropriate in order to protect the best interests of the Fund and its shareholders. The Board has determined that it would be in the best interests of each Fund and its shareholders to pay to the Pension Trust the redemption price for its shares substantially in kind as described below.

6. The Trust, on behalf of each Fund, has elected to be governed by rule 18f–1 under the Act. This election commits each Fund, during any 90-day period for any one shareholder, to redeem its shares solely in cash up to the lesser of $250,000 or 1% of the Fund's net asset value at the beginning of such period. Only redemption proceeds in excess of this limit may be paid in kind by a Fund.

7. In order to reduce the impact of the redemptions by the Pension Trust upon the Funds and their respective shareholders, the Board, in accordance with each Fund's redemption policies, proposes to pay the first $250,000 of each such redemption in cash and the remainder in the form of a proportionate distribution of each of the portfolio securities held by the Fund (the ''Proposed In-Kind Redemptions'') after excluding: (a) Securities that, if distributed, would be required to be registered under the Securities Act of 1933 (''Securities Act''); (b) securities issued by entities in countries that (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles such as the Fund, or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; and (c) certain portfolio assets (such as forward foreign currency exchange contracts, futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. Securities to be distributed pursuant to the Proposed In-Kind Redemptions will be further limited to securities that are traded on a public securities market or for which quoted bid prices are available. Cash will be paid for that portion of each Fund's assets represented by cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and other assets that are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, each Fund will distribute cash in lieu of securities held in the Fund's portfolio not amounting to round lots (or which would not amount to round lots if included in the Proposed In-Kind Redemptions),

[1] Four of the Trust's seven trustees are not ''interested persons'' (as defined in section 2(a)(19) of the Act) of the Trust. One trustee is considered an interested person of the Trust because he is an employee of Allied Signal, the sponsor of the Pension Trust, which is a shareholder and an ''affiliated person'' of each Fund. This trustee did not vote on any matter in connection with the proposed in-kind redemptions described in the application.

fractional shares, and accruals on such securities.

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act makes it unlawful for an affiliated person of a registered investment company or an affiliated person of such a person, acting as principal, to knowingly purchase from such registered investment company any security or other property (except securities of which the seller is the issuer). Section 2(a)(3)(A) of the Act defines ''affiliated person'' to include any person owning 5% or more of the outstanding voting securities of such other person. The Pension Trust owns beneficially and of record in excess of 5% of each Fund's shares and, thus, is an affiliated person of each Fund. To the extent that a Proposed In-Kind Redemption would be considered to involve the purchase of portfolio securities (of which the applicable Fund is not the issuer) by the Pension Trust, the Proposed In-Kind Redemption would be prohibited by section 17(a)(2).

2. Section 17(b) provides that the SEC shall exempt proposed transactions from the restrictions of section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicant submits that the terms of each Proposed In-Kind Redemption meet the standards set forth in section 17(b). Applicant believes that the terms of each Proposed In-Kind Redemption do not involve overreaching on the part of any person and are reasonable and fair to the affected Fund, its shareholders, and the Pension Trust because the portfolio securities to be distributed will be valued according to an objective, verifiable standard. Similarly, each Proposed In-Kind Redemption is consistent with the investment policies of the Trust and the applicable Fund, as set forth in the Funds' Prospectus, which expressly discloses each Fund's ability to redeem shares in kind. Finally, applicant believes that the Proposed In-Kind Redemptions are consistent with the general purposes of the Act to protect security holders of investment companies from discrimination among holders of securities issued by such companies and from self-dealing on the part of investment company affiliates to the detriment of other security holders. Applicants assert that neither the Adviser nor the Pension Trust has any opportunity to select the portfolio securities to be distributed to the Pension Trust. In addition, applicants state that the Pension Trust would receive the same ''in kind'' distribution of portfolio securities and cash on the same basis as any other shareholder wishing to redeem shares valued in excess of $250,000 in any 90-day period. Thus, the Pension Trust would not receive any advantage not available to any other shareholder requesting a comparable redemption.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The portfolio securities of each Fund distributed to the Pension Trust pursuant to a redemption in king (the ''In-Kind Securities'') will be limited to securities that are traded on a public securities market or for which quoted bid prices are available.

2. The In-Kind Securities will be distributed by each Fund on a *pro rata* basis after excluding: (a) Securities that, if distributed, would be required to be registered under the Securities Act; (b) securities issued by entities in countries that (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles such as the Fund, or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; and (c) certain portfolio assets (such as forward foreign currency exchange contracts, futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of each Fund's assets represented by cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements) and other assets that are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, each Fund will distribute cash in lieu of any securities held in the Fund's portfolio not amounting to round lots (or that would not amount to round lots if included in the in-kind distribution), fractional shares, and accruals on such securities.

3. The In-Kind Securities distributed to the Pension Trust will be valued in the same manner as they would be valued for purposes of computing each Fund's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported trade price on the exchange on which the securities are principally traded, or, if there is no such reported price, is the last quoted bid price.

4. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the applicable Proposed In-Kind Redemption by the Pension Trust occurred, the first two years in an easily accessible place, a written record of such redemption setting forth a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–10923 Filed 5–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21919; 811–5287]

Pound Sterling Performance Portfolio L.P.; Notice of Application

April 26, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Pound Sterling Performance Portfolio L.P.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 14, 1995, and an amendment thereto on April 17, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 21, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 540 Fifth Street, N.W., Washington, D.C. 20549.

Applicant, 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Robert A. Robertson, 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.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company that was organized as a limited partnership under the laws of the State of Delaware. On August 17, 1987, applicant registered as an investment company under the Act. On that same date, applicant filed a registration statement on Form N–1A under section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on November 9, 1988 and the initial public offering commenced shortly thereafter.

2. On January 7, 1992, in light of applicant's small asset size and the unlikelihood of achieving efficiencies of economy the individual general partners of applicant, including the individual general partners who are not interested persons, unanimously approved a Plan of Dissolution, Liquidation and Termination (the ''Plan''). The Plan providing for the dissolution of applicant, the liquidation of applicant's assets and the distribution of all the proceeds of such liquidation, which were in cash form, less an amount provided for debts and liabilities of applicant, to the shareholders of applicant.

3. On or about March 26, 1992, proxy materials were mailed to the shareholders and filed with the SEC. The shareholders of applicant approved the Plan on April 30, 1992.

4. As of April 30, 1992, there were 342,269.038 shares of partnership interest of applicant outstanding, having a net asset value of $3,306,328.56 and a per share net asset value of $9.66. As of May 1, 1992, assets were distributed to the shareholders and accordingly there are no shares of partnership interest or any other class of securities outstanding.

5. In connection with its liquidation, applicant incurred expenses of approximately $63,922.63, which were borne by applicant's adviser and administrator. The expenses consisted of accounting, printing, administrative and certain legal expenses.

6. As of the filing date of this application, applicant had no shareholders, liabilities, or assets. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant intends to terminate its existence under the laws of the State of Delaware.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–10927 Filed 5–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21918; 811–8980]

Schwab Advantage Trust; Notice of Application

April 26, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Schwab Advantage Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 8, 1996, and amended on April 18, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 21, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 101 Montgomery Street, San Francisco, California 94104, Attention: David H. Lui, Esq.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, 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.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. Applicant has three portfolios: Schwab Value Advantage Tax-Free Money Fund, Schwab Value Advantage California Tax-Free Money Fund, and Schwab Value Advantage New York Tax-Free Money Fund. On February 21, 1995, applicant registered under the Act and filed a registration statement under the Act and the Securities Act of 1933 on Form N–1A. Applicant's registration statement was never declared effective, and applicant never issued or sold any securities.

2. At a regularly scheduled meeting of applicant's Board of Trustees, it was determined that it was advisable and in the best interests of applicant to withdraw its registration statement with the SEC, cease to be registered as an investment company and terminate its existence as a Massachusetts business trust.

3. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs. Applicant has filed a Notice of Termination with the Secretary of State of The Commonwealth of Massachusetts.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–10928 Filed 5–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21917; 811–5288]

Yen Performance Portfolio L.P.; Notice of Application

April 26, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Yen Performance Portfolio L.P.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 14, 1995, and an amendment thereto on April 17, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 21, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Robert A. Roberston, 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.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company that was organized as a limited partnership under the laws of the State of Delaware. On August 17, 1987, applicant registered as an investment company under the Act. On that same date, applicant filed a registration statement on Form N–1A under section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on November 9, 1988 and the initial public offering commenced shortly thereafter.

2. On January 17, 1992, in light of applicant's small asset size and the unlikelihood of achieving efficiencies of economy, the individual general partners of applicant, including the individual general partners who are not interested persons, unanimously approved a Plan of Dissolution, Liquidation and Termination (the ''Plan''). The Plan provided for the dissolution of applicant, the liquidation of applicant's assets, and the distribution of all the proceeds of such liquidation, which were in cash form, less an amount provided for debts and liabilities of applicant, to the shareholders of applicant.

3. On or about March 26, 1992, proxy materials were mailed to the shareholders and filed with the SEC. The shareholders of applicant approved the Plan on April 30, 1992.

4. As of April 30, 1992, there were 198,358.770 shares of partnership interest of applicant outstanding, having a net asset value of $1,816,975.53 and a per share net asset value of $9.16. As of May 1, 1992, assets were distributed to the shareholders and accordingly there are no shares of partnership interest or any other classes of securities outstanding.

5. In connection with its liquidation, applicant incurred expenses of approximately $65,858.43 consisting of accounting, printing, administrative and certain legal expenses. These expenses were borne by applicant's adviser and administrator.

6. As of the filing date of this application, applicant had no shareholders, liabilities, or assets. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant intends to terminate its existence under the laws of the State of Delaware.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–10929 Filed 5–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37146; File No. SR–Amex–96–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Amendments to Rule 117 (Trading Halts Due to Extraordinary Market Volatility) and Rule 1 (Hours of Business)

April 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 April 11, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, 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 proposes to amend Exchange Rule 117 (Trading Halts Due to Extraordinary Market Volatility) to reduce from one hour to thirty minutes the time period during which trading on the Exchange is halted due to a decline in the Dow Jones Industrial Average (''DJIA'')* of 250 points and to reduce from two hours to one hour the time period for a halt due to a decline in the DJIA of 400 points. In addition, the Exchange proposes to amend Amex Rule 1 (Hours of Trading) to permit closing transactions after 4:00 p.m. where the Exchange has determined to permit such transactions pursuant to Rule 117.

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 IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 117—the Exchange's ''circuit breaker'' rule—provides that trading in securities on the Exchange shall halt and not reopen for one hour if the DJIA falls 250 points or more below its closing value on the previous trading day. The rule provides further that trading on the Exchange shall halt for two hours if the DJIA falls 400 points or more. The Exchange proposes to shorten from one hour to thirty minutes

* ''Dow Jones Industrial Average'' is a service mark of Dow Jones & Company, Inc.

the duration of a trading halt due to a 250 point decline in the DJIA, and to shorten from two hours to one hour the duration of a halt due to a 400 point decline in the DJIA.

Commentary .03 to Rule 117 also provides that if the DJIA declines 250 points at or after 3:00 p.m. or 400 points at or after 2:00 p.m., trading in securities shall halt for the remainder of the day. However, if the 250 point level is reached between 3:00 p.m. and 3:30 p.m., or the 400 point level is reached between 2:00 p.m. and 3:00 p.m., the Exchange may use abbreviated reopening procedures to either permit trading to reopen before 4:00 p.m. or to establish closing prices. The Exchange proposes to amend Commentary .03 to provide that the Exchange may use abbreviated reopening procedures to establish new last sale prices in the event the 250 point level is reached at or after 3:30 p.m., or if the 400 point level is reached at or after 3:00 p.m.

Because such closing transactions may need to be effected after 4:00 p.m., the Exchange is proposing to amend Rule 1 (Hours of Business) to provide that closing transactions may be permitted after 4:00 p.m. where the Exchange has determined to permit such transactions pursuant to Rule 117.

Rule 117 was approved by the Commission on a pilot basis on October 19, 1988 [1] and has been extended annually since then, with the most recent extension expiring on October 31, 1996.[2] The Exchange proposes to adopt amendments to Rule 117 to coincide with the year-to-year pilot program. The Exchange proposes to amend Rule 1 on a permanent basis.

The Exchange believes the proposed amendments are an appropriate, measured response to the significant technological progress made by the securities markets and the broker-dealer community since 1988 in efficiently accommodating large order imbalances that may occur under volatile market conditions. The shortened time periods should now provide sufficient opportunity for market participants to evaluate market conditions and will avoid unnecessary delays in resumption of trading.

In connection with abbreviated reopening procedures to establish new last sale prices under Rule 117, Commentary .03, the Amex will examine whether additional procedures to facilitate a single trade auction are appropriate. Such procedures would be filed by the Exchange pursuant to Rule 19b–4.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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, N.W., Washington, D.C. 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–Amex–96–13 and should be submitted by May 23, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–10925 Filed 5–1–96; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Release No 26198 (Oct. 19, 1988), 53 FR 41637 (Oct. 24, 1988).

[2] *See* Securities Exchange Act Release No. 36414 (Oct. 25, 1995), 60 FR 55630 (Nov. 1, 1995).

[Release No. 34–37145; File No. SR–NYSE–96–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Amendments to Rule 80B (Trading Halts Due to Extraordinary Market Volatility) and Rule 51 (Hours of Business)

April 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 April 11, 1996, the New York Stock Exchange, Inc. (''NYSE'' 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 proposes to amend Rule 80B to modify the time periods for halting trading on the Exchange when the Dow Jones Industrial Average (''DJIA'')* has declined by 250 or 400 points. The Exchange proposes to amend Rule 51 to permit closing transactions after 4 p.m. if Rule 80B is put into effect during the last half-hour of trading (in the event of a 250-point decline) or during the last hour of trading (in the event of a 400-point decline).

*''Dow Jones Industrial Average'' is a service mark of Dow Jones & Company, Inc.

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 IV below. The self-regulatory organization has prepared summaries, wet 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

2. Purpose

Rule 80B provides, in part, that if the DJIA falls 250 or more points below its previous trading day's closing value, trading in all stocks on the Exchange will halt for one hour. It further provides that, if on the same day the DJIA drops 400 or more points from its previous trading day's close, trading on the Exchange will halt for two hours. The Exchange is now proposing to revise those time periods to one-half hour and one hour, respectively.[1]

Rule 80B currently also provides that if the 250-point trigger is reached during the last hour, but before the last half-hour, of trading, or if the 400-point trigger is reached during the last two hours, but before the last hour, of trading, the Exchange may use abbreviated reopening procedures either to permit trading to reopen before 4:00 p.m. or to establish closing prices. Rule 80B further provides that if the 250-point trigger is reached during the last half-hour, or if the 400-point trigger is reached during the last hour, the Exchange shall not reopen for trading on that day. The Exchange is proposing to amend Rule 80B to provide that if the 250-point trigger is reached during the last half-hour of trading, or if the 400-point trigger is reached during the last hour of trading, the Exchange may use abbreviated reopening procedures to establish new last sale prices.[2]

Such closing transactions may need to be effected after 4:00 p.m. Accordingly, the Exchange is proposing to amend Rule 51 to provide that the 9:30 a.m. to 4:00 p.m. trading session may be extended to permit closing transactions pursuant to Rule 80B. The Exchange proposes to amend Rule 51 on a permanent basis.

Based on constituent input and in consultation with the Working Group on Financial Markets (''Working Group''),[3] the Exchange believes that it is appropriate to reduce the time period during which trading will be halted, particularly given the current level of automation support for the trading process. These revised time periods should be sufficient to provide a meaningful ''time out'' for participants to evaluate changing market conditions, without unduly constraining trading activity. The Exchange is not proposing, at this time, to revise the 250/400 point triggers. The Exchange intends to continue discussions with its constituents as to whether any revisions to these point parameters might be appropriate.

With respect to the use of abbreviated reopening procedures, the Exchange believes that if the trigger value is reached and trading halted during the last half-hour, respectively, of trading, it may be appropriate to provide the opportunity to establish new last sale prices. In that regard, the Exchange will be assessing whether additional procedures to facilitate a single trade auction are appropriate. Such procedures would be filed with the Commission for approval.

Rule 80B was approved by the Commission on a pilot basis on October 19, 1988, and has been extended for an additional one year period every year since then, currently running to October 31, 1996. The Exchange is proposing to adopt these amendments to Rule 80B to coincide with that year-to-year pilot.

2. Statutory Basis

The basis under the Act for this 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 a national market system and, in general, to protect investors and the public interest. The Exchange believes that amending Rule 80B on a one-year pilot basis and amending Rule 51 is consistent with these objectives in that the revised trading halt periods and opportunity to establish new last sale prices during a period of significant stress can be expected to provide market participants with a reasonable opportunity to become aware of and respond to significant price movements, thereby facilitating, in an orderly manner, the maintenance of an equilibrium between buying and selling interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W.,

[1] The NYSE has represented to the Commission that it will use the intermarket telecommunications system known as Information Network for Futures, Options, and Equities (''INFOE'') system as well as the Consolidated Tape to announce the precise time when the circuit breaker thresholds are reached. Telephone conversation between Brian McNamara, Vice President, Market Surveillance, NYSE, and Alton Harvey, Office Head, Division of Market Regulation, SEC on April 24, 1996.

[2] The text of the proposed rule change provides that the NYSE may use abbreviated reopening procedures to establish new last sale prices when the 250-point or 400-point trigger is reached at 3:30 p.m. or 3:00 p.m. respectively. Notwithstanding the Rule's reference to specific times, however, the Exchange has interpreted its proposed rule change as allowing the use of such reopening procedures anytime the 250-point or 400-point levels are triggered thirty minutes or one hour before the scheduled close, in the event that the Exchange is scheduled to close earlier than 4:00 p.m. Telephone conversation between Brian McNamara, Vice President, Market Surveillance, NYSE, and Alton Harvey, Office Head, Division of Market Regulation, SEC on April 24, 1996.

[3] The Working Group on Financial Markets was established by the President in March 1988 to determine what coordinated regulatory actions were necessary to strengthen the nation's financial markets in the aftermath of the October 1987 market break. The Working Group consists of the heads of the Commission, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, and the Department of the Treasury.

Washington, D.C. 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, N.W., Washington, D.C. 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–NYSE–96–09 and should be submitted by May 23, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–10924 Filed 5–1–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2848]

Indiana; Declaration of Disaster Loan Area

Morgan County and the contiguous counties of Brown, Hendricks, Johnson, Marion, Monroe, Owen, and Putnam in the State of Indiana constitute a disaster area as a result of damages caused by severe storms and tornadoes which occurred on April 19, 1996. Applications for loans for physical damage may be filed until the close of business on June 24, 1996 and for economic injury until the close of business on January 24, 1997 at the address listed below:

U.S. Small Business Administration,
Disaster Area 2 Office,
One Baltimore Place, Suite 300,
Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

For Physical Damage:	*Percent*
Homeowners with credit available elsewhere	7.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 284812, and for economic injury the number is 883400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 24, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–10895 Filed 5–1–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2847]

North Carolina; Declaration of Disaster Loan Area

Wake County and the contiguous counties of Chatham, Durham, Franklin, Granville, Harnett, Johnston, and Nash in the State of North Carolina constitute a disaster area as a result of damages caused by high winds and tornadoes which occurred on April 15, 1996. Applications for loans for physical damage may be filed until the close of business on June 21, 1996 and for economic injury until the close of business on January 22, 1997 at the address listed below:

U.S. Small Business Administration,
Disaster Area 2 Office,
One Baltimore Place, Suite 300,
Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

For Physical Damage:	Percent
Homeowners with credit available elsewhere	7.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 284712, and for economic injury the number is 883300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 22, 1996.

Philip Lader,

Administrator.

[FR Doc. 96–10896 Filed 5–1–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2824]

Pennsylvania; Declaration of Disaster Loan Area (Amendment #3)

In accordance with a notice from the Federal Emergency Management Agency (FEMA) dated April 19, 1996, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damages until May 3, 1996.

All other information remains the same; i.e., the termination date for filing applications for economic injury is October 21, 1996.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 23, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–10897 Filed 5–1–96; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. Since the last list was published in the Federal Register on April 26, 1996, the information collections listed below have been proposed or will require extension of the current OMB approvals.

(Call the SSA Reports Clearance Officer on (410) 965–4123 for a copy of the form(s) or package(s), or write to her at the address listed below the information collections.)

Survey of Employers Regarding A Pre-retirement Satellite Broadcast—0960–NEW. The Social Security Administration (SSA) is attempting to establish satellite communications with private sector employers as an economical and efficient means of providing program information and training. SSA will broadcast a pre-retirement seminar via satellite and ask employers to provide information on the broadcast. The information collected by SSA will be used to determine employer

interest in receiving information by satellite and to determine what issues should be covered; i.e., retirement, legislative updates, wage reporting training, etc. The respondents are employers who have received the satellite transmission.

Number of Respondents: 10,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 833 hours.

Comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address:

Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: April 25, 1996.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–10892 Filed 5–1–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2374]

United States International Telecommunications, Radiocommunications Sector, Study Group 4; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC) Radiocommunications Sector Study Group 4 will meet on May 21, 1996 at 2:00 p.m. to 4:00 p.m. in Room 847 at the Federal Communications Commission (FCC), 2000 M Street, N.W., Washington, DC.

Study Group 4 deals with matters relating to the fixed satellite service. The meeting agenda is as follows: (1) Review of the Activities of WP 4A, 4B, 4–9S, 4SNG; (2) Discussion of Industry and Government Support for the FSS Handbook; (3) Discussion of Resolution 18 Issues, (a) SCRPM Activities, (b) WRC '97 Preparatory Activities, (c) WP4A Activities; (4) Preparations for Future International Meetings; (5) Other Business

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chairman, Dr. Robert Hedinger, (908) 234–7550.

Dated: April 24, 1996.

Warren G. Richards,

Chairman, U.S. ITR–R National Committee.

[FR Doc. 96–10942 Filed 5–1–96; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Submission for OMB Review; Comment Request

ACTION: Notice of request to reinstate an expired information collection.

SUMMARY: As required by the Paperwork Reduction Act of 1995, a notice was published in the Federal Register on February 26, 1996 stating the Research and Special Programs Administration's (RSPA) intention to request reinstatement of an information collection. The notice allowed 60 days for public comments; none were received. The information collection has been submitted to OMB for review and approval, and the purpose of this notice is to allow 30 days from the date of this notice for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to this collection of information is displayed under OMB Approval Number.

Type of Information Request: Reinstatement of an information collection.

Title of Information Collection: Recordkeeping for Liquid Natural Gas (LNG) Facilities OMB Approval Number: 2137–0048

Frequency: On occasion.

Use: This collection is used by RSPA to ensure that LNG facilities are being operated in a safe manner.

Estimated Number of Respondents: 150.

Respondents: LNG facility operators.

Total Annual Hours Requested: 18,000 hours.

Copies of this information collection can be reviewed at the Dockets Unit, (Docket PS–146; Notice 2) Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., S.W. Washington, D.C.

ADDRESSES: Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, N.W. Washington, DC 20503, ATTN: Desk Office for Department of Transportation, RSPA.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, S.W. Washington, D.C. 20950, (202) 366–1640.

Dated: April 29, 1996.

Michael T. Horkan,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–10904 Filed 5–1–96; 8:45 am]

BILLING CODE 4910–60–P

Office of the Secretary

NAFTA Land Transportation Subcommittee and Transportation Consultative Group, Meeting

AGENCY: Office of the Secretary, Office of International Transportation and Trade.

ACTION: Notice.

SUMMARY: This notice (1) announces the third annual joint plenary session of the North American Free Trade Agreement's (NAFTA) Land Transportation Standards Subcommittee (LTSS) and the Transportation Consultative Group (TCG) and other related meetings; (2) invites representatives of non-governmental entities to participate in a listening session immediately preceding the plenary meeting and to attend a briefing at a later date; and (3) reports that the Working Group on Rail Safety Standards has completed its required work under the NAFTA, and that rail-

related work will now be conducted under the TCG.

BACKGROUND: The Land Transportation Standards Subcommittee (LTSS) was established by the North American Free Trade Agreement's (NAFTA) Committee on Standards-Related Measures to examine the land transportation regulatory regimes in the United States, Canada, and Mexico, and to seek to make certain standards more compatible. The Transportation Consultative Group (TCG) was formed by the three countries' departments of transportation to address non-standards-related issues that affect cross-border movements among the countries, but that are not included in the NAFTA.

The LTSS Working Group on Rail Safety Standards has completed its NAFTA-mandated work, and has determined that safety regulations for rail operating personnel involved in cross-border operations and for locomotives and other rail equipment are mostly compatible. The working group's final report is available for review at the U.S. Department of Transportation (DOT) at the address below. A working group has been created under the TCG to analyze economic aspects of rail operations and to seek to increase compatibility of certain regulations not covered by the NAFTA's LTSS work program.

MEETINGS AND DEADLINES: The third annual joint LTSS/TCG plenary session will be held June 17–20, 1996, at the Holiday Inn On-the-Bay, 1355 North Harbor Drive, San Diego, California. All LTSS and TCG working groups (with the exception of the TCG working group on Maritime & Ports Policy) will meet during the same week and at the same location. The following working groups continue to operate under the LTSS: Compliance, Driver and Vehicle Standards; Vehicle Weights and Dimensions; Traffic Control Devices for Highways; and Hazardous Materials Standards. Five working groups operate under the TCG: Cross-Border Operations and Facilitation; Rail Safety and Economic Issues; Automated Data Exchange; Science and Technology; and Maritime and Ports Policy.

Also at the same San Diego site, on June 18, from 9:00 a.m. to noon, a listening session will be held for representatives of the truck, bus, rail, and chemical manufacturing industries, transportation labor unions, brokers and shippers, public safety advocates, and others who have notified us of their interest to attend and have submitted copies of their presentations, in English and Spanish, to the address below by May 24. This is an opportunity for presenters to voice their concerns, provide technical information, and offer suggestions relevant to achieving greater standards compatibility and improving cross-border trade.

A briefing to report on the outcome of the San Diego meetings will be conducted at DOT at the address below, in Room 9230, on July 23, from 10:00 a.m. to noon. Interested parties may notify DOT of their interest to attend this briefing by calling the phone number listed below by July 16.

SUPPLEMENTARY INFORMATION: LTSS-related documents, including working group reports and statements received by DOT from industry associations, transportation labor unions, public safety advocates, and others, will be available for review in Docket no. OST–95–246, at the address below, Room PL–401, between 9:00 a.m. and 5:00 p.m., e.s.t., Monday through Friday, except national holidays.

Address and Phone Numbers

Individuals and organizations interested in participating in the listening session may send notice of their interest and copies of their presentations to Ronăle Taylor, U.S. Department of Transportation, OST/X–20, Room 10300, 400 Seventh Street, S.W., Washington, D.C. 20590. Respondents may also send information by fax at (202) 366–7417.

For additional information, call (202) 366–2892.

Dated: April 29, 1996.

Nancy K. MacRae,

Acting Director, Office of International Transportation and Trade.

[FR Doc. 96–10934 Filed 5–1–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Deadline for Submission of Application for Airport Grant Funds Under the Airport Improvement Program (AIP) for Fiscal Year 1996

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces June 30, 1996, as the deadline for having on file with the FAA an acceptable application for airport grant funds under the Airport Improvement Program (AIP) for fiscal year 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Lou, Manager, Programming Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–520, on (202) 267–8809.

SUPPLEMENTARY INFORMATION: Section 47105(f) of the Codification of Certain U.S. Transportation Laws as Title 49, United States Code, Public Law No. 103–272, (July 5, 1994), provides that the sponsor of each airport to which entitlement funds are apportioned shall notify the Secretary, by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for passenger and cargo entitlement funds. Notification of the sponsor's intent to apply during fiscal year 1996 for any of its entitlement funds, including those unused from prior years, shall be in the form of a project application (SF 424) submitted to the FAA field office no later than June 30, 1996.

This notice is promulgated to expedite and prioritize grants in the final quarter of the fiscal year. Absent an acceptable application by June 30, FAA intends to defer an airport's entitlement funds until the next fiscal year.

Issued in Washington, D.C., April 25, 1996.

Stan Lou,

Manager, Programming Branch.

[FR Doc. 96–10970 Filed 5–1–96; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

Training Programs in Bosnia, Request for Proposals; Notice

SUMMARY: The Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop media and parliamentary training programs for Bosnia. Projects should include both in-country and U.S. training programs for professionals in the above-mentioned fields.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other

nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Exchanges appropriation.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–96–35.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, June 14, 1996. Faxed documents will not be accepted, nor will documents postmarked June 7, 1996, but received at a later date. It is the responsibility of each applicant to ensure the proposals are received by the above deadline.

Grants should begin after September 9, 1996.

FOR FURTHER INFORMATION, CONTACT: The Office of Citizen Exchanges, European Division, Room 224, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone (202) 619–5319, fax (202) 619–4350, Internet address [cminer@usia.gov] to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/ or from the Internet Gopher at gopher://gopher.usia.gov. Select ''Education and Cultural Exchanges'', then select ''Current Request for Proposals (RFPs).'' Please read ''About the Following RFPs'' before beginning to download.

Please specify USIA Program Officer Christina Miner on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and eight copies of the application should be sent to:

U.S. Information Agency, Ref.: E/P–96–35, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview

Proposals must focus on one of the following topics:

Media Training

Programs in this general topic should fall under one or more of three sub-categories: journalistic training (both print and broadcast); management of media organizations; and/or government/press relations. Media projects should include cities outside of Sarajevo.

Journalistic training should emphasize skills such as effective writing, investigative reporting, objectivity, evaluation of sources, clear labeling of editorials and opinion pieces, conformance to copyright laws, and ethics.

Media management training should focus on management of media as a profitable business. Topics to be addressed might include management techniques, desk top publishing, sales, and advertising, marketing, distribution, staff development, and accountability.

Public affairs training should cover the relationship between journalists and spokespersons for political parties and/or government agencies. Following the Fall elections the interaction between both national and municipal government spokespersons and the media will be critical to the development of democracy.

Parliamentary Training

Training should focus on the administration and structure of a parliamentary government. The role of support offices, the structure of parliamentary committees and parliamentary procedures and process, including the basics of drafting legislation, should all be addressed. These projects may be regional in focus.

Guidelines

Projects must be two-way exchanges and include in-country workshops, consultations, and U.S.-based training (including internships, where possible).

University faculty are invited to work as project directors; however, the U.S.-based training should include professional development and the Bosnian participants should be professionals working in the fields of media or government.

Exchange programs for students or faculty or proposals that request support for the development of university curricula or for degree-based programs are ineligible under this RFP. Proposals to link university departments or to exchange faculty and/or students are funded by USIA's Office of Academic Programs (E/AE) under the University Affiliation Program and should not be submitted in response to this RFP.

In the selection of all foreign participants, USIA and USIS posts retain the right to nominate participants and to approve or reject participants recommended by the program institution. Programs must also comply with J–1 visa regulations.

Programs that include internships in the U.S. should provide letters tentatively committing host institutions to support the internships.

Funding

Proposals for less than $135,000 will receive preference.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. federal per diem

rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used.

Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

3. If needed, interpreters for the U.S. program may be provided by the U.S. State Department Language Services Division. A pair of simultaneous interpreters is provided for every four participants. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants can be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capital costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions, including information on audit requirements.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of Eastern European and NIS Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technical eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission. Program objectives should be reasonable, feasible, and flexible.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Cross Cultural/Area Expertise: Proposals should reflect the institution's expertise in the subject area and should address specific areas of concern facing countries involved in the project. Additionally, projects should show evidence of sensitivity to historical, linguistic and other cross cultural factors and should demonstrate how this sensitivity will be used in practical aspects of the program, such as pre-departure orientations or briefings of American hosts.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.–Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: April 23, 1996.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 96–10596 Filed 5–1–96; 8:45 am]

BILLING CODE 8230–01–M

United States Information Agency Regional Scholar Exchange Program With the New Independent States; Freedom Support Act Fellowships in Contemporary Issues

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Academic Programs, Academic Exchanges Division, European Programs Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for two assistance awards. Public and private non-profit organizations with at least four years of experience in conducting international exchange programs with the New Independent States and meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop and administer one or both of the following two categories of academic exchange programs:

Category A: USIA Regional Scholar Exchange Program with the New Independent States for approximately 60 to 70 pre-doctoral and/or post-doctoral scholars, researchers, and university faculty in the social sciences and humanities who are citizens of Armenia, Azerbaijan*, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan and for approximately 10 pre- and/or post-doctoral scholars, researchers, and university faculty in the social sciences and humanities who are citizens of the United States.

Category B: FREEDOM Support Act Fellowships in Contemporary Issues for approximately 60 to 70 highly qualified policymakers, public, private, and third sector professionals, and scholars with advanced degrees—Kandidat preferred—who are citizens of Armenia, Azerbaijan*, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan and who are professionally engaged in the building of democracy, free markets, and a civil society in their countries in the post-Soviet era. Interested organizations should read the complete Federal Register announcement and request a Solicitation Package from USIA prior to preparing a proposal.

*Please note: Programs with Azerbaijan are subject to the restrictions of Section 907 of the Freedom Support Act of 1992: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities.

The goals and objectives of both the USIA Regional Scholar Exchange Program with the NIS and the FREEDOM Support Act Fellowships in Contemporary Issues are to empower outstanding citizens of the countries of the NIS and U.S. to: (1) Obtain access to the resource materials and specialists of the host country so that they can conduct the specific research proposed in their applications; (2) Deliver lectures, make presentations, and write articles, books, policy papers, reports, and/or produce other materials that advance the state of knowledge and practice in their fields in their home countries and institutions; (3) Promote long-term collaborative research projects and cooperation between U.S. and NIS scholars and practitioners.

For both categories, participants from the NIS must demonstrate a high level of fluency in written and spoken English at a level appropriate to achieve the goals and objectives of the program. Participants from the U.S. must demonstrate a high level of fluency in written and spoken Russian and/or another language of the NIS in order to conduct research at NIS host institutions. Escort interpreters will not be provided, nor funded by USIA.

Both categories are open, merit-based competitions that must be conducted nationally in the home countries of the applicants and all applicants must be working or studying in their home countries at the time of application and selection. The fellowship periods for both categories must be for a minimum of three months (or the equivalent of one academic semester), but must not exceed a maximum of eight months (or the equivalent of one academic year). For both categories, all participants must be affiliated with universities, research institutes, or other organizations in the host country which have specialists and resources in the field of the fellows' research. All participants must be matched with a host advisor who serves as a research mentor and guides their professional development during the fellowship. Applicants who have participated in a USIA-funded academic exchange program after June 1994 are not eligible to receive fellowships in either category.

Each category has separate conditions and requirements which are stated in this announcement and detailed in the full Solicitation Package. Organizations may apply for an assistance award for one or both categories, but must submit a separate proposal and budget for each category. Organizations that apply for assistance awards in both categories are strongly encouraged to craft each proposal and budget in an innovative way that maximizes resources, streamlines program and administrative operations, and achieves economies of scale for the program and administrative activities, practices, and procedures which are common to both categories.

Organizations which wish to work in partnership on one or both categories may apply as a consortia, but must submit one proposal and one budget for each category. All proposals from consortia must identify a lead organization and cite the specific duties, responsibilities, division of labor, and budget for all members of the consortia as well as subcontracts from a lead organization to each member of the consortia.

USIA anticipates awarding one assistance award for each category cited in this announcement. Grants awarded to organizations through this competition must begin no earlier than August 1, 1996 and must be completed by July 31, 1998. USIA expects that NIS participants will begin their U.S. programs as a group in late January 1997 and in late August 1997. However, in instances when it is feasible and advisable, some NIS participants may begin their U.S. programs at other appropriate times during the grant period. USIA expects that U.S. participants will begin their NIS programs at various and appropriate times in 1997 and 1998. At the end of their fellowships, all participants are required to return to their home countries so that they can begin to apply the knowledge, skills, and insights gained as a result of their academic exchange experience.

Overall grantmaking authority for the USIA Regional Scholar Exchange Program for the New Independent States is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic

and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended. Programs shall also maintain their scholarly integrity and shall meet the highest standards of academic excellence. . . .

Overall grantmaking authority for the FREEDOM Support Act Fellowships in Contemporary Issues is made possible through legislation sponsored by the U.S. Congress and incorporated in the Foreign Relations Authorization Act of FY 1993. The legislation was established to assist the economic and democratic development of the New Independent States of the former Soviet Union. The funding authority for the program cited above is provided through the FREEDOM Support Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds. USIA reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the programs.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/AEE–04.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Thursday, June 13, 1996. Faxed documents will not be accepted, nor will documents postmarked June 13, 1996 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, Division of Academic Exchanges, European Programs Branch, E/AEE, Room 246, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547; telephone number (202) 205–0525; fax (202) 260–7985; Internet address rboris @usia.gov to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budgets.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The Solicitation Package may be download from USIA's website at http://www.usia.gov/ or from the Internet Gopher at gopher.usia.gov. Select ''Education and Cultural Exchanges'', then select ''Current Request for Proposals (RFPs).'' Please read ''About the Following RFPs'' before beginning to download.

Please specify USIA Program Officer Rhonda E. Boris on all inquiries and correspondence. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and ten copies of the application should be sent to: U.S. Information Agency, Ref.: E/AEE–96–04, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION: For both categories, U.S. organizations will be required to: advertise, announce, and explain the program to target audiences in the U.S. and NIS; recruit a large, diverse group of qualified applicants from each eligible country; select finalists via merit-based open competition that incorporates peer group review mechanisms; affiliate participants with diverse host institutions and place participants with host advisors who are knowledgeable about the participants' field of research; arrange program logistics in a timely and effective manner, track and monitor participants; develop alumni and other follow on activities; evaluate programs for short-term and long-term evidence of effectiveness and in support of the requirements of the Government Performance and Results Act of 1993 (GPRA); and conduct other required program activities and operations.

Organizations are required to plan and implement all program activities and operations in close coordination with USIA in Washington and USIS posts in the NIS. Further details about specific program requirements and additional information can be found in the Project Objectives, Goals, and Implementation (POGI) Statement which are part of the full Solicitation Package.

Guidelines

Visa/Health Insurance/Tax Requirements: Programs must comply with J–1 visa regulations. Exchange program regulations require that all J visa holders carry health and accident insurance. Please refer to the guidelines in the Solicitation Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Proposed Budget

For Category A: FY 1996 USIA funding is anticipated at $1,000,000.

For Category B: FY 1996 FREEDOM Support Act funding is anticipated at $960.000.

Organizations must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. It is required that requested administrative funds, including indirect costs and administrative expenses, not exceed 20 percent of the grant amount requested from USIA. Preference will be given to organizations whose administrative cost request is below 20 percent.

Administrative and program expenses should be cost-shared to maximize all available program resources from the private sector, host institutions, and applicant organization.

Allowable costs for each category include the following:

(1) General Program Costs (program materials; advertising and outreach; recruitment travel and per diem in the NIS; application review and/or selection

committee; finalist interviews in the NIS; group program orientation for NIS participants, listserv; on-line journal, alumni data base, alumni activities for NIS participants, follow on e-mail/Internet assistance for selected NIS participants);

(2) Participant Program Costs (visas; roundtrip travel to and from home city to host institution via American flag carrier; monthly maintenance (based on average MMR); stipend; professional development for NIS participants; participant taxes)

(3) Administrative Costs (staff salaries and benefits; communications, facilities (U.S. and NIS), office supplies audit, and indirect costs).

Please refer to the full Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program Plan

Proposals should include academic rigor and scholarly excellence, thorough conception of program, demonstration of meeting participants' needs, contributions to understanding the partner country, specific details of recruitment, selection, affiliation, placement, professional development, and monitoring processes, proposed alumni activities, alumni tracking, and follow on activities, qualifications and expertise of program staff and participants, and relevance of program plan to USIA's mission and U.S. foreign policy goals and objectives in the NIS.

2. Program Planning and Organizational Capacity

A detailed work plan and timeline should demonstrate the organization's logistical and administrative capacity to implement the program. Proposals must demonstrate how the organization and its staff will meet the program's objectives and work plan. Proposed personnel and organizational resources should be adequate and appropriate to implement the program requirements and achieve program objectives.

3. Organization's Track Record

Relevant USIA and outside assessments of the organization's experience in developing, implementing, administering, and evaluating scholarly research exchanges with the NIS, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. Multiplier Effect/Impact

Proposed programs must demonstrate an impact on the wider community of scholars, students, policymakers, opinion-leaders, and public, private, and third sector professionals and organizations through the sharing of information and the establishment of long-term institutional and individual linkages among U.S. and NIS scholars and practitioners.

5. Cost-Effectiveness

A key measure of cost-effectiveness is USIA's cost per participant. This is the total funds requested from USIA divided by the number of participant-months (number of participants multiplied by the number of program months). The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

6. Cost-Sharing

Preference will be given to outstanding proposals that also seek to maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

7. Value of U.S.-Partner Country Relations

The assessment by USIA's geographic area office of the need potential impact, and significance of the project with the partner country.

8. Support of Diversity and Pluralism

Proposals should demonstrate substantive support of the Bureau's policy on diversity through the recruitment, selection, affiliation, and placement of participants, to the extent feasible for the applicant organizations.

9. Alumni and Follow-On Activities

Proposals should provide a plan for alumni and other follow on activities (without USIA support) which ensures that USIA supported programs are not isolated events.

10. Program Evaluation

Proposals should include a plan to evaluate the program in ways that support the requirements of the Government Performance and Results Act of 1993. An evaluation plan and draft survey questionnaire or other technique plus a description of a methodology to be used to link outcomes to original project objectives is required as well as a comprehensive plan to track participants before, during, and after their fellowships. Organizations will be expected to submit intermediate programmatic and financial reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: April 25, 1996.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 96–10817 Filed 5–1–96; 8:45 am]

BILLING CODE 8230–01–M

federal register

Thursday
May 2, 1996

Part II

Federal Reserve System

12 CFR Part 205

Electronic Fund Transfers; Final Rules and Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–0830]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule to amend Regulation E, which implements the Electronic Fund Transfer Act. The amendments are a result of the Board's review of Regulation E under its Regulatory Planning and Review Program, which calls for the periodic review of all Board regulations. The final rule contains some substantive amendments, including changes to the existing exemptions for securities or commodities transfers. Primarily, the final amendments simplify the language and format of the regulation, and delete obsolete provisions. Commenters generally supported the Board's proposed amendments and offered suggestions for additional changes, some of which were adopted in the final rule. In conjunction with the amendments to the regulation, the Board also has made amendments to the staff commentary, published elsewhere in today's Federal Register.

DATES: *Effective date.* May 2, 1996. *Compliance date.* Mandatory compliance January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Kyung Cho-Miller, Natalie Taylor, or Michael Hentrel, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf *only*, contact Dorothea Thompson, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Federal Reserve Board was given rulewriting authority to issue implementing regulations. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale terminal, automated clearinghouse, telephone bill-payment system, or home banking program. The act and Regulation E (12 CFR part 205) provide rules that govern these and other EFTs. The rules prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs.

Board policy under its Regulatory Planning and Review (RPR) program calls for the periodic review of each Board regulation. The RPR program has four goals: to clarify and simplify regulatory language; to amend regulations to reflect technological and other developments; to reduce undue regulatory burden on the industry; and to delete obsolete provisions. In keeping with that policy, the Board conducted a detailed review of Regulation E to determine whether it can be simplified to ease compliance burdens for financial institutions, while meeting the Board's responsibility for implementing the consumer protections of the EFTA. The Board issued a proposed rule on March 7, 1994 (59 FR 10684).

Based on the comments received on the proposal and on its own further analysis, the Board has adopted a revised Regulation E. While certain substantive revisions have been made (see the section-by-section discussion below), the final rule leaves most of the regulatory provisions substantively unchanged. The regulation closely follows the statute, which contains detailed requirements in most areas; major changes to the regulation are not possible unless the act itself is amended. The Board solicited comment on whether specific legislative revisions to the EFTA are necessary and achievable without imposing a significant adverse impact on consumer protections. A number of commenters provided recommendations. The Board plans to convey these recommendations to the Congress, as appropriate, as part of a report that the Board will make pursuant to section 303 of the Community Development and Regulatory Improvement Act of 1994.

The final rule simplifies the language and format of each section of the regulation to state the requirements more clearly. All footnotes are either integrated into the text of the regulation or moved to the staff commentary, making the regulation itself less cumbersome to use. The final regulation is shorter than current Regulation E by about fifteen percent, a reduction largely attributable to the deletion of obsolete provisions and to the transfer of explanatory material to the commentary. Commenters offered specific suggestions, as well as rationale, for changes to the regulation (beyond those proposed by the Board) that would facilitate compliance. A number of these suggestions have been incorporated in the final rule. Also, unless otherwise indicated below, the revisions that were proposed in March 1994 have been adopted in the final rule.

II. Regulatory Revisions

The following discussion covers the revisions to Regulation E section-by-section. In many cases, the changes simplify or clarify the current text, with no substantive change in the regulatory requirements; where the meaning of these changes is evident from reading the text itself, they are not discussed.

Section 205.1—Authority and purpose

This section has been simplified without substantive change. The discussion of congressional findings in former paragraph (b) and contained in § 902(a) of the act has been deleted as unnecessary. The paragraph relating to the coverage of the act and regulation has been moved to § 205.3.

Section 205.2—Definitions

2(b) Account

This paragraph incorporates in paragraph (b)(2) the exemption for trust accounts (former § 205.3(f)) to track more closely the statutory language contained in section 903(2) of the EFTA.

2(d) Business day

This paragraph defining business day is unchanged.

The act and regulation define business day as any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions. This requires that each financial institution determine when its offices are ''carrying on substantially all business functions.'' The Board proposed to use its authority under section 904(c) of the EFTA to change the definition to mirror the definitions used in Regulations CC (12 CFR part 229) and DD (12 CFR part 230). Those regulations define a business day as a calendar day other than a Saturday, Sunday, or any legal public holiday specified in 5 U.S.C. 6103(a).

Some commenters supported the proposed change; they believed that the change would simplify compliance by conforming the regulations governing deposit accounts. Among these commenters, however, several qualified their support. Some believed that a financial institution should not be

required to investigate and resolve errors on a day that the institution is not open for business. These commenters were concerned that they could have fewer days to investigate and resolve errors; they suggested using the definition of ''banking day'' in Regulation CC (the current definition of ''business day'' in Regulation E) to compute the time period for resolving disputes. Using multiple definitions—including the existing definition for certain purposes—would seem to further complicate the regulation. Other commenters opposed changing the definition, mentioning the burden and cost associated with changing disclosures without corresponding benefit. After further analysis, the Board has retained the current definition.

2(f) Credit

The definition of credit, inadvertently deleted from the proposal, has been retained.

2(i) Financial institution

The definition of financial institution (former § 205.2(i)) has been simplified by eliminating references to both state and federal institutions.

2(j) Person

A definition of ''person'' has been added, incorporating language similar to that in Regulation B (Equal Credit Opportunity, 12 CFR 202.2(x)) and Regulation Z (Truth in Lending, 12 CFR 226.2(a)(22)). The term is used in several places in the regulation, including § 205.3(a), which defines the regulation's coverage, § 205.10(e) on compulsory use, and § 205.13(b) on record retention.

Section 205.3—Coverage

This section (formerly captioned Exemptions) incorporates the definition of an EFT (formerly in § 205.2) and consolidates in one place all the rules dealing with coverage to facilitate compliance. A proposal regarding Regulation E coverage of stored-value products and other emerging EFT payment systems is published separately in today's Federal Register.

3(b) Electronic fund transfer

The definition of ''electronic fund transfer'', which is central to determining coverage under the regulation, has been moved to paragraph 3(b). The definitions of ''preauthorized electronic fund transfer'' and ''unauthorized electronic fund transfer'' remain in the definitions section.

3(c)(3) Wire or other similar transfers

The exemption for wire transfers in former § 205.3(b) has been revised to clarify that it exempts transfers through Fedwire (or similar wire transfer systems, such as CHIPS or S.W.I.F.T.) and not all transfers through the Federal Reserve Communications System such as the automated clearinghouse. No substantive change in the scope of the exemption is intended.

Commenters generally favored the proposed revision. One commenter requested examples of transfers similar to those through the Federal Reserve Communications System that are exempt from Regulation E. The commentary addresses this issue. (See comment 205.3(c)(3)–3.)

3(c)(4) Securities and commodities transfers

The exemption for certain securities and commodities transfers (formerly § 205.3(c)) is revised to more closely parallel the statute. As revised, transfers involving unregulated securities are exempt from the EFTA if the purchase or sale is transacted by a broker-dealer regulated by the Securities and Exchange Commission (SEC) or a futures commission merchant regulated by the Commodity Futures Trading Commission (CFTC). The Board believes that the regulation of broker-dealers and futures commission merchants offers sufficient protection of payment transfers for consumers and that the application of the protections in Regulation E would only duplicate available safeguards.

Paragraph (c)(4)(iii) extends the exemption to all securities or commodities held in book-entry form by Federal Reserve Banks on behalf of the Treasury Department and other federal agencies (for example, Treasury Direct issues). Previously a transfer to purchase Treasury securities was technically covered by Regulation E because the securities were not regulated by the SEC or the CFTC and, when purchased from the Federal Reserve Banks, were not purchased or sold by a registered broker-dealer. The Board believes there is adequate regulation of transfers that involve Federal Reserve Banks and federal agencies, offering sufficient consumer protection (see 31 CFR part 370, regulations governing payments by the automated clearing house method on account of United States securities).

3(c)(6) Telephone initiated transfers

Former § 205.3(e) exempted any transfer of funds initiated by a telephone conversation between a consumer and an officer or an employee of a financial institution if the transfer is not under a prearranged plan. To accommodate telephone transfers initiated by facsimile or through telephone response machines, this paragraph has been revised to replace ''conversation'' with the broader term ''communications.'' Also the phrase ''officer and employee'' has been deleted as unnecessary.

3(c)(7) Small institutions

The asset-size cutoff for the small institution exemption (formerly contained in § 205.3(g)) has been increased from $25 million to $100 million. Section 904(c) of the EFT gives the Board authority to modify the requirements imposed by the regulation on small financial institutions if the Board determines that such modifications are necessary to alleviate any undue compliance burden on small institutions and that such modifications are consistent with the purposes and objective of the act. In 1982, the Board exempted preauthorized transfers to or from accounts at financial institutions with assets of less than $25 million to reduce compliance burdens for small institutions that did not offer any other EFT services.

The regulation exempts the preauthorized transfers as a class of EFTs, and not the financial institutions themselves. A small financial institution that provides EFT services besides preauthorized transfers must comply with the regulation for those *other* services. For example, a small financial institution that offers ATM services must comply with Regulation E in regard to the issuance of debit cards, terminal receipts, periodic statements, and other requirements. In addition, the institution must comply with provisions of the act that apply to the financial institution's conduct rather than to the exempted transfers. For example, the prohibition against compulsory use of EFTs in section 913 of the act, in regard to credit or employment, remains applicable.

When the Board adopted the $25 million exemption in 1982, many small institutions that did not offer EFT services such as ATM access benefited from the exemption. Given the growth in assets of financial institutions in the past ten years, increasing the asset-size cutoff of the exemption to $100 million could reduce burden without lessening the extent of consumer protection originally provided. Because many small institutions now offer a variety of EFT services, it appears that only a limited number of institutions would be

exempted from Regulation E under the increase.

The Board solicited comment on the proposed increase in the exemption level and on other ways the burden on small institutions could be reduced without sacrificing the consumer protections intended by the act. The majority of the commenters agreed that increasing the asset-size of the exemption would reduce burden and supported the proposal. Most commenters supporting the proposal are credit unions which do not offer EFTs other than preauthorized transfers such as payroll deductions. Other commenters opposed the proposal, stating that consumers should receive the same treatment from all institutions regardless of asset size.

Based on comments and further analysis, the Board has increased the asset-size cutoff to $100 million. In light of current concerns about regulatory burden, the Board believes that increasing the asset-size cutoff will provide relief to small institutions offering limited EFT services, consistent with the principles under which the original exemption was granted.

Questions have been raised about the impact of Article 4A of the Uniform Commercial Code (UCC) on the small institution exemption. The revised commentary to Regulation E clarifies that Article 4A is not applicable to the preauthorized transfers that qualify for the small institution exemption. (See comment 3(c)(7)–1.) Article 4A applies primarily to large-dollar commercial wire transfers made, for example, via Fedwire, CHIPs, SWIFT, and Telex. Section 4A–108 excludes any transaction that is subject to the EFT from coverage under Article 4A. The question is whether the transfers initiated by small financial institutions that take advantage of the regulatory exemption (such as for direct deposits) may be subject to the requirements of Article 4A as a consequence. The Board regards these preauthorized transfers as remaining subject to certain requirements of the EFT, and therefore not covered by Article 4A.

Footnote 1a which refers to sections 913, 915, and 916 of the EFT has been deleted. Section 913 places restrictions on the compulsory use of EFTs. For example, an institution may not condition the extension of credit on repayment by preauthorized debit. The statutory language from section 913 has been incorporated in § 205.10(e). References to sections 915 and 916 (concerning civil and criminal liability for violations of the EFTA) are contained in § 205.3(c)(5)(ii). The Board has added cross-references to § 205.10 and sections 915 and 916 in the appropriate paragraphs to replace footnote 1a.

Section 205.4—General disclosure requirements; jointly offered services

This section consolidates the general disclosure requirements currently dispersed throughout the regulation in this section. In addition to adding paragraph (a), the final rule contains various editorial changes including a reordering of the section; no substantive change is intended.

4(a) Form of disclosures

The format requirements for disclosures formerly found in §§ 205.7(a) and 205.9 are incorporated into this section. The Board interprets these requirements as generally applying to *all* disclosures and notices.

With the continuing emergence of EFT payment technologies, the Board has received inquiries about providing disclosures required under the EFTA and Regulation E to consumers in an electronic form, in lieu of paper documentation. The Board has addressed this issue in the proposed rulemaking on Regulation E published elsewhere in today's Federal Register.

4(e) Services offered jointly

This paragraph incorporates the substance of former paragraph 4(a). The Board has retained text concerning disclosures within an institution's knowledge, which had been omitted in the proposal as unnecessary. The Board did not intend to make a substantive change by omitting this language.

Section 205.5—Issuance of access devices

The final rule makes editorial changes to this section. The substance of footnote 1b, which provided guidance on issuance of an access device for a joint account, has been moved to the commentary.

The final rule deletes as obsolete former § 205.5(a)(3), which grandfathered renewals of pre-1979 access devices from the requirements of the section. The explanatory language from former § 202.5(b)(4)—providing examples of the methods a financial institution may use to verify a consumer's identity when validating an access device—has been moved to the commentary. (See comment 205.5(b)–4.)

The Board has moved the provisions relating to the Truth in Lending Act (TILA) from former § 205.5(c) to § 205.12, to simplify the regulation by placing all references to TILA in the same section.

Section 205.6—Liability of Consumer for Unauthorized Transfers

Section 205.6 specifies the rules governing consumer liability for unauthorized use. To simplify the text and make it easier to understand, the Board has moved explanatory or illustrative material to the commentary. This includes examples of means of identification that an institution may provide to the consumer to whom an access device is issued; part of former § 205.6(b)(3), on the relationship between the various tiers of liability; and former § 205.6(b)(4), about extenuating circumstances that would permit delayed notification by consumers. The provisions in former § 205.6(d) concerning the relation to the TILA now appear in § 205.12.

6(a) Conditions for liability

The former regulation appeared to condition consumer liability for unauthorized EFTs in all cases on the issuance of an accepted access device (§ 205.6(a)). The former commentary, on the other hand, stated that if the consumer failed to report an unauthorized EFT within sixty days of transmittal of the periodic statement reflecting the transfer, the consumer could be subject to liability for subsequent transfers, even if the unauthorized transfer did not involve an access device.

Paragraph 6(a) is revised to clarify that a consumer can be held liable for unauthorized EFTs that do not involve an access device, but only those that occur sixty days after transmittal of the periodic statement reflecting an unauthorized transfer. Some commenters believed that a sixty-day period was unreasonable and suggested an alternative time period ranging from thirty to forty-five days; such a revision, however, would require a statutory change.

Section 205.6(a)(3) requires that only three of the disclosures from § 205.7 to be provided before a consumer can be held liable for unauthorized transfers. The Board proposed to require that a financial institution provide all of the disclosures required by § 205.7 in order to impose liability, given that institutions must initially provide *all* of the disclosures to comply with § 205.7(b).

Commenters were split on whether this change would increase the risk of liability for institutions. Some agreed with the Board that the proposed requirement would not increase compliance burden. Others believed that the requirement could have adverse consequences due to inadvertent

disclosure errors unrelated to consumers' liability. Upon further analysis, the Board has retained the current rule.

6(b) Limitations on amount of liability

Paragraph (b) incorporates the substance of former paragraphs (b) (limitations on amount of liability) and (c) (notice to financial institution). The final rule more clearly sets forth each of the three tiers of a consumer's liability ($50, $500, or unlimited).

Section 205.7—Initial disclosures

The final rule includes format and editorial changes to this section to provide greater clarity. No substantive changes are intended. The format requirements in former paragraph (a) have been moved to § 205.4(a).

The provision in former § 205.7(a)(1), giving financial institutions the option of informing the consumer about the advisability of promptly reporting lost or stolen access devices, has been moved to comment 7(b)(1)–3 of the commentary.

The Board has moved the error resolution notice from former § 205.7(a)(10) to appendix A (Model Form A–3), to streamline the regulation and place all model disclosures together. The final rule deletes as obsolete former § 205.7(b) regarding disclosures for accounts that predate the statute.

7(a)(3) Business days

Because the Board did not adopted the proposed definition of business day, as discussed under § 205.2(d), the disclosure requirement has been retained.

Section 205.8—Change in terms notice; error resolution notice

The Board has restructured § 205.8 and added subheadings to make it easier to follow.

8(a)(1) Prior notice required

Section 905(b) of the EFTA requires a financial institution to notify a consumer in writing at least 21 days before the effective date of an adverse change in certain terms or conditions contained in the initial disclosures. The Truth in Savings Act (TISA) (12 U.S.C. 4301) also requires institutions to provide a change-in-terms notice for deposit accounts. Section 266(c) of TISA requires a notice 30 days before the effective date of any adverse change in terms or conditions. The official staff commentary of Regulation DD (Truth in Savings) provides that if a changed term also triggers a change in terms notice under Regulation E, the institution may use the timing rules of Regulation E for sending the notice to affected consumers (see 59 FR 5543, February 7, 1994).

The Board proposed to use its exception authority under the EFTA to extend the timing of the change-in-terms notice in Regulation E from 21 to 30 days to parallel Regulation DD and facilitate compliance with both regulations. The Board solicited comment on whether it is preferable to retain the flexibility offered by the two different timing requirements. Most commenters opposed extending the timing requirement to 30 days because the extension would in many cases double the period of notice before a change in terms could be implemented without a special mailing. The Board believes the proposed change might unnecessarily increase regulatory burden and, accordingly, has retained the 21-day notice requirement.

8(a)(2) Prior notice exception

Prior notice is not required when an immediate change in terms is needed to maintain or restore the security of an EFT system or account. If a change is made permanent, however, a financial institution must notify the consumer ''on or with the next regularly scheduled periodic statement or within 30 days'' of the change if disclosure would not raise security concerns. In certain circumstances, periodic statements are sent on a quarterly basis, and thus the consumer might not receive notification of a change for up to ninety days after the change occurs.

The Board proposed to require written notice within 45 days of the change. Most commenters opposed the proposal. The majority believe the revision would result in increased costs and regulatory burden. Where financial institutions send quarterly periodic statements, or where no EFT has been made during a statement cycle, notice of the change in terms would have to be provided in a separate mailing. Some commenters asked the Board to clarify whether the notice is triggered by the date of the initial change or the date the change becomes permanent; it is the latter.

Based on the comments and upon further analysis, the Board has retained the current rule. The notice provided to consumers reflects a change in terms that has already been made. Since many institutions send statements monthly, in many cases consumers will obtain notice in or around 45 days after the change. In all instances, notice will be provided within 90 days. Given the likelihood that a section 8(a)(2) change is rare, and that most notices will be provided within 45 days (and all no later than 90 days), the minimal consumer benefit associated with the change is outweighed by the potential compliance cost to financial institutions.

8(b) Error resolution notice

To streamline the regulation and place all model disclosure forms in one location, the abbreviated error resolution notice in former § 205.8(b)—which an institution may give with each periodic statement in place of the longer annual notice—has been moved to appendix A (Model Form A–3). Language has been added to clarify that financial institutions may use a form substantially similar to the model form.

Section 205.9—Receipts at electronic terminals; periodic statements

This section contains a number of editorial revisions and several substantive changes. New paragraphs and headings have been added to better organize the text concerning the content of disclosures.

Disclosure format requirements, and former paragraph (e) concerning use of abbreviations, have been moved to § 205.4. Former footnote 2, which permits a financial institution to make receipts available through a third party, has been moved to the commentary. Two obsolete paragraphs, (f) and (g), which dealt with receipts from terminals purchased prior to 1980 and delayed effective dates for certain periodic statements have been deleted.

9(a)(1)—Amount

The former regulation allowed financial institutions *other* than the account-holding institution to include a charge for the transfer in the total amount of the transfer, provided the amount of the charge is disclosed on the receipt and on a sign posted on or at the terminal. The final rule permits all financial institutions (including the account-holding institution) to include the charge in the total amount of the transfer, if the appropriate disclosures are made; and permits institutions to display the fee on or at the terminal—meaning either on a sign posted at the terminal or on the terminal screen itself.

Some commenters requested clarification as to whether disclosure of a transaction fee on the receipt or at the terminal would substitute for disclosure of the fee under § 205.7(a)(5), initial disclosures. Institutions holding a consumer's account must continue to disclose transaction fees under § 205.7(a)(5), as well as on the receipt and at the terminal.

The Board solicited comment on whether consumers would need

protections if the fee is displayed on the screen, for example, allowing the consumer to cancel the transaction after the fee is disclosed. Commenters generally believed that displaying the fee on a screen provided adequate notice, as long as consumers are provided with the option to cancel the transaction after receiving notice. This interpretation is reflected in comment 9(a)(1)-1 of the staff commentary.

9(a)(3)—Type

The examples included in former paragraph (a)(3) have been moved to the commentary.

9(a)(4)—Identification

In a previous rulemaking, the Board deleted the requirement that a financial institution ''uniquely'' identify the consumer. See 55 FR 15032 (March 22, 1995). The final rule, effective April 24, 1995, no longer requires that terminal receipts uniquely identify the consumer, the consumer's account, or the consumer's card. The change allows institutions to truncate the number on the receipt and helps protect consumers and financial institutions against fraudulent withdrawals.

9(a)(5)—Terminal location

This paragraph incorporates the substance of former § 205.9(b)(1)(iv), the rules regarding terminal identification on receipts; former footnote 5 and much of the explanatory material on describing locations has been moved to the commentary.

The Board had proposed to delete the exception in footnote 5 allowing institutions (1) to omit the name of the city and state if all of the terminals owned or operated by the financial institution providing the statement are located in the same city, or if the system in which the financial institution's terminal participates is located in the same city and (2) to omit the state if all of the terminals are located in the same state. Since most institutions that offer ATM access belong to networks operating on an interstate basis, the Board believed that few, if any, financial institutions would be able to take advantage of the exception provided by the footnote. The Board solicited comment on whether the exception is still used by institutions. Many commenters stated that credit unions and ''closed systems'' frequently used at universities continue to benefit from this exception because such institutions do not belong to interstate networks. Thus, the Board has retained the exception but moved it to the commentary. (See comment 205.9(a)(5)(iv)–1.)

The rules regarding terminal identification on the receipt have been slightly modified. Former § 205.9(b)(1)(iv)(C) allowed financial institutions to identify the terminal location by using the name of the entity at whose place of business the terminal is located or the entity that owns or operates the terminal (such as the financial institution). Footnote 7 required, however, that if the financial institution owns or operates terminals at more than one location, the terminal location must be identified on the periodic statement in accordance with former 9(b)(1)(iv) (A) or (B) and had to provide either a street address or a generally accepted name for the location. If an institution owned only one terminal (and did not belong to a network), however, it could identify the terminal using its own name under paragraph 9(b)(1)(iv)(C). The final rule omits the footnote, removing the limitation so that the receipt and the periodic statement may provide the terminal location by giving the name of the institution if it is other than the account-holding institution. The Board believes this change makes the provision available to more institutions, since very few institutions own and operate only one terminal and do not belong to a network. Commenters generally believed this change would not adversely reduce consumer information.

9(a)(6) Third party transfer

Paragraph (a)(6), which requires disclosure of the name of any third party to or from whom funds are transferred, has been revised; guidance on the use of codes as identification or the exception to the requirement when the name of the payee cannot be duplicated by the terminal has been incorporated into the commentary. (See comment 205.9(a)(6)–1.)

9(b) Periodic statements

9(b)(1)—Transaction information

For each transfer initiated at an electronic terminal, paragraph (b)(1)(iv) requires financial institutions to disclose on the periodic statement the location of the terminal as it appeared on the receipt provided under § 205.9(a). Under the former rule, if a code or terminal number on the receipt was used to identify the location, both the code and a description of the location, as specified in § 205.9(b)(1)(iv) had to be disclosed on the periodic statement. The final rule does not require a restatement of the code in addition to the location description. Commenters generally supported this revision, noting that the code was of little use and that rules of the National Association of Automated Clearing Houses already require codes to be retained by the institution which would allow consumers to get the code upon request. The substance of footnote 4a, which provided that a financial institution need not identify the terminal location for transactions that involve the deposit of cash, checks, drafts, or similar paper instruments at electronic terminals, has been incorporated into paragraph (b)(1)(iv).

Former footnote 4 permitted financial institutions to provide transaction information on documents that accompany the periodic statement; and permits the use of codes, if explained on either the statement or the accompanying documents. Former footnote 9 allowed an institution to omit the identification of third parties from periodic statements if their names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal. The substance of former footnotes 4 and 9 has been moved to the commentary. (See comments 205.9(b)–6 and 205.9(b)(1)(v)–6.)

9(b)(3)—Fees

The reference in former § 205.9(b)(3) that a periodic statement required by Regulation E need not disclose any finance charge imposed under 12 CFR 226.7(f) has been moved to the commentary. (See comment 205.9(b)(3)–3.)

The Board solicited comment on whether regulatory compliance burden would be eased if the fee disclosure requirements in Regulations E and DD were identical. Many commenters preferred having the option of complying with Regulation E or Regulation DD. The Board has retained the existing fee disclosure requirements.

9(c) Exceptions to the periodic statement requirements for certain accounts

The final rule incorporates current paragraphs (c), (d), (h), and footnote 9a in § 205.9(c), pertaining to intra-institutional transfers and the circumstances in which a periodic statement for EFT transactions is not required (for example, for a passbook account that can be accessed electronically only by preauthorized transfers to the account) or is not required on a monthly cycle. Some editorial changes have been made in the final rule that differ slightly from the proposal but no substantive change is intended.

9(d)—Documentation for foreign-initiated transfers

Paragraph (d) incorporates the substance of former paragraph (i) without substantive change.

Section 205.10—Preauthorized transfers

Section 205.10 sets forth general requirements for preauthorized transfers. The Board has reformatted and made editorial changes to this section. Substantive changes are discussed below.

10(a) Preauthorized transfers to consumer's account

10(a)(3)—Crediting

This paragraph (formerly paragraph 10(a)(2)) provides that when a consumer's account will be credited by a preauthorized EFT from the same payor at least once every 60 days, an institution must credit the funds to the account as of the day the funds for the transfer are *received*. The Board believed that this provision was not necessary since other regulations address both when funds must be made available to the consumer and when interest must be paid on the deposit (see Regulation CC, 12 CFR part 229; Treasury regulations, 31 CFR part 210; and ACH association rules). The Board solicited comment on its proposed deletion of paragraph 10(a)(2).

Most commenters agreed that Regulation CC, NACHA rules governing automated clearing house transactions, and Treasury direct-deposit rules adequately covered this issue and supported the Board's proposal to delete the requirement. Several commenters requested that a reference to the other rules and regulations be added to the paragraph 10(a)(2). One commenter distinguished the requirements under paragraph 10(a)(2) from those under other rules and regulations, noting that paragraph 10(a)(2) addressed crediting and that the NACHA rules, for example, address the availability of funds for withdrawal. The commenter recommended retaining the current language.

Upon further analysis, the Board believes that the requirement under current paragraph 10(a)(2) is, in fact, different from those required by other regulations and has retained the current rule in paragraph 10(a)(3).

10(b) Written authorization for preauthorized transfers from consumer's account

Under the former rule, preauthorized EFTs from a consumer's account may be authorized by the consumer only in writing (typically a signed paper document); a copy of the authorization must be given to the consumer. To address developments in electronic services such as home banking, the Board has more broadly interpreted a written authorization to include electronic authorizations which are ''similarly authenticated'' by the consumer. The Board believes this broader interpretation is consistent with the requirement in section 907 of the EFTA that the authorization be in writing.

This change would, for example, allow preauthorized transfers in an electronic payment system to be authenticated by a ''digital signature'' or a security code. The Board believes that these are options that may provide the same assurance as a signature in a paper-based system. To meet the requirement that an authorization be in writing, the electronic agreement would have to be displayed on a computer screen (or other visual display) that enables the consumer to read the communication. The person that obtains the authorization must provide an electronic or hard copy to the consumer. These interpretations are codified in the commentary.

10(e) Compulsory use

This paragraph incorporates section 913 of the EFTA, which places certain restrictions on compulsory use of EFTs as a condition of credit, employment, or receipt of government benefits. This paragraph also clarifies that the provision applies to persons such as employers, and not just to financial institutions. In the former regulation, the prohibition against compulsory use was referenced in footnote 1a.

Section 205.11—Procedures for resolving errors

The Board has reformatted this section and made editorial revisions to simplify the language and facilitate compliance. The one substantive change, discussed below, allows a financial institution three business days to provide notice after it has determined that an error has occurred.

The substance of three footnotes has been moved to the commentary: footnote 10, permitting an institution to prescribe procedures for giving an error notice; footnote 11, defining an agreement for purposes of § 205.14; and footnote 12, allowing institutions to use a periodic statement to inform consumers that no error has occurred.

The substance of former paragraphs (d)(1), (3); (e)(1); and (g) has been moved to the commentary. Paragraph (e) on reasserting errors replaces former paragraph (h). Former paragraph (i), rules relating to the TILA, has been moved to § 205.12.

11(c) Time limits and extent of investigation

Paragraph 11(c) combines former paragraphs 11(c) and 11(d)(2) concerning investigation of errors. The regulation requires a financial institution to provide the consumer with a written explanation, within the prescribed time period (either 10 business days or 45 calendar days), if an error occurred. If an error did not occur and the financial institution is operating under the 45-day rule, the institution has three additional days to notify the consumer of its findings. Section 908 of the EFTA makes clear the extra time is available when no error occurred, but is silent on the availability of extra time when an error is found.

To facilitate compliance, the Board has used its *exception authority* under section 904(c) to permit institutions to give notice within three business days of concluding its investigation regardless of the procedure being followed and whether or not an error has been found. The statutory language contained in section 908(d) lends itself to such an interpretation, and the Board believes the change will facilitate compliance with the section without any significant loss of consumer protection.

Commenters requested that the Board consider extending the time periods for investigations of errors on new accounts based on concerns about fraud and misrepresentation. The Board has published a proposed rule elsewhere in today's Federal Register that would change the timing for error resolution on new accounts.

11(d) Procedures if financial institution determines no error or different error occurred

This paragraph simplifies and replaces former paragraph 11(f).

Section 205.12—Relation to other laws

This section contains the various references to the Truth in Lending Act (TILA) and Regulation Z formerly dispersed throughout Regulation E. The section also includes the standards applied by the Board in granting a state law preemption or in making an exemption determination.

12(a) Relation to Truth in Lending

All references from §§ 205.5, 205.6, and 205.11 to compliance with both the TILA and the EFTA are consolidated in this paragraph to facilitate compliance.

12(b) Preemption of inconsistent state laws

Former § 205.12 (a) and (b) are incorporated in paragraph (b). Former § 205.12(c), which establishes procedures for preemption, has been deleted from the regulation. The procedures for requesting a preemption determination are available from the Board upon request.

12(c) State exemptions

Paragraph (c) (formerly (d)) contains the rules the Board applies in granting a state exemption.

Section 205.13—Administrative enforcement; record retention

Former § 205.13 contained information about administrative enforcement, issuance of staff interpretations, and record retention. Much of this information has been moved to the appendices, with the exception of the provision on record retention. Specifically, former paragraph (a) listed the federal agencies charged with administrative enforcement of the act and regulation; revised paragraph (a) merely cross-references Appendix B, which lists the federal enforcement agencies in greater detail. Former paragraph (b) dealt with issuance of staff interpretations; this material has been updated to describe the staff commentary process that replaced the old interpretation letters, and has been moved to new Appendix C. Former paragraph (c), record retention, has been redesignated paragraph (b).

13(b) Record retention

Only certain provisions of the act and regulation apply to persons other than financial institutions (for example, the compulsory use provisions of section 913, which apply to employers, creditors, and government agencies). The proposal would have limited the record retention requirements to financial institutions, rather than covering ''any person subject to the act and regulation.'' The majority of the commenters addressing this issue opposed the proposed change, arguing that the same record retention requirement should apply to all persons subject to the regulation, and that the proposed change could adversely affect enforcement. The Board has retained the current rule; the record retention requirements continue to apply to all persons subject to the act and regulation.

Section 205.14—Electronic fund transfer service provider not holding consumer's account

Substantial editorial revisions have been made to this section to simplify the text.

14(a) Electronic fund transfer service providers subject to regulation

Revised paragraph (a) deals expressly with the entities subject to section 205.14, and identifies entities more clearly by setting forth the conditions for coverage under section 205.14 in separate subparagraphs.

14(b) Compliance by electronic fund transfer service provider

This paragraph contains much of the material that appeared in former paragraph (a), and sets forth the compliance responsibilities of a non-account-holding service provider. The material has been revised and reorganized for greater clarity, without substantive change.

14(c) Compliance by account-holding institution

This paragraph sets forth the compliance responsibilities of the account-holding institution, and is substantively unchanged from former paragraph (b). Former footnote 13, regarding delayed effective dates, has been deleted as obsolete. The substance of former paragraph (c), providing guidance on when there is an agreement between a service provider and an account-holding institution, has been moved to the commentary.

Section 205.15—Electronic fund transfer of government benefits

In March 1994, the Board issued a final rule relating to the coverage by the EFTA and Regulation E of government benefits that federal, state, and local governments disburse to recipients by means of electronic benefit transfer (EBT) programs, adding a new section 205.15 to Regulation E (59 FR 10678, March 7, 1994). This section is unchanged from the one originally issued.

Appendix A—Model Disclosure Clauses and Forms

The model forms contained in the former regulation have been consolidated in Appendix A. As noted earlier, the error resolution notices in former §§ 205.7(a)(10) and 205.8(b) have been moved from the regulation to Appendix A to streamline the regulation (see Model Form A–3).

Appendix B—Administrative enforcement

Appendix B lists the federal enforcement agencies responsible for enforcing Regulation E for particular classes of institutions.

Appendix C—Issuance of staff interpretations

The final rule adds a new appendix C to replace former § 205.13(b) pertaining to staff interpretations of Regulation E. The Board will continue to rely on the publication of interpretations in the official staff commentary as the primary means of interpreting the regulation. In keeping with the practice that has been in place for years, the final rule deletes any reference to unofficial staff interpretations that are in writing, limiting written interpretations to those that appear in the staff commentary, as revised. The Board believes this to be the most efficient and useful way to facilitate compliance.

III. Regulatory Flexibility Analysis

The Board's Office of the Secretary has prepared an economic impact statement on the amendment to Regulation E. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452–3245.

IV. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No comments specifically addressing the burden estimate were received.

The collection of information requirements in this regulation are found in 12 CFR Part 205. This information is mandatory (15 U.S.C. 1693 *et seq.*) to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to consumers. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Records must be retained for twenty-four months. Regulation E applies to all types of financial institutions, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the Regulation E paperwork burden on their respective constituencies. Please contact the appropriate agency

for an estimate of this proposed regulation's affect on other institutions.

The revisions are expected to decrease the associated paperwork burden on state member banks. It is estimated that 25 percent of small state member banks have no covered activities other than preauthorized transfers. Thus the Federal Reserve estimates that raising the asset-size cutoff from $25 million to $100 million will decrease the number of covered state member banks from 1,000 to 873. The estimated burden per response ranges from fifteen seconds (for an ATM receipt) to 30 minutes (for notice of revised error resolution rules). The Federal Reserve estimates the average frequency of response to be 85,800 responses per respondent each year. Thus, the total amount of annual burden is estimated to be 474,804 hours, a decrease of 13 percent from 543,447 hours.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 205 as set forth below:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693.

2. The table of contents for part 205 is revised to read as follows:

Sec.
205.1 Authority and purpose.
205.2 Definitions.
205.3 Coverage.
205.4 General disclosure requirements; jointly offered services.
205.5 Issuance of access devices.
205.6 Liability of consumer for unauthorized transfers.
205.7 Initial disclosures.
205.8 Change in terms notice; error resolution notice.
205.9 Receipts at electronic terminals; periodic statements.
205.10 Preauthorized transfers.
205.11 Procedures for resolving errors.
205.12 Relation to other laws.
205.13 Administrative enforcement; record retention.
205.14 Electronic fund transfer service provider not holding consumer's account.
205.15 Electronic fund transfer of government benefits.
Appendix A to Part 205—Model Disclosure Clauses and Forms
Appendix B to Part 205—Federal Enforcement Agencies
Appendix C to Part 205—Issuance of Staff Interpretations
Supplement 1 to Part 205—Official Staff Interpretations

3. Sections 205.1 through 205.15 are revised to read as follows:

§ 205.1 Authority and purpose.

(a) *Authority.* The regulation in this part, known as Regulation E, is issued by the Board of Governors of the Federal Reserve System pursuant to the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*). The information-collection requirements have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100–0200.

(b) *Purpose.* This part carries out the purposes of the Electronic Fund Transfer Act, which establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and of financial institutions that offer these services. The primary objective of the act and this part is the protection of individual consumers engaging in electronic fund transfers.

§ 205.2 Definitions.

For purposes of this part, the following definitions apply:

(a)(1) *Access device* means a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers.

(2) An access device becomes an *accepted access device* when the consumer:

(i) Requests and receives, or signs, or uses (or authorizes another to use) the access device to transfer money between accounts or to obtain money, property, or services;

(ii) Requests validation of an access device issued on an unsolicited basis; or

(iii) Receives an access device in renewal of, or in substitution for, an accepted access device from either the financial institution that initially issued the device or a successor.

(b)(1) *Account* means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.

(2) The term does not include an account held by a financial institution under a bona fide trust agreement.

(c) *Act* means the Electronic Fund Transfer Act (title IX of the Consumer Credit Protection Act, 15 U.S.C. 1693 *et seq.*).

(d) *Business day* means any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions.

(e) *Consumer* means a natural person.

(f) *Credit* means the right granted by a financial institution to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(g) *Electronic fund transfer* is defined in § 205.3.

(h) *Electronic terminal* means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines.

(i) *Financial institution* means a bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer, or that issues an access device and agrees with a consumer to provide electronic fund transfer services.

(j) *Person* means a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association.

(k) *Preauthorized electronic fund transfer* means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

(l) *State* means any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision of the above in this paragraph (l).

(m) *Unauthorized electronic fund transfer* means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. The term does not include an electronic fund transfer initiated:

(1) By a person who was furnished the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized;

(2) With fraudulent intent by the consumer or any person acting in concert with the consumer; or

(3) By the financial institution or its employee.

§ 205.3 Coverage.

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this

part applies to financial institutions. For purposes of §§ 205.10 (b), (d), and (e) and 205.13, this part applies to any person.

(b) *Electronic fund transfer.* The term electronic fund transfer means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to:

(1) Point-of-sale transfers;

(2) Automated teller machine transfers;

(3) Direct deposits or withdrawals of funds;

(4) Transfers initiated by telephone; and

(5) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

(c) *Exclusions from coverage.* The term electronic fund transfer does not include:

(1) *Checks.* Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.

(2) *Check guarantee or authorization.* Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument but that does not directly result in a debit or credit to a consumer's account.

(3) *Wire or other similar transfers.* Any transfer of funds through Fedwire or through a similar wire transfer system that is used primarily for transfers between financial institutions or between businesses.

(4) *Securities and commodities transfers.* Any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity, if the security or commodity is:

(i) Regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission;

(ii) Purchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission; or

(iii) Held in book-entry form by a Federal Reserve Bank or federal agency.

(5) *Automatic transfers by account-holding institution.* Any transfer of funds under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer:

(i) Between a consumer's accounts within the financial institution;

(ii) From a consumer's account to an account of a member of the consumer's family held in the same financial institution; or

(iii) Between a consumer's account and an account of the financial institution, except that these transfers remain subject to § 205.10(e) regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability.

(6) *Telephone-initiated transfers.* Any transfer of funds that:

(i) Is initiated by a telephone communication between a consumer and a financial institution making the transfer; and

(ii) Does not take place under a telephone bill-payment or other written plan in which periodic or recurring transfers are contemplated.

(7) *Small institutions.* Any preauthorized transfer to or from an account if the assets of the account-holding financial institution were $100 million or less on the preceding December 31. If assets of the account-holding institution subsequently exceed $100 million, the institution's exemption for preauthorized transfers terminates one year from the end of the calendar year in which the assets exceed $100 million. Preauthorized transfers exempt under this paragraph (c)(7) remain subject to § 205.10(e) regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability.

§ 205.4 General disclosure requirements; jointly offered services.

(a) *Form of disclosures.* Disclosures required under this part shall be clear and readily understandable, in writing, and in a form the consumer may keep. A financial institution may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this part.

(b) *Additional information; disclosures required by other laws.* A financial institution may include additional information and may combine disclosures required by other laws (such as the Truth in Lending Act (15 U.S.C. 1601 et seq.) or the Truth in Savings Act (12 U.S.C. 4301 et seq.)) with the disclosures required by this part.

(c) [Reserved]

(d) *Multiple accounts and account holders*—(1) *Multiple accounts.* A financial institution may combine the required disclosures into a single statement for a consumer who holds more than one account at the institution.

(2) *Multiple account holders.* For joint accounts held by two or more consumers, a financial institution need provide only one set of the required disclosures and may provide them to any of the account holders.

(e) *Services offered jointly.* Financial institutions that provide electronic fund transfer services jointly may contract among themselves to comply with the requirements that this part imposes on any or all of them. An institution need make only the disclosures required by §§ 205.7 and 205.8 that are within its knowledge and within the purview of its relationship with the consumer for whom it holds an account.

§ 205.5 Issuance of access devices.

(a) *Solicited issuance.* Except as provided in paragraph (b) of this section, a financial institution may issue an access device to a consumer only:

(1) In response to an oral or written request for the device; or

(2) As a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor.

(b) *Unsolicited issuance.* A financial institution may distribute an access device to a consumer on an unsolicited basis if the access device is:

(1) Not validated, meaning that the institution has not yet performed all the procedures that would enable a consumer to initiate an electronic fund transfer using the access device;

(2) Accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired;

(3) Accompanied by the disclosures required by § 205.7, of the consumer's rights and liabilities that will apply if the access device is validated; and

(4) Validated only in response to the consumer's oral or written request for validation, after the institution has verified the consumer's identity by a reasonable means.

§ 205.6 Liability of consumer for unauthorized transfers.

(a) *Conditions for liability.* A consumer may be held liable, within the limitations described in paragraph (b) of this section, for an unauthorized electronic fund transfer involving the consumer's account only if the financial institution has provided the disclosures required by § 205.7(b)(1), (2), and (3). If the unauthorized transfer involved an access device, it must be an accepted access device and the financial institution must have provided a means to identify the consumer to whom it was issued.

(b) *Limitations on amount of liability.* A consumer's liability for an

unauthorized electronic fund transfer or a series of related unauthorized transfers shall be determined as follows:

(1) *Timely notice given.* If the consumer notifies the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of $50 or the amount of unauthorized transfers that occur before notice to the financial institution.

(2) *Timely notice not given.* If the consumer fails to notify the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of $500 or the sum of:

(i) $50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and

(ii) The amount of unauthorized transfers that occur after the close of two business days and before notice to the institution, provided the institution establishes that these transfers would not have occurred had the consumer notified the institution within that two-day period.

(3) *Periodic statement; timely notice not given.* A consumer must report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement to avoid liability for subsequent transfers. If the consumer fails to do so, the consumer's liability shall not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the institution, and that the institution establishes would not have occurred had the consumer notified the institution within the 60-day period. When an access device is involved in the unauthorized transfer, the consumer may be liable for other amounts set forth in paragraphs (b)(1) or (b)(2) of this section, as applicable.

(4) *Extension of time limits.* If the consumer's delay in notifying the financial institution was due to extenuating circumstances, the institution shall extend the times specified above to a reasonable period.

(5) *Notice to financial institution.* (i) Notice to a financial institution is given when a consumer takes steps reasonably necessary to provide the institution with the pertinent information, whether or not a particular employee or agent of the institution actually receives the information.

(ii) The consumer may notify the institution in person, by telephone, or in writing.

(iii) Written notice is considered given at the time the consumer mails the notice or delivers it for transmission to the institution by any other usual means. Notice may be considered constructively given when the institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the consumer's account has been or may be made.

(6) *Liability under state law or agreement.* If state law or an agreement between the consumer and the financial institution imposes less liability than is provided by this section, the consumer's liability shall not exceed the amount imposed under the state law or agreement.

§ 205.7 Initial disclosures.

(a) *Timing of disclosures.* A financial institution shall make the disclosures required by this section at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account.

(b) *Content of disclosures.* A financial institution shall provide the following disclosures, as applicable:

(1) *Liability of consumer.* A summary of the consumer's liability, under § 205.6 or under state or other applicable law or agreement, for unauthorized electronic fund transfers.

(2) *Telephone number and address.* The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) *Business days.* The financial institution's business days.

(4) *Types of transfers; limitations.* The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. Details of the limitations need not be disclosed if confidentiality is essential to maintain the security of the electronic fund transfer system.

(5) *Fees.* Any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers.

(6) *Documentation.* A summary of the consumer's right to receipts and periodic statements, as provided in § 205.9, and notices regarding preauthorized transfers as provided in §§ 205.10(a), and 205.10(d).

(7) *Stop payment.* A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in § 205.10(c).

(8) *Liability of institution.* A summary of the financial institution's liability to the consumer under section 910 of the act for failure to make or to stop certain transfers.

(9) *Confidentiality.* The circumstances under which, in the ordinary course of business, the financial institution may provide information concerning the consumer's account to third parties.

(10) *Error resolution.* A notice that is substantially similar to Model Form A–3 as set out in Appendix A of this part concerning error resolution.

§ 205.8 Change in terms notice; error resolution notice.

(a) *Change in terms notice*—(1) *Prior notice required.* A financial institution shall mail or deliver a written notice to the consumer, at least 21 days before the effective date, of any change in a term or condition required to be disclosed under § 205.7(b) if the change would result in:

(i) Increased fees for the consumer;

(ii) Increased liability for the consumer;

(iii) Fewer types of available electronic fund transfers; or

(iv) Stricter limitations on the frequency or dollar amount of transfers.

(2) *Prior notice exception.* A financial institution need not give prior notice if an immediate change in terms or conditions is necessary to maintain or restore the security of an account or an electronic fund transfer system. If the institution makes such a change permanent and disclosure would not jeopardize the security of the account or system, the institution shall notify the consumer in writing on or with the next regularly scheduled periodic statement or within 30 days of making the change permanent.

(b) *Error resolution notice.* For accounts to or from which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, an error resolution notice substantially similar to the model form set forth in Appendix A of this part (Model Form A–3). Alternatively, an institution may include an abbreviated notice substantially similar to the model form error resolution notice set forth in Appendix A of this part (Model Form A–3), on or with each periodic statement required by § 205.9(b).

§ 205.9 Receipts at electronic terminals; periodic statements.

(a) *Receipts at electronic terminals.* A financial institution shall make a receipt available to a consumer at the time the consumer initiates an electronic fund transfer at an electronic terminal. The

receipt shall set forth the following information, as applicable:

(1) *Amount.* The amount of the transfer. A transaction fee may be included in this amount, provided the amount of the fee is disclosed on the receipt and displayed on or at the terminal.

(2) *Date.* The date the consumer initiates the transfer.

(3) *Type.* The type of transfer and the type of the consumer's account(s) to or from which funds are transferred. The type of account may be omitted if the access device used is able to access only one account at that terminal.

(4) *Identification.* A number or code that identifies the consumer's account or accounts, or the access device used to initiate the transfer. The number or code need not exceed four digits or letters to comply with the requirements of this paragraph (a)(4).

(5) *Terminal location.* The location of the terminal where the transfer is initiated, or an identification such as a code or terminal number. Except in limited circumstances where all terminals are located in the same city or state, if the location is disclosed, it shall include the city and state or foreign country and one of the following:

(i) The street address; or

(ii) A generally accepted name for the specific location; or

(iii) The name of the owner or operator of the terminal if other than the account-holding institution.

(6) *Third party transfer.* The name of any third party to or from whom funds are transferred.

(b) *Periodic statements.* For an account to or from which electronic fund transfers can be made, a financial institution shall send a periodic statement for each monthly cycle in which an electronic fund transfer has occurred; and shall send a periodic statement at least quarterly if no transfer has occurred. The statement shall set forth the following information, as applicable:

(1) *Transaction information.* For each electronic fund transfer occurring during the cycle:

(i) The amount of the transfer;

(ii) The date the transfer was credited or debited to the consumer's account;

(iii) The type of transfer and type of account to or from which funds were transferred;

(iv) For a transfer initiated by the consumer at an electronic terminal (except for a deposit of cash or a check, draft, or similar paper instrument), the terminal location described in paragraph (a)(5) of this section; and

(v) The name of any third party to or from whom funds were transferred.

(2) *Account number.* The number of the account.

(3) *Fees.* The amount of any fees assessed against the account during the statement period for electronic fund transfers, for the right to make transfers, or for account maintenance.

(4) *Account balances.* The balance in the account at the beginning and at the close of the statement period.

(5) *Address and telephone number for inquiries.* The address and telephone number to be used for inquiries or notice of errors, preceded by ''Direct inquiries to'' or similar language. The address and telephone number provided on an error resolution notice under § 205.8(b) given on or with the statement satisfies this requirement.

(6) *Telephone number for preauthorized transfers.* A telephone number the consumer may call to ascertain whether preauthorized transfers to the consumer's account have occurred, if the financial institution uses the telephone-notice option under § 205.10(a)(1)(iii).

(c) *Exceptions to the periodic statement requirement for certain accounts*—(1) *Preauthorized transfers to accounts.* For accounts that may be accessed only by preauthorized transfers to the account the following rules apply:

(i) *Passbook accounts.* For passbook accounts, the financial institution need not provide a periodic statement if the institution updates the passbook upon presentation or enters on a separate document the amount and date of each electronic fund transfer since the passbook was last presented.

(ii) *Other accounts.* For accounts other than passbook accounts, the financial institution must send a periodic statement at least quarterly.

(2) *Intra-institutional transfers.* For an electronic fund transfer initiated by the consumer between two accounts of the consumer in the same institution, documenting the transfer on a periodic statement for one of the two accounts satisfies the periodic statement requirement.

(3) *Relationship between paragraphs (c)(1) and (c)(2) of this section.* An account that is accessed by preauthorized transfers to the account described in paragraph (c)(1) of this section and by intra-institutional transfers described in paragraph (c)(2) of this section, but by no other type of electronic fund transfers, qualifies for the exceptions provided by paragraph (c)(1) of this section .

(d) *Documentation for foreign-initiated transfers.* The failure by a financial institution to provide a terminal receipt for an electronic fund transfer or to document the transfer on a periodic statement does not violate this part if:

(1) The transfer is not initiated within a state; and

(2) The financial institution treats an inquiry for clarification or documentation as a notice of error in accordance with § 205.11.

§ 205.10 Preauthorized transfers.

(a) *Preauthorized transfers to consumer's account*—(1) *Notice by financial institution.* When a person initiates preauthorized electronic fund transfers to a consumer's account at least once every 60 days, the account-holding financial institution shall provide notice to the consumer by:

(i) *Positive notice.* Providing oral or written notice of the transfer within two business days after the transfer occurs; or

(ii) *Negative notice.* Providing oral or written notice, within two business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or

(iii) *Readily-available telephone line.* Providing a readily available telephone line that the consumer may call to determine whether the transfer occurred and disclosing the telephone number on the initial disclosure of account terms and on each periodic statement.

(2) *Notice by payor.* A financial institution need not provide notice of a transfer if the payor gives the consumer positive notice that the transfer has been initiated.

(3) *Crediting.* A financial institution that receives a preauthorized transfer of the type described in paragraph (a)(1) of this section shall credit the amount of the transfer as of the date the funds for the transfer are received.

(b) *Written authorization for preauthorized transfers from consumer's account.* Preauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer.

(c) *Consumer's right to stop payment*—(1) *Notice.* A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at least three business days before the scheduled date of the transfer.

(2) *Written confirmation.* The financial institution may require the consumer to give written confirmation of a stop-payment order within 14 days of an oral notification. An institution that requires written confirmation shall inform the consumer of the requirement

and provide the address where confirmation must be sent when the consumer gives the oral notification. An oral stop-payment order ceases to be binding after 14 days if the consumer fails to provide the required written confirmation.

(d) *Notice of transfers varying in amount*—(1) *Notice.* When a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, the designated payee or the financial institution shall send the consumer written notice of the amount and date of the transfer at least 10 days before the scheduled date of transfer.

(2) *Range.* The designated payee or the institution shall inform the consumer of the right to receive notice of all varying transfers, but may give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

(e) *Compulsory use*—(1) *Credit.* No financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account.

(2) *Employment or government benefit.* No financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit.

§ 205.11 Procedures for resolving errors.

(a) *Definition of error*—(1) *Types of transfers or inquiries covered.* The term *error* means:

(i) An unauthorized electronic fund transfer;

(ii) An incorrect electronic fund transfer to or from the consumer's account;

(iii) The omission of an electronic fund transfer from a periodic statement;

(iv) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;

(v) The consumer's receipt of an incorrect amount of money from an electronic terminal;

(vi) An electronic fund transfer not identified in accordance with §§ 205.9 or 205.10(a); or

(vii) The consumer's request for documentation required by §§ 205.9 or 205.10(a) or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1)(i) through (vi) of this section.

(2) *Types of inquiries not covered.* The term *error* does not include:

(i) A routine inquiry about the consumer's account balance;

(ii) A request for information for tax or other recordkeeping purposes; or

(iii) A request for duplicate copies of documentation.

(b) *Notice of error from consumer*—(1) *Timing; contents.* A financial institution shall comply with the requirements of this section with respect to any oral or written notice of error from the consumer that:

(i) Is received by the institution no later than 60 days after the institution sends the periodic statement or provides the passbook documentation, required by § 205.9, on which the alleged error is first reflected;

(ii) Enables the institution to identify the consumer's name and account number; and

(iii) Indicates why the consumer believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests described in paragraph (a)(1)(vii) of this section.

(2) *Written confirmation.* A financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification.

(3) *Request for documentation or clarifications.* When a notice of error is based on documentation or clarification that the consumer requested under paragraph (a)(1)(vii) of this section, the consumer's notice of error is timely if received by the financial institution no later than 60 days after the institution sends the information requested.

(c) *Time limits and extent of investigation*—(1) *Ten-day period.* A financial institution shall investigate promptly and, except as otherwise provided in this paragraph (c), shall determine whether an error occurred within 10 business days of receiving a notice of error. The institution shall report the results to the consumer within three business days after completing its investigation. The institution shall correct the error within one business day after determining that an error occurred.

(2) *Forty-five day period.* If the financial institution is unable to complete its investigation within 10 business days, the institution may take up to 45 days from receipt of a notice of error to investigate and determine whether an error occurred, provided the institution does the following:

(i) Provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days of receiving the error notice. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer has occurred and the institution has satisfied the requirements of § 205.6(a), the institution may withhold a maximum of $50 from the amount credited. An institution need not provisionally credit the consumer's account if:

(A) The institution requires but does not receive written confirmation within 10 business days of an oral notice of error; or

(B) The alleged error involves an account that is subject to Regulation T (Securities Credit by Brokers and Dealers, 12 CFR part 220);

(ii) Informs the consumer, within two business days after the provisional crediting, of the amount and date of the provisional crediting and gives the consumer full use of the funds during the investigation;

(iii) Corrects the error, if any, within one business day after determining that an error occurred; and

(iv) Reports the results to the consumer within three business days after completing its investigation (including, if applicable, notice that a provisional credit has been made final).

(3) *Extension of time periods.* The applicable time periods in this paragraph (c)(3) are 20 business days in place of 10 business days, and 90 days in place of 45 days, if a notice of error involves an electronic fund transfer that:

(i) Was not initiated within a state; or

(ii) Resulted from a point-of-sale debit card transaction.

(4) *Investigation.* With the exception of transfers covered by § 205.14, a financial institution's review of its own records regarding an alleged error satisfies the requirements of this section if:

(i) The alleged error concerns a transfer to or from a third party; and

(ii) There is no agreement between the institution and the third party for the type of electronic fund transfer involved.

(d) *Procedures if financial institution determines no error or different error*

occurred. In addition to following the procedures specified in paragraph (c) of this section, the financial institution shall follow the procedures set forth in this paragraph (d) if it determines that no error occurred or that an error occurred in a manner or amount different from that described by the consumer:

(1) *Written explanation.* The institution's report of the results of its investigation shall include a written explanation of the institution's findings and shall note the consumer's right to request the documents that the institution relied on in making its determination. Upon request, the institution shall promptly provide copies of the documents.

(2) *Debiting provisional credit.* Upon debiting a provisionally credited amount, the financial institution shall:

(i) Notify the consumer of the date and amount of the debiting;

(ii) Notify the consumer that the institution will honor checks, drafts, or similar instruments payable to third parties and preauthorized transfers from the consumer's account (without charge to the consumer as a result of an overdraft) for five business days after the notification. The institution shall honor items as specified in the notice, but need honor only items that it would have paid if the provisionally credited funds had not been debited.

(e) *Reassertion of error.* A financial institution that has fully complied with the error resolution requirements has no further responsibilities under this section should the consumer later reassert the same error, except in the case of an error asserted by the consumer following receipt of information provided under paragraph (a)(1)(vii) of this section.

§ 205.12 Relation to other laws.

(a) *Relation to Truth in Lending.* (1) The Electronic Fund Transfer Act and this part govern:

(i) The addition to an accepted credit card, as defined in Regulation Z (12 CFR 226.12(a)(2), footnote 21), of the capability to initiate electronic fund transfers;

(ii) The issuance of an access device that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account; and

(iii) A consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving an extension of credit that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) The Truth in Lending Act and Regulation Z (12 CFR part 226), which prohibit the unsolicited issuance of credit cards, govern:

(i) The addition of a credit feature to an accepted access device; and

(ii) Except as provided in paragraph (a)(1)(ii) of this section, the issuance of a credit card that is also an access device.

(b) *Preemption of inconsistent state laws*—(1) *Inconsistent requirements.* The Board shall determine, upon its own motion or upon the request of a state, financial institution, or other interested party, whether the act and this part preempt state law relating to electronic fund transfers. Only state laws that are inconsistent with the act and this part are preempted and then only to the extent of the inconsistency. A state law is not inconsistent with the act and this part if it is more protective of consumers.

(2) *Standards for determination.* State law is inconsistent with the requirements of the act and this part if it:

(i) Requires or permits a practice or act prohibited by the federal law;

(ii) Provides for consumer liability for unauthorized electronic fund transfers that exceeds the limits imposed by the federal law;

(iii) Allows longer time periods than the federal law for investigating and correcting alleged errors, or does not require the financial institution to credit the consumer's account during an error investigation in accordance with § 205.11(c)(2)(i); or

(iv) Requires initial disclosures, periodic statements, or receipts that are different in content from those required by the federal law except to the extent that the disclosures relate to consumer rights granted by the state law and not by the federal law.

(c) *State exemptions*—(1) *General rule.* Any state may apply for an exemption from the requirements of the act or this part for any class of electronic fund transfers within the state. The Board shall grant an exemption if it determines that:

(i) Under state law the class of electronic fund transfers is subject to requirements substantially similar to those imposed by the federal law; and

(ii) There is adequate provision for state enforcement.

(2) *Exception.* To assure that the federal and state courts continue to have concurrent jurisdiction, and to aid in implementing the act:

(i) No exemption shall extend to the civil liability provisions of section 915 of the act; and

(ii) When the Board grants an exemption, the state law requirements shall constitute the requirements of the federal law for purposes of section 915 of the act, except for state law requirements not imposed by the federal law.

§ 205.13 Administrative enforcement; record retention.

(a) *Enforcement by federal agencies.* Compliance with this part is enforced by the agencies listed in Appendix B of this part.

(b) *Record retention.* (1) Any person subject to the act and this part shall retain evidence of compliance with the requirements imposed by the act and this part for a period of not less than two years from the date disclosures are required to be made or action is required to be taken.

(2) Any person subject to the act and this part having actual notice that it is the subject of an investigation or an enforcement proceeding by its enforcement agency, or having been served with notice of an action filed under sections 910, 915, or 916(a) of the act, shall retain the records that pertain to the investigation, action, or proceeding until final disposition of the matter unless an earlier time is allowed by court or agency order.

§ 205.14 Electronic fund transfer service provider not holding consumer's account.

(a) *Provider of electronic fund transfer service.* A person that provides an electronic fund transfer service to a consumer but that does not hold the consumer's account is subject to all requirements of this part if the person:

(1) Issues a debit card (or other access device) that the consumer can use to access the consumer's account held by a financial institution; and

(2) Has no agreement with the account-holding institution regarding such access.

(b) *Compliance by service provider.* In addition to the requirements generally applicable under this part, the service provider shall comply with the following special rules:

(1) *Disclosures and documentation.* The service provider shall give the disclosures and documentation required by §§ 205.7, 205.8, and 205.9 that are within the purview of its relationship with the consumer. The service provider need not furnish the periodic statement required by § 205.9(b) if the following conditions are met:

(i) The debit card (or other access device) issued to the consumer bears the service provider's name and an address or telephone number for making inquiries or giving notice of error;

(ii) The consumer receives a notice concerning use of the debit card that is substantially similar to the notice contained in Appendix A of this part;

(iii) The consumer receives, on or with the receipts required by § 205.9(a), the address and telephone number to be used for an inquiry, to give notice of an error, or to report the loss or theft of the debit card;

(iv) The service provider transmits to the account-holding institution the information specified in § 205.9(b)(1), in the format prescribed by the automated clearinghouse system used to clear the fund transfers;

(v) The service provider extends the time period for notice of loss or theft of a debit card, set forth in § 205.6(b) (1) and (2), from two business days to four business days after the consumer learns of the loss or theft; and extends the time periods for reporting unauthorized transfers or errors, set forth in §§ 205.6(b)(3) and 205.11(b)(1)(i), from 60 days to 90 days following the transmittal of a periodic statement by the account-holding institution.

(2) *Error resolution.* (i) The service provider shall extend by a reasonable time the period in which notice of an error must be received, specified in § 205.11(b)(1)(i), if a delay resulted from an initial attempt by the consumer to notify the account-holding institution.

(ii) The service provider shall disclose to the consumer the date on which it initiates a transfer to effect a provisional credit in accordance with § 205.11(c)(2)(ii).

(iii) If the service provider determines an error occurred, it shall transfer funds to or from the consumer's account, in the appropriate amount and within the applicable time period, in accordance with § 205.11(c)(2)(i).

(iv) If funds were provisionally credited and the service provider determines no error occurred, it may reverse the credit. The service provider shall notify the account-holding institution of the period during which the account-holding institution must honor debits to the account in accordance with § 205.11(d)(2)(ii). If an overdraft results, the service provider shall promptly reimburse the account-holding institution in the amount of the overdraft.

(c) *Compliance by account-holding institution.* The account-holding institution need not comply with the requirements of the act and this part with respect to electronic fund transfers initiated through the service provider except as follows:

(1) *Documentation.* The account-holding institution shall provide a periodic statement that describes each electronic fund transfer initiated by the consumer with the access device issued by the service provider. The account-holding institution has no liability for the failure to comply with this requirement if the service provider did not provide the necessary information; and

(2) *Error resolution.* Upon request, the account-holding institution shall provide information or copies of documents needed by the service provider to investigate errors or to furnish copies of documents to the consumer. The account-holding institution shall also honor debits to the account in accordance with § 205.11(d)(2)(ii).

§ 205.15 Electronic fund transfer of government benefits.

(a) *Government agency subject to regulation.* (1) A government agency is deemed to be a financial institution for purposes of the act and this part if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account. The agency shall comply with all applicable requirements of the act and this part except as provided in this section.

(2) For purposes of this section, the term *account* means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals.

(b) *Issuance of access devices.* For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.

(c) *Alternative to periodic statement.* A government agency need not furnish the periodic statement required by § 205.9(b) if the agency makes available to the consumer:

(1) The consumer's account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer); and

(2) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date of a request by the consumer.

(d) *Modified requirements.* A government agency that does not furnish periodic statements, in accordance with paragraph (c) of this section, shall comply with the following special rules:

(1) *Initial disclosures.* The agency shall modify the disclosures under § 205.7(b) by disclosing:

(i) *Account balance.* The means by which the consumer may obtain information concerning the account balance, including a telephone number. The agency provides a notice substantially similar to the notice contained in paragraph A–5 in Appendix A of this part.

(ii) *Written account history.* A summary of the consumer's right to receive a written account history upon request, in place of the periodic statement required by § 205.7(b)(6), and the telephone number to call to request an account history. This disclosure may be made by providing a notice substantially similar to the notice contained in paragraph A–5 in Appendix A of this part.

(iii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph A–5 in Appendix A of this part, in place of the notice required by § 205.7(b)(10).

(2) *Annual error resolution notice.* The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph A–5 in appendix A, in place of the notice required by § 205.8(b).

(3) *Limitations on liability.* For purposes of § 205.6(b)(3), regarding a 60-day period for reporting any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with transmittal of a written account history or other account information provided to the consumer under paragraph (c) of this section.

(4) *Error resolution.* The agency shall comply with the requirements of § 205.11 in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history or other account information, under paragraph (c) of this section, in which the error is first reflected.

4. Appendices A and B are revised and Appendix C is added to read as follows:

Appendix A to Part 205—Model Disclosure Clauses and Forms

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A–1—MODEL CLAUSES FOR UNSOLICITED ISSUANCE (§ 205.5(b)(2))
A–2—MODEL CLAUSES FOR INITIAL DISCLOSURES (§ 205.7(b))
A–3—MODEL FORMS FOR ERROR RESOLUTION NOTICE (§§ 205.7(b)(10) and 205.8(b))
A–4—MODEL FORM FOR SERVICE-PROVIDING INSTITUTIONS (§ 205.14(b)(1)(ii))
A–5—MODEL FORMS FOR GOVERNMENT AGENCIES (§ 205.15(d) (1) and (2))

A–1—MODEL CLAUSES FOR UNSOLICITED ISSUANCE (§ 205.5(b)(2))

(a) *Accounts using cards.* You cannot use the enclosed card to transfer money into or out of your account until we have validated it. If you do not want to use the card, please (destroy it at once by cutting it in half).

[Financial institution may add validation instructions here.]

(b) *Accounts using codes.* You cannot use the enclosed code to transfer money into or out of your account until we have validated it. If you do not want to use the code, please (destroy this notice at once).

[Financial institution may add validation instructions here.]

A–2—MODEL CLAUSES FOR INITIAL DISCLOSURES (§ 205.7(b))

(a) *Consumer Liability (§ 205.7(b)(1)).* (Tell us AT ONCE if you believe your [card] [code] has been lost or stolen. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days, you can lose no more than $50 if someone used your [card][code] without your permission. (If you believe your [card] [code] has been lost or stolen, and you tell us within 2 business days after you learn of the loss or theft, you can lose no more than $50 if someone used your [card] [code] without your permission.)

If you do NOT tell us within 2 business days after you learn of the loss or theft of your [card] [code], and we can prove we could have stopped someone from using your [card] [code] without your permission if you had told us, you could lose as much as $500.

Also, if your statement shows transfers that you did not make, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

(b) *Contact in event of unauthorized transfer (§ 205.7(b)(2)).* If you believe your [card] [code] has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, call:

[Telephone number]
or write:

[Name of person or office to be notified]
[Address]

(c) *Business days (§ 205.7(b)(3)).* For purposes of these disclosures, our business days are (Monday through Friday) (Monday through Saturday) (any day including Saturdays and Sundays). Holidays are (not) included.

(d) *Transfer types and limitations (§ 205.7(b)(4))*—(1) *Account access.* You may use your [card][code] to:

(i) Withdraw cash from your [checking] [or] [savings] account.

(ii) Make deposits to your [checking] [or] [savings] account.

(iii) Transfer funds between your checking and savings accounts whenever you request.

(iv) Pay for purchases at places that have agreed to accept the [card] [code].

(v) Pay bills directly [by telephone] from your [checking] [or] [savings] account in the amounts and on the days you request.

Some of these services may not be available at all terminals.

(2) *Limitations on frequency of transfers.*—(i) You may make only [insert number, e.g., 3] cash withdrawals from our terminals each [insert time period, e.g., week].

(ii) You can use your telephone bill-payment service to pay [insert number] bills each [insert time period] [telephone call].

(iii) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].

(iv) For security reasons, there are limits on the number of transfers you can make using our [terminals] [telephone bill-payment service] [point-of-sale transfer service].

(3) *Limitations on dollar amounts of transfers*—(i) You may withdraw up to [insert dollar amount] from our terminals each [insert time period] time you use the [card] [code].

(ii) You may buy up to [insert dollar amount] worth of goods or services each [insert time period] time you use the [card] [code] in our point-of-sale transfer service.

(e) *Fees (§ 205.7(b)(5))*—(1) *Per transfer charge.* We will charge you [insert dollar amount] for each transfer you make using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service].

(2) *Fixed charge.* We will charge you [insert dollar amount] each [insert time period] for our [automated teller machine service] [telephone bill-payment service] [point-of-sale transfer service].

(3) *Average or minimum balance charge.* We will only charge you for using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service] if the [average] [minimum] balance in your [checking account] [savings account] [accounts] falls below [insert dollar amount]. If it does, we will charge you [insert dollar amount] each [transfer] [insert time period].

(f) *Confidentiality (§ 205.7(b)(9)).* We will disclose information to third parties about your account or the transfers you make:

(i) Where it is necessary for completing transfers, or

(ii) In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or

(iii) In order to comply with government agency or court orders, or

(iv) If you give us your written permission.

(g) *Documentation (§ 205.7(b)(6))*—(1) *Terminal transfers.* You can get a receipt at the time you make any transfer to or from your account using one of our [automated teller machines] [or] [point-of-sale terminals].

(2) *Preauthorized credits.* If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, (we will let you know if the deposit is [not] made.) [the person or company making the deposit will tell you every time they send us the money] [you can call us at (insert telephone number) to find out whether or not the deposit has been made].

(3) *Periodic statements.* You will get a [monthly] [quarterly] account statement (unless there are no transfers in a particular month. In any case you will get the statement at least quarterly).

(4) *Passbook account where the only possible electronic fund transfers are preauthorized credits.* If you bring your passbook to us, we will record any electronic deposits that were made to your account since the last time you brought in your passbook.

(h) *Preauthorized payments (§ 205.7(b) (6), (7) and (8); § 205.10(d))*—(1) *Right to stop payment and procedure for doing so.* If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:

Call us at [insert telephone number], or write us at [insert address], in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. (We will charge you [insert amount] for each stop-payment order you give.)

(2) *Notice of varying amounts.* If these regular payments may vary in amount, [we] [the person you are going to pay] will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

(3) *Liability for failure to stop payment of preauthorized transfer.* If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

(i) *Financial institution's liability (§ 205.7(b)(8)).* If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

(1) If, through no fault of ours, you do not have enough money in your account to make the transfer.

(2) If the transfer would go over the credit limit on your overdraft line.

(3) If the automated teller machine where you are making the transfer does not have enough cash.

(4) If the [terminal] [system] was not working properly and you knew about the breakdown when you started the transfer.

(5) If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.

(6) There may be other exceptions stated in our agreement with you.

A–3—MODEL FORMS FOR ERROR RESOLUTION NOTICE (§§ 205.7(b)(10) and 205.8(b))

(a) Initial and annual error resolution notice (§§ 205.7(b)(10) and 205.8(b))

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will tell you the results of our investigation within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

If we decide that there was no error, we will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

(b) Error resolution notice on periodic statements § 205.8(b)

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

A–4—MODEL FORM FOR SERVICE-PROVIDING INSTITUTIONS (§ 205.14(b)(1)(ii))

ALL QUESTIONS ABOUT TRANSACTIONS MADE WITH YOUR (NAME OF CARD) CARD MUST BE DIRECTED TO US (NAME OF SERVICE PROVIDER), AND NOT TO THE BANK OR OTHER FINANCIAL INSTITUTION WHERE YOU HAVE YOUR ACCOUNT. We are responsible for the [name of service] service and for resolving any errors in transactions made with your [name of card] card.

We will not send you a periodic statement listing transactions that you make using your [name of card] card. The transactions will appear only on the statement issued by your bank or other financial institution. SAVE THE RECEIPTS YOU ARE GIVEN WHEN YOU USE YOUR [NAME OF CARD] CARD, AND CHECK THEM AGAINST THE ACCOUNT STATEMENT YOU RECEIVE FROM YOUR BANK OR OTHER FINANCIAL INSTITUTION. If you have any questions about one of these transactions, call or write us at [telephone number and address] [the telephone number and address indicated below].

IF YOUR [NAME OF CARD] CARD IS LOST OR STOLEN, NOTIFY US AT ONCE by calling or writing to us at [telephone number and address].

A–5—MODEL FORMS FOR GOVERNMENT AGENCIES (§ 205.15(d) (1) and (2))

(1) Disclosure by government agencies of information about obtaining account balances and account histories § 205.15(d)(1) (i) and (ii)

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM) (a POS terminal)] [when you make a balance inquiry at an ATM][when you make a balance inquiry at specified locations].

You also have the right to receive a written summary of transactions for the 60 days preceding your request by calling [telephone number]. [Optional: Or you may request the summary by contacting your caseworker.]

(2) Disclosure of error resolution procedures for government agencies that do not provide periodic statements (§ 205.15 (d)(1)(iii) and (d)(2))

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [telephone number] or Write us at [address] as soon as you can, if you think an error has occurred in your [EBT][agency's name for program] account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

- Your name and [case] [file] number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days. We will generally complete our investigation within 10 business days and correct any error promptly. In some cases, an investigation may take longer, but you will have the use of the funds in question after the 10 business days. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account during the investigation.

For errors involving transactions at point-of-sale terminals in food stores, the periods referred to above are 20 business days instead of 10 business days.

If we decide that there was no error, we will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

If you need more information about our error resolution procedures, call us at [telephone number][the telephone number shown above].

Appendix B to Part 205—Federal Enforcement Agencies

The following list indicates which Federal agency enforces Regulation E (12 CFR part 205) for particular classes of institutions. Any questions concerning compliance by a particular institution should be directed to the appropriate enforcing agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

National banks, and Federal branches and Federal agencies of foreign banks

District office of the Office of the Comptroller of the Currency where the institution is located.

State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act

Federal Reserve Bank serving the District in which the institution is located.

Nonmember insured banks and insured state branches of foreign banks

Federal Deposit Insurance Corporation regional director for the region in which the institution is located.

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally-chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund)

Office of Thrift Supervision Regional Director for the region in which the institution is located.

Federal Credit Unions

Division of Consumer Affairs, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428

Air Carriers

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

Brokers and Dealers

Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

Retailers, Consumer Finance Companies, Certain Other Financial Institutions, and all others not covered above

Federal Trade Commission, Electronic Fund Transfers, Washington, D.C. 20580.

Appendix C to Part 205—Issuance of Staff Interpretations

Official Staff Interpretations

Pursuant to section 915(d) of the act, the Board has designated the director and other officials of the Division of Consumer and Community Affairs as officials ''duly authorized'' to issue, at their discretion, official staff interpretations of this part. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to this part, which will be amended periodically.

Requests for Issuance of Official Staff Interpretations

A request for an official staff interpretation shall be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

Scope of Interpretations

No staff interpretations will be issued approving financial institutions' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

By order of the Board of Governors of the Federal Reserve System, April 19, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–10179 Filed 5–1–96; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–0831]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official Staff Interpretation.

SUMMARY: The Board is publishing final revisions to its official staff commentary to Regulation E (which implements the Electronic Fund Transfer Act), as part of the Board's review of the regulation. The commentary applies and interprets the requirements of Regulation E to facilitate compliance by financial institutions that offer electronic fund transfer services to consumers. The revisions change the question-and-answer format to a narrative one to make the commentary easier to use and to conform it with the format of the Board's other staff commentaries. In conjunction with revisions to Regulation E adopted by the Board and published elsewhere in today's Federal Register, the revised commentary also includes interpretative provisions previously contained in the regulation that were more explanatory in nature and additional interpretations on matters not previously addressed.

DATES: *Effective date.* May 2, 1996.

Compliance date. Mandatory compliance January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Kyung Cho-Miller, Michael Hentrel, or Natalie E. Taylor, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452–2412 or (202) 452–3667. For the hearing impaired *only,* contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). The Board has revised Regulation E under its Regulatory Planning and Review Program, which calls for the periodic review of all Board regulations. In 1981, the Board published an official staff commentary to Regulation E. The commentary substitutes for individual staff interpretations and is designed to facilitate compliance and provide protection from civil liability, under section 915(d)(1) of the act, for financial institutions that act in conformity with it.

The question-and-answer format of the former commentary was designed to make compliance easier by providing specific answers, in nontechnical language, to frequently asked questions. However, that format usually relied on specific factual situations and often restricted the scope of an interpretation. The Board has adopted a narrative format, similar to other commentaries issued by the Board, to provide more general applicability.

The order of comments in the final commentary corresponds with the new sections in the revised regulation. Throughout the commentary, reference to ''this section'' or ''this paragraph'' means the section or paragraph in the regulation that is the subject of the comment. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The commentary incorporates text that was moved from the regulation because it is more explanatory than regulatory in nature. A number of comments have been deleted as obsolete.

II. Section-by-Section Analysis

The section-by-section descriptions highlight certain provisions that differ from the former commentary and certain portions of the former regulation that have been moved to the commentary. Comments in the former commentary are referred to as ''questions'' and are cited by the section number and the number of the question. For example, Q2–11 is the citation for question number 11 in the commentary to § 205.2. As the substance of many questions does not change in the new format, those comments are not specifically discussed. A summary at the beginning of the section-by-section analysis matches the old question to the new commentary provisions. The summary also lists questions that have been deleted from the commentary, comments that are new, and comments that have been moved to other sections.

Section 205.2—Definitions

New	Old
(a)–1	Q2–1
(b)(1)–1	Q2–2, Q2–3, Q2–4, Q2–5, Q2–5.5
(b)(2)–1	Q3–21
(b)(2)–2	Q3–20
(d)–1	Q2–8
(d)–2	Q2–6
(d)–3	Q2–9

New	Old
(d)–4	Q2–7
(h)–1	Q2–25.5, Q2–23
(h)–2	Q2–24
(h)–3	Q2–25
(m)–1	Q2–26
(m)–2	Q2–27
(m)–3	Q2–27
(m)–4	Q2–28

Comment deleted

Q2–22: Electronic terminal—telephone bill payment

Comments moved

Comments relating to the definition of an EFT have been moved to the commentary to § 205.3

Paragraph 2(b)(2)

In the regulation, the exemption for trust accounts has been incorporated into the definition of account. The substance of Q3–20 (custodial agreements) and Q3–21 (trust accounts) is included in this section as comments (b)(2)–2 and (b)(2)–1. The change mirrors the statutory definition of account.

2(d) Business Day

The regulatory proposal included a new definition of business day. The Board has retained the current definition of business day; accordingly, comments Q2–6, Q2–7, and Q2–9, which provide guidance on interpreting ''substantially all business functions,'' have been retained and included in comments (d)(2)–(d)(4).

2(m) Unauthorized Electronic Fund Transfer

Comment (m)–2, which incorporates Q2–27, provides that when the consumer furnishes an access device and grants actual authority to make transfers to another person (a family member or co-worker, for example) who then exceeds that authority, the consumer is liable for the transfers unless the consumer has notified the financial institution that transfers by that person are no longer authorized. While institutions are required to provide a summary of the consumer's liability under § 205.6 in the initial disclosures, the model clauses do not require financial institutions to disclose this potential liability as part of the initial disclosures of § 205.7.

Section 205.3—Coverage

Section 205.3 of the regulation is a new section on the regulation's coverage, including the scope of Regulation E, the definition of an EFT, and the exemptions from the regulation. To correspond with these regulatory amendments, the commentary consolidates existing and new comments on the regulation's coverage.

New	Old
(a)–1	Q9–15 in part
(a)–2	Q9–15 in part
(a)–2	new
(b)–1	Q2–11, broadens and reverses Q2–16, Q2–18, Q2–19, Q2–21.5
(b)–2	Q2–10, Q2–12, Q2–21
(c)(2)–1	Q3–1
(c)(3)–1	Q3–3
(c)(3)–2	new
(c)(3)–3	new
(c)(4)–1	new
(c)(4)–2	new
(c)(4)–3	Q3–3.5, Q3–3.6
(c)(5)–1	Q3–8, Q3–9, Q3–10, Q3–11, Q3–12
(c)(5)–2	Q3–13
(c)(6)–1	Q3–14, Q3–15, Q3–16, Q3–19.5
(c)(6)–2	Q3–17, Q3–18, Q3–19, new (facsimile machine)
(c)(7)–1	new

Comments deleted

Q2–12.5: Fund transfer—withholding of income tax on interest

Q2–12.6: Fund transfer—EBT

Q2–13: Fund transfer—withdrawal at another institution

Q2–14: Fund transfer—check truncation

Q2–15: Fund transfer—payee information, non-electronic form

Q2–17: Fund transfer—ACH

Q2–20: Fund transfer—preauthorized debits by paper drafts, ACH

Q3–2: Wire transfer—instructions on magnetic tape

Q3–4: Telephone transfer plans—applicability of intrainstitutional exemption

Q3–5: Compulsory use—preauthorized loan payments

Comments moved

Q3–6, Q3–7, and Q3–7.5 (see commentary to § 205.10(e))

Q3–20 and Q3–21 (see commentary to § 205.2)

3(a) General

Comments 3(a)–1 and –2 incorporate the part of Q9–15 that details the types of accounts subject to the requirements of the regulation.

Comment 3(a)–2 is new. Language for this comment is modeled on the commentary to Regulation Z on foreign applicability (12 CFR part 226, Supp. I, comment 1(c)–1).

3(b) Electronic Fund Transfer

In the revised regulation, the definition of ''electronic fund transfer'' is referenced in § 205.2(g) but is included in § 205.3 as the definition is central to determining coverage. The commentary consolidates in this section the questions pertaining to EFTs. A number of comments were deleted because of a change in Board interpretations. For example, Q2–12.6 dealt with the electronic payment of government benefits, stating that such transfers were not subject to Regulation E. As the Board has adopted amendments to Regulation E extending coverage to electronic benefit transfer programs established by federal, state, or local government agencies, the substance of Q2–12.6 has been deleted.

Comment 3(b)–1(iii) broadens and reverses Q2–16 to achieve consistency with other sections of Regulation E. The comment states that debits or credits to a consumer's account according to billing information contained on magnetic tape are EFTs even if the financial institution receives or sends a composite check. Previously, *credits* to consumers' accounts made by a composite check accompanied by a magnetic tape containing payee information were not EFTs for purposes of Regulation E.

3(c) Exclusions From Coverage

The regulation's exemptions are incorporated in § 205.3.

Paragraph 3(c)(3)—Wire or Other Similar Transfers

Comment 3(c)(3)–2 addresses the relationship of Regulation E to Article 4A of the Uniform Commercial Code (UCC). Article 4A provides comprehensive rules governing rights and responsibilities arising from wire transfers. It applies primarily to large-dollar, commercial wire transfers made via Fedwire, Clearing House Interbank Payments Systems (CHIPS), Society for Worldwide Interbank Payments Systems (SWIFT), and Telex.

UCC § 4A–108 provides that Article 4A does not cover a fund transfer any part of which is governed by the EFTA. In drafting Article 4A, the National Conference of Commissioners on Uniform State Laws stated that if a fund transfer is made in part by Fedwire and in part via an automated clearinghouse (ACH), because the EFTA applies to the ACH part of the transfer, Article 4A does not apply to any part of the transfer. Institutions that offer Fedwire services expressed concern that these transfers would lose the legal certainty offered by complying with the requirements of Article 4A if some part of the transfer is subject to the EFTA. This concern must be balanced with the potential of subjecting consumers to full liability for unauthorized transfers merely because some part of the transfer, which would ordinarily be

covered by Regulation E, is made via Fedwire.

In 1990, the Board adopted a comprehensive revision of subpart B to Regulation J (55 FR 40791, October 5, 1990). Regulation J (12 CFR Part 210) specifies the rules applicable to funds transfers handled by Federal Reserve Banks. To ensure that the rules for all funds transfers through Fedwire are consistent, the Board used its preemptive authority under UCC § 4A–107 to determine that subpart B, including the provisions of Article 4A, applies to all fund transfers through Fedwire, even if a portion of the fund transfer is governed by the EFTA. Even so, the Board has continued to receive questions about the effect of dual coverage. For example, if an institution offers consumers the ability to initiate Fedwire transfers pursuant to a telephone transfer agreement, the transfer could be covered by both Regulation E and Article 4A. UCC § 4A–202 encourages verification of the authenticity of a Fedwire payment order pursuant to a ''security procedure'' established by agreement between a customer and a receiving bank. Putting such an agreement in writing could be deemed to constitute a telephone transfer plan for purposes of Regulation E. The Board believes that if an institution makes Fedwire payments available to consumers, but does not make the service available in conjunction with a telephone plan that is subject to Regulation E, then the protections of Article 4A are applicable to the transfer.

The wire transfer exemption extends to any transfer of funds through Fedwire or through a similar fund transfer system. Comment 3(c)(3)-3 provides examples of such systems. The Board was asked also to exempt transfers made on the books or ''in book-entry form'' by the financial institution. The commentary clarifies that such transfers are exempt from Regulation E.

Paragraph 3(c)(4)—Securities and Commodities Transfers

The Board has revised the exemption for certain securities and commodities transfers contained in § 205.3(c). The exemption applies to a transfer for the purchase or sale of securities or commodities, even if the security or commodity is not regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission, so long as the security or commodity is sold by a registered broker-dealer or futures commission merchant (for example, municipal securities). Comment 3(c)(4)–1 provides added clarification on this point.

Comments 3(c)(4)–2 and –3 provide examples of covered and exempt securities transfers. Comment 3(c)(4)–2 also contains a new example of an exempt transfer, that of a telephone order to exercise a margin call. The Board believes that the exercise of a margin call is so closely linked to the purchase or sale of securities as to come within the purview of the exemption.

Several commenters requested clarification on Q3–3.5, which stated that the exemption applied only if a transfer's primary purpose is the purchase or sale of securities and which provided an example of a money market mutual fund transfer. The Board believes that all securities transfers must meet the primary purpose test—transfers must be to purchase or sell securities—set forth in Q3–3.5 to qualify for the exemption. If a transfer results from the use of a debit card to access any securities account (including a money market mutual fund account) for the purchase of goods or services or to obtain cash, the transfer is not exempt from Regulation E.

Paragraph 3(c)(6)—Telephone-Initiated Transfers

Comment 3(c)(6)–2 incorporates examples contained in the former commentary of covered transfers under a written plan (see Q3–17, Q3–18, and Q3–19). The comment also contains a new example regarding the use of a facsimile machine to initiate a transfer. The Board has received questions about plans in which the consumer uses facsimile paper designed to look like a paper ''draft'' to initiate a transfer sent via facsimile machine. The EFTA's definition of EFT includes any transfer through a ''telephonic instrument.'' The Board considers a facsimile machine to be the functional equivalent of a telephone; it is inconsequential whether information about the transfer is transmitted orally or by facsimile.

Paragraph 3(c)(7)—Small Institutions

Comment 3(c)(7)–1 makes clear the Board's view that Article 4A is not applicable to transfers exempt from Regulation E under the small-institution exemption. As noted above, the drafters of Article 4A considered the EFTA and Regulation E to be mutually exclusive. The Board has been asked whether preauthorized transfers by small institutions (now, institutions with assets under $100 million), which are largely exempt from Regulations E, are subject to the requirements of Article 4A by virtue of that exemption (for example, a direct deposit to a consumer's account at a small bank). The Board regards the transfers as generally subject to the EFTA, and therefore not subject to Article 4A.

Section 205.4—General Disclosure Requirements; Jointly Offered Services

Section 205.4 of the revised regulation sets forth general and special requirements for the various disclosures. Corresponding changes have been made in the commentary.

New	Old
(a)–1	Q7–3, Q9–4 in part
(a)–2	new (revises and broadens Q7–4)

Comments deleted

Q4–3: Multiple accounts and account holders (clarified in § 205.4(d)(1) of the regulation)

Section 205.5—Issuance of Access Devices

New	Old
5–1	Q5–1.5
(a)(1)–1	new (footnote 1b to former § 205.5(a)(1))
(a)(1)–2	new
(a)(2)–1	Q5–1, Q5–2
(a)(2)–2	Q5–3
(b)–1	Q5–6, Q5–7
(b)–2	Q5–4.5
(b)–3	Q5–5
(b)–4	Q5–8 (including examples from former § 205.5(b)

Comment deleted

Q5–4: Renewal or substitution—pre-February 8, 1979 device

Comments moved

Q5–9, Q5–10 (see commentary to § 205.12)

5(a) Solicited Issuance

Paragraph 5(a)(1)

Comment (a)(1)–2 has been added to clarify the permissible forms of a consumer's request for an access device.

Section 205.6—Liability of Consumer for Unauthorized Transfers

New	Old
(a)–1	Q6–4, new (former § 205.6(a)(2))
(a)–2	Q6–3
(b)–1	Q6–5 (revised)
(b)–2	Q6–6.5 (with cross-reference to comment 2(k)-2 added)
(b)–3	Q6–6.5
(b)(1)–1	Q6–5 (revised)
(b)(1)–2	Q6–6 (revised)
(b)(2)–1	Q6–5 (revised)
(b)(3)–1	Q6–5 (revised)
(b)(3)–2	Q6–5 (revised)
(b)(4)–1	new (former § 205.6(b)(4))
(b)(5)–1	Q6–7
(b)(5)–2	new

New	Old
(b)(5)–3	Q6–8

Comments deleted
Q6–1: Unauthorized transfers—access device not involved
Q6–2: Failure to disclose business days
Comments moved
Q6–9, Q6–10, and Q6–11 (see commentary to § 205.12)

6(a) Conditions for Liability

The Board had proposed amending the regulation to require that a financial institution provide all of the initial disclosures required by § 205.7 in order to impose liability on the consumer. Based on comment and further analysis, the Board has instead retained the current rule.

The former regulation implicitly conditioned consumer liability on the issuance of an accepted access device (§ 205.6(a)). The commentary, on the other hand, stated that if the consumer failed to report an unauthorized EFT within 60 days of transmittal of the periodic statement reflecting the transfer, the consumer could be subject to liability for subsequent transfers, even if the unauthorized EFT did not involve an access device. This commentary position was based on the Board's interpretation of section 909 of the EFTA as precluding consumer liability for unauthorized transfers not involving an access device until 60 days after transmittal of the periodic statement reflecting the transfer. The Board has incorporated that clarification into the § 205.6(a)(3) of the regulation.

Commenters generally supported the revision, although some believed that a 60-day period is unreasonable. The latter suggested an alternative time period ranging from 30 to 45 days; this change, however, would require a statutory amendment. Upon further analysis, the Board adopted the regulatory revision as proposed and has incorporated Q6–1 into § 205.6(b)(3). Comment 6(b)(3)–2 provides further clarification.

6(b) Limitations on Amount of Liability

Q6–5 provided examples of when the liability rules apply. Material from Q6–5, in revised form, has been incorporated into the commentary to paragraph (b).

Paragraph 6(b)(4)—Extension of Time Limits

Former § 205.6(b)(4) provided examples of extenuating circumstances when a consumer delays notification to the institution that an access device has been lost or stolen. The examples have been deleted from the revised regulation and moved to comment (b)(4)–1.

Paragraph 6(b)(5)—Notice to Financial Institution

The Board has received questions about whether notice from a third party is sufficient to limit a consumer's liability under § 205.6. Proposed comment (b)(5)–2 indicated that such notice is valid if it is communicated by a third party on the consumer's behalf. Commenters generally supported this interpretation. Several commenters asked the Board to clarify that a financial institution may require adequate documentation of the authority of the person who claims to represent the consumer. Others requested that the Board address the potential liability of financial institutions arising from reliance on the claims of a third party. In response, the Board has clarified that a financial institution should have a reasonable belief that a third party is acting on the consumer's behalf.

Section 205.7—Initial Disclosures

New	Old
(a)–1	Q7–1
(a)–2	Q7–2
(a)–3	Q7–5.5
(a)–4	Q7–6, new (timing of disclosures)
(a)–5	Q7–6.5
(a)–6	Q7–5
(b)(1)–1	Q7–8
(b)(1)–2	Q7–7
(b)(1)–3	new (former § 205.7(a)(1))
(b)(2)–1	Q7–19
(b)(2)–2	Q7–20
(b)(4)–1	Q7–11
(b)(4)–2	Q7–11.5
(b)(4)–3	Q7–10
(b)(5)–1	Q7–14, 7–15
(b)(5)–2	Q7–12, 7–13
(b)(5)–3	Q7–15.5
(b)(9)–1	Q7–16, 7–17
(b)(10)–1	Q7–18
(b)(10)–2	Q7–18.5

Comment deleted
Q7–9: Summary disclosure of rights
Comments moved
Q7–3, Q7–4 (see commentary to § 205.4)

7(a) Timing of Disclosures

Comment (a)–4 expands on Q7–6, which discussed the addition of new EFT services and required financial institutions to provide disclosures for the additional service if it was subject to terms and conditions different from those previously described in the initial disclosures; the commentary was silent, however, as to when such disclosures should be provided. Comment (a)–4 provides that the disclosures be given either when the consumer contracts for the new service or before the first EFT is made using the new service.

7(b) Content of Disclosures

Former § 205.7(a)(1) gave financial institutions the option of including advice about promptly reporting the loss or theft of the access device or other unauthorized transfers in the summary of the consumer's liability. This language has been deleted from the regulation and moved to comment (b)(1)–3.

Section 205.8—Change-in-Terms Notice; Error Resolution Notice

New	Old
(a)–1	Q8–6
(a)–2	Q8–3, Q8–5
(a)–3	Q8–4
(a)–4	Q8–2
(b)–1	Q8–8

Comments deleted
Q8–1: Terms requiring change in terms notice
Q8–7: Error resolution notice—no periodic statements sent

8(a) Change-in-Terms Notice

Paragraph 8(a)(2)—Prior Notice Exception

Proposed comment (a)(2)–1, which addressed circumstances when financial institutions include with the periodic statement a subsequent notice upon making a permanent change in terms related to security has not been adopted, as the Board did not adopt its proposal revising the regulation to extend to 45 days the time period in which financial institutions must send such notice.

Section 205.9—Receipts at Electric Terminals; Periodic Statements

New	Old
(a)–1	Q9–1
(a)–2	new (footnote 2 to former § 205.9(a)), Q9–2
(a)–3	Q9–3.5
(a)–4	Q9–5
(a)–5	Q9–6
(a)–6	Q9–4 in part
(a)(1)–1	new
(a)(2)–1	Q9–7
(a)(3)–1	new (former § 205.9(a)(3))
(a)(3)–2	new (footnote 3 to former § 205.9(a)(3)), Q–9, 9–10
(a)(3)–3	Q9–8
(a)(3)–4	new (former § 205.9(a)(3)), Q9–37
(a)(3)–5	Q9–36, Q9–27
(a)(5)–1	Q9–38
(a)(5)–2	Q9–40
(a)(5)(i)–1	new (former § 205.9(b)(1)(iv)(A))
(a)(5)(ii)–1	new (former § 205.9(b)(1)(iv)(B))
(a)(5)(iii)–1	new (former § 205.9(b)(1)(iv)(C))

New	Old
(a)(5)(iv)–1	new (former § 205.9(b)(1)(iv) footnote 5
(a)(5)(iv)–2	new (former § 205.9(b)(1)(iv) footnote 5
(a)(6)–1	Q9–13, new (former § 205.9(a)(6))
(a)(6)–2	Q9–14
(b)–1	Q9–19, 9–20
(b)–2	new
(b)–3	Q9–17
(b)–4	Q9–18
(b)–5	Q9–21
(b)–6	Q9–23, new (footnote 4 to § 205.9(b)(1))
(b)(1)–1	Q9–25
(b)(1)(i)–1	Q9–35
(b)(1)(iii)–1	Q9–36
(b)(1)(iv)–1	Q9–40.5
(b)(1)(v)–1	Q9–28
(b)(1)(v)–2	Q9–30
(b)(1)(v)–3	Q9–41
(b)(1)(v)–4	Q9–43
(b)(1)(v)–5	Q9–44
(b)(1)(v)–6	new (footnote 9 to former § 205.9(b)(1)(v))
(b)(3)–1	Q9–31
(b)(3)–2	Q9–31.5
(b)(3)–3	new (former § 205.9(b)(3))
(b)(4)–1	Q9–32
(b)(5)–1	Q9–33
(b)(6)–1	Q9–33
(c)–1	Q9–50
(d)–1	Q9–51

Comments deleted

Q9–3: Receipts—information displayed on screen
Q9–10.5: Receipts—type of account, interchange system
Q9–11: Receipts—unique identifier
Q9–12: Receipts—terminal location
Q9–16: Periodic statements—frequency
Q9–24: Periodic statements—accompanying documents
Q9–29: Periodic statements—multiple transferee
Q9–34: Periodic statements—telephone numbers
Q9–39: Receipts/periodic statements—location code
Q9–42: Receipts/periodic statements—intermediate party
Q9–45: Passbook updates—when required
Q9–46: Passbook accounts—telephone notice alternative
Q9–47: Passbook updates—discarding of data
Q9–48: Passbook updates—periodic transmittals
Q9–49: Quarterly statements—compliance with regular requirements

Comments moved

Q9–4 in part (see commentary to § 205.4)
Q9–15 (see commentary to § 205.2)
Q9–26 (see commentary to § 205.11)

A number of comments have been deleted because they were obsolete or very fact specific and not of general applicability. Proposed comment (a)(4)–1 has been omitted because the Board deleted the regulatory requirement that a financial institution ''uniquely'' identify the consumer on a terminal receipt (see 55 FR 15032, March 22, 1995).

9(a) Receipts at Electronic Terminals

Footnote 2 to former § 205.9(a) allowed an account-holding institution to make terminal receipts available through third parties. The footnote has been deleted from the regulation and moved to comment 9(a)–2.

Paragraph 9(a)(1)—Amount

Former § 205.9(a)(1) provided that financial institutions other than the account-holding institution may include a fee for a transfer in the amount of the transfer if the fee is disclosed on the receipt and on a sign posted on or at the terminal. The revised regulation modifies these requirements and allows the account-holding institution also to take advantage of the exception. In addition, proposed comment 9(a)(1)–1 provided that the requirement to display the amount of a transaction fee ''on or at the terminal'' could be met by displaying the fee on the terminal screen before the consumer has initiated the transfer if displayed for a reasonable duration. Commenters generally believed that displaying the fee on a screen provided adequate notice, as long as consumers were given the option to cancel the transaction after receiving notice. The Board has adopted the comment as proposed. The Board believes that providing consumers with the option to cancel the transaction after receiving notice helps ensure compliance with the notice requirements of this paragraph.

Paragraph 9(a)(3)—Type

Former § 205.9(a)(3) required disclosure of the type of transfer and the type of consumer's account to or from which funds are transferred. It also provided examples of descriptions for such accounts. The examples have been deleted from the regulation and moved to comment 9(a)(3)–1. In addition, § 205.9(a)(3) provided generic descriptions for accounts that are similar in function. These examples have been deleted from the regulation and incorporated with the substance of Q9–37 in comment 9(a)(3)–4.

Footnote 3 to former § 205.9(a)(3) provided an exception to the requirement to disclose the type of transfer and account if the consumer can access only one account at a particular time or terminal. The exception has been deleted from the regulation and the substance moved to comment 9(a)(3)–2.

Paragraph 9(a)(5)—Terminal Location

Footnotes 5, 6, and 8 have been deleted from the regulation. Footnote 5 allowed institutions to omit the name of the state on terminal receipts for transfers occurring at terminals within 50 miles of the institution's main office. Footnotes 6 and 8 referred back to the text of footnote 5. Based upon comments and further analysis the Board has retained the substance of footnote 5, incorporating it in comment 9(a)(5)(iv)–1.

The former regulation included detailed guidance for specifying the terminal location on both the receipt and periodic statement (see former § 205.9(b)(1)(iv)). While the substantive requirement to disclose the location remains unchanged, the illustrative text has been moved to comments 9(a)(5)(i)–1, 9(a)(5)(ii)–1, and 9(a)(5)(iii)–1.

Paragraph 9(a)(6)—Third Party Transfer

Former § 205.9(a)(6) required that the name of any third party to or from whom funds are transferred be disclosed on the receipt. It also provided guidance on the use of codes and an exception to the disclosure requirement when the name of the payee cannot be provided in a machine-readable form at the terminal. This guidance has been deleted from the regulation and moved to comment 9(a)(6)–1.

9(b) Periodic Statements

Former § 205.9(b) provided that periodic statements must be sent for each monthly or shorter cycle in which an EFT has occurred, but at least quarterly if no transfer has occurred. As the Board believes that few institutions send a statement (for Regulation E purposes) for a cycle shorter than one month, the final regulation has deleted reference to a ''shorter cycle.'' The reference has been moved to comment 9(b)–1.

Proposed comment 9(b)–2 provided guidance on what is considered a cycle for purposes of Regulation E. The comment required that financial institutions provide relevant information for the cycle or period since the last statement was issued. The Board adopted a similar approach in the proposed commentary to Regulation DD (see 59 FR 5536, February 7, 1994). For example, if an institution may issue quarterly statements in March, June, September, and December and the

consumer initiates an EFT in February, an interim statement would be provided. The comment indicates that the statement should provide information for the months of January and February. The regularly scheduled March statement would provide information only about the month of March. The Regulation DD commentary states that disclosures given on the interim statement cannot be repeated on the regularly scheduled statement. In the example above, the March statement could not repeat information disclosed on the February statement.

Commenters requested clarification on whether an interim Regulation E statement should repeat the information on a regularly scheduled quarterly statement. The Board believes that if Regulation DD is triggered (because the interim statement contains interest or rate information) institutions should comply with Regulation DD and should not repeat information on the quarterly statement. If Regulation DD is not triggered, however, institutions should continue to comply with Regulation E.

Footnote 4 to former § 205.9(b)(1) permitted financial institutions to provide certain periodic statement disclosures on documents that accompany the statement. It also permitted institutions to use codes for the disclosures if they are explained either on the statement or accompanying documents. The footnote has been deleted from the regulation and the substance moved to comment 9(b)–6.

Paragraph 9(b)(1)(v)

Footnote 9 to former § 205.9(b)(1)(v) provided that a financial institution need not identify on the periodic statement third parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal. The footnote has been deleted from the regulation and the substance moved to comment 9(b)(1)(v)–6.

Paragraph 9(b)(3)—Fees

Section 205.9(b)(3) provides that financial institutions must disclose the amount of any fees (other than a finance charge imposed under Regulation Z, 12 CFR § 226.7(f)) that were assessed against the account during the statement period for EFTs. The reference to finance charges in former § 205.9(b)(3) has been deleted from the regulation and moved to comment (b)(3)–3.

Section 205.10—Preauthorized Transfers

Section 205.10 sets forth the substantive and disclosure requirements for authorizing preauthorized transfers to and from a consumer's account. The Board has expanded this section to include guidance on the prohibitions against compulsory use, and corresponding commentary has been added.

New	Old
(a)(1)–1	Q10–5, Q10–6
(a)(1)–2	Q10–1
(a)(1)–3	Q10–7
(a)(1)–4	Q10–7
(a)(1)–5	Q10–10
(a)(1)–6	Q10–12
(a)(1)–7	Q10–11
(b)–1	Q10–17
(b)–2	Q10–18
(b)–3	Q10–18.6
(b)–4	Q10–18.5
(b)–5	new
(b)–6	new
(c)–1	Q10–19
(c)–2	Q10–19.5
(d)(1)–1	Q10–21
(d)(2)–1	new (range)
(e)(1)–1	Q3–7, Q3–7.5
(e)(1)–2	new
(e)(2)–1	Q3–6

Comments deleted

Q10–2: Notice of credit—when receipt guaranteed
Q10–3: Notice provided by payor
Q10–4: Notice provided by payor—form
Q10–8: Negative notice—timing
Q10–9: Negative notice—cessation of transfers
Q10–13: Preauthorized credits—availability of funds
Q10–14: Preauthorized credits—posting schedule
Q10–15: Preauthorized credits—funds received prior to agreed crediting date
Q10–16: Preauthorized debits—preexisting authorizations
Q10–20: Ten-day notice of varying debits—preexisting authorizations

Paragraph 10(a)(1)—Notice by Financial Institution

Section 906(b) of the EFTA and former § 205.10(a)(1) of the regulation provide that when a payor credits a consumer's account by preauthorized EFT at least once every 60 days, the account-holding institution must inform the consumer that the transfer has or has not occurred or provide a phone number for the consumer to use to verify the transfer. Q10–7 provided that the absence of a deposit entry on a periodic statement can serve as notice that a preauthorized transfer has not occurred. The Board's proposed comment 10(a)(1)–4 would have reversed that position, stating that the absence of a deposit entry is *not* negative notice.

Of the commenters addressing this issue, the majority opposed placing an affirmative duty on the account-holding institution to provide notice either positively or negatively. Based on the comments and further analysis resulting from comment 10(a)(1)–4, the Board believes that the regulatory burden on the receiving bank outweighs the potential benefit to the consumer. Therefore, the Board is retaining the substance of Q10–7 in comment 10(a)(1)–4, allowing the absence of the deposit entry (on a periodic statement sent within two business days of the scheduled transfer date) to serve as negative notice.

10(b) Written Authorization for Preauthorized Transfers From Consumer's Account

Proposed comment 10(b)–1, which incorporates Q10–17, provided that a financial institution or designated payee does not need to obtain new authorizations before shifting from a paper-based to an electronic debiting system. The proposed comment also provided that a successor payee or institution may rely on a preexisting authorization to debit payments from the consumer's account (for example, when an institution purchases the mortgage servicing rights from a party that previously obtained the consumer's authorization).

Commenters generally supported the proposed language but sought clarification on how broadly the term ''successor institution'' could be construed in this context. One suggested some minimal requirement for an authorization since it would be difficult for successor financial institutions to ensure that all required disclosures were provided when relying on pre-existing authorizations. The Board believes that ''successor institution'' should be interpreted broadly to include any successor payee. To do otherwise could be extremely disruptive to consumers who have entered into agreements for automatic debiting and could lead to missed payments and adverse consequences.

The requirement in former § 205.10(b) of the regulation that preauthorized EFTs from a consumer's account be authorized by the consumer only in writing has been revised. The requirement for the authorization to be a signed writing has been expanded to include authorizations which are ''similarly authenticated'' by the consumer. This enhancement addresses developments in electronic services, such as home banking.

Proposed comment 10(b)–5 provided an example of a consumer's authorization that is ''similarly authenticated.'' The comment provided that for a home banking system to satisfy the requirement, there must be

some means to identify the consumer (such as a security code), and the consumer must have the ability to obtain a printed copy of the authorization (either by printing a copy or obtaining one from the payee). The Board solicited comment on whether additional safeguards are necessary to protect consumers in this situation and on other issues related to the requirements of a written authorization under this section.

The majority of commenters supported the Board's proposal that an electronic system that has some means to identify the consumer such as by a security code satisfies the ''similarly authenticated'' standard adopted in § 205.10(b). Preauthorized transfers in an electronic system should be authenticated by a method that provides the same assurance as a signature in a paper-based system. Commenters believed that these methods of preauthorizing transfers would benefit consumers by enabling payments to be handled expeditiously.

Several commenters raised concerns about unauthorized transfers that might result because a consumer has written down codes and kept them adjacent to a personal computer, and about the potential for increased liability for institutions arising from unauthorized use.

The Board believes that these concerns are not sufficient to change the liability standard currently in effect. The Board believes that institutions may reduce exposure to liability by reviewing security procedures with the consumer when establishing the home banking relationship. However, for home banking systems, the Board is limiting the use of a code as a means to similarly authenticate an authorization to those where the code originates with the paying institution. The Board believes that this limitation will preserve the ''unique status'' of a code or PIN similar to a signature. This condition also would not allow the use of a code issued by a third party that the paying institution could not verify.

The majority of commenters opposed the requirement in proposed comment 10(b)–5 that the consumer must have the ability to obtain a printed copy of the authorization (either from the consumer's printer or from the payee). There was concern that such a requirement could inhibit the development of home banking products. Other commenters found the requirement placed unrealistic burdens on the institution to determine whether the consumer possessed a printer and whether it was used to print out a copy. Several commenters urged the Board to make this requirement an option available to the consumer.

Based on comment and upon further analysis, the comment has been revised. If an authorization is initiated electronically, a copy must be made available to the consumer. The text of an electronic authorization would have to be displayed on a computer screen or other visual display. A consumer is entitled to a hard copy upon request.

The Board solicited comment on two issues that have not been discussed previously in the commentary—telephone-initiated transfers and the appropriate means for obtaining a consumer's authorization for preauthorized transfers.

Regarding the first issue, the Board has received inquiries about one-time transfers usually initiated by telephone when the consumer provides an account number to the caller and authorizes a draft or an ACH debit to be submitted against the consumer's account. Such transfers are EFTs where the consumer's account is debited through the ACH.

The one-time transfers are not ''preauthorized transfers,'' however, and the rules regarding written authorization by the consumer thus are not applicable. The Board solicited comment on whether this type of transfer warranted written authorization. A few commenters believed that telephone-initiated transfers posed sufficient risk to mandate written authorization. Most commenters believed that for such nonrecurring transfers, NACHA rules and the UCC provided the consumers with sufficient protections. At this time, the Board has maintained the current position that written authorizations are not required for non-recurring transfers.

The second issue concerns the appropriate means for obtaining a consumer's authorization for preauthorized transfers. A few commenters discouraged regulation of the format of authorizations. The majority of commenters acknowledged that the Board could not compile a comprehensive list of authorization methods and suggested that an outline of the general requirements, like those under the NACHA rules, would be helpful.

The Board is adding a new comment 10(b)–6, which generally incorporates the requirements of an authorization under NACHA rules. An authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable.

The Board was asked whether sending the consumer a check that incorporates in the endorsement an authorization for the financial institution to automatically debit the consumer's account on a monthly basis is a legitimate method for obtaining the consumer's authorization. The Board believes that if the authorization meets the requirements under comment 10(b)–6, an endorsement on a check could satisfy the written authorization requirement of § 10(b).

10(d) Notice of Transfers Varying in Amount

Paragraph 10(d)(2)—Range

Proposed comment 10(d)(2)–1 provided guidance on what is an acceptable range for purposes of this section, stating that an acceptable range is one that could plausibly be anticipated by the consumer. For example, if the consumer's monthly payment is approximately $50, providing a range between zero and $10,000 is not acceptable.

The majority of commenters suggested that the range should not be so broad as to create uncertainty for consumers about their ability to maintain sufficient balances to avoid overdrafts.

The Board believes that comment (d)(2)–1 does not increase the compliance burden given that it is an option. The language ''or designated payee'' has been added after ''financial institutions'' in the first sentence since this option is also available to a designated payee. The Board believes that the example of an acceptable range in the comment provides adequate guidance, and is not adding other examples at this time.

10(e) Compulsory Use

Paragraph 10(e)(1)—Credit

The revised regulation incorporates the statutory restrictions against compulsory use of EFTs (as a condition of credit, employment, or receipt of government benefits) into § 205.10(e).

Comment 10(e)(1)–2 would allow an institution to use the exception in § 205.10(e)(1) even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts. For example, in addition to overdraft protection, a consumer may be able to obtain cash advances directly from the credit line without going through a checking account. The Board believes that it is not practicable for an institution to distinguish between extensions of credit triggered under such plans because of the overdraft mechanism and those advanced to the consumer by some other means.

Several consumers requested clarification on whether the prohibition in comment 10(e)(2)–1 preempted state

laws. A reference to § 205.12, which discusses preemption of state laws and the standards for preemption, has been added.

Section 205.11—Procedures for Resolving Errors

Section 205.11 sets forth the regulation's procedures for error resolution. The revised regulation reformats the section to facilitate compliance and the commentary provisions have been revised accordingly. Several new comments incorporate provisions that have been removed from the regulation.

New	Old
(a)–1	Q9–26
(a)–2	Q9–26
(a)–3	Q11–2
(a)–4	Q11–3
(a)–5	Q11–4
(b)(1)–1	Q11–8, new (example added)
(b)(1)–2	new
(b)(1)–3	Q11–5
(b)(1)–4	Q11–6
(b)(1)–5	Q11–7
(b)(1)–6	new (footnote 10 to former § 205.11(b)(1)(i))
(b)(2)–1	Q11–9
(c)–1	new
(c)–2	Q11–10
(c)–3	new (revised Q11–31)
(c)–4	new (former § 205.11(d)(3))
(c)–5	Q11–20, new (footnote 12 to former § 205.11(e)(2))
(c)–6	Q11–19, new (former § 205.11(e)(1))
(c)–7	new former § 205.11(d)(1)
(c)(2)(i)–1	new (former § 205.11(c)(3))
(c)(3)–1	Q11–11.5
(c)(4)–1	Q11–13
(c)(4)–2	Q11–14
(c)(4)–3	Q11–16
(c)(4)–4	new (footnote 11 to former § 205.11(d)(1))
(d)–1	Q11–17
(d)(1)–1	Q11–25
(d)(2)–1	Q11–23
(d)(2)–1	Q11–24
(e)–1	Q11–30

Comments deleted

Q11–1: Transfers—initiated by institution
Q11–11: Deadlines for investigation of error
Q11–12: Request for documentation—facsimile or photocopy
Q11–15: Scope of investigation—preauthorized credits
Q11–18: Crediting of interest
Q11–21: Written explanation—timing
Q11–22: Debiting of recredited funds—items to be honored
Q11–26: Documents relied on—privacy issue
Q11–27: Documents relied on—no information on relevant tapes
Q11–28: Withdrawal of error notice
Q11–29: Withdrawal of error notice

Comments moved

Q11–32, Q11–33 (see commentary to § 205.12)

11(b) Notice of Error From Consumer

Paragraph 11(b)(1)—Timing; Contents

Section 205.11 requires institutions to investigate and make a final determination as to a consumer's allegation of an error within either 10 business days or 45 calendar days. Financial institutions have asked whether they can delay initiating or completing an investigation pending receipt of an affidavit related to the alleged error. Comment (b)(1)–2 prohibits institutions from delaying their investigation until a consumer has produced a written, signed statement relating to an error. The Board believes that permitting delay would allow institutions to circumvent the investigation procedures currently mandated by the act and regulation. The language of the comment has been revised to more closely parallel Regulation Z, substituting ''written, signed statement'' for ''affidavit.''

Footnote 10 to former § 205.11(b)(1)(i), which permits a financial institution to prescribe procedures for giving notice of an error, has been deleted from the regulation and the substance moved to comment (b)(1)–6.

Paragraph 11(b)(2)—Written Confirmation

Comment 11(b)(2)–1 incorporates Q11–9 and further provides that institutions operating under the 45-calendar-day rule need not provisionally credit the consumer's account when the written confirmation is delayed beyond 10 business days because it was sent to the wrong address.

11(c) Time Limits and Extent of Investigation

Q11–31 articulated the Board's concern that charging consumers for the financial institution's compliance with the regulation's error resolution procedures might have a chilling effect on the good-faith assertion of errors. Proposed comment (c)–3, based on Q11–31, explicitly prohibited institutions from charging consumers for error resolution. The Board solicited comment on the impact of such a prohibition on institutions and consumers. Based on comment and further analysis, the comment has been revised; it parallels a similar provision in the commentary to Regulation Z.

Former § 205.11(d)(3) provided that a financial institution may correct an error in the amount or manner alleged by the consumer without complying with the investigation requirements of this section if it complies with all other requirements of § 205.11. The provision has been deleted from the regulation and moved to comment (c)–4.

Footnote 12 to former § 205.11(e)(2) allowed financial institutions to provide the notice of correction on the periodic statement that is mailed or delivered within the time limits specified in the section. The footnote has been deleted from the regulation and moved to comment (c)–5.

Former § 205.11(e)(1) provided that in correcting an error, a financial institution must, where applicable, credit interest and refund any fees or charges imposed. This language has been deleted from the regulation and combined with the substance of Q11–19 in comment (c)–6. The comment also clarifies that the requirement only applies to fees imposed by the institution and not to those imposed by third parties.

Paragraph 11(c)(2)(i)

Former § 205.11(c)(3) provided examples of when a financial institution must comply with all requirements of § 205.11 except the provisional crediting requirements. While the examples have been retained in the final regulation, the language requiring compliance with other requirements of the section has been deleted and moved to comment (c)(2)(i)–1.

Paragraph 11(c)(4)—Investigation

Footnote 11 to former § 205.11(d)(1) provided examples of what does and does not constitute an agreement for purposes of this section. The explanatory language has been deleted from the regulation and moved to comment (c)(4)–4.

Section 205.12—Relation to Other Laws

The revised regulation consolidates the references to a number of provisions dealing with the relationship of Regulation E and the Truth in Lending Act and Regulation Z formerly in §§ 205.5, 205.6, and 205.11, in § 205.12. The section also contains the rules the Board applies in determining the preemption of inconsistent state laws or in granting a state exemption. The commentary provisions for these rules and references are similarly consolidated in this section.

New	Old
(a)–1	Q6–9, Q6–10, Q6–11, Q11–32, Q11–33
(a)–2	Q5–9, Q5–10
(b)–1	Q12–1, new
(b)–2	new

12(b) Preemption of Inconsistent State Laws

Comment 12(b)–1 incorporates Q12–1, which provides that state law may be preempted even if the Board has not issued a determination. The comment also notes that financial institutions are not protected from liability for failing to comply with state law in the absence of a preemption determination by the Board.

Comment 12(b)–2 incorporates into the commentary an official staff interpretation preempting certain provisions of Michigan's EFT statute. Future preemption determinations will also be included in the commentary.

Section 205.13—Administrative Enforcement; Record Retention

New	Old
13(b)–1	Q13–2

Comments moved

Q13–1 (see commentary to appendix A)

Proposed comment 13(b)–1 has been revised, based on public comment, to indicate that records of disclosures and documentation given to individual consumers need not be retained.

Section 205.14—Electronic Fund Transfer Service Provider Not Holding Consumer's Account

New	Old
14(a)–1	Q14–1, Q14–2
14(a)–2	Q14–3
14(b)–1	new (formerly § 205.14(a)(1)
14(b)(1)–1	Q14–4
14(b)(2)–1	Q14–6
14(c)(1)–1	Q14–7

Comment deleted

Q14–5: Periodic statement—issuance of card

14(a) Provider of Electronic Fund Transfer Service

Proposed comments 14(a)–1 and 14(a)–2 have been revised to make clear that transactions cleared and settled through the ACH are not excluded from coverage by this section on the basis of an ''agreement'' between the two institutions involved.

14(b) Compliance by Service Provider

Former § 205.14(a)(1) provided that the service-providing institution must reimburse the consumer for unauthorized EFTs in excess of the limits set by § 205.6. This provision has been deleted from the regulation and moved to comment 14(b)–1.

Appendix A—Model Disclosure Clauses and Forms

New	Old
App. A–1	Q13–1
App. A–2	new (former introductory language in Appendix A)
App. A–3	new (former introductory language in Appendix A)

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

Text of Revisions

For the reasons set forth in the preamble, the Board amends 12 CFR part 205, as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693.

2. In part 205, Supplement I is revised to read as follows:

SUPPLEMENT I TO PART 205—OFFICIAL STAFF INTERPRETATIONS

Section 205.2—Definitions.

2(a) Access Device

1. *Examples.* The term access device includes debit cards, personal identification numbers (PINs), telephone transfer and telephone bill payment codes, and other means that may be used by a consumer to initiate an electronic fund transfer (EFT) to or from a consumer account. The term does not include magnetic tape or other devices used internally by a financial institution to initiate electronic transfers.

2(b) Account

1. *Consumer asset account.* The term consumer asset account includes:

i. Club accounts, such as vacation clubs. In many cases, however, these accounts are exempt from the regulation under § 205.3(c)(5) because all electronic transfers to or from the account have been preauthorized by the consumer and involve another account of the consumer at the same institution.

ii. A retail repurchase agreement (repo), which is a loan made to a financial institution by a consumer that is collateralized by government or government-insured securities.

2. Examples of accounts not covered by Regulation E (12 CFR part 205) include:

i. Profit-sharing and pension accounts established under a trust agreement, which are exempt under § 205.2(b)(2).

ii. Escrow accounts, such as those established to ensure payment of items such as real estate taxes, insurance premiums, or completion of repairs or improvements.

iii. Accounts for accumulating funds to purchase U.S. savings bonds.

Paragraph 2(b)(2)

1. *Bona fide trust agreements.* The term bona fide trust agreement is not defined by the act or regulation; therefore, financial institutions must look to state or other applicable law for interpretation.

2. *Custodial agreements.* An account held under a custodial agreement that qualifies as a trust under the Internal Revenue Code, such as an individual retirement account, is considered to be held under a trust agreement for purposes of Regulation E.

2(d) Business Day

1. *Duration.* A business day includes the entire 24-hour period ending at midnight, and a notice required by the regulation is effective even if given outside normal business hours. The regulation does not require, however, that a financial institution make telephone lines available on a 24-hour basis.

2. *Substantially all business functions.* ''Substantially all business functions'' include both the public and the back-office operations of the institution. For example, if the offices of an institution are open on Saturdays for handling some consumer transactions (such as deposits, withdrawals, and other teller transactions), but not for performing internal functions (such as investigating account errors), then Saturday is not a business day for that institution. In this case, Saturday does not count toward the business-day standard set by the regulation for reporting lost or stolen access devices, resolving errors, etc.

3. *Short hours.* A financial institution may determine, at its election, whether an abbreviated day is a business day. For example, if an institution engages in substantially all business functions until noon on Saturdays instead of its usual 3:00 p.m. closing, it may consider Saturday a business day.

4. *Telephone line.* If a financial institution makes a telephone line available on Sundays for reporting the loss or theft of an access device, but performs no other business functions, Sunday is not a business day under the ''substantially all business functions'' standard.

2(h) Electronic Terminal

1. *Point-of-sale (POS) payments initiated by telephone.* Because the term electronic terminal excludes a telephone operated by a consumer, a financial institution need not provide a terminal receipt when:

i. A consumer uses a debit card at a public telephone to pay for the call.

ii. A consumer initiates a transfer by a means analogous in function to a telephone,

such as by home banking equipment or a facsimile machine.

2. *POS terminals.* A POS terminal that captures data electronically, for debiting or crediting to a consumer's asset account, is an electronic terminal for purposes of Regulation E if a debit card is used to initiate the transaction.

3. *Teller-operated terminals.* A terminal or other computer equipment operated by an employee of a financial institution is not an electronic terminal for purposes of the regulation. However, transfers initiated at such terminals by means of a consumer's access device (using the consumer's PIN, for example) are EFTs and are subject to other requirements of the regulation. If an access device is used only for identification purposes or for determining the account balance, the transfers are not EFTs for purposes of the regulation.

2(m) Unauthorized Electronic Fund Transfer

1. *Transfer by institution's employee.* A consumer has no liability for erroneous or fraudulent transfers initiated by an employee of a financial institution.

2. *Authority.* If a consumer furnishes an access device and grants authority to make transfers to a person (such as a family member or co-worker) who exceeds the authority given, the consumer is fully liable for the transfers unless the consumer has notified the financial institution that transfers by that person are no longer authorized.

3. *Access device obtained through robbery or fraud.* An unauthorized EFT includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery.

4. *Forced initiation.* An EFT at an automated teller machine (ATM) is an unauthorized transfer if the consumer has been induced by force to initiate the transfer.

Section 205.3—Coverage

3(a) General

1. *Accounts covered.* The requirements of the regulation apply only to an account for which an agreement for EFT services to or from the account has been entered into between:

i. The consumer and the financial institution (including an account for which an access device has been issued to the consumer, for example);

ii. The consumer and a third party (for preauthorized debits or credits, for example), when the account-holding institution has received notice of the agreement and the fund transfers have begun.

2. *Automated clearing house (ACH) membership.* The fact that membership in an ACH requires a financial institution to accept EFTs to accounts at the institution does not make every account of that institution subject to the regulation.

3. *Foreign applicability.* Regulation E applies to all persons (including branches and other offices of foreign banks located in the United States) that offer EFT services to residents of any state, including resident aliens. It covers any account located in the United States through which EFTs are offered to a resident of a state. This is the case whether or not a particular transfer takes place in the United States and whether or not the financial institution is chartered in the United States or a foreign country. The regulation does not apply to a foreign branch of a U.S. bank unless the EFT services are offered in connection with an account in a state as defined in § 205.2(l).

3(b) Electronic Fund Transfer

1. *Fund transfers covered.* The term electronic fund transfer includes:

i. A deposit made at an ATM or other electronic terminal (including a deposit in cash or by check) provided a specific agreement exists between the financial institution and the consumer for EFTs to or from the account to which the deposit is made.

ii. A transfer sent via ACH. For example, social security benefits under the U.S. Treasury's direct-deposit program are covered, even if the listing of payees and payment amounts reaches the account-holding institution by means of a computer printout from a correspondent bank.

iii. A preauthorized transfer credited or debited to an account in accordance with instructions contained on magnetic tape, even if the financial institution holding the account sends or receives a composite check.

iv. A transfer from the consumer's account resulting from a debit-card transaction at a merchant location, even if no electronic terminal is involved at the time of the transaction, if the consumer's asset account is subsequently debited for the amount of the transfer.

2. *Fund transfers not covered.* The term electronic fund transfer does not include:

i. A payment that does not debit or credit a consumer asset account, such as a payroll allotment to a creditor to repay a credit extension (which is deducted from salary).

ii. A payment made in currency by a consumer to another person at an electronic terminal.

iii. A preauthorized check drawn by the financial institution on the consumer's account (such as an interest or other recurring payment to the consumer or another party), even if the check is computer-generated.

3(c) Exclusions From Coverage

Paragraph 3(c)(2)—Check Guarantee or Authorization

1. *Memo posting.* Under a check guarantee or check authorization service, debiting of the consumer's account occurs when the check or draft is presented for payment. These services are exempt from coverage, even when a temporary hold on the account is memo-posted electronically at the time of authorization.

Paragraph 3(c)(3)—Wire or Other Similar Transfers

1. *Fedwire and ACH.* If a financial institution makes a fund transfer to a consumer's account after receiving funds through Fedwire or a similar network, the transfer by ACH is covered by the regulation even though the Fedwire or network transfer is exempt.

2. *Article 4A.* Financial institutions that offer telephone-initiated Fedwire payments are subject to the requirements of UCC section 4A–202, which encourages verification of Fedwire payment orders pursuant to a security procedure established by agreement between the consumer and the receiving bank. These transfers are not subject to Regulation E and the agreement is not considered a telephone plan if the service is offered separately from a telephone bill-payment or other prearranged plan subject to Regulation E. The Board's Regulation J (12 CFR part 210) specifies the rules applicable to funds handled by Federal Reserve Banks. To ensure that the rules for all fund transfers through Fedwire are consistent, the Board used its preemptive authority under UCC section 4A–107 to determine that subpart B of Regulation J (12 CFR part 210), including the provisions of Article 4A, applies to all fund transfers through Fedwire, even if a portion of the fund transfer is governed by the EFTA. The portion of the fund transfer that is governed by the EFTA is not governed by subpart B of Regulation J (12 CFR part 210).

3. *Similar fund transfer systems.* Fund transfer systems that are similar to Fedwire include the Clearing House Interbank Payments System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), Telex, and transfers made on the books of correspondent banks.

Paragraph 3(c)(4)—Securities and Commodities Transfers

1. *Coverage.* The securities exemption applies to securities and commodities that may be sold by a registered broker-dealer or futures commission merchant, even when the security or commodity itself is not regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

2. *Example of exempt transfer.* The exemption applies to a transfer involving a transfer initiated by a telephone order to a stockbroker to buy or sell securities or to exercise a margin call.

3. *Examples of nonexempt transfers.* The exemption does not apply to a transfer involving:

i. A debit card or other access device that accesses a securities or commodities account such as a money market mutual fund and that the consumer uses for purchasing goods or services or for obtaining cash.

ii. A payment of interest or dividends into the consumer's account (for example, from a brokerage firm or from a Federal Reserve Bank for government securities).

Paragraph 3(c)(5)—Automatic Transfers by Account-Holding Institution

1. *Automatic transfers exempted.* The exemption applies to:

i. Electronic debits or credits to consumer accounts for check charges, stop-payment charges, NSF charges, overdraft charges, provisional credits, error adjustments, and similar items that are initiated automatically on the occurrence of certain events.

ii. Debits to consumer accounts for group insurance available only through the financial institution and payable only by means of an aggregate payment from the institution to the insurer.

iii. EFTs between a thrift institution and its paired commercial bank in the state of Rhode Island, which are deemed under state law to be intra-institutional.

iv. Automatic transfers between a consumer's accounts within the same financial institution, even if the account holders on the two accounts are not identical.

2. *Automatic transfers not exempted.* Transfers between accounts of the consumer at affiliated institutions (such as between a bank and its subsidiary or within a holding company) are not intra-institutional transfers, and thus do not qualify for the exemption.

Paragraph 3(c)(6)—Telephone-Initiated Transfers

1. *Written plan or agreement.* A transfer that the consumer initiates by telephone is covered only if the transfer is made under a written plan or agreement between the consumer and the financial institution making the transfer. The following do not, by themselves, constitute a written plan or agreement:

i. A hold-harmless agreement on a signature card that protects the institution if the consumer requests a transfer.

ii. A legend on a signature card, periodic statement, or passbook that limits the number of telephone-initiated transfers the consumer can make from a savings account because of reserve requirements under Regulation D (12 CFR part 204).

iii. An agreement permitting the consumer to approve by telephone the rollover of funds at the maturity of an instrument.

2. *Examples of covered transfers.* When a written plan or agreement has been entered into, a transfer initiated by a telephone call from a consumer is covered even though:

i. An employee of the financial institution completes the transfer manually (for example, by means of a debit memo or deposit slip).

ii. The consumer is required to make a separate request for each transfer.

iii. The consumer uses the plan infrequently.

iv. The consumer initiates the transfer via a facsimile machine.

Paragraph 3(c)(7)—Small Institutions

1. *Coverage.* This exemption is limited to preauthorized transfers; institutions that offer other EFTs must comply with the applicable sections of the regulation as to such services. The preauthorized transfers remain subject to sections 913, 915, and 916 of the act and § 205.10(e), and are therefore exempt from UCC Article 4A.

Section 205.4—General Disclosure Requirements; Jointly Offered Services

4(a) Form of Disclosures

1. *General.* Although no particular rules govern type size, number of pages, or the relative conspicuousness of various terms, the disclosures must be in a clear and readily understandable written form that the consumer may retain. Numbers or codes are considered readily understandable if explained elsewhere on the disclosure form.

2. *Foreign language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.

Section 205.5—Issuance of Access Devices

1. *Coverage.* The provisions of this section limit the circumstances under which a financial institution may issue an access device to a consumer. Making an additional account accessible through an existing access device is equivalent to issuing an access device and is subject to the limitations of this section.

5(a) Solicited Issuance

Paragraph 5(a)(1)

1. *Joint account.* For a joint account, a financial institution may issue an access device to each account holder if the requesting holder specifically authorizes the issuance.

2. *Permissible forms of request.* The request for an access device may be written or oral (for example, in response to a telephone solicitation by a card issuer).

Paragraph 5(a)(2)

1. *One-for-one rule.* In issuing a renewal or substitute access device, a financial institution may not provide additional devices. For example, only one new card and PIN may replace a card and PIN previously issued. If the replacement device permits either additional or fewer types of electronic fund transfer services, a change-in-terms notice or new disclosures are required.

2. *Renewal or substitution by a successor institution.* A successor institution is an entity that replaces the original financial institution (for example, following a corporate merger or acquisition) or that acquires accounts or assumes the operation of an EFT system.

5(b) Unsolicited Issuance

1. *Compliance.* A financial institution may issue an unsolicited access device (such as the combination of a debit card and PIN) if the institution's ATM system has been programmed not to accept the access device until after the consumer requests and the institution validates the device. Merely instructing a consumer not to use an unsolicited debit card and PIN until after the institution verifies the consumer's identity does not comply with the regulation.

2. *PINS.* A financial institution may impose no liability on a consumer for unauthorized transfers involving an unsolicited access device until the device becomes an ''accepted access device'' under the regulation. A card and PIN combination may be treated as an accepted access device once the consumer has used it to make a transfer.

3. *Functions of PIN.* If an institution issues a PIN at the consumer's request, the issuance may constitute both a way of validating the debit card and the means to identify the consumer (required as a condition of imposing liability for unauthorized transfers).

4. *Verification of identity.* To verify the consumer's identity, a financial institution may use any reasonable means, such as a photograph, fingerprint, personal visit, signature comparison, or personal information about the consumer. However, even if reasonable means were used, if an institution fails to verify correctly the consumer's identity and an imposter succeeds in having the device validated, the consumer is not liable for any unauthorized transfers from the account.

Section 205.6—Liability of Consumer for Unauthorized Transfers

6(a) Conditions for Liability

1. *Means of identification.* A financial institution may use various means for identifying the consumer to whom the access device is issued, including but not limited to:

i. Electronic or mechanical confirmation (such as a PIN).

ii. Comparison of the consumer's signature, fingerprint, or photograph.

2. *Multiple users.* When more than one access device is issued for an account, the financial institution may, but need not, provide a separate means to identify each user of the account.

6(b) Limitations on Amount of Liability

1. *Application of liability provisions.* There are three possible tiers of consumer liability for unauthorized EFTs depending on the situation. A consumer may be liable for (1) up to $50; (2) up to $500; or (3) an unlimited amount depending on when the unauthorized EFT occurs. More than one tier may apply to a given situation because each corresponds to a different (sometimes overlapping) time period or set of conditions.

2. *Consumer negligence.* Negligence by the consumer cannot be used as the basis for imposing greater liability than is permissible under Regulation E. Thus, consumer behavior that may constitute negligence under state law, such as writing the PIN on a debit card or on a piece of paper kept with the card, does not affect the consumer's liability for unauthorized transfers. (However, refer to comment 2(m)–2 regarding termination of the authority of given by the consumer to another person.)

3. *Limits on liability.* The extent of the consumer's liability is determined solely by the consumer's promptness in reporting the loss or theft of an access device. Similarly, no agreement between the consumer and an institution may impose greater liability on the consumer for an unauthorized transfer than the limits provided in Regulation E.

Paragraph 6(b)(1)—Timely Notice Given

1. *$50 limit applies.* The basic liability limit is $50. For example, the consumer's card is lost or stolen on Monday and the consumer learns of the loss or theft on Wednesday. If the consumer notifies the financial institution within two business days of learning of the loss or theft (by midnight Friday), the consumer's liability is limited to $50 or the amount of the unauthorized transfers that occurred before notification, whichever is less.

2. *Knowledge of loss or theft of access device.* The fact that a consumer has received a periodic statement that reflects unauthorized transfers may be a factor in determining whether the consumer had knowledge of the loss or theft, but cannot be deemed to represent conclusive evidence that the consumer had such knowledge.

Paragraph 6(b)(2)—Timely Notice Not Given

1. *$500 limit applies.* The second tier of liability is $500. For example, the consumer's

card is stolen on Monday and the consumer learns of the theft that same day. The consumer reports the theft on Friday. The $500 limit applies because the consumer failed to notify the financial institution within two business days of learning of the theft (which would have been by midnight Wednesday). How much the consumer is actually liable for, however, depends on when the unauthorized transfers take place. In this example, assume a $100 unauthorized transfer was made on Tuesday and a $600 unauthorized transfer on Thursday. Because the consumer is liable for the amount of the loss that occurs within the first two business days (but no more than $50), plus the amount of the unauthorized transfers that occurs after the first two business days and before the consumer gives notice, the consumer's total liability is $500 ($50 of the $100 transfer plus $450 of the $600 transfer, in this example). But if $600 was taken on Tuesday and $100 on Thursday, the consumer's maximum liability would be $150 ($50 of the $600 plus $100).

Paragraph 6(b)(3)—Periodic Statement; Timely Notice Not Given

1. *Unlimited liability applies.* The standard of unlimited liability applies if unauthorized transfers appear on a periodic statement, and may apply in conjunction with the first two tiers of liability. If a periodic statement shows an unauthorized transfer made with a lost or stolen debit card, the consumer must notify the financial institution within 60 calendar days after the periodic statement was sent; otherwise, the consumer faces unlimited liability for all unauthorized transfers made after the 60-day period. The consumer's liability for unauthorized transfers before the statement is sent, and up to 60 days following, is determined based on the first two tiers of liability: up to $50 if the consumer notifies the financial institution within two business days of learning of the loss or theft of the card and up to $500 if the consumer notifies the institution after two business days of learning of the loss or theft.

2. *Transfers not involving access device.* The first two tiers of liability do not apply to unauthorized transfers from a consumer's account made without an access device. If, however, the consumer fails to report such unauthorized transfers within 60 calendar days of the financial institution's transmittal of the periodic statement, the consumer may be liable for any transfers occurring after the close of the 60 days and before notice is given to the institution. For example, a consumer's account is electronically debited for $200 without the consumer's authorization and by means other than the consumer's access device. If the consumer notifies the institution within 60 days of the transmittal of the periodic statement that shows the unauthorized transfer, the consumer has no liability. However, if in addition to the $200, the consumer's account is debited for a $400 unauthorized transfer on the 61st day and the consumer fails to notify the institution of the first unauthorized transfer until the 62nd day, the consumer may be liable for the full $400.

Paragraph 6(b)(4)—Extension of Time Limits

1. *Extenuating circumstances.* Examples of circumstances that require extension of the notification periods under this section include the consumer's extended travel or hospitalization.

Paragraph 6(b)(5)—Notice to Financial Institution

1. *Receipt of notice.* A financial institution is considered to have received notice for purposes of limiting the consumer's liability if notice is given in a reasonable manner, even if the consumer notifies the institution but uses an address or telephone number other than the one specified by the institution.

2. *Notice by third party.* Notice to a financial institution by a person acting on the consumer's behalf is considered valid under this section. For example, if a consumer is hospitalized and unable to report the loss or theft of an access device, notice is considered given when someone acting on the consumer's behalf notifies the bank of the loss or theft. A financial institution may require appropriate documentation from the person representing the consumer to establish that the person is acting on the consumer's behalf.

3. *Content of notice.* Notice to a financial institution is considered given when a consumer takes reasonable steps to provide the institution with the pertinent account information. Even when the consumer is unable to provide the account number or the card number in reporting a lost or stolen access device or an unauthorized transfer, the notice effectively limits the consumer's liability if the consumer otherwise identifies sufficiently the account in question. For example, the consumer may identify the account by the name on the account and the type of account in question.

Section 205.7—Initial Disclosures

7(a) Timing of Disclosures

1. *Early disclosures.* Disclosures given by a financial institution earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later enters into an agreement with a third party who will initiate preauthorized transfers to or from the consumer's account, unless the terms and conditions differ from those that the institution previously disclosed. On the other hand, if an agreement is directly between the consumer and the account-holding institution, disclosures must be given in close proximity to the event requiring disclosure, for example, when the consumer contracts for a new service.

2. *Lack of prenotification of direct deposit.* In some instances, before direct deposit of government payments such as Social Security takes place, the consumer and the financial institution both will complete Form 1199A (or a comparable form providing notice to the institution) and the institution can make disclosures at that time. If an institution has not received advance notice that direct deposits are to be made to a consumer's account, the institution must provide the required disclosures as soon as reasonably possible after the first direct deposit is made, unless the institution has previously given disclosures.

3. *Addition of new accounts.* If a consumer opens a new account permitting EFTs at a financial institution, and the consumer already has received Regulation E disclosures for another account at that institution, the institution need only disclose terms and conditions that differ from those previously given.

4. *Addition of EFT services.* If an EFT service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required. The disclosures must be provided when the consumer contracts for the new service or before the first EFT is made using the new service.

5. *Addition of service in interchange systems.* If a financial institution joins an interchange or shared network system (which provides access to terminals operated by other institutions), disclosures are required for additional EFT services not previously available to consumers if the terms and conditions differ from those previously disclosed.

6. *Disclosures covering all EFT services offered.* An institution may provide disclosures covering all EFT services that it offers, even if some consumers have not arranged to use all services.

7(b) Content of Disclosures

Paragraph 7(b)(1)—Liability of Consumer

1. *No liability imposed by financial institution.* If a financial institution chooses to impose zero liability for unauthorized EFTs, it need not provide the liability disclosures. If the institution later decides to impose liability, however, it must first provide the disclosures.

2. *Preauthorized transfers.* If the only EFTs from an account are preauthorized transfers, liability could arise if the consumer fails to report unauthorized transfers reflected on a periodic statement. To impose such liability on the consumer, the institution must have disclosed the potential liability and the telephone number and address for reporting unauthorized transfers.

3. *Additional information.* At the institution's option, the summary of the consumer's liability may include advice on promptly reporting unauthorized transfers or the loss or theft of the access device.

Paragraph 7(b)(2)—Telephone Number and Address

1. *Disclosure of telephone numbers.* An institution may use the same or different telephone numbers in the disclosures for the purpose of:

i. Reporting the loss or theft of an access device or possible unauthorized transfers;

ii. Inquiring about the receipt of a preauthorized credit;

iii. Stopping payment of a preauthorized debit;

iv. Giving notice of an error.

2. *Location of telephone number.* The telephone number need not be incorporated into the text of the disclosure; for example, the institution may instead insert a reference to a telephone number that is readily available to the consumer, such as ''Call your branch office. The number is shown on your periodic statement.'' However, an institution must provide a specific telephone number

and address, on or with the disclosure statement, for reporting a lost or stolen access device or a possible unauthorized transfer.

Paragraph 7(b)(4)—Types of Transfers; Limitations

1. *Security limitations.* Information about limitations on the frequency and dollar amount of transfers generally must be disclosed in detail, even if related to security aspects of the system. If the confidentiality of certain details is essential to the security of an account or system, these details may be withheld (but the fact that limitations exist must still be disclosed). For example, an institution limits cash ATM withdrawals to $100 per day. The institution may disclose that daily withdrawal limitations apply and need not disclose that the limitations may not always be in force (such as during periods when its ATMs are off-line).

2. *Restrictions on certain deposit accounts.* A limitation on account activity that restricts the consumer's ability to make EFTs must be disclosed even if the restriction also applies to transfers made by nonelectronic means. For example, Regulation D (12 CFR Part 204) restricts the number of payments to third parties that may be made from a money market deposit account; an institution that does not execute fund transfers in excess of those limits must disclose the restriction as a limitation on the frequency of EFTs.

3. *Preauthorized transfers.* Financial institutions are not required to list preauthorized transfers among the types of transfers that a consumer can make.

Paragraph 7(b)(5)—Fees

1. *Disclosure of EFT fees.* An institution is required to disclose all fees for EFTs or the right to make them. Others fees (for example, minimum-balance fees, stop-payment fees, or account overdrafts) may, but need not, be disclosed (but see Regulation DD, 12 CFR Part 230. An institution is not required to disclose fees for inquiries made at an ATM since no transfer of funds is involved.

2. *Fees also applicable to non-EFT.* A per-item fee for EFTs must be disclosed even if the same fee is imposed on nonelectronic transfers. If a per-item fee is imposed only under certain conditions, such as when the transactions in the cycle exceed a certain number, those conditions must be disclosed. Itemization of the various fees may be provided on the disclosure statement or on an accompanying document that is referenced in the statement.

3. *Interchange system fees.* Fees paid by the account-holding institution to the operator of a shared or interchange ATM system need not be disclosed, unless they are imposed on the consumer by the account-holding institution. Fees for use of an ATM that are debited directly to the consumer's account by an institution other than the account-holding institution (for example, fees included in the transfer amount) need not be disclosed.

Paragraph 7(b)(9)—Confidentiality

1. *Information provided to third parties.* An institution must describe the circumstances under which any information relating to an account to or from which EFTs are permitted will be made available to third parties, not just information concerning those EFTs. The term ''third parties'' includes affiliates such as other subsidiaries of the same holding company.

Paragraph 7(b)(10)—Error Resolution

1. *Substantially similar.* The error resolution notice must be substantially similar to the model form in appendix A of part 205. An institution may use different wording so long as the substance of the notice remains the same, may delete inapplicable provisions (for example, the requirement for written confirmation of an oral notification), and may substitute substantive state law requirements affording greater consumer protection than Regulation E.

2. *Exception from provisional crediting.* To take advantage of the longer time periods for resolving errors under § 205.11(c)(3) (for transfers initiated outside the United States, or resulting from POS debit-card transactions), a financial institution must have disclosed these longer time periods. Similarly, an institution that relies on the exception from provisional crediting in § 205.11(c)(2) for accounts subject to Regulation T (12 CFR part 220) must disclose accordingly.

Section 205.8—Change-in-Terms Notice; Error Resolution Notice

8(a) Change-in-Terms Notice

1. *Form of notice.* No specific form or wording is required for a change-in-terms notice. The notice may appear on a periodic statement, or may be given by sending a copy of a revised disclosure statement, provided attention is directed to the change (for example, in a cover letter referencing the changed term).

2. *Changes not requiring notice.* The following changes do not require disclosure:

i. Closing some of an institution's ATMs;

ii. Cancellation of an access device.

3. *Limitations on transfers.* When the initial disclosures omit details about limitations because secrecy is essential to the security of the account or system, a subsequent increase in those limitations need not be disclosed if secrecy is still essential. If, however, an institution had no limits in place when the initial disclosures were given and now wishes to impose limits for the first time, it must disclose at least the fact that limits have been adopted. (See also § 205.7(b)(4) and the related commentary.)

4. *Change in telephone number or address.* When a financial institution changes the telephone number or address used for reporting possible unauthorized transfers, a change-in-terms notice is required only if the institution will impose liability on the consumer for unauthorized transfers under § 205.6. (See also § 205.6(a) and the related commentary.)

8(b) Error Resolution Notice

1. *Change between annual and periodic notice.* If an institution switches from an annual to a periodic notice, or vice versa, the first notice under the new method must be sent no later than 12 months after the last notice sent under the old method.

Section 205.9—Receipts at Electronic Terminals; Periodic Statements

9(a) Receipts at Electronic Terminals

1. *Receipts furnished only on request.* The regulation requires that a receipt be ''made available.'' A financial institution may program its electronic terminals to provide a receipt only to consumers who elect to receive one.

2. *Third party providing receipt.* An account-holding institution may make terminal receipts available through third parties such as merchants or other financial institutions.

3. *Inclusion of promotional material.* A financial institution may include promotional material on receipts if the required information is set forth clearly (for example, by separating it from the promotional material). In addition, a consumer may not be required to surrender the receipt or that portion containing the required disclosures in order to take advantage of a promotion.

4. *Transfer not completed.* The receipt requirement does not apply to a transfer that is initiated but not completed (for example, if the ATM is out of currency or the consumer decides not to complete the transfer).

5. *Receipts not furnished due to inadvertent error.* If a receipt is not provided to the consumer because of a bona fide unintentional error, such as when a terminal runs out of paper or the mechanism jams, no violation results if the financial institution maintains procedures reasonably adapted to avoid such occurrences.

6. *Multiple transfers.* If the consumer makes multiple transfers at the same time, the financial institution may document them on a single or on separate receipts.

Paragraph 9(a)(1)—Amount

1. *Disclosure of transaction fee.* The required display of a fee amount on or at the terminal may be accomplished by displaying the fee on a sign at the terminal or on the terminal screen for a reasonable duration. Displaying the fee on a screen provides adequate notice, as long as consumers are given the option to cancel the transaction after receiving notice of a fee.

Paragraph 9(a)(2)—Date

1. *Calendar date.* The receipt must disclose the calendar date on which the consumer uses the electronic terminal. An accounting or business date may be disclosed in addition if the dates are clearly distinguished.

Paragraph 9(a)(3)—Type

1. *Identifying transfer and account.* Examples identifying the type of transfer and the type of the consumer's account include ''withdrawal from checking,'' ''transfer from savings to checking,'' or ''payment from savings.''

2. *Exception.* Identification of an account is not required when the consumer can access only one asset account at a particular time or terminal, even if the access device can normally be used to access more than one account. For example, the consumer may be able to access only one particular account at terminals not operated by the account-

holding institution, or may be able to access only one particular account when the terminal is off-line. The exception is available even if, in addition to accessing one asset account, the consumer also can access a credit line.

3. *Access to multiple accounts.* If the consumer can use an access device to make transfers to or from different accounts of the same type, the terminal receipt must specify which account was accessed, such as ''withdrawal from checking I'' or ''withdrawal from checking II.'' If only one account besides the primary checking account can be debited, the receipt can identify the account as ''withdrawal from other account.''

4. *Generic descriptions.* Generic descriptions may be used for accounts that are similar in function, such as share draft or NOW accounts and checking accounts. In a shared system, for example, when a credit union member initiates transfers to or from a share draft account at a terminal owned or operated by a bank, the receipt may identify a withdrawal from the account as a ''withdrawal from checking.''

5. *Point-of-sale transactions.* There is no prescribed terminology for identifying a transfer at a merchant's POS terminal. A transfer may be identified, for example, as a purchase, a sale of goods or services, or a payment to a third party. When a consumer obtains cash from a POS terminal in addition to purchasing goods, or obtains cash only, the documentation need not differentiate the transaction from one involving the purchase of goods.

Paragraph 9(a)(5)—Terminal Location

1. *Location code.* A code or terminal number identifying the terminal where the transfer is initiated may be given as part of a transaction code.

2. *Omission of city name.* The city may be omitted if the generally accepted name (such as a branch name) contains the city name.

Paragraph 9(a)(5)(i)

1. *Street address.* The address should include number and street (or intersection); the number (or intersecting street) may be omitted if the street alone uniquely identifies the terminal location.

Paragraph 9(a)(5)(ii)

1. *Generally accepted name.* Examples of a generally accepted name for a specific location include a branch of the financial institution, a shopping center, or an airport.

Paragraph 9(a)(5)(iii)

1. *Name of owner or operator of terminal.* Examples of an owner or operator of a terminal are a financial institution or a retail merchant.

Paragraph 9(a)(5)(iv)

1. *Omission of a state.* A state may be omitted from the location information on the receipt if:

i. All the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in that state, or

ii. All transfers occur at terminals located within 50 miles of the financial institutions's main office.

2. *Omission of a city and state.* A city and state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in the same city.

Paragraph 9(a)(6)—Third Party Transfer

1. *Omission of third-party name.* The receipt need not disclose the third-party name if the name is provided by the consumer in a form that is not machine readable (for example, if the consumer indicates the payee by depositing a payment stub into the ATM). If, on the other hand, the consumer keys in the identity of the payee, the receipt must identify the payee by name or by using a code that is explained elsewhere on the receipt.

2. *Receipt as proof of payment.* Documentation required under the regulation constitutes prima facie proof of a payment to another person, except in the case of a terminal receipt documenting a deposit.

9(b) Periodic Statements

1. *Periodic cycles.* Periodic statements may be sent on a cycle that is shorter than monthly. The statements must correspond to periodic cycles that are reasonably equal, that is, do not vary by more than four days from the regular cycle. The requirement of reasonably equal cycles does not apply when an institution changes cycles for operational or other reasons, such as to establish a new statement day or date.

2. *Interim statements.* Generally, a financial institution must provide periodic statements for each monthly cycle in which an EFT occurs, and at least quarterly if a transfer has not occurred. Where EFTs occur between regularly-scheduled cycles, interim statements must be provided. For example, if an institution issues quarterly statements at the end of March, June, September and December, and the consumer initiates an EFT in February, an interim statement for February must be provided. If an interim statement contains interest or rate information, the institution must comply with Regulation DD, 12 CFR 230.6.

3. *Inactive accounts.* A financial institution need not send statements to consumers whose accounts are inactive as defined by the institution.

4. *Customer pickup.* A financial institution may permit, but may not require, consumers to call for their periodic statements.

5. *Periodic statements limited to EFT activity.* A financial institution that uses a passbook as the primary means for displaying account activity, but also allows the account to be debited electronically, may provide a periodic statement requirement that reflects only the EFTs and other required disclosures (such as charges, account balances, and address and telephone number for inquiries). (See § 205.9(c)(1)(i) for the exception applicable to preauthorized transfers for passbook accounts.)

6. *Codes and accompanying documents.* To meet the documentation requirements for periodic statements, a financial institution may:

i. Include copies of terminal receipts to reflect transfers initiated by the consumer at electronic terminals;

ii. Enclose posting memos, deposit slips, and other documents that, together with the statement, disclose all the required information;

iii. Use codes for names of third parties or terminal locations and explain the information to which the codes relate on an accompanying document.

Paragraph 9(b)(1)—Transaction Information

1. *Information obtained from others.* While financial institutions must maintain reasonable procedures to ensure the integrity of data obtained from another institution, a merchant, or other third parties, verification of each transfer that appears on the periodic statement is not required.

Paragraph 9(b)(1)(i)

1. *Incorrect deposit amount.* If a financial institution determines that the amount actually deposited at an ATM is different from the amount entered by the consumer, the institution need not immediately notify the consumer of the discrepancy. The periodic statement reflecting the deposit may show either the correct amount of the deposit or the amount entered by the consumer along with the institution's adjustment.

Paragraph 9(b)(1)(iii)

1. *Type of transfer.* There is no prescribed terminology for describing a type of transfer. Placement of the amount of the transfer in the debit or the credit column is sufficient if other information on the statement, such as a terminal location or third-party name, enables the consumer to identify the type of transfer.

Paragraph 9(b)(1)(iv)

1. *Nonproprietary terminal in network.* An institution need not reflect on the periodic statement the street addresses, identification codes, or terminal numbers for transfers initiated in a shared or interchange system at a terminal operated by an institution other than the account-holding institution. The statement must, however, specify the entity that owns or operates the terminal, plus the city and state.

Paragraph 9(b)(1)(v)

1. *Recurring payments by government agency.* The third-party name for recurring payments from federal, state, or local governments need not list the particular agency. For example, ''U.S. gov't'' or ''N.Y. sal'' will suffice.

2. *Consumer as third-party payee.* If a consumer makes an electronic fund transfer to another consumer, the financial institution must identify the recipient by name (not just by an account number, for example).

3. *Terminal location/third party.* A single entry may be used to identify both the terminal location and the name of the third party to or from whom funds are transferred. For example, if a consumer purchases goods from a merchant, the name of the party to whom funds are transferred (the merchant) and the location of the terminal where the transfer is initiated will be satisfied by a disclosure such as ''XYZ Store, Anytown, Ohio.''

4. *Account-holding institution as third party.* Transfers to the account-holding institution (by ATM, for example) must show

the institution as the recipient, unless other information on the statement (such as, ''loan payment from checking'') clearly indicates that the payment was to the account-holding institution.

5. *Consistency in third-party identity.* The periodic statement must disclose a third-party name as it appeared on the receipt, whether it was, for example, the ''dba'' (doing business as) name of the third party or the parent corporation's name.

6. *Third-party identity on deposits at electronic terminal.* A financial institution need not identify third parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal.

Paragraph 9(b)(3)—Fees

1. *Disclosure of fees.* The fees disclosed may include fees for EFTs and for other nonelectronic services, and both fixed fees and per-item fees; they may be given as a total or may be itemized in part or in full.

2. *Fees in interchange system.* An account-holding institution must disclose any fees it imposes on the consumer for EFTs, including fees for ATM transactions in an interchange or shared ATM system. Fees for use of an ATM imposed on the consumer by an institution other than the account-holding institution and included in the amount of the transfer by the terminal-operating institution need not be separately disclosed on the periodic statement.

3. *Finance charges.* The requirement to disclose any fees assessed against the account does not include a finance charge imposed on the account during the statement period.

Paragraph 9(b)(4)—Account Balances

1. *Opening and closing balances.* The opening and closing balances must reflect both EFTs and other account activity.

Paragraph 9(b)(5)—Address and Telephone Number for Inquiries

1. *Telephone number.* A single telephone number, preceded by the ''direct inquiries to'' language, will satisfy the requirements of § 205.9(b)(5) and (6).

Paragraph 9(b)(6)—Telephone Number for Preauthorized Transfers

1. *Telephone number.* See comment 9(b)(5)–1.

9(c) Exceptions to the Periodic Statement Requirements for Certain Accounts

1. *Transfers between accounts.* The regulation provides an exception from the periodic statement requirement for certain intra-institutional transfers between a consumer's accounts. The financial institution must still comply with the applicable periodic statement requirements for any other EFTs to or from the account. For example, a Regulation E statement must be provided quarterly for an account that also receives payroll deposits electronically, or for any month in which an account is also accessed by a withdrawal at an ATM.

9(d) Documentation for Foreign-Initiated Transfers

1. *Foreign-initiated transfers.* An institution must make a good faith effort to provide all required information for foreign-initiated transfers. For example, even if the institution is not able to provide a specific terminal location, it should identify the country and city in which the transfer was initiated.

Section 205.10—Preauthorized Transfers

10(a) Preauthorized Transfers to Consumer's Account

Paragraph 10(a)(1)—Notice by Financial Institution

1. *Content.* No specific language is required for notice regarding receipt of a preauthorized transfer. Identifying the deposit is sufficient; however, simply providing the current account balance is not.

2. *Notice of credit.* A financial institution may use different methods of notice for various types or series of preauthorized transfers, and the institution need not offer consumers a choice of notice methods.

3. *Positive notice.* A periodic statement sent within two business days of the scheduled transfer, showing the transfer, can serve as notice of receipt.

4. *Negative notice.* The absence of a deposit entry (on a periodic statement sent within two business days of the scheduled transfer date) will serve as negative notice.

5. *Telephone notice.* If a financial institution uses the telephone notice option, it should be able in most instances to verify during a consumer's initial call whether a transfer was received. The institution must respond within two business days to any inquiry not answered immediately.

6. *Phone number for passbook accounts.* The financial institution may use any reasonable means necessary to provide the telephone number to consumers with passbook accounts that can only be accessed by preauthorized credits and that do not receive periodic statements. For example, it may print the telephone number in the passbook, or include the number with the annual error resolution notice.

7. *Telephone line availability.* To satisfy the readily-available standard, the financial institution must provide enough telephone lines so that consumers get a reasonably prompt response. The institution need only provide telephone service during normal business hours. Within its primary service area, an institution must provide a local or toll-free telephone number. It need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business.

10(b) Written Authorization for Preauthorized Transfers From Consumer's Account

1. *Preexisting authorizations.* The financial institution need not require a new authorization before changing from paper-based to electronic debiting when the existing authorization does not specify that debiting is to occur electronically or specifies that the debiting will occur by paper means. A new authorization also is not required when a successor institution begins collecting payments.

2. *Authorization obtained by third party.* The account-holding financial institution does not violate the regulation when a third-party payee fails to obtain the authorization in writing or fails to give a copy to the consumer; rather, it is the third-party payee that is in violation of the regulation.

3. *Written authorization for preauthorized transfers.* The requirement that preauthorized EFTs be authorized by the consumer ''only by a writing'' cannot be met by a payee's signing a written authorization on the consumer's behalf with only an oral authorization from the consumer. A tape recording of a telephone conversation with a consumer who agrees to preauthorized debits also does not constitute written authorization for purposes of this provision.

4. *Use of a confirmation form.* A financial institution or designated payee may comply with the requirements of this section in various ways. For example, a payee may provide the consumer with two copies of a preauthorization form, and ask the consumer to sign and return one and to retain the second copy.

5. *Similarly authenticated.* An example of a consumer's authorization that is not in the form of a signed writing but is instead ''similarly authenticated'' is a consumer's authorization via a home banking system. To satisfy the requirements of this section, there must be some means to identify the consumer (such as a security code) and to make available a paper copy of the authorization (automatically or upon request). The text of the electronic authorization would have to be displayed on a computer screen or other visual display which enables the consumer to read the communication. Only the consumer may authorize the transfer and not, for example, a third-party merchant on behalf of the consumer.

6. *Requirements of an authorization.* An authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable.

10(c) Consumer's Right To Stop Payment

1. *Stop-payment order.* The financial institution must honor an oral stop-payment order made at least three business days before a scheduled debit. If the debit item is resubmitted, the institution must continue to honor the stop-payment order (for example, by suspending all subsequent payments to the payee-originator until the consumer notifies the institution that payments should resume).

2. *Revocation of authorization.* Once a financial institution has been notified that the consumer's authorization is no longer valid, it must block all future payments for the particular debit transmitted by the designated payee-originator. The institution may not wait for the payee-originator to terminate the automatic debits. The institution may confirm that the consumer has informed the payee-originator of the revocation (for example, by requiring a copy of the consumer's revocation as written confirmation to be provided within fourteen days of an oral notification). If the institution does not receive the required written confirmation within the fourteen-day period, it may honor subsequent debits to the account.

10(d) Notice of Transfers Varying in Amount

Paragraph 10(d)(1)—Notice

1. *Preexisting authorizations.* A financial institution holding the consumer's account does not violate the regulation if the designated payee fails to provide notice of varying amounts.

Paragraph 10(d)(2)—Range

1. *Range.* A financial institution or designated payee that elects to offer the consumer a specified range of amounts for debiting (in lieu of providing the notice of transfers varying in amount) must provide an acceptable range that could be anticipated by the consumer. For example, if the transfer is for payment of a gas bill, an appropriate range might be based on the highest bill in winter and the lowest bill in summer.

10(e) Compulsory Use

Paragraph 10(e)(1)—Credit

1. *Loan payments.* Creditors may not require repayment of loans by electronic means on a preauthorized, recurring basis. A creditor may offer a program with a reduced annual percentage rate or other cost-related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the creditor for the type of credit involved. Examples include:

i. Mortgages with graduated payments in which a pledged savings account is automatically debited during an initial period to supplement the monthly payments made by the borrower.

ii. Mortgage plans calling for preauthorized biweekly payments that are debited electronically to the consumer's account and produce a lower total finance charge.

2. *Overdraft.* A financial institution may require the automatic repayment of an overdraft credit plan even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts.

Paragraph 10(e)(2)—Employment or Government Benefit

1. *Payroll.* A financial institution (as an employer) may not require its employees to receive their salary by direct deposit to that same institution or to any other particular institution. An employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution, or receiving their salary by check or cash.

Section 205.11—Procedures for Resolving Errors

11(a) Definition of Error

1. *Terminal location.* With regard to deposits at an ATM, a consumer's request for the terminal location or other information triggers the error resolution procedures, but the financial institution need only provide the ATM location if it has captured that information.

2. *Verifying account deposit.* If the consumer merely calls to ascertain whether a deposit made via ATM, preauthorized transfer, or any other type of EFT was credited to the account, without asserting an error, the error resolution procedures do not apply.

3. *Loss or theft of access device.* A financial institution is required to comply with the error resolution procedures when a consumer reports the loss or theft of an access device if the consumer also alleges possible unauthorized use as a consequence of the loss or theft.

4. *Error asserted after account closed.* The financial institution must comply with the error resolution procedures when a consumer properly asserts an error, even if the account has been closed.

5. *Request for documentation or information.* A request for documentation or other information must be treated as an error unless it is clear that the consumer is requesting a duplicate copy for tax or other record-keeping purposes.

11(b) Notice of Error From Consumer

Paragraph 11(b)(1)—Timing; Contents

1. *Content of error notice.* The notice of error is effective even if it does not contain the consumer's account number, so long as the financial institution is able to identify the account in question. For example, the consumer could provide a Social Security number or other unique means of identification.

2. *Investigation pending receipt of information.* While a financial institution may request a written, signed statement from the consumer relating to a notice of error, it may not delay initiating or completing an investigation pending receipt of the statement.

3. *Statement held for consumer.* When a consumer has arranged for periodic statements to be held until picked up, the statement for a particular cycle is deemed to have been transmitted on the date the financial institution first makes the statement available to the consumer.

4. *Failure to provide statement.* When a financial institution fails to provide the consumer with a periodic statement, a request for a copy is governed by this section if the consumer gives notice within 60 days from the date on which the statement should have been transmitted.

5. *Discovery of error by institution.* The error resolution procedures of this section apply when a notice of error is received from the consumer, and not when the financial institution itself discovers and corrects an error.

6. *Notice at particular phone number or address.* A financial institution may require the consumer to give notice only at the telephone number or address disclosed by the institution, provided the institution maintains reasonable procedures to refer the consumer to the specified telephone number or address if the consumer attempts to give notice to the institution in a different manner.

Paragraph 11(b)(2)—Written Confirmation

1. *Written confirmation-of-error notice.* If the consumer sends a written confirmation of error to the wrong address, the financial institution must process the confirmation through normal procedures. But the institution need not provisionally credit the consumer's account if the written confirmation is delayed beyond 10 business days in getting to the right place because it was sent to the wrong address.

11(c) Time Limits and Extent of Investigation

1. *Notice to consumer.* Unless otherwise indicated in this section, the financial institution may provide the required notices to the consumer either orally or in writing.

2. *Written confirmation of oral notice.* A financial institution must begin its investigation promptly upon receipt of an oral notice. It may not delay until it has received a written confirmation.

3. *Charges for error resolution.* If a billing error occurred, whether as alleged or in a different amount or manner, the financial institution may not impose a charge related to any aspect of the error-resolution process (including charges for documentation or investigation). Since the act grants the consumer error-resolution rights, the institution should avoid any chilling effect on the good-faith assertion of errors that might result if charges are assessed when no billing error has occurred.

4. *Correction without investigation.* A financial institution may make, without investigation, a final correction to a consumer's account in the amount or manner alleged by the consumer to be in error, but must comply with all other applicable requirements of § 205.11.

5. *Correction notice.* A financial institution may include the notice of correction on a periodic statement that is mailed or delivered within the 10-business-day or 45-calendar-day time limits and that clearly identifies the correction to the consumer's account. The institution must determine whether such a mailing will be prompt enough to satisfy the requirements of this section, taking into account the specific facts involved.

6. *Correction of an error.* If the financial institution determines an error occurred, within either the 10-day or 45-day period, it must correct the error (subject to the liability provisions of §§ 205.6 (a) and (b)) including, where applicable, the crediting of interest and the refunding of any fees imposed by the institution. In a combined credit/EFT transaction, for example, the institution must refund any finance charges incurred as a result of the error. The institution need not refund fees that would have been imposed whether or not the error occurred.

7. *Extent of required investigation.* A financial institution complies with its duty to investigate, correct, and report its determination regarding an error described in § 205.11(a)(1)(vii) by transmitting the requested information, clarification, or documentation within the time limits set forth in § 205.11(c). If the institution has provisionally credited the consumer's account in accordance with § 205.11(c)(2), it may debit the amount upon transmitting the requested information, clarification, or documentation.

Paragraph 11(c)(2)(i)

1. *Compliance with all requirements.* Financial institutions exempted from provisionally crediting a consumer's account

under § 205.11(c)(2)(i) (A) and (B) must still comply with all other requirements of § 205.11.

Paragraph 11(c)(3)—Extension of Time Periods

1. *POS debit card transactions.* The extended deadlines for investigating errors resulting from POS debit card transactions apply to all debit card transactions, including those for cash only, at merchants' POS terminals, and also including mail and telephone orders. The deadlines do not apply to transactions at an ATM, however, even though the ATM may be in a merchant location.

Paragraph 11(c)(4)—Investigation

1. *Third parties.* When information or documentation requested by the consumer is in the possession of a third party with whom the financial institution does not have an agreement, the institution satisfies the error resolution requirement by so advising the consumer within the specified time period.

2. *Scope of investigation.* When an alleged error involves a payment to a third party under the financial institution's telephone bill-payment plan, a review of the institution's own records is sufficient, assuming no agreement exists between the institution and the third party concerning the bill-payment service.

3. *POS transfers.* When a consumer alleges an error involving a transfer to a merchant via a POS terminal, the institution must verify the information previously transmitted when executing the transfer. For example, the financial institution may request a copy of the sales receipt to verify that the amount of the transfer correctly corresponds to the amount of the consumer's purchase.

4. *Agreement.* An agreement that a third party will honor an access device is an agreement for purposes of this paragraph. A financial institution does not have an agreement for purposes of § 205.11(c)(4)(ii) solely because it participates in transactions that occur under the federal recurring payments programs, or that are cleared through an ACH or similar arrangement for the clearing and settlement of fund transfers generally, or because it agrees to be bound by the rules of such an arrangement.

11(d) Procedures if Financial Institution Determines No Error or Different Error Occurred

1. *Error different from that alleged.* When a financial institution determines that an error occurred in a manner or amount different from that described by the consumer, it must comply with the requirements of both § 205.11 (c) and (d), as relevant. The institution may give the notice of correction and the explanation separately or in a combined form.

Paragraph 11(d)(1)—Written Explanation

1. *Request for documentation.* When a consumer requests copies of documents, the financial institution must provide the copies in an understandable form. If an institution relied on magnetic tape it must convert the applicable data into readable form, for example, by printing it and explaining any codes.

Paragraph 11(d)(2)—Debiting Provisional Credit

1. *Alternative procedure for debiting of credited funds.* The financial institution may comply with the requirements of this section by notifying the consumer that the consumer's account will be debited five business days from the transmittal of the notification, specifying the calendar date on which the debiting will occur.

2. *Fees for overdrafts.* The financial institution may not impose fees for items it is required to honor under § 205.11. It may, however, impose any normal transaction or item fee that is unrelated to an overdraft resulting from the debiting. If the account is still overdrawn after five business days, the institution may impose the fees or finance charges to which it is entitled, if any, under an overdraft credit plan.

11(e) Reassertion of Error

1. *Withdrawal of error; right to reassert.* The financial institution has no further error resolution responsibilities if the consumer voluntarily withdraws the notice alleging an error. A consumer who has withdrawn an allegation of error has the right to reassert the allegation unless the financial institution had already complied with all of the error resolution requirements before the allegation was withdrawn. The consumer must do so, however, within the original 60-day period.

Section 205.12—Relation to Other Laws

12(a) Relation to Truth in Lending

1. *Determining applicable regulation.* For transactions involving access devices that also constitute credit cards, whether Regulation E or Regulation Z (12 CFR part 226) applies, depends on the nature of the transaction. For example, if the transaction is purely an extension of credit, and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error resolution requirements of Regulation Z (12 CFR part 226) apply. If the transaction only debits a checking account (with no credit extended), the provisions of Regulation E apply. Finally, if the transaction debits a checking account but also draws on an overdraft line of credit, the Regulation E provisions apply, as well as §§ 226.13 (d) and (g) of Regulation Z. In such a transaction, the consumer might be liable for up to $50 under Regulation Z (12 CFR part 226) and, in addition, for $50, $500, or an unlimited amount under Regulation E.

2. *Issuance rules.* For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance). Regulation Z (12 CFR part 226) rules apply if there is another type of credit feature, for example, one permitting direct extensions of credit that do not involve the asset account.

12(b) Preemption of Inconsistent State Laws

1. *Specific determinations.* The regulation prescribes standards for determining whether state laws that govern EFTs are preempted by the act and the regulation. A state law that is inconsistent may be preempted even if the Board has not issued a determination. However, nothing in § 205.12(b) provides a financial institution with immunity for violations of state law if the institution chooses not to make state disclosures and the Board later determines that the state law is not preempted.

2. *Preemption determination.* The Board determined that certain provisions in the state law of Michigan are preempted by the federal law, effective March 30, 1981:

i. Definition of unauthorized use. Section 5(4) is preempted to the extent that it relates to the section of state law governing consumer liability for unauthorized use of an access device.

ii. Consumer liability for unauthorized use of an account. Section 14 is inconsistent with § 205.6 and is less protective of the consumer than the federal law. The state law places liability on the consumer for the unauthorized use of an account in cases involving the consumer's negligence. Under the federal law, a consumer's liability for unauthorized use is not related to the consumer's negligence and depends instead on the consumer's promptness in reporting the loss or theft of the access device.

iii. Error resolution. Section 15 is preempted because it is inconsistent with § 205.11 and is less protective of the consumer than the federal law. The state law allows financial institutions up to 70 days to resolve errors, whereas the federal law generally requires errors to be resolved within 45 days.

iv. Receipts and periodic statements. Sections 17 and 18 are preempted because they are inconsistent with § 205.9. The state provisions require a different disclosure of information than does the federal law. The receipt provision is also preempted because it allows the consumer to be charged for receiving a receipt if a machine cannot furnish one at the time of a transfer.

Section 205.13—Administrative Enforcement; Record Retention

13(b) Record Retention

1. *Requirements.* A financial institution need not retain records that it has given disclosures and documentation to each consumer; it need only retain evidence demonstrating that its procedures reasonably ensure the consumers' receipt of required disclosures and documentation.

Section 205.14—Electronic Fund Transfer Service Provider Not Holding Consumer's Account

14(a) Electronic Fund Transfer Service Providers Subject to Regulation

1. *Applicability.* This section applies only when a service provider issues an access device to a consumer for initiating transfers to or from the consumer's account at a financial institution and the two entities have no agreement regarding this EFT service. If the service provider does not issue an access device to the consumer for accessing an account held by another institution, it does not qualify for the treatment accorded by § 205.14. For example, this section does not apply to an institution that initiates preauthorized payroll deposits to consumer accounts on behalf of an employer. By

contrast, § 205.14 can apply to an institution that issues a code for initiating telephone transfers to be carried out through the ACH from a consumer's account at another institution. This is the case even if the consumer has accounts at both institutions.

2. *ACH agreements.* The ACH rules generally do not constitute an agreement for purposes of this section. However, an ACH agreement under which members specifically agree to honor each other's debit cards is an ''agreement,'' and thus this section does not apply.

14(b) Compliance by Electronic Fund Transfer Service Provider

1. *Liability.* The service provider is liable for unauthorized EFTs that exceed limits on the consumer's liability under § 205.6.

Paragraph 14(b)(1)—Disclosures and Documentation

1. *Periodic statements from electronic fund transfer service provider.* A service provider that meets the conditions set forth in this paragraph does not have to issue periodic statements. A service provider that does not meet the conditions need only include on periodic statements information about transfers initiated with the access device it has issued.

Paragraph 14(b)(2)—Error Resolution

1. *Error resolution.* When a consumer notifies the service provider of an error, the EFT service provider must investigate and resolve the error in compliance with § 205.11 as modified by § 205.14(b)(2). If an error occurred, any fees or charges imposed as a result of the error, either by the service provider or by the account-holding institution (for example, overdraft or dishonor fees) must be reimbursed to the consumer by the service provider.

14(c) Compliance by Account-Holding Institution

Paragraph 14(c)(1)

1. *Periodic statements from account-holding institution.* The periodic statement provided by the account-holding institution need only contain the information required by § 205.9(b)(1).

Appendix A—Model Disclosure Clauses and Forms

1. *Review of forms.* The Board will not review or approve disclosure forms or statements for financial institutions. However, the Board has issued model clauses for institutions to use in designing their disclosures. If an institution uses these clauses accurately to reflect its service, the institution is protected from liability for failure to make disclosures in proper form.

2. *Use of the forms.* The appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of §§ 205.5(b)(2) and (b)(3), 205.6(a), 205.7, 205.8(b), 205.14(b)(1)(ii) and 205.15(d)(7) and (d)(2). The use of appropriate clauses in making disclosures will protect a financial institution from liability under sections 915 and 916 of the act provided the clauses accurately reflect the institution's EFT services.

3. *Altering the clauses.* Financial institutions may use clauses of their own design in conjunction with the Board's model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The catchlines are not part of the clauses and need not be used. Financial institutions may make alterations, substitutions, or additions in the clauses to reflect the services offered, such as technical changes (including the substitution of a trade name for the word ''card,'' deletion of inapplicable services, or substitution of lesser liability limits). Several of the model clauses include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address may be referenced and need not be repeated.

Supplement II to Part 205 [Removed]

3. Supplement II to Part 205 is removed.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, April 19, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–10180 Filed 5–1–96; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–0919]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed amendments to Regulation E, which implements the Electronic Fund Transfer Act. The proposed amendments relate to: the use of electronic communication in home-banking services for providing disclosures and other documentation; error resolution requirements for new accounts; and the treatment of stored-value cards (imposing modified Regulation E requirements on stored-value products in systems that track individual transactions, cards, or consumers; providing an exemption for cards on which a maximum value of $100 can be stored; and providing that other stored-value cards are not covered by Regulation E).

DATES: Comments must be received on or before August 1, 1996.

ADDRESSES: Comments should refer to Docket No. R–0919 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW (between Constitution Avenue and C Street) between 8:45 a.m. and 5:15 p.m. weekdays. Except as provided in the Board's rules regarding the availability of information (12 CFR 261.8), comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP–500 of the Martin Building, between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Regarding the proposed amendments on electronic communication, Michael Hentrel, Staff Attorney, and regarding the other proposed amendments, Jane Gell, Natalie Taylor, or Kyung Cho-Miller, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. For the hearing impaired *only,* Telecommunications Device for the Deaf (TDD), Dorothea Thompson, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Federal Reserve Board was given rulewriting authority to issue implementing regulations. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse, telephone bill-payment system, or home banking program. The act and Regulation E (12 CFR Part 205) provide rules that govern these and other EFTs. The rules prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs.

In 1994 the Board issued for public comment a proposed revision of Regulation E under the Board's Regulatory Planning and Review program. (The Board has taken final action on the proposal; a revised regulation and revised staff commentary are published in today's Federal Register.) As part of that process, and based in part on the public comments received, the Board identified areas that offer an opportunity for further burden reduction without undercutting consumer protection. One such area involves the use of electronic communication between consumers and financial institutions—for example, by personal computer and modem—in place of paper documents. The proposed revision published in 1994 included a provision that allowed electronic communication in place of paper for authorization of recurring electronic debits. The Board now proposes to permit electronic text messages to substitute for paper under Regulation E generally. The proposed revision also solicited comment generally on coverage of prepaid cards and other stored-value products under Regulation E. To resolve issues raised during and following the public comment period, the Board undertook an analysis of stored-value products and their treatment under Regulation E. The Board now proposes amendments under which many stored-value products would be exempt, and others would be covered under limited requirements.

II. Proposed Regulatory Revisions

The following discussion covers the proposed amendments to Regulation E in the order of the sections of the regulation that would be affected—first addressing electronic communication, then error resolution for new accounts, and finally stored-value products.

Electronic Communication—Section 205.4(c)

Financial institutions offer a wide variety of ''home banking'' services ranging from account inquiries, verifications, and fund transfers between accounts, to bill payment and full account management; and they are using various forms of electronic communication to deliver these services. Telephones and personal computers are the most common means of access to home banking services. Telephones with digital screens (''screen phones''), equipped with bar code or magnetic stripe readers, allow consumers to enter transactions off-line, then send the information to the financial institution on-line. Financial institutions may offer consumers specialized software that allows the user to access bank information via personal computer; oftentimes this software is integrated with other on-line services. These EFT services use electronic communication as a fast, convenient, and sometimes less costly means of communication with the consumer. Electronic communication, for purposes of this discussion, means an electronically transmitted text message between a financial institution and a consumer's home computer or other electronic device possessed by the consumer.

Under Regulation E, certain disclosures (such as initial disclosures and periodic statements) must be provided to consumers (1) in writing, (2) in a clear and readily understandable form, and (3) in a form that the consumer may keep. In the context of home banking and similar services, financial institutions have asked whether they may satisfy these requirements by providing the information electronically, for example, through a consumer's personal computer.

Are Electronic Communications ''Writings''

Many Regulation E disclosures must be provided to consumers in writing. A writing, up to the present, has typically been presumed to mean a paper document. Information that is produced,

stored, or communicated by computer too is generally considered to be a writing, at least where text is involved. Indeed, in many office environments in the United States today, documents are produced, edited, revised, and communicated to others within the organization by the use of computers and electronic mail, and these documents are considered written documents when kept in electronic form as well as when printed on paper. Similarly, under other laws that call for information to be in writing, information in electronic form is considered to be ''written.''

Communications by telephone (including voicemail systems) are typically characterized as oral communication as they do not have the feature generally associated with a writing—visual text. Therefore, pursuant to its authority under section 904(c) of the EFTA, the Board proposes to permit financial institutions to use an electronic communication where the regulation calls for information to be provided in writing, but to limit the scope of the term ''electronic communication'' to a communication in a form that can be displayed as visual text. An example would be an electronic message that the receiver could display on a screen (including a computer monitor or a screen phone).

Clear and Readily Understandable Form

Regulation E requires financial institutions to provide required information in a clear and readily understandable form. Some means of displaying an electronic communication appear to meet this standard; for example, a personal computer monitor should allow the consumer to read the text of a disclosure. Others may not have this capability; a screen phone, for example, may display only a few lines of text at a time, making it difficult for a consumer to review initial disclosures or a periodic statement, where it may be necessary to move back and forth between various parts of the document. The Board believes that the requirement for clear and readily understandable disclosures applies fully to electronic communications. The Board requests specific comments on the likelihood and extent of compliance problems that could be caused by this requirement, as well as suggestions for resolving such problems.

Retainability

The act and regulation establish a retainability requirement. In general, if information must be provided in writing, Regulation E requires that the information must be in a form that the consumer may retain.

Consumers with home banking systems will most likely have the ability to download information, print it out, and store it on a computer disk for later retrieval. The responsibility to provide EFTA information in a retainable form belongs to the financial institution. Still, the Board recognizes that to satisfy the retainability requirement for electronic communications, financial institutions will have to rely on the consumer's having the capability to download data. The Board believes that where a consumer has agreed to receive information electronically, the financial institution should be deemed to satisfy the retention requirement by making information available for downloading, provided some consumer safeguards are established. In the event of printer malfunctions and other unforeseen computer problems, for instance, the consumer may be precluded from effectively retaining an electronic message received from a financial institution.

The Board proposes to amend Regulation E to provide that if a financial institution uses electronic communication to send information that is required to be in writing, the consumer may request a paper copy of the information within one year after receipt of the electronic communication. Commenters are asked to address whether this is an appropriate time period, and if not, to offer suggestions for an alternative.

The Board also solicits comment on possible alternatives to providing a paper copy upon request to consumers. One such means might be for a financial institution to maintain the information in data storage and re-send the information electronically to a consumer whose computer facilities were temporarily inoperable.

Some electronic messages from a consumer to an institution trigger the need for a response from the institution. For example, an oral or written notice of error from a consumer requires the institution to investigate and resolve the error within a specified period. Some financial institutions have indicated that in accepting electronic communications from consumers, they may want to require paper verifications, for their own and the consumer's protection. For example, Regulation E provides that a consumer may stop payment of a preauthorized electronic fund transfer by notifying the institution orally or in writing, and that the institution may require written confirmation of an oral stop-payment order. If an institution accepts an electronic stop-payment order, the institution might want to require confirmation of the order in paper form, to make sure that a preauthorized payment is not dishonored by mistake.

The Board believes that (as in the case of an oral communication) if the consumer sends an electronic communication to the institution, the institution could require a confirmation from the consumer in paper form. Comment is requested, however, on whether and how the regulation should address this point.

Electronic communication between financial institutions and consumers could also be used in contexts other than home banking. For example, a consumer who possesses a modem-equipped personal computer may wish to send and receive information required by Regulation E about an EFT service used by the consumer, such as debit card access to the consumer's account. The proposal covers this situation. The Board solicits comment on whether the regulation should, as proposed, permit electronic communication to substitute for paper disclosures and other required paper messages for EFT services other than home banking, or should limit electronic communication to home-banking services.

Error Resolution for New Accounts—Section 205.11

Regulation E requires a financial institution to investigate and resolve a consumer's claim of error within specified time limits. An institution generally is expected to resolve the alleged error within ten business days after receiving a notice of error. If the institution needs more time, it must provisionally credit the consumer's account and resolve the error no later than 45 calendar days after receiving the notice.

In the course of commenting on the Board's 1994 proposal to revise Regulation E, some institutions requested that the Board use its exception authority under the statute either (1) to exempt new accounts from the requirement to provisionally credit the account by the tenth business day or (2) to extend the time period for resolving errors.

Commenters expressed concern about individuals who open a new account with the intent to defraud. Such individuals may open an account, immediately withdraw all or a large amount of the funds through ATMs, and file a claim with the financial institution disputing the ATM transactions. Often they receive provisional credit because of the financial institution's inability to

research the claim (such as by obtaining photographic evidence from ATM cameras) within ten business days. At that point, the individual immediately withdraws the funds that were provisionally credited and abandons the account. Commenters believe that having more time to investigate errors involving new accounts would enable institutions to limit their losses and control this type of fraud.

Some commenters pointed to the Board's exception for new accounts under Regulation CC, which implements the Expedited Funds Availability Act. There, the regulation extends the time within which an institution is required to make funds available to a customer for new accounts. Regulation CC defines a new account as an account during the first 30 calendar days after the first deposit to the account is made.

The Board proposes to amend Regulation E, pursuant to its section 904(c) authority to provide for adjustments and exceptions in the regulation, to extend the time periods for resolving errors that involve new accounts. The proposal would allow 20 business days for resolving an error before an institution is required to provisionally credit, and an outside limit of 90 calendar days for resolving the claim. Comment is solicited on the proposed extensions of time, on the 30-day definition for new accounts, and on whether consumer protections relating to error resolution would be adversely affected.

Stored-Value Systems—Section 205.16

Over the past few years the financial services industry has shown increasing interest in providing ''stored-value cards'' (also referred to as prepaid or value-added cards) to consumers. These cards maintain, typically in a computer chip or magnetic stripe, a ''stored value'' of funds available to the consumer for access primarily at retail locations. The balance recorded on the card is debited at a merchant's POS terminal when the consumer makes a purchase.

Products that could be characterized broadly as ''stored-value'' cover a wide range. In their simplest form, stored-value systems are targeted at low-value uses (public transit, pay telephones, or photocopiers, for example); the amount that can be stored on the card is limited; and the card is disposed of once its value has been used up. These cards typically have a single type of use, and only one card issuer and one entity (likely to be the same as the issuer) that accepts the card as payment for goods or services.

More sophisticated systems can involve large transactions and permit consumers to store value in the hundreds of dollars on a card. The cards may have multiple uses, and there may be multiple card issuers and multiple card-accepting merchants. The cards may allow the consumer to obtain cash from ATMs instead of, or in addition to, making purchases. At least one system (now in the pilot stage) would enable the consumer to transfer stored-value balances to another person's card. Some systems would provide access to funds in foreign currencies. Cards tend to be reloadable, allowing the consumer to load value onto the card, for example, by withdrawing funds from an account at a depository institution through a teller, via an ATM, or, potentially, via a specially-equipped telephone. Some systems are designed as stand-alone products. In other cases, stored-value features may be added to debit or credit cards. Some of these more sophisticated stored-value systems are in operation as pilot programs or are under development by financial institutions or associations of institutions.

Colleges and universities are increasingly adding a stored-value feature to student identification cards, so that students can make purchases at campus locations such as cafeterias, bookstores, and vending machines. In some cases, the educational institution is both the issuer and the only card-accepting entity; in others, the card is also accepted by off-campus merchants. In addition to the stored-value features that some student card systems may have, these systems may operate with student asset accounts maintained by the university or by a depository institution on behalf of the university; these accounts are covered by Regulation E.

There are significant differences among proposed systems in the manner that they handle balances and transaction data. Some systems operate off-line, with transaction approval and data retention occurring only at the merchant level. The balance of available funds may be stored only on the card itself as transactions occur, and transactions neither require nor receive authorization from a central database. The data for a given transaction are kept at the merchant location, and are not forwarded to the central data facility. Only the aggregate amount for a batch of transactions is transmitted by the merchant (usually daily) so that the merchant can receive appropriate credit from a financial institution. In other off-line systems, the dollar value remaining on the card is stored both on the card and in a central data facility. Data for individual transactions are transmitted to the central data facility, typically at the end of each business day, and maintained there. Still other systems operate on-line, and transactions are authorized by communication between a terminal and a central database.

Status of Stored-Value Cards Under the EFTA

In 1994, the Board issued proposed revisions to Regulation E under the Board's Regulatory Planning and Review program. At that time, the Board generally requested comment on whether, and the extent to which, the regulation should apply to stored-value cards. The Board made clear that a transaction involving such cards is covered by Regulation E when the transaction accesses a consumer's account (such as when value is ''loaded'' onto the card from the consumer's deposit account via an ATM). Among the commenters that addressed this issue, many asked the Board to provide an exemption from Regulation E for stored-value cards and other stored-value products so as not to hinder their development or, alternatively, to modify the requirements applicable to them.

Legislation introduced and still pending in the Congress would exempt stored-value cards and other stored-value products from the EFTA and Regulation E. (H.R. 2520, 104th Cong., 1st Sess., § 443; S. 650, 104th Cong., 1st Sess., § 601 (1995).) The Board has suggested in congressional testimony that, while certain provisions of Regulation E should not apply, it would be appropriate to first examine basic issues raised by these new payments systems before legislating a blanket exemption from the EFTA. The Board mentioned terminal receipts and periodic statements as examples of requirements that should not apply, but suggested that consumers might benefit from receiving initial disclosures (such as disclosure of a consumer's risk for unauthorized transactions), a requirement that would likely entail minimal added expense for card issuers.

Coverage Issue

Coverage of stored-value systems under the EFTA and Regulation E depends on whether a stored-value transaction involves an EFT from a consumer's asset account. The act defines an ''electronic fund transfer'' as a transfer of funds initiated through electronic means (such as an electronic terminal or a computer) that results in a debit or credit to an account. Stored-value transactions involve a transfer of funds and are carried out through

electronic means—namely, terminals in retail locations that read the magnetic strip or chip embedded in the card.

The act defines ''account'' as a demand deposit, savings, or other ''asset account''—as described in regulations of the Board—that is established primarily for personal, family, or household purposes. Asset accounts are not limited to traditional checking and other deposit accounts. For example, the term includes a consumer's money market mutual fund or other securities account held by a broker-dealer. The Board also interprets the term ''account'' to include accounts established by government agencies under electronic benefit transfer (EBT) programs (59 FR 10678, March 7, 1994).

The legislative history of the act provides guidance as to the Board's regulatory authority under the EFTA for determining issues of coverage. Senate Banking Committee reports noted that the ''definitions of 'financial institution' and 'account' are deliberately broad so as to assure that all persons who offer equivalent EFT services involving any type of asset account are subject to the same standards and consumers owning such accounts are assured of uniform protection.'' (S. Rep. No. 915, 95th Cong., 2d Sess. 9 (1978).) This concept is captured in section 904(d) of the EFTA, which provides that if EFT services ''are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by this title are made applicable to such persons and services.''

Further, section 904(c) provides that the rules issued by the Board ''may contain such classifications, differentiations, or other provisions * * * as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, [or] to prevent circumvention or evasion thereof. * * *'' Senate Banking Committee reports on two separate bills, in discussing section 904(c), stated that ''since no one can foresee EFT developments in the future, regulations would keep pace with new services and assure that the act's basic protections continue to apply.'' (S. Rep. No. 915, 95th Cong., 2d Sess. 10 (1978).)

Types of Stored-Value Systems

In some stored-value systems, the balance of funds available is recorded on the card, but is also maintained at a central data facility at a bank or elsewhere. The systems operate off-line; there is no authorization of transactions by communication with a database at a financial institution or elsewhere. Transaction data are periodically transmitted to and maintained by a data facility. As in the case of the traditional consumer deposit account accessed by a debit card, in these stored-value card systems a consumer has the right to draw upon funds held by an institution. The maintenance of a record of value and of transactions for a given card apart from the card itself—so that transactions are traceable to the individual card—strongly parallels the functioning of a deposit account. The Board believes that the facts support a finding that such systems involve an account for purposes of the EFTA. These systems are referred to below as ''off-line *accountable* stored-value systems.''

In another type of stored-value system that also operates off-line, the record of value is maintained only on the card itself, and not in a central database. Transaction data for debits to the card's ''stored value'' are recorded on the card and captured at merchant terminals (where they are maintained for a limited period of time). Only the aggregate amount of transactions for a given period is transmitted by the merchant to a financial institution or other entity so that the merchant can receive credit. Given the lack of a centrally maintained, ongoing record of individual card balances or of transaction data in these systems, it is more difficult to conclude that an ''account'' exists for purposes of Regulation E. These systems will be referred to below as ''off-line *unaccountable* stored-value systems.''

A third type of stored-value system operates in a manner that is the functional equivalent of using a debit card to access a traditional deposit account. Notably, this type of system involves on-line access to a database for purposes of transaction authorization and data capture. That is, when the card is used at an ATM or a POS terminal, the transaction is authorized by means of on-line communication with the data facility, where the transaction data are stored (including information such as merchant identification, amount, date, and card number). The balance of funds available to the consumer is not recorded on the card itself, as in off-line stored-value systems; instead, the balance information is maintained in the data facility. Two distinctions between these systems and traditional deposit accounts accessed by debit card are (1) the value associated with a card is limited to the amount that the cardholder has chosen to make accessible through the card (as opposed to a deposit account accessed by debit card, where the entire account is accessible and funds available may fluctuate); and (2) the value associated with the card is accessible only through use of the card itself (in contrast to deposit accounts accessible by debit card, which typically may be accessed through various means, including check, withdrawal slip, ACH, or telephone bill payment).

The Board believes these systems—which are referred to as ''*on-line* stored-value systems''—meet the definition of a consumer asset account, and thus are covered by Regulation E, based on their on-line operation and extensive data capture and retention. As discussed below, however, the Board also believes it is appropriate to propose modifying the rules applicable to these systems.

Modifications and Exceptions for Various Types of Stored-Value Systems

The discussion that follows is organized to address separately each of the three types of systems described above—off-line *accountable* stored-value systems, off-line *unaccountable* stored-value systems, and *on-line* stored-value systems. The Board notes that, in all three types of systems, a transaction in which a stored-value card is used to access a consumer's deposit account, such as ''reloading'' the card by drawing on the consumer's checking account at an ATM, is covered by Regulation E and subject to all Regulation E requirements. The discussion below, therefore, relates to transactions in which value stored on a card is drawn down to obtain cash or purchase goods or services.

A. Off-line ''Accountable'' Stored-Value Systems

To the extent that off-line accountable stored-value systems are similar to systems involving debit cards and traditional deposit accounts, parallel consumer protections under Regulation E may be appropriate. If these stored-value systems were to be covered by all requirements of Regulation E, however, their further development could be seriously slowed or even halted in some cases. The following discussion presents an analysis of the major provisions of Regulation E, including the compliance burdens to financial institutions and the benefits to consumers associated with each.

1. *Restrictions on unsolicited issuance of access devices.* Generally Regulation E prohibits issuing a debit card, personal identification number (PIN), or other ''access device'' to a consumer (for example, by mail) unless the consumer has requested the device, orally or in writing. The purpose is to avoid making

consumers' accounts accessible by a means that consumers may not want and that may subject them to added risk, and to reduce the likelihood of unauthorized transactions from interception of cards. There is a qualified exception, for an access device that is not ''validated'' (meaning usable) at the time of issuance and that the issuer will validate only upon request by the consumer and verification of the consumer's identity.

As a practical matter, most providers of stored-value products will likely issue stored-value cards only to consumers who request them. Some may choose to promote their product by targeting populations and sending unsolicited cards with small amounts of ''free money'' on the card. Such a practice would not appear to harm consumers, since there would be no access to the consumer's own deposit-account funds.

Application of the unsolicited issuance rules to off-line accountable stored-value cards (aside from those that could access a consumer's existing deposit account, where the rules already apply) appears unnecessary for consumer protection. The Board proposes to exclude off-line accountable stored-value cards from the Regulation E rules on unsolicited issuance, but solicits specific comment on whether there is any practical need for the rules to apply.

2. *Initial disclosures.* Regulation E requires that at the time a financial institution and a consumer enter into an agreement for an EFT service, the institution must disclose certain terms and conditions. Items to be disclosed include a summary of the consumer's liability for unauthorized transfers, error-resolution procedures, any limits on the frequency or dollar amount of transfers, and any fees or charges for individual transfers or for the service.

Without the disclosure of terms and conditions, consumers might regard off-line accountable stored-value products as comparable to debit or credit cards, and thus might expect similar rights and remedies to apply. This could be particularly likely if the stored-value feature were made part of the consumer's debit or credit card, or if a consumer could use the card for transactions in the same locations where debit or credit card transactions take place.

Financial institutions that provide stored-value products may disclose certain information voluntarily; however, the disclosures that they opt to give could vary considerably. Requiring disclosures under Regulation E would ensure that uniform information is given to consumers. Such disclosures would be useful in alerting consumers to important features of these new services, such as transaction charges and risk of loss for lost or stolen cards.

Providing initial disclosures would probably not impose significant compliance costs. The disclosures can be given along with the card or other account-opening material in a preprinted format; they need not be individually customized for each account. Accordingly, the Board proposes to amend Regulation E to require initial disclosures for off-line accountable stored-value systems.

The proposed amendment would not include all the items generally required to be disclosed under Regulation E, but only those that appear relevant to off-line accountable stored-value systems. These include the disclosures of consumer liability for unauthorized transactions; the types of transfers available; transaction charges, if any; and error resolution procedures available to the consumer, if any. The disclosure of consumer liability for unauthorized transactions would expressly state that the consumer bears the full risk of loss (if such is the case), or would state any limits on liability that might be adopted by agreement with the consumer.

3. *Change-in-terms notices.* Under Regulation E, if terms or conditions required to be disclosed (such as limits on transfers, or transaction fees) were to change from those initially in effect, the institution must generally notify the consumer at least 21 days before the effective date of the change.

Whether change-in-terms notices are relevant for off-line accountable stored-value products depends on whether contract terms applicable to the card are likely to change. If there are increases in transaction charges, for instance, it is reasonable for consumers to be informed of the increase before it takes effect. (It appears that, currently at least, charges are not imposed on stored-value transactions.) But issuers of some of these products may not expect to have an ongoing relationship with the consumer, and thus may not typically obtain an address at the time the consumer purchases the card. In some cases, stored-value cards are freely transferrable; even if the card issuer has the address of the original cardholder, the issuer may not have the address of a subsequent holder. If the value stored on the card is likely to be used within a short period, it is also probable that new transaction charges would not be imposed or charges increased during its lifetime.

The Board believes that the potential costs of having to comply with the change-in-terms notice requirement outweighs the consumer protections that would be afforded by such notices and proposes to exempt off-line accountable stored-value systems from this requirement. The Board specifically solicits comment on whether there might be circumstances in which the notice requirement should apply.

4. *Transaction receipts and periodic statements.* For an EFT initiated at an ATM or a POS terminal, Regulation E requires that a transaction receipt be made available to a consumer. The receipt must show the date, amount, type of transaction and account, card or account number, terminal location, and name of any third party (such as a merchant) involved in the transfer. The regulation also requires periodic account statements, generally monthly, that detail largely the same information as on terminal receipts and provide other information such as opening and closing account balances and fees or charges assessed during the statement period. These receipts and periodic statements allow consumers to verify account activity and to detect unauthorized transactions and errors, so that they can be reported and resolved.

For off-line accountable stored-value products, documentation requirements could present compliance difficulties and considerable costs, while providing only limited benefits to consumers. In some cases, receipts may be given whether or not required by Regulation E. A retailer that accepts debit cards must provide receipts under Regulation E for debit card transactions, and therefore might provide receipts for stored-value card transactions as well. But if the card can be used at places not equipped with printers (such as vending machines), to require receipts would necessitate a retrofitting of terminals and would impose ongoing compliance costs. Moreover, for small or commonly-made transactions, many consumers may not want or need a receipt.

The requirement for periodic statements too may present compliance problems for some off-line accountable stored-value systems. In some of these systems, transaction data are collected in centralized data facilities, not by the card-issuing financial institutions. Given that lack of data, providing periodic statements would be costly and could impede the development of stored-value products. Moreover, as in the case of receipts, for small or commonly-made transactions on these cards, consumers may not need or want documentation on a periodic statement.

The Board believes that the consumer benefits of terminal receipts and periodic statements—in the context of stored-value transactions—may be somewhat limited and be outweighed by the compliance costs. Consequently, the Board proposes to exempt off-line accountable stored-value systems from these requirements.

5. *Limitations on consumer liability for unauthorized transfers.* Regulation E generally limits a consumer's losses for unauthorized EFT debits to a maximum of $50. If the consumer fails to notify the financial institution of the loss or theft of a debit card or other ''access device'' within two business days of learning of the loss or theft, the consumer's potential liability rises to $500. If the consumer fails to notify the institution of unauthorized transfers appearing on a periodic statement within 60 days after the institution sent the statement, the consumer's liability for any further unauthorized transfers is unlimited.

Absent Regulation E's limits on liability, stored-value cardholders bear the entire risk unless the issuer opts to assume some part of it (or offers insurance to consumers against losses). If the regulatory liability limits applied, the risk would be imposed on the issuer, because these systems operate off-line and will not typically require PIN-protection or any other means of identifying the consumer. Without PIN-protection there is an almost certain likelihood that lost or stolen cards could and would be used.

Some off-line accountable systems could conceivably store negative files at merchant POS terminals for blocking unauthorized transactions. Thus, they might be able to prevent unauthorized use, assuming a consumer promptly reported loss or theft of the card. But many systems do not have this capability. In addition, even for those that could, the cost of transmitting negative files to terminals frequently enough to effectively block unauthorized transactions could be prohibitive.

Arguably, the lack of PIN-protection in these systems may lead consumers to be more careful in handling the cards. Consumers might act more prudently if initial disclosures were provided, explaining the risk. In addition, if loss does occur, the amount stored on the card may be substantially less than would typically be at risk with the loss or theft of a traditional debit card, where the deposit account may serve several purposes (as a repository for savings or for paying bills, for instance), and thus may tend to have a larger account balance.

In light of these factors, the Board proposes to exempt off-line accountable stored-value cards from the liability provisions. Under the proposal, the initial disclosures given to consumers would summarize the full extent of their risk.

6. *Error resolution procedures.* Regulation E requires financial institutions to investigate and resolve claims of error made by consumers within specified times—generally, no later than ten business days after receiving the consumer's notice of error; or 45 days after the notice if the institution provisionally credits the consumer's account, in the amount of the claimed error, within ten business days. A summary of these procedures is given to consumers with the initial disclosures, and consumers also receive an annual notice as a reminder. ''Error'' includes an unauthorized electronic debit, a transaction in an incorrect amount, and failure to provide required identification of transactions.

Prompt resolution of errors is an important consumer protection, but the detailed procedures prescribed by the act and regulation pose a potentially difficult compliance problem for off-line accountable stored-value systems. Investigation and resolution of errors in accordance with Regulation E would be complicated and costly.

After weighing the potential costs against the consumer's need for these protections, the Board proposes to exempt off-line accountable stored-value systems from application of the error resolution procedures and also from the related requirement to mail an annual notice describing them. Initial disclosures would inform consumers that they bear the full risk of loss in case of lost or stolen cards, if that is the case, and would summarize any error resolution procedures available.

The Board requests specific comment on whether, alternatively, some minimal error resolution procedures should be required. For example, an error within the financial institution's control, such as one resulting from a malfunctioning card, may not be unduly difficult to correct. Commenters are also asked to address whether, if no error resolution requirements are imposed, the initial disclosures should include a statement that there are no error resolution procedures available to the consumer.

7. *De minimis exclusion.* In addition to the modifications presented above, the Board proposes a *de minimis* exclusion for off-line accountable stored-value systems based on the maximum balance that can be stored on the card or other device. For a stored-value product limited to a relatively small amount of funds, the amount at risk would be sufficiently minimal that application of even modified Regulation E protections appears unnecessary. This provision would apply to off-line accountable devices that are limited to a maximum of $100 at a given time; such devices would be completely exempt from Regulation E.

B. Off-line ''Unaccountable'' Stored-Value Systems

As described above, off-line *unaccountable* stored-value systems are those in which the card balances and transaction data are maintained only on the card itself. Transaction data may be maintained for a limited time at merchant terminals, but are not captured or maintained by the issuer or a central database. Photocopier cards and farecards for the mass transit systems in some cities are examples of such cards. Under the proposed amendments, off-line unaccountable stored-value systems would not be covered by Regulation E. The proposed amendments do not provide an explicit exemption; instead, the definitions of systems that would be covered under the proposal do not capture off-line unaccountable systems.

Most off-line unaccountable systems currently involve small dollar amounts and a single use, such as paying transit fares. Other proposed systems, however, could involve substantially larger transaction amounts and maximum card values, and could have multiple uses. These features may make such a system more comparable to traditional debit cards than the small-value cards, in terms of potential uses by consumers. This being the case, the Board could consider whether to exercise its authority under the EFTA (to provide uniform protections for all equivalent consumer EFT services) by proposing to bring off-line unaccountable systems within the coverage of the act. If the requirements applicable to off-line *unaccountable* stored-value systems were the same as those that the Board is proposing with regard to off-line *accountable* systems—initial disclosures, with an exemption for card values of $100 or less—compliance would not be particularly costly or difficult. Since the concern about consumer protection would exist primarily for systems that store substantial amounts on a card, any proposal could be framed in terms of covering only those cards with a maximum value of more than a certain amount.

Although some off-line stored-value systems that permit larger maximum card values may fall within the

unaccountable category, it is not clear that such systems would operate in this manner at all times and with respect to all transactions. As systems are further developed, they could evolve into systems that capture and maintain some transactions in a location other than on cards and at merchant terminals. If so, the Board believes such systems could be characterized as off-line *accountable*, rather than off-line *unaccountable*, systems, and thus would be subject to the same set of rules.

There is some risk that the application of Regulation E to off-line accountable stored-value systems, but not to off-line unaccountable systems, could act as an incentive for developers of stored-value systems to structure systems as unaccountable in order to avoid being covered under the regulation. It is not desirable to have system design be guided by regulatory rather than economic considerations. However, the requirements applicable to off-line accountable systems—initial disclosures—are so minimal when compared to other factors that could affect system design (for example, the transaction data collected in accountable systems may be useful for various purposes including fraud detection and marketing) that it seems unlikely the potential for coverage by Regulation E would have much impact.

On balance, the Board believes that it is preferable to state that off-line unaccountable cards are not covered by Regulation E. The Board solicits specific comment, however, on whether the distinction between off-line accountable and off-line unaccountable systems (especially high-value ones) reaches the right result, in light of the considerations discussed above, and accordingly on whether the Board should consider coverage of off-line unaccountable systems, under very limited requirements such as initial disclosures. The Board also solicits comment on whether, if Regulation E coverage were extended to off-line unaccountable systems, it would be preferable in defining the scope of coverage to focus on the value capable of being stored, on whether the system has multiple uses, or on both of these features.

C. ''On-line'' Stored-Value Systems

The third type of stored-value system in some respects resembles off-line accountable stored-value systems, and in others resembles traditional deposit accounts accessed by debit cards. As in off-line accountable stored-value systems, data about individual card balances and transactions (including merchant identification, amount, date, and card number) are collected and maintained at centralized locations; and the value associated with a card is limited to an amount that the consumer chooses, not a fluctuating balance in the consumer's checking or savings account.

As in traditional deposit accounts accessed by debit cards, these stored-value systems operate on-line. When a card is used at an ATM or a POS terminal, the transaction is authorized by means of on-line communication with a financial institution or central data facility. The balance of funds available to the consumer is not recorded on the card itself, as in off-line stored-value systems; instead, the balance information is maintained only at the data facility. In this respect too, an on-line stored-value system is the functional equivalent of a deposit account accessed by a debit card, and thus can be viewed as representing a consumer asset account for Regulation E purposes, subject to coverage by the regulation.

In general, compliance with Regulation E requirements does not appear to be a significant problem. For example, because these systems operate on-line, they are designed to block unauthorized access, and compliance with the limitations on consumer liability for unauthorized transactions should not be more burdensome than for a traditional deposit account accessed by debit card. However, a few exceptions from particular provisions of Regulation E may be appropriate, as presented below.

1. Exceptions for periodic statements and annual error resolution notices. Regulation E requires statements that detail account activity. In some on-line stored-value systems, cards are not reloadable, but instead are meant to be discarded after the funds associated with the card are drawn down to zero. For example, a consumer may purchase a card for use on a trip of a few weeks, and draw down all value tied to the card within that time. In such cases, the potentially short-term nature of the product and the lack of an ongoing account relationship may make periodic statements unnecessary.

As an alternative to the periodic statement requirement, an issuer could provide account balances and account histories upon request, for the preceding one or two months. This treatment would parallel the exception adopted by the Board under the rules applicable to EBT systems. (See 59 FR 10678, March 7, 1994, codified at 12 CFR § 205.15.) This alternative documentation would not appear to be unduly burdensome, because cardholders who have used up the value associated with the card will presumably not request an account history. For similar reasons, the Board believes that it would be appropriate to propose exempting these systems from the requirement to send annual notices summarizing error resolution procedures. Again, if the card is used and discarded within a year, this annual notice would serve little purpose.

It may also be appropriate to propose an exemption from the periodic statement requirement for on-line stored-value systems involving cards that are reloadable. Since the stored value is accessible only through use of the card itself (not, for example, by check), then periodic statements may be unnecessary. If a consumer receives a receipt for each transaction, periodic statements may not be needed even if the relationship between the consumer and the issuer is ongoing. If the consumer needed to check on recent account transactions, the consumer could request the issuer to provide an account history.

There may be less reason to exempt reloadable on-line cards from the annual error resolution notice requirement. If a card issuer has an ongoing relationship with the consumer, sending the annual notice does not seem burdensome. However, extending the exemption to both requirements—periodic statements and the annual error notice—regardless of whether a card is reloadable, would avoid making the proposed rule overly complex.

Accordingly, the Board proposes to provide that on-line stored-value systems are not subject to (1) the periodic statement requirement, but may instead provide the account balance and transaction history to the cardholder upon request; or (2) the requirement for an annual reminder of error resolution procedures. The Board solicits comment on whether the proposed modifications should be different for on-line stored-value cards that are reloadable.

2. *Change-in-terms notices*. Under Regulation E, if terms or conditions required to be disclosed (such as limits on transfers, or transaction fees) were to change from those initially in effect, the institution must generally notify the consumer at least 21 days before the effective date of the change.

For the reasons discussed in connection with off-line accountable stored-value products, the Board believes that the change-in-terms notice requirements need not apply to on-line accountable stored-value products and, accordingly, proposes to exempt them from this requirement. Specific comment is solicited on whether there

might be circumstances in which the notice requirement should apply.

3. *De minimis exclusion*. Some on-line stored-value systems may make relatively small amounts accessible through use of the card. For example, a number of prepaid telephone card systems apparently operate on-line. As in the case of off-line accountable stored-value systems, if the amount associated with a consumer's card is limited to a relatively small amount, application of Regulation E protections such as the limitation on the consumer's liability for unauthorized transactions seems less important. And if transaction amounts are on average quite small (as is likely to be true if the maximum amount on a card is low), the cost impact of Regulation E compliance would be proportionately greater than for systems involving large transactions. For these reasons, the Board proposes to exempt on-line stored-value systems completely from coverage under Regulation E if the maximum amount that can be associated with a card is limited to $100.

Computer Network Payment Products

Parallel to the development of stored-value card products, there has been an increasing interest in other products that might adopt stored-value concepts. Systems are being proposed, for example, for making payments over computer networks, such as the Internet. In these cases, a balance of funds could be accessed via a consumer's personal computer, and transferred or used in purchases via a computer network. As in the case of card-based products, there is a range of network payment products in operation or under development.

Some of these network payment products involve on-line access to a consumer account in a financial institution, and thus are fully subject to Regulation E. Other products may involve various procedures for authorizing and carrying out transactions, and may or may not be subject to the regulation. The Board requests specific comment on the extent to which the Board should consider proposing that Regulation E apply to various types of network payment products. In general, the Board believes that the same principles should apply to network payment products as to stored-value card products in analyzing coverage under Regulation E. For example, the Board might consider applying a *de minimis* exemption to network payment products in the same way the Board is proposing for stored-value card products.

Summary of Proposed Amendments for Stored-Value Systems

To summarize, with respect to stored-value systems, the Board proposes to amend Regulation E to:

(1) Exempt completely from Regulation E *off-line unaccountable* stored-value systems;

(2) Exempt completely from Regulation E both *off-line accountable* stored-value systems and *on-line* stored-value systems if the maximum amount that can be stored on or associated with a card at any given time is $100 or less;

(3) Establish modified requirements for coverage of *off-line accountable* stored-value systems, applying only the requirements relating to initial disclosures; and

(4) Modify the requirements applicable to *on-line* stored-value systems, under which such systems would not be subject to (a) the periodic statement requirement, if an account balance and a summary of recent transactions is provided upon request; (b) the annual error resolution notice requirement; or (c) change-in-terms notices.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–0919. The Board requests that, when possible, comments be prepared using a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on computer diskettes, using either the 3.5'' or 5.25'' size, in any DOS-compatible format. Comments on computer diskettes must be accompanied by a paper version.

IV. Regulatory Flexibility Analysis

In accordance with section 603 of the Regulatory Flexibility Act and section 904(a)(2) of the EFTA, the Board's Division of Research and Statistics has prepared an economic impact statement on the proposed regulation. A copy of the analysis may be requested from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, or by telephone at (202) 452–3245.

V. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR Part 205. This information would be mandatory (15 USC 1693 *et seq.*) to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services affecting consumers using certain stored-value cards or home-banking services and consumers exercising their error resolution rights under Regulation E. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Regulation E applies to all types of financial institutions, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the Regulation E paperwork burden on their respective constituencies.

The Federal Reserve has no data on which to estimate the burden the proposed requirements would impose on state member banks. With regard to stored-value cards, there are as yet no such systems in full operation in the United States, and only a few stored-value card pilot projects. It is difficult to predict how many state member banks will choose to offer these products and how many cards will be issued to consumers. However, because the proposed amendments include a number of exemptions for stored-value products from Regulation E requirements, the proposed amendments could have the effect of reducing paperwork burden, compared to what the burden would be without the amendments in place.

The proposed amendments on the use of electronic communication in home banking would likely reduce the paperwork burden of financial institutions. Institutions offering home banking programs would be able to use electronic communication to provide disclosures, periodic statements, and other information required by Regulation E rather than having to print and mail the information in paper form.

The proposed amendment relating to error resolution for new accounts may reduce paperwork burden, because institutions may be able to complete

error investigations within the longer time allowed under the proposal (20 business days), rather than have to provisionally credit consumer's accounts within ten business days and provide related notices to the consumer, as is required currently under Regulation E.

The Federal Reserve requests comments from issuers, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this regulation is effective. Comments are invited on: (a) the cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation E. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

Pursuant to the authority granted in sections 904 (a), (c), and (d) of the Electronic Fund Transfer Act, 15 U.S.C. 1693b (a), (c), and (d), and for the reasons set forth in the preamble, the Board proposes to amend 12 CFR Part 205 as set forth below:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for Part 205 would be revised to read as follows:

Authority: 15 U.S.C. 1693–1693r.

2. Section 205.4 would be amended by adding paragraph (c) to read as follows:

§ 205.4 General disclosure requirements; jointly offered services.

* * * * *

fl (c) *Electronic communication.* (1) *Definition.* For purposes of this part, the term *electronic communication* means an electronically transmitted text message between a consumer and a financial institution; in the case of a communication to the consumer, the message shall allow text to be displayed on equipment in the consumer's possession such as a modem-equipped personal computer or screen telephone.

(2) *Communication between financial institution and consumer.* (i) By agreement between a financial institution and a consumer, either may send to the other by electronic communication any information required by this part to be provided orally or in writing. Information required by this part to be in writing and sent to a consumer by electronic communication shall be clear and readily understandable and shall be provided in a manner that would allow a consumer to retain the information.

(ii) If this part specifies that information be provided to the consumer in writing, the consumer may request a paper copy of the information up to one year after receiving the electronic communication. fi

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3. Section 205.11 would be amended by revising paragraph (c)(3), to read as follows:

§ 205.11 Procedures for resolving errors.

* * * * *

(c) *Time limits and extent of investigation.* * * *

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(3) *Extension of time periods.* The applicable time periods in this paragraph (c)(3) are 20 business days in place of 10 business days, and 90 days in place of 45 days, if a notice of error involves an electronic fund transfer that:

(i) Was not initiated within a state; [or]

(ii) Resulted from a point-of-sale debit card transaction; fl or

(iii) Involves a new account during the first 30 calendar days after the first deposit to the account is made. fi

* * * * *

4. A new section 205.16 would be added, to read as follows:

fl § 205.16 Certain stored-value services.

(a) *General.* The rules in this section apply to stored-value accounts as defined in paragraph (b) of this section.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Off-line stored-value account* means a balance of funds recorded on a card that a consumer may use at electronic terminals to obtain cash or purchase goods or services, where the record of such balance is also maintained on a separate database, apart from the card, and where on-line authorization of transactions is not required to access the funds. Off-line stored-value accounts are subject to the requirements in paragraph (d) of this section.

(2) *On-line stored-value account* means a balance of funds that may be accessed only through the use of a card that a consumer may use at electronic terminals to obtain cash or purchase goods or services, where the record of such balance is maintained on a separate database, and not on the card, and where on-line authorization of transactions is required to access the funds. On-line stored-value accounts are subject to the requirements in paragraph (e) of this section.

(3) *Financial institution* includes any person that, directly or indirectly, holds an on-line or off-line stored-value account, or that issues a card to a consumer for use in obtaining cash or purchasing goods or services by accessing such an account.

(c) *$100 exemption.* A stored-value account, as defined in paragraphs (b) (1) and (2) of this section, is exempt from the requirements of this part if the maximum amount that may be in the account at any given time is $100 or less.

(d) *Modified requirements for off-line stored-value accounts; initial disclosures.* Stored-value accounts as defined in paragraph (b)(1) of this section are subject only to the following initial disclosure requirements of this part, as applicable:

(1) *Liability of consumer.* A summary of the consumer's liability, under state or other applicable law or agreement, for unauthorized transfers.

(2) *Types of transfers; limitations.* The type of electronic fund transfers that the consumer may make and any limitations on the frequency and the dollar amount of transfers.

(3) *Fees.* Any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers.

(4) *Error resolution.* A summary of the financial institution's procedures for resolving errors concerning electronic fund transfers, including the telephone number and address of the person or office to be notified in the event of an error.

(e) *Modified requirements for on-line stored-value accounts.* Stored-value accounts as defined in paragraph (b)(2) of this section are subject to the requirements of this part, with the following modifications:

(1) *Exceptions; change-in-terms notice; error resolution notice.* The account is exempt from the requirements of § 205.8.

(2) *Alternative to periodic statement.* A financial institution need not furnish the periodic statement required by § 205.9(b) if the financial institution makes available to the consumer:

(i) The consumer's account balance, through a readily available telephone line and at a terminal; and

(ii) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date of a request by the consumer.

(3) *Additional modifications.* A financial institution that does not furnish periodic statements, in accordance with paragraph (e)(2) of this section, shall comply with the following special rules:

(i) *Initial disclosures.* The financial institution shall modify the disclosures under § 205.7 by disclosing:

(A) *Account balance.* The means by which the consumer may obtain information concerning the account balance, including a telephone number. This disclosure may be made by providing a notice substantially similar to the notice in paragraph A–6 of Appendix A of this part.

(B) *Written account history.* A summary of the consumer's right to receive a written account history upon request, in place of the periodic-statement disclosure required by section 205.7(b)(6), and the telephone number to call to request an account history. This disclosure may be made by providing a notice substantially similar to the notice in paragraph A–6 of Appendix A of this part.

(C) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph A–6 of Appendix A of this part.

(ii) *Limitations on liability.* For purposes of § 205.6(b)(3), regarding a 60-day period for reporting any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with the transmittal of a written account history provided to the consumer under paragraph (e)(2) of this section.

(iii) *Error resolution.* The financial institution shall comply with the requirements of section 205.11 in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history, under paragraph (e)(2) of this section, in which the error is first reflected. fi

5. Appendix A would be amended by adding an entry to the table of contents at the beginning of the appendix and by adding a new paragraph A–6, to read as follows:

Appendix A to Part 205—Model Disclosure Clauses and Forms

Table of Contents

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fl A–6—Model Forms for On-Line Stored-Value Card Services (§ 205.16(e)(3)) fi

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fl A–6—Model Forms for On-Line Stored-Value Card Services (§ 205.16(e)(3))

(1) *Disclosure of information about obtaining account balances and account histories in on-line stored-value card service* (§ 205.16(e)(3)(i) (A) and (B))

(2) *Disclosure of error resolution procedures in on-line stored-value card service* (§ 205.16(e)(3)(i)(C))

You may find out about the balance remaining on your card by calling [telephone number]. You can also learn your remaining balance [by making a balance inquiry at an ATM] [on the receipt you get when withdrawing cash from an ATM] [on the receipt you get when making a purchase].

You also have the right to get a written summary of transactions made with your card for the 60 days preceding your request by calling [telephone number].

In Case of Errors of Questions About Your Card Transactions Telephone us at [telephone number] or Write us at [address] as soon as you can, if you think an error has occurred involving a transaction made with your card. We must hear from you no later than 60 days after you receive a written summary of transactions (which you can request from us), showing the error. You will need to tell us:

- Your name and card number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days. We will generally complete our investigation within 10 business days and correct any error promptly. In some cases, an investigation may take longer, but you will have the use of the funds in question after the 10 business days. However, if we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit the funds in question back to the card during the investigation.

If we decide that there was no error, we will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

If you need more information about our error resolution procedures, call us at [telephone number] [the telephone number shown above]. fi

By order of the Board of Governors of the Federal Reserve System, April 19, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–10181 Filed 5–1–96; 8:45 a.m.]

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May 2, 1996

Part III

Department of Housing and Urban Development

24 CFR Parts 941 and 970

Public/Private Partnerships for the Mixed-Finance Development of Public Housing Units; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 941 and 970

[Docket No. FR–3919–I–01]

RIN 2577–AB54

Office of the Assistant Secretary for Public and Indian Housing; Public/Private Partnerships for the Mixed-Finance Development of Public Housing Units

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule adds a new subpart F to the public housing development program at 24 CFR part 941, which authorizes a public housing authority to use a combination of private financing and public housing development funds to develop public housing units. HUD is issuing this interim rule as a result of its determination that public housing development funds may be provided to a PHA, even though the PHA will provide those funds to a non-PHA entity so that it can develop and own the resulting public housing units. This interim rule also sets forth the requirements that must be met by the owner entity before HUD will approve a proposal to use mixed-finance strategies under subpart F, and sets forth continuing requirements that apply throughout the development and operation of the public housing units by the owner entity. In addition, this interim rule clarifies that replacement public housing units for public housing units that have been demolished may be built on the original public housing site, or in the same neighborhood, if the number of such replacement units is significantly fewer than the number of units demolished.

DATES: *Effective date:* July 1, 1996, except for §§ 941.606 and 941.610, which contain information collection requirements, and are not effective until approved by the Office of Management and Budget. When approval is obtained, HUD will publish notice of the effective date. See the Paperwork Reduction Act Statement below under the heading, ''V. OTHER MATTERS.''

Comments due date: Comments must be submitted by July 1, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address. Facsimile (FAX) comments are not acceptable. A copy of any comment concerning the information collections contained in the interim rule also should be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for HUD, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Bill Flood, Office of Capital Improvements, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone number (voice): (202) 708–1640, ext. 4185; (TTY): (202) 708–9300 or 1–800–877–8339. (Except for the ''800'' telephone number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule adds a new subpart F to the public housing development program at 24 CFR part 941, which authorizes a PHA to use a combination of private financing and public housing development funds to develop public housing units. HUD is issuing this interim rule as a result of its determination that a PHA may receive public housing development funds under section 5 of the United States Housing Act of 1937, notwithstanding the fact that the PHA will provide those funds to a non-PHA entity to develop and own the resulting public housing units.

Under this subpart, a PHA and its partner(s) may structure transactions that make use of private and/or public sources of financing (including public housing development funds) for the purpose of developing public housing units. The resulting development(s) (referred to as a ''mixed-finance'' development(s) for purposes of this interim rule), may consist of 100 percent public housing units, or may consist of both public housing and non-public housing units. Through Fiscal Year 1997, transactions approved under this subpart will not involve more than $94 million in mortgage financing insured by the Federal Housing Administration. Additionally, at the end of the 1997 fiscal year, HUD will undertake an analysis to determine the costs and benefits of the transactions approved under this subpart and will reconsider the policy of using FHA mortgage insurance in connection with this development method.

Many potential scenarios for ownership and transaction structures exist, ranging from the PHA or its partner(s) holding no ownership interest, a partial ownership interest, or l00 percent ownership interest in the public housing units that are to be developed. PHAs and/or their partner(s) may choose to enter into a partnership or other contractual arrangement with a third-party entity for the mixed-finance development and/or ownership of public housing units. If this entity has primary responsibility along with the PHA for the development of these units, it is referred to for purposes of this interim rule as the PHA's partner. The entity that ultimately owns the public housing units, whether the PHA retains an ownership interest or not, is referred to as the ''owner entity.''

Subpart F also sets forth the requirements that must be met by the PHA before HUD can approve a proposal involving mixed-finance strategies, and sets forth continuing requirements that apply throughout the development and operation of the public housing units by the owner entity. HUD notes that, in developments where the proposed public housing units are not specifically designated units, the development requirements set forth in subpart F (including Davis-Bacon and procurement requirements) are applicable to all units that may, at any time, be used as the public housing units. Federal requirements applicable to the operation of public housing units must also be satisfied with respect to the percentage of public housing units approved by HUD for construction within the development.

HUD believes that the establishment of this new subpart will expand greatly opportunities for private sector investment in the development of public housing units. The Department believes further that the increased development of such public housing units will aid local efforts in providing affordable housing for low income families. HUD expects that the increased flexibility of using public housing funds for mixed-finance developments will expand considerably the opportunities for low income families to become more economically and socially integrated within the broader community. HUD specifically requests comments from the public on how the interim rule can provide for further expansion of such opportunities.

Furthermore, in HUD's continuing efforts to devolve responsibility and avoid micromanagement, it has

attempted to establish in this interim rule the minimal process necessary to ensure that public housing development funds are used for program purposes and not subject to waste, fraud or abuse. The Department specifically requests comments from the public as to how the process may be further streamlined, particularly in light of any existing safe harbors that may permit an abbreviated Departmental review. HUD will consider all comments that it receives in developing the final rule implementing subpart F.

II. Implementation

The Department's primary consideration in approving proposals under this new subpart is to ensure the financial viability of the proposed mixed-finance development, since HUD wants to ensure that the public housing units remain available to eligible families for the maximum term of any low-income use restrictions. HUD also wants to ensure that the Federal investment of funds in the development is protected.

The mixed-finance strategies established in subpart F are independent of the normal requirements governing public housing development, as set forth in existing subparts A through E of part 941. To the extent that certain requirements contained in subparts A through E also apply to mixed-finance development, HUD has included in subpart F explicit cross-references to such requirements.

The Department intends to model procedures and requirements under subpart F as closely as possible to the Urban Development Action Grant (UDAG) program. Just as UDAG provided grant assistance to local governments for use with other sources of public and private funds (frequently for implementation through partnerships with other entities), so subpart F is intended to allow PHAs to combine their funds with other sources and enter into partnerships for the development and/or ownership of the funded property. Of course, the public housing funding sources that may be used in a mixed-finance development strategy operate under statutory provisions different from those of the UDAG program. The requirements applicable to the use of public housing development funds are set forth in this subpart.

The Department notes that currently it is in the process of overhauling the public housing development program set forth in 24 CFR subparts A through E, and expects to publish shortly an interim rule that will effect major changes to these subparts. HUD intends to include in that interim rulemaking a republication of the contents of today's rulemaking. This will enable HUD to correct in subpart F any cross-references to provisions that may be revised and reorganized in subparts A through E of part 941.

A PHA may decide to pursue a mixed-finance development strategy under subpart F using either public housing development funds, or modernization funds reserved by HUD for the PHA prior to September 30, 1995 and approved by HUD for conversion to development uses. A PHA may also propose mixed-finance strategies to HUD under funding rounds for any appropriate programs in the future, which may be implemented after HUD establishes the necessary regulatory framework.

A PHA that wants to pursue a mixed-finance strategy is encouraged to identify as soon as possible the entity(ies) with which it would like to partner. The PHA must select its partner(s) pursuant to the requirements set forth in § 941.602(d), in such a manner that it can certify as to competitive selection pursuant to § 941.606(n)(1)(ii). Since the roles in development, ownership and management of the proposed public housing may substantially affect the type of partner the PHA seeks, PHAs are encouraged to thoroughly consider desired arrangements before soliciting partner(s).

The Department is authorizing the use of mixed-finance strategies under this subpart because it allows PHAs to incorporate other financing sources into the redevelopment of public housing communities. The PHA and its partner(s), as the primary entities responsible for developing the proposal, will be responsible for raising non-public housing capital for the mixed-finance development, as well as structuring a transaction and ownership structure that accommodates the requirements of the other financing sources.

For purposes of this interim rule, the term ''participating party'' refers to any public or private individual or organization that: (a) provides financial or other resources to carry out the proposal, or specified activities contained in the proposal; or (b) otherwise participates in the development and/or operation of the public housing units and will receive HUD funds with respect to such participation.

To be eligible to use mixed-finance strategies under this subpart, a PHA must prepare its proposal pursuant to § 941.606, and make a submission directly to Headquarters. Following a technical screening of the proposal, HUD will carry out a substantive review of the proposal. This review includes a preliminary assessment of the financing and other documentation so that HUD can determine, to its own satisfaction, whether the mixed-finance development is viable and is structured so as to adequately protect the Federal investment of funds in the development. In addition, HUD will determine whether the proposal complies with all program requirements set forth in subpart F, and will undertake various statutory, regulatory and executive order reviews.

If Headquarters determines that the proposal can be approved, it will notify the PHA accordingly and send to the PHA for execution an ACC amendment and/or grant agreement. If the PHA has already executed a front-end ACC amendment, HUD will send to the PHA another ACC amendment for the mixed-finance development and/or a grant agreement. After the PHA executes these document(s), it must return them to HUD for execution.

Before public housing development funds may be disbursed to the PHA, it must first submit to HUD evidentiary materials and other forms of documentation, as described in §§ 941.610 and 941.612, and execute the ACC amendment or special mixed-finance amendment to the ACC (and/or grant agreement). Thereafter, the PHA is responsible for ensuring that the mixed-finance development is carried out in accordance with its approved proposal. Requirements governing HUD's monitoring and review of the development, and the sanctions that HUD may impose for non-performance, will be set forth in the special mixed-finance amendment to the ACC (and/or grant agreement).

III. Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR § 10.1.)

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that prior public procedure is contrary to the public interest. This is

because 24 CFR part 941, subpart F authorizes a new and creative method of financing the development of public housing, which will enable localities to respond to critical shortages in their low income housing stock. The development of public housing units within a development will also promote the economic and social integration of low income families within the broader community, thereby providing greater opportunities for the upward mobility of such families. In addition, mixed-finance development will promote public/private development of public housing units, thereby facilitating the demolition of some of the nation's most severely distressed, obsolete high-rise public housing complexes. The Department invites public comment on the interim rule. The comments received within the 60-day comment period will be considered during development of a final rule that will supersede this interim rule.

IV. Description of Provisions

Following is a section-by-section analysis of each of the provisions included in this interim rulemaking:

Section 941.202—(''Site and Neighborhood Standards'')

This rulemaking adds a new paragraph (c)(3) to HUD's existing site and neighborhood standards at § 941.202. This provision is applicable only to mixed-finance proposals submitted under 24 CFR part 941, subpart F. The purpose of this provision is to clarify HUD's existing authority to approve the building of replacement public housing units for public housing units that have been demolished on either the original public housing site, or in the same neighborhood, if the number of such replacement public housing units is significantly fewer than the number of public housing units demolished. This authority was affirmed by the recent passage of section 1002(a)(9) of Pub.L. 104–19 (approved July 27, 1995) which explicitly authorizes HUD to approve the building of replacement public housing units under such circumstances.

The Department notes that, in construing the phrase, ''significantly fewer units,'' it has chosen not to establish a quantitative standard. Instead, HUD will assess, on a case-by-case basis, the facts involved in each request. In addition, it will take into account the evolving interpretation of the phrase, ''significantly fewer units'' as it develops in the course of HUD's separate rulemaking on site and neighborhood standards.

Section 941.600—(''Purpose'')

This section indicates that the purpose of 24 CFR part 941, subpart F, is to authorize PHAs to use a combination of private financing and public housing development funds. In addition, this provision indicates that subpart F is intended to authorize a variety of ownership and transaction structures, in which the PHA or its partner(s) may hold no ownership interest, a partial ownership interest, or 100 percent ownership interest. In addition, this section sets forth continuing requirements that apply throughout the development and operation of the public housing units in the development.

Section 941.600(b) provides that public housing units built within a development using mixed-finance strategies must be comparable to non-public housing units with respect to size, location, external appearance, and distribution within the development.

Section 941.602—(''Applicability of Other Requirements'')

Paragraph (a) identifies the relationship between subpart F and the remaining subparts in 24 CFR part 941. Specifically, this paragraph states that the requirements contained in subpart F apply to the development and operation of public housing units in a development that is owned, or that will be owned, by a public/private partnership using mixed-finance strategies. If the PHA and/or owner entity does not want to designate specific units in a development as public housing units, the development of all units that may at any time be considered public housing units must be carried out in accordance with Federal requirements (including Davis-Bacon and procurement requirements, as set forth in this subpart).

This paragraph also provides that other requirements related to public housing development, as set forth in subparts A through E, do not apply to subpart F, except as may be required by HUD. Included in this paragraph is a listing of specific provisions contained in subparts A through E that are applicable to mixed-finance development under subpart F, which include: various definitions contained in § 941.103; PHA eligibility (§ 941.201); site and neighborhood standards (§ 941.202); design and construction standards (§ 941.203); cost guidelines (§ 941.204); PHA contracts (§ 941.205); eligible properties (§ 941.206); relocation and acquisition (§ 941.207); other Federal requirements (§ 941.208); audit (§ 941.209); maximum development cost (§ 941.406); construction requirements (§ 941.503); acceptance of work and contract settlement (§ 941.504); and completion of development (§ 941.505). (See § 941.602(a) for limitations on applicability.)

Paragraph (b) provides that if HUD determines there is a conflict between a requirement contained in subpart F and a requirement contained in any other subpart of part 941, the requirements set forth in subpart F shall apply, unless HUD otherwise determines in writing.

Paragraph (c) of this section states that all references in subparts A through F of part 941 to the need for ''HUD'' or ''field office'' action or approval shall be construed to mean that ''HUD Headquarters'' shall take such action or provide such approval, unless the field office is authorized in writing by Headquarters to carry out a specific function under this part. This is because HUD intends that its Headquarters office, located in Washington, DC, will be responsible primarily for taking necessary actions, and providing approvals with respect to proposals under subpart F.

Paragraph (d) provides that the administrative requirements under 24 CFR part 85, which are applicable to grants to PHAs and certain subgrantees, are also applicable to grantees and subgrantees that receive funds under subpart F. However, this paragraph also sets forth two provisos with respect to the applicability of part 85.

The first proviso states that a PHA may select a partner to implement its proposal using competitive proposal procedures for qualifications-based procurement. This method will enable the PHA to select a partner based on its qualifications, subject to negotiation of fair and reasonable compensation. Currently, this method (which does not require a consideration of price as a selection factor) is authorized in part 85 only with respect to a grantee's procurement of architectural/engineering professional services (see 24 CFR § 85.36(d)(3)(v). HUD believes that a qualifications-based procurement of partners in mixed-finance undertakings is critical to the success of this new development method. This is because the success of a public/private partnership hinges upon the creativity, capacity, and vision of the partner and, in many instances, the scope or cost of the development may not be known at the time the owner entity seeks to procure the partner.

Consequently, HUD advocates providing maximum flexibility to the PHA to select a partner based upon its qualifications to develop a mixed-

finance development. In this manner, once selected, the partner will have the freedom to consider various approaches, sites, and financing strategies for the development of the public housing units, so long as the partner can provide the minimum number of units for which public housing funds were provided, and complies with any total development cost (TDC) and other statutory and mandatory requirements.

The second proviso relates to the applicability of part 85 to the owner entity that will develop and operate the public housing units. As a private entity, the owner entity would not normally be subject to the requirements of part 85. However, this provision states that the owner entity will be required to comply with 24 CFR part 85 if HUD determines that the PHA or PHA instrumentality exercises significant functions within the owner entity with respect to managing the development of the proposed units. Even under such circumstances, however, HUD may exempt the owner entity from complying with part 85 if it finds that the owner entity has developed an acceptable alternative procurement plan.

Section 941.604—(''Definitions'')

This section of the interim rule defines terms that are applicable only to mixed-finance development: ''development,'' ''mixed-finance,'' ''owner entity,'' ''participating party,'' ''partner,'' ''proposal,'' ''public housing agency,'' and ''public housing unit.'' In addition to these terms, § 941.602(a)(1) identifies those definitions in subpart A that are also applicable to development carried out pursuant to subpart F. These definitions include: ''Annual Contributions Contract,'' ''cooperation agreement,'' ''design documents,'' ''reformulation,'' and ''total development cost.''

Section 941.606—Proposal

This section provides that the PHA must submit its proposal for the mixed-finance development by a deadline to be established by HUD. The Department has the discretion to determine the scope of a PHA's submissions under this section. HUD shall exercise its discretion based upon a consideration of whether the documentation is required for HUD to carry out statutory or other mandatory reviews, as well as a consideration of the PHA's past performance in implementing development projects under part 941, and the PHA's administrative capability, as demonstrated by its overall score on the PHMAP.

HUD has attempted to limit the scope of the PHA proposal submissions to those that it believes are necessary for the Department to comply with mandatory front-end reviews, such as environmental reviews, section 213 (24 CFR part 791, subpart C) clearance, subsidy layering, and life cycle analysis.

In addition, HUD is requesting a number of items that it believes are necessary for a preliminary assessment of the financial viability of the proposed mixed-finance development, and which would be required by any private sector lender prior to making available construction or permanent financing. These submissions include, but are not limited to: information with respect to the proposed activities to be carried out; a description of the relationship of the participating parties and of the proposed financing (including the proposed use of public housing development funds); a description of the proposed housing; site information; a market analysis; an estimate of the development construction cost; information with respect to facilities, displaced occupants, life cycle analysis, a determination of operating feasibility, and a copy of the section 213 solicitation letter; and various certifications and assurances.

Section 941.608—Technical Processing and Approval

After a PHA submits its proposal by the specified deadline, HUD will perform an initial screening to determine that all required documentation has been submitted. If there are any deficiencies in the proposal, HUD will advise the PHA and request that the additional information be submitted by a specified date.

Once the proposal is determined to be complete, HUD will evaluate the proposal to determine whether: (1) The PHA has the necessary legal authority to develop the public housing units pursuant to subpart F; (2) the proposed sources and uses of funds identified in the proposal are eligible and reasonable, and whether HUD's preliminary assessment of the financing and other documentation establishes to HUD's satisfaction that the mixed-finance development is viable and is structured so as to adequately protect the Federal investment of funds in the development; (3) if applicable, whether the public housing units in the proposed development will be comparable in size, location, external appearance and distribution within the development to the non-public housing units; (4) if applicable, if public housing development funds are to be used to pay for more than the pro rata cost of common area improvements, whether the proposal complies with the specific requirements set forth in § 941.608(b)(4)(i) and (ii); (5) the proposal complies with all program requirements including, if applicable, any comments received from the unit of general local government under section 213 (24 CFR part 791, subpart C); and (6) the proposal is approvable after conducting an environmental review in accordance with 24 CFR part 50.

If HUD determines that the proposal can be approved, it will send a notification letter to the PHA indicating that its proposal has been approved and stating the approved total development cost of the public housing units in the development. HUD will also send to the PHA for execution an ACC amendment and/or grant agreement (or, if the PHA has previously executed a front-end ACC amendment, HUD will send to the PHA a special mixed-finance amendment to the ACC and/or a grant agreement). (The special amendment to the ACC (and/or grant agreement) contains additional requirements pertaining to the development and operation of the public housing units in the context of a mixed-finance development.) After the PHA executes these documents, it will return them to HUD for execution.

Section 941.610—Evidentiary Materials and Other Documents

Before HUD will allow a PHA to draw down development funds pursuant to its approved proposal, the PHA must submit to HUD, within the prescribed timeframe, certain evidentiary materials and other documentation with respect to the proposed development. This documentation includes, but is not limited to: various certifications and assurances to ensure that the public housing units will be developed and operated by the owner entity in accordance with the ACC and other applicable Federal requirements for the maximum period required by law; copies of executed development-related contracts; agreements that are needed to implement the approved proposal; deed restrictions, covenants running with the land, etc.

Section 941.612—Disbursement of Grant Funds

Paragraph (a) provides that a PHA may obtain front-end assistance under this subpart, and may use such funds to pay for: (1) The costs of materials and services related to the development of a proposal; (2) costs associated with the demolition of existing units on a proposed site; or (3) other preliminary development work.

HUD will determine the maximum amount of public housing funds that may be drawn down by a PHA to pay for preliminary development costs based upon its review of the nature and scope of activities proposed to be carried out by the PHA. The Department emphasizes that it will scrutinize carefully any proposed request by a PHA to use public housing funds in such a manner as to benefit the non-public housing units in a development. HUD will not permit public housing development funds to be used to subsidize non-public housing units, or parts of the development, that do not meet the specific requirements set forth in this subpart.

Paragraph (b) provides that HUD will review the evidentiary materials and other documents submitted pursuant to § 941.610 and, upon determining that such documents are satisfactory, may approve a drawdown of development funds, consistent with the following requirements:

First, a PHA may only draw down public housing development funds in an approved ratio to other public and private funds, in accordance with a schedule approved by HUD. The PHA and its partner must certify, in a form prescribed by HUD, prior to the initial drawdown of public housing development funds that the PHA will not draw down, and the partner will not request, more public housing grant funds than necessary to meet the PHA's pro rata share of the development costs. The PHA may draw down public housing development funds only when payment is due and after inspection and acceptance of work covered by the draw. The PHA is required to release funds promptly to its partner (or other designated third parties approved by HUD), normally within two working days of receipt of the funds from HUD. The PHA's partner is also required to take prompt action to distribute the funds (normally within two working days of receipt of the funds from the PHA).

Second, the interim rule provides that each drawdown of public housing development funds constitutes a certification by the PHA that all the representations and warranties of the PHA, as submitted under subpart F, continue to be valid, true, and in full force and effect. The PHA's draw down of funds constitutes a certification that it is in full compliance with all of the PHA's obligations under this subpart that are applicable at the time the funds are draw down, and that the ratio for the draw down of funds is satisfied. Finally, the interim rule provides that the PHA's drawdown of funds constitutes a certification that all conditions precedent to the PHA's authority to draw down the public housing grant funds have been satisfied, and that the funds to be drawn down will be used only for eligible costs actually incurred, or that will be incurred, in accordance with the provisions of this subpart and the approved proposal.

Paragraph (c) of this section clarifies that the standard drawdown requirements set forth in paragraph (b) (including the requirement that public housing development funds must be drawn down in an approved ratio to other public and private funds) do not apply to front-end assistance that is approved by HUD for drawdown under paragraph (a) of this section.

Section 941.614—(''HUD Monitoring and Review'')

This section establishes the regulatory authority for HUD's ongoing monitoring and review of a PHA's approved proposal, and provides that the special mixed-finance amendment to the ACC (and/or grant agreement) will set forth specific monitoring and review requirements under this subpart.

Section 941.616—(''Sanctions'')

This section establishes the regulatory authority for HUD's imposition of sanctions in the event the public housing units that are proposed to be developed under this subpart are not developed in accordance with the projected development schedule, the approved proposal, or all applicable Federal requirements, or if the units are not operated in accordance with applicable requirements. In addition, this section provides that HUD may impose sanctions on the PHA, and/or seek legal and equitable relief in accordance with requirements prescribed by HUD in the special mixed-finance amendment to the ACC and/or the grant agreement.

Section 970.2—(''Applicability'')

HUD is amending 24 CFR § 970.2 to carve out two additional exceptions to the applicability of 24 CFR part 970 (the Department's regulations implementing the demolition and disposition requirements of section 18 of the United States Housing Act of 1937 (''USHA'')). These exceptions are intended to clarify that a PHA is not required under certain circumstances to comply with the disposition requirements set forth in section 18 of the USHA.

The first exception provides that a PHA is not required to comply with section 18 if the PHA conveys a project to the owner entity pursuant to an approved proposal under 24 CFR part 941, subpart F, before the determination of the Actual Development Cost to enable an owner entity to develop the project using the mixed-finance development method.

The second exception provides that the requirements of section 18 are inapplicable in the event of a reversion of the public housing units from the owner entity to the PHA (e.g., at the end of the low-income housing tax credit term).

However, section 18 *does* apply whenever the owner entity seeks to dispose of public housing units developed under subpart F to a non-PHA entity, or to demolish the units, or to operate the units in a manner inconsistent with public housing occupancy requirements. Section 18 also applies to any disposition by the PHA of public housing units once the Actual Development Cost of the units is determined. Thus, a PHA that wants to convey existing public housing units to an owner entity for rehabilitation would have to comply with requirements set forth in section 18.

V. Other Matters

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of Rules Docket Clerk, 451 Seventh Street, S.W., room 10276, Washington, D.C. 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that the interim rule will not have a significant impact on a substantial number of small entities.

Executive Order 12866

This interim rule was reviewed by the Office of Management and Budget under Executive Order 12866 as a significant regulatory action. Any changes made in this interim rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of HUD's Rules Docket Clerk, room 10276, 451 7th Street, S.W., Washington, D.C.

Pursuant to Executive Order 12866, each Federal agency must provide a cost/benefit analysis with respect to

each rule that is determined to be a significant regulatory action. Accordingly, HUD sets forth the following cost/benefit analysis for this interim rulemaking:

Mixed finance development is a new development method whereby existing public housing development funds can be used with other public and private funding sources. This interim rule will not result in any additional cost to the taxpayer, since it enables PHAs to combine their funding with private and other public sources, and to enter into partnerships with other entities for the development, ownership and/or management of public housing units. This financing mechanism will enable PHAs to locate public housing units in developments that may consist of public housing and non-public housing units.

This interim rule provides that public housing units located within a development must be comparable to the non-public housing units with respect to size, location, external appearance and distribution within the development. In developments consisting solely of public housing units, the additional capital made available through other sources is expected to provide higher quality living environments than would be possible if the PHA used only public housing development funds to construct the development.

Examples of this method of development under the HOPE VI Urban Revitalization Demonstration program are underway. Estimated private investment in these transactions range from one-half to twice the level of the public housing funds involved.

Additional benefits to the public include ending the isolation and stigmatization of public housing residents. Moreover, the interim rule will enhance the ability of PHAs to collaborate substantially with other local institutions in the large-scale revitalization of neighborhoods containing public housing. Public housing created as part of mixed-finance transactions is subject to market forces, particularly when integrated with non-public housing units in a development.

Finally, the interim rule provides for flexibility in transaction structures as well as development, ownership and management strategies for PHAs to craft the most advantageous proposal for their particular communities.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the provisions of this interim rule will not have a significant impact on family formation, maintenance or well-being, except to the extent that the program authorized by the interim rule will provide increased opportunities for low-income families to live in public housing developments. The Department believes that these opportunities will increase the likelihood that low-income families will become more economically and racially integrated within the broader community, thereby providing positive benefits for families.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, Federalism, has determined that the policies contained in this interim rule will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

Catalog of Federal Domestic Assistance.

The Catalog of Federal Domestic Assistance number for this program is 14.850.

Paperwork Reduction Act Statement

The information collection requirements contained in §§ 941.606 and 941.610 of this interim rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). 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. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided herein. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Kay Weaver, Reports Management Officer, Department of Housing and Urban Development, 45l Seventh Street, S.W., Room 10276, Washington, D.C. 20410; and to the Office of Management and Budget, Attention: Desk Officer for HUD, Washington, D.C. 20503.

Information on the estimated public reporting burden is provided, as follows:

ANNUAL REPORTING BURDEN FOR INFORMATION COLLECTION

[**FR**–3919]

Section	Number of respondents	x	Frequency of responses	x	Hours per response	=	Burden hours
941.606	35		1		48		1,680
941.610	20		1		64		1,280
Total Reporting Burden	...	...	...	...	...	...	2,960

List of Subjects

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 970

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

In accordance with the reasons set forth in the preamble, 24 CFR part 941 and part 970 are amended as follows:

PART 941—PUBLIC HOUSING DEVELOPMENT

1. The authority citation for 24 CFR part 941 continues to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g, and 3535(d).

2. Section 941.202 is amended by adding a new paragraph (c)(3), to read as follows:

§ 941.202 Site and neighborhood standards.

* * * * *

(c) * * *

(3) Notwithstanding any other provision of this part, and for purposes only of subpart F of this part, replacement public housing units for public housing units demolished may be built on the original public housing site, or in the same neighborhood, if the number of such replacement public housing units is significantly fewer than the number of public housing units demolished.

* * * * *

3. A new subpart F is added to read as follows:

Subpart F—Public/Private Partnerships for the Mixed Finance Development of Public Housing Units

Sec.
941.600 Purpose.
941.602 Applicability of other requirements.
941.604 Definitions.
941.606 Proposal.
941.608 Technical processing and approval.
941.610 Evidentiary materials and other documents.
941.612 Disbursement of grant funds.
941.614 HUD monitoring and review.
941.616 Sanctions.

Subpart F—Public/Private Partnerships for the Mixed Finance Development of Public Housing Units

§ 941.600 Purpose.

(a)(1) This subpart authorizes a PHA to use a combination of private financing and public housing development funds to develop public housing units, and is designed to enable PHAs and their partners to structure transactions that make use of private and/or public sources of financing. Many potential scenarios for ownership and transaction structures exist, ranging from the PHA or its partner(s) holding no ownership interest, a partial ownership interest, or 100 percent of the ownership interest of the public housing units that are to be developed. PHAs and/or their partner(s) may choose to enter into a partnership or other contractual arrangement with a third-party entity for the mixed-finance development and/or ownership of public housing units. If this entity has primary responsibility along with the PHA for the development of these units, it is referred to for purposes of this subpart as the PHA's ''partner.'' The entity that ultimately owns the public housing units, whether or not the PHA retains an ownership interest, is referred to as the ''owner entity.'' The resulting ''mixed-finance'' developments may consist of 100 percent public housing units, or may consist of public housing and non-public housing units.

(2) This subpart sets forth the requirements that must be met by the PHA and its partner(s) before HUD can approve a proposal for mixed-finance development, and also sets forth continuing requirements that apply throughout the development and operation of the development by the owner entity.

(b) Under this subpart, public housing units that are built in a mixed-finance development must be comparable in size, location, external appearance, and distribution to the non-public housing units within the development.

§ 941.602 Applicability of other requirements.

(a) *Relationship of this subpart to other requirements in this part.* The requirements contained in this subpart apply only to the development of public housing units using mixed-finance development methods under this subpart and to the operation of public housing units that are owned, or that will be owned, by an owner entity under this subpart. Other requirements for the development of public housing, as set forth in subparts A through E of this part, shall not apply to the development of public housing units pursuant to this subpart, except as may be required by HUD. Applicable requirements include, but shall not be limited to, the following:

(1) Section 941.103 (''Definitions'') (definitions of the following terms only shall apply to this subpart: ''Annual Contributions Contract (ACC),'' ''cooperation agreement,'' ''design documents,'' ''reformulation,'' and ''Total Development Cost (TDC).''

(2) Section 941.201 (''PHA eligibility'') (except that specific requirements governing the cooperation agreement, as set forth in § 941.201(c), shall be determined in accordance with this subpart);

(3) Section 941.202 (''Site and neighborhood standards'');

(4) Section 941.203 (''Design and construction standards'');

(5) Section 941.204 (''Cost guidelines'');

(6) Section 941.205 (''PHA contracts'') (except that the reference to ''development related contracts entered into by the PHA'' shall be construed to mean ''development related contracts entered into by the PHA or the owner entity'');

(7) Section 941.206 (''Eligible properties'');

(8) Section 941.207 (''Relocation and acquisition'');

(9) Section 941.208 (''Other Federal requirements'');

(10) Section 941.209 (''Audit'');

(11) Section 941.406 (''Maximum development cost and advances'') (except that paragraph (b) of that section, dealing with ''development advances,'' is not applicable to this subpart);

(12) Section 941.503 (''Construction requirements'');

(13) Section 941.504 (''Acceptance of work and contract settlement''); and

(14) Section 941.505 (''Completion of development'').

(b) *Procedure in the event of a conflict between requirements.* In the event of a conflict between a requirement contained in this subpart and an applicable requirement set forth in subparts A through E of this part, the requirements of this subpart shall apply, unless HUD otherwise so determines in writing.

(c) *HUD approval.* For purposes of this subpart only, any action or approval that is required to be taken or provided by HUD or by the HUD field office, pursuant to a requirement set forth in subparts A through F of this part, shall be construed to mean that HUD Headquarters shall take such action or provide such approval, unless the field office is authorized in writing by Headquarters to carry out a specific function under this subpart.

(d) *Applicability of requirements pursuant to 24 CFR part 85.* The requirements of 24 CFR part 85 are applicable to this subpart, subject to the following two provisos:

(1) A PHA may select a partner using competitive proposal procedures for qualifications-based procurement (subject to negotiation of fair and reasonable compensation, including TDC and other applicable cost limitations);

(2) An owner entity (which, as a private entity, would normally not be subject to part 24 CFR part 85) shall be required to comply with 24 CFR part 85 if HUD determines that the PHA or PHA instrumentality exercises significant functions within the owner entity with respect to managing the development of the proposed units. HUD may, on a case-by-case basis, exempt such an owner entity from the need to comply with 24 CFR part 85 if it determines that the owner entity has developed an acceptable alternative procurement plan.

§ 941.604 Definitions.

In addition to the definitions set forth in § 941.602(a)(1), the following definitions are applicable to this subpart:

Development. A housing facility consisting of public housing units, and that may also consist of non-public housing units, that has been developed, or that will be developed, using mixed-finance strategies under this subpart.

Mixed-finance. The combined use of publicly and privately financed sources of funds for the development of public housing units under this subpart.

Owner Entity. The entity that will own the public housing units, if the PHA holds less than one hundred percent of the ownership interest; or the lessee under a ground lease from the PHA. The owner entity may be a partnership that includes the PHA.

Participating party. Any person, firm, corporation, or public or private entity that:

(1) Agrees to provide financial or other resources to carry out the approved proposal, or specified activities contained in the proposal; or

(2) Otherwise participates in the development and/or operation of the public housing units and will receive funds derived from HUD with respect to such participation. The term ''participating party'' includes an owner entity or partner.

Partner. A third party entity with whom the PHA has entered into a partnership or other contractual arrangement to provide for the mixed-finance development of public housing units pursuant to this subpart, and that has primary responsibility with the PHA for the development of the housing units under the terms of the approved proposal.

Proposal. For purposes of this subpart only, the term ''proposal'' means a detailed PHA submission of information under § 941.606.

Public Housing Agency (PHA). Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing under this part. For purposes of this subpart, the term ''PHA'' also encompasses any agency or instrumentality of the PHA.

Public housing unit. A unit that is eligible to receive operating subsidy pursuant to section 9 of the Act (42 U.S.C. 1437g).

§ 941.606 Proposal.

Each proposal shall be prepared in the form prescribed by HUD and shall include some or all of the following documentation, as deemed necessary by HUD. In determining the amount of information to be submitted by the PHA under this section, HUD shall consider whether the documentation is required for HUD to carry out mandatory statutory or executive order reviews, the quality of the PHA's past performance in implementing development projects under this part, and the PHA's demonstrated administrative capability, as demonstrated by its overall score on the PHMAP. The proposal includes:

(a) *Activities; relationship of participating parties.* An identification of the participating parties and a description of the activities to be undertaken by each of the participating parties and the PHA, and the legal and business relationships between the PHA and each of the participating parties.

(b) *Financing.* A detailed description of all financing (including public housing development funds) necessary for the implementation of the proposal, specifying the sources (with respect to each of the proposed categorical uses of all such financing), together with a ten-year operating pro forma for the development (including all underlying assumptions). In addition, the PHA may be required to submit to HUD, for such review and approval as HUD deems necessary, all documents (including applications for financing) relating to the financing of the proposal, including, but not limited to, any loan agreements, notes, mortgages or deeds of trust, use restrictions, operating pro formas relating to the viability of the development, and other agreements or documents pertaining to the financing of the proposal.

(c) *Methodology.* If the PHA proposes to provide public housing operating subsidy for the public housing units, it must submit a methodology acceptable to HUD for the distribution of a portion of its operating subsidy to such units;

(d) *Development description.* A description of the housing, including the number and type (with bedroom count) of public housing units and, if applicable, the number and type of non-public housing units (with bedroom count) to be developed; schematic drawings and designs of the proposed building and unit plans; outline specifications; and the types and amounts of non-dwelling space to be provided.

(e) *Site information.* An identification and description of the proposed site, site plan, and neighborhood.

(f) *Market analysis.* An analysis of the projected market for the proposed development.

(g) *Development construction cost estimate.* A preliminary development construction cost estimate based on the schematic drawings and outline specifications and current construction costs prevailing in the area. In addition, a copy of the PHA development schedule, including the architect or contractor estimate of the time required to complete each major development stage.

(h) *Facilities.* A statement addressing the adequacy of existing or proposed facilities and services for the prospective occupants of the development.

(i) *Relocation.* Information concerning any displacement of site occupants, including identification of each displacee, the distribution plan for notices, and the anticipated cost and source of funding for relocation benefits.

(j) *Operating feasibility.* A demonstration of the operating feasibility of the development, which shall be accomplished by the PHA's showing that the estimated operating expenses of the development will not exceed its estimated operating income.

(k) *Life cycle analysis.* For new construction and substantial rehabilitation, the criteria to be used in equipping the proposed development with heating and cooling systems, which shall include a life-cycle cost analysis of the installation, maintenance and operating costs of such systems pursuant to section 13 of the Act (42 U.S.C. 1437k).

(l) *Section 213 clearance.* To expedite processing of the proposal, a PHA may solicit, on behalf of HUD, comments under section 213 (24 CFR part 791, subpart C) from the chief executive officer (CEO) (or his or her designee) of the unit of general local government. In such case, the solicitation letter must state that comments should be sent directly to HUD within 30 calendar days of HUD's estimated date of receipt of the PHA's proposal. The local government's response must state that the comments are to be considered its only response under 24 CFR part 791, subpart C. A copy of the solicitation letter must be included in the PHA's proposal.

(m) *New construction.* If a proposal involves new construction, the PHA must comply with section 6(h) of the Act (42 U.S.C. 1437d). This may be accomplished by the PHA's submission of a comparison of the cost of new construction in the neighborhood where the housing is proposed to be constructed and the cost of acquisition of existing housing (with or without rehabilitation) in the same neighborhood (including estimated costs of lead-based paint testing and abatement). Alternatively, the PHA may submit a certification, accompanied by

supporting documentation, that there is insufficient existing housing in the neighborhood to develop public housing through acquisition.

(n)(1) *Certifications and assurances.* The PHA shall submit, as part of its proposal, certifications and assurances warranting that it:

(i) Has the legal authority under State and local law to develop public housing units through the establishment or selection of an owner entity, and to enter into all agreements and provide all assurances required under this subpart. In addition, the PHA shall warrant that it has the legal authority necessary to enter into any proposed partnership and to fulfill its obligations as a partner thereunder, and that it has obtained all necessary approvals for this purpose;

(ii) Will use an open and competitive process to select the partner and/or the owner entity and shall ensure that there is no conflict of interest involved in the PHA's selection of the partner and/or owner entity to develop and operate the proposed public housing units. In addition, the PHA shall ensure that:

(A) Any selected partner and/or owner entity complies with all applicable State and local procurement and conflict of interest requirements with respect to its selection of entities to assist in the development, and uses a competitive process consistent with the requirements set forth in this subpart; and

(B) If the partner and/or owner entity (or any other entity with an identity of interests with such parties) wants to serve as the general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest bid submitted in response to a public request for bids;

(iii) Will be responsible to HUD for ensuring that the public housing units are developed and operated in accordance with all applicable public housing requirements, including the ACC, and all pertinent statutory, regulatory, and executive order requirements, as those requirements may be amended from time to time. The PHA must also warrant that it will provide for a mechanism to assure, to HUD's satisfaction, that the public housing units will remain available for use by low-income families for the maximum period required by law. In addition, the PHA must warrant that any agreement providing for the management of the public housing units by an entity other than the PHA shall require that the units be operated in accordance with all applicable requirements under this subpart for the full term of any low-income use restrictions.

(2) The PHA shall submit a certification of previous participation in accordance with procedures set forth in 24 CFR part 200, subpart H, and shall ensure that a similar certification is submitted to HUD by the participating parties.

§ 941.608 Technical processing and approval.

(a) *Initial screening.* HUD shall perform an initial screening to determine that all documentation required as part of the proposal under § 941.606 has been submitted. HUD will advise the PHA of any deficiencies in the proposal and indicate that additional information will be accepted if it is received by a specified date.

(b) *Technical processing.* Upon determining that a proposal is acceptable for technical processing, HUD will evaluate the proposal to determine:

(1) Whether the PHA has the legal authority necessary to develop public housing units through the establishment of an owner entity and the use of mixed-finance strategies in accordance with this subpart;

(2) Whether the proposed sources and uses of funds set forth in the proposal are eligible and reasonable, and whether HUD's preliminary assessment of the financing and other documentation establishes to HUD's satisfaction that the mixed-finance development is viable and is structured so as to adequately protect the Federal investment of funds in the development. For this purpose, HUD will consider (among other factors) the PHA's proposed methodology for allocating operating subsidies on behalf of the public housing units; the projected revenues to be generated by any non-public housing units in a mixed-finance development; and the l0-year operating pro forma and other information contained in the proposal;

(3) If applicable, whether the public housing units in the proposed development will be comparable in size, location, external appearance and distribution within the development to the non-public housing units;

(4) If public housing development funds are to be used to pay for more than the pro rata cost of common area improvements, whether the proposal ensures that:

(i) On a per unit basis (taking into consideration the number of public housing units for which funds have been reserved) the PHA will not exceed TDC limits; and

(ii) Any common area improvements will benefit all residents of the development;

(5) Whether the proposal complies with all program requirements including, if applicable, any comments received from the unit of general local government pursuant to section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439) (see 24 CFR part 791, subpart C); and

(6) Whether the proposal is approvable following completion by HUD of an environmental review in accordance with the requirements of 24 CFR part 50.

(c) *Proposal approval.* HUD shall send a notification letter to the PHA stating that the proposal has been approved or disapproved. For approved proposals, the letter shall indicate the approved total development cost of the public housing units in the development. HUD will also send to the PHA for execution an ACC amendment and/or a grant agreement. If the PHA has already executed a front-end ACC amendment, HUD will send to the PHA for execution a special ACC amendment for the mixed-finance development (and/or a grant agreement). The PHA shall execute these documents and return them to HUD for execution.

§ 941.610 Evidentiary materials and other documents.

(a) *Submission of documents.* As a condition of the release of grant funds under § 941.612, the PHA shall submit to HUD, within the timeframe prescribed by HUD, evidentiary materials and other documentation, as more fully set forth in the special mixed-finance amendment to the ACC (and/or grant agreement). Such materials and documentation shall include, but shall not be limited to:

(1) A copy of executed development-related contracts entered into by the PHA or owner entity with respect to the development, and the PHA-executed ACC amendment or special mixed-finance amendment to the ACC (and/or grant agreement);

(2) Agreements that are necessary to implement the proposal and to ensure that all requirements of this subpart are satisfied. Such agreements must be submitted to HUD for review and approval and shall include, but shall not be limited to:

(i) A deed restriction, covenant running with the land, ground lease, or other arrangement of public record, that will assure to HUD's satisfaction that the public housing units will be available for use by eligible low-income families in accordance with all

applicable public housing requirements for the maximum period required by law;

(ii) A regulatory or operating agreement between the PHA and the owner entity that provides binding assurances that the operation of the public housing units will be in accordance with all applicable public housing requirements;

(iii) An agreement between the PHA and the owner entity with respect to the provision of operating subsidy by the PHA in accordance with this subpart;

(iv) A partnership agreement, development agreement, or other agreement entered into between the PHA and its partner, or any other participating party, that establishes the relationships between the parties with respect to the implementation of the proposal, including all rights and liabilities (financial and otherwise) of the parties, a development schedule, and the respective commitments of the parties with respect to the development of the public housing units. For developments involving public and non-public housing units only, the PHA shall also provide for an allocation with the owner entity of expenses and risks (e.g., fire, exhaustion of, or failure to receive, syndication funds, etc.) associated with the development and operation of the development. The allocation of expenses and risks shall be based upon a ratio that reflects the proposed bedroom mix of the public housing units as compared to the bedroom mix and unit count of the non-public housing units in the development, or as otherwise approved by HUD;

(v) Any agreement relating to the management of the public housing units by an entity other than the PHA;

(vi) For developments consisting of public housing and non-public housing units, and in lieu of the standard cooperation agreement required under § 941.201(c), the PHA shall submit a cooperation agreement with the applicable locality concerning PILOT payments, local tax exemption and local government services on behalf of the proposed public housing units. Such payments, exemption and services must be based upon a ratio reflecting the proposed bedroom mix of the public housing units as compared to the bedroom mix of the non-public housing units in the development, or as otherwise approved by HUD. For developments consisting only of public housing units, the PHA shall submit the standard cooperation agreement required under § 941.201(c);

(3) All private or public financing documents evidencing the availability of the participating party(ies)'s financing, the amount and source of financing committed to the proposal by the participating party(ies), and the irrevocability of those funds. HUD may require in lieu of, or in addition to the submission of these documents, an opinion of the PHA's and the owner entity's counsel (or other party designated by HUD) attesting that counsel has examined the availability of the participating party(ies)'s financing, and the amount and source of financing committed to the proposal by the participating party(ies), and has determined that such financing has been irrevocably committed by the participating party(ies) for use in carrying out the proposal, and that such commitment is in the amount required under the terms of the proposal;

(4) The organizational documents of the owner entity, which shall be reviewed by HUD (together with all financing documents) to ensure that they do not provide equity investors, creditors, and any other parties, with rights that would be inconsistent with, or that could interfere with, HUD's interest in the proposed development;

(5) Evidence that all necessary actions have been taken by the PHA and other participating parties to confer such legally enforceable rights as will enable HUD to protect its investment in the property and to ensure the availability of the public housing units for low-income persons for the maximum permissible period;

(6) Evidence of control of the site by the PHA, partner, or owner entity following proposal submission, for such period of time as may be required by HUD;

(7) Evidence that construction or rehabilitation is permitted by current zoning ordinances or regulations, or evidence to indicate that needed rezoning is likely and will not delay construction of the development;

(8) In addition, the PHA shall submit the following certifications warranting that:

(i) For PHAs receiving operating assistance, that:

(A) There shall be no disposition of the public housing units without the prior written approval of HUD during and for ten years after the end of the period in which the public housing units receiving operating subsidy from the PHA; and

(B) During a 40-year period (which may be extended for 10 years after the end of the period in which the public housing units receive operating subsidy from the PHA, or as may be otherwise required by law), the public housing units shall be maintained and operated in accordance with all applicable public housing requirements (including the ACC), as those requirements may be amended from time to time;

(ii) The PHA will develop at least the same number of public housing units as were approved by HUD as part of the PHA's proposal. Where the PHA proposes to pay for more than its pro rata share of the cost of common area improvements, the PHA must also certify that:

(A) It will develop the same number of public housing units as were approved by HUD as part of the PHA's proposal, and will do so within the TDC limits; and

(B) The common area improvements will benefit all residents of the development. If the PHA's proposal provides that public housing units within a development will not be specifically designated as public housing units, but shall instead constitute a fixed percentage of the housing units and number of bedrooms developed under the proposal, the PHA must provide additional binding assurances that the percentage of public housing units and number of bedrooms, as approved by HUD, will be maintained as public housing by the owner entity, and that all of the requirements of this subpart will be satisfied with respect to those units;

(iii) It will ensure that the requirements of this subpart are binding upon the owner entity and any partner of the PHA and, to the extent determined necessary by HUD, upon any other participating party. In addition, in the event of any noncompliance with the requirements of this subpart by any participating party, the PHA agrees to take all necessary enforcement action to ensure such compliance or, alternatively, to pursue any legal or equitable remedies that HUD deems appropriate;

(iv) It will include in all agreements or contracts with the partner, owner entity, or any other participating parties receiving development funds under this subpart, an acknowledgement that a transfer of the development funds by the PHA to the partner, the owner entity, or other participating party, shall not be deemed to be an assignment of development grant funds and that, accordingly, the partner, the owner entity or other participating party shall not succeed to any rights to benefits of the PHA under the ACC, or ACC amendment, nor shall it attain any privileges, authorities, interests, or rights in or under the ACC or ACC amendment;

(v) It will include, or cause to be included, in all its agreements or

contracts with the partner, the owner entity, or other participating parties, and in all contracts with any other party involving the use of development grant funds under this subpart, a provision stating that nothing in the ACC or ACC amendments providing such funds, nor any agreement or contract between the party(ies) shall be deemed to create a relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship involving HUD;

(vi) It will ensure that the development of the public housing units will be in compliance with labor standards applicable to the development of public housing including, but not limited to, wage rates under the Davis-Bacon Act (40 U.S.C. 276a *et seq.*). If the proposed development will include public housing units that are not specifically designated units, the PHA shall ensure that such labor requirements are met with respect to the development of all units that may, at any time, be used as the public housing units;

(vii) It will take all steps necessary to ensure that, in the event of a foreclosure or other adverse action brought against the owner entity with respect to the housing units (including, but not limited to, the public housing units), the operation of the public housing units developed under this subpart shall not be adversely affected.

(9) Such additional documentation as may be required by HUD.

(b) *Subsidy layering analysis.* After the PHA submits the documentation required under paragraph (a) of this section, HUD (or its designee) shall carry out a subsidy layering analysis pursuant to section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (see 24 CFR part 4) to determine whether the amount of assistance being provided for the development is more than necessary to make the assisted activity feasible after taking into account the other governmental assistance.

§ 941.612 Disbursement of grant funds.

(a) *Front-end drawdowns.* A PHA may request front-end assistance for both scattered or non-scattered site development in accordance with the following requirements:

(1) Front-end assistance may be used to pay for materials and services related to proposal development, and may also be used to pay for costs related to the demolition of existing units on a proposed site or for preliminary development work;

(2) HUD shall determine on a case-by-case basis the maximum amount that may be drawn down by a PHA to pay for preliminary development costs, based upon a consideration of the nature and scope of activities proposed to be carried out by the PHA;

(3) Before a request for front-end assistance may be approved, the PHA must provide HUD with such information and documentation as HUD deems appropriate from the list set forth at § 941.606. In determining the extent of the PHA's submissions under this paragraph (a), HUD shall ensure that it has adequate information or documentation to enable it to carry out any statutory, executive order, or other mandatory upfront reviews under this subpart. These reviews shall include, but shall not be limited to, environmental reviews (including NEPA and historic preservation), intergovernmental review, section 213 clearance (24 CFR part 791, subpart C), and subsidy layering. If, upon completing these reviews, HUD determines that the proposed development is approvable, it may execute with the PHA a front-end ACC amendment and the special mixed-finance amendment to the ACC (and/or grant agreement) to provide advances for the purposes, and in the amounts, approved by HUD.

(b) *Standard drawdown requirements.* HUD will review the evidentiary materials and other documents submitted pursuant to § 941.610, and, upon determining that such documents are satisfactory, may approve a drawdown of development funds, consistent with the following requirements:

(1) A PHA may only draw down public housing development funds in an approved ratio to other public and private funds, in accordance with a draw schedule prepared by the PHA and approved by HUD. The PHA and its partner shall certify, in a form prescribed by HUD, prior to the initial drawdown of public housing development funds that the PHA will not draw down and the partner will not request more public housing grant funds than necessary to meet the PHA's pro rata share of the development costs. The PHA shall draw down public housing development funds only when payment is due and *after* inspection and acceptance of work covered by the draw. The PHA shall release funds to its partner promptly, normally within two working days of receipt of the funds from HUD, and only in accordance with the ratio approved by HUD. The PHA's partner shall take prompt action to distribute the funds, normally within two working days of receipt of the funds from the PHA;

(2) Each drawdown of public housing development funds constitutes a certification by the PHA that:

(i) All the representations and warranties of the PHA, as submitted in accordance with this subpart, continue to be valid, true, and in full force and effect;

(ii) The PHA is in full compliance with all of the PHA's obligations pursuant to this part which, by their terms, are applicable at the time of the drawdown of the public housing development funds, and that to the best of the PHA's knowledge, it is not in default under the ACC, as amended;

(iii) All conditions precedent to the PHA's authority to draw down the public housing grant funds have been satisfied;

(iv) The public housing grant funds to be drawn down will be used for eligible costs actually incurred or to be incurred in accordance with the provisions of this subpart and the approved proposal; and

(v) The ratio for the draw down of funds is satisfied.

(c) The standard drawdown requirements set forth in paragraph (b) of this section (including the requirement that public housing development funds must be drawn down in an approved ratio to other public and private funds) do not apply to front-end assistance approved by HUD pursuant to paragraph (a) of this section.

§ 941.614 HUD monitoring and review.

HUD shall monitor and review the implementation of the PHA's approved proposal in accordance with requirements prescribed by HUD in a special mixed-finance amendment to the ACC (and/or grant agreement).

§ 941.616 Sanctions.

In the event the public housing units that are proposed to be developed under this subpart are not developed in accordance with the projected development schedule, the approved proposal, and all applicable Federal requirements, or if the units are not operated in accordance with applicable requirements, HUD may impose sanctions on the PHA, and/or seek legal and equitable relief, in accordance with requirements prescribed by HUD in the special mixed-finance amendment to the ACC (and/or grant agreement).

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

5. Section 970.2 is amended by removing the word ''and'' at the end of paragraph (a)(9); by removing the period at the end of paragraph (a)10); and by adding new paragraphs (a)(11) and (a)(12), to read as follows:

§ 970.2 Applicability.

(a) * * *

(11) A public housing development that is conveyed by a PHA to an owner entity pursuant to an approved proposal under 24 CFR part 941, subpart F and prior to the determination of the Actual Development Cost to enable an owner entity to develop the project using the mixed-finance development method; and

(12) Public housing units that are developed pursuant to the mixed-finance development method at 24 CFR part 941, subpart F, and that are reconveyed by the owner entity to the PHA.

* * * * *

Dated: January 16, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–10445 Filed 5–1–96; 8:45 am]

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federal register

Thursday
May 2, 1996

Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405 and 486

Medicare and Medicaid Programs; Conditions of Coverage for Organ Procurement Organizations (OPOs); Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 486

[BPD–646–FC]

RIN 0938–AE48

Medicare and Medicaid Programs; Conditions of Coverage for Organ Procurement Organizations (OPOs)

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

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period sets forth changes to the conditions of coverage for organ procurement organizations (OPOs). It provides for exceptions to the OPO qualification and performance standards under certain circumstances, revises the methodology for counting organs, and extends the period for interim OPO designations and notification of termination. It also adds new regulations relating to hospitals that change OPO designations when there is a change in the OPO service area.

This final rule with comment period modifies conditions of coverage previously set forth in an interim final rule. These changes are being made in response to public comments received on that interim rule. New regulations contained in this final rule implement provisions of the Social Security Act Amendments of 1994.

DATES: Effective date: This final rule is effective May 31, 1996.

Comment date: Written comments on the definition of ''donor'' (Section VI of the preamble) or the hospital waiver process (XI of the preamble) will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 1, 1996.

ADDRESSES: Mail written comments (One original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–646–FC, P.O. Box 7518, Baltimore, MD 21207–0518.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC or Room C5–09–26, 7500 Security Boulevard, Baltimore, MD.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–646–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

See section XV of this preamble for special instructions regarding the submission of comments and recommendations regarding the information collection requirements contained in these regulations.

FOR FURTHER INFORMATION CONTACT: Jackie Sheridan, (410) 786–4635.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative History

Medicare coverage of services furnished to individuals with end-stage renal disease who require dialysis or kidney transplantation is authorized under section 1881 of the Social Security Act (the Act). Medicare also covers certain other organ transplants that HCFA has determined are ''reasonable and necessary'' under section 1862 of the Act, and pays for those transplants and related organ procurement services.

Under the Medicaid program, payment is made for ''medical assistance'' as defined in section 1905(a) of the Act and in our regulations at 42 CFR Part 440. Each State has a considerable degree of flexibility to supplement Medicaid-required services with optional services the State elects in its State plan. States must pay Medicare coinsurance and deductible amounts for transplant services for ''qualified Medicare beneficiaries,'' and must pay for transplant services to individuals under the age of 21 who receive early and periodic screening, diagnostic, and treatment services. In addition, States may pay for other transplant services based on written standards which provide that similarly situated individuals are treated alike.

Payment may be made under the Medicare and Medicaid programs for organ procurement costs attributable to payments to an organ procurement organization (OPO) only if the organization has been designated by the Secretary as meeting the conditions for coverage as an OPO. OPOs are generally paid indirectly for organ procurement costs. Usually, the transplanting hospital pays those costs to the OPO and claims them on its cost report. An OPO, however, does have to file a cost report with us at the end of its fiscal year. At that time, we settle any overpayments or underpayments with the OPO.

Section 1138(b) of the Act sets forth the statutory qualifications and requirements that an OPO must meet for coverage of the costs of its services in procuring organs for hospitals under the Medicare and Medicaid programs.

Title IV of the Health Omnibus Programs Extension Act of 1988 (Public Law 100–607) contained the Transplant Amendments Act of 1988. This Act contained amendments to section 371 of the Public Health Service Act (PHS Act) (42 U.S.C. 273), which defines OPOs. Specifically, section 402(c)(1)(A) of Public Law 100–607 amended section 371(b)(1)(E) of the PHS Act by revising the definition of ''service area'' that must be encompassed by an OPO. Public Law 101–274, enacted on April 23, 1990, postponed until January 1, 1992, the effective date of section 402(c)(1)(A) of Public Law 100–607. Additional legislation regarding the definition of a service area was included in the Transplant Amendments Act of 1990 (Public Law 101–616). The details of these provisions are discussed under section II ''Service Area'' of this preamble.

Section 201(d)(1) of Public Law 101–616 redesignated section 371(b)(2) of the PHS Act as section 371(b)(3). That section sets forth the functions of an OPO. However, the Congress did not amend two textual references in section 371(b)(1) to the OPO functions formerly specified in paragraph (2). Since that was clearly an oversight and failure to read the section 371(b)(1) text as if those ''paragraph (2)'' references had been changed to ''paragraph (3)'' would make part of the statute meaningless, we are using the corrected references in this document.

Additional legislation regarding OPOs was included in section 155 of the Social Security Amendments of 1994 (Public Law 103–432, enacted on October 31, 1994). This legislation amended section 1138(a)(1) of the Act to require a hospital to have an agreement for notification of potential organ donation only with the OPO designated for the area in which the hospital is located. Because this legislation was passed after our issuance of proposed and interim final rules in 1991 and 1994 respectively to implement statutory provisions, we did not include any revisions regarding this subject in those publications. We are, however, including revisions to the regulations in this final rule to reflect the provisions of Public Law 103–432. These

provisions are discussed under section XI. ''Waiver of Service Area Designations'' of this preamble.

B. Regulations

Regulations regarding organ procurement are currently found at 42 CFR part 486 (''Conditions for Coverage of Specialized Services Furnished by Suppliers'') under subpart G (''Conditions of Coverage: Organ Procurement Organizations''). The existing regulations were recently redesignated from subpart D of 42 CFR Part 485 in a final rule with comment period published in the Federal Register on September 29, 1995 (60 FR 50446). For the benefit of the reader, we are including a redesignation table. All succeeding regulations references will be to the redesignated sections. Throughout this preamble, we generally use the new section numbers in our discussion of specific sections. In some cases, we use both the old and the new section numbers for ease of reference.

Old section (subpart D of part 485	New section (subpart G of part 486
485.301	486.301
485.302	486.302
485.303	486.304
485.304	486.306
485.305	486.308
485.306	486.310
485.307	486.314
485.308	486.316
485.309	486.318
485.311	486.325

On June 21, 1991, we published a Notice of Proposed Rulemaking in the Federal Register (56 FR 28513). In it, we proposed to implement section 402 of Public Law 100–607 and section 201 of Public Law 101–616 by amending certain sections of 42 CFR part 482, which set forth the Medicare conditions of participation for hospitals, and subpart D of 42 CFR part 485, which, at that time, set forth the Medicare and Medicaid conditions of coverage for OPOs.

In addition to the provisions necessary to implement these laws, we proposed some other revisions to the existing regulations. These additional regulations were derived from our experience in administering the OPO program and not related to legislation. The most noteworthy of these latter provisions dealt with change of ownership of an OPO and with termination of participation in the Medicare and Medicaid.

These proposed regulations were updated, revised, and adopted in an interim final rule with comment period issued on September 8, 1994 (59 FR 46513). Provisions in the interim final rule which contained changes based on public comments included:

- Participation in the Organ Procurement and Transplantation Network (OPTN) as one of the Medicare conditions of participation for hospitals.
- Certification requirements for an OPO.
- Requirements for an OPO service area.
- Requirements that an OPO obtain HCFA approval before entering into any change of ownership, merger, consolidation, or change in its service area.
- Medicare payment provisions.
- OPO performance standards.

We have included detailed information regarding the provisions of the proposed and interim final rule with comment period as background in the discussion of individual topics.

We received 33 timely items of correspondence in response to the September 8, 1994, interim final rule with comment period. This final rule with comment period responds to the comments we received on the interim final rule with comment period. It also contains revisions to the regulations to implement provisions of the Social Security Act Amendments of 1994 (Public Law 103–432). These changes to the conditions of coverage for OPOs (42 CFR Part 486) are discussed below.

II. Service Area (§ 486.307)

A. Background

Before enactment of Public Law 100–607, the PHS Act provided that, unless an OPO service area comprised an entire State, it had to be of sufficient size to include ''at least 50 potential organ donors'' each year.

Section 402(c)(1)(A) of Public Law 100–607 amended section 371(b)(1)(E) of the PHS Act to require the service area to be large enough that the OPO ''can reasonably expect to procure organs from not less than 50 donors each year.''

We determined that this change would have resulted in a substantial number of existing OPOs failing to qualify for redesignation, because we interpreted the requirement that the OPO ''can reasonably expect to procure organs from not less than 50 donors'' to be more stringent than the requirement that the service area include ''at least 50 potential organ donors.'' According to a Departmental study cited in the Report of the Committee on Energy and Commerce on a precursor to the 1988 legislative amendments to the Transplant Amendments Act of 1987 (H.R. Rep. No. 383, 100th Cong., 1st Sess. 5–6 (1987)), the average OPO was, at the time of the report, procuring organs from only 44 donors per year. (Because more than one organ may be obtained from a donor, the average number of organs obtained per OPO per year was about 110.) Currently, the average number of donors per OPO is 77, resulting in an average of 279 organs per OPO.

Most of the designated OPOs were scheduled for redesignation beginning in March 1990 and would have been required to meet the new requirement imposed by Public Law 100–607. Information obtained from many representatives of organ procurement organizations (OPOs) revealed that almost one-half of the OPOs would not have been able to meet the new requirement. Some organ procurement and transplantation experts believed that many of the OPOs that did not have a realistic expectation of procuring organs from at least 50 donors were nonetheless effective and efficient entities. Consequently, the Department and other interested parties sought statutory relief to avoid disruption to the nation's organ procurement system.

On April 23, 1990, Public Law 101–274 was passed. It postponed until January 1, 1992, the effective date of section 402(c)(1)(A) of Public Law 100–607, which changed the definition of ''service area.'' Therefore, the ''at least 50 potential donors'' requirement would have remained in full force and effect until that date. However, Public Law 101–616 further amended section 371(b)(1)(E) of the PHS Act to require an OPO to have a defined service area that (1) is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and (2) either includes an entire Metropolitan Statistical Area (MSA) or does not include any part of the area. Section 201(d)(2) of Public Law 101–616 required the Secretary to publish a proposed definition of ''service area'' by February 14, 1991, and final regulations defining ''service area'' by November 16, 1991.

In the June, 1991 proposed rule, we specified in § 485.304(d) that an OPO cover a service area ''* * * of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs and that either includes an entire metropolitan statistical area as specified by the Office of Management and Budget or does not include any part of such area * * * *''.

In the September 1994 interim final rule, we revised proposed § 485.304(d) (now § 486.306(d)) to provide that, for designations in 1996 and thereafter, an

OPO's service area must include an entire State or the OPO must procure organs from an average of at least 24 donors per calendar year in the 2 years before the year of designation. We provided that an OPO operating in a noncontiguous U.S. State, a U.S. Territory, or a U.S. Commonwealth, such as Hawaii or Puerto Rico, was subject to a specified, alternative standard beginning January 1, 1996. We also provided that if an entity has not previously operated as a Medicare-certified OPO, it must demonstrate that it can procure organs from at least 50 potential donors per calendar year.

B. Public Comments and Our Responses

Comment: One commenter suggested that we require that every transplant center have a working relationship with an OPO.

Response: Existing law and regulations already require this relationship. Sections 1138(a)((1)(C) and 1138(a)(3) of the Act require that a hospital have an agreement, as described in section 371(b)(3)(A) of the PHS Act, with its designated OPO if it is to participate in the organ procurement program. Medicare regulations at 42 CFR 405.2163 require that every renal transplant center ''* * * participates in a patient registry program with an OPO designated or redesignated under Part 485, Subpart D * * * ''. (We are changing this reference to Part 486, Subpart G in this final rule with comment period to reflect the redesignation). In addition, we have published in the Federal Register notices containing the Medicare coverage criteria for heart (52 FR 10935, April 6, 1987), liver (56 FR 15006, April 12, 1991), and lung (60 FR 6537, February 2, 1995) transplantations. Each of these notices requires that a hospital submit documentation demonstrating the hospital's agreement with a Medicare-certified OPO as one of the conditions necessary for Medicare approval as a facility for which respective organ transplantation may be covered. We believe that these requirements meet the commenter's suggestion.

Comment: One commenter suggested that more consideration be given to regional MSAs than to State boundaries. The commenter believed the current policy results in poor service to remote areas.

Response: It is not clear to us how the current policy would inappropriately effect organ distribution to remote areas. We believe, however, that the law is clear regarding the MSAs and provides little latitude for alternative interpretation. Section 371(b)(1)(E) of the PHS Act provides that an OPO ''* * * has a defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire MSA (as specified by the Director of the Office of Management and Budget) or does not include any part of the area.'' Thus, we have no authority to split MSAs in designating OPO service areas. Other than repeating this statutory language, our Medicare regulations do not address MSAs.

As a matter of practice, we designate OPO service areas on a county specific basis. An OPO's service area will include all of the counties within the MSA and as many other counties as it desires and is awarded based on the criteria in § 485.308 (now redesignated as § 486.316). We note that all counties that contain a hospital are assigned to one of the designated OPOs. In addition, in principle, we believe that organ donation is most likely to be enhanced where there is a willing and cooperative arrangement between the hospital and the OPO. Therefore, we believe that it could be potentially deleterious rather than helpful to force hospitals in counties that are not officially part of an MSA to be served by the OPO servicing the MSA. However, if the parties agree that designation of a regional MSA would be helpful, we would not preclude such designations.

Comment: One commenter noted that current terminology used by the Office of Management and Budget (OMB) refers to ''Metropolitan Area'' (MA) rather than MSA as the general term describing urban classifications. Within MAs, there are several categories: MSA, Consolidated MSAs (CMSAs), Primary MSAs (PMSAs), and New England County Metropolitan Areas (NECMAs). The commenter requested clarification as to which MA categories are applicable to the OPO regulations.

Response: For purposes of the OPO regulations, MSAs encompass the current MA categories of MSA, PMSA, and NECMA. A CMSA is comprised of a number of PMSAs that are considered separately for purposes of defining OPO service areas. In New England, we use NECMAs rather than MSAs and PMSAs which are based on townships rather than county areas. Since OPO service areas are defined based on counties, we believe it is more appropriate to use the county equivalent MA designations in New England (that is, NECMAs). The law clearly states that we may not divide an MSA into the service areas of multiple OPOs. If an OPO's service area includes any part of an MSA, PMSA, or NECMA, it must include the entire area.

Comment: One commenter noted that a newly established OPO could qualify based on a determination that it has the potential to procure organs from at least 50 potential donors. The commenter requested clarification as to how the organization would demonstrate this fact. The commenter also noted that currently OPOs convert fewer than 50 percent of the potential donors to actual donors. Therefore, it is unlikely that an organization with only a 50-donor potential can meet the 24-donor criterion.

Response: The current criterion for qualification as an OPO servicing an area of fewer than 2.5 million people is that the organization demonstrate that it has the potential to procure organs from 50 donors. Thus, the criterion we have established for newly functioning OPOs is identical to that currently applied to the existing OPOs. We have historically not prescribed how an OPO must demonstrate this standard is met. Rather, when making such a determination, we have accepted the information submitted by the OPO, evaluated it, and requested clarification if necessary. We believe it is appropriate to hold newly established OPOs to the condition in place for existing OPOs. Thus, we do not intend to specify how such a standard is to be met. We will continue to allow flexibility for the OPO to come forward with reasonable information to demonstrate its position.

We do, however, intend to take a more rigorous look at the information than we have previously. Newly established OPOs need to qualify at the end of a 2-year period based on one of the other criteria. In most cases, this criterion will be an average 24 donors per year over a 2-year period. We believe it would be disruptive to the organ procurement industry to allow OPOs to enter the arena only to exit 2 years later if they cannot meet the qualification criteria. Consequently, we expect OPOs to act responsibly and to have a specific plan for achieving the long-term qualification criteria.

Comment: Several commenters expressed concern about the 24-donor rule. For the most part, these commenters believed that some very small OPOs are performing efficiently as is evidenced by the fact that they meet the performance criteria. The commenters believed that the 24-donor criteria is not an appropriate measure of performance. They recommended that no size limitations be part of the qualification criteria for designation as a Medicare-approved OPO.

One commenter believed that we should continue to permit an OPO that meets the performance criterion to

qualify if it has an alternative local unit (ALU) to address the equitable distribution issue. An ALU is an area developed by the OPO and approved by the OPTN contractor as an alternative area as an aid to equitable distribution. An ALU may be treated as a substitute for the OPO's service area in the allocation scheme. The commenter, from a very small OPO that is one of three OPOs operating in a single medium-size State, believed that HCFA should continue to permit an OPO that meets the performance criterion to qualify if it has an ALU to address the equitable distribution issue. In the commenter's State, the three OPOs share certain matched organs on a broader scale than they would if the ALU were not in place, but the majority of organs are allocated locally. The commenter believed that the regulations should be modified to provide for an exception criterion that would allow this small OPO to continue to qualify.

Response: The qualification criteria are intended to implement section 371 of the PHS Act. Section 371(b)(1)(E) of the PHS Act provides that an OPO must have a defined service area that ''* * * is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs * * *.'' We believe the use of the explicit words ''of sufficient size'' in the statutory language is a clear expression that the Congress intended the Secretary to establish some measures of size in response to this mandate in the law.

Further, when we look at the legislative history, we believe that the Congress intended that the service area size criterion be rigorous. Section 371 initially set the qualification criterion at 50 potential donors. However, the Congress recognized that this criterion was too lax. The Congress subsequently modified section 371(b)(1)(E) in section 402 of Public Law 100–607 to require the service area to be large enough that the OPO ''* * * can reasonably expect to procure organs from not less than 50 donors each year''.

When this legislation was enacted, we recognized that setting the qualification standard at this level at that time would have resulted in decertification of approximately one-half of the OPOs approved by Medicare. Consequently, we sought legislative relief from the statutory standard. The Congress responded to our request with Public Law 101–616.

We acknowledge that the fact that an OPO procures 24 donors per year is not in and of itself assurance of ''maximum effectiveness'' in organ procurement. We believe, however, that this criterion certainly contributes to the retention of OPOs that are more likely to be effective in organ procurement. This is true particularly for OPOs with service areas that have populations under 1.5 million. We do not believe that it is productive and cost effective to continue to retain several OPOs operating within a single, often small, State. In these cases, often too much time and effort are spent in competition with the neighboring OPO rather than in organ outreach. Generally, a merger of a number of small competing OPOs is cost effective because it results in shared overhead, shared optimal practices, and a higher ratio of organs to fixed operating costs.

Our decision to proceed with the 24-donor rule, however, is not solely based on the maximum effectiveness portion of the statutory language. The law also specifically requires that service area designations be sufficiently large to ensure *equitable distribution* of organs. Organs available for transplant are a scarce resource. There are many more people on the transplant waiting list than there are available organs. Both the Congress and this Administration support transplant policies that contribute to the equitable distribution of organs. We believe a proliferation of a large number of very small OPOs does not contribute to this goal. The organ allocation policies give priority, in most cases, to distribution of organs within the service area. Consequently, OPOs must give first priority to keeping organs procured within their service areas for transplant rather than dispersing them to a larger area. The existence of a substantial number of small OPOs could be disruptive to an effective large organ allocation system because each of these OPOs would be keeping organs for transplant within its own small service area.

For example, a small hospital-based OPO may have only a single transplant center (itself) within its service area. In most cases, all the organs procured in the service area are then transplanted to patients on the waiting list at the transplant center instead of being allocated to patients on a regional or national basis. The OPO, in accordance with the national allocation rules, is transplanting the procured organs to the highest-ranking appropriate patients in the local area. These patients may have been on the waiting list a very short time. Equally appropriate patients in the region who have been waiting a much longer period of time would not receive the organs because they are outside the local area. Since the OPO is servicing only itself, it has an incentive to be a high-performing OPO. The patients at this center have a shorter wait time.

However, in a neighboring town that is part of a larger OPO service area, there may be several hospitals that must share the organs procured from an OPO that is as effective in procuring organs as the small OPO. Because this OPO must share organs among several transplant centers, patients in these centers must wait considerably longer for the needed lifesaving organs. As a result, there is significant disparity among the transplant center waiting times. In various hearings on organ transplantation over the years the Congress has expressed concern about the disparity in waiting times for organ transplantation among various geographic areas. Many members of the Congress have expressed a strong desire to move toward a national allocation methodology to mitigate this condition. We believe that the definition of service area in the statute that addresses the idea that an OPO's service area be of sufficient size to assure equitable distribution is direction to the Secretary to not only look at OPO performance or effectiveness but to also consider the impact of service area size on organ distribution since very small OPO service areas tend to result in disproportionately short waits in some areas and disproportionately long waits in other areas. We conclude that a proliferation of very small OPOs may not be consistent with an equitable distribution system as required in the statute.

While we acknowledge the existence of an ALU for the purpose of organ distribution may potentially mitigate some of the concern regarding equitable distribution, we believe that there are other values associated with establishing OPO minimal service area size that cause us to continue to support this position. There are many benefits of the consolidation of OPOs, such as the sharing of best practices, shared overhead, expediency in reacting to emergency situations, consistent procurement and transplant practices, and promotion of equitable treatment. We find no benefit to the program or the American public in retaining very small OPOs under a system of exceptions when there is no potential that these OPOs would ever meet the size criterion.

On the other hand, we have not arbitrarily set up criteria that restrict OPOs to a certain size or population base. We recognize that small OPOs can be very effective in procuring and distributing organs despite serving a small population area in certain circumstances. OPOs may qualify if they service an entire State, regardless of the population or the number of donors

available. Similarly, we have established special qualifying criteria for OPOs servicing areas that are not contiguous to the rest of the nation. OPOs servicing Hawaii, Alaska, and U.S. territories must meet alternative criteria as discussed below.

We also point out that the criterion is applied based on a 2-year average. Thus, if an OPO fails to meet the criterion in one year due to uncontrollable or unforeseen circumstances, it will have an opportunity to make up for lost donors in the following period. Since this is a static number, OPOs will be able to continually monitor themselves against this criterion and take corrective actions as necessary to improve.

In evaluating the impact of this criterion on the existing OPOs using historical data, we are comfortable that the criterion will not have a major adverse impact on the existing OPOs.

Based on 1994/1995 data, three OPOs that would have met the performance criterion if it had existed in that period would not have met the 24-donors per year criterion. However, one of these OPOs would have qualified under the statewide criterion. The remaining two OPOs are small organizations located in States with alternative, OPOs. We believe alternative, high-performing OPOs could service the respective areas adequately, while providing for a broader allocation area that is likely to promote more equity in organ distribution. Consequently, we continue to believe that the 24-donor rule is appropriate as one of the qualification criteria.

In response to the comment that the 24-donor rule is not an appropriate measure of performance, we have reviewed this requirement. We agree that the 24-donor rule is not a measure of performance but a measure of service area size. Furthermore, it is redundant to maintain this requirement as both a performance and a qualification criterion. All OPOs must meet all of the qualification criteria to be recertified. It serves no purpose to place the requirement in two separate sections. Therefore, we are deleting § 486.310(b)(2) (formerly § 485.306(b)(2)) from this final rule with comment period.

Comment: Some commenters noted that this same criterion was both a qualification standard and a performance standard. The performance standard is one that is subject to a corrective action plan. However, it was not clear whether the qualification criterion is subject to corrective action.

Response: As noted above, we are deleting the 24-donor rule as a performance criterion. Nonetheless, we think the commenters' concern that there is no provision for exception to the qualification criteria is important.

The law specifically requires that an OPO be of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs. As discussed above, we do not believe it is in the best interests of the program or the public to establish an exception system for very small OPOs that historically do not possess the base to achieve 24 donors. Even though such a small OPO may be performing adequately based on its population base, we are concerned that the proliferation of extremely small service areas runs counter to the objectives of an equitable national organ allocation system.

However, we recognize that an OPO may experience unforeseen circumstances beyond its control that result in the OPO failing to meet the qualification criterion during a single recertification period. Consequently, we are adding a new § 486.307(d)(3) to provide for an exception process.

This exception process is explicitly limited to those OPOs that have historically met the criteria and that have a specific plan to achieve 24 donors per year in the future. We are also allowing a one-time exception for the transitional period. This exception allows an OPO that meets the performance standards in § 486.310 to continue Medicare and Medicaid participation for 2 years while it puts in place a plan to achieve 24 donors per year in the future. (See Section X of this preamble)

To receive the exception, an OPO must file its request with HCFA at least 15 days before its recertification date. The request must be in narrative form. If the exception is based on unusual circumstances the narrative must explain in detail the unusual circumstances that contributed to the OPOs failure to procure 24 donors per year. The exception request must also include data regarding the number of donors per year for the 5 years immediately preceding the present designation period. For example, if an OPO fails to meet the qualification standard for the 1996 designation period and it requests an exception, it must submit data, by year, for donors procured from 1991 through 1995. The exception request must also detail the specific actions the OPO intends to take to increase organ donors to 24 per year. Detailed instructions concerning the exception process and the corrective action will be included in the manual instructions.

Comment: One commenter wrote encouraging us to view the qualification criteria as bare minimum which should not be weakened for any reason. The commenter was concerned with the discrepancy between the qualification standards for new OPOs and currently existing OPOs.

Response: We appreciate support for the qualification standards adopted. As noted above, we believe it is important to maintain high standards to encourage OPOs to make every effort to procure all available organs. However, we are not aware of any means to avoid a discrepancy in standards between new and existing OPOs. That is, a new OPO will not have actual data on any objective measure of organ recovery or transplant rates. Consequently, we have no alternative than to use a measure of potential procurement for the initial designation.

On the other hand, if an OPO is not recovering the potential organs, despite the fact that the area is large enough to support minimum recovery level, we believe it would be irresponsible to continue to allow that OPO to service the area. Thus, while there may be some discussion as to what exactly is the most appropriate qualification standard for existing OPOs, we believe that there should be no alternative to setting the standard using actual experience measures as opposed to potential. Since it is impossible to use actual data for new OPOs and we are wedded to using actual data for existing OPOs, there appears to be no alternative but to use different standards for new and existing OPOs.

However, from the context of the comment, it appears that the commenter believes the standard for new OPOs, which uses potential recoveries, is more difficult than the standard for existing OPOs. We point out that while the number of potential donors for new OPOs is higher than the number of actual donors for existing OPOs, we do not believe the standard for new OPOs is more rigorous. We have been told by some OPOs that the average conversion rate of potential organs is approaching 3 to 1. This means that to achieve the standard for existing OPOs of 24 donors, a new OPO should have an area big enough to have close to 72 potential donors.

We did not use the 72-donor criterion for several reasons. First, we believe it is inappropriate to hold new OPOs to a different initial standard than that which had to be met by their competitors when they first entered the program. Second, we believe that new OPOs deserve the benefit of the doubt in achieving a conversion rate that is above the national average. That is, a new OPO may have only 50 potential

donors, but because of effective practices is able to achieve a conversion rate of 2 to 1, and thus would continue to meet the qualification criterion at recertification time.

Comment: One commenter noted that not all OPO service areas are contiguous territories. The commenter requested that HCFA prohibit OPOs from developing noncontiguous areas, citing difficulty in organ allocation when service areas are separated.

Response: The commenter did not present any data or examples demonstrating that noncontiguous areas are problematic. Further, the issue of noncontiguous service areas has not presented a significant problem for organ allocation or procurement to the best of our knowledge. Most OPOs that have noncontiguous service areas have established field offices in each territory. Often, they have secured approval for alternative allocation policies for each portion of the service area. While there may be some administrative complexities associated with noncontiguous areas, this concept has appeared to work very well. We find no reason to prohibit the practice in the future.

C. Provisions of This Final Rule With Comment Period

We are making the following changes to the interim final rule.

- We are revising § 486.306(d). We are retaining the general requirements for documentation of service area in paragraph (d) and moving the specific detailed requirements in that paragraph to new § 486.307 *OPO service area requirements and documentation* and including a cross-reference to § 486.307 in § 486.306(d). We are making this change as a technical change to allow for a better organization and readability of the regulations.
- We are adding § 486.307(d)(3) to provide for an exception process when an OPO experiences unforeseen circumstances beyond its control that result in the OPO failing to meet the qualification criterion during a single certification period. To qualify for an exception, the OPO must demonstrate that (1) it failed to meet the 24-donor criterion due to unusual circumstances beyond its control, (2) it has historically maintained a service area sufficient to assure effective procurement and equitable distribution (that is, it has historically achieved 24 donors per year), and (3) it has a specific plan to achieve 24 donors per year in the future.
- We are deleting § 486.310(b)(2) (formerly § 485.306(b)(2)). This paragraph contains the 24-donor rule as a measure of performance. As noted above, we are keeping this measure as a qualification criterion.
- Although we did not receive a comment to this effect, we are redesignating § 486.310(a)(3) (formerly § 485.306(a)(3)), that requires OPOs to enter into a working relationship with any hospital or transplant center in the OPO's service area that requests a working relationship, as § 486.304(b)(8). We believe that this requirement is more appropriately considered as a qualification standard for OPOs rather than as a performance standard.

III. Composition of the Board of Directors of an OPO (§ 486.306(f))

A. Background

Section 485.304(f) (redesignated as § 486.306(f)) requires that as one of the conditions for qualification as an OPO under the Medicare and Medicaid programs, an OPO must have a board of directors or an advisory board that has the authority to recommend policies relating to the donation, procurement, and distribution of organs. That section also specifies that the board must include members with various backgrounds and areas of interest. In the proposed rule, we included a revision to § 485.304(f)(3) (now § 486.306(f)(3)) to allow either a physician or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility to serve on an OPO board of directors or advisory board. In the interim final rule, we changed the requirement from ''a physician with knowledge, experience, or skills in the field of human histocompatibility'' to ''a physician with knowledge, experience or skill in human histocompatibility, or an individual with a doctorate degree in a biological science and with knowledge, experience, or skills in the field of human histocompatibility.''

In addition to this requirement, § 486.306(f) specifies that the board must also consist of:

- Members who represent hospital administrators, tissue banks, voluntary health associations in its service area, or emergency room personnel.
- Members who represent the public residing in that area.
- A neurosurgeon or another physician with knowledge or skills in the field of neurology; and
- A transplant surgeon from each transplant center in its service area with which the OPO has an arrangement to coordinate its activities.

While an OPO may have more than one board, the membership composition specified in § 486.306(f) must exist on a single board.

B. Public Comments and Our Responses

Comment: Several commenters questioned the composition of the policy board. Some commenters expressed concern with the involvement of a transplant surgeon from each transplant center. They interpreted the regulation as requiring that each transplant surgeon from each center be placed on the board. They commented that this provision would produce very large and costly boards and would give transplant surgeons control.

Response: The commenters misinterpreted the regulation. We are not requiring that each transplant surgeon be included on the OPO policy board. Rather, we are including in the regulations the statutory requirement contained in section 371(b)(1)(G)(i)(V) of the PHS Act. This section requires that there be one transplant surgeon from each transplant center within the OPO service area included on the policy board.

We agree with the commenter that to include all transplant surgeons would be inappropriate. Such a situation would give transplant surgeons a disproportionate influence over OPO policies. We did not intend to require the inclusion of every transplant surgeon. In fact, we read the statute as prohibiting this composition. That is, we believe the statute does not provide the OPO an opportunity to alter the composition of the board from that provided in the law. Section 371(b)(1)(G)(i) of the PHS Act states clearly that the board ''is composed of * * * from each transplant center * * * *a* member who is a surgeon * * *.'' We believe the use of the article ''a'' to modify transplant surgeon members, expresses the will of the Congress that the board be composed using only a single transplant surgeon from each transplant center within the service area. The statute does not say that the board must include at least the following members. Rather it clearly states that the board is composed as directed. Thus, OPOs may not add additional members to the policy board other than those specified in § 486.306(f). We are modifying this section to specify that the board must ''be composed of'', rather than say ''include'' to clarify this provision.

Comment: Another commenter recommended that § 486.306(f) be modified to include only a single representative from one of the disciplines from each transplant center on the policy board. The commenter was concerned that the current regulation gives surgeons a disproportionate influence on the board

or requires very large boards to balance their influence.

Response: As noted above, the statute is very clear in describing the composition of the policy board. To alter the composition would require a change in the law. However, we are not convinced that the composition mandated in the law is problematic in most cases.

The law requires both a neurologist and a histocompatibility expert on the board. In addition, it requires an unspecified number of other people that may be included; for example, representatives of hospital administrators, intensive care and emergency room personnel, tissue banks, voluntary health associations, and members of the public. Although the law does not specify the number of these representatives, it is clear that there must be multiple representatives through the use of the plural of the word ''members'' in sections 371(b)(1)(G)(i) (I) and (II) of the PHS Act. In all but a few extremely large urban OPO service areas, using only the minimum representation from these other categories will result in a fairly small and balanced policy board.

We acknowledge that there will be isolated cases where the requirement for a surgeon from each transplant center may be problematic. For example, we are aware of one OPO that services 17 transplant centers. The inclusion of 17 transplant surgeons will result in a very large and potentially difficult policy board. Therefore, we are considering recommending a statutory change to the Congress regarding the law governing OPO board composition. In the meantime, the boards must be composed as directed in the law.

Comment: Other commenters recommended that OPOs be allowed to establish committees, such as a quality of organs recovered committee or a medical committee, in lieu of full representation on the policy board by all surgeons. Still other commenters expressed support for inclusion of one transplant physician from each transplant center on the policy board.

Response: As noted above, the composition of the board is explicit in the statute. We do not have the authority to condone alternative governing strategies. We will consider developing a recommendation for statutory change in this regard. However, we believe that the statute would not prohibit OPOs from establishing the committees that have been suggested. Such committees could advise the board and may be very helpful in developing the OPO's policies and influencing its practices. We strongly encourage OPOs to seek opinions from their customers and others affected by their decisions. The only problem we find with the commenter's recommendation is that such committees cannot be used in lieu of full representation.

Comment: One commenter suggested that § 485.304(f)(3) (now § 486.306(f)(3)) relating to histocompatibility representation on the board be broadened further to include a doctorate level individual in bioethics or a nursing specialty.

Response: We are not certain if the commenter intended that the histocompatibility requirement be met by someone with bioethic or nursing doctorate level education or that such individuals be added in addition to the histocompatibility person. We believe that the histocompatibility requirement is extremely important to the policy board composition. Histocompatibility testing is paramount in discussing policies related to equitable distribution of organs. We believe that the histocompatibility representative on the policy board must be someone with a medical degree or a biological science degree with experience in human histocompatibility.

The requirement included in § 486.306(f)(3) is a reiteration of the requirement in the statute. The current law does not authorize alternative education for this requirement. However, the current regulations do not prohibit an OPO from including someone with a doctorate level education in nursing or bioethics on the board. The statute does not provide specific direction as to the education or number of representatives from hospitals and the public. An OPO could certainly choose to include a person with advanced nursing and bioethics training, or both, as one of these board representatives.

Comment: One commenter recommended that the OPO boards be comprised of not more than 50-percent representation from transplant centers.

Response: As noted above, we have described the composition of the OPO boards in this regulation in accordance with section 371 of the PHS Act. We note that the law does not prescribe the number or skills mix of representatives from hospitals or the public. We expect that, given that the boards must include a transplant surgeon from each transplant center, in most cases the transplant centers will be heavily represented on the boards.

We believe, however, that it is unnecessary and inappropriate to dictate the percentage of transplant center representatives on the board. We believe that each OPO is best equipped to determine the needs of its operation and the community. Given the number of transplant centers in the OPO's service area, such a requirement could result in extremely large boards which could be costly to the OPO and, consequently, the Medicare and Medicaid programs. Further, we do not believe that the statute supports such a requirement because the law was deliberately vague in its use of the term ''representatives'' as opposed to use of limiting article ''a'' in the requirements regarding members of the board.

However, given the rigorous performance standards that OPOs must meet, we expect that each OPO will ensure as broad a representation as practicable in setting up its policy board. We expect that it would want to seek out increased involvement with donor hospitals and public representatives to achieve innovative strategies to increase donation rates. OPOs that fail to modify their boards to achieve a balance in representation from the donor community and the transplant community are likely to feel the consequences in failure to meet performance standards. Thus, although we are not specifying the percentage of representatives, we are holding OPOs accountable for appropriate decisions.

C. Provisions of this Final Rule With Comment Period

We are clarifying § 486.306(f) by revising the language describing the OPO board. The revised language, ''the advisory board must be composed of the following,'' more clearly indicates that there is no discretion to add or remove skills to the mix on the board.

IV. Equitable Distribution of Organs (§ 486.306(i))

A. Background

In a proposed revision to § 485.304(i) (now § 486.306(i)), we specified that an OPO must have a system to allocate donated organs equitably among transplant centers and patients according to established medical criteria. This revision was made to include the word ''equitably'' in the previously existing requirement. In the interim final rule with comment period, we changed the requirement to eliminate the allocation of organs among ''centers'' and to specify the medical criteria that the system must operate under; that is, they must be consistent with Centers for Disease Control and Prevention (CDC) standards and with OPTN rules. We made the former change to be consistent with section 371(b)(3)(E) of the PHS Act.

B. Public Comments and Our Responses

Comment: One commenter believed there was now an absence of a requirement for OPOs to equitably distribute organs. Another commenter recommended that there be a follow-up mechanism to ensure that OPOs use a system to allocate organs according to established medical criteria.

Response: The regulations at § 486.306(i) require OPOs to have a system to equitably allocate donated organs among transplant patients that is consistent with the CDC and the OPTN rules. We made the change in the interim final rule to specifically add the word ''equitably'' to the distribution requirement. Currently, the OPTN develops a national organ allocation system. The system is developed by the membership and is medically based.

Although we are aware of isolated instances of OPOs using allocation systems that do not comport with the national OPTN rules, we do not believe that this situation is widespread. Consequently, we believe it is unnecessary to establish a formal mechanism to evaluate OPO allocation methodologies at this time. However, we invite the public to advise the Department of incidents of organ allocation that fall outside the established system. Incidents should be reported to Judith B. Braslow, Director, Division of Organ Transplantation, Room 7–18, 5600 Fishers Lane, Rockville, MD 20857.

Comment: Two commenters requested clarification regarding the reference to the CDC standards. They noted that the CDC guidelines were published as guidelines, not rules. They inquired if inclusion in § 485.304(i) (now § 486.306(i)) sets these guidelines as standards of practice for the entire transplant community.

Response: Section 486.306(i) requires that an OPO's system of distribution of organs among patients be consistent with the CDC standards. For the most part, these CDC standards relate to screening potential organ donors and organs recovered for Human Immunodeficiency Virus (HIV) infection. We believe that the monitoring for HIV infection is critical and is an essential element for Medicare certification of OPOs. In fact, in section 371(b)(3)(C) of the PHS Act, the Congress has specifically required that OPOs evaluate an organ for HIV infection.

Exclusion of prospective blood donors based on their acknowledged risk factors for HIV infection began in 1983. In 1985, when the test for the HIV antibody became available, screening of prospective donors of blood, tissue and organs began. Both measures have reduced remarkably the transmission of HIV via these routes. A 1991 investigation, however, determined that several recipients had been infected with HIV by an organ/tissue donor who had negative HIV antibodies at the time of the donation. This occurrence raised questions about the need for additional Federal oversight of transplantation of organs and tissues.

A work-group was formed by the Public Health Service (PHS) to address transmission of HIV through transplantation of human tissue. This group produced a set of recommendations that were included in the CDC Guidelines that we have included as an appendix to subpart G of part 486 and referenced in the OPO regulations. OPOs must abide by the CDC guidelines to qualify for Medicare and Medicaid certification.

In developing the recommendations, the PHS sought assistance from public and private health professionals and representatives of the transplant community, public health and other organizations. A total of 37 external consultants and 18 government staff formulated the recommendations. These recommendations address issues such as donor screening; quarantine of tissue from a living donor; inactivation or elimination of infectious organisms in organs and tissues before transplantation; timely detection, reporting, and tracking of potentially infected tissues, organs and recipients; and recall of stored tissues from donors found after donation to have been infected. Factors considered in the development of these guidelines included differences between the screening of living and cadaveric donors; time constraints due to organ/tissue viability that may preclude performing certain screening procedures; differences in the risk of HIV transmission from various organs and tissues; differences between systems for procuring and distributing organs and tissues; the effect of screening practices on the limited availability of organs and some tissues; and the benefit of the transplant recipients.

The CDC guidelines are intended to promote public health and safety. They were not arrived at without appropriate assessment of the risks and benefits for the public health of Americans. We fully support the CDC guidelines and have attempted to assure compliance with them through inclusion in the Medicare conditions of coverage. Thus, the inclusion of the CDC guidelines as a requirement for OPOs does give the CDC guidelines regarding organ allocation the force of regulation. That is, any OPO found to be failing to conduct appropriate screening or distributing organs that are not in compliance with the CDC guidelines for organ allocation can be found out of compliance with the qualifications for becoming a Medicare- or Medicaid-certified OPO and have its certification terminated.

However, we acknowledge that the reference to the CDC guidelines contained in the interim final rule with comment period is not sufficiently clear on this point. Consequently, we are revising § 486.306(i) to specifically incorporate by reference the CDC guidelines. The guidelines were issued as one of the CDC Morbidity and Mortality Weekly Reports, ''Guidelines on Preventing Transmission of Human Immunodeficiency Virus Through Transplantation of Human Tissue and Organs,'' Vol. 43, No. RR–8, May 20, 1994.

We did not receive a formal comment on the application of the CDC guidelines during the public comment period for the interim final rule. We understand, however, that OPOs have taken the position that acceptance of recovered organs is a matter of patient choice. Some patients are so dangerously close to death while on the waiting list that they are willing to risk receiving an organ potentially infected with a fatal virus rather than risk the chance of not finding in a timely manner an appropriate healthy organ. Some OPOs support the patient having the opportunity to make this choice for themselves and believe the CDC guidelines prohibit this practice.

The law at section 371(b)(3)(C) of the PHS Act is clear regarding testing for infection with the etiologic agents (HIV–1 and HIV–2) for acquired immune deficiency syndrome and taking steps to prevent exposure to HIV through transplantation of these organs. Regardless of the personal preference of a potential recipient or the opinion of the OPO staff, the law requires that potential donors be tested for viral markers for HIV–1 and HIV–2, and if found to be infected, organs from that donor are not to be transplanted.

The CDC guidelines, however, do permit some measure of judgment for organs tested negative for HIV etiological agents, but procured from donors who have demonstrated high-risk behaviors. The recommendation in the CDC guidelines on donor screening state that ''* * * Regardless of the HIV antibody test results, persons who meet any of the high-risk criteria should be excluded from donation of organs or

tissues unless the risk to the recipient of not performing the transplant is deemed to be greater than the risk of HIV transmission and disease. In such a case, informed consent regarding the possibility of HIV transmission should be obtained from the recipient. * * *''

Thus, while compliance with the CDC guidelines requires OPOs to conduct screening of donors through asking questions about the potential donor's behavior relative to HIV-risk factors, the guidelines do not unilaterally prohibit transplantation of the organs from donors found to have high-risk behavioral criteria who have negative HIV–1 and HIV–2 serologic tests. The OPO may procure the organs from such donors and make the information concerning HIV-risk factors available to the transplant surgeon. The transplant surgeon will then assess the risk factors for HIV against the risk associated with delaying transplantation and together with the potential recipient (and his or her family if appropriate) make a decision to accept or reject the organ. It is imperative, however, that full information regarding the risk factors be disclosed by the appropriate transplant surgeon to the potential recipient.

C. Provisions of this Final Rule With Comment Period

We are including the specific CDC guidelines cited in the interim final rule as appendix A of part 436 subpart G. We are also clarifying the reference to the CDC guidelines in § 486.306(i). As a result of these revisions, we are making the guidelines required standards for OPOs.

V. Testing of Organs (§ 486.306 (q) and (s))

A. Background

In the proposed rule, we added a new § 485.304(r) (now § 486.306(q)) to require OPOs to assure appropriate tests consistent with OPTN standards and CDC guidelines are performed to prevent the acquisition of organs that are infected with the HIV–1 and HIV–2 etiologic agents for acquired immune deficiency syndrome. In the interim final rule, we redesignated the contents of paragraph (r) as paragraph (q) and the contents of paragraph (q) as paragraph (r) and added a new paragraph (s). Revised paragraph (r) required OPOs to assist hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors. New paragraph (s) required OPOs to ensure that serologic testing for HIV–1 and HIV–2 viral markers is performed on potential donors consistent with OPTN rules and CDC guidelines for solid organ donation.

B. Public Comments and Our Responses

Comment: One commenter recommended that we include standard provisions that are required for all hospital donation protocols. The two provisions the commenter specifically suggested were that (1) hospitals refer all potential donors to the OPO before donation has been mentioned, and (2) a trained professional be involved in all donation requests.

Response: We believe that the suggested protocols are good and are likely to work quite effectively for many OPOs and hospitals. However, it is inappropriate to regulate specific donation protocols at this time. There are many different protocols that can be highly effective in organ donation. We do not wish to stifle the development of innovative means of increasing the procurement rate by regulating specific methodologies or protocols.

Comment: One commenter expressed concern with the requirement in § 485.304(s) (now § 486.306(s)) regarding CDC guidelines for preventing transmission of HIV through transplantation of human tissue and organs. The commenter noted that an OPO has no knowledge of what information the transplant center provided to the potential recipients regarding their informed consent to the risks of transmission of infections. The commenter suggested alternative language describing an OPO's responsibility to make information available to the transplant center. This language would state that an OPO is not responsible for the decision to transplant high-risk organs in life-threatening situations.

Response: Section 485.304(s) (now § 486.306(s)) requires that OPOs ''Ensure that donors are tested for human deficiency viral markers consistent with OPTN rules and CDC guidelines for solid organ donation.'' Similarly, § 485.304(i) (now § 486.306(i)) requires that the OPO allocate organs in accordance with these guidelines. OPOs are responsible for testing and allocating organs in accordance with these guidelines.

If an OPO only allocates organs that comply with the guidelines to a transplant hospital, a transplant center would receive a high-risk organ to transplant to the recipient only on a very rare and carefully selected basis. The OPO is required to ensure that informed consent of the recipient is obtained. Thus, while the commenter is accurate in the statement that an OPO does not formally have direct contact with the recipient, we do not agree that such a situation in any way alters the responsibility of an OPO to follow the CDC guidelines regarding testing and allocation of organs. We expect that in these rare cases the OPO will work closely with the transplant center to impress upon the center the importance of getting informed consent documentation to the OPO timely. We expect hospitals will cooperate with the OPOs in meeting this requirement.

An OPO's responsibility does not stop with testing the donor and making information available to the transplant center. The regulations go beyond this to require the OPOs to allocate organs in accordance with CDC guidelines. We believe it is appropriate to continue to hold OPOs responsible for compliance with the CDC guidelines for allocation as well as testing. Therefore, we are not modifying the regulations as recommended by this commenter. However, as we stated above in discussing § 486.306(i), we believe that the nonspecific reference to the CDC guidelines could be confusing. Thus, we are clarifying the regulations to include a reference to the CDC guidelines in § 486.306(s). The guidelines are also included as an appendix to part 486 subpart G.

Comment: One commenter suggested we also require OPOs to use the guidelines and recommendations of the PHS workgroup on the testing of organ donors for the presence of hepatitis.

Response: Unlike the requirement for testing for HIV viral markers, which is contained in section 371(b)(3)(C) of the PHS Act, there is no express legislative authority to mandate a requirement for hepatitis testing. Although we believe that hepatitis testing is not precluded by the law, there is no clear indication in either the statutory language or the legislative history indicating the Congress intended that the direction provided for HIV testing be expanded to other infectious diseases.

We believe that it would be permissible to issue a regulation requiring hepatitis testing for potential organ donors. However, we believe that it would be imprudent to proceed with such a requirement without the benefit of a prior public comment period to solicit the input of the industry and other interested parties. We recognize that there are significant OPO concerns that must be considered before we proceed with any proposal to require testing for hepatitis. We especially want to consider any cost impact and potential for decline in organ donations before we develop a regulatory change of this nature. Consequently, we are inviting public comment on this issue at

this time. If, after considering any comments we receive, we believe that change in the regulations is appropriate, we will issue a new regulation.

C. Provisions of the Final Rule With Comment Period

We have revised § 486.306 (q) and (s) to include a reference the CDC guidelines as standards in this final rule with comment period. We have also included the CDC guidelines as an appendix to part 486 subpart G.

VI. Qualification Data (§ 486.306(t))

A. Background

In the interim final rule with comment period, we added § 485.304(t) (now § 486.306(t)) to enable us to verify an OPO's compliance with the performance standards. Section 486.306(t) requires an OPO to submit accurate data to us within 15 days following the end of a calendar year (unless otherwise notified), giving information on the—

- Population of designated service areas based on the most recent U.S. Bureau of the Census data;
- Number of actual organ donors;
- Number of kidneys procured;
- Number of kidneys transplanted;
- Number of extrarenal organs by type procured; and
- Number of extrarenal organs transplanted.

B. Public Comments and Our Responses

Comment: One commenter believed that there are multiple interpretations for the terms for ''actual donor'' and ''procured'' that are used in the performance standards. The commenter recommended that HCFA adopt the definitions that have been developed by the OPTN contractor.

Response: Because, in the case of the OPO performance criteria, we are using criteria that are based on the performance of peers, it is important that all OPOs use the same data definitions to report data uniformly. We surveyed the use of various terms within the industry, including the OPTN contractor, and developed the following definitions:

- Kidneys recovered—The number of kidneys recovered is the actual number of kidneys the OPO recovers with the intent to transplant. Kidneys recovered that are intended for research are not to be included in the count. However, if a kidney was recovered with the intent to transplant but was not actually transplanted due to unforeseen circumstances, it may be counted. Kidneys recovered en bloc are counted as two kidneys.
- Kidneys transplanted—The number of kidneys transplanted is the actual number of kidneys that were transplanted into recipients. Kidneys transplanted en bloc are counted as two kidneys. Kidneys transplanted as part of multiple organ transplants, for example, kidney-pancreas transplants, are counted as both a kidney transplant and an extrarenal transplant.
- Extrarenal organs recovered—The number of extrarenal organs recovered is the actual number of hearts, livers, lungs, and pancreas the OPO recovers with the intent to transplant. Each organ is counted individually regardless of the number of organs transplanted into the same recipient.
- Extrarenal organs transplanted—The number of extrarenal organs transplanted into recipients. Each organ is counted individually regardless of the number of organs transplanted into a single recipient.

We had initially collected data from the OPOs using alternative definitions that may have disadvantaged some OPOs serving hospitals that frequently engaged in multiple organ transplants, such as heart-lung transplants, bilateral lung transplants, and kidney-pancreas transplants. We believe these revised definitions treat OPOs fairly. We note that the OPTN contractor has agreed to use these common definitions in its data gathering activities. Consequently, the feedback that the OPTN contractor provides to an OPO throughout the performance period to monitor an OPO's performance against its peers should be consistent with the HCFA performance standards. Moreover, based upon our impact analysis, we believe that changing the definitions from those contained in the interim final rule with comment period will not adversely impact any OPO's ability to meet the performance standards.

We defined ''donors'' in our previous collections as ''the number of cadavers from which the OPO actually recovers at least one viable organ.'' Some OPOs advised us that differences in OPO protocols may result in unintended differences among the OPOs through the use of this definition. They recommended that we alter the definition to count only those cadavers from which at least one organ was ultimately transplanted.

Unlike the changes in other definitions that increase the number of organs counted for nearly all OPOs, this recommendation for the change in the definition of ''donors'' would decrease the count of donors for many OPOs. Further, in conducting an impact analysis, we found at least one OPO that would have met the performance standard under the previously announced definition would not meet the standard under the recommended revision.

We do not want to change the standard without benefit of comment from the full industry, particularly in light of the fact that OPO representatives differ in their views of the most appropriate definition. Similarly, we are concerned that making a change in the definitions that would adversely impact some OPOs at this late time in the performance period without providing those entities an opportunity for comment is not equitable. Consequently, we are retaining the definition of ''donors'' that we used when we initially collected data to calculate performance standards for the 1996 designations. We are, however, open to altering the definitions for the 1998 recertification process. Therefore, we specifically invite the public to comment on this provision. If, after analysis of the comments, we believe that changes are appropriate, we will advise the public, including all OPOs, of these changes on a timely basis.

We advised OPOs of these definitions in our letters to them regarding the collection of data throughout the performance period. Similarly, we intend to include these definitions in the manual instructions being prepared on the OPO conditions of coverage. We believe that this way of proceeding will give us more flexibility in adopting more appropriate definitions that become evident through continued work with the data. We are also soliciting comments on whether changes in the definitions should be made through rulemaking.

Comment: Several commenters objected to our requirement that organs procured and transplanted en bloc, such as a pair of kidneys or lungs, be counted as a single organ. The commenters believed that each organ should be counted separately.

Response: We had intended that the organs be counted in accordance with industry standards. Mistakenly, we utilized the HCFA standard for counting organs that is applied during the cost reporting process. We have now changed our definitions to be consistent with industry usage. Each organ will be counted separately. OPOs are not able to influence the transplantation of multiple organs and therefore should not be penalized for serving centers that engage in this practice at a greater frequency than the national average.

We note that we have already clarified this in our operational instructions to the OPOs in verifying the performance data. Thus, the performance standards

applied for the 1996 recertification process have been calculated based on these revised definitions. Moreover, we are deleting any regulatory reference to how organs are to be counted. We believe that this type of detailed operational instruction is more appropriately placed in a manual where it can be revised more easily as appropriate.

Comment: A few commenters recommended that HCFA use only verified data from the OPTN contractor to monitor performance.

Response: We have analyzed portions of the OPTN data relative to organ recovery and transplantation. We found the donor data reasonably consistent with that reported to HCFA directly. Thus, the idea of using the OPTN data for calculating performance standards is very appealing. This method would reduce the reporting burden on the OPOs and is consistent with the Administration's goal of reducing the Federal regulatory burden. If we make such a change, we will, of course, first notify all OPOs timely.

However, we have two concerns before we can implement such a strategy. First, to make the performance standards as current as possible while still meeting the recertification schedule, we require that the calendar year data be reported as close to the end of the year as possible. Currently, we require the OPOs to report this data to us by January 15 annually. Because of the lag time of hospitals notifying the OPTN of recipient registrations, the OPTN contractor questions if the data reported by the 15th of the following month through routine channels are comprehensive.

Second, we are concerned that OPOs have an avenue to request adjustment of the data or to provide any necessary explanatory material. For example, all of the performance criteria are population based. Due to hospitals dealing with OPOs other than the one designated for the service area or census changes, changes in the actual population data for an area may be necessary. The OPTN data on population is not, to the best of our knowledge, specific to the actual hospitals served by OPOs. Thus, to use the OPTN data without the benefit of adjustment could unfairly penalize some OPOs.

We established a process for collecting data from the OPOs. Each OPO has been asked to submit its data in accordance with our directions defining the variables. OPOs have the opportunity to identify necessary adjustments to the population for its designated service area to take into account hospitals that deal with multiple OPOs or an OPO other than the one designated for the area. When an OPO requests a population adjustment, we will work with the alternative OPO and our regional offices using appropriate census data to accurately apportion the population in question.

National averages and performance criteria are calculated and forwarded to the OPOs, along with our recorded data from that OPO, to provide an opportunity to review the data recorded. The OPO has an opportunity to assure that data entry errors or other mistakes have not been made and provide any necessary corrections to the data base. We believe it is essential to provide OPOs this form of opportunity for input before we use the data for purposes that could potentially result in termination of the OPO from Medicare and Medicaid participation.

Initially, we were concerned that this opportunity for input would not be available if we were to use the OPTN data. However, we anticipate that once the initial population for the OPO service areas has been calculated, future changes or adjustments, or both, will be minor and infrequent. Thus, we may be able to develop a process that is based on calculation of the standards using OPTN data, yet incorporates a process for individual OPO adjustment requests.

Despite these concerns, we are supportive of the concept of using the OPTN data to calculate the performance standards. We, together with the OPTN contractor, will work with the OPOs and the transplant centers throughout the year to obtain the necessary data as timely as possible and develop a process for appropriate adjustments to achieve this goal. We intend to test the 1995 and 1996 OPTN contractor data submissions and analyze differences between the OPTN data and the OPO data. If the OPTN data prove satisfactory, we will begin using them to set the 1998 standards rather than collecting the data individually from the OPOs. We would, however, continue to allow OPOs to review the data and request changes as appropriate. We note that adopting the OPTN data may require revisions to the regulation or paperwork requirements or both. We invite OPOs to participate with us in this process during the ongoing evaluation.

Comment: One commenter believed that the requirement that the data be submitted within 15 days of the end of an calendar year is unreasonable. The commenter recommended that OPOs be given 60 days in which to submit data.

Response: We acknowledge that a 15-day period for submission of data after the end of the year may appear unnecessarily onerous. But, upon closer examination, we believe that the request is quite reasonable. The data are for items routinely collected by nearly all OPOs, there are only six data elements, and the data for the first 11 months may be gathered in advance of the due date with the final month's data added at the end of the year.

In addition, we believe that it is impractical to extend this timeframe because of the work that must be done to determine the performance standards before the recertification process which, for most OPOs, begins in April. Prior to the beginning of April in the years in which the recertification process takes place, we must review the data submitted by the OPOs, make any necessary adjustments, enter the data into a database, and calculate the performance standards. This work must be completed as early in the year as possible so that the OPOs can be notified of the standards, be afforded an opportunity to verify the accuracy of their data, and make any changes to the data prior to the recertification process. Because, the performance standards are based on averages, a change in a single OPO's data can result in a change in the standard that could impact upon other OPOs. We believe that it would be inequitable to OPOs to delay having the performance standards available to them until immediately preceding the recertification.

Additionally, we must also have estimates available as early as possible of those service areas currently served by OPOs that do not appear to meet the standards so that any OPO interested in moving into a service area of a poorly performing OPO has an opportunity to prepare a plan for operating in the service area.

The only alternative we have to collecting data within 15 days of the end of the performance period is to change the base years from which we calculate the standards. That is, we could calculate the performance standards for the 1996 redesignation using data from 1993 and 1994 rather than 1994 and 1995. We find this alternative unsatisfactory. We believe that it is important that the data used to evaluate an OPO's suitability for redesignation reflect the most recent performance of an OPO. The use of old data could result in our terminating the agreement of an OPO that has just completed an outstanding performance year because the OPO did not meet the criteria 2 or 3 years ago.

We note that very few OPOs appear to have difficulty with the data collection process and due date once they have gotten used to the process. For example, only six OPOs did not file their data

timely in response to our 1995 collection effort. Further, none of the OPOs called us to complain that the timeframe was unworkable or unreasonably difficult.

C. Provisions of the Final Rule With Comment Period

We have not made any revisions to § 486.306(t) in this final regulation with comment period. We have, however, removed the introductory paragraph of § 486.310 containing operational instructions regarding the counting of organs. We are removing these instructions from the OPO regulations because they will be more appropriately placed and more easily updated in an operational manual.

VII. Performance Standards (§ 486.310)

A. Background

Section 485.306 (now § 486.310) lists the performance standards for OPOs. In the proposed rule, we proposed revisions to this section to state that we would not ''redesignate'' any OPO that fails to meet the performance standards contained in this section. We also revised § 485.306(b) (now § 486.310(b)) to distinguish between an OPO which has not previously been designated by us for a particular service area and a redesignated OPO with respect to the exemption from meeting the performance standards in § 485.306(a) (1) and (2) (now § 486.310(a) (1) and (2)) for 2 years.

In the interim final rule with comment period, we revised the proposal to add the performance standards that OPOs must meet beginning January 1, 1996. An OPO must meet the primary performance standard by achieving at least 75 percent of the national mean for four of the five performance categories over 2 calendars years before the year of redesignation. The performance categories are:

- Actual donors per million population.
- Kidneys recovered per million population.
- Extrarenal organs recovered per million population.
- Kidneys transplanted per million population.
- Extrarenal organs transplanted per million population.

In addition to the primary performance standard, the interim final rule provided for three additional performance standards. An OPO must:

- Procure organs from an average of at least 24 donors per calendar year in the 2 calendar years before redesignation.
- Maintain an average procurement ratio of three organs per donor.
- Enter into a working relationship with any hospital or transplant center in the OPO's service area that requests a working relationship.

For the purpose of measuring adherence to the performance standards, organs removed en bloc and transplanted en bloc are counted as a single organ.

In addition, § 485.306 (now § 486.310) permits an OPO to submit corrected information if it believes the data used to apply the performance standards were inaccurate. It also allows us to grant an exception from some of the performance standards to OPOs operating outside the contiguous United States.

B. Public Comments and Our Responses

Comment: One commenter suggested that performance measures be reevaluated annually to ensure that the system can incorporate a superior model for assessing underlying donor potential that is under development.

Response: We intend to continually reevaluate the performance standards as new data become available. We believe it is unnecessary to commit to an annual reevaluation because it is unlikely that new measures will surface at a rate that would indicate that the existing standards are antiquated that quickly. Nonetheless, readers can be assured that we will continue to monitor research and experience to further refine and perfect performance standards. Any proposed changes in the standards will be published for public comment before being effectuated.

Comment: One commenter noted that performance standards based on potential would be more accurate and effective than the ones specified in the regulation.

Response: We do not agree with the commenter that standards based on potential performance are superior to standards based on actual performance. We believe it would be inappropriate for us to certify any except a new OPO based on its potential to perform at a certain level, if the OPO is not achieving a certain level of that potential. For example, an OPO could service an area with the potential to produce 100 organ donors and significantly higher than average organs per million population. However, if that OPO does not actually achieve 24 donors and 75 percent of the national average organs per million population, we believe strongly that it would be inappropriate for us to ignore the actual performance and continue to certify the OPO based on its potential performance.

Comment: One commenter expressed concern that the performance criteria disproportionately accentuated recovery over transplantation. That is, the commenter noted that three of the primary performance standards related to recovery (that is, donors per million, kidneys recovered, and extrarenal organs recovered), while only two related to transplantation (that is, kidneys and extrarenal organs transplanted). The commenter believed this emphasis on recovery over transplantation does little to accomplish the primary goal of OPOs—providing transplantable organs for thousands of waiting recipients. The commenter was concerned that such an emphasis may result in increased discard rates.

Response: We believe that both organ recovery and transplantation are critical areas of OPO performance that need to be monitored. We acknowledge that the commenter is accurate in noting that the primary performance criteria do slightly emphasize recovery over transplantation. One of the primary reasons for this is that an OPO can more directly influence the recovery rate than the transplant rate.

While we acknowledge that a small portion of the organs discarded are within the control of the OPO through tasks such as thorough medical history taking, we believe the majority of organ discards occur for reasons that are beyond the OPO's control. For example, surgical nicks, damage to the organ during removal, and diseases that were unknown to the family or not reported in medical records account for many discards.

While we believe it is important to hold OPOs accountable for making every effort to avoid unnecessary discards, we believe it is unnecessary and inappropriate to accentuate the transplantation over recovery. After all, an organ must first be recovered before it can be transplanted. Given that there are but five criteria in the primary performance standard, we continue to believe that it is appropriate to have three recovery-related criteria and two transplant-related criteria. We note that, for the most part, the OPO industry widely supports this division.

Comment: Another commenter expressed concern that the primary performance criteria were antiquated in that they emphasize kidney transplants almost to the exclusion of other tissues and organs.

Response: We do not agree with the commenter that the primary performance standard disproportionately emphasizes kidney transplants ''almost to the exclusion of'' other tissues and organs. Three of the five primary standards are not related to kidney transplants. However, since the

number of kidney transplants significantly outweighs other organ transplants, we believe it is appropriate to establish separate standards that look solely at the kidney recoveries and transplants as part of overall OPO performance. Of the 19017 transplants in 1994, 11,391 or 59 percent were for kidneys. We believe this high incidence of kidney organ transplants justify standards that concentrate exclusively on that organ. We welcome comments on whether this emphasis on kidney transplants is the best course for the future, given the science of transplantation.

Comment: One commenter stated that some OPOs may not meet the extrarenal organ standards for reasons beyond their control, such as geography or availability of transplant surgeons. The commenter stated that there are no pancreas, lung, or heart/lung programs in the commenter's State so the OPO often did not recover these organs due to unavailability of transplant surgeons. The commenter suggested that if an OPO is able to demonstrate that it cannot meet the standard due to such reasons, it be given credit for unrecovered organs.

Response: Although we can sympathize with this OPO's concerns, many OPOs are faced with this situation. Some have developed mechanisms to facilitate procurement of extrarenal organs for transplantation in patients listed at transplant centers outside their States. Many OPOs are meeting these goals by utilizing local surgeons to perform excisions. Other OPOs are developing relationships with extrarenal programs to facilitate placements without impediment from geographic boundaries.

It is an OPO's responsibility to recover all viable organs from all acceptable donors and facilitate their placement in suitable recipients. The performance standards are designed specifically to encourage more effective organ retrieval and transplantation. We believe it would be irresponsible, given the number of persons awaiting organs, to modify the performance standards in any way that would validate the failure to retrieve transplantable organs. Therefore, we are not altering the regulations as suggested by the commenter. We note that in areas where geographical boundaries present real obstacles to placement, such as noncontiguous States and territories, the regulations now located at § 486.310(c)(1) already adequately address this issue through an exception process.

If it is true that viable organs are going unrecovered because there is no transplant program for a specific type of organ in a State, we find a severe problem exists that should certainly be corrected. We do not want to encourage the continuance of the problem by altering the performance standards.

All organs can be transported at least 500 miles without significant chance of damage. With few exceptions, this 500-mile radius goes significantly beyond State and, generally, OPO service area boundaries. Consequently, an organ should be recovered even when the organ cannot be transplanted in the State or within the OPO's service area. We strongly encourage any OPO that has adopted the practice of not recovering organs that it cannot transplant locally to alter that practice immediately.

Comment: One commenter suggested that HCFA include data from all OPOs, including new OPOs, in the calculation of the national mean.

Response: We intend to include all OPOs in the calculation of the national mean, including new OPOs and those in noncontiguous States and territories. However, we believe it is unnecessary to amend the regulations to specify this intention. Since the regulatory language does not restrict the calculation, we believe it already supports our position to include all OPOs in the calculation.

Comment: Several commenters suggested that we substitute deaths per year as the denominator in the primary performance criteria is lieu of population. They believe that logically this denominator is more directly correlated to the potential donor pool and would produce better performance standards.

Response: The objective of the performance standards is to establish an appropriate measure that would enable us to assess how well OPOs are maximizing organ resources and therefore warrant certification by the Medicare/Medicaid program. As such, it is important that the data we use to develop these standards provide an accurate measure of OPO performance. Clearly, the use of hospital deaths versus area population in the denominator from which these standards are derived warrants further investigation. We agree that since OPOs deal with cadaveric donors, deaths per year (particularly hospital deaths per year) is a more targeted measure of an OPO's actual potential donor pool. Therefore, we surveyed the OPOs in an attempt to collect death data from them for 1994 so that we could study the feasibility of using deaths per year as the denominator. In nearly every State, OPOs reported problems obtaining timely data. In at least one State, the data are not available at all. We were able to determine, however, that national death statistics are available from the National Center for Health Statistics (NCHS) and the Social Security Administration (SSA).

Although we have decided to proceed with the use of population as the denominator for a number of reasons discussed below, we are soliciting public comments on which approach—population or death statistics—would best achieve our objectives with respect to measuring OPO performance.

- Population Data:

For purposes of developing the performance standards, we use the latest census data. In addition, adjustments are made in the population data to account for hospitals that deal with OPOs outside the designated OPO service area.

These data are relatively easy to obtain at minimal, if any, cost to the OPOs. We are soliciting comment on the timeliness, cost, and quality of these data and adjustments to these data.

- NCHS Death Data:

NCHS produces a public use data tape that contains deaths by county for all U.S. counties. This tape contains approximately 2.2 million records per year. Although death data are available universally, there are some data elements that may be missing for certain areas. The OPO industry has suggested the use of in-hospital deaths rather than general death data, and while this could be obtained from the NCHS tape, certain areas, such as Oklahoma, do not make fine distinctions in the hospital site. Also, we are not certain about the availability of death data for the United States territories. The NCHS tape may allow some finer analysis based on demographic characteristics that may better reflect the viable organ pool.

In the United States, the collection of these vital statistics data is a State responsibility. Data are gathered by the States, and each State establishes its own definitions for terms and coding rules. Although NCHS conducts a quality review of the data, it uses the individual State guidelines to verify the data were coded appropriately. This approach, especially in terms of the definition of ''hospital'', could affect the OPO performance standards. In addition, there is approximately a two-year delay in the availability of death data from NCHS.

The NCHS public use tape can be purchased for $590 per year. Since performance standards utilize a two-year average to avoid penalizing OPOs for short fluctuations in organ donation, it would cost an OPO approximately $1200 per redesignation cycle to obtain

the tapes. At this time, the data file is only available in mainframe medium. We expect that most OPOs do not employ the staff that would be required to abstract data from the NCHS tapes, although we would welcome comment on this point.

The NCHS data does not identify individual hospitals for any State, and there may be confidentiality issues that preclude States from collecting hospital-specific information. Lack of hospital-specific data would create a problem in adjusting the performance data for those hospitals that deal with OPOs outside of the designated OPO service area. While for most OPOs the impact of hospitals dealing with alternative OPOs is minimal, there are several OPOs where the impact of such hospital choices is very significant.

- SSA Death Data:

Although we may be able to obtain timely death data through the Social Security Administration, we know through experience that there are a small number of deaths that are not reported accurately. Our experience with using these data in our intramural research indicates it is approximately 98 percent accurate. However, we are very concerned with use of data that the OPOs cannot verify. We are further investigating the timeliness, cost and quality of the SSA mortality data. We are interested in receiving public comment on this data source.

- Other Policy Implications:

We are concerned about the impact of using death as the denominator for those OPOs servicing large urban areas. Urban areas may have a higher death rate among apparently suitable donors, however, there is a lower donor consent rate among the minority population and a higher likelihood that a potential donor will be an HIV risk or present a history of substance abuse. Therefore, in these cases, the death rate may not accurately define the potential donor pool and may disproportionately affect OPOs serving large urban areas. We may not want to establish a performance standard that may systematically bias a particular group of OPOs.

We conducted an impact analysis comparing the use of 1991 death data (the most recent data available at the time of our analysis) and population data as denominators in calculating performance standards. We determined that the use of death data would not significantly alter performance outcomes compared to using population data. However, three OPOs servicing major urban areas would not meet the performance standards if death data were substituted for population data, provided that the performance standards is not also changed. We acknowledge that if the denominator used to measure performance were changed, the performance standard itself could in principle be changed, and solicit comments on this issue.

While research is being conducted on determining adjustment factors that would allow for normalization of death or population data to account for demographic factors, we are not aware of a generally accepted adjustment methodology at this time.

In summary, we are soliciting comments on the approaches discussed above with respect to use of population versus death statistics (from either NCHS, SSA or some other national source) as a denominator for measuring performance. Specifically, we are interested in comments concerning the timeliness, cost, and validity of the various data sources. We would also appreciate suggestions concerning possible adjustments to account for varying demographic factors across areas, as well as any other potential changes in the performance measures that could be used in conjunction with death data.

Comment: One commenter suggested that any adopted performance standards include adjustment for demographic risk factors related to the population of the service areas. The commenter suggested historical consent rates and medical suitability rates of potential donors.

Response: We acknowledge that intuitively it would seem to be more difficult to achieve performance standards in some service areas than in others. However, the impact analysis we conducted based on 1994 AOPO data does not support the assumption that the unadjusted population-based performance standards would disproportionately impact on those population bases that have higher demographic risk factors. Rather, it appears that the selected performance standards appropriately identify those OPOs that have not achieved designated performance standards based on factors that are within the OPO's control. For the most part, those OPOs with high demographic risk factors do not appear to have difficulty meeting the standards. For example, the California Transplant Donor Network exceeds the mean of all five of the performance standards while servicing San Francisco, which has one of the largest HIV populations in the country. Similarly, most OPOs servicing populations that have historically had low consent rates also appear to meet the standards.

Finally, the commenter did not propose an empirical value to be used to adjust for these risk factors. Although we are aware of ongoing research in this area, we have not found literature that unequivocally supports a method to calculate exact demographic risk factors that would appropriately adjust the planned performance standards. We are interested in any empirical research in this area. We intend to continue to monitor the research and will consider any significant findings for future refinement of the standards.

We are very interested in the development of alternative performance criteria that would be consistent with our goals of increasing organ donation, setting achievable threshold levels of acceptable performance that are realistic and fair to all the OPOs. Unfortunately, we have not been able to ascertain empirical evidence regarding the correlation between adjustment factors and donation. That is, to the best of our knowledge organ donation is influenced by a myriad of factors. An area that has a high incidence of some factor that would seem to decrease donation may also have a high incidence of another factor that would seem to increase donation. We are not aware of any regression analysis or other statistical studies that would allow us to appropriately adjust performance indicators for idiosyncracies of a geographic area.

Nonetheless, we are very interested in further refining the performance standards. We specifically invite the public to comment on any alternative performance measures that are supportable by empirical evidence.

We should point out, however, that it appears that the rigorous performance standards we have selected are providing the appropriate incentives to increase organ donation. Based on the unverified 1995 performance data reported, there has been an increase of 262 donors in 1995 over 1994, resulting in over 1100 additional organs being procured. We find these statistics very gratifying and may demonstrate that the use of rigorous performance standards significantly benefits the public awaiting transplantation.

Comment: Two commenters noted that many OPOs deal with hospitals outside of the designated service area. They asked if we would calculate the appropriate, actual population served by an OPO in applying the performance standards.

Response: As noted above, we believe that approximately 200 hospitals deal with OPOs outside their service areas. We recognize that this arrangement can contribute to an OPO's failure to meet the performance standards based on servicing a designated area. The

regulations at § 486.310(c)(3) specify an OPO may provide documentation to us to support an adjustment in its population rate if one or more hospitals in its designated service area have agreements with alternative OPOs.

Operationally, we have implemented this provision by soliciting actual population data from each OPO. We asked the OPOs to advise us when a population adjustment is appropriate. We then ascertained appropriate population adjustments through discussions with the alternative OPOs, the hospitals in question, and the HCFA regional offices. We note that effective January 1, 1996, a hospital may deal with only one OPO. We believe this requirement will make it easier to allocate population as the entire hospital service area will be designated to the one OPO with which it has an agreement. As noted above, we calculated the performance standards based on the reported data, asked OPOs to verify the accuracy of their submitted data, and provided OPOs an opportunity to request further adjustments.

We believe that the process we developed provides an opportunity for equitable adjustments to the population data and holds an OPO accountable for all of the hospitals it serves—including hospitals outside of its designated service areas.

Comment: One commenter noted that research currently underway at the Harvard School of Public Health could potentially lead to a more accurate methodology for measuring OPO performance. The commenter requested that the current performance measures be reevaluated annually to ensure that more current research does not produce a superior mechanism for evaluating performance.

Response: We are pleased to see that there is research ongoing in this area. We will be very interested in the results and will consider them fully when the research is complete. While we are always open to improving the mechanism for evaluating OPO performance from any interested source, we believe it is unnecessary and inappropriate to commit to an annual reevaluation in the regulations. OPOs must know in advance to what standards they will be held, so that they can make appropriate plans and changes in their procurement strategies. If the research proves to be superior as the commenter believes, we will issue a proposed notice in the Federal Register for public comment. Changes in the performance standards will only be made after the public has had an opportunity to review and comment on the proposal.

Comment: Two commenters suggested that we develop more appropriate criteria for the noncontiguous States and territories. They noted that Puerto Rico has historically had extremely poor success with organ procurement and would fail to meet the planned standards of 50 percent of the national mean.

Response: We acknowledge the historically small number of organ donations in Puerto Rico. We note, however, that other noncontiguous areas such as Hawaii have had higher donation rates. We feel challenged to develop a standard that would provide an incentive for improvement for Puerto Rico without being so lax as to fail to present any challenge to Hawaii at all. We note that the performance standards for the noncontiguous States and territories are limited exclusively to kidneys procured and transplanted. For this single organ, the standard is 50 percent of the national average.

During 1994, a new OPO assumed responsibility for Puerto Rico. Under the guidance of this new OPO, we are optimistic that Puerto Rico will eventually meet this performance standard. In the meantime, we do not intend to allow a service area that contains a hospital to go unserved. Thus, we have revised the regulations to specify that an OPO that does not meet the performance standards will not be terminated as long as another OPO does not compete for the territory (§ 486.310(c)). Given this change in the regulations, we believe it is acceptable to retain the standards for the noncontiguous States and territories. An OPO may continue to be designated for Puerto Rico even if it does not meet the performance standards as long as no other OPO competes for the service area. If another OPO demonstrates that it can achieve better performance in the area, we believe that it is appropriate to terminate the low performing OPO and give the alternative OPO an opportunity to achieve higher organ donation.

Comment: Several commenters were concerned that the primary performance standard of achieving at least 75 percent of the national mean for four out of the five performance categories is absolutely mandatory. They believed that OPOs should have an opportunity to provide a corrective action plan for the primary performance standards rather than be terminated. Another OPO suggested that OPOs not meeting the primary performance standard be placed on probation for one year.

Response: We, together with staff in the Health Resources and Services Administration, have long believed that there are many more potential organ donors available than are currently being identified by the OPOs. For example, there are nearly 5,000 hospitals in this country that have not identified a single organ donor over a 3-year period. Based on recent research from the Johns Hopkins University, we believe that approximately 850 of these hospitals have donor potential. While there are a myriad of reasons for failure to identify all potential organ donors and to convert all potential donors to actual donors, a major influence on organ donation is unquestionably the OPO.

We believe that the establishment of primary performance standards at 75 percent of the national average is a reasonable standard. We hold no OPO accountable to an arbitrary number but rather look only to its peers. We are not aware of geographical factors that by themselves make it impossible for an OPO to meet the standards in certain service areas. Rather with a 25-percent margin of error off the mean, we believe that the most influential factor to performance is the OPO itself.

We intend these performance standards to serve the people on the transplant waiting lists in all areas of the country by fostering the most efficient OPO service for them. We believe that all Americans, regardless of whether they are Medicare or Medicaid beneficiaries, deserve to be serviced by OPOs that make every effort and use every skill available to procure transplantable organs so that lives may be saved or improved through timely organ transplants.

Consequently, we believe it is important to hold each OPO accountable for meeting the primary performance standard. If the OPO that is assigned to a service area is not achieving appropriate organ donation rates, we would be acting irresponsibly to the Americans on the waiting list to allow that OPO to continue to serve that area rather than replace it with another better-performing OPO.

However, we equally believe we would be acting irresponsibly to allow an area to go unserved rather than to permit an OPO an opportunity for improvement. Therefore, we are altering the regulations to permit an OPO that does not meet the performance standards to retain its certification and submit a corrective action plan, if no other OPO that is performing acceptably is willing to assume the service area.

When an OPO does not meet the primary performance standard, we will solicit interest in assuming the territory from other OPOs. When another higher-

performing OPO wants to assume the service area, we believe that we should make the potentially superior service available in that area. In those cases where no other OPO expresses an interest in assuming the service area, we will allow the poor-performing OPO to submit a corrective action plan and retain its certification for an additional 2-year period.

Comment: Several commenters thought that the performance standard requiring OPOs to maintain an average procurement ratio of three organs per donor should be eliminated. Many of them thought that the standard would discourage innovative practices by OPOs, particularly those related to procuring organs from older donors.

Response: We had originally intended the use of a static number standard, such as the 3 organs per donor and 24 donors per year standards, as part the performance standards to ensure that the standards remained rigorous over time. We wished to safeguard against the industry as a whole becoming lax in performance and driving the national average to artificially low numbers.

Upon further reflection, we believe that the use of static number performance standards is unnecessary and could result in a burden on the OPOs if we required the submission of justification or corrective action plans when these standards are not met. In conducting an impact analysis of these performance standards, we found that all OPOs that did not meet the three organ per donor standard also failed to meet the primary performance standard. Consequently, we anticipate that this standard in and of itself would have no immediate impact.

We also recognize that industry changes that could result in these static number standards not being met may not necessarily be detrimental. For example, innovative practices, such as procuring organs from older donors, can result in a net increase in organs available even though the standard may not be met. We do not wish to discourage aggressive organ procurement practices as long as they promote safe organ acquisition and show respect for the families of potential donors. Our principle goal in the development of performance standards is to increase the total number of organs transplanted. Standards that could potentially deter an OPO from obtaining every viable organ available are contrary to our goal. Consequently, we believe that our goal is best served if we eliminate the static number standards and proceed with the primary performance standards alone.

Comment: One commenter requested that newly merged OPOs and OPOs acquiring significant new territory be granted a grace period for compliance with the performance standards, similar to what we permit for newly formed OPOs. The commenter believed that failure to provide a grace period would deter an OPO from expanding its territory.

Response: The concept of granting a grace period for merging OPOs and OPOs acquiring significant new territory is a difficult one. We recognize that significant changes in OPO management, administration, or new service areas could potentially result in a temporary decline in performance as the organization adjusts to the change.

On the other hand, we are extremely concerned that permitting a grace period could instill a perverse incentive into the program. That is, allowing a grace period could provide an incentive for two poorly performing OPOs to merge merely to avoid termination or for OPOs to enter into bidding wars over service areas to avoid application of performance standards. Policies that promote frequent major changes in the OPO structure could be counter to our goals by resulting in decreased rather than increased organ donations.

After considerable thought, we have decided to retain our current policy of not permitting a grace period for newly merged OPOs or OPOs with significant changes in territory. We believe that this will encourage OPOs to undertake such changes judiciously using careful thought and extensive planning. It is far less likely that big OPOs will overstep their capacity for expansion if they must maintain high performance standards.

We note, however, that the above change in policy, related to the failure to terminate an OPO's provider agreement when there is an absence of interest by another OPO in assuming the service area, would apply in the case of newly merged OPOs. That is, a newly merged OPO will be allowed to continue in the program even if it does not meet the performance standards when no OPO with acceptable performance levels is interested in servicing the area.

We expect that, in most cases, there would be a reluctance on the part of competing OPOs to move into the service area of a newly merged OPO before that OPO has had an extended opportunity to demonstrate its ability to perform. We base our expectation on the realization that repeated changes in OPO personnel and organization practices are disruptive to organ donation and are likely to make it more difficult for the second OPO to meet its performance standards as well.

C. Provisions of this Final Rule With Comment Period

- We have added new § 486.310(c)(2) to provide that an OPO that is performing below standards may be redesignated for a service area if no acceptably performing OPO is willing to accept responsibility for the service area and if the designated OPO submits a corrective action plan.
- We have reorganized § 486.310(c) for clarity.
- We have moved the requirement at § 486.310(b)(4) (formerly § 485.306(b)(4)) that each OPO enter into a working relationship with any hospital or transplant center in the OPO's service area that requests a working relationship to § 486.304(b)(8).
- We have deleted § 486.310(b) (2) through (4) (formerly § 485.306(b) (2) through (4)) relating to the non-primary performance standards for redesignation after January 1, 1996. We are making conforming changes to various other sections to delete references to these sections.

VIII. Definition of an Open Area (§ 486.302)

A. Background

In the proposed rule, we added the definition of ''open area'' to § 485.302 (now § 486.302). We defined ''open area'' as a service area for which we are accepting applications for designation. A service area becomes open for competition once the normal 2-year designation period or brief interim redesignation period has expired, when the designated status of the existing OPO is terminated, or when no OPO previously has been designated for the area. In the interim final rule with comment period, we modified § 485.308(a) (now § 486.316(a)) to clarify that, based upon the language in § 485.302 (now § 486.302), it is the OPO's provider agreement with HCFA (not the OPO itself) that can be terminated.

B. Public Comments and Our Responses

Comment: A few commenters requested clarification of the concept of an open area. The commenters believed that, if an OPO meets the performance criteria, no other OPO should be allowed to compete for its service area.

Response: It is the intent of the law to encourage the most effective organ procurement and allocation system. During various Congressional hearings on transplant issues, the Congress has made it clear that it supports as

equitable a system as possible. We believe it is the Congress' expectation that we establish conditions in the Medicare and Medicaid program that provide incentives for OPOs to operate as efficiently and effectively as possible in procuring lifesaving organs.

Consequently, we believe that the law does not in any way intend to assure OPOs a monopoly simply because they barely meet the Medicare performance criteria. The structure of the statute, which allows only a single OPO to be designated in any given area, sets up an inherently competitive system. Thus, it is appropriate and in keeping with the principles of our national economy to permit competition regardless of the fact that an OPO is meeting the performance criteria.

We intend to designate the best performing OPO for each service area. We believe it is inappropriate to designate a marginally performing OPO for a service area simply because it has operated in that area previously if a peak-performing OPO is also competing for the area and has the support of the hospital community. However, we recognize that organ donation is a voluntary action. Therefore, to perform well in an area, any OPO must have the support and cooperation of the community. The ''tie-breaking'' criteria we will use to adjudicate the competition are specified at § 485.308(a) (1) through (6) (now § 486.316(a) (1) through (6)). These criteria emphasize the relationship between the OPO and the hospitals in the service area, the proximity of the OPO to the area, and past performance.

With regard to the explicit request for clarification of the open area designations, every county in the country is open for competition at redesignation time. Currently, most OPOs are in two-year designation periods that end April through June 1996 and every two years thereafter. Thus, an OPO may compete for any county, or all counties in an MSA, that it believes it can serve better than the existing, designated OPO at that time. To bid on an open area, the OPO must notify the HCFA regional office of its intention. The regional office will advise the existing, designated OPO of the competition and request the necessary information to evaluate the proposals.

In addition to the open area competition that may occur at redesignation time, an area will be declared open if the provider agreement with the OPO serving the area is terminated or if no OPO has been designated for the area. There are a number of counties that do not contain hospitals. Consequently, no OPO had been designated for these counties in prior designation periods. We believe that every county should have a designated OPO to work within the community. Therefore, we instructed our regional offices to designate these counties based on the affiliation of the hospital from which the majority of the residents seek care. That is, we asked the Regional Offices to designate these counties to the OPO servicing the hospital that is used routinely by the majority of the residents.

We had considered designating the county to the hospital furnishing trauma care to the locality. However, we decided to designate the OPO of the local hospital because the nearest trauma facility may be located very far away. We believe that designating the area to an OPO that is a great distance away is likely to be a deterrent to the OPO's ability to serve the community.

Finally, we point out that the final regulation states explicitly a policy HCFA has applied administratively in implementing the OPO redesignation process. We have historically allowed competition for OPO service areas designations at time of redesignation. Further, we would accept a bid for a service area for undesignated counties or the service area of a terminated OPO at any time should an entity apply. Such competition has been minimal. We do not expect this to change with the inclusion of this policy in the regulations. It is generally accepted that OPO-hospital relationships may make procurement more difficult during the transition. Since OPOs acquiring new service areas will continue to be held to rigorous performance standards, we do not believe OPOs will seek expansion without considerable thought and planning.

Comment: Another commenter noted that the interim final rule did not list the factors that would be used to adjudicate the designation of a service area that is being contested. The commenter suggested the following factors: procurement rate, satisfaction of transplant centers with service provided by the OPO, organ procurement costs, response time to donor referrals, extent and effectiveness of professional and public education, established patterns of organ donor referrals, organ discard rate, and donor hospital satisfaction.

Response: We did not reprint the factors that would be considered in adjudicating contested service area designation because we did not intend to change the regulations. As noted above, the factors are listed at § 486.316(a) (1) through (6). Many of the factors noted by the commenter are included in these regulations. These factors follow.

(1) Prior performance, including the previous year's experience in terms of the number of organs retrieved and wasted and the average cost per organ;

(2) Actual number of donors compared to the number of potential donors;

(3) The nature of relationships and degree of involvement with hospitals in the organization's service area;

(4) Bed capacity associated with the hospitals with which the organization has working relationships;

(5) Willingness and ability to place organs within the service area; and

(6) Proximity of the organization to the donor hospitals.

As noted above, we have not heretofore experienced a significant amount of competition among the OPOs. Thus, we have only limited experience with these criteria. If competition increases among the OPOs as a result of this final rule with comment period, we will consider revising the factors in the future. In that regard, we will give consideration to the factors noted by the commenter. We will also publish a proposed notice of these changes in the Federal Register and invite public comment on the proposal.

C. Provisions of This Final Rule With Comment Period

As we stated above, we are making no revisions in the definition of ''open area'' at this time.

IX. Termination of an OPO's Provider Agreement (§ 486.325(b))

A. Background

In the interim final rule, we added § 485.311 (now § 486.325(b)) to specify the conditions for both voluntary and involuntary termination of an OPO's provider agreement. For a voluntary termination, we required that the OPO provide us with a written notice of its intention with a proposed termination date. We will take action to approve the request as submitted or take other action to ensure that there is no disruption in services in the affected service area.

For an involuntary termination, we may terminate an agreement if we find that an OPO no longer meets the conditions of coverage. Under § 485.311(b) (now § 486.325(b)), we indicated we would give 15 days notice of termination. We also set forth an OPO's appeal rights, the requirement that an OPO give prompt public notice regarding the voluntary termination, and reinstatement provisions.

We made editorial changes to this section as part of the interim final rule

with comment period but we did not make any significant changes in the substance.

B. Public Comments and Our Responses

Comment: One commenter believed that a 15-day notice of termination, if used, could lead to serious disruption of organ procurement efforts. The commenter urged a minimum notice requirement of 90 days.

Response: The added the 15-day termination notice is included in the OPO regulations to be consistent with the treatment of providers under the Medicare program. It is common practice in the Medicare program to give providers a 15-day notice of termination of their agreement to participate in the Medicare program for failure to comply with the conditions of coverage.

However, upon further reflection, we can see some significant differences between certification of Medicare participating providers and certification/designation of an OPO that may warrant an alternative policy for OPO termination. Most notably, providers are generally terminated for serious and imminent health and safety reasons, while OPOs are most likely to be terminated for failure to meet performance standards. While it is possible for an OPO to be terminated for a health and safety reason, such as procuring organs from HIV-infected donors, such a termination has not occurred to date. Consequently, we expect that such an occurrence would occur very rarely, if at all. Thus, in the case of serious health and safety issues, it is important to protect the health and safety of our beneficiaries by proceeding with termination expeditiously. However, we believe that because no serious harm is likely to befall anyone if we move more cautiously with termination of an OPO's provider agreement, we can consider an extended termination notification period.

In addition, Medicare beneficiaries generally have easier access to alternative health care when a provider of health care services is terminated. That is, while a Medicare beneficiary is no doubt inconvenienced somewhat when the provider of choice is terminated from the program, 15 days is generally enough notice for the beneficiary to locate an alternative source of care within the area. In the case of an OPO, however, the situation is significantly different. That is, an OPO does not furnish health care services directly to the beneficiary, and there are no generally available alternative OPOs within easy access. Thus, in the case of OPOs, expeditious termination of the entity could present a significant problem to the providers who have an agreement with the OPO.

We note that we are changing the process for termination somewhat from that in the interim final rule with comment period. That is, we have concluded that we will not necessarily terminate an OPO that does not meet the primary performance standard if no other OPO is willing to assume the territory. Rather, we will solicit interest from other OPOs in assuming the service area. Thus, it seems only practical to allow for a period in which to solicit such interest from competing OPOs before terminating the OPO that does not meet the performance standard. To do otherwise would place an OPO in the anomalous position of being terminated 15 days after notification of failure to meet the performance standards only to be reinstated within a month or two when we discover no alternative OPO is willing to assume the territory. Consequently, we have modified § 485.311 (now § 486.325) to provide that termination of OPOs will occur 90 days after the notification by the Secretary that the OPO does not meet the standards.

C. Provisions of this Final Rule With Comment Period

We have revised § 486.325(b) (formerly § 485.311(b)) to provide for a 90-day advance notification before a termination of an OPO's provider agreement becomes effective. Similarly, we have revised § 486.304(e)(3)(ii) (formerly § 485.303(e)(3)), relating to interim designation periods, to extend the length of such designations to 180 days to take into account the longer advance notification period to effectuate terminations.

X. Effective Dates

A. Background

In the September 1994 interim final rule, we noted that, although the regulations were effective 30 days after publication, we would apply the new qualification and performance standards for the first time with the recertification of OPOs that takes place in the spring of 1996 (for most OPOs, June 1, 1996). For purposes of the recertification, we would use data from calendar years 1994 and 1995.

B. Public Comments and Our Responses

Comment: Several commenters suggested that we delay the effective date of the regulations to provide for 2 full years of advance notice before we apply the standards.

Response: Although the actual regulations were not issued until 9 months into the 24-month performance period (1994 and 1995), we believe that OPOs have had adequate advance notice of the intent to improve performance through both the law and the notice of proposed rulemaking that was issued in June 1991. That is, since 1991, revisions in the statute relating to OPOs that were discussed in the interim final rule have expressed the intent of the Congress that OPOs be held to rigorous performance standards. Moreover, while the 1991 notice of proposed rulemaking did not specify detailed qualification and performance standards, it included a discussion of the exact standards we included in the September 1994 interim final rule.

We believe that OPOs have had adequate advance notice that performance would be monitored and should have taken appropriate steps to ensure that they are performing to the best of their ability. In addition, the interim final rule was issued only 9 months into the performance period. Thus, even if an OPO had not been planning for the rigorous performance standards, it still has approximately 63 percent of the performance period remaining to make up for any past performance problems.

Finally, we note that the primary performance criteria are based on national averages. All of the data that are used to set the actual performance standards numbers come from actual performance of OPOs. Since the content of the interim final rule was not released until publication, all of the OPOs are treated equally with regard to knowledge of the standards. Thus, it is reasonable to assume that no OPO is unfairly treated by reliance on standards that are based on the performance of its peers. We collected the 1994 performance data from the OPOs. National averages were calculated and distributed to the OPOs in 1995. Thus, each OPO had an indication of what the performance standards would be and if it needed to significantly alter its performance to achieve performance equivalent to its peers. In addition, the AOPO has published peer performance data for OPOs to review and monitor their own performances throughout the performance period.

We are anxious to implement meaningful performance standards for OPOs. We believe that implementation of these standards will promote organ availability and result in additional lifesaving transplants for not only Medicare and Medicaid beneficiaries, but for all Americans in need of organ transplants. The 1996 recertifications are for a 2 year period. Thus, if we delay implementation of the standards beyond

the 1996 recertification, the standards will not be fully effective until June 1998.

Nonetheless, we recognize that the move to a system of performance and qualification standards that are objectively measured and strictly enforced is a major transition for the OPO community. Consequently, we are providing for a transition mechanism for OPOs that do not meet the standards for the 1996 redesignation period but are making progress towards meeting them. Therefore, we are providing transitional standards for both the service area size designation qualification standard and the performance standards for the 1996 redesignation period.

We will grant an exception to the 24-donor service area size criterion during the 1996 redesignation process for those qualified OPOs that meet the performance standards in § 486.310. To qualify for the exception, an OPO must submit a written request to HCFA that includes a narrative description of its plans for meeting the standard by the 1998 redesignation period. We emphasize that this is a one-time exception opportunity that will not be repeated for any OPO after the 1996 redesignation process.

We are also providing a one-time exception process for OPOs that do not meet four of the five performance standards at the time of redesignation. This exception is limited to those qualified OPOs that meet three out of the five performance criteria in § 486.310(b) (1) through (5). Similar to the exception process for the qualification standard, an OPO must submit a written request to HCFA accompanied by a detailed, narrative description of the OPO's plans for ensuring that it will meet the performance standards by the 1998 redesignation.

C. Provisions of This Final Rule With Comment Period

We are not making any changes in the effective dates of the provisions of the interim final rule with comment period. We are, however, as explained above, adding two one-time exceptions for the 1996 redesignation process only.

- We are adding § 486.307(d)(4) stating that HCFA may grant an exception to the 24-donor criterion in paragraph § 486.307(d)(2)(ii) to an OPO that can demonstrate that (1) it meets the performance criteria in § 486.310(b), and (2) it has a specific plan to meet the service area size criterion in paragraph § 486.307(d)(2)(ii) by the 1998 redesignation period.
- We are adding § 486.310(c)(3) to provide that for the 1996 designation period only, HCFA may continue to designate for a service area an OPO that does not meet the standards under paragraph (b) of this section if the OPO (1) meets three of the five criteria in § 486.310(b)(1) through (b)(5); and (2) submits an acceptable corrective action plan in accordance with § 486.310(d).

XI. Waiver of Service Area Designations

A. Background

Section 1138(a)(1)(A)(iii) of the Act had required hospitals participating in the Medicare program to notify an OPO of potential organ donors. The use of the article ''an'' indicated that a hospital need not have an agreement with the OPO whose designated service area includes the county in which the hospital is located. Thus, a significant number of hospitals, for various reasons, have chosen to have agreements with a Medicare/Medicaid-certified OPO other than the OPO designated for their areas. In fact, several hospitals have agreements with multiple OPOs.

Sections 155 (a)(1)(A) and (a)(1)(B) of Public Law 103–432 amended sections 1138 (a)(1)(A)(iii) and (a)(1)(C) of the Act to add requirements that a hospital have an agreement for notification of potential organ donation only with the OPO designated for the area in which the hospital is located. Public Law 103–432 also provided for waiver of the requirements under certain circumstances. Section 155(a)(1)(C) added new section 1138(a)(2)(A) to the Act. Specifically, the Secretary must approve waiver requests if (1) the waiver is expected to increase organ donations and (2) the waiver will assure equitable treatment of both those patients within the service area served by the hospital's designated OPO and those patients within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver.

The law is quite specific in identifying the factors that HCFA may consider in adjudicating waiver requests. That is, section 1138(a)(2)(B) provides that in making a determination on a waiver request the Secretary may consider the factors that would include, but not be limited to (1) cost effectiveness; (2) improvements in quality; (3) any change in a hospital's designated organ procurement agency due to a change made on or after December 28, 1992, in the definitions for MSAs (as established by the Office of Management and Budget); and (4) the length and continuity of a hospital's relationship with an organ procurement agency.

Sections 1138 (a)(2)(C) and (a)(2)(D) of the Act are quite specific in detailing the process for the waiver requests. Effective January 1, 1996, any hospital seeking a waiver must submit an application to the Secretary. Within 30 days of receipt of a waiver request, the Secretary will publish a public notice of the request offering interested parties a 60-day period to comment on the request. Allowing HCFA only 30 days to evaluate the comments and render a decision would result in a minimum time period of 120 days for processing a waiver request.

Section 155(a)(2) of Public Law 103–432 contains a grandfathering provision for hospitals which on October 31, 1994, the date of enactment of Public Law 103–432, have existing agreements with OPOs other than the OPO designated for their service areas. Any hospital that has an agreement with an OPO other than the OPO designated for its area on October 31, 1994, may continue the agreement until HCFA has adjudicated its waiver request, provided the hospital has filed a waiver request by January 1, 1996. This provision was included because it would be disruptive to a hospital to force it into an agreement with the OPO designated for its area while a waiver request is being processed.

We believe the provisions of section 155 are self-implementing. Thus, we proceeded with implementation prior to modification of the regulations or prior public comment. In October 1995, we issued Program Memorandum A–95–11 to our intermediaries outlining the process for making a waiver request. We instructed each intermediary to notify every hospital that it serviced of the opportunity to request a waiver to deal with an OPO other than the OPO designated for the area. We advised the hospitals that we intended to adjudicate the requests using the criteria set forth in the law. We advised the hospitals that, to retain their existing out-of-area OPO agreements that were in effect as of October 31, 1994, their waiver requests must be received by January 1, 1996.

The law did not address the impact of changes in OPO service areas on future waiver requests. That is, we note that changes in OPO service areas are ongoing events. We anticipate that, with the implementation of the provisions contained in the September 8, 1994, final rule with comment period, such changes may become somewhat more frequent. Often these changes occur through mergers or cooperative means. Some changes, however, are the result of competitive actions among the OPOs with HCFA awarding the service areas

based on the criteria in § 485.308 (now § 486.316). When these changes in service areas occur, the hospitals in the affected counties must enter into agreements with the newly designated OPO or request a waiver to deal with an alternative designated OPO.

As noted above, the minimum period of time necessary to process a waiver request is 120 days. We believe it is unproductive and contrary to the goal of increasing national organ donation to force the hospitals in affected areas into new working relationships with a OPO and then to approve a waiver request and allow an alternative agreement a few months later. Such a system would be disruptive to the hospital and to effective organ procurement nationally.

Consequently, we are adding a new provision to the regulations at § 486.316 to permit the grandfathering of existing agreements between an OPO and a hospital when changes in a service area occur pending resolution of the hospital's waiver request.

To be eligible for the grandfathering, a hospital must have had an agreement with the OPO prior to the changes in service area and the hospital must have requested waiver from the provisions of section 1138 (a)(1)(A)(iii) and (c) of the Act within 30 days of the effective date of the change in service area. Of course, if HCFA denies the waiver request on its merits (the request does not demonstrate that it is expected to increase organ donation and assure equitable treatment of patients), the hospital must enter into an agreement with the new OPO for the area. The regulations provide that such new agreements must be executed within 30 days of notification of the determination on the waiver request.

We recognize that this grandfathering provision is not explicitly stated in the law. Nonetheless, we believe the provision is authorized under section 1138(a)(2)(A) of the Act which vests broad authority to HCFA to waive the new requirements of sections 1138(a)(1)(A)(iii) and 1138(a)(1)(C) of the Act. The provision is also complementary to the grandfathering provision specified in section 155 of the Social Security Act Amendments of 1994. We believe that allowing such a grandfathering policy during the processing of the waiver request is the only means to ensure a smooth transition and promote organ donation. Nonetheless, we are providing an opportunity for public comment in this final rule with comment period.

B. Provisions of This Final Rule With Comment Period

We have revised § 486.316 (formerly § 485.308) by adding new paragraphs (c) through (f) to implement section 1138 (a)(2) of the Act and the grandfathering provisions of section 155(a)(2) of Public Law 103–432. These revisions permit grandfathering of a hospital to the OPO with which it has an historical working relationship while the hospital's request for waiver is being considered when changes in the OPO designated for the service area in which the hospital is located occur beginning January 1, 1996. We are soliciting comments on this provision of the final rule with comment period.

XII. Technical Revisions

We have made the following technical revisions to the regulations for the purposes of clarifying and reorganizing the OPO regulations.

- We amended § 405.2163 by removing the reference to part 485, subpart D and replacing it with a reference to part 486, subpart G to reflect the earlier published redesignation of the OPO regulations.
- We revised § 486.301 to add section 1138(a) and (b) of the Act and section 371(b) of the PHS Act as the statutory bases of the OPO regulations.
- We reorganized § 486.310 to include the exceptions and exemptions to the OPO standard requirements under paragraph (c).
- We deleted § 486.310(e) (previously designated as § 485.306(e)) as it is unnecessary and has created confusion among the OPO industry. This provision provides that an OPO that has not previously been designated by HCFA for a particular service area is exempt from meeting the performance standards for its first 2 years of designation as the OPO for that area. However, the performance standards are used to measure the OPO's qualifications to be redesignated beginning 2 years after the OPO has been first designated for any portion of a service area.

Since there is no data on the OPO's performance in the area when it is newly designated, it would be impossible to apply the performance standards at the time of initial designation. Thus, we believe it is unnecessary to maintain an exemption of this nature. The remaining portion of the provision merely states that we will apply the normal performance standards at the time of redesignation. Therefore, this portion of the regulation is also unnecessary since, without it, we would have no alternative but to apply the normal performance standards.

- We revised the cross-reference in § 486.314 (formerly § 485.307) to reflect the reorganization of the material.

XIII. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the Federal Register and invite public comment before issuing a final document. Most of the provisions of this rule were open for public comment through both the June 21, 1991, proposed rule and the September 8, 1994, interim final rule. We are now publishing these provisions as final rules. Because they have previously been open for comment, we are not inviting further public comment on these provisions.

The Social Security Act Amendments of 1994 were enacted subsequent to the September 8, 1994, interim final rule with comment period. Section 155 of these amendments, relating to OPO hospital relationships, are inextricably linked to this final rule. The provisions of section 155 are self-implementing and do not require rulemaking.

XIV. Regulatory Impact Statement

We generally prepare a regulatory impact statement that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a rule will not have a significant economic impact on a substantial number of small entities.

For purposes of the RFA, we consider all providers and suppliers of health care as small entities. Individuals and States are not included in the definition of a small entity. Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a MSA and has fewer than 50 beds.

This final rule with comment period sets forth changes required by Public Law 100–607, Public Law 101–616, and Public Law 103–432. In the September 1994 interim final rule with comment period, we provided an impact analysis on the provisions of Public Law 100–607 and Public Law 101–616. In that analysis, we stated that we expected that, while OPOs may incur some additional costs, those costs would be minimal. We invited public comment on the impact statement in the interim final rule with comment period. We did not receive any public comments.

The provisions of section 155 of Public Law 103–432 included in this final rule with comment period conform to section 1138(a)(2) of the Act to provide for a waiver of section

1138(a)(1)(A)(iii) and (c) of the Act under certain circumstances. Section 1138(a)(1) requires that a hospital have an agreement for potential organ donations only with the OPO designated for the area in which the hospital is located. We expect any additional costs related to this provision to be minimal. Any hospital wishing a waiver must file a request with us. We believe, however, that any additional costs are minimal compared to the improvement these provisions will have on the quality of health care for organ recipients.

We have determined and we certify that this final rule with comment period will not have a significant economic effect on a substantial number of providers and suppliers. Also, OPOs (independent and hospital-based) are not considered small rural hospitals since OPOs generally service large geographical areas. Therefore, a regulatory flexibility analysis under the RFA and a rural impact analysis under section 1102(b) of the Act are not required.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

XV. Information Collection Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the Federal Register and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. This final rule with comment period contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and collecting and reviewing the collection of information.

We are, however, requesting an emergency review of these regulations. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirement for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR. Part 1320 to permit recertification of OPO's as required by statute. Failure to issue these rules in time for the 1996 redesignation process may result in the termination of OPO agreements. As a consequence, persons in need of organ transplants may not receive them. The agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result if normal clearance procedures are followed. Without this information, we could not ensure compliance with this Congressional mandate.

We are requesting that OMB provide a 21-day public comment period with a 7-day OMB review period and a 90-day approval. We will publish a separate Federal Register notice for an emergency request for the OPO manual requirements.

Type of Information Collection Request: New Collection.

Type of Information Collection: Conditions of Coverage for Organ Procurement Organizations.

Form No.: HCFA–R–13.

USE: Organ Procurement Organizations are required to submit accurate data to HCFA concerning population and information on donors and organs on an annual basis in order to ensure maximum effectiveness in the procurement and distribution of organs.

Frequency: Annually.

Affected public: Not-for-profit institutions.

Number of Respondents: 66.

Total Annual Responses: 66.

Total Annual Hours Requested: 4,096.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326.

The sections in these final regulations with comment period that contain information collection requirements are:

- Sections 486.304 (c)(2), (c)(4), (c)(7), and (c)(8) require that an OPO submit documentation to HCFA as part of the conditions for payment. These requirements include cost reporting, cost projection, and data to show the number of organs procured and transplanted. The OPO must maintain data in a format that can readily be continued by a successor OPO.
- Section 486.306(d) requires that an OPO document that it meets the service area requirements at § 486.307.
- Section 486.306(t) requires that an OPO submit to HCFA within 15 days following the end of the calendar year information on the service area population, number of donors, number of organs procured, and the number of organs transplanted.
- Section 486.307(a) requires that an OPO make documentation available to HCFA to verify that it meets the requirements for boundary designation, service area location, and service area size.
- Section 486.307(d) requires that, for the 1996 transitional redesignation period only, an OPO that does not meet the qualification standards in § 486.307(d)(2)(ii) may submit a request to HCFA for a one-time exception to the standard if it can demonstrate that it meets the performance criteria in § 486.310(b) and has a specific plan to meet the 24-donor standard by the 1998 redesignation period.
- Section 486.310(c)(3) requires that, for the 1996 transitional redesignation period only, HCFA may continue to designate for a service area an OPO that does not meet the standards of § 486.310(b) if the OPO can demonstrate that it meets three of the criteria in § 486.310(b)(1) through § 486.310(b)(5) and if the OPO submits an acceptable correction plan in accordance with § 486.310(d).
- Section 486.310(d) requires that an OPO that does not meet the performance standards may continue to be designated for a service area if no acceptably performing OPO is willing to accept responsibility for the service area and if the OPO submits a corrective action plan that is acceptable to HCFA.
- Section 486.316 requires that an OPO submit an application to HCFA if it wishes to be designated as the OPO for a service area. Applications are only accepted if the area is an open area.
- Section 486.318 requires that a designated OPO notify HCFA if it is considering a change in ownership or service area. It must submit the same information that it supplied at the time of designation.
- Section 486.325(a)(1) requires that an OPO that wishes to terminate its agreement with HCFA send written notice of its intention with the proposed termination date to HCFA.

The information collection requirements concern quantifiable data for submission to us that document an OPO's performance. The respondents for the information collection requirements are the 66 OPOs participating in the Medicare program. The OPOs are required to keep performance data on an ongoing basis and submit a yearly report. The reporting burden for the collection of all of this information is estimated to be 1,000 hours per submission.

Other reporting requirements for special circumstances such as termination of agreements and requests for exceptions and exemptions rely on the same information that an OPO must submit in its annual report. Consequently, no extra collection of

information is required. Since these submissions depend on special circumstances, we cannot give the exact number of submissions. However, since there are only 66 OPOs participating in the Medicare program, we expect the number of these submissions will be extremely small.

These information collection and recordkeeping requirements are not effective until they have been approved by OMB. The agency has submitted a copy of this final rule with comment period to OMB for its review of these information collections. A notice will be published in the Federal Register when approval is obtained. Interested persons are invited to send comments regarding this burden or any other aspect of these collections of information, including any of the following subjects: (1) The necessity and utility of the information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. Comments should be sent to HCFA, OFHR, MPAS, C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

XVI. Response to Comments

Because of the large number of items of correspondence we normally receive on a final rule with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive related to the waiver process discussed in section XI of this preamble, § 486.316, and the definition of ''donor'' by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 486

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below:

A. Part 405, subpart U is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions of Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

1. The authority citation for part 405, subpart U continues to read as follows:

Authority: Secs. 1102, 1138, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1320b–8, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

2. Section 405.2163(f) is amended by removing the reference to ''part 485, subpart D'' and replacing it with a reference to ''part 486, subpart G.''

B. Part 486 is amended as follows:

PART 486—CONDITIONS FOR COVERAGE OF SPECIALIZED SERVICES FURNISHED BY PROVIDERS AND SUPPLIERS

Subpart G—Conditions for Coverage: Organ Procurement Organizations

1. The authority citation for part 486 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 486.301 is revised to read as follows:

§ 486.301 Basis and scope.

(a) *Statutory Basis.* (1) Section 1138(b) of the Act sets forth the requirements that an organ procurement organization must meet to have its organ procurement services to hospitals covered under Medicare and Medicaid. These include certification as a ''qualified'' organ procurement organization (OPO) and designation as the OPO for a particular service area.

(2) Section 371(b) of the PHS Act sets forth the requirements for certification and the functions that a qualified OPO is expected to perform.

(b) *Scope.* This subpart sets forth—

(1) The conditions and requirements that an OPO must meet;

(2) The procedures for certification and designation of OPOs; and

(3) The terms of the agreement with HCFA, and the basis for, and the effect of, termination of the agreement.

3. In § 486.304, the introductory text of paragraph (b) is republished, new paragraph (b)(8) is added, and paragraph (e)(3)(ii) is revised to read as follows:

§ 486.304 General requirements.

* * * * *

(b) *Requirements for designated status.* To be the designated OPO for a service area, an entity must do the following:

* * * * *

(8) Enter into a working relationship with any hospitals, including transplant centers, in the OPO's service area that request a working relationship.

* * * * *

(e) *Designation periods*

* * * * *

(3) *Interim designation.* * * *

(ii) The interim designation period does not exceed 180 days after the normal designation period has expired.

* * * * *

4. In § 486.306, the introductory text and paragraphs (d), (f) introductory text, (i), (q), and (s) are revised to read as follows:

§ 486.306 Qualifications for designation as an OPO.

To be designated as the OPO for a service area, an organization must, at the time of application and throughout the period of its designation, meet the following requirements:

* * * * *

(d) Document that it has a defined service area that meets the requirements of § 486.307.

* * * * *

(f) Have a board of directors or an advisory board that has the authority to recommend policies relating to the donation, procurement, and distribution of organs. While an OPO may have more than one board, the members specified in paragraphs (f)(1) through (f)(5) of this section must be members of a single board. The board of directors or advisory board must be composed of the following:

* * * * *

(i) Have a system to equitably allocate donated organs among transplant patients that is consistent with—

(1) ''Guidelines for Preventing Transmission of Human Immunodeficiency Virus Through Transplantation of Human Tissue and Organs'' issued by the Centers for Disease Control and Prevention (CDC) that are appended to this subpart; and

(2) Rules of the Organ Procurement and Transplantation Network (OPTN), see § 486.308.

* * * * *

(q) Ensure that appropriate donor screening and infection tests, consistent with OPTN standards and the CDC guidelines that are appended to this subpart, are performed by a laboratory that is certified in the appropriate specialty or subspecialty of service in accordance with part 493 of this chapter, including tests to prevent the

acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome.

* * * * *

(s) Ensure that donors are tested for human immunodeficiency viral markers consistent with OPTN rules and the CDC guidelines appended to this subpart for solid organ donation.

* * * * *

5. A new § 486.307 is added to read as follows:

§ 486.307 OPO service area size designation and documentation requirements

(a) *General documentation requirement.* An OPO must make available to HCFA documentation verifying that the OPO meets the requirements of paragraphs (b) through (d) of this section at the time of application and throughout the period of its designation.

(b) *Boundary designation.* The defined service area either includes an entire Metropolitan Statistical Area or a New England County Metropolitan Area as specified by the Director of the Office of Management and Budget or does not include any part of such an area.

(c) *Service area location and characteristics.* An OPO must precisely define and document a proposed service area's location through the following information:

(1) The names of counties (or parishes in Louisiana) served or, if the service area includes an entire State, the name of the State.

(2) Geographic boundaries of the service area for which U.S. population statistics are available.

(3) Total population in service area.

(4) The number of and the names of acute care hospitals in the service area with an operating room and the equipment and personnel to retrieve organs.

(d) *Sufficient size requirements.* (1) Before January 1, 1996, an OPO must demonstrate that it can procure organs from at least 50 potential donors per calendar year or that its service area comprises an entire State.

(2) Beginning January 1, 1996, an OPO must meet at least one of the following requirements:

(i) Its service area must include an entire State or official U.S. territory.

(ii) It must either procure organs from an average of at least 24 donors per calendar year in the 2 years before the year of redesignation or request and be granted an exception to this requirement under paragraph (d)(3) or (d)(4) of this section.

(iii) In the case of an OPO operating exclusively in a noncontiguous U.S. State, a U.S. territory, or a U.S. commonwealth, such as Hawaii or Puerto Rico, it must procure organs at the rate of 50 percent of the national average of all OPOs for kidney procurement per million population and for kidney transplantation per million population.

(iv) If it is an entity that has not been previously designated as an OPO, it must demonstrate that it can procure organs from at least 50 potential donors per calendar year.

(3) HCFA may grant an OPO an exception to paragraph (d)(2)(ii) of this section if the OPO can demonstrate that—

(i) It failed to meet the requirement because of unusual circumstances beyond its control;

(ii) It has historically maintained a service area of sufficient size to meet the criterion in paragraph (d)(2)(ii) of this section; and

(iii) It has a specific plan to meet the size criterion in paragraph (d)(2)(ii) of this section in the future.

(4) During the 1996 redesignation process only, HCFA may grant an exception to paragraph (d)(2)(ii) of this section to an OPO that can demonstrate that—

(i) It meets the performance criteria in § 486.310(b); and

(ii) It has a specific plan to meet the service area size criterion in paragraph (d)(2)(ii) of this section by the 1998 redesignation period.

6. Section 486.310 is amended by removing the introductory text, adding a heading for paragraph (a); removing paragraphs (a)(3) and (e); and revising paragraphs (b), (c), and (d) to read as follows:

§ 486.310 Condition: Adherence to performance standards.

(a) *Standards before January 1, 1996.*

* * * * *

(b) *Standards beginning on January 1, 1996.* Except as specified in paragraph (c) of this section, each OPO must achieve at least 75 percent of the national mean for four of the following five performance categories, averaged over the 2 calendar years before the year of redesignation:

(1) Number of actual donors per million population.

(2) Number of kidneys recovered per million population.

(3) Number of extrarenal organs recovered per million population.

(4) Number of kidneys transplanted per million population.

(5) Number of extrarenal organs transplanted per million population.

(c) *Exceptions and exemptions.*

(1) *Exception based on location.* OPOs operating exclusively in a noncontiguous U.S. State, a U.S. territory, or a U.S. commonwealth, such as Hawaii or Puerto Rico, may be granted an exception from the performance standards of paragraph (b) of this section because of special geographically related characteristics, such as difficulty in transporting organs to the mainland, that impede satisfaction of the national rate of organ procurement. They must meet a standard of 50 percent of the national average of all OPOs for kidneys recovered and transplanted per million population.

(2) *Exception because of lack of competition for a service area.* HCFA may continue to designate an OPO that does not meet the standards under paragraph (b) of this section for a service area if no OPO that meets the performance and qualification requirements is willing to accept responsibility for the service area and if the designated OPO submits an acceptable corrective action plan in accordance with paragraph (d) of this section.

(3) *Exception for 1996 transition period.* During the 1996 designation period only, HCFA may continue to designate for a service area an OPO that does not meet the standards under paragraph (b) of this section if the OPO:

(i) Meets three of the criteria in paragraphs (b)(1) through (b)(5) of this section; and

(ii) Submits an acceptable corrective action plan in accordance with paragraph (d) of this section.

(d) *Corrective action plans and corrected information.*

(1) *Corrective action plans.* (i) If a designated OPO does not meet the standards of paragraph (a) of this section, it may submit to the appropriate HCFA regional office a corrective action plan explaining why it failed to meet them and specifying the actions it will take to ensure it meets those standards in the future.

(ii) HCFA will not accept corrective action plans from an OPO for failure to meet the standards specified in paragraph (b) of this section unless the OPO continues to be designated under paragraph (c)(2) or (c)(3) of this section.

(2) *Corrected information.* An OPO may request correction of the information required by § 486.306(e) from HCFA throughout the two-year designation period. HCFA will evaluate the OPO's request and may seek input from other sources, such as hospital personnel, neighboring OPOs, the OPTN contractor, and the Census Bureau as necessary to verify the OPO's information before making the changes requested by the OPO. In addition,

HCFA will notify an OPO if it does not meet the performance standards based on the information reported. Any OPO so notified may provide corrected information for consideration within 30 days of receipt of a notice of failure to meet the standards.

(e) [Removed]

§ 486.314 [Amended]

7. Section 486.314 is amended by removing the reference to ''§ 485.310 (a) and (b)'' and replacing it with a reference to ''§ 486.310''.

8. Section 486.316 is amended by adding new paragraphs (c), (d), (e), (f), and (g) to read as follows:

§ 486.316 Designation of one OPO for each service area.

* * * * *

(c) After January 1, 1996, a hospital must enter into an agreement only with the OPO designated to serve the area in which the hospital is located unless HCFA has granted the hospital a waiver under paragraphs (d) through (g) of this section to be serviced by another OPO.

(d) If HCFA changes the OPO designated for an area, hospitals located in that area must enter into agreements with the newly designated OPO or submit a request for a waiver in accordance with paragraph (e) of this section within 30 days of notice of the change in designation.

(e) A hospital may request and HCFA may grant a waiver permitting the hospital to have an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located. To qualify for a waiver, the hospital must submit data to HCFA establishing that—

(1) The waiver is expected to increase organ donations; and

(2) The waiver will ensure equitable treatment of patients referred for transplants within the service area served by the hospital's designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement.

(f) In making a determination on waiver requests, HCFA considers:

(1) Cost effectiveness;

(2) Improvements in quality;

(3) Changes in a hospital's designated OPO due to changes in the metropolitan service area designations, if applicable; and

(4) The length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO.

(g) A hospital may continue to operate under its existing agreement with an out-of-area OPO while HCFA is processing the waiver request. If a waiver request is denied, a hospital must enter into an agreement with the designated OPO within 30 days of notification of the final determination.

§ 486.325 [Amended]

9. In § 486.325, in paragraph (b), ''15 days'' is removed and ''90 days'' is added in its place.

10. Appendix A is added to subpart G to read as follows:

Appendix A to Subpart G of Part 486—Guidelines for Preventing Transmission of Human Immunodeficiency Virus Through Transplantation of Human Tissue and Organs

BILLING CODE 4120–01–P

Guidelines for Preventing Transmission of Human Immunodeficiency Virus Through Transplantation of Human Tissue and Organs

Summary

Although previous recommendations for preventing transmission of human immunodeficiency virus (HIV) through transplantation of human tissue and organs have markedly reduced the risk for this type of transmission, a case of HIV transmission from a screened, antibody-negative donor to several recipients raised questions about the need for additional federal oversight of transplantation of organs and tissues. A working group formed by the Public Health Service (PHS) in 1991 to address these issues concluded that further recommendations should be made to reduce the already low risk of HIV transmission by transplantation of organs and tissues. In revising these recommendations, the PHS sought assistance from public and private health professionals and representatives of transplant, public health, and other organizations. The revised guidelines address issues such as donor screening, testing, and exclusionary criteria; quarantine of tissue from living donors; inactivation or elimination of infectious organisms in organs and tissues before transplantation; timely detection, reporting, and tracking of potentially infected tissues, organs, and recipients; and recall of stored tissues from donors found after donation to have been infected. Factors considered in the development of these guidelines include differences between the screening of living and cadaveric donors; time constraints due to organ/tissue viability that may preclude performing certain screening procedures; differences in the risk of HIV transmission from various organs and tissues; differences between systems for procuring and distributing organs and tissues; the effect of screening practices on the limited availability of organs and some tissues; and the benefit of the transplant to the recipient.

INTRODUCTION

Exclusion of prospective blood donors based on their acknowledged risk behaviors for human immunodeficiency virus (HIV) infection began in 1983 (*1*). In 1985, when tests for HIV antibody became available, screening prospective donors of blood, organs, and other tissues also began (*2,3*). Both measures have reduced markedly the transmission of HIV via these routes.

A 1991 investigation determined that several recipients had been infected with HIV by an organ/tissue donor who had tested negative for HIV antibody at the time of donation (*4*). This occurrence raised questions about the need for additional federal oversight of transplantation of organs and tissues. To address these questions, the Public Health Service (PHS) formed a working group comprising representatives from several federal agencies. The working group concluded that, although existing recommendations are largely sufficient, revisions should be made to reduce the already low risk of HIV transmission via transplantation of organs and tissues. Adequate federal

regulations, recommendations, and guidelines for blood and plasma are already established and are not addressed in this document.

Those developing guidelines for other organs and tissues should consider donor screening and testing; quarantine of tissue from living donors; inactivation or elimination of infectious organisms in organs and tissues before transplantation; timely detection, reporting, and tracking of potentially infected organs, tissues, and recipients; and recall of stored tissue from donors found after donation to have been infected.

These guidelines apply largely to donation and transplantation of organs and solid tissues. Although they also apply generally to donation of human milk and semen, some modifications may be needed because donors of human milk and semen are living and often donate repeatedly. Additionally, donor milk should be pasteurized (a heating procedure that inactivates HIV) before dispensing. This document can serve as a general guide to facilities that bank breast milk or semen and should be followed where feasible.

In revising these recommendations for transplantation of organs and tissues, PHS sought assistance from public and private health professionals and representatives of transplant, public health, and other organizations (see pages iii-v). These guidelines do not supersede existing state laws but are to be implemented in accordance with existing statutes.

BACKGROUND

Epidemiology of HIV Infection in Recipients of Organs and Tissues

Most transmission of HIV to organ/tissue recipients occurred before 1985, before the implementation of donor screening. In addition to HIV transmission through blood and blood products, reports of HIV infection following transplantation have implicated the kidney, liver, heart, pancreas, bone, and possibly skin as sources of infection (*4*). HIV has also been transmitted from infected semen during artificial insemination (*5*). Several studies and case reports indicate that HIV can be transmitted through breast milk from HIV-infected women to their children (*6,7*); these investigations include several prospective studies indicating that breast-fed infants are at greater risk of acquiring HIV from their infected mothers than are bottle-fed infants (*8,9*).

Reports of transmission from screened, HIV-antibody–negative donors of organs or tissues have been rare. In one instance, hemodilution from multiple transfusions given to the organ/tissue donor before collection of the blood sample resulted in an HIV-antibody test result that was initially false negative (*10*). Serum samples taken on admission, before the transfusions, and 2 days after the transfusions later tested positive for antibody to HIV. In another instance, a kidney donor tested HIV-antibody negative 8 months before donation but seroconverted between the time of testing and donation (*11*). The donor was not retested at the time of donation. In a third instance, an organ from an HIV-infected donor was transplanted under emergency conditions before results of the HIV-antibody test were known (*12*).

A fourth case involved transmission from an organ/tissue donor whose HIV-antibody test was negative at the time of donation (*4*). Most likely, the donation occurred sometime between infection and antibody seroconversion, which, for most

infected persons, ranges from 4 weeks to 6 months (*13*). Six years after the donor's death and ensuing donation, HIV infection in the stored donor material was confirmed by virus culture and polymerase chain reaction (PCR) of stored donor lymphocytes (*4*). Among the 41 recipients identified and tested, those who received the solid organs and unprocessed, fresh-frozen bone acquired HIV infection from the allografts (one recipient of a heart, two recipients of kidneys, one recipient of a liver, and three recipients of fresh-frozen bone). The recipients of other processed bone and relatively avascular soft tissue (fascia lata, tendons, ligaments, dura mater, and corneas) did not become HIV infected (*4*).

Current Use of Organ and Tissue Transplants

The number of transplants has grown considerably over the last several years, a phenomenon attributable to many factors, including the availability of improved immunosuppressant drugs. Approximately 66 Organ Procurement Organizations (OPOs) and 260 organ transplant centers are members of the Organ Procurement and Transplantation Network (OPTN). In 1990 these centers recovered approximately 15,000 organs (e.g., kidney, liver, heart, lung, and pancreas) from 4,500 donors.

OPOs and tissue banks also recovered tissues (other than the organs listed above) from an estimated 7,500–10,000 donors in 1990. These tissues were used in approximately 250,000–300,000 (mostly bone) allografts.

In 1990, member banks of the Eye Bank Association of America (EBAA) retrieved ocular tissue from more than 40,000 donors. These tissues are used for corneal transplantation and are also processed into epikeratophakia lenticules (EBAA Statistical Report, 1990).

More than 400 establishments either bank or commercially process one or more human tissues. Approximately 100 eye banks and 125 bone banks operate in the United States (although the number of hospitals that store bone for future transplantation is difficult to estimate). Also, several hospitals may retrieve and store bone from living donors. Seven human milk banks operating in the United States process donor breast milk.

The American Fertility Society is aware of approximately 100 semen banks in the United States. Slightly fewer than half of artificial inseminations performed in the United States involve unrelated-donor semen used to inseminate approximately 75,000 women per year. In addition to these 100 semen banks, an undetermined number of smaller banks are hospital based or located in the offices of individual physicians.

The National Heart, Lung, and Blood Institute (NHLBI) within the National Institutes of Health (NIH) is aware of 99 bone marrow transplant centers, of which 41 participate in programs involving bone marrow transplants from unrelated donors. Many additional facilities are equipped to obtain marrow from donors. About 2,200 bone marrow transplants involving allogeneic marrow took place in the United States in 1991. Of those, approximately 435 were provided by donors who were not related to the recipients. Peripheral blood stem cells are being used for autologous transplantation and, in the future, may be useful for allogeneic use. Furthermore, cord blood stem cells are being used for both related- and unrelated-donor allogeneic transplantation.

Current Guidelines and Recommendations

Procedures for procurement and transplantation of organs and tissues are addressed by a) federal laws, regulations, and guidelines; b) state laws and regulations; and c) voluntary industry standards. Several federal agencies either directly or indirectly regulate procurement and transplantation of organs and tissues. These activities range from the publication of guidelines that address the transmission of communicable diseases through transplantation to regulatory requirements for registration and premarket product licensure or approval (blood and certain other tissue products).

The Health Resources and Services Administration (HRSA), through the United Network for Organ Sharing (UNOS), administers the contract for OPTN as required by Section 372 of the Public Health Service Act and as amended [42 USC 274]. The contract covers specified solid organs (kidney, liver, heart, lung, and pancreas) but does not cover corneas, eyes, or other tissues. Technically, all UNOS policies are voluntary; however, HRSA is currently developing regulations dealing with OPTN membership and operation.

Under a separate contract with HRSA, UNOS maintains a Scientific Registry for Transplant Recipients that includes information on all solid-organ transplant recipients (since October 1, 1987) from the date of transplantation until failure of the graft or death of the patient. In addition, HRSA informally conveys recommendations to organizations involved in procurement and transplantation of organs. Through OPTN and the Scientific Registry for Transplant Recipients, HRSA has the capacity to link organ donors and their recipients.

FDA regulates a limited number of specific tissues as either "biological products" or "medical devices." Examples of tissues include blood, dura mater, corneal lenticules, umbilical veins, nonautologous cultured skin, and heart valves. In addition, FDA has recently published regulations regarding behavioral screening and infectious-disease testing (HIV-1, HIV-2, hepatitis B virus, and hepatitis C virus) for donors of human tissue for transplantation (*14*). FDA also regulates certain agents and devices for processing bone marrow, although bone marrow transplants from unrelated donors are under the auspices of NHLBI.

NHLBI manages the federal contract for the National Marrow Donor Program. Two bone marrow donor registries currently exist: one independent registry and one registry managed through the NHLBI contractor. Each registry group has voluntary guidelines/standards that resemble blood-banking standards. Although federal regulations have not yet been promulgated, the current practice of bone marrow acquisition and transplantation includes procedures to reduce the risk of HIV transmission. NHLBI is preparing regulations that will set forth criteria, standards, and procedures for entities involved in bone marrow collection, processing, and transplantation. These entities include the National Marrow Donor Registry, individual donor centers, donor registries, marrow-collection centers, and marrow-transplant centers. The regulations will include donor-selection criteria to prevent the transmission of infectious diseases, including HIV infection.

Donor Screening

PHS has made recommendations for preventing HIV transmission through organ/tissue transplantation and artificial insemination (*1–3,15,16*). These

recommendations include screening for behaviors that are associated with acquisition of HIV infection, a physical examination for signs and symptoms related to HIV infection, and laboratory screening for antibody to HIV.

PHS has made no specific recommendations for donation and banking of human milk, although HIV-infected women in the United States are advised to avoid breast feeding their infants because of the risk of HIV transmission through breast milk (*17*). The Human Milk Banking Association of North America has issued guidelines for the establishment and operation of human milk banks (*18*). These guidelines state that all human milk donors should be screened according to the American Association of Blood Banks' standards for screening blood donors. All milk accepted for donation should be pasteurized unless the recipient's condition requires fresh-frozen milk, in which case the milk bank director should consult with the medical director and advisory board to approve the dispensing of microbiologically screened, fresh-frozen milk from suitable donors.

Since March 1985, the FDA has licensed a number of screening and supplemental tests for detection and confirmation of HIV antibody. All these tests are intended for use on either fresh or freezer-stored samples of serum or plasma. The FDA has not required manufacturers to submit data showing that HIV-1 antigen and antibody-detection kits produce accurate results when applied to postmortem blood samples. Postmortem blood samples are often hemolyzed, which may affect the specificity of screening assays for HIV antibody (*19,20*).

The screening tests include enzyme immunoassays (EIAs), several of which are also approved for testing blood spots dried onto a specific filter paper, which may provide a method for storing samples. Rapid screening assays for HIV antibody that use a latex-agglutination or EIA (microparticle-based) format have also been approved for screening serum, plasma, or whole blood. A licensed EIA for detecting antibodies to HIV-2 is also commercially available, as are "combination tests" that simultaneously detect antibodies to HIV-1 and HIV-2 (*21*). FDA has also licensed one manufacturer to make and distribute a test for detection of HIV-1 p24 antigen for patient diagnosis and prognosis of HIV infection but not for screening blood donors.

Western blot tests and an immunofluorescence assay for HIV-1 are approved for supplemental, more specific testing of serum, plasma, and whole-blood samples found reactive by HIV-1 antibody screening tests. No additional, more specific test is approved that confirms either antibodies to HIV-2 (*21*) or eluted, dried blood-spot results. The licensed p24-antigen test includes a neutralization procedure that is to be used for specific testing of samples with repeatedly reactive test results.

Federal regulations already require that all donations of blood, blood components, and plasma intended for further processing into injectable products ("source plasma") be screened with a licensed test that detects HIV antibody. Since June 1992, PHS has also required that all blood and plasma donations be screened for HIV-2 antibody.

PHS has not recommended the use of the licensed HIV-1 p24-antigen assay for screening donated blood or source plasma, nor has the kit been approved for use in donor screening. This position is based on findings from several studies indicating that a blood donor with a positive test for antigen and a negative test for antibody is rare (*22,23*). Such rarity is probably attributable to the effectiveness of the donor-qualification procedures, including donor education, voluntary exclusion, and

antibody testing that together operate to prevent donation by persons at increased risk for HIV infection.

Limited studies have been conducted to examine the use of the p24-antigen assay to screen organ/tissue donors (*19,20,24*). Among approximately 1,000 samples from HIV-1 antibody-negative donors, no donors had detectable HIV-1 p24 antigen.

Recipient Screening

Until recently, PHS had made no recommendations regarding routine testing of recipients of organs, tissues, semen, or donated human milk. However, in response to the July 18, 1991, report of the PHS Workgroup on Organ and Tissue Transplantation, HRSA asked UNOS to request that transplant centers implement an interim voluntary HIV-testing policy for organ recipients. HRSA has requested that recipients be tested for HIV-1 antibody immediately before transplantation and at 3, 6, and 12 months after transplantation. If HIV infection is diagnosed in an organ recipient, the results of the HIV test are reported by the transplant center to the Scientific Registry for Transplant Recipients and to the procuring OPO, in accordance with existing state laws. No comparable registry exists for recipients of tissues, semen, or donated human milk. However, the National Marrow Donor Program routinely tracks both donors and recipients of bone marrow for unrelated-donor transplants. This program reports no known seroconversions among either donors or recipients, although recipients are not routinely screened for HIV.

Routine testing of recipients after transplantation has several potential benefits. First, early identification of HIV infection in a recipient allows for early intervention before signs and symptoms develop. Both antiviral therapy to prevent progression to acquired immunodeficiency syndrome (AIDS) (*25*) and prophylactic therapy to prevent opportunistic infections (*26,27*) have been recommended for HIV-infected patients, based on CD4+ T-lymphocyte levels. Second, early identification of HIV infection in a transplant recipient allows for early intervention to prevent further transmission from the recipient to sex or needle-sharing partners and to future offspring (through vertical transmission from mother to infant). Third, early identification of HIV infection in a recipient potentially identifies an infectious donor. Should further investigation indicate that the donor is the source of the HIV infection in the recipient, other recipients of tissue from that same donor can be notified and stored tissue can be retrieved, preventing further transmission through transplantation.

Concern has been expressed that linking HIV infection in a transplant recipient to the transplantation may be difficult because many recipients may have also received blood or blood products or have other risk factors. However, identification of multiple HIV-infected recipients of tissue from the same donor strongly implicates the donor as the source of the HIV infection in the recipients. In addition, stored blood or lymphoid samples from the donor (when available) can be tested for the presence of virus to confirm the HIV-infection status of the donor (*4*).

Questions have been raised about whether transplant recipients who may be receiving immunosuppressive therapy to prevent rejection are capable of producing antibody against HIV if transmission occurs. Several reports now indicate that the HIV-antibody response is not delayed in transplant recipients receiving antirejection therapy, which primarily affects cellular immunity (*4*).

The additional costs of routine screening for HIV in recipients must be considered as well. The Institute of Medicine has estimated that laboratory costs are approximately $4 for a patient who tests negative and $35 for a patient who tests positive. (The latter cost includes the added expense of repeat EIAs and Western blot or other supplemental tests.) These costs may be underestimates, however. The time required for pretest and posttest counseling was estimated to be approximately 0.5–1.0 hour for an HIV-seronegative patient and 1.5–2.0 hours for an HIV-seropositive patient (*28*).

Inactivation of HIV in Tissues

Thorough donor screening is considered the most effective method for preventing HIV transmission through transplantation; however, the use of chemical or physical inactivating or sterilizing agents to reduce further the already low risk of transmission has been considered. If such agents are to be useful, they must either inactivate or eliminate the virus while maintaining the functional integrity of the tissue or organ.

No mechanism for inactivating virus in whole organs currently exists. However, several agents have been suggested as possible disinfectants for tissues such as bone fragments (*4*). Pasteurization has been shown to inactivate HIV in human milk without substantially compromising nutritional and immunologic characteristics (*29*).

Although some physical and chemical agents have been shown to reduce the likelihood of isolating virus from treated solid tissues, conclusive evidence that those processes render solid tissue completely safe yet structurally intact is lacking. In the recent case of an HIV-infected donor who was antibody negative (*4*), tissues that had been processed in a variety of ways did not transmit HIV. These tissues included a) lyophilized fascia lata, tendons, or ligaments; b) dura mater that was lyophilized and irradiated with 3.0–3.4 Mrad of gamma radiation through a cobalt-60 source; c) bone fragments that were treated with ethanol and lyophilized; and d) one sample of fresh-frozen long bone with the marrow elements evacuated (*4*). However, because most of these tissues were relatively avascular, it is unclear whether the absence of HIV transmission was due to processing, avascularity, or both.

General Considerations

In developing guidelines for preventing HIV transmission from organ/tissue donors to recipients, several factors were considered: a) differences between the screening of living, brain-dead, and cadaveric donors; b) time constraints due to organ/tissue viability that may preclude performing certain screening procedures; c) differences in the risk for HIV transmission from various organs and tissues; d) differences between systems in place for procuring and distributing organs and tissues; e) the effect of screening practices on the limited availability of organs and some tissues; and f) the benefit of the transplant to the recipient (i.e., some transplants are lifesaving, whereas others are life enhancing).

Living donors can be interviewed about potential high-risk behavior, whereas deceased donors cannot. In the case of brain-dead or cadaveric donors, family members and others may be unable to provide an accurate risk history. Therefore, exclusion of potentially infected brain-dead or cadaveric donors relies even more heavily on laboratory screening and physical examinations than on interviews regarding high-risk behavior.

Screening procedures that require more than 24 hours to complete may not be feasible for brain-dead or cadaveric donors of organs and certain tissues. Most tissues must be recovered and most organs must be recovered and transplanted shortly after cessation of circulatory function of the donor. Whereas some tissues can be stored for months, others must be transplanted within a few days after procurement. These time constraints may limit the ability to interview certain family members or significant life partners who are not nearby and may preclude the use of certain laboratory screening tests that cannot be performed within these time constraints.

The precise risk of HIV transmission from various tissues is not known, yet some organs and tissues clearly present a higher risk for HIV transmission than others (*4*). For example, studies indicate that the risk for transmission from an organ of an HIV-infected donor is nearly 100%. Fresh-frozen, unprocessed bone also appears to carry a high risk for transmission, particularly if marrow elements and adherent tissue are not removed. Relatively avascular solid tissue, some of which is also processed by using techniques that might inactivate HIV, appears to carry a lower risk for HIV transmission.

As noted earlier in these guidelines, there is considerable variability in the role of federal agencies regarding transplantation of organs and tissues and the procurement and distribution systems. Oversight for, existence of, and compliance with recommendations also vary between these systems. When organs and tissues are procured from a single donor, tracking systems must involve multiple distribution systems that may be difficult to link.

Donor-screening practices must also consider the already inadequate supply of most organs and tissues needed for transplantation. However, even though attempts should be made to ensure the highest level of safety, donor-screening practices should not unnecessarily exclude acceptable potential donors.

Those involved in developing guidelines should consider that some transplants are lifesaving (e.g., a heart transplant), whereas others are life enhancing. Some physicians may be willing to offer the patient a transplant of a lifesaving organ from a donor whose HIV risk status is questionable but would not use life-enhancing tissue from such a donor.

RECOMMENDATIONS

Donor Screening

1. All prospective living donors or next of kin or significant life partners accompanying brain-dead or cadaveric donors should be informed of the general nature of the donor-evaluation process, including a review of medical and behavioral history, physical examination, and blood tests to exclude infectious agents that might be transmitted by organ or tissue transplant.

2. Prospective living donors or next of kin or significant life partners accompanying brain-dead or cadaveric donors should be informed about modes of transmission and risk factors for HIV infection, emphasizing that HIV can be transmitted via transplanted organs and tissues. They should be told that a negative test for HIV antibody does not guarantee that the donor is free of HIV infection because of the

rare situation of donation after infection but before seroconversion. Therefore, organs and tissue must not be transplanted from persons who may have engaged in activities that placed them at increased risk for HIV infection. This information should be presented in simple language to ensure that the donor, next of kin, or significant life partner understands what is considered high-risk behavior and the importance of excluding persons who have engaged in this behavior. Persons soliciting the donation should not place undue pressure to donate on potential living donors and those persons providing permission for potential brain-dead or cadaveric donors who might otherwise decline to donate or give permission because of high-risk behavior.

3. To ascertain risk factors, all prospective living donors should be interviewed in a confidential and sensitive manner by a health-care professional competent to elicit information about behaviors that place persons at risk for HIV infection. Interviewers should ask direct questions about high-risk behavior.

4. For potential pediatric donors for whom maternal transmission of HIV is a consideration, the mother and, if possible, the father should be interviewed about behaviors that may have placed them at risk for acquiring HIV infection that could have been transmitted to their child.

5. Except where retrieval occurs by legal authorization, the next of kin or significant life partner of brain-dead or cadaveric donors should be interviewed in a confidential and sensitive manner by a health-care professional regarding potential HIV risk factors in the donor. Other family members, friends, and sex partners may also need to be interviewed, if available. When consent for removal of organs/tissue is required, at least the person signing the consent form should be interviewed. Other possible sources of information about behavioral risk factors may include hospital, police, and coroner's records, if available. When an interview is not performed, as allowed by legal authorization, the transplant surgeon should be fully informed that the donation was accepted, even though a direct interview with the next of kin or significant life partner was not performed.

6. If available, the medical records, including autopsy reports of all donors, should be reviewed for signs and symptoms associated with HIV infection and for evidence of high-risk behavior (e.g., male-to-male sexual contact, acquisition of sexually transmitted diseases, exchange of sex for money or drugs, injecting-drug use, or birth to a mother either at risk for or infected with HIV).

7. All prospective donors of organs, solid tissue, and semen should undergo a physical examination as close as possible before donation, with special attention to physical signs of HIV disease and injecting-drug use. The extent of the physical examination should be determined by the responsible medical officials according to the context of organ/tissue donation. Human milk banks should obtain a release from the primary health-care provider certifying that the prospective donor is in good health and does not constitute a risk to potential recipients.

8. As with donors of blood and plasma, prospective living organ, tissue, semen, and milk donors found after careful screening to be acceptable donors should sign

a consent statement indicating that they have reviewed and understand the information provided regarding the spread of HIV and have agreed not to donate should they be at potential risk for spreading HIV. The statement should also indicate that prospective donors understand that they must be tested for HIV as part of the donor-screening process and will be notified of positive results as specified by any existing state statutes, regulations, or guidelines. For acceptable brain-dead or cadaveric donors, procurement personnel should document that a careful attempt has been made to eliminate persons at high risk through available information, including interview of family members or significant life partners, physical examination, review of medical records, autopsy findings, and any other records that might provide information about high-risk behavior or possible HIV infection. For either type of donor, the statement should be included as part of a general checklist or donor evaluation form covering all important aspects of the donor evaluation and should be included in the transplant records or record of the procuring agency. All records generated by the interview should be kept confidential.

Donor Testing

1. For all prospective donors, a blood sample obtained before any transfusions were administered (during the current hospital admission for inpatients) should be collected as close to the time of retrieval of tissue as possible. Bone marrow donors must provide blood samples far enough in advance of marrow harvest to permit the tests to be performed and results reported before the recipient's preparative regimen (marrow ablatement) is begun. Samples should be tested for antibodies to both HIV-1 and HIV-2 by using FDA-licensed tests. Separate tests or a combination test for HIV-1 and HIV-2 may be used. All antibody-screening tests should be performed by EIA unless the condition of the recipient or donor dictates the use of a more rapid screening assay.

2. Transfusions and infusion of other fluids to the prospective donor might produce false-negative results because of hemodilution. Efforts should be made to perform HIV-antibody testing on the most recent pretransfusion/infusion specimen for which identity and quality can be ensured. Specimens should not be drawn immediately downstream from an intravenous site to prevent dilution with intravenous fluids.

   Posttransfusion/infusion specimens may be considered for testing after efforts to obtain a pretransfusion/infusion sample have been exhausted and posttransfusion/infusion samples have been assessed for evidence of dilution. The suitability of posttransfusion/infusion samples must consider a) the volume of the material transfused as a percentage of the patient's total blood volume and b) the amount of time between the last transfusion/infusion and the collection of the sample to be tested. An exchange of one total blood volume will reduce the concentration of an intravascular substance such as IgG to 35% of initial levels if there is no replacement from the extravascular space. More than 50% of total body IgG is extravascular, and reequilibration to normal levels of IgG should be nearly complete within 24 hours of a total blood volume exchange of albumin (*30*).

3. The HIV p24-antigen assay may identify a few of the rare donors who are HIV-infected, yet antibody-negative; however, studies examining the utility of this assay for screening organ/tissue donors are limited and currently do not allow a definitive recommendation on the use of this test (*19,24*). The utility of other assays such as PCR, which are currently experimental, should be considered for evaluation as they become available for clinical use. Those institutions choosing to use the HIV-1 p24-antigen assay should be aware that in populations with low prevalence (e.g., organ/tissue donors), a large percentage of persons who test repeatedly reactive (without confirmation with the neutralization assay) will be false positive. Consideration should also be given to the potential problems with decreased specificity when the assay is used to test postmortem samples (*19*).

4. The testing algorithm for HIV-antibody assays should be performed as described in the package insert with an initial test and, if reactive, a retest on the same specimen. However, the time constraints of some situations may not accommodate the delay of repeat testing by EIA as described in the package insert. In such extreme cases of lifesaving organ transplantation, the sample should be set up in triplicate in the initial EIA. A repeatedly reactive result (positive screening test) is defined as reactivity above the test cutoff in two or more of the three assays. When testing by EIA is impractical, a more rapid licensed test should be performed in triplicate. Testing by the conventional algorithm should be performed as early as possible, even if it follows the procurement and/or transplant of the organs or tissues.

5. Results of HIV testing for organ/tissue donors should be handled confidentially, in accordance with general medical practices and applicable federal and state statutes, regulations, and guidelines.

6. Prospective living donors should be notified if they are found through the screening process to be HIV infected. Because of the possibility of sexual or parenteral transmission, the spouse or known sex partners of brain-dead or cadaveric donors should be notified in accordance with state law. All notifications should be handled in a manner congruent with current recommendations regarding counseling, testing, and partner notification (*31,32*). Before the notification of these persons, transplant and procurement organizations should consult with their state health department concerning local notification policies.

   Also before notification, the repeatedly reactive screening assay should be confirmed with more specific supplemental tests. An aliquot of the original sample should be analyzed by using the following, more specific tests. For repeatedly reactive HIV-1 antibody EIAs, an HIV-1 Western blot or immunofluorescence assay should be performed. For repeatedly reactive HIV-1 antigen assays (if performed), a neutralization procedure must be performed. For HIV-2, no licensed supplemental test is available; however, consideration may be given to the use of research assays such as Western blot, immunofluorescence, radioimmune precipitation, and synthetic peptide-based EIA. Arrangements for HIV-2 supplemental testing may need to be made with either the state or local health department. For repeatedly reactive combination HIV-1 and HIV-2 assays, the published testing algorithm should be followed (*21*). When the results of any supplemental tests are unclear, the use of research assays should be considered.

Notification of HIV-infected prospective living donors or spouses/known sex partners of cadaveric donors should be done in accordance with state law and in a confidential and sensitive manner by staff competent in counseling and discussing positive HIV results and their implications. If such staff are not available in the organ/tissue procurement organization, arrangements should be made with other organizations such as health departments or clinics to provide appropriate notification.

7. When it is possible to properly obtain and store samples, one or more of the following samples from the donor should be saved for at least 5 years after the expiration date of the tissue: dried blood spots, a frozen buffy coat, spleen cells, lymph node cells, bone marrow, and an aliquot of serum. These samples can be examined if subsequent information indicates that the donor may have donated during the period after infection but before antibody seroconversion.

8. Confirmed positive HIV test results in a prospective organ/tissue donor should be reported to state health agencies if required by state law or regulation.

Donor Exclusion Criteria

Regardless of their HIV antibody test results, persons who meet any of the criteria listed below should be excluded from donation of organs or tissues unless the risk to the recipient of not performing the transplant is deemed to be greater than the risk of HIV transmission and disease (e.g., emergent, life-threatening illness requiring transplantation when no other organs/tissues are available and no other lifesaving therapies exist). In such a case, informed consent regarding the possibility of HIV transmission should be obtained from the recipient.

Behavior/History Exclusionary Criteria

1. Men who have had sex with another man in the preceding 5 years.

2. Persons who report nonmedical intravenous, intramuscular, or subcutaneous injection of drugs in the preceding 5 years.

3. Persons with hemophilia or related clotting disorders who have received human-derived clotting factor concentrates

4. Men and women who have engaged in sex in exchange for money or drugs in the preceding 5 years.

5. Persons who have had sex in the preceding 12 months with any person described in items 1–4 above or with a person known or suspected to have HIV infection.

6. Persons who have been exposed in the preceding 12 months to known or suspected HIV-infected blood through percutaneous inoculation or through contact with an open wound, nonintact skin, or mucous membrane.

7. Inmates of correctional systems. (This exclusion is to address issues such as difficulties with informed consent and increased prevalence of HIV in this population.)

Specific Exclusionary Criteria for Pediatric Donors

1. Children meeting any of the exclusionary criteria listed above for adults should not be accepted as donors.

2. Children born to mothers with HIV infection or mothers who meet the behavioral or laboratory exclusionary criteria for adult donors (regardless of their HIV status) should not be accepted as donors unless HIV infection can be definitely excluded in the child as follows:

   Children >18 months of age who are born to mothers with or at risk for HIV infection, who have not been breast fed within the last 12 months, and whose HIV antibody tests, physical examination, and review of medical records do not indicate evidence of HIV infection can be accepted as donors.

3. Children ≤18 months of age who are born to mothers with or at risk for HIV infection or who have been breast fed within the past 12 months should not be accepted as donors regardless of their HIV test results.

Laboratory and Other Medical Exclusionary Criteria

1. Persons who cannot be tested for HIV infection because of refusal, inadequate blood samples (e.g., hemodilution that could result in false-negative tests), or any other reasons.

2. Persons with a repeatedly reactive screening assay for HIV-1 or HIV-2 antibody regardless of the results of supplemental assays.

3. Persons whose history, physical examination, medical records, or autopsy reports reveal other evidence of HIV infection or high-risk behavior, such as a diagnosis of AIDS, unexplained weight loss, night sweats, blue or purple spots on the skin or mucous membranes typical of Kaposi's sarcoma, unexplained lymphadenopathy lasting >1 month, unexplained temperature >100.5 F (38.6 C) for >10 days, unexplained persistent cough and shortness of breath, opportunistic infections, unexplained persistent diarrhea, male-to-male sexual contact, sexually transmitted diseases, or needle tracks or other signs of parenteral drug abuse.

Inactivation of HIV in Organs/Tissues

Definitive recommendations cannot yet be made regarding inactivation of HIV in organs and tissues because of lack of information about potentially effective inactivation measures. Research should continue in this area. Efforts to evaluate the effect of certain processing techniques on tissue sterility and quality should be expanded to include virologic studies for HIV. Thus, until more is known, it is prudent to process bone and bone fragments and carefully evacuate all marrow components from whole bone whenever feasible.

Quarantine

For semen donations and, when possible, for tissue donations from living donors, the collection should be placed in frozen quarantine and the donor retested for

antibodies to HIV-1 and HIV-2 after 6 months (*15*). The quarantined material should be released only if the follow-up test results have been obtained and are negative.

Record Keeping for Tracking of Recipients and Tissues

1. Each establishment involved in the acquisition, processing, distribution, or storage of organs or tissues should have a graft identification system that allows the tracking of organs and tissues from the donor source to the recipient institution and vice versa. Furthermore, each establishment involved in the acquisition of organs or tissues from a single donor should have mechanisms in place to facilitate the communication between establishments for the purposes of tracking organs and tissues to recipients who should be notified if HIV transmission from donor source material is confirmed. Procurement, processing, distribution, and storage centers should keep accurate records of the distribution of each organ/tissue according to the donor identification number, tissue type and identifying number, and identifying information for the receiving center, along with dates of procurement and distribution. Records should be kept a minimum of 10 years after expiration of tissue.

2. The transplantation center, hospital, physician, or dentist should keep accurate records of all organs/tissues received and the disposition of each. These records must be separate from patients' medical records (e.g., in a log book) so that this information is easily obtainable should tracking be necessary. Recorded information should include the organ/tissue type; donor identification number; name of procurement or distribution center supplying the organ/tissue; recipient-identifying information; name of recipient's physician or dentist; and dates of a) receipt by the center and b) either transplantation to the recipient or further distribution.

3. The donor identification number and organ or tissue type should be recorded in the recipient's transplant/medical/dental record.

Testing and Reporting of Recipients

1. Health-care providers for transplant recipients and the recipients themselves should be aware of the small but potential risk of infections, including HIV, from transplanted organs and tissues. The recipient's informed consent to the transplant should include acknowledgment of the risks, including transmission of HIV and other infections.

2. Until the risk for HIV transmission from screened donors has been clarified, recipients of solid organs should be routinely advised to be tested for HIV immediately before transplantation and at 3 months following the transplant. Testing of recipients should be done with consent of the recipient and should not be mandatory. Recipients of tissues other than solid organs do not require routine testing for HIV following receipt of the tissue from appropriately screened donors. Results of HIV testing of organ recipients should be collected and analyzed by the Scientific Registry for Transplant Recipients. (If data indicate no benefit from recipient testing, then this recommendation for recipient testing may be omitted in a revision of these guidelines.)

3. If a transplant recipient is found to be infected with HIV, the transplant center or health-care provider should, consistent with state law, immediately notify the state health department and the organization from which the tissue was obtained. HIV infection in a solid-organ recipient should also be reported to the Scientific Registry for Transplant Recipients.

Recall of Stored Tissue and Tracking of Recipients of Organs/Tissue from HIV-Infected Donors

1. Upon being notified that an organ/tissue recipient is infected with HIV, the organ/tissue collection center, in collaboration with the state or local health department and with assistance from CDC, is responsible for determining as soon as possible whether the donor was HIV-infected. This is done by determining the HIV-infection status of other recipients of organs/tissues (particularly those recipients of organs and fresh-frozen bone) and by laboratory testing of stored donor material. Experimental diagnostic laboratory assays such as PCR may be useful in these situations and should be used when they become available.

2. If evidence suggests HIV infection in the donor either from testing of stored donor specimens or by finding HIV infection in other recipients, all other recipients of that donor's tissue or organs should be notified through their transplanting physician and informed of the likelihood of HIV exposure and advised to undergo HIV testing.

3. HIV-infected recipients should be counseled about their need for medical evaluation and about prevention of HIV transmission to others. They should also be advised to inform their sex or needle-sharing partners of their potential risk and need for HIV counseling and testing. HIV-infected women should be informed of the risk of transmission of HIV to their children born after the transplant and be advised to have these children evaluated and to avoid breast-feeding. Pregnant women should receive pregnancy counseling about HIV.

4. All stored organs/tissues from a donor found to be HIV-infected should be retrieved and quarantined immediately and either used only for research purposes or destroyed, except when the transplantation of an indispensable organ/tissue is necessary to save the patient's life.

(Catalog of Federal Domestic Assistance Programs No 93.774, Medicare—Supplementary Medical Insurance, and No. 13.714, Medical Assistance Program)

Dated: April 15, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: April 25, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 95–10901 Filed 4–30–96; 8:45 am]

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May 2, 1996

Part V

Department of Housing and Urban Development

Notice of Funding Availability for the Family Unification Program, Fiscal Year 1996; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4045–N–01]

Office of the Assistant Secretary for Public and Indian Housing; NOFA for the Family Unification Program, Fiscal Year 1996

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA) for FY 1996.

SUMMARY: This notice announces the availability of up to $32 million (approximately) in 2-year budget authority for FY 1996 for section 8 rental certificates under the Family Unification Program, which will support approximately 1,600 families. Public housing agencies (PHAs) and Indian Housing Authorities (IHAs), herein referred to as housing agencies (HAs), are invited to submit applications for housing assistance.

The purpose of the Family Unification Program is to provide housing assistance to families for whom the lack of adequate housing is a primary factor in the separation, or imminent separation, of children from their families. As was the case in prior years, participation in the Family Unification Program is limited to HAs in 16 States. The 16 States are: California, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas, and Virginia.

DATES: The application deadline for the Family Unification program NOFA is July 1, 1996, 3:00 p.m., local time.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing HAs, HUD will treat as ineligible for consideration any application that is not received before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

ADDRESSES: The local HUD State or Area Office, Attention: Director, Office of Public Housing, is the official place of receipt for all applications, except applications from Indian Housing Authorities (IHAs). The local HUD Native American Programs Office, Attention: Administrator, Office of Native American Programs, is the place of official receipt for IHA applications. For ease of reference, the term ''HUD Office'' will be used throughout this NOFA to mean the HUD State Office, HUD Area Office, and the HUD Native American Programs Office. If a particular type of HUD Office needs to be identified, e.g., the HUD Native American Programs Office, the appropriate office will be used.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone number (202) 708–0477 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The section 8 information collection requirements contained in this NOFA 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 2577–0169. 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.

Family Self-Sufficiency (FSS) Program Requirement

Unless specifically exempted by HUD, all rental voucher or rental certificate funding reserved in FY 1996 (except funding for renewals or amendments) will be used to establish the minimum size of an HA's FSS program.

A. Purpose and Substantive Description of Family Unification Program

(1) Authority. The Family Unification Program is authorized by Section 8(x) of the United States Housing Act of 1937, 42 U.S.C. 1437f(x).

(2) Background. The Family Unification Program is a program under which Section 8 rental assistance is provided to families for whom the lack of adequate housing is a primary factor which would result in:

(a) The imminent placement of the family's child, or children, in out-of-home care; or

(b) The delay in the discharge of the child, or children, to the family from out-of-home care.

The purpose of the Family Unification Program is to promote family unification by providing rental assistance to families for whom the lack of adequate housing is a primary factor in the separation, or the threat of imminent separation, of children from their families.

Rental certificates awarded under the Family Unification Program are to be administered by HAs under HUD's regulations for the Section 8 rental certificate program (24 CFR parts 882 and 982). The HA may issue a rental voucher (24 CFR parts 887 and 982) to a family selected for participation in the Family Unification Program if the family requests a rental voucher and the HA has one available.

(3) Eligibility of HAs.—(a) *Family Unification Program Eligibility.* Consistent with previous NOFAs, HAs currently administering a rental voucher or certificate program in the following 16 States are eligible to apply (except those HAs determined unacceptable under section A.(3)(b) of this NOFA): California, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas, and Virginia.

(b) *Eligibility for HUD-Designated Housing Agencies with Major Program Findings.* HUD will establish a pass or fail threshold for all HAs. An HA that fails the threshold will not be eligible to apply without another entity to administer the program. Some housing agencies currently administering the Section 8 rental voucher and certificate programs have, at the time of publication of this NOFA, major program management findings that are open and unresolved or other significant program compliance problems (e.g., HA has not implemented mandatory FSS program). HUD will not accept applications for additional funding from these HAs as contract administrators if, on the application deadline date, the findings are not closed to HUD's satisfaction. If these HAs want to apply for the Family Unification Program, the HA must submit an application that designates another housing agency, nonprofit agency, or contractor that is acceptable to HUD and includes an agreement with the other housing agency or contractor to administer the new funding increment on behalf of the HA. The Office of Public Housing in the local HUD Office will notify, immediately after the publication of this NOFA, those HAs that are not eligible to apply. Applications submitted by these HAs without an agreement from another housing agency or contractor, approved by HUD, to serve as contract administrator will be rejected. Other

agencies may be notified by HUD at other times as HUD deems appropriate.

(4) Program Guidelines.—(a) *Eligibility.*—(i) *Family Unification eligible families.* Each HA must modify, in accordance with program rules, its selection preference system to permit the selection of Family Unification eligible families for the program based on available funding provided by HUD for this purpose. The term ''Family Unification eligible family'' means a family that:

(*A*) The public child welfare agency has certified is a family for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care, or in the delay of discharge of a child, or children, to the family from out-of-home care; and

(*B*) The HA has determined is eligible for Section 8 rental assistance.

(ii) *Lack of Adequate Housing.* The lack of adequate housing means:

(*A*) A family is living in substandard housing; or

(*B*) A family is homeless; or

(*C*) A family is displaced by domestic violence; or

(*D*) A family is living in an overcrowded unit.

(iii) *Substandard Housing.* A family is living in substandard housing if the unit where the family lives:

(*A*) Is dilapidated;

(*B*) Does not have operable indoor plumbing;

(*C*) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(*D*) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(*E*) Does not have electricity, or has inadequate or unsafe electrical service;

(*F*) Does not have a safe or adequate source of heat;

(*G*) Should, but does not, have a kitchen; or

(*H*) Has been declared unfit for habitation by an agency or unit or government.

(iv) *Dilapidated Housing.* A family is living in a housing unit that is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(v) *Homeless.* A homeless family includes any person or family that:

(*A*) Lacks a fixed, regular, and adequate nighttime residence; and

(*B*) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for persons intended to be institutionalized; or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(vi) *Detained Family.* A Family Unification eligible family does not include any person imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(vii) *Displaced by Domestic Violence.* A family is displaced by domestic violence if:

(*A*) The applicant has vacated a housing unit because of domestic violence; or

(*B*) The applicant lives in a housing unit with a person who engages in domestic violence.

(*C*) ''Domestic violence'' means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(viii) *Qualify as Involuntarily Displaced.* For an applicant to qualify as involuntarily displaced because of domestic violence:

(*A*) The HA must determine that the domestic violence occurred recently or is of a continuing nature; and

(*B*) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the HA has given advance written approval. If the family is admitted, the HA may deny or terminate assistance to the family for breach of this certification.

(ix) *Overcrowded Housing.* A family is considered to be living in an overcrowded unit if:

(*A*) The family is separated from its children and the parent(s) are living in an otherwise standard housing unit, but, after the family is re-united, the parents' housing unit would be overcrowded for the entire family and would be considered substandard.

(*B*) The family is living with its children in a unit that is overcrowded for the entire family and this overcrowded condition may result in the imminent placement of a child or children in out-of-home care.

(*C*) For purpose of this paragraph (ix), the HA shall have discretion to determine whether the unit is ''overcrowded'' in accordance with HA occupancy standards.

(x) *Public child welfare agency* (PCWA) means the public agency that is responsible under applicable State or Tribal law for determining that a child is at imminent risk of placement in out-of-home care or that a child in out-of-home care under the supervision of the public agency may be returned to his or her family.

(b) *HA Responsibilities.* HAs must:

(i) Accept families certified by the PCWA as eligible for the Family Unification Program. If the HA has a closed waiting list, it must reopen the waiting list to accept Family Unification Program applicant families. The HA is not required to review its waiting list for eligible families. The HA upon receipt of the PCWA list of families currently in the PCWA caseload must compare the names with those of families already on the HA's Section 8 waiting list. Any family on the HA's Section 8 waiting list that matches with the PCWA's list must be assisted in order of their position on the waiting list in accordance with HA admission policies;

(ii) Determine if any families with children on its waiting list are living in temporary shelters or on the street and may qualify for the Family Unification Program, and refer such applicants to the PCWA;

(iii) Determine if families referred by the PCWA are eligible for Section 8 assistance and place eligible families on the Section 8 waiting list;

(iv) Amend the administrative plan in accordance with applicable program regulations and requirements;

(v) Administer the rental assistance in accordance with applicable program regulations and requirements; and

(vi) Assure the quality of the evaluation that HUD intends to conduct on the Family Unification Program and cooperate with and provide requested data to the HUD office or HUD-approved contractor responsible for program evaluation.

(c) *Public Child Welfare Agency (PCWA) Responsibilities.* Public child welfare agencies must:

(i) Establish and implement a system to identify Family Unification eligible families within the agency's caseload and to review referrals from the HA;

(ii) Provide written certification to the HA that a family qualifies as a Family Unification eligible family based upon the criteria established in Section 8(x) of the United States Housing Act of 1937, HUD regulations, and the HA policies implementing the regulations;

(iii) Commit sufficient staff resources to ensure that Family Unification eligible families are identified and

certified in a timely manner and to provide follow-up supportive services after the families lease units; and

(iv) Cooperate with the evaluation that HUD intends to conduct on the Family Unification Program, and submit a certification with the HA's application for Family Unification funding that the PCWA will agree to cooperate with and provide requested data to the HUD office or HUD-approved contractor having responsibility for program evaluation.

(d) *Section 8 Rental Certificate Assistance.* The Family Unification Program provides assistance under the Section 8 rental assistance programs. Although HUD is providing a special allocation of rental certificates, the HA may use both rental vouchers and certificates to assist families under this program.

HAs must administer this program in accordance with HUD's regulations governing the Section 8 rental certificate and rental voucher programs. The HA may issue a rental voucher to a family selected to participate in the Family Unification Program if the family requests a rental voucher and the HA has one available. If Section 8 assistance for a family under this program is terminated, the rental assistance must be reissued to another Family Unification eligible family during the 2-year term of the Annual Contributions Contract (ACC) for the Section 8 rental certificates provided under this program.

B. Family Unification Allocation Amounts

This NOFA announces the availability of up to $32 million for the Family Unification Program which will support assistance for about 1,600 families. Each HA may apply for funding for a maximum of 50 units.

The amounts allocated under this NOFA will be awarded under a national competition, based on the threshold criteria and a lottery for selection from all approvable applications. The Family Unification Program is exempt from the fair share allocation requirements of section 213(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 1439(d)) and the implementing regulations at 24 CFR part 791, subpart D. Applications that meet the requirements of this NOFA and are included in the FY 1996 lottery, but that are not selected, may be considered for funding from funds available, if any, in FY 1997 appropriations designated for the Family Unification Program.

C. Family Unification Application Submission Requirements

(1) Forms. Application forms may be obtained from the local HUD Office. Applications must include the following, unless otherwise specifically excepted:

(a) *Form HUD–52515.* An Application for Existing Housing, Form HUD–52515, must be completed in accordance with the program regulations (24 CFR 982.102). An application must include the information in Section C, Average Monthly Adjusted Income, of Form HUD–52515 in order for HUD to calculate the amount of Section 8 budget authority necessary to fund the requested number of units. HAs may obtain a copy of Form HUD–52515 from the local HUD Office.

(b) *Certification Regarding Drug-Free Workplace.* The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each HA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with CFR part 24, subpart F. HAs may obtain a copy of this form from the local HUD Office.

(c) *Certification Regarding Lobbying.* Any HA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF–LLL). IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage, but IHAs established under State law are not excluded from the coverage. HAs may obtain a copy of the certification and the Form SF–LLL from the local HUD Office.

(2) Local government comments. Section 213 of the Housing and Community Development Act of 1974 requires that HUD independently determine that there is a need for the housing assistance requested in applications and solicit and consider comments relevant to this determination from the chief executive officer of the unit of general local government. The HUD Office will obtain Section 213 comments from the unit of general local government in accordance with 24 CFR part 791, subpart C, Applications for Housing Assistance in Areas Without Housing Assistance Plans. Comments submitted by the unit of general local government must be considered before an application can be approved.

For purposes of expediting the application process, the HA should encourage the chief executive officer of the unit of general local government to submit a letter with the HA application commenting on the HA application in accordance with Section 213. Because HUD cannot approve an application until the 30-day comment period is closed, the Section 213 letter should not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the unit of general local government.

(3) Letter of Intent and Narrative. All the items in this Section must be included in the application submitted to the HUD Office. The HA must state in its cover letter to the application whether it will accept a reduction in the number of rental certificates and the minimum number of rental certificates it will accept, since the funding is limited and HUD may only have enough funds to approve a smaller amount than the number of rental certificates requested. The application must include an explanation of how the application meets, or will meet, Threshold Criteria 1 through 4 in Section D of this NOFA, below.

The application must also include a letter of intent from the PCWA stating its commitment to provide resources and support for the Family Unification Program. The PCWA letter of intent must explain:

(i) The definition of eligible families;

(ii) The method used to identify eligible families;

(iii) The process to certify eligible families;

(iv) The PCWA assistance to families to locate suitable housing;

(v) The staff resources committed to the program; and

(vi) PCWA experience with the administration of similar programs including cooperation with a HA.

The PCWA serving the jurisdiction of the HA is responsible for providing the information for Threshold Criterion 4, PCWA Statement of Need for Family Unification Program, to the HA for submission with the HA application. The application must include a statement by the PCWA describing the need for a Family Unification Program. This should include a discussion of the case-load of the PCWA and information about homelessness, family violence resulting in involuntary displacement, number and characteristics of families who are experiencing the placement of children in out-of-home care as a result of inadequate housing, and the PCWA's experience in obtaining housing through HUD assisted housing programs and other sources for families lacking adequate housing. A State-wide Public Child Welfare Agency must provide

information on Threshold Criterion 4, PCWA Statement of Need for Family Unification Program, to all HAs that request data; otherwise, HUD will not consider applications from any HAs with the State-wide PCWA as a participant in its program.

(4) Evaluation Certifications. The HA and the PCWA, in separate certifications, must state that the HA and Public Child Welfare Agency agree to cooperate with HUD and provide requested data to the HUD office or HUD-approved contractor delegated the responsibility for the program evaluation. No specific language for this certification is prescribed by HUD.

D. Family Unification Application Rating Process

(1) General. The HUD Office is responsible for rating the applications for the selection criteria established in this NOFA, and HUD Headquarters is responsible for selection of applications (including applications rated by the Native American Programs Office) that will receive assistance under the Family Unification Program. The HUD Office will initially screen all applications and determine any technical deficiencies based on the application submission requirements.

Each application submitted in response to the NOFA, in order to be eligible for funding, must receive at least 30 points for Threshold Criterion 1, Unmet Housing Needs, and at least 20 points for Threshold Criterion 2, Efforts of HA to Provide Area-Wide Housing Opportunities for Families, and must meet the requirements for Threshold Criterion 3, Coordination between HA and Public Child Welfare Agency, and Threshold Criterion 4, Public Child Welfare Agency Statement of Need for Family Unification Program.

(2) Threshold Criteria.

(a) *THRESHOLD CRITERION 1: UNMET HOUSING NEEDS (50 POINTS).*

(i) *Description:* This criterion assesses the unmet housing need in the primary area specified in the HA's application compared to the unmet housing need for the allocation area. Unmet housing need is defined as the number of very low-income renter households with housing problems based on 1990 Census, minus the number of federally assisted housing units provided since the 1990 Census.

In awarding points under this criterion, HUD will, to the extent practicable, consider all units provided since the 1990 Census under the Section 8 Rental Voucher and Certificate programs, any other Section 8 programs, the Public and Indian Housing programs, the Section 202 program, and the Farmers Home Administration's Section 515 Rural Rental Housing program.

(ii) *Rating and Assessment:* The number of points assigned is based on the percentage of the allocation area's unmet housing need that is within the HA's primary area. State or Regional Housing Agencies will receive points based on the areas they intend to serve with this allocation, e.g., the entire allocation area or the localities within the allocation area specified in the application. The HUD Office will assign one of the following point totals:

- *50 points.* If the HA's percentage of unmet housing need is greater than 50 percent of the allocation area's unmet need.
- *45 points.* If the HA's percentage of unmet housing need is equal to or less than 50 percent but greater than 40 percent of the allocation area's unmet need.
- *40 points.* If the HA's percentage of unmet housing need is equal to or less than 40 percent but greater than 30 percent of the allocation area's unmet need.
- *35 points.* If the HA's percentage of unmet housing need is equal to or less than 30 percent but greater than 20 percent of the allocation area's unmet need.
- *30 points.* If the HA's percentage of unmet housing need is equal to or less than 20 percent but greater than 10 percent of the allocation area's unmet need.
- *0 points.* If the HA's percentage of unmet housing need is equal to or less than 10 percent of the allocation area's unmet need.

The HUD Office will not consider for funding any HA application receiving zero (0) points.

In accordance with Notice PIH 91–45, the HUD Office will notify the Farmers Home Administration, or its successor agency under Public Law 103–354 (FmHA), of applications it receives and ask that FmHA provide advisory comments concerning the market for additional assisted housing or the possible impact the proposed units may have on FmHA projects. Applications for which FmHA has provided comments expressing concerns about market need or the continued stability of existing FmHA projects, with which HUD agrees, will receive zero points for this criterion.

(b) *THRESHOLD CRITERION 2: EFFORTS OF HA TO PROVIDE AREA-WIDE HOUSING OPPORTUNITIES FOR FAMILIES (60 POINTS).*

(i) *Description:* Many HAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. The efforts described in response to this selection criterion must be beyond those required by federal law or regulation such as the portability provisions of the Section 8 rental voucher and certificate programs. HAs in metropolitan and non-metropolitan areas are eligible for points under this criterion. The HUD Office will assign points to HAs that have established cooperative agreements with other HAs or created a consortium of HAs in order to facilitate the transfer of families and their rental assistance between HA jurisdictions. In addition, the HUD Office will assign points to HAs that have established relationships with nonprofit groups to provide families with additional counseling, or have directly provided counseling, to increase the likelihood of a successful move by the families to areas that do not have large concentrations of poverty.

(ii) *Rating and Assessment:* The HUD Office will assign point values for any of the following assessments for which the HA qualifies and add the points for all the assessments (maximum of 60 points) to determine the total points for this Selection Criterion:

- *10 points*—Assign 10 points if the HA documents that it participates in an area-wide rental voucher and certificate exchange program where all HAs absorb portable Section 8 families.
- *10 Points*—Assign 10 points if the HA certifies that its administrative plan does not include a ''residency preference'' for selection of families to participate in its rental voucher and certificate programs or the HA certifies that it will eliminate immediately any ''residency preference'' currently in its administrative plan.
- *10 Points*—Assign 10 points if the HA documents that it has established a contractual relationship with a nonprofit agency or the local governmental entity to provide housing counseling for families that want to move to low-poverty or non-minority areas. The five HAs approved for the FY 1993 Moving to Opportunity (MTO) for Fair Housing Demonstration and any other HAs that receive counseling funds from HUD (e.g., in settlement of litigation involving desegregation or demolition of public housing, mixed population projects) may qualify for points under this assessment, but these HAs must identify all activities undertaken, other than those funded by HUD, to expand housing opportunities.
- *10 Points*—Assign 10 points if the HA documents that it requested from HUD, and HUD approved, the authority to utilize exceptions to the fair market rent limitations as allowed under 24 CFR 882.106(a)(4) to allow families to

select units in low-poverty or non-minority areas.

• *10 Points*—Assign 10 points if the HA documents that it participates with other HAs in using a metropolitan wide or combined waiting list for selecting participants in the program.

• *10 Points*—Assign 10 points if the HA documents that it has implemented other initiatives that have resulted in expanding housing opportunities in areas that do not have undue concentrations of poverty or minority families.

(c) *THRESHOLD CRITERION 3: COORDINATION BETWEEN HA AND PUBLIC CHILD WELFARE AGENCY TO IDENTIFY AND ASSIST ELIGIBLE FAMILIES.*

The application must describe the method that the HA and the PCWA will use to identify and assist Family Unification eligible families. The application must include a letter of intent from the PCWA stating its commitment to provide resources and support for the program. The PCWA letter of intent and other information must be comprehensive and must include an explanation of: the method used to identify eligible families, the PCWA's certification process for determining Family Unification eligible families, the responsibilities of each agency, the PCWA assistance provided to families in locating housing units, the PCWA staff resources committed to the program, the past PCWA experience administering a similar program, and the PCWA/HA cooperation in administering a similar program.

(d) *THRESHOLD CRITERION 4: PUBLIC CHILD WELFARE AGENCY STATEMENT OF NEED FOR FAMILY UNIFICATION PROGRAM.*

The application must include a statement by the PCWA describing the need for a program providing assistance to families for whom lack of adequate housing is a primary factor in the placement of the family's children in out-of-home care or in the delay of discharge of the children to the family from out-of-home care in the area to be served, as evidenced by the caseload of the public child welfare agency. The PCWA must adequately demonstrate that there is a need in the HA's jurisdiction for the Family Unification program that is not being met through existing programs. The narrative must include specific information relevant to the area to be served, about homelessness, family violence resulting in involuntary displacement, number and characteristics of families who are experiencing the placement of children in out-of-home care or the delayed discharge of children from out-of-home care as the result of inadequate housing, and the PCWA's past experience in obtaining housing through HUD assisted programs and other sources for families lacking adequate housing.

E. Corrections to Deficient Family Unification Applications

(1) Acceptable Applications. To be eligible for processing, an application must be received by the appropriate HUD Office no later than the date and time specified in this NOFA. The HUD Office will initially screen all applications and notify HAs of technical deficiencies by letter.

If an application has technical deficiencies, the HA will have 14 calendar days from the date of the issuance of the HUD notification letter to submit the missing or corrected information to the HUD Office. Curable technical deficiencies relate only to items that do not improve the substantive quality of the application relative to the rating factors.

All HAs must submit corrections within 14 calendar days from the date of the HUD letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time (i.e., the time in the appropriate HUD Office), of the 14th calendar day of the correction period will not be accepted and the application will be rejected as incomplete.

(2) Unacceptable Applications. (a) After the 14-calendar day technical deficiency correction period, the HUD Office will disapprove HA applications that it determines are not acceptable for processing. The HUD Office notification of rejection letter must state the basis for the decision.

(b) Applications that fall into any of the following categories will not be processed:

(i) There is a pending civil rights suit against the HA instituted by the Department of Justice or there is a pending administrative action for civil rights violations instituted by HUD (including a charge of discrimination under the Fair Housing Act).

(ii) There has been an adjudication of a civil rights violation in a civil action brought against the HA by a private individual, unless the HA is operating in compliance with a court order or implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the areas of noncompliance.

(iii) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance.

(iv) HUD has denied application processing under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(v) The HA has serious unaddressed, outstanding Inspector General audit findings, Fair Housing and Equal Opportunity monitoring review findings, or HUD management review findings for one or more of its Rental Voucher, Rental Certificate, or Moderate Rehabilitation Programs, or, in the case of a HA that is not currently administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, for its Public Housing Program or Indian Housing Program. The only exception to this category is if the HA has been identified under the policy established in section A.(3)(b) of this NOFA and the HA makes application with a designated contract administrator.

(vi) The HA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the HA to administer an additional increment of rental vouchers or rental certificates.

(vii) A HA application that does not comply with the requirements of 24 CFR 982.102 and this NOFA, after the expiration of the 14-calendar day technical deficiency correction period will be rejected from processing.

(viii) A HA application submitted after the deadline date.

(ix) The application is from a HA that has failed to achieve a lease-up rate of 90 percent of units in its HUD-approved budget for the HA fiscal year prior to application for funding in each of its rental voucher and certificate programs.

F. Family Unification Application Selection Process

After the HUD Office has screened HA applications and disapproved any applications unacceptable for further processing (See Section E.(2) of this NOFA), the HUD Office will review and rate all approvable applications, utilizing the Threshold Criteria and the point assignments listed in this NOFA. Each HUD Office will send to HUD Headquarters the following information on each application that passes the Threshold Criteria:

(1) Name and address of the HA;

(2) Name and address of the Public Child Welfare Agency;

(3) State Office, Area Office, or Native American Programs Office contact person and telephone number;

(4) The number of rental certificates in the HA application and minimum number of rental certificates specified in the HA application, and the corresponding budget authority acceptable to the HA; and

(5) A completed fund reservation worksheet for the number of rental certificates requested in the application.

HUD Headquarters will select eligible HAs to be funded based on a lottery. All HAs identified by the HUD Offices as meeting the Threshold Criteria identified in this NOFA will be eligible for the lottery selection process. As HAs are selected, the costs of funding the applications will be counted against the total funds available for the Family Unification Program. In order to achieve geographic diversity, HUD Headquarters will limit the number of applications selected for funding under the lottery for any State to 10 percent of the budget authority made available under this NOFA.

Applications will be funded in full for the number of rental certificates requested by the HA in accordance with the NOFA. However, when remaining rental certificate funds are insufficient to fund the last HA application in full, HUD Headquarters may fund that application to the extent of the funding available and the applicant's willingness to accept a reduced number of rental certificates. Applicants that do not wish to have the size of their programs reduced may indicate in their applications that they do not wish to be considered for a reduced award of funds. HUD Headquarters will skip over these applicants if assigning the remaining funding would result in a reduced funding level.

G. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment for all funding available under this NOFA has been made in accordance with the Department's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding 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, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW, Washington, D.C. 20410.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this notice 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. As a result, the notice is not subject to review under the Order. This notice is a funding notice and does not substantially alter the established roles of the Department, the States, and local governments, including HAs.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Executive Order and, thus, is not subject to review under the Order. This is a funding notice and does not alter program requirements concerning family eligibility.

Section 102 of the HUD Reform Act: Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 calendar days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act), codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice) (this is not a toll-free number). Any HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact the appropriate Field Office Counsel or Headquarters counsel for the program to which the question pertains.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the ''Byrd Amendment'') and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Dated: April 23, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

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Part VI

Department of Labor

Wage and Hour Division

29 CFR Part 4

Service Contract Act; Labor Standards for Federal Service Contracts; Proposed Rule

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

29 CFR Part 4

RIN 1215–AA78

Service Contract Act; Labor Standards for Federal Service Contracts

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Labor (DOL or the Department) is proposing alternative approaches for procedures to establish minimum health and welfare benefits requirements in the regulations issued under the McNamara-O'Hara Service Contract Act (SCA). Pursuant to § 4(b) of the SCA, a variance from the SCA's locality and occupational requirements for determining prevailing health and welfare fringe benefits is also proposed to reflect the limitations of available fringe benefit data. Comments are also requested on revisions to timeframes for section 4(c) substantial variance proceedings.

The United States District Court for the District of Columbia has set a deadline for the Department of July 31, 1996, to complete this rulemaking process. *SEIU* v. *Reich,* CA No. 91–0605 (D.D.C. January 29, 1996). To aid in the selection of the most appropriate methodology, the Department is in the process of developing data on the occupational mix of service contract employees. This data will help provide a basis for the regulatory impact analysis. Due to the time constraints imposed by the district court, however, it is not feasible to publish the impact analysis for comment with the proposed rule. Instead, the analysis will be published as soon as possible for comment. Comments on the analysis will be reviewed prior to promulgation of a final rule.

DATES: Comments are due on or before July 1, 1996.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped postcard, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile (''FAX'') machine to (202) 219–5122 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

FOR FURTHER INFORMATION CONTACT: William Gross, Director, Division of Wage Determinations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 219–8353. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The Department is proposing alternative procedures for determining prevailing health and welfare fringe benefits under SCA and seeks comments on each alternative. The Department does not intend, with this notice, to introduce new or added reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The existing information collection requirements contained in Regulations, 29 CFR Part 4 were previously approved by the Office of Management and Budget under OMB control number 1215–0150. The general Fair Labor Standards Act (FLSA) recordkeeping requirements which are restated in Part 4 were approved by the Office of Management and Budget under OMB control number 1215–0017.

II. Background

The McNamara-O'Hara Service Contract Act of 1965 (SCA) (41 U.S.C. 351, *et seq.*) applies to Federal contracts with the principal purpose of furnishing services through the use of service employees. For service contracts in excess of $2,500, the Department of Labor is required to make determinations of prevailing wage rates and fringe benefits that must be paid as a minimum by contractors and subcontractors to employees employed on covered contacts ''* * * in accordance with prevailing rates for such employees in the locality, * * *'' (see sections 2 (a)(1) and 2(a)(2) of the Act).[1]

Section 4(b) of the Act as amended in 1972 authorizes the Secretary of Labor to ''provide such reasonable limitations'' and to ''make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act (other than § 10), but only in special circumstances where * * * necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purposes of this Act to protect prevailing labor standards.''

Federal agencies award contracts for a large variety of services which are performed for a specific period, typically one year with options for additional years.[2] Upon the expiration of such contracts, through new solicitations for bids or requests for proposals, follow-on contracts are commonly awarded to continue the services at the same locality or localities. When new contracts are awarded, the employees of predecessor contractors often routinely go to work for the new contractors.[3] Continuity of services and, generally, employees from year to year makes consistency in wage and fringe benefit determinations a key concern of contracting agencies, contractors, and service employees. Although the statutory requirements for issuing both prevailing wage rate and fringe benefit determinations are the same, different procedures have been used since the Act's enactment in 1965 to implement them. These procedures have been shaped by the availability of wage and fringe benefit data, the need for consistency and continuity over time, and the common practice of employers in the service contracting industry to provide uniform fringe benefit packages to all workers.

Prevailing wage rates are based primarily on cross-industry surveys

[1] The prevailing wage and fringe benefit determination scheme provided by sections 2 (a)(1) and 2(a)(2) of the Act was modified by amendments to the Act in 1972. As a result of a new § 2(a)(5), the Department, in making prevailing determinations, is also required to give due consideration to the rates that would be paid to the various classes of service employees if directly hired by the Federal agency. In addition, prevailing determinations are not applicable where the employees of a predecessor contractor are covered by a collective bargaining agreement. In such cases, collectively bargained wages and fringe benefits are specified in determinations pursuant to section 4(c) of the Act.

[2] Option periods are deemed wholly new contracts for wage determination purposes and must include new or updated wage determinations (see 29 CFR 4.145).

[3] Experience with this general practice underlies Executive Order 12933, signed by President Clinton on October 20, 1994. While successor contractors on service contracts for the maintenance of public buildings typically hire the majority of the predecessor's employees, the executive order seeks to minimize the disruption in services that otherwise would occur if a successor contractor hires a totally new work force. The executive order, among other things, requires solicitations for building service contracts for public buildings to include a clause that requires the successor contractor to offer certain employees of the predecessor a right of first refusal to employment on the new, follow-on contract.

conducted by the Bureau of Labor Statistics (BLS), either under its own Area Wage Survey program (currently under review) or under contract with the Department's Employment Standards Administration. These surveys are designed to provide earnings data for selected occupations common to many manufacturing and nonmanufacturing industries, using a standard set of job descriptions, within a particular local labor market usually described in terms of a metropolitan area. Since 1965, the Department has routinely issued locality-based, occupation-specific prevailing wage rate determinations.

Since 1965, the fringe benefit levels specified in prevailing determinations have been applicable to all of the listed occupational classes in a particular determination. The locality surveys conducted by BLS, in addition to data on the wages paid to workers in selected occupations, provide information on the overall prevalence of certain fringe benefits, such as life insurance, sickness and accident insurance plans, hospitalization, surgical and medical insurance plans, accidental death and dismemberment insurance, long-term disability insurance, sick leave, retirement plans, civic and personal leave, and other benefits. These surveys also provide information on the numbers of holidays and vacation days provided by the surveyed employers. Unlike wage data, the fringe benefit information from these surveys is not currently collected on an occupation-by-occupation basis; nor is data on the cost of such benefits collected. In the past, the Department has found that reliable data by locality or by occupation could not be obtained due to prohibitive costs.

It has been the Department's general practice to include *locality-based* holiday and vacation benefits in determinations, based on information obtained from the locality surveys. However, due to the absence of locality-based data up to this time, health and welfare fringe benefits[4] have always been specified in a determination as a monetary amount based on survey data collected on a *nationwide* basis.[5] Until 1976, the Department routinely issued a single, national ''insurance'' benefit level for all occupations of service employees throughout the country,[6] based primarily on data from the BLS' *Biennial Survey of Employee Compensation in the Private Nonfarm Economy*.[7] This ''insurance'' benefit level was limited to the average cost per hour of providing life, accident, and health insurance in all industries, based on available information which indicated that this fringe benefit package was the most prevalent of the various benefits provided by employers, particularly small employers, and was stated in determinations as a fixed hourly payment amount due for each hour paid (up to a maximum of 40 hours per week and 2,080 per year) on behalf of each service employee.

In the early 1970s, several large Federal service contractors and some contracting agencies asked the Department to consider an alternative methodology because the contractors were having difficulty hiring and retaining highly skilled workers, and remaining competitive, at the ''insurance'' only benefit level. In response, a second health and welfare benefit level was developed that took into account not only insurance, but all types of benefits not legally required, since these were commonly provided to employees by larger employers. This ''total benefits'' level has since been applied primarily to solicitations for large base support service contracts, solicitations (for OMB Circular A–76 actions) with potential for displacement of federal civilian workers, and solicitations that require bidders to be large, national corporations, or providers of highly technical services. The ''total benefits'' level includes the all-industry average hourly cost of not only life, accident, and health insurance, but also sick leave, pension plans, civic and personal leave, other leave, severance pay, and savings and thrift plans. Rather than a fixed payment for each hour worked, the ''total benefit'' level is expressed in terms of average cost—which allows variable contributions to employees (e.g., contributions to a health insurance plan typically vary depending upon the individual employee's marital or employment status)—so long as total contributions for all service employees average at least the specified amount per hour for each service employee. (See 29 CFR 4.175(b).)

From 1966 to 1979, the BLS *Biennial Survey of Employee Compensation in the Private Nonfarm Economy* was the primary source for the nationwide cost data on the health and welfare benefit level, for both the ''insurance'' and the ''total benefit'' levels. However, in 1979, BLS discontinued this survey. Absent a new survey data base, benefit levels were not adjusted between 1980 and 1986. In 1986, updated fringe benefit levels were based on BLS Employment Cost Index (ECI) data showing the percentage increase in benefit costs between 1980 and 1986, which was applied to the 1980 base rates. At that time, the ''insurance'' benefit level was increased from $0.32 to $0.59 per hour, and the ''total benefit'' level from $1.08 to $1.84 per hour.

When BLS published ECI survey data on fringe benefit levels for the first time in 1987,[8] the average employer's cost of the various fringe benefit components did not correspond with the SCA health and welfare fringe benefit levels then being issued (i.e., the ECI data would have significantly increased the ''insurance'' benefit level and comparably decreased the ''total benefit'' level). It was decided to evaluate alternative methodologies which might better reflect the practices of the type of employers who perform contracts subject to SCA. As a consequence, health and welfare fringe benefits levels again were not adjusted until 1991 (see below).

On March 21, 1991, the Service Employees International Union (SEIU) filed a lawsuit against the Department in the U.S. District Court for the District of Columbia, seeking to compel the Secretary of Labor to immediately raise

[4] The term ''health and welfare'' fringe benefits refers to all benefits provided to workers not required by law *except* vacation and holiday benefits.

[5] BLS is currently in the process of redesigning its system for collecting fringe benefit data to potentially allow for the collection and publication of health and welfare benefit information for several of the country's largest metropolitan areas. The number of localities for which such data will be published is uncertain at this point and clearly would not include all localities for which the Department issues wage determinations under the SCA. Such data is currently not available and may be several years from publication.

[6] This did *not* include pension or other benefits because BLS locality surveys indicated that such benefits did not ordinarily prevail.

[7] When information available for a geographic area indicated that collectively bargained wage rates and fringe benefits were furnished to a majority of the employees in a particular occupation, such wage rates and fringe benefits were adopted as prevailing. Studies of employee compensation practices in particular industries, in contrast to those conducted as cross-industry area wage studies, were also sometimes used in the past for determinations issued for service contracts in that industry, e.g., mail hauling.

[8] Employer costs for employee compensation are developed from data collected for the Bureau of Labor Statistics Employment Cost Index (ECI) during a March sample. The report, ''Employer Costs for Employee Compensation,'' is published once a year, and covers all occupations in private industry (excluding farms and households) and state and local governments. It is a measure of the average cost to employers per employee hour worked for wages and salaries and employee benefits. *See* BLS Handbook of Methods, Bulletin 2414, for a full background discussion concerning the ECI. The ECI has been designated as a principal Federal economic indicator by the Office of Management and Budget and ''is the only measure of labor costs that treats wages and salaries and total compensation consistently, and provides consistent subseries by occupation and industry.'' *Id*., p. 63.

the fringe benefit amounts specified in prevailing wage determinations.

At the time, the Department was completing the development of a new methodology for setting health and welfare fringe benefit levels utilizing newly published ECI size-of-establishment breakouts. In evaluating the new BLS ECI fringe benefit cost data, the Department concluded that cost distributions by size-of-firm best approximated fringe benefit levels and practices among the types of establishments that performed SCA-covered contracts, and would preserve continuity and consistency for Federal agencies, service contractors, and service employees. Accordingly, the health and wealth fringe benefit level issued for most service contracts, which was based only on the ''insurance'' component, was raised from $0.59 to $0.74 per hour in September 1991, based on 1990 data for employers with less-than-100 employees. The new BLS ECI data on total benefits for firms with 100-or-more employees was used to increase the ''total benefits'' level from $1.84 to $2.07 per hour.

Actual BLS ECI fringe benefit cost data by size-of-firm was also used as a basis for updating the health and welfare levels in 1992, 1993, and 1994. Applying the same principles adopted for the 1991 updates, the ''insurance'' level was raised to $0.83 per hour in July 1992, to $0.89 in August 1993, and to $0.90 in August 1994. Correspondingly, the ''total benefit'' package was raised to $2.23 per hour in July 1992, to $2.39 in August 1993, and to $2.56 in August 1994.[9]

After the issuance of updated health and welfare fringe benefit levels in September 1991, SEIU amended its complaint to seek review of the Department's fringe benefit methodology, in particular the use of BLS ECI fringe benefit data for employers with less-than-100 employees for the ''insurance'' level. In addition to challenging the size-of-establishment methodology, SEIU also challenged a number of other aspects of the existing methodology, including the issuance of nationwide rather than locality-based health and welfare fringe benefit determinations, the use of private industry data only (the ECI covers private industry and also state and local governments), and the lack of consideration of fringe benefit costs in the Federal sector. Because no administrative review within the Department was sought by SEIU relating to the size-of-establishment methodology adopted for the September 1991 updates, the District Court dismissed the case without prejudice, directing SEIU to exhaust its administrative remedies before the Department of Labor. See *SEIU* v. *Martin*, CA No. 91–0605 (JFP) (D.D.C. April 1, 1992).

The size-of-establishment procedures were subsequently reaffirmed by the Acting Administrator of the Wage and Hour Division on July 8, 1992, and SEIU appealed the decision to the Department's Board of Service Contract Appeals (BSCA). In a decision dated August 28, 1992, the BSCA generally affirmed fringe benefit practices, including the issuance of fringe benefits on a nationwide basis, but remanded the issue of using size-of-establishment data as a basis for fringe benefit rates.[10] The BSCA directed Wage and Hour to either better support the use of the size-of-establishment data or develop an alternative methodology for setting fringe benefit rates. On remand, Wage and Hour conducted a study of service contracts subject to the SCA and examined other available data. This research indicated that the great preponderance of service establishments employs fewer than 100 workers, and the Acting Administrator, by letter to SEIU dated May 28, 1993, reaffirmed the use of BLS ECI size-of-establishment data in the development of prevailing fringe benefits under the Act.[11]

In response to SEIU's review petition, the BSCA decided on September 23, 1993, that Wage and Hour had not provided sufficient justification for its departure from the practice of basing the ''insurance'' and ''total benefit'' components on all industry data (prior to 1991) without regard to size-of-establishments. While the BSCA acknowledged that the size-of-establishment methodology addressed certain concerns such as consistency, ease of administration, and the ability to update on a regular basis, it was not convinced that these attributes and objectives were ''characteristic only of a system that utilizes size-of-establishment data or whether those same objectives can be also achieved by using other data to set the SCA rates.'' While the BSCA upheld the use of BLS ECI data in general and concluded that the lack of reliable locality data was reasonable justification for issuing nationwide benefit rates, it again remanded the matter to Wage and Hour for reconsideration; the Board was not satisfied that the size-of-establishment data justified departure from the previous practice of basing the fringe benefit rates on all-industry data, or that other data might not achieve the desired objectives.[12]

Because of the variety of alternatives that could be used to determine prevailing fringe benefits, and the potential effects of each of these alternatives, the Department concluded that resolution of the issues in the pending litigation would be best accomplished through rulemaking.

In the meantime, SEIU moved in district court to reopen its case against the Department. SEIU asked the court to enjoin the use of the 1991 methodology and direct DOL to immediately begin setting minimum fringe benefit rates in accordance with the methodology used prior to 1991. The district court, by Order dated January 29, 1996, dismissed the case without prejudice to SEIU's right to reopen for reconsideration upon a showing that DOL has not adopted a final rule in this matter by July 31, 1996. The court declined to order reinstatement of the Department's pre-1991 methodology, stating that it would not ''impose a disruptive interim rule that will itself be displaced by the full participation exercise of rulemaking.'' *SEIU* v. *Reich*, CA No. 91–0605 (CRR) (D.D.C. January 19, 1996)

The Department has given careful consideration to a number of alternative methodologies involving the use of BLS ECI fringe benefit cost data (as the best currently available data source) and, accordingly, is proposing to use one of the approaches described below in determining prevailing health and welfare benefits under the SCA in the

[9] The following year (1995), Wage and Hour decided to keep the health and welfare benefits levels the same as were issued in August 1994, even though the BLS ECI fringe benefit cost data, published in March 1995, showed decreases in both the ''insurance'' and ''total benefits'' levels (to $0.82 and $2.32, respectively). The rationale behind this decision was three-fold. First was the concern that issuance of decreased health and welfare benefit rates would be disruptive to the federal services procurement community. Second, it was perceived to be inappropriate to decrease health and welfare benefit rates based on a methodology which was uncertain to continue in light of the Board's remand order (see below) and the pending litigation which challenged the methodology. Third, Wage-Hour was aware that BLS was considering significant revisions to its survey methodology.

[10] *SEIU re Nationwide Fringe Benefit Determinations*, BSCA Case No. 92–01 (August 23, 1992).

[11] Wage and Hour reasoned that cost data for firms with fewer than 100 employees approximated the cost of providing health and welfare benefits to employees furnishing services of the kind required under the vast majority of SCA-covered contracts, and that data for firms with 100 or more employees best approximated the cost experience of employers with SCA-covered contracts involving large base support contracts and other contracts involving competition among major corporations or for highly technical tasks.

[12] See *SEIU re Nationwide Fringe Benefit Determinations*, BSCA Case No. 93–08 (September 23, 1993).

future. In order to assist the Department in establishing the most appropriate method, the Department requests commenters to consider the optional fringe benefit methodologies discussed below and seeks information on ease or difficulty of compliance; administrative and/or recordkeeping burdens; economic and budgetary impact from the point of view of service contractors, service employees and Federal procurement agencies; transitional difficulties in departing from the current methodology, including the appropriateness of a phase-in alternative for such methodologies; the nature of SCA-covered contracts and the fringe benefit practices typical of service contractors; the effects on contracting activity and employment; and any other areas of concern that the Department should take into consideration in deciding this matter.

If commenters favor continued use of the current methodology based on size-of-establishment data, comments should include data or other evidence that the methodology in fact is consistent with industry practices. Commenters are also invited to comment on any alternative approach for which reliable fringe benefit cost data are available through the ECI or otherwise, including a discussion of how the approach would result in fringe benefits which would better indicate prevailing fringes on SCA contracts, as well as the other issues raised below.

Commenters are also requested to comment on whether they would favor utilization of locality-based fringe benefit data for certain selected metropolitan areas, should such data become available in the future (see note 5, *supra*), within the framework of any of the following proposed methodologies favored by the commenter.

III. Alternative Proposed Methodologies

Alternative I: Issue a Single Benefit Level Based Upon ECI Data for Workers in Private Industry

This methodology would utilize employer costs per hour worked for all benefits (excluding holidays, vacations, and benefits otherwise required by law, such as social security, unemployment insurance, and workers' compensation payments) as reported annually by the BLS ECI study of employer costs for employee compensation in the private sector (all workers, all industries, all establishment sizes, and all occupations). Under this ''total benefits'' approach, the Department would issue a single nationwide health and welfare fringe benefit level applicable to all employees engaged in the performance of SCA-covered contracts, based on the average cost [13] for the following compensation components:

(1) Sick and other leave (excluding vacation and holiday leave);

(2) Insurance, consisting of life, health, and sickness and accident insurance plans;

(3) Retirement and savings, consisting of pension and savings and thrift plans; and

(4) Other benefits not otherwise required by law.

Based on March 1995 BLS ECI data, this alternative would result in a single fringe benefit rate of $1.89 per hour. This alternative would increase the current benefit level (from $0.90 to $1.89 per hour) for those SCA-covered contracts now subject to prevailing determinations containing the ''insurance'' fringe benefit level, and would result in a benefit level reduction (from $2.56 to $1.89 per hour) for SCA-covered contracts currently subject to the ''total benefit'' fringe benefit level.

In basing the fringe benefit level on the average compensation level for all employees, this alternative is consistent with the approach generally used in determining prevailing wages in that it does not differentiate by size of firm, and in determining prevailing fringe benefits in the past. It would eliminate the two-tier benefit levels that have been difficult to defend in the legal proceedings before the BSCA described above. This approach would apply the same minimum hourly benefit level for all service employees and would not require any subjective judgments as to which benefit level to apply based on the type of contract or employee. This determination method would be simple to understand and to comply with, and relatively simple to administer and enforce by the Department. It would allow all service contractors to offer health benefits for their employees, whereas at present some employers cannot purchase health benefits at the current ''insurance'' benefit level.

Service employees currently employed on contracts subject to the ''total benefit'' level could experience a reduction in fringe benefits and not return to the current level for several years. Further, this approach does not recognize the real differences in types of SCA-covered contracts that are apparent from the occupational data. As demonstrated by the data by occupational groupings, discussed below, privately-employed service employees in relatively low-skilled, low-wage service occupations do not generally receive this level of fringe benefits. On the other hand, privately-employed high-skilled service workers, such as aircraft mechanics, generally receive fringe benefits above this level.

In addressing this alternative, comments are specifically sought on the appropriateness of mitigating any disruption (and the short-term costs) caused by the increase in the current ''insurance'' level by phasing in the changes during a transition period; whether or not the current ''total benefit'' level should be grandfathered at its present level until it is overtaken by the all-industry, all-occupation average rate; and, whether such actions would be consistent with statutory requirements.

Alternative II–A: Issue a Single Benefit Level for Each of Six Major Occupational Groupings Based on ECI Data for All Workers in Each Grouping in Private Industry

The BLS ECI reports employer fringe benefit costs for employees in broad occupational groups compatible with the ''Standard Occupational Classification Manual.'' Of these occupational groupings, six account for most of the classifications used in the performance of SCA-covered contracts: (1) Professional, specialty and technical; (2) Administrative support, including clerical; (3) Precision production, craft and repair; (4) Transportation and material moving; (5) Handlers, cleaners, helpers, laborers; and (6) Service workers.

Under this alternative, the ''total benefit'' level for each of these six occupational groupings would be specified in prevailing determinations. Thus, a benefit amount would be specified for each occupation listed on an SCA-determination with the amount applicable to a particular occupation determined by the occupational grouping of that occupation. Based on the data reported by the March 1995 BLS ECI study, the hourly ''total benefit'' amounts for the six basic

[13] The cost of the benefit components in the BLS ECI study are an average based on data of all employers in the survey, including employers that do not provide the particular benefit. Because averaging in the ''zeros'' is another way of showing prevalence, the proposal is not limited to only those benefits that prevail. Data is not currently available that computes the cost of benefits provided by only employers with benefit plans. The Department is currently exploring the possibility of obtaining such data, and if it can be obtained, will consider its use under the various alternatives for those benefits that prevail.

occupational groupings would be as follows: [14]

1. Professional, specialty and technical (nurses, computer systems analysts, etc.)	$3.15
2. Administrative support including clerical (computer operators, secretaries, typists, clerks, etc.)	1.96
3. Precision production, craft and repair (vehicle mechanics, heavy equipment operators, automotive mechanics, aircraft mechanics, machinery repairers, electrical and electronic equipment repairers, heating/air-conditioning/refrigeration mechanics, etc.)	2.73
4. Transportation and material moving (motor vehicle operators, truck drivers, material moving equipment operators, operating engineers, etc.)	2.22
5. Handlers, equipment cleaners, helpers and laborers (helpers, handlers, equipment cleaners, laborers, etc.)	1.24
6. Service occupations (guards, food/beverage preparation and service occupations, health service occupations, janitors and cleaners, barbers, hairdressers, amusement/recreation facility attendants, etc.)	0.62

Utilizing this approach would permit the Department to issue prevailing health and welfare fringe benefit determinations for various ''classes of service employees'' as contemplated by the Act, thereby permitting health and welfare benefits to correspond more closely to the benefits such classes of employees actually receive in the private sector. Because many service contracts do not involve a broad mix of different occupations, the administrative difficulty with multiple fringe benefit determinations for those contracts would be minimized. Further, it would not result in large differences for highly skilled employees on many technical service contracts that currently receive the ''total benefit'' level.

Certain administrative concerns arise under this alternative, however, especially regarding those SCA-covered contracts that do involve a mix of employees from different occupational groups. This alternative envisions that employers would provide different fringe benefit plans to employees in each occupational group, and thus would be contrary to what we understand to be the common employer practice of providing the same benefits to all employees. Not only might it be difficult for a carrier to provide, and for the employer or the carrier to administer, up to six different benefit plans, but labor-management problems would be likely where employees realize that their co-workers are entitled to different benefits than they are receiving. Furthermore, an employer administering self-funded plans may be restricted in providing different benefit plans because of non-discrimination rules of the Internal Revenue Code which prevent providing higher-paid employees with better health benefits. See 26 U.S.C. 105(h); 26 CFR § 1.105–11. An employer's alternative, if it did not want to, or could not, provide different plans, would be to (1) provide all employees benefits at the lowest level and pay the difference to other classes of employees in cash; (2) provide all employees higher benefits and absorb the difference from the employer's profit margin; or (3) provide employees the same health benefits at the lowest level, but provide other benefits, such as pension benefits, to employees in the other classifications.

Therefore, some mechanism such as the use of an average cost concept, discussed below, with which most small service contractors and employees are not familiar, or providing benefits to all employees in accordance with the predominant class, may be advisable. On the other hand, such a mechanism would entail significant administrative difficulties for contractors and for the Department in determining compliance. Further, it would result in a substantial decrease in benefits for large numbers of service employees in ''service'' occupations, e.g., janitors, guards, food service workers.

Therefore, in particular, comments are sought regarding whether in fact employers normally provide the same level of fringe benefits to all classes of employees; on the administrative feasibility of this alternative; whether or not the current ''insurance'' level should be grandfathered at its present level until it is overtaken by the ''service'' occupation average rate; and on the practicality of assigning a single rate to a particular service contract based on the benefit rate applicable to the predominant occupational group performing the contract services.

Alternative II–B: Issue a Single Benefit Rate Adjusted To Reflect the Difference Between the BLS ECI Occupational Universe and the Actual Mix of Comparable Occupations on SCA-Covered Contracts

As noted above, the BLS ECI data provide a breakout of fringe benefit costs by broad occupational groupings. The fringe benefit costs for employees in each of these occupational categories is a component factor of the all-industry, all-occupation ''total benefit'' costs calculated for the universe of employees. The distribution of employees within the six occupational categories in the BLS ECI data (above) may not correspond proportionately to the actual mix of employees performing work on SCA-covered contracts in the same occupational categories, i.e., it is likely that the number of SCA-covered employees within the BLS ECI service occupation category is proportionately larger than the number of such employees in the overall BLS ECI occupational universe. Under this proposed alternative approach, the distribution of benefit levels in the six BLS ECI occupational categories would be weighted by the corresponding distribution of SCA-covered employees in the same occupational categories to arrive at an adjusted ''total benefit'' level that may better reflect actual employment experience on SCA-covered service contracts, rather than the overall employment mix among these occupational groups in the general economy.

While the benefit level under this approach would be expected to be somewhat less than the March 1995 BLS ECI ''total benefit'' level of $1.89, data to compute an actual rate for this level is not yet available. The Department is in the process of developing information on the occupational mix of service contract employees utilizing procurement data in the Federal Procurement Data System (FPDS), and a survey of SCA-covered contracts is being conducted.

Because the actual mix of occupations on SCA-covered contracts generally would be a factor in the determination, the benefit determination would be more reflective of the prevailing benefit level on SCA-type contracts than the all-industry, all-employee average. Moreover, the single benefit level that would be established avoids many of the administrative and compliance complexities associated with separate levels for each of the occupational groupings, is a simple determination for contractors to understand and comply with, and, because the same benefit level would be applied to all employees, does not require subjective judgment as to which benefit level to use.

On the other hand, this alternative would not be consistent with past practice of using all-industry, all-employee data for wages and, until 1991, benefits. Furthermore, this alternative would apply a lower fringe benefit level to those service employees currently receiving the ''total benefit''

[14] The listed amounts represent close approximations based on Wage-Hour's reading of 1995 BLS ECI cost data and may not be exact.

level, and, thus, requires consideration of what, if any, transition procedure would be appropriate.

Because the alternative, unlike the others, does not directly apply BLS ECI data to SCA-covered contracts, the Department is particularly interested in receiving public comments on its appropriateness. In commenting on this alternative, comments are also sought on the appropriateness of mitigating any disruption caused by any increase in the current ''insurance'' level by phasing in the changes during a transition period; whether or not the current ''total benefit'' level should be grandfathered at its present level until it is overtaken by the new fringe benefit rate; and whether such actions would be consistent with statutory requirements.

Alternative II–C: Issue Two Benefit Levels Based on a Combination of the Occupational Groupings

This alternative combines some aspects of both Alternatives II–A and II–B. Rather than using six occupational groupings as proposed in Alternative II–A, occupational groups would be combined to result in only two groupings (or some other number). For example, the ECI ''professional, specialty and technical'' occupational group could be combined with the ''administrative support, including clerical'' group to develop a single rate for ''white-collar'' occupations. Similarly, the ''precision production, craft and repair;'' ''transportation and material moving;'' ''handlers, cleaners, helpers, laborers;'' and ''service worker'' groupings could be combined to develop a single rate for production occupations, both skilled and unskilled.

Like the approach proposed under Alternative II–B, Alternative II–C might weight the ECI data based on the corresponding distribution of SCA-covered employees in the same occupational categories to arrive at an adjusted ''total benefit'' level for each of the two occupational groupings. In the alternative, the ECI data could be weighted in accordance with the national incidence of the various occupational groups.

Although this alternative would reduce the potential number of different benefit levels that might be required on a single contract from six to two, Alternative II–C still has the potential for applying different benefit levels to employees working on the same contract. Therefore, many of the questions and issues identified under Alternative II–A are also applicable to this alternative. By reducing the number of occupational groupings, however, the probability of having all workers employed on the contract fall within the same occupational grouping increases greatly. Thus, for many contracts the problem of multiple benefit levels would be unlikely because the employees performing the contract will be clustered within a single, broad occupational grouping.

In commenting on the feasibility and desirability of this alternative, commenters are asked to comment on the appropriate number of occupational groupings, how the occupational groups should be combined, and the weighting methodology which should be used. Commenters are asked to give particular attention to whether this smaller number of groups would significantly decrease any administrative and compliance difficulties which might be entailed in using the six groups.

Alternative III: Issue a Single Benefit Rate for Each of Four Geographic Regions Based on ECI Data for All Workers in Private Industry

The BLS ECI data includes average costs for benefit categories in four broad regions: Northeast, South, Midwest, and West.[15] This alternative would result in four benefit levels that would be reflected in SCA-determinations issued for contracts within each of these geographic regions. Based on the March 1995 BLS ECI data, the benefit amount for each area would be as follows:

1. Northeast—$2.30
2. South—$1.57
3. Midwest—$1.99
4. West—$1.90

The BLS ECI data base does not cross-correlate fringe benefit costs by occupational groupings within the four geographic areas, and this limitation precludes any options that would combine this alternative with the above occupational approaches, absent a large increase in sample size and thus survey costs. Utilizing this alternative would permit the Department to issue prevailing fringe benefit determinations on a ''locality'' basis, as contemplated by the Act. The single benefit level for each geographic region would be simple to administer, and is relatively easy for contractors to understand and comply with.

This option fails to reflect variations within a region, which we believe may be more significant than variations among regions. Furthermore, like the occupational approach, this option is in potential conflict with our understanding of the common practice that employers, including service contractors, provide similar fringe benefits to all employees without regard to either occupation or geographic location. This alternative also raises unique administrative questions because some service contracts require performance in a number of different locations and some service contractors bid on contracts for similar services at various facilities and installations throughout the country. Finally, while the option permits all service contractors to offer meaningful health benefits, it could result in reduced benefits for those service employees currently employed on contracts subject to the ''total benefit'' level.

Commenters are asked to address whether service contractors typically provide similar fringe benefits to all employees without regard to geographic location, and the administrative feasibility of this alternative. In particular, comments are sought on what adjustments, if any, would be appropriate in the case of a service contract that requires performance in more than one of the four regions, or in those cases where service contractors customarily bid on contracts for similar services at various facilities and installations throughout the country.

Alternative IV: Issue a Single Fringe Benefit Rate (as a Percent of Wages) Based on the Relationship Between the ECI All-Private Industry ''Total Benefit'' Rate and the ECI All-Private Industry Average Wage Rate

The BLS ECI data correlates employer fringe benefit expenditures as a percent of overall compensation. Under this alternative, a single, nationwide fringe benefit percentage level, determined as the percent that all industry ''total benefit'' costs represent of total average wages, would be established. The March 1995 BLS ECI data reports average straight-time wages and salaries for *all* workers in private industry at $12.25 per hour. Based on a ''total benefit'' level of $1.89, the ratio of the fringe benefit amount to the wage rate under this methodology would be 15.4 percent, which would be specified in all SCA-determinations. If the prevailing wage for an occupation were $8.00 per hour, for example, the applicable fringe benefit amount under this alternative

[15] These four regions correspond to the four Census regions. The State composition of the regions is as follows: *Northeast*—Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont; *South*—Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia; *Midwest*—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin; and *West*—Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

would be 15.4 percent of that amount, or $1.23 an hour; a prevailing wage of $11.00 an hour would require a fringe benefit obligation of $1.69 an hour; and a prevailing wage of $15.00 an hour would compute to a fringe benefit obligation of $2.31 an hour.

Because fringe benefits are directly related to locality-based wage rates, this alternative results in fringe benefit levels that vary by occupation and location (wages listed in a prevailing determination for particular occupations are survey-based by locality) and, therefore, has the advantage of being more consistent with the statutory provision that contemplates determining prevailing fringe benefits for classes of service workers in localities than are the other alternatives under consideration. The ratio of benefits to wages is easy to determine from BLS ECI data, and should remain relatively consistent over time; many employers, particularly Federal service contractors, have familiarity with the concept in connection with contract costing practices.

The alternative is a significant departure from current practices, and many contractors, particularly smaller ones, may have difficulty with its administrative requirements, which will be similar to the problems with separate benefit levels for occupational groupings. It will also require a more extensive revision of the current regulations to explain the compliance requirements. Moreover, the methodology assumes a straight line relationship between wages and benefits. Finally, the option could be problematic under IRS rules discussed above and would be inconsistent with the common practice of offering the same health benefits to all employees without variation based on individual employees' wage rates.

Because the wage rates paid and the number of workers used to perform SCA-covered contracts can fluctuate considerably, comments are requested on the administrative and recordkeeping burdens associated with this alternative, and how compliance would be determined. Comments are also sought on whether this alternative should be applied on an individual employee basis (applying the ratio to the individual's rate of pay to determine the fringe amount that must be furnished) or on a payroll basis (for example, by applying the percentage to the total payroll and dividing by total employment to determine the fringe benefit amount that must be furnished to each service employee).

Alternative V: Issue Two Fringe Benefit Levels Based on BLS ECI Size-of-Establishment Data for All Workers in Private Industry

This alternative is essentially the same as the current methodology that has been used since 1991. In addition, the Department seeks public comments on the appropriateness and feasibility of a variation of the current methodology, which also is under consideration:

A. Currently, the ''insurance'' benefit level is issued based on employers' average cost for providing insurance benefits in establishments with fewer than 100 employees. The ''total benefit'' level is based on the average cost for providing all benefits in establishments with 100 employees or more. Although size-of-establishment data are used to determine the different benefit levels, in practice the two levels are applied based primarily upon the *nature* rather than the size of the contract.[16] Based on the March 1994 BLS ECI data, the ''insurance'' benefit level, as established in August 1994, is $.90 per hour, and the ''total benefit'' level is currently $2.56 per hour.[17]

B. A variation of this methodology would continue the issuance of two levels but, instead, use the BLS ECI all industry ''total benefit'' data for (1) firms with fewer than 100 employees and (2) firms with 100 or more employees—perhaps to be applied, respectively, to SCA-covered contracts performed by fewer than 100 employees and those performed by 100 or more employees. On the basis of the March 1995 BLS ECI data, the ''fewer than 100'' level would be established at $1.28 per hour, and the ''100 or more'' level would be $2.32 per hour. This alternative, thus, differs from the methodology applied from 1991 through 1994 in that an amount comprising ''total benefits'' is used instead of an amount limited to the cost disclosed for ''insurance,'' and the applicable rate would possibly be applied by the size (rather than the nature) of the contract.

Both versions of this alternative are consistent with the longstanding procedure of generally applying a lower fringe benefit level to *small* contractors and a total benefit level to *large contractors*. Under Alternative A, in accordance with current practice, the lower fringe benefit rate would be based only on the ''insurance'' component, derived from data from employers with fewer than 100 employees. Under Alternative B, the lower fringe benefit rate would be based on the ''total benefit'' level, also derived from data from employers with fewer than 100 employees. In both cases, in accordance with current practice, the ''total benefit'' level is derived from data from employers with 100 or more employees. These are the only alternatives which would not appear to be greatly disruptive to contractors and employees in that current practices would generally be continued. Neither would result in any significant reduction of benefits for employees currently working on SCA-covered contracts—or significant increase in costs to contractors and to the Government—and there would be continuity with the benefit levels that have been issued for the last twenty years.

The major disadvantage of both versions of this alternative is that there is little evidence to support the rationale for two fringe benefit levels: i.e., assumptions that the average benefit level for small firms corresponds best to benefits paid by private employers on contracts similar to most SCA contracts, and that the level paid by large firms corresponds to employers which perform contracts to which the ''total benefit'' package is applied. Although most SCA-covered contracts involve performance by fewer than 100 employees, there is not a direct relationship in all cases between the size of an SCA-covered contract and the fringe benefit package (''less than 100'' and ''100 or more'' size-of-establishment data divisions) which has been applied. The second variation ameliorates this problem, but instead would put small and large contractors on an unequal footing in bidding on contracts, unless estimated size of contract (instead of size of firm) is used. Also, both options require a sometimes subjective determination regarding which contracts are subject to the high level benefit and which the low level benefit.

In addition to the practical aspects of a two-level fringe benefit approach, commenters who favor this methodology are also requested to provide data to support its continued use, including any suggestions on how the available ECI data, or new data in the long term, could be used to provide a basis for its continued use consistent with the requirements of the SCA.

[16] Currently, the ''total benefit'' level is applied to large base support contracts, solicitations based on OMB Circular A–76 solicitations, solicitations for highly technical services typically provided by large corporations, and other selected solicitations without regard to size of contract. Such contracts are frequently awarded to large contractors, but not always. In practice, small contractors are most likely awarded contracts that contain the ''insurance'' level.

[17] As noted previously, these rates continue to remain in effect, even though 1995 BLS ECI data for size-of-establishment would have resulted in somewhat lower rates.

IV. Average Cost Approach

As noted above, the lower ''insurance'' level has traditionally been stated in determinations as a fixed payment due for all hours paid for (up to a maximum of 40 hours per week and 2,080 per year) on behalf of each service employee. The ''total benefits'' level, on the other hand, has traditionally been stated in terms of average cost which allows variable contributions among employees so long as total contributions for all service employees on a particular contract average at least the specified amount per hour per service employee. Explanation of the average cost concept is set forth in 29 CFR 4.175(b).

The average cost concept was intended to provide flexibility to accommodate variable employee benefit practices. It takes into account variable contributions based, for example, on an employee's election of single or family coverage under health insurance plans, or an employee's election not to participate in health insurance plans or other supplemental plans that may be offered like those for dental and eyeglass coverage. It also accommodates variable contributions to pension or other plans like life insurance that are commonly related to an employee's wages.[18] It is also recognized that certain employees may receive lesser or even no fringe benefits when the average cost approach is used by a service contractor, for example, because they are part-time and not eligible for certain benefits, are subject to a waiting period before becoming eligible, have elected not to participate, or for other reasons. Therefore this approach may be perceived as inequitable. The Department is seeking specific comments on the use of the average cost concept in conjunction with any of the above alternative methodologies, or other alternatives suggested by commenters, and what changes, if any, would be appropriate to facilitate compliance, reduce administrative burdens, and create fairness for service employees, consistent with the requirements of the SCA. In considering the average cost approach in connection with the above alternatives, or other alternatives suggested by commenters, comments are also sought on any recordkeeping requirements which would be necessary to document the average cost, and whether this would result in a greater burden on conractors, particularly smaller contractors.

V. Variance Under Section 4(b) of the Act

In connection with any fringe benefit methodology that may be adopted as a result of this rulemaking, the Department is further proposing to provide a corresponding variance pursuant to § 4(b) from the Act's provisions for making prevailing fringe benefit determinations for various classes of workers on a locality basis.[19] Under the Department's longstanding procedure, the vacation and holiday components of the fringe benefit determination vary based on the locality where the contract services are to be performed because locality data are available for these components. The health and welfare component has been issued only on a national basis due to the current absence of locality-based data (except the large regional groupings discussed above), and none of the available data sources on fringe benefits provides any occupational-based information (except the broad occupational groupings discussed above).

Moreover, the Department has researched all available data sources over the years to ascertain the existence of any reliable information that would permit the making of prevailing fringe benefit determinations on a locality and occupation basis. The Department has also initiated special pilot studies to test the feasibility of collecting fringe benefit cost data in specific geographic localities. Based on the results of these pilot studies by BLS, it has been the Department's conclusion that significant technical problems would have to be overcome before such data could be collected and utilized on a routine basis, and at probably very high cost.[20] At this time, the available BLS ECI fringe benefit cost data is the most comprehensive, and best information available that shows what employers spend for different types of fringe benefits furnished to their employees. While the annual ECI study provides some locality (four geographic regions) and occupational information (broad occupational groupings), it does not currently produce cost data by occupation within each of the geographic regions.

Under these circumstances, the variance discussed above is believed by the Department to be reasonable, necessary and proper in the public interest or to avoid the serious impairment of Government business. Furthermore, because it is our understanding that many employers normally provide the same fringe benefit package to employees in all locations and occupations, this variance is believed to be in accord with the remedial purposes of this Act to protect prevailing labor standards.

As discussed in footnote 5 above, BLS is currently redesigning its system for collecting fringe benefit data to potentially allow for collection and publication of health and welfare benefit information for several large metropolitan areas. Commenters are therefore specifically requested to comment on whether they would favor utilization of locality-based fringe benefit data for selected metropolitan areas, should such data become available in the future.

Public commenters are requested to specifically include in their comments particular views on any alternative ways to balance the Act's ''locality'' and ''class of service worker'' requirements with the practical problems of data availability; and the feasibility, expense, and burden of collecting fringe benefit cost data in occupational and locality-based surveys in relation to the benefits derived therefrom. Commenters are also requested to provide information regarding whether it is their practice to provide different benefit packages in different localities or to different classes of workers, and to address the burden on employers of providing different benefit packages.

VI. General

In considering the various alternatives discussed above, the Department also seeks comments on the requirement to give ''due consideration'' to the wage and fringe benefit rates being paid Federal employees in making wage determinations applicable to SCA-covered contracts, and what administrative procedure, if any, would be appropriate in factoring this information into fringe benefit determinations (see 29 CFR 4.51(d)). Also, see *AFGE* v. *Donovan,* 25 WH Cases (D.D.C. 1982), aff'd 694 F.2d 280 (D.C. Cir. 1982), which interpreted the SCA's ''due consideration'' clause.

The Department also seeks comments concerning whether state and local employee data should be included in data compiled in determining health

[18] Under current regulations, service contractors who elect to pay the specified benefit level as a cash equivalent to each employee for each hour worked, rather than administer particular health and welfare plans, are required to pay the amount specified in the wage determination to each employee. The regulations do not permit variable cash contributions.

[19] A variance from both provisions may not be necessary under some of the alternatives on which comments are solicited.

[20] A September 1987 BLS test survey of fringe benefit costs in the Madison, Wisconsin, locality, for example, used newly developed ECI concepts, manuals, and methods. The pilot did not produce publishable data, and the cost to upgrade the data collection effort to produce publishable data were viewed at the time as prohibitive.

and welfare benefits in the future. The BLS ECI data currently reports fringe benefit cost information for the civilian workforce which includes private industry and State and local governments. Under the current methodology, the ''insurance'' and the ''total benefit'' levels are based on private industry data. However, the Department has recently changed its methodology to include both private and public employee data in determining prevailing wage rates where the data is available. The insurance component (life, health, and sickness and accident insurance plans) for all workers in private industry, as reported by March 1995 BLS ECI data, is $1.15 an hour, whereas the comparable cost in the State and local government sector is $2.03; the combined insurance cost for private and governmental civilian workers is $1.29 an hour. The effect of including State and local governments cost data is similar in the other fringe benefit components.

Also, the Department requests comments on whether the Department should explore the cost and feasibility of expanding the ECI survey so that more refined data could be obtained, or in the alternative, developing other data bases. For example, should the Department consider expanding the survey to permit determination of prevailing fringe benefit levels by occupation within geographic regions; or to permit determination of whether the individual fringe benefit components prevail in each occupation? In commenting on whether expanding the survey should be pursued, commenters are specifically asked to comment on the value of the more refined data which might be obtained relative to the potential costs and burden of conducting such surveys, as well as to consider whether there would be a net benefit to the Government or to the contractors and service employees subject to the SCA from obtaining more refined data, thereby presumably permitting more accurate prevailing fringe benefit determinations.[21]

Finally, the Department seeks comment on whether it should continue to recognize different benefit levels for certain industries. Data limitations and the expense of conducting such surveys make their widespread use infeasible. Although some special surveys were conducted in the past, they are rarely used currently except for mail-haul contracts. The Department notes that these industries would be included in existing data, and that past practice has been to issue such special rates for low-benefit industries (and not vice-versa).

VII. Other Proposals

The Department is also seeking comments on the current procedures for the conduct of substantial variance hearings under Section 4(c) of the Act. Under existing regulations, the Administrator is required to respond to the party requesting a hearing within 30 days after receipt of a request for a hearing (29 CFR 4.10(b)(2)). Upon submission of an Order of Reference to the Chief Administrative Law Judge, interested parties must submit a written response to the Chief Administrative Law Judge within 20 days of the date on which the Order of Reference was mailed (29 CFR 6.51(b)), and the hearing is to take place within 60 days of the Order of Reference (29 CFR 6.52). The regulations further provide that an expedited transcript shall be made of the hearing (29 CFR 6.54(f)), and that the Administrative Law Judge's (ALJ) decision shall be issued within 15 days of receipt of the transcript. Any aggrieved party within 60 days of the ALJ's decision may appeal to the Board of Service Contract Appeals (the Board) (29 CFR 8.7(b)). No time frames are established for issuance of a decision by the Board.

The National Performance Review (NPR) has recommended that the regulations be revised to require that substantial variance hearings be held and decisions issued within 60 calendar days.[22] In view of the NPR recommendation, comments are requested on the existing time frames and how these time frames might be reduced to conform with the NPR recommendation. In particular, comments are sought on a 60-day time frame for the completion of substantial variance hearings, and whether or not this period accords interested parties adequate time to prepare for the proceeding, obtain a transcript, and file necessary briefs, and for the ALJ to issue a considered opinion on the merits.

Finally, it is proposed that the final rule will include certain minor, technical modifications necessitated by the 1989 Amendments to the Fair Labor Standards Act (FLSA), a 1985 court decision, a 1983 treaty, and a 1986 intergovernmental compact. Specifically, Section 4.2 would be revised to delete the reference to dated minimum wage rates, and the tip credit example in Section 4.6(q) would be modified to delete the example that is based on the minimum wage rates required by the 1978 Amendments to the FLSA. Furthermore, the text of Section 4.112, which was invalidated by a 1985 court decision in *AFL–CIO* v. *Donovan*, 757 F.2d 330 (D.C. Cir. 1985), would be modified to reinstate the previous regulations as they appeared in the July 1, 1983, edition of the CFR. In addition, necessary changes to address more recent enactments pertaining to the geographic scope of SCA would be included in the restored regulatory language.[23] Also, the reference ''See Section 4.6(m)(8)'' in the previously existing Section 4.112(b) would be deleted since this section was deleted from the regulations issued October 27, 1983. If commenters have any questions about these planned changes, information can be obtained as indicated above.

VIII. Executive Order 12866/Section 202 of the Unfunded Mandates Reform Act of 1995

The Department is seeking public comment on various optional fringe benefit methodologies and is not proposing any specific methodology. The anticipated cost of some alternatives to the existing methodology for updating SCA health and welfare fringe benefit rates may exceed the costs associated with the existing methodology. Therefore, adoption of an alternative methodology may result in increased procurement costs to Federal agencies who award SCA-covered service contracts, as well as higher fringe benefits for many of the affected service employees. To cover that possibility, the Department has reached the preliminary conclusion that this notice may likely result in a rule deemed an economically significant regulatory action within the meaning of Executive Order 12866. However, the rule will not include any Federal mandate requiring expenditures by State, local or tribal governments of $100 million or more in any one year. Preparation of the required analyses under the executive order and

[21] Of course any expansion of the surveys or development of more refined data bases would have to be funded and could not be accomplished immediately. Therefore, if pursued, a fringe benefit methodology for the short-term would continue to be required.

[22] Creating a Government That Works Better and Costs Less, Reinventing Federal Procurement (Accompanying Report of the National Performance Review), Office of the Vice President, September 1993, page 37.

[23] SCA covers contract services furnished ''in the United States.'' The geographical area included in this term, as defined in § 8(d), requires changes to conform to the Treaty of Friendship Between the United States and the Republic of Kiribati, T.I.A.S. No. 10777, ratified June 21, 19183, and the Compact of Free Association between the United States and the Governments of Marshall Islands and the Federated States of Micronesia which was placed into effect by the President on November 3, 1986, pursuant to Pub. L. 99–239.

Unfunded Mandates Reform Act must necessarily await the compilation of related economic data.

As noted in the discussion under Alternative II–B, the Department is in the process of developing data to establish more reliable information on the occupational mix of service employees engaged in the performance of SCA-covered contracts. Based on data collected by the Federal Procurement Data System for Fiscal Year 1994, a statistical survey will provide specific information on service contract employment by occupation within SIC industry classifications. The information collected should also provide a basis for more reliable estimates of the economic impact of the various proposed alternatives.

Due to the time constraints imposed by the district court, discussed above, it is not feasible to publish the impact analysis for comment with the proposed rule. Instead, the analysis will be published as soon as possible for comment. Comments will be reviewed prior to promulgation of a final rule. In the meantime, if commenters have empirical evidence which would assist in developing the analysis or evaluating the data, it would be welcome at this time.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, Public Law 96–354 (94 Stat. 1164; 5 U.S.C. 601 *et seq.*), Federal agencies are required to prepare and make available for public comment an initial regulatory flexibility analysis that describes the anticipated impact of proposed rules on small entities. The Department has prepared the following Regulatory Flexibility Analysis regarding this rule.

(1) Reasons Why Action Is Being Considered

The McNamara-O'Hara Service Contract Act of 1965 (SCA) requires that the Department of Labor (DOL) determine locally-prevailing wages and fringe benefits for the various classes of service employees performing contract work subject to the SCA. Contracts over $2,500 (if the predecessor contract was not subject to a collective bargaining agreement) are required to contain wage determinations issued by DOL that specify the minimum monetary wages and fringe benefits that must be paid to the various classes of workers who perform work on the service contract, based upon rates determined by DOL to be prevailing in the locality where the work is to be performed. As discussed previously, fringe benefit data are not generally available on an occupation-specific or on a locality basis, which prompted DOL to issue fringe benefit determinations for health and welfare based on nationwide data ever since SCA was enacted.

The Service Employees International Union (SEIU) sued DOL in March 1991 in the United States District Court for the District of Columbia over the longstanding administrative practice, since 1976, of issuing two nationwide rates for health and welfare fringe benefits, and for failure to periodically update SCA H&W fringe benefit levels which, at that time, had not been updated since 1986 (*SEIU* v. *Martin*, CA No. 91–0605 (JFP) (D.D.C. April 1, 1992)). In this court challenge, the district court remanded the case to DOL for exhaustion of administrative remedies and final agency action, which led to the decision of DOL's Board of Service Contract Appeals that remanded the matter to the Wage and Hour Division to consider alternative methodologies for implementing the statutory objectives (BSCA Case No. 92–01 (August 28, 1992) and Case No. 93–08 (September 23, 1993)). The proposed rulemaking alternatives are being considered in order to develop a methodology for establishing prevailing SCA fringe benefits consistent with statutory requirements. In the meantime, SEIU moved the district court to reopen its case against the Department. The district court dismissed the case without prejudice to SEIU's right to reopen for reconsideration upon a showing that DOL has not adopted a final rule in this matter by July 31, 1996 (*SEIU* v. *Reich*, CA No. 91–0605 (CRR) (D.D.C. January 19, 1996)).

(2) Objectives of and Legal Basis for Rule

These regulations are issued under the authority of the McNamara-O'Hara Service Contract Act of 1965 (SCA) (41 U.S.C. 351 *et seq.*), Public Law 89–286, 79 Stat. 1034, as amended by Public Law 92–473, 86 Stat. 789; by Public Law 93–57, 87 Stat. 140; and by Public Law 94–489, 90 Stat. 2358. The objective of these regulations is to provide effective procedures for implementing SCA's statutory requirement that DOL determine prevailing health and welfare fringe benefits that are to be specified in wage determinations included in SCA-covered service contracts, which benefits are required to be furnished to the various classes of service employees performing work on SCA-covered contracts.

(3) Number of Small Entities Covered Under the Rule

The definition of small business varies considerably depending upon the policy issues and circumstances under review, the industry being studied, and the measures used. The Small Business Administration's Office of Advocacy generally uses employment data as a basis for size comparisons, with firms having fewer than 100 employees or fewer than 500 employees defined as small.[24]

Statistics published by the Internal Revenue Service indicate that in 1990, an estimated 20.4 million business tax returns were filed for 4.4 million corporations, 1.8 million partnerships, and 14.2 million sole proprietorships, most of which are ''small''—fewer than 7,000 would qualify as large businesses if an employment measure of 500 employees or less is used to define small and medium-sized businesses.[25]

Federal procurement data are compiled and reported by the Federal Procurement Data Center (FPDC) in the *Federal Procurement Data System Federal Procurement Report* (Washington, D.C.: U.S. Government Printing Office). The value of Federal contracts and volume of contract ''actions'' are currently reported individually to the FPDC for contract actions exceeding $25,000; actions of less than $25,000 are reported only in the aggregate. A contract ''action'' differs from an initial contract ''award'' because a single contract may involve more than one action—for example, a modification to an initial contract award is reported to the FPDC as a separate action and may involve the obligation or de-obligation of funds.

Small businesses were awarded $58.8 billion of the $184.2 billion spent by the Federal government on goods and services in Fiscal Year (FY) 1989, including $31.6 billion awarded directly to small firms and $27.2 billion awarded to small subcontractors by Federal prime contractors.[26] Small firms accounted for more than one-half (51.3

[24] The State of Small Business: A Report of the President Transmitted to the Congress (1991), Together with The Annual Report on Small Business and Competition of the U.S. Small Business Administration (United States Government Printing Office, Washington, D.C., 1991), p. 19. A more detailed breakdown also used is: under 20 employees, very small; 20–99, small; 100–499, medium-sized; and over 500, large. In general, a business bidding on a government contract is regarded as small if it has fewer than 500 employees (see p. 221).

[25] U.S. Department of the Treasury, Internal Revenue Service, *SOI Bulletin* (Spring 1990) Table 19; reprinted by SBA in The State of Small Business (1991), Id., p. 21.

[26] *Id.*, p. 220.

percent) of the value of contracts under $25,000, but only 14.1 percent of those over $25,000 in FY 1989.[27] Since FY 1979 when the FPDC first began reporting procurement data regularly, the share of Federal procurement dollars awarded to small firms has fluctuated between 14 and 16 percent over the entire period—for FY 1989 it was 14.1 percent overall.

Of the major product/service categories under which contract actions are reported to the FPDC, the ''other services'' category (which includes a variety of non-construction activities ranging from technical, sociological, administrative, and other professional services, to installation, maintenance, and repair of equipment) amounted to 28.9 percent of the total Federal prime contract actions reported individually in FY 1989. Small businesses were awarded $6.8 billion or 14.7 percent of the contract dollars awarded for services in FY 1989.[28]

This FPDC data on small business awards does not correlate precisely with the number of contract actions or contract dollars awarded that are subject to the SCA. However, the ''services'' category can be considered a reliable proxy for analyzing the universe of SCA-covered contracts reported to the FPDC that may be awarded to small businesses. Of a total 502,138 contract actions valued at $177.8 billion that were individually reported to the FPDC in FY 1992 (i.e., actions over $25,000 each), 82,957 contract actions, valued at $18.1 billion, were classified as subject to the SCA.[29] Of these awards, we estimate that $2.66 billion (14.7 percent) went to small businesses. These figures, however, do not include any portion of the contract actions not individually reported but reported in summary to the FPDC, which totaled 19.6 million contract actions valued at $22.02 billion.[30] Based upon the percentage of contract actions and contract dollars in the services category that were reported individually to FPDC as being subject to SCA, we estimate that an additional 2,905,696 actions, valued at $2.2 billion, of the actions reported in summary to the FPDC were subject to SCA. Of these awards, we estimate that $1.1 billion (50 percent) went to small businesses.

No current employment data are available by size of business that would relate to Federal contracts awarded subject to SCA. (The SBA measures employment change on a current basis for each small-or large-business-dominated industry using Bureau of Labor Statistics payroll data.[31])

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

This proposed rule, which relates to the procedures to be followed by DOL for determining prevailing health and welfare fringe benefits to be paid to service employees working on Federal service contracts covered by SCA, contains no reporting, recordkeeping, or other compliance requirements applicable to small businesses. However, some of the proposed alternatives may involve additional recordkeeping. All SCA-covered contractors (including small businesses) are required to maintain records specified under 29 CFR Part 4 that demonstrate compliance with the statutory requirements to furnish equivalent fringe benefits or cash equivalents at not less than prevailing rates.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

There are currently no Federal rules that duplicate, overlap or conflict with this proposed rule.

(6) Differing Compliance or Reporting Requirements for Small Entities

This proposed rule, as noted, relates to DOL procedures for determining prevailing health and welfare fringe benefits for service employees on SCA-covered service contracts. At this time, the rule contains no reporting, recordkeeping, or other compliance requirements applicable to small businesses. Moreover, the requirement to provide prevailing fringe benefits applies to all contracts in excess of $2,500, and establishing different requirements for small entities is not a valid alternative under the terms of the statute. However, under the express terms of the statute, all SCA-covered contractors may discharge their obligations to furnish prevailing fringe benefits under SCA ''* * * by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the Secretary * * *,'' which are set forth at 29 CFR § 4.177.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

As noted, this proposed rule pertaining to DOL procedures for determining prevailing fringe benefits under SCA contains no new compliance or reporting requirements for small entities.

(8) Use of Other Standards

Given the stated objectives of the statute, compliance by contractors can only be achieved through performance rather than design standards—i.e., the Secretary is required by the Act to determine the prevailing wages and fringe benefits to be paid by service contractors. The available alternative methodologies that are being considered and put forth in this proposed rule are discussed in the preamble above and are not repeated here.

(9) Exemption From Coverage for Small Entities

Exemption from coverage under this rule for small entities would not be appropriate given the statutory mandate of SCA that all contractors (large and small) performing on SCA-covered contracts furnish prevailing fringe benefits to service employees performing on Federal service contracts. Further exclusion of such small businesses from data collected to determine prevailing fringe benefits would also be impractical, and would distort determinations of prevailing fringe benefits, possibly to the detriment of small businesses.

Summary

Based upon the foregoing analysis, the revised procedures contained in this proposed rule are expected to have a ''significant economic impact on a substantial number of small entities'' within the meaning of the Regulatory Flexibility Act. This impact is mitigated in some respects by the statutory authority for SCA-covered contractors to discharge their obligations to furnish prevailing fringe benefits by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 4

Administrative practice and procedures, Employee benefit plans,

[27] *Ibid.*

[28] *Id.*, pp. 223, 226 & 235–237.

[29] Federal Procurement Data System Standard Report, Fiscal Year 1992, Fourth Quarter, pp. 74–75.

[30] *Id.*, p. 74.

[31] *Id.*, p. 34.

Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

Signed at Washington, DC, on this 26th day of April, 1996.

Maria Echaveste,

Administrator, Wage and Hour Division.

[FR Doc. 96–10797 Filed 5–1–96; 8:45 am]

BILLING CODE 4510–27–P

federal register

Thursday
May 2, 1996

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 159

Removal of Part 159; National Capital Airports; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 159

[Docket No. 28556; Amendment No. 159–32]

RIN 2120–AG05

Removal of Part 159; National Capital Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comment.

SUMMARY: The FAA is removing part 159, entitled ''National Capital Airports,'' from Title 14, Code of Federal Regulations (14 CFR). That part has prescribed regulations for the use and occupancy of Washington National Airport and Washington Dulles International Airport, which now are operated by the Washington Metropolitan Airports Authority and not by the Federal government. Similar regulations have been adopted by the Airports Authority, and the Federal regulations no longer govern use and occupancy at either airport. This rulemaking action will remove unnecessary Federal regulations from the Code of Federal Regulations.

EFFECTIVE DATE: The final rule is effective May 2, 1996. Comments on this action must be received on or before June 3, 1996.

ADDRESSES: Comments on this notice may be delivered or mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 28556, Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments submitted must be marked: ''Docket No. 28556.'' Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov. Comments may be examined in Room 915G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Kevin Hehir, Airport Safety and Compliance Branch (AAS–310), Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–8224.

SUPPLEMENTARY INFORMATION:

Comments Invited

The final rule will remove part 159 from Title 14 of the Code of Federal Regulations and clarify that the Washington Metropolitan Airports Authority is responsible for adoption and enforcement of regulations that apply to National Airport and Dulles International Airport. This final rule is an administrative and procedural action consistent with the objectives of Executive Order 12866. Because these regulations are no longer in effect by operation of law, the final rule is being adopted without notice and prior public comment. However, DOT regulatory policies and procedures encourage operating administrations to provide an opportunity for public comment on regulations issued without prior notice.

Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from promulgating the final rule are also invited. Substantive comments should be accompanied by cost estimates. All comments received on or before the closing date for comments will be considered by the agency. The action taken in this final rule may be changed in light of the comments received. All comments received both before and after the closing date for comments will be available for review by interested persons in the Rules Docket. A report summarizing each substantive public contact with FAA personnel on this rulemaking will be included in the docket. Commenters who would like the FAA to acknowledge receipt of comments on this final rule must include with the comments a preaddressed, stamped postcard that states ''Comments to Docket No. 28556.'' The postcard will be date-stamped and returned to the commenter.

Background

On October 18, 1986, the Metropolitan Washington Airports Act of 1986 was signed by the President (49 U.S.C. App. 2452 et seq.). The 1986 act authorized the Federal government to transfer operating responsibility for Washington National Airport and Washington Dulles International Airport, under a long-term lease of 50 years, to an independent local agency. That local agency is the Metropolitan Washington Airports Authority—a public body with regulatory authority created under the laws of the Commonwealth of Virginia and the District of Columbia. One of the purposes of the 1986 act was to ''achieve local control, management, operation, and development'' of both airports (49 U.S.C. App. 2453(a)). Part of that local control includes day-to-day operation, and regulation of the use and occupancy, of both airports by the local Airports Authority.

In the 1986 act, Congress provided a mechanism to facilitate smooth transition of operational control and responsibility to the Airports Authority, such as ensuring the continuation of regulations that governed the use and occupancy of National Airport and Dulles International Airport. Under § 6005(c)(5) of the act (49 U.S.C. App. 2455(c)(5)), the regulations in part 159 were to become the regulations of the Metropolitan Washington Airports Authority on June 7, 1987, the date the long-term lease between the Federal government and the Airports Authority was effective. Under the 1986 act, those regulations were to be effective as regulations of the Airports Authority until modified or revoked by the Airports Authority under procedures developed for such administrative actions.

This transition mechanism was intended to enable the Metropolitan Washington Airports Authority to continue to rely on the Federal regulations, with certain exceptions noted in the 1986 act, for only a short time. However, on April 1, 1987, the Metropolitan Washington Airports Authority adopted its own regulations for National Airport and Dulles International Airport by Resolution 87–5. Thus, use and occupancy regulations actually were effective shortly after formation of the Airports Authority on October 18, 1986, and several months in advance of the lease effective date of June 7, 1987. Adoption of those regulations by the Airports Authority essentially eliminated the need for regulations contained in 14 CFR part 159.

Congress authorized the Airports Authority to ''* * * maintain, improve, operate, protect, and promote * * *'' the Washington Metropolitan Airports (49 U.S.C. 2457(c).) The Airports Authority's regulations, adopted in 1987, assist the daily operation of the airports and have been effective and used continuously by the Airports Authority and the public since the creation of the local entity and the transfer of both airports. Copies of the regulations generally are available at local libraries near either airport and upon request from the Office of Legal Counsel for the Metropolitan Washington Airports Authority. The Office of Legal Counsel is located in Alexandria, Virginia; the telephone number is (703) 739–8615.

Recent Regulatory Reviews

Both DOT and the FAA have conducted regulatory reviews and requested comment on regulations that could be eliminated to reduce any unnecessary or undue regulatory burdens consistently with the FAA's statutory safety, security, and public interest responsibilities. (See 57 FR 4744, February 7, 1992; 59 FR 1362, January 10, 1994.) There were no comments supporting retention or advocating elimination of part 159 in response to either request for comment. In both notices of regulatory review, DOT and the FAA stated that changes, including repeal where appropriate, would be considered to ensure that regulations and regulatory programs were consistent with Presidential direction regarding the regulatory review. Eliminating the regulations in part 159 is consistent with the requirements of Executive Order 12866 (September 30, 1993). Specifically, that order requires Federal agencies to ''identify regulations that are cumulative, obsolete, or inconsistent, and where appropriate, eliminate or modify them.''

This action will not alter any existing responsibility for, or the enforcement of, the regulations that now apply to use and occupancy of Washington National Airport and Washington Dulles International Airports. Despite legal challenges to certain provisions of the 1986 act, the validity of the regulations adopted in 1987 by the Airports Authority has not been questioned. (See 501 U.S. 252 (1991) and 36 F.3d 97 (1994), 115 S.Ct. 934 (1995).) In addition, a specific savings clause included in subsequent legislation enacted in 1991 would ensure the continued vitality of the regulations adopted in 1987. (See 7004(b) of Pub. L. 102–240, December 18, 1991.) The Airports Authority, the Federal government, and the public continue to rely on the local regulations, and not the Federal regulations in part 159, for use and operations at both airports. The FAA does not envision any future need for the Federal regulations on the part of the Federal government, the general public, or the Airports Authority. Continued publication of these regulations is neither necessary nor cost-effective and they should be removed from the CFR.

Paperwork Reduction Act

There is no requirement to collect or submit information associated with this rulemaking. Any information collection requirements associated with part 159 will be eliminated when this part is removed from the Code of Federal Regulations. Therefore, there are no issues of compliance regarding the Paperwork Reduction Act of 1980 (Pub. L. 96–5111), as amended by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), or OMB implementing regulations (60 FR 44978; August 29, 1995).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by regulations. The Act requires Federal agencies to analyze the economic effect of regulatory changes on small entities. A regulatory flexibility analysis is required if a proposal will have a significant economic impact on a substantial number of small business entities. Removing these obsolete and possibly inconsistent regulations that apply only to the Washington Metropolitan Airports will not have a significant effect on any small business entities under the criteria of the Regulatory Flexibility Act or FAA Order 2100.14A, ''Regulatory Flexibility Criteria and Guidance,'' which establishes threshold costs and size standards to assist compliance with the act.

International Trade Impact Analysis

The Office of Management and Budget directs Federal agencies to assess the effect of regulatory changes on international trade. Removing part 159 will have no impact on trade for U.S. firms doing business in foreign countries or foreign firms doing business in the United States. Thus, adopting this final rule will not constitute a barrier to international trade.

Federalism Implications

The final rule 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. In fact, adopting this final rule is consistent with the transfer of operating authority and responsibility to a local public entity as directed by Congress in the Washington Metropolitan Airports Act of 1986. Therefore, in accordance with Executive Order 12612, this final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Conclusion

Removing part 159 from the Code of Federal Regulations is not a significant regulatory action under the criteria in Executive Order 12866, entitled ''Regulatory Planning and Review,'' issued on September 30, 1993 (58 FR 51735; October 4, 1993), or the guidance issued by the Office of Management and Budget for implementation of E.O. 12866 (dated October 12, 1993). This rulemaking action also is not significant under DOT Order 2100.5, ''Policies and Procedures for Simplification, Analysis, and Review of Regulations.'' Removing part 159 is not expected to have any economic impact on the use and occupancy or daily operation of the Washington Metropolitan Airports. The FAA has not identified any specific economic consequences attributable to eliminating these redundant regulations. To the extent this rulemaking action has any economic impact, the only impact will be the savings to the Federal government realized by discontinuing publication of this part in the CFR. If there are any costs or benefits associated with removing part 159, the FAA expects their value, if any, to be minimal under the criteria of applicable Executive Orders, statutes, or regulations. Since there are no costs expected to accrue and only minimal benefits are anticipated, the FAA is not required to prepare a full regulatory evaluation of this final rule.

Reason for No Notice and Immediate Adoption

Under § 6005(c)(5) of the Metropolitan Airports Act of 1986 (49 U.S.C. App. 2455(c)(5)), the regulations in part 159 were to become the regulations of the Metropolitan Washington Airports Authority on June 7, 1987, the date the long-term lease between the Federal government and the Airports Authority was effective. Under the 1986 act, those regulations were to be effective as regulations of the Airports Authority, until modified or revoked by the Airports Authority, under procedures developed for such administrative actions.

On April 1, 1987, the Metropolitan Washington Airports Authority adopted its own regulations for National Airport and Dulles International Airport by Resolution 87–5. Thus, local use and occupancy regulations actually were effective shortly after formation of the Airports Authority on October 18, 1986, and several months in advance of the lease effective date on June 7, 1987. The regulations authorized by Congress and adopted by the local agency for the expressed purpose of transferring

operating authority and responsibility for the airports have been effective and used continuously by the Airports Authority and the public since the creation of the local entity and the transfer of both airports. The regulations are generally available at local libraries near either airport and are available upon request from the Office of Legal Counsel for the Metropolitan Washington Airports Authority. Adoption of the final rule, therefore, will have no effect on operations of the Metropolitan Washington Airports, the users of the airport, the general public, the Airports Authority, or the Federal government.

Accordingly, notice and public comment are unnecessary. In addition, good cause exists, under § 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), to make this amendment effective in fewer than 30 days. In accordance with DOT regulatory policies and procedures, an opportunity for public comment on the final rule is provided.

List of Subjects in 14 CFR Part 159

Air carriers, Air traffic control, Aircraft, Airports, District of Columbia, Federal buildings and facilities, Fire prevention, Law enforcement. Reporting and recordkeeping requirements, Security measures, Traffic regulations.

The Amendment

Accordingly, pursuant to 49 U.S.C. 44701, the Federal Aviation Administration amends 14 CFR by removing part 159.

Issued in Washington, DC, on April 26, 1996.

David R. Hinson,

Administrator.

[FR Doc. 96–10824 Filed 5–1–96; 8:45 am]

BILLING CODE 4910–13–M

federal register

Thursday
May 2, 1996

Part VIII

Department of Housing and Urban Development

24 CFR Part 201

Title I Property Improvement and Manufactured Home Loan Insurance Programs; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 201

[Docket No. FR–3718–I–01]

RIN 2502–AG32

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Title I Property Improvement and Manufactured Home Loan Insurance Programs

AGENCY: Office of the Assistant Secretary for Housing Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Department's regulations implementing its property improvement and manufactured home loan insurance programs under title I, section 2 of the National Housing Act. This interim rule amends the regulations to codify program changes that were previously effectuated by waiving various requirements of the regulations, under the Secretary's general waiver authority. The interim rule also makes other changes that are needed to clarify program requirements, to enable the Department to better use the Title I programs in accomplishing its mission, and to eliminate unnecessary regulations.

DATES: Effective date: June 3, 1996.

Comments due date: July 1, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. eastern time) at the above address. HUD will not accept comments sent by facsimile (FAX).

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Director, Title I Insurance Division, 490 L'Enfant Plaza East, Suite 3214, Washington, DC 20024, telephone (202) 755–7400. This number is not toll-free. Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Requirements

The information collection requirements in this interim rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501–3520) and were assigned OMB control number 2502–0328. 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.

Introduction

Under title I, section 2 of the National Housing Act (12 U.S.C. 1703), the Department insures approved lenders against losses sustained as a result of borrower defaults on property improvement loans and manufactured home loans. The regulations implementing the Title I programs are in 24 CFR part 201.

This interim rule amends part 201 to codify program changes that were previously effectuated by waiving various requirements of the regulations, under the Secretary's general waiver authority in § 201.5(a). The Department informed all approved Title I lenders of these changes in three Title I Letters: TI–428, issued July 22, 1994; TI–429, issued October 6, 1994; and TI–431, issued June 5, 1995.

These program changes were the result of an outreach process in which the Department received recommendations from a wide variety of program participants, including lenders, State and local government agencies, nonprofit organizations, manufactured home retailers and producers, insurance companies, trade associations, and owners of manufactured homes. They reflect a significant redirection of the Title I programs to serve community development needs, with a focus on assisting low- and moderate-income families in making needed repairs to their homes, supporting revitalization and rebuilding efforts in central cities, upgrading housing in rural areas and other underserved credit areas, and enabling first-time homebuyers to purchase affordable housing.

The waivers announced in TI–428, TI–429, and TI–431 were limited in duration until the Department could make the necessary changes in the regulations. Accordingly, as of the effective date of this interim rule, those waivers are no longer operative.

This interim rule also amends part 201 to make other changes necessary to clarify program requirements, to enable the Department to better utilize the Title I programs in accomplishing its mission, and to eliminate unnecessary regulations. Each of the program changes is discussed in the sections that follow.

Changes Affecting Both Title I Loan Programs

Changes in the Title I regulations that apply to both property improvement and manufactured home loans include the following: clarifying dealer approval requirements; limiting discount points paid by borrowers; prohibiting discount points from being collected from dealers; prohibiting penalties for loan prepayment; permitting financial assistance in meeting the borrower's initial payment; providing that eligible fees and charges will be established by the Secretary, but removing the specific fees and charges from the regulations; revising flood insurance requirements; and eliminating the annual adjustment in the lender's insurance reserves.

Dealer Approval Requirements

Section 201.27(a)(2) requires that the dealer's financial statement be prepared by a licensed public accountant. This licensing requirement was waived in TI–428, because the Department determined that it imposed a burden on small dealers, particularly in the property improvement loan program. In place of the licensing requirement, the Department stated that it expected the lender to take into consideration whether the financial statement was prepared by someone who is independent of the dealer and is qualified by education and experience to prepare such statements.

Accordingly, this interim rule amends § 201.27(a)(2) by eliminating the requirement that the financial statement be prepared by a licensed public accountant and substituting the phrase ''someone who is independent of the dealer and is qualified by education and experience to prepare such statements.''

Payment of Discount Points by Borrowers

Section 201.13 states that the lender and the borrower may negotiate the amount of any discount points to be paid by the borrower as part of the borrower's initial payment. As used in the Title I regulations, the Department intends the term ''discount points'' to have the same meaning it has throughout the banking, finance, and investment communities—that is, an up front fee charged by the lender, separate from interest but part of the total finance charge, that is to increase the lender's yield on the loan to a competitive

position with other types of investments.

In recent years, property improvement lenders in certain areas of the country have been charging high up-front fees to borrowers and calling them ''discount points,'' although they seem to have no relationship to the lender's overall yield on the loan. Rather, they are being used to cover the lender's costs in originating the loan and marketing the Title I program. The Department's Monitoring Division has found evidence that these ''discount points'' are often financed from the loan proceeds, in contravention of the program regulations. The result is that many low- and moderate-income borrowers, who are otherwise creditworthy and need Title I loans, cannot obtain them because of the high discount points.

In TI–431, the Department announced that the continued practice of borrowers' being charged high levels of ''discount points'' when there was no benefit to the borrower in the form of a lower interest rate was no longer acceptable. TI–431 stated that the collection of discount points from the borrower was no longer permitted, unless the lender could demonstrate a clear relationship between the charging of discount points and some tangible benefit to the borrower such as a compensating decrease in the interest rate being charged.

To clarify the Department's intent, this interim rule amends § 201.2 to define ''discount points'' as ''a fee charged by the lender, separate from interest but part of the lender's total yield on the loan needed to maintain a competitive position with other types of investments. One discount point equals one percent of the principal amount of the loan. As discount points on the loan increase, the interest rate can be expected to decrease in a fairly consistent relationship.''

Payment of Discount Points by Dealers

Section 201.13 states that the lender and the dealer may negotiate the amount of any discount points to be paid by the dealer for the benefit of the borrower. The purpose of this provision, which was added to the regulations in 1986, was to enable the dealer to assist the borrower by paying some of the up-front costs of obtaining a Title I loan, or by buying down the interest rate so that the borrower could qualify for the loan. Some lenders have abused this provision, charging ''discount points'' to dealers for the acceptance of borrowers with marginal credit, and inflating the cost of home improvements to the detriment of low- and moderate-income borrowers.

In TI–428, the Department clarified that certain financeable fees and charges incurred by the lender could be paid by the dealer. TI–428 stated that the dealer could advance the funds for these items and could be reimbursed by the lender from the loan proceeds. Alternatively, the lender could advance the funds for these items and then deduct their cost from the loan proceeds paid to the dealer. In either case, TI–428 made clear that there must be full disclosure that these items had been added to the price of the goods and/or services being provided by the dealer.

The Department informed lenders that, with this clarification on the fees and charges that may be paid by dealers, the collection of discount points from dealers was no longer necessary. The Department urged lenders to discontinue the practice of collecting discount points from dealers when those points were unrelated to the financeable fees and charges. The Department advised lenders that, if they failed to comply with this request voluntarily, the Department would amend the regulations to prohibit any collection of discount points from dealers.

Since TI–428 was issued on July 22, 1994, the Department's Monitoring Division has found that many lenders have continued the practice of collecting ''discount points'' that are not for the benefit of the borrower and bear no relation to the payment of fees and charges that may be paid by the dealer. Therefore, this interim rule amends § 201.13 to prohibit the payment of discount points by any party other than the borrower. Conforming amendments are also made to § 201.26(a)(5)(ii), (b)(3)(vii), (b)(4)(vii), and (b)(4)(viii).

Loan Prepayment Without Penalty

Section 201.17 requires that the loan note contain a provision permitting full or partial prepayment of the loan.

That section previously contained a requirement that when a loan was prepaid in full, the lender must rebate all unearned interest on the loan, except for a minimum retained handling charge if permitted by State or local law. The Department had intended this requirement to preclude lenders from exacting a prepayment penalty.

The Department removed this requirement in a final rule published in the Federal Register on October 18, 1991 (56 FR 52414, 52430). As stated in the preamble to the October 18, 1991 final rule, the Department determined that, since interest on all loans with applications approved on or after January 15, 1986 must be calculated according to the actuarial method, there should be no unearned interest, and therefore the requirement was unnecessary. However, in amending § 201.17, the Department inadvertently failed to include the replacement language to prohibit lenders from charging a prepayment penalty on loans made since January 1986.

Some lenders have taken advantage of this oversight to assess penalties of as much as six months' advance interest on loans that are prepaid within the first five years of the loan term. Assessing a high prepayment penalty prevents many borrowers from refinancing their loans to take advantage of lower interest rates, even when this may be to their benefit. Prepayment penalties are particularly troublesome in the case of low- and moderate-income borrowers who do not have the cash reserves to pay the penalty.

Accordingly, this interim rule restores the requirement in § 201.17 that full or partial prepayment of the loan must be without penalty, except that the borrower may be assessed reasonable and customary charges for recording a release of the lender's security interest in the property, if permitted by State law.

Financial Assistance on the Initial Payment

Section 201.23(a) provides that, if any part of the borrower's initial payment is loaned to the borrower, that loan must be secured by property or collateral owned by the borrower independently of the property securing the Title I loan. The Department has had several cases in which financial assistance was available from a governmental agency or nonprofit organization to help low- and moderate-income borrowers meet the up-front costs of obtaining a property improvement or manufactured home loan. This assistance was in the form of a loan requiring that the borrower provide a ''soft second'' lien on the property, so that the loan might be repaid at the time the property is sold. In these situations, the Department needs greater flexibility to allow for exceptions to the requirement that the loan be secured by a different property.

Accordingly, this interim rule amends § 201.23(a) to provide that if any part of the borrower's initial payment is loaned to the borrower, that loan must be secured by property or collateral owned by the borrower independently of the property securing the Title I loan, unless the Secretary's prior approval is obtained for an exception to this requirement.

Eligible Fees and Charges

Section 201.25(a) establishes maximum origination fees that may be charged in connection with any new or refinanced Title I loan. Section 201.25(b) lists those fees and charges that may be financed in a property improvement or manufactured home loan, as long as their inclusion does not increase the total principal obligation beyond the maximum loan amounts in § 201.10. Section 201.25(c) lists fees and charges that may be collected from the borrower in the initial payment, but may not be included in the loan amount or otherwise financed or advanced by the dealer, manufacturer, or any other party to the loan transaction.

In TI–429 and TI–431, the Department waived § 201.25(a) and (c)(1) to increase the maximum origination fee for any new property improvement loan and to permit this fee to be financed. In TI–428, the Department waived § 201.25(c)(3) and (4) to permit recording fees, recording taxes, filing fees, and documentary stamp taxes to be financed for both property improvement and manufactured home loans. In that letter, the Department also waived § 201.25(c)(8) to permit appraisal fees in connection with the purchase or refinancing of a manufactured home and/or lot to be financed.

However, as a result of the Department's page-by-page review of its regulations, it has determined that the inclusion of detailed lists of eligible fees and charges in the program regulations is unnecessary. Changes to the list of eligible fees and charges are sometimes needed, and program participants would benefit greatly if these changes could be made in a more timely manner than through the rulemaking process.

Accordingly, this interim rule amends § 201.25 (a) and (b) to provide that the Secretary will establish a list of fees and charges that may be included in property improvement loans and manufactured home loans, respectively, provided that they are incurred in originating the loan and their inclusion does not increase the total principal obligation beyond the maximum loan amounts in § 201.10. The interim rule also amends § 201.25(c) to provide that the Secretary will establish a list of fees and charges incurred by the lender that may be collected from the borrower in the initial payment, but may not be included in the loan amount or otherwise financed or advanced by the dealer, the manufacturer, or any other party to the loan transaction.

Concurrently with the publication of this interim rule, the Department will issue a Title I Letter that identifies the specific fees and charges that may be financed in a property improvement or manufactured home loan, as well as the fees and charges that may be collected from the borrower but may not be financed in the loan. The fees and charges that were the subject of waivers in TI–428, TI–429, and TI–431 will be included in the Title I Letter.

Revised Flood Insurance Requirements

Section 201.28(a) requires flood insurance coverage if the property securing a Title I loan is located in a special flood hazard area as identified by the Federal Emergency Management Agency (FEMA). The National Flood Insurance Reform Act of 1994 (Pub. L. 103–325, approved September 23, 1994) amended and expanded the flood insurance requirements of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234, approved December 31, 1973). The 1994 Act requires that flood insurance be obtained at any time during the term of the loan that a supervised lender or its servicer determines that the secured property is located in a special flood hazard area identified by FEMA. If the borrower does not obtain flood insurance within 45 days after being notified by the lender or servicer that it is required, the lender is expected to force-place the insurance and bill the borrower for the premiums.

It has been a longstanding policy of the Department that all secured Title I loans are subject to Federal flood insurance requirements. The Department expects all lenders, whether supervised or nonsupervised, to comply fully with the requirements of the 1994 Act. Accordingly, this interim rule amends § 201.28(a) to reflect the new statutory requirements and make them applicable to all Title I lenders.

Lenders may make their own flood hazard area determinations, or they may use outside firms that specialize in providing this information. If an outside firm is used, the fee for obtaining the flood hazard area determination, including the cost of life-of-the-loan determinations, may be included in the loan amount, as long as the maximum loan amounts in § 201.10 are not exceeded. Permitting these fees to be financed is a change from previous Departmental policy. The Title I Letter on fees and charges that is to be issued concurrently with the publication of this interim rule includes this policy change.

Annual Adjustment in Insurance Reserves

Section 201.32(b) requires that a 10 percent annual reduction be applied to each lender's insurance coverage reserve account after the lender has had a Title I contract of insurance for more than five years. In TI–431, the Department announced that it would no longer apply an annual adjustment to any lender's insurance reserves, beginning on October 1, 1995. The Department concluded that the annual reduction no longer serves the purpose of protecting the Federal Housing Administration (FHA) insurance fund against excessive claim losses caused by lenders that exhaust their insurance reserves. Rather, it has penalized lenders who built their loan volume methodically over a period of years and those who maintained low claim rates.

The Department instituted the annual adjustment of insurance reserves in the early 1950s, when the Department was extending the Title I program for a time period that exceeded the maximum allowable term of the loans being made. In that lending climate, all lenders held loans in their own portfolios. The Department's concern was that lenders might accumulate reserves that were excessive in relation to the loans remaining in the lenders' portfolios.

In today's lending environment, the annual adjustment has become an anachronism. Many lenders that originate Title I loans sell them to servicing lenders; the servicing lenders then sell them to investing lenders that issue securities backed by the loans for sale to investors. With the movement of loans from lender to lender, the annual adjustment is no longer meaningful or effective in protecting the program against excessive claim losses. Instead, it has been restricting the growth of the Title I program, creating uncertainty about the lender's future insurance coverage, and preventing the active participation of larger, better capitalized lenders in the program.

Accordingly, this interim rule amends § 201.32 by removing paragraph (b). In addition, the interim rule makes conforming amendments to §§ 201.1 and 201.32(a) to remove references to the annual adjustment in insurance reserves.

Changes Affecting Property Improvement Loans

Changes to the Title I regulations that are applicable only to property improvement loans include the following: eliminating the equity requirement for loans over $15,000, increasing the maximum origination fee and the maximum amount of an unsecured loan, permitting greater use of the program to improve manufactured homes, removing impediments to greater use of the program for improving

multifamily structures, eliminating the completion certificate requirement under certain circumstances, and revising procedures to assist victims of major disasters.

Elimination of the Equity Requirement

Sections 201.20(a)(3) and 201.26(a)(1) of the regulations require that the borrower have equity in the property at least equal to the loan amount on any property improvement loan (or combination of such loans) exceeding $15,000. In TI–428, the Department partially waived this equity requirement, so that it no longer applied when the property to be improved was occupied by the borrower.

The equity requirement was intended to provide more secure collateral for larger property improvement loans. However, after three years of experience with the requirement, the Department concluded that it was costly and time-consuming, with no significant risk protection for either the lenders or the Department. In the event of default, it was usually not cost-effective for the lender to foreclose on the property, because the costs of carrying the first mortgage, disposing of the property, and maintaining it prior to sale would consume whatever equity there might be. The equity requirement was preventing the people that Title I was created to serve (creditworthy borrowers with limited equity) from obtaining loans to carry out needed improvements.

The waiver granted by TI–428 has benefited many creditworthy borrowers, but only when the property was owner-occupied. The Department is concerned that the equity requirement is preventing the property improvement loan program from being used in the revitalization of central cities, where much of the housing stock consists of small multifamily buildings (e.g., two to ten units). Title I loans are usually not available for these multifamily buildings because the owner does not live on-site and does not have enough equity to qualify for a loan.

Accordingly, this interim rule eliminates the equity requirement in its entirety by removing §§ 201.20(a)(3) and 201.26(a)(1)(iii). In addition, with the publication of this interim rule and upon its effective date, the Department is withdrawing the Federal Register notice published on January 8, 1992 (57 FR 610) that established the procedures for determining the market value of the property and evaluating whether the borrower had sufficient equity.

Increased Maximum Origination Fee

Section 201.25(a) limits the maximum origination fee that may be paid by the borrower to one percent of the loan amount on any new Title I loan, and to one percent of the additional advance on any existing Title I loan being refinanced by the lender. Section 201.25(c)(1) specifies that this origination fee may not be financed in the loan.

In TI–429, the Department waived these two limitations to permit the financing of an origination fee of up to three percent of the loan amount. However, this waiver was only for single family property improvement loans made to low- and moderate-income borrowers in connection with a housing assistance program administered by a State or local government agency or a nonprofit organization. The waiver was intended to serve as an inducement for the creation of public-private partnerships and to reduce the out-of-pocket expenses for low- and moderate-income borrowers.

In TI–431, the Department extended the waiver of the one percent limitation on the origination fee to all property improvement loans, and a maximum origination fee of five percent of the loan amount is now permitted on all new property improvement loans. In addition, the Department waived the prohibition against financing this origination fee, as long as the maximum loan amounts in § 201.10 are not exceeded. The Department recognized that a one percent origination fee was simply not enough to cover the lenders' costs in originating these loans, when the origination fee on the average property improvement loan of $13,000 is limited to $130. These waivers allow property improvement lenders to charge a more reasonable origination fee, while at the same time reducing the out-of-pocket expenses of borrowers obtaining Title I loans.

As discussed above, the Department is amending § 201.25(a), (b), and (c) to provide that the Secretary will establish eligible fees and charges. However, the Department is removing the specific fees and charges from the regulations. In a Title I Letter to be issued concurrently with the publication of this interim rule, the Department is revising the list of fees and charges that may be financed to permit the lender to charge a maximum origination fee of five percent of the loan amount on any new property improvement loan, as long as the fee has been incurred and its inclusion does not increase the total principal obligation beyond the maximum loan amounts in § 201.10. The maximum origination fee for a new manufactured home loan remains at one percent of the loan amount and cannot be financed.

In a related change, the Department is revising the list of nonfinanceable fees and charges to permit the lender to assess a handling charge of up to one percent of the new loan amount for refinancing an existing Title I loan. This change will enable lenders to charge a more reasonable fee for the work involved in processing a loan refinancing, and it is included in the Title I Letter that is to be issued concurrently with the publication of this interim rule.

Maximum Amount for Unsecured Loans

Section 201.24(a) limits the maximum amount of an unsecured property improvement loan to $5,000. In TI–428, the Department waived this limitation to allow lenders to make unsecured property improvement loans up to $7,500. This increase in the unsecured loan amount makes it possible for lenders to finance small home improvement projects without obtaining and recording a security interest in the property being improved. It also sets the threshold for obtaining a security interest at the same dollar amount required for on-site inspections of property improvements. Accordingly, this interim rule amends § 201.24(a) by substituting ''$7,500'' for ''$5,000.''

Manufactured Home Improvement Loans

Under the definition of ''manufactured home improvement loan'' in § 201.2, the loan proceeds may be used only to improve the manufactured home, but cannot be used for site improvements. In TI–428, the Department waived this restriction to permit the proceeds of a manufactured home improvement loan to be used for site improvements, as long as the borrower is the owner of the underlying real estate. Accordingly, this interim rule amends § 201.2 to permit the proceeds of a manufactured home improvement loan to be used for site improvements if the borrower is the owner of the underlying real estate.

In a related change, the interim rule also amends § 201.10(a)(1)(iv) to increase the maximum loan amount for a manufactured home improvement loan from $5,000 to $7,500. This increase is needed to keep pace with the increased cost of home improvements, as measured by the change in the Home Maintenance and Repair component of the Consumer Price Index since the $5,000 limit was established in 1980. Between 1980 and 1994, the Home

Maintenance and Repair component increased by 59 percent. Thus, a 50 percent increase in the maximum loan amount is warranted.

Ownership of Multifamily Properties

The definition of ''multifamily property improvement loan'' in § 201.2 provides that the multifamily structure may not be owned by a corporation, partnership, or trust. As noted above, the Department is interested in expanding the use of Title I property improvement loans to rehabilitate small multifamily structures in central cities. The Department has occasionally waived this restriction on ownership to permit multifamily property improvement loans to be made to nonprofit corporations or partnerships that own and operate housing primarily for low- and moderate-income families.

To give the Department greater flexibility in approving these types of nonprofit entities as Title I borrowers and to eliminate the delays inherent in the waiver process, this interim rule amends § 201.2 to allow for exceptions to the prohibition against corporations, partnerships, and trusts with the prior approval of the Secretary.

Approval for Loan Amounts Over $25,000

Section 201.10(a)(2) requires the prior approval of the Secretary for any property improvement loan that will result in the borrower having a total unpaid principal obligation in excess of $25,000, whether in one Title I loan or several loans. The Department has determined that, because of staff reductions and the restructuring of its field offices, the continued imposition of this requirement will only serve to delay loan originations.

In addition, it is an impediment to the use of multifamily property improvement loans to rehabilitate small multifamily structures in central cities. Accordingly, this interim rule amends § 201.10 by removing paragraph (a)(2).

Completion Certificate Requirements

Section 201.40(b) of the regulations requires that a borrower obtaining a direct property improvement loan must submit a completion certificate to the lender after completion of the work, but not later than 6 months after disbursement of the loan proceeds. In TI–429, the Department waived the requirement for submitting a completion certificate for situations in which the borrower applies for a property improvement loan through a State or local government agency or a nonprofit organization, the loan proceeds are held in an escrow account pending completion of the improvements, and the loan proceeds are disbursed from the escrow account in stages, based upon the percentage of work completed. The Department determined that, under these conditions, the controlled disbursement of the loan funds with the borrower's approval obviates the need for obtaining a completion certificate.

Accordingly, this interim rule amends § 201.40 by adding a new paragraph (b)(3) to exempt the borrower from submitting a completion certificate when the property improvement loan is made by or on behalf of a State or local government agency or a nonprofit organization, the loan proceeds are held in an escrow account pending completion of the improvements, and the loan proceeds are disbursed from the escrow account in stages, with the written approval of the borrower and based upon the percentage of work completed.

Assistance to Disaster Victims

Section 201.20(b)(3) provides that the proceeds of a property improvement loan may be used only for improvements that are started after loan approval. The Department has waived this limitation in connection with Presidentially-declared disasters such as the Northridge, California earthquake and Hurricanes Marilyn and Opal. In addition, the Department has waived this limitation in individual cases when the borrower needed to begin emergency repairs prior to loan approval.

The Department has concluded that greater use would be made of the Title I program to assist disaster victims in repairing their homes if the regulations provided for an exception to § 201.20(b)(3) whenever there is a major disaster declared by the President. In addition, the Department's ability to address other emergency situations would be enhanced if greater flexibility were available to grant exceptions to this limitation on starting the improvements.

Accordingly, this interim rule amends § 201.20(b)(3) to provide that the loan proceeds shall only be used to finance property improvements that are started after loan approval, unless (a) the prior approval of the Secretary is obtained for an exception, or (b) the property is located in a major disaster area declared as such by the President, and the lender determines that emergency action is needed to repair damage resulting from the disaster.

The interim rule also amends § 201.54(b)(2) to permit the Secretary to extend the claim filing period on a property improvement loan when the borrower had experienced a loss of income or other financial difficulties directly attributable to a major disaster declared by the President, and additional time was needed to provide forbearance.

Changes Affecting Manufactured Home Loans

Changes in the Title I regulations that are applicable only to manufactured home loans include the following: reducing the minimum required downpayment and revising the maximum loan amount to compensate for the lower downpayment, increasing the maximum expense-to-income ratios for borrowers purchasing energy-efficient manufactured homes, and increasing the maximum dollar allowances for repossession expenses and legal fees.

Reduced Downpayment Requirements

Section 201.23 of the regulations requires a minimum cash downpayment of five percent of the first $5,000 and ten percent of the balance of the purchase price to obtain a new manufactured home or a manufactured home and lot. To purchase an existing manufactured home or a developed lot on which to place a manufactured home, the minimum downpayment is ten percent of the purchase price.

In TI–428, the Department waived the present downpayment requirements to require a minimum cash downpayment of five percent of the purchase price for all manufactured home purchase loans, manufactured home lot loans, and combination loans. The Department decided that a five percent minimum downpayment would help restore Title I as a financing vehicle for first-time buyers to achieve affordable homeownership. It would create a different loan program from conventional financing and would enable lenders and dealers to offer low- and moderate-income families a real alternative.

Accordingly, this interim rule amends § 201.23(b), (c), and (d) by replacing the existing downpayment requirements in these sections with ''five percent of the purchase price.''

Changes in Maximum Loan Calculation

Because of the reduction in the minimum downpayment to five percent, TI–428 also granted waivers that apply to the maximum loan amount calculations in § 201.10(b), (c), and (d). The maximum loan amount for the purchase of a new manufactured home under § 201.10(b)(1) or for the purchase of a new manufactured home and lot under § 201.10(d)(1) was based upon 125 percent of the wholesale (base)

price of the home, itemized options, and freight charge. The Department increased the percentage to 130 percent to conform with the reduced downpayment requirement.

In a related change, the Department also waived the maximum dollar allowances applicable to delivery and set-up of the home in § 201.10(b)(1) and (d)(1), and to skirting in § 201.10(b)(1). These waivers ensure that the downpayment is a true 5 percent in most cases, and give lenders and dealers greater flexibility in dealing with State and local variations in installation standards.

For the purchase of an existing manufactured home under § 201.10(b)(2) or a manufactured home lot under § 201.10(c), the maximum loan amount was calculated at 90 percent of the appraised value or purchase price, whichever was less. To conform with the reduced downpayment requirement, the Department increased the percentage to 95 percent.

Accordingly, this interim rule amends § 201.10(b), (c), and (d) in the following respects:

1. By replacing ''125 percent'' with ''130 percent'' in § 201.10(b)(1)(i) and (d)(1)(i);
2. By removing ''not to exceed $750 per module'' in § 201.10(b)(1)(iii);
3. By replacing ''Skirting costs, not to exceed $500'' with ''The actual dealer's cost of skirting'' in § 201.10(b)(1)(iv);
4. By replacing ''90 percent'' with ''95 percent'' in § 201.10(b)(2) and (c); and
5. By removing ''not to exceed $1,200 per module'' in § 201.10(d)(1)(iii).

Increase in Expense-to-Income Ratios

Section 201.22(b) states that, for any Title I loan, the borrower's income must be adequate to meet the periodic payments required by the loan, as well as the borrower's other housing expenses and recurring charges. For a borrower's income to be considered adequate, housing expenses and total fixed expenses generally may not exceed maximum percentages of effective gross income established by the Secretary. On October 18, 1991 (56 FR 52438), the Department published a notice in the Federal Register setting the maximum expense-to-income ratios for manufactured home loans at 29 percent for total housing expenses and 41 percent for total fixed expenses.

In TI–428, the Department waived the 29 percent and 41 percent ratios in favor of higher ratios of 31 percent and 43 percent, respectively, for borrowers who purchased manufactured homes with a date of manufacture on or after October 25, 1994, the effective date of the Department's new energy conservation standards. The Department adopted the higher ratios to recognize that while energy-efficient homes are more expensive, borrowers will be spending less of their income on fuel costs.

Since the Department has already notified lenders of this change in the maximum expense-to-income ratios by Title I Letter, this interim rule amends § 201.22(b)(1) to eliminate the need for publication of a Federal Register notice to advise lenders of the change. The Department has decided that lenders can be more effectively notified of future changes in maximum expense-to-income ratios through Title I Letters or by including the information in program handbooks.

Repossession Expenses and Legal Fees

Section 201.55(b)(3) sets the maximum dollar allowances for removal and transportation of a repossessed manufactured home to an off-site location at $750 per module. In TI–428, the Department waived this limit to permit an increase in the allowance to $1,000 per module, which more accurately reflects the lender's cost for this activity. Accordingly, this interim rule amends § 201.55(b)(3) by substituting ''$1,000'' for ''$750.''

Section 201.55(b)(7) sets the maximum dollar allowance for attorney's fees in connection with a claim on a manufactured home loan at $500. In TI–428, the Department waived this limit to permit an increase in the allowance to $1,000, which more accurately reflects the cost for legal services. Accordingly, this interim rule amends § 201.55(b)(7) by substituting ''$1,000'' for ''$500.''

Clarifying and Conforming Amendments

The Department is also amending other sections of part 201 to clarify the regulations and conform them with current practice in the operation of the Title I program. The Department calls particular attention to the following amendments:

1. In § 201.2, the Department is revising the definition of ''existing structure'' to clarify that the 90-day completion and occupancy requirement applies to all manufactured homes, whether they are real or personal property. In a conforming change, the Department is revising § 201.20(b)(1) to remove redundant language on the 90-day completion and occupancy requirement.
2. In § 201.2, the Department is revising the definition of ''manufactured home'' to clarify that the construction standards for existing manufactured homes apply only to loans for the purchase or refinancing of such homes, and not to property improvement loans on manufactured homes.
3. In § 201.2, the Department is revising the definition of ''State'' to substitute ''the Commonwealth of the Northern Mariana Islands'' for ''the Trust Territory of the Pacific Islands,'' since the remainder of the Trust Territory is now independent and is no longer eligible to participate in the Title I programs.
4. In § 201.3, the Department is removing paragraph (b), which indicates the applicability of amendments made to part 201 by a final rule that was published in the Federal Register on October 18, 1991 (56 FR 52414). The paragraph is now obsolete because many of the regulatory sections listed in the paragraph have been eliminated or changed. To the extent that it is still applicable, the preamble to the final rule contains the same information.
5. The Department is revising § 201.10(b)(3) and (d)(3) to clarify that the ''purchase price'' used in connection with manufactured home purchase loans and combination loans includes the retail cost to the borrower of all items set forth in the purchase contract, not just those items that are eligible for inclusion in the Title I loan.
6. The Department is revising §§ 201.10(f)(3) and 201.11(c)(2) to clarify that these provisions apply to the refinancing of any uninsured manufactured home loan, and are not limited to manufactured home purchase loans and combination loans.
7. The Department is revising §§ 201.10(f)(4) and 201.11(c)(3) to clarify that these provisions apply anytime the borrower is refinancing a manufactured home lot already owned by the borrower in connection with the purchase of a manufactured home.
8. The Department is revising §§ 201.10(f)(5) and 201.11(c)(4) to clarify that these provisions apply anytime the borrower is refinancing a manufactured home already owned by the borrower in connection with the purchase of a manufactured home lot. The Department is also increasing the maximum loan amount in § 201.10(f)(5) to $64,800, in conformance with a final rule published in the Federal Register on July 30, 1993 (58 FR 40996).
9. The Department is revising § 201.11 to add a new paragraph (a)(3), limiting the maximum term for an historic preservation loan to 15 years and 32 days. The Department inadvertently omitted this provision when it changed the maximum term for other types of property improvement loans in a final rule published in the Federal Register on September 30, 1992 (57 FR 45244).

10. The Department is revising § 201.12, which sets forth requirements for the note, to remove a prohibition against the use of discount or add-on notes in connection with any Title I loan approved on or after January 15, 1986. Although such loans remain uninsurable, the Department believes that it is no longer necessary to spell out this prohibition, since the Department is revising § 201.13 as described in paragraph 10, below.

11. The Department is revising § 201.13 to state that interest on a Title I loan shall be ''calculated on a simple interest basis,'' rather than ''calculated according to the actuarial method.''

12. The Department is revising § 201.20(a)(2) to specify that the manufactured home must be the principal residence of the borrower to be eligible for a manufactured home improvement loan. In a conforming change, this interim rule removes the same provision from § 201.20(b)(1), since that section deals with the use of the loan proceeds.

13. The Department is further revising § 201.20(b)(1) to include provisions previously found in § 201.26(a)(2). As revised, § 201.20(b)(1) requires that, if the borrower plans to use a dealer or contractor to carry out the property improvements, the lender shall obtain a copy of a proposal or contract that describes in detail the work to be performed and the estimated or actual cost. Alternatively, if the borrower plans to carry out the work without the services of a dealer or contractor, the borrower shall be required to furnish a detailed written description of the work to be performed, the materials to be furnished, and their estimated cost. In a conforming change, the Department is revising § 201.26(a)(2) to remove the present language and to refer to the requirements of § 201.20(b)(1).

14. The Department is revising §§ 201.20(b)(2) and 201.21(b)(5) to eliminate the need for publication of a Federal Register notice to notify lenders about items and activities that are ineligible for financing in property improvement or manufactured home loans. The Department has decided that lenders are more effectively notified of this information through Title I Letters or by including the information in program handbooks.

15. The Department is revising § 201.21(b)(3) to specify that wheels and axles cannot be purchased with the proceeds of a manufactured home loan, and to clarify that the cost of furniture, wheels, and axles shall not be included in the maximum loan amount calculated under § 201.10(b)(1) or (d)(1). The Department inadvertently omitted the reference to wheels and axles from this section when it implemented the prohibition against financing these items in a final rule published in the Federal Register on October 18, 1991 (56 FR 52414).

16. In § 201.22(b)(2), the Department is revising the definition of ''other recurring charges'' to remove child care expenses as an item that must be considered in determining whether the borrower's income is adequate to qualify for a property improvement or manufactured home loan. This change is consistent with modifications in credit underwriting requirements that have taken place in the Department's other loan and mortgage insurance programs.

17. The Department is revising § 201.22(c)(1) to clarify the prohibition against a lender approving a Title I loan if the borrower is in default on a previous loan obligation owed to or insured or guaranteed by the Federal Government.

18. The Department is revising § 201.24(a)(1) to clarify that the requirement that the Title I loan must have lien priority over any uninsured loan made by the lender at the same time does not apply when the uninsured loan is a first mortgage loan for the purchase or refinancing of the property.

19. The Department is revising § 201.25(d) to clarify that neither the lender nor the borrower may pay a referral fee to any third party in connection with the origination of a Title I loan. Prohibiting the borrower from paying a referral fee is consistent with the wording in the preambles to both the proposed rule published in the Federal Register on January 29, 1991 (56 FR 3302) and the final rule published in the Federal Register on October 18, 1991 (56 FR 52414), but the Department inadvertently omitted this prohibition from the text of the regulation.

20. The Department is revising § 201.26(b)(6) to clarify that an inspection by the lender or its agent on a direct manufactured home loan is required only when the transaction involves the relocation of the manufactured home to a new homesite.

21. The Department is revising § 201.27(a)(5) to clarify that the lender is required to notify the Department that it has terminated its approval of a dealer only if the termination was because the dealer did not satisfactorily perform its contractual obligations to borrowers, did not comply with Title I requirements, or was unresponsive to the lender's supervision and monitoring requirements.

22. The Department is removing § 201.27(b)(2), which provided for limited recourse agreements between manufactured home lenders and dealers for uninsurable loans, because it is obsolete.

23. In § 201.32(a)(1), the Department is eliminating the requirement that separate Title I contracts of insurance and separate reserve accounts be established for lenders that originate, purchase, or hold both property improvement and manufactured home loans. The Department has determined that requiring two contracts of insurance poses an unnecessary obstacle to more widespread lender participation in the Title I program.

24. The Department is revising § 201.52 to clarify that when a lender accepts a voluntary conveyance of title or a voluntary surrender of the property securing a manufactured home loan, it is not necessary to send the borrower the notice of default and acceleration that is otherwise required by § 201.50(b).

25. The Department is revising § 201.53 to clarify that in determining the best price obtainable for a manufactured home property, cost items other than repairs may be deducted from the actual sales price, so that a valid comparison can be made with the appraised value of the property before repairs.

Justification for Interim Rulemaking

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1).

Many of the changes in this interim rule merely codify the Secretary's waiver of burdensome regulatory requirements. As noted earlier, the Department developed many of these changes through an outreach process that involved a wide variety of program participants, and the Department notified all approved lenders of the changes through Title I Letters. The Department considered the alternatives and determined that these changes are generally compatible with industry practice and are necessary to increase the availability of credit to qualified borrowers and to further the goals of the National Housing Act. Greater use of the Title I program will help preserve the nation's existing housing stock and rebuild neighborhoods.

Furthermore, implementation of the interim rule's provisions is needed as soon as possible to eliminate the practice of lenders collecting discount

points from dealers that are not for the benefit of borrowers, and to stop the continued assessment of excessive prepayment penalties that are preventing low- and moderate-income borrowers from refinancing their loans. Therefore, the Department has determined that good cause exists to omit prior public procedure for this interim rule because such delay would be contrary to the public interest and unnecessary.

However, the Department is interested in obtaining as much public input as possible as to how this interim rule could be further improved or streamlined. The Department is allowing for a 60-day public comment period, after which it will consider the issues raised by the commenters in its development of a final rule.

Regulatory Reinvention

Consistent with Executive Order 12866 and President Clinton's memorandum of March 4, 1995 to all Federal departments and agencies on the subject of regulatory reinvention, the Department is conducting a page-by-page review of all its regulations to determine whether certain regulations can be eliminated. As part of this review, the Department is publishing this interim rule, which eliminates from the Code of Federal Regulations many of the burdensome substantive requirements in the Title I programs. This interim rule also removes from the regulations the lists of eligible fees and charges under the Title I programs. It is unnecessary and burdensome for these lists to be included in the regulations. The Secretary will instead notify lenders of these fees and charges directly through Title I Letters.

Findings and Other Matters

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this interim rule under Executive Order 12866, *Regulatory Planning and Review,* issued by the President on September 30, 1993. Any changes made in this interim rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with the Department's regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection as provided under the section of this preamble entitled ''Executive Order 12866.''

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that it will not have a significant economic impact on a substantial number of small entities. The majority of institutions that participate in the Title I program are large depository institutions, and nearly all of the changes relieve regulatory burdens for all entities seeking to conduct Title I loan transactions.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this interim 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. Specifically, the requirements of this interim rule are directed to lenders and borrowers, and will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the interim rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, *The Family,* has determined that this interim rule will not have potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. The interim rule involves requirements for property improvement and manufactured home loans insured by the Department. Any effect on the family will likely be indirect and insignificant.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are:

14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;

14.142 Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures; and

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

List of Subjects in 24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 201 is amended as follows:

PART 201——TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for 24 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 1703; 42 U.S.C. 1436a and 3535(d).

2. Section 201.1 is amended by adding a period after the phrase ''§ 201.2'', and by revising the fourth sentence, to read as follows:

§ 201.1 Purpose.

* * * The insurance can cover up to 10 percent of the amount of all insured Title I loans in the financial institution's portfolio, as reflected in the total amount of insurance coverage contained at any time in an insurance coverage reserve account established by the Secretary, less amounts for insurance claims paid. * * *

3. Section 201.2 is amended by:

a. Removing the paragraph designations (a) through (ll);

b. Adding a new definition of the term ''*Discount points*'' in alphabetical order;

c. Revising the first sentence of the introductory text of the definition of the term ''*Existing structure*'';

d. Revising the second sentence in paragraph (2) of the definition of the term ''*Lender*'';

e. Revising the third sentence of the definition of the term ''*Manufactured home*'';

f. Adding a sentence at the end of the definition of the term ''*Manufactured home improvement loan*''; and

g. Revising the definitions of the terms ''*Multifamily property improvement loan*'' and ''*State*'', to read as follows:

§ 201.2 Definitions.

* * * * *

Discount points means a fee charged by the lender, separate from interest but part of the total finance charges on the loan, that is part of the lender's total yield on the loan needed to maintain a competitive position with other types of

investments. One discount point equals one percent of the principal amount of the loan. As discount points on the loan increase, the interest rate can be expected to decrease in a fairly consistent relationship.

Existing structure means a dwelling, including a manufactured home, that was completed and occupied at least 90 days prior to an application for a Title I loan, or a nonresidential structure that was a completed building with a distinctive functional use prior to an application for a Title I loan. * * *

* * * * *

Lender * * *

(2) For purposes of loan origination under subparts A, B, and C of this part, the term ''lender'' also includes a ''loan correspondent'' as defined in this section.

* * * * *

Manufactured home * * * To qualify for a manufactured home loan insured under this part, an existing manufactured home must have been constructed in accordance with standards published at 24 CFR part 3280 and must meet standards similar to the minimum property standards applicable to existing homes insured under title II of the Act, as prescribed by the Secretary.

Manufactured home improvement loan * * * The proceeds of a manufactured home improvement loan may also be used for improvements to the homesite, as long as the borrower is the owner of the home and the underlying real estate.

* * * * *

Multifamily property improvement loan means a loan to finance the alteration, repair, improvement, or conversion of an existing structure used or to be used as an apartment house or a dwelling for two or more families. The multifamily structure may not be owned by a corporation, partnership, or trust, unless the prior approval of the Secretary is obtained for an exception to this requirement.

* * * * *

State means any State of the United States, Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands.

* * * * *

4. Section 201.3 is revised to read as follows:

§ 201.3 Applicability of the regulations.

The regulations in this part may be amended by the Secretary at any time. Such amendment shall not adversely affect the insurance privileges of a lender on any loan that has been made or for which a loan application has been approved before the effective date of the amendment.

5. Section 201.10 is amended by:

a. Revising paragraph (a)(1)(iv);

b. Removing paragraph (a)(2);

c. Redesignating paragraph (a)(3) as paragraph (a)(2); and

d. Revising paragraphs (b)(1)(i), (b)(1)(iii), (b)(1)(iv), (b)(2)(i), (b)(2)(ii), (b)(3), (c), (d)(1)(i), (d)(1)(iii), (d)(3), (f)(3), (f)(4), and (f)(5), to read as follows:

§ 201.10 Loan amounts.

(a) * * *

(1) * * *

(iv) Manufactured home improvement loans—$7,500.

* * * * *

(b) * * *

(1) * * *

(i) 130 percent of the sum of the wholesale (base) prices of the home and any itemized options and the charge for freight, as detailed in the manufacturer's invoice;

* * * * *

(iii) The actual dealer's cost of transportation to the homesite, set-up and anchoring, including the rental of wheels and axles (if not included in the freight charges);

(iv) The actual dealer's cost of skirting;

* * * * *

(2) * * *

(i) 95 percent of the appraised value of the home as equipped and furnished (as determined by a HUD-approved appraisal) and 95 percent of any itemized amounts allowed under paragraphs (b)(1)(iii) through (vii) of this section, if incurred; or

(ii) 95 percent of the purchase price of the home.

(3) The purchase price of a manufactured home financed with a manufactured home purchase loan shall include the retail cost to the borrower of all items set forth in the purchase contract, including any applicable charges authorized under § 201.25(b).

(c) *Manufactured home lot loans.* The total principal obligation for a loan to purchase and, if necessary, develop a lot suitable for a manufactured home, including on-site water and utility connections, sanitary facilities, site improvements and landscaping, shall not exceed 95 percent of either the appraised value of the developed lot (as determined by a HUD-approved appraisal) or the total of the purchase price and development costs, whichever is less, up to a maximum of $16,200.

(d) * * *

(1) * * *

(i) 130 percent of the sum of the wholesale (base) prices of the home and any itemized options and the charge for freight, as detailed in the manufacturer's invoice;

* * * * *

(iii) The actual dealer's cost of transportation to the homesite, set-up and anchoring, including the rental of wheels and axles (if not included in the freight charge);

* * * * *

(3) The purchase price of a manufactured home and a lot financed with a combination loan shall include the retail cost to the borrower of all items set forth in the purchase contract or contracts, including any applicable charges authorized under § 201.25(b).

* * * * *

(f) * * *

(3) The total principal obligation of a loan made to refinance a borrower's existing uninsured manufactured home loan shall not exceed the cost to the borrower of prepaying the existing loan or the appraised value of the property (as determined by a HUD-approved appraisal), whichever is less, up to the maximum loan amount permitted under this section for the particular type of loan.

(4) When a borrower's existing manufactured home lot is being refinanced in connection with the purchase of a manufactured home, the total principal obligation of the combination loan shall be determined in accordance with paragraph (d)(1) or (d)(2) of this section.

(5) When a borrower's existing manufactured home is being refinanced in connection with the purchase of a manufactured home lot, the total principal obligation of the combination loan shall not exceed the lesser of the following amounts, up to a maximum of $64,800:

(i) The cost to the borrower of prepaying any existing loan on the home, plus the purchase price of the lot; or

(ii) The appraised value of the home and lot (as determined by a HUD-approved appraisal).

* * * * *

6. Section 201.11 is amended by revising paragraphs (a)(1) and (a)(2), by adding a new paragraph (a)(3), and by revising paragraphs (c)(2), (c)(3), and (c)(4), to read as follows:

§ 201.11 Loan maturities.

(a) * * *

(1) The maximum term for a single family property improvement loan on a manufactured home that qualifies as real property shall not exceed 15 years and 32 days from the date of the loan;

(2) The maximum term for a manufactured home improvement loan shall not exceed 12 years and 32 days from the date of the loan; and

(3) The maximum term for an historic preservation loan shall not exceed 15 years and 32 days from the date of the loan.

* * * * *

(c) * * *

(2) The term of a loan made to refinance a borrower's existing uninsured manufactured home loan shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

(3) When a borrower's existing manufactured home lot is being refinanced in connection with the purchase of a manufactured home, the term of the combination loan shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

(4) When a borrower's existing manufactured home is being refinanced in connection with the purchase of a manufactured home lot, the term of the combination loan shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

7. Section 201.12 is revised to read as follows:

§ 201.12 Requirements for the note.

The note shall bear the genuine signature of each borrower and of any co-maker or co-signer, be valid and enforceable against the borrower and any co-maker or co-signer, and be complete and regular on its face. The borrower and any co-maker or co-signer shall execute the note for the full amount of the loan obligation. Although the note may be executed by the borrower on an earlier date, the date of the loan shall be the date that the loan proceeds are disbursed by the lender. Such date shall be entered on the note when disbursement occurs. The note shall separately recite the principal amount and any interest at an agreed annual rate that comprises the borrower's payment obligation. The lender shall assure that the note and all other documents evidencing the loan transaction are in compliance with applicable Federal, State, and local laws. If the note is executed on behalf of a corporation, partnership, or trust by an authorized representative, it shall create a binding obligation on such entity.

8. Section 201.13 is revised to read as follows:

§ 201.13 Interest and discount points.

The interest rate for any loan shall be negotiated and agreed to by the borrower and the lender, and such interest rate shall be fixed for the full term of the loan and recited in the note. Interest on the loan shall accrue from the date of the loan, and shall be calculated on a simple interest basis. The lender and the borrower may negotiate the amount of discount points, if any, to be paid by the borrower as part of the borrower's initial payment. The lender shall not require or allow any party other than the borrower to pay any discount points or other financing charges in connection with the loan transaction.

9. Section 201.17 is revised to read as follows:

§ 201.17 Prepayment provision.

The note shall contain a provision permitting full or partial prepayment of the loan without penalty, except that the borrower may be assessed reasonable and customary charges for recording a release of the lender's security interest in the property, if permitted by State law.

10. Section 201.20 is amended by revising paragraph (a)(2), by removing paragraph (a)(3), and by revising paragraph (b), to read as follows:

§ 201.20 Property improvement loan eligibility.

(a) * * *

(2) To be eligible for a manufactured home improvement loan, the borrower shall have at least a one-half interest in the manufactured home, and the home must be the principal residence of the borrower.

(b) *Eligible use of the loan proceeds.* (1) The loan proceeds shall be used only for the purposes disclosed in the loan application. If the borrower plans to use a dealer or contractor to carry out the improvement work, the lender shall obtain a copy of a proposal or contract that describes in detail the work to be performed and the estimated or actual cost. If the borrower plans to carry out the improvement work without the services of a dealer or contractor, the borrower shall be required to furnish a detailed written description of the work to be performed, the materials to be furnished, and their estimated cost.

(2) The loan proceeds shall be used only to finance property improvements that substantially protect or improve the basic livability or utility of the property. The Secretary will establish a list of items and activities that may not be financed with the proceeds of any property improvement loan. If a lender has any doubt as to the eligibility of any item or activity, it shall request a specific ruling by the Secretary before making a loan.

(3) The loan proceeds shall only be used to finance property improvements that are started after loan approval, unless:

(i) The prior approval of the Secretary is obtained for an exception to this requirement; or

(ii) The property is located in a major disaster area declared by the President, and the lender determines that emergency action is needed to repair damage resulting from the disaster.

* * * * *

11. Section 201.21 is amended by revising paragraphs (b)(3) and (b)(5), to read as follows:

§ 201.21 Manufactured home loan eligibility.

* * * * *

(b) * * *

(3) The proceeds of a loan to purchase a new manufactured home or a new manufactured home and lot shall not be used to purchase furniture or wheels and axles, and the cost of these items shall not be included in the total principal obligation calculated under § 201.10(b)(1) or (d)(1).

* * * * *

(5) The Secretary will establish a list of items and activities that may not be financed with the proceeds of any manufactured home loan. If a lender has any doubt as to the eligibility of any item or activity, it shall request a specific ruling by the Secretary before making a loan.

* * * * *

12. Section 201.22 is amended by revising paragraphs (b)(1), (b)(2)(iv), and (c)(1), to read as follows:

§ 201.22 Credit requirements for borrowers.

* * * * *

(b) * * *

(1) For any Title I loan, the credit application and review must establish that the borrower's income will be adequate to meet the periodic payments required by the loan, as well as the borrower's other housing expenses and recurring charges. For a borrower's income to be considered adequate, housing expenses and total fixed expenses generally may not exceed maximum percentages of effective gross income established by the Secretary. If these expense-to-income ratios are exceeded, the borrower's income may be considered adequate only if the lender determines and documents in the loan file the existence of compensating factors concerning the borrower's

creditworthiness that support approval of the loan.

(2) * * *

(iv) *Other recurring charges* include all payments on automobile loans, furniture loans, student loans, installment loans, revolving charge accounts, alimony or child support, and any other debt for which the obligation is expected to continue for six months or more.

(c) * * *

(1) The borrower is past due more than 30 days as to the payment of principal or interest under the original terms of a loan obligation owed to or insured or guaranteed by the Federal Government, unless the debt has since been discharged or satisfied; or

* * * * *

13. Section 201.23 is revised to read as follows:

§ 201.23 Borrower's initial payment.

(a) *General requirement.* The borrower shall be responsible for the payment in cash of any costs that will not be paid, or are not eligible to be paid, from the proceeds of the loan. Such costs payable by the borrower may include any required downpayment, any discount points to be paid by the borrower to the lender, any other fees and charges that may not be financed, and any other costs in excess of the loan amount. No part of such costs payable by the borrower may be loaned, advanced, or paid to or for the benefit of the borrower by the dealer, the manufacturer, or any other party to the loan transaction. If the borrower obtains all or any part of such costs through a gift or a loan from some other source, the borrower must disclose the source of such gift or loan on the credit application. Any such loan must be secured by property or collateral owned by the borrower independently of the property securing repayment of the Title I loan, unless the prior approval of the Secretary is obtained for an exception to this requirement. The lender shall consider any such loan obligation in performing the credit investigation. Documentation of any initial payment shall be retained by the lender in the loan file.

(b) *Manufactured home purchase loans.* In the case of a manufactured home purchase loan, the borrower shall make a minimum cash downpayment of at least five percent of the purchase price of the home. The borrower's equity in an existing manufactured home and any movable appurtenances may be traded-in on a new home and accepted in lieu of full or partial cash downpayment, but without any cash payment to the borrower. The existing manufactured home being traded-in shall be clearly identified, and the borrower's equity in the home shall be based upon the retail value of the home and appurtenances (as determined by a HUD-approved appraisal), less the total of all loans outstanding on the home and appurtenances.

(c) *Manufactured home lot loans.* In the case of a manufactured home lot loan, the borrower shall make a minimum cash downpayment of at least five percent of the total of the purchase price and development costs for the lot.

(d) *Combination loans.* In the case of a combination loan, the borrower shall make a minimum cash downpayment of at least five percent of the purchase price of the manufactured home and lot. If the borrower already owns a manufactured home or a lot on which a manufactured home is to be placed, the borrower's equity in such home or lot may be accepted in lieu of full or partial cash downpayment on a combination loan, but without any cash payment to the borrower.

14. Section 201.24 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 201.24 Security requirements.

(a) * * *

(1) Any property improvement loan in excess of $7,500 shall be secured by a recorded lien on the improved property. The lien shall be evidenced by a mortgage or deed of trust, executed by the borrower and all other owners in fee simple. If the borrower is a lessee, the borrower and all owners in fee simple must execute the mortgage or deed of trust. If the borrower is purchasing the property under a land installment contract, the borrower, all owners in fee simple, and all intervening contract sellers must execute the mortgage or deed of trust. The lien need not be a first lien on the property; however, the lien securing the Title I loan must have priority over any lien securing an uninsured loan made at the same time and in connection with the same property, unless the uninsured loan is a first mortgage loan for the purchase or refinancing of the property.

(2) Any property improvement loan for $7,500 or less (other than a manufactured home improvement loan) shall be similarly secured if, including such loan, the total amount of all Title I loans on the improved property is more than $7,500.

* * * * *

15. Section 201.25 is revised to read as follows:

§ 201.25 Charges to borrower to obtain loan.

(a) *Fees and charges that may be financed in a property improvement loan.* The Secretary will establish a list of fees and charges that may be included in a property improvement loan. Such fees and charges shall have been incurred in connection with the origination of the loan, and their inclusion shall not increase the total principal obligation beyond the maximum loan amounts in § 201.10.

(b) *Fees and charges that may be financed in a manufactured home loan.* The Secretary will establish a list of fees and charges that may be included in a manufactured home loan. Such fees and charges shall have been incurred in connection with the origination of the loan, and their inclusion shall not increase the total principal obligation beyond the maximum loan amounts in § 201.10.

(c) *Fees and charges that may not be financed.* The Secretary will establish a list of fees and charges incurred by the lender that may be collected from the borrower in the initial payment, but may not be included in the loan amount or otherwise financed or advanced by the dealer, the manufacturer, or any other party to the loan transaction.

(d) *Fees and charges that may not be paid.* Neither the lender nor the borrower may pay a referral fee to any dealer, home manufacturer, contractor, supplier, real estate broker, loan broker, or any other party in connection with the origination of a loan insured under this part.

16. Section 201.26 is amended by revising paragraphs (a)(1), (a)(2), (a)(5)(ii), (a)(6)(i), (b)(3)(vi), (b)(3)(vii), (b)(4)(vi), and (b)(4)(vii); by removing paragraph (b)(4)(viii); and by revising paragraph (b)(6) introductory text, to read as follows:

§ 201.26 Conditions for loan disbursement.

(a) * * *

(1) The lender shall ensure that the following conditions are met:

(i) The borrower is eligible for a property improvement loan in accordance with § 201.20(a) (1) or (2); and

(ii) The interest of the borrower in the property is valid, through such title or other evidence as is generally acceptable to prudent lending institutions and leading attorneys in the community in which the property is situated.

(2) The proposed use of the loan proceeds shall be documented in accordance with the requirements of § 201.20(b)(1).

* * * * *

(5) * * *

(ii) The borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, sales commission, or anything of more than nominal value from the dealer as an inducement for the consummation of the transaction.

(6) * * *

(i) States that the loan will be insured by HUD and describes the actions the Secretary may take to recover the debt if the borrower defaults on the loan and an insurance claim is paid;

* * * * *

(b) * * *

(3) * * *

(vi) The borrower has paid the remaining unpaid balance on any other manufactured home loan secured by a different property, unless the prior approval of the Secretary is obtained for an exception to this requirement; and

(vii) The borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, or anything of more than nominal value from the manufacturer or dealer as an inducement for the consummation of the transaction.

(4) * * *

(vi) Any initial payment required under § 201.23 was made by the borrower, and no part of the initial payment was loaned, advanced, or paid to or for the benefit of the borrower by the manufacturer, dealer, or any other party to the loan transaction; and

(vii) The borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, or anything of more than nominal value from the manufacturer or dealer as an inducement for the consummation of the transaction.

* * * * *

(6) For any direct manufactured home purchase loan or combination loan involving the relocation of the manufactured home to a new homesite owned or leased by the borrower, the lender (or an agent of the lender that is not a manufactured home dealer) shall conduct a site-of-placement inspection to verify that:

* * * * *

17. Section 201.27 is amended by revising the second sentence of paragraph (a)(2) and by revising paragraph (a)(5); by removing paragraph (b)(2); and by redesignating paragraph (b)(1) as paragraph (b), to read as follows:

§ 201.27 Requirements for dealer loans.

(a) * * *

(2) * * * The dealer shall furnish a current financial statement prepared by someone who is independent of the dealer and is qualified by education and experience to prepare such statements, together with such other documentation as the lender deems necessary to support its approval of the dealer. * * *

* * * * *

(5) If a dealer does not satisfactorily perform its contractual obligations to borrowers, does not comply with Title I program requirements, or is unresponsive to the lender's supervision and monitoring requirements, the lender shall terminate the dealer's approval and immediately notify the Secretary with written documentation of the facts. A dealer whose approval is terminated under these circumstances shall not be reapproved without prior written approval from the Secretary. The lender may in its discretion terminate the approval of a dealer for other reasons at any time.

* * * * *

18. Section 201.28 is amended by revising paragraph (a) to read as follows:

§ 201.28 Flood and hazard insurance, and Coastal Barriers properties.

(a) *Flood insurance.* No property improvement loan or manufactured home loan shall be eligible for insurance under this part if the property securing repayment of the loan is located in a special flood hazard area identified by the Federal Emergency Management Agency (FEMA), unless flood insurance on the property is obtained by the borrower in compliance with section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a). Such insurance shall be obtained at any time during the term of the loan that the lender determines that the secured property is located in a special flood hazard area identified by FEMA, and shall be maintained by the borrower for the remaining term of the loan, or until the lender determines that the property is no longer in a special flood hazard area, or until the property is repossessed or foreclosed upon by the lender. The amount of such insurance shall be at least equal to the unpaid balance of the Title I loan, and the lender shall be named as the loss payee for flood insurance benefits.

* * * * *

19. Section 201.32 is amended by revising paragraph (a); by removing paragraph (b); and by redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, to read as follows:

§ 201.32 Insurance coverage reserve account.

(a) *Establishment.* The Secretary shall establish an insurance coverage reserve account for each lender. The amount of insurance coverage in each reserve account shall equal 10 percent of the amount disbursed, advanced, or expended by the lender in originating or purchasing eligible loans registered for insurance under this part, less the amount of all insurance claims approved for payment in connection with losses on such loans.

* * * * *

20. Section 201.40 is amended by adding a new paragraph (b)(3) to read as follows:

§ 201.40 Post-disbursement loan requirements.

* * * * *

(b) * * *

(3) The borrower is not required to submit a completion certificate when the property improvement loan is made by or on behalf of a State or local government agency or a nonprofit organization, the loan proceeds are held in an escrow account pending completion of the improvements, and the loan proceeds are disbursed from the escrow account in stages, with the written approval of the borrower and based upon the percentage of work completed.

* * * * *

21. Section 201.52 is amended by adding a sentence at the end, to read as follows:

§ 201.52 Acquisition by voluntary conveyance or surrender.

* * * If the lender accepts a voluntary conveyance of title or a voluntary surrender of the property, the notice of default and acceleration under § 201.50(b) shall not be required.

22. Section 201.53 is amended by:

a. Redesignating the paragraph as introductory text;

b. Revising the third sentence of the newly designated introductory text; and

c. Adding paragraphs (a) and (b), to read as follows:

§ 201.53 Disposition of manufactured home loan property.

* * * The best price obtainable shall be the greater of:

(a) The actual sales price of the property, after deducting the cost of repairs, furnishings, and equipment needed to make the property marketable, and after deducting the cost of transportation, set-up, and anchoring if the manufactured home is moved to a new homesite; or

(b) The appraised value of the property before repairs (as determined by a HUD-approved appraisal obtained in accordance with § 201.51(b)(3)).

23. Section 201.54 is amended by revising paragraph (b)(2), to read as follows:

§ 201.54 Insurance claim procedure.

* * * * *

(b) * * *

(2) The Secretary may extend the claim filing period in a particular case, but only if the lender shows clear evidence that the delay in claim filing was in the interest of the Secretary or was caused by one of the following:

(i) Litigation related to the loan;

(ii) Management control of the lender or the Title I loan portfolio was assumed by a Federal or State agency; or

(iii) The borrower had experienced a loss of income or other financial difficulties directly attributable to a major disaster declared by the President, and additional time was needed to provide forbearance on a property improvement loan.

* * * * *

24. Section 201.55 is amended by revising the introductory text of paragraph (a), the introductory text of paragraph (b), and paragraphs (b)(3) and (b)(7), to read as follows:

§ 201.55 Calculation of insurance claim payment.

* * * * *

(a) *Property improvement loans.* For property improvement loans, the insurance claim payment shall be 90 percent of the following amounts:

* * * * *

(b) *Manufactured home loans.* For manufactured home loans, the insurance claim payment shall be 90 percent of the sum of the following amounts:

* * * * *

(3) For manufactured home purchase loans, the amount of costs paid to a dealer or other third party to repossess and preserve the manufactured home and other property securing repayment of the loan (including the costs of site inspection, property appraisal, hazard insurance premiums, personal property taxes, and site rental, as appropriate), plus actual costs not to exceed $1,000 per module for removing and transporting the home to a dealer's lot or other off-site location.

* * * * *

(7) The amount of attorney's fees on an hourly or other basis for time actually expended and billed, not to exceed $1,000.

* * * * *

Dated: January 11, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–10885 Filed 5–01–96; 8:45 am]

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federal register

Thursday
May 2, 1996

Part IX

The President

Proclamation 6890—Law Day, U.S.A., 1996

Federal Register
Vol. 61, No. 86
Thursday, May 2, 1996

Presidential Documents

Title 3—

The President

Proclamation 6890 of April 30, 1996

Law Day, U.S.A., 1996

By the President of the United States of America

A Proclamation

For more than three decades, we have set aside the first day of May to honor the role our legal system plays in maintaining our country's greatness, to celebrate the precious freedoms our citizens have enjoyed since America's beginnings, and to recognize the crucial role of the law in ensuring our security and prosperity. Today, as we confront the threats of domestic and international terrorism and the violence that plagues our neighborhoods and schools, it is more important than ever for Americans to understand the extraordinary legacy left to us by our Founders and to reaffirm the ideals of liberty, equality, and justice.

This year's theme, ''The Constitution: The Original American Dream,'' underscores the centrality of this precious document in our national life. The doctrines set forth in our Constitution have made possible our progress and unparalleled history of freedom. Written more than 200 years ago, its measures were crafted by people who believed in individual rights and who understood that liberty must be the basis for our system of laws. As we approach a new century, we can be proud that our remarkable, dynamic Constitution, while reflecting the mores and culture of its time, continues to express America's profound commitment to human dignity.

We celebrate the Constitution as a model for other nations around the world, as the purest expression of American law, and as the ultimate authority for our statutes, judicial decisions, and Executive actions. But its power also depends on an informed, involved citizenry. Each of us must take personal responsibility for our actions and respect the rights of others. In homes, schools, neighborhoods, and businesses we must honor the rule of law and cherish the promise of equality and opportunity for all people. Every American must work to see that our Nation's legal system remains a model for the rest of the world and that future generations will continue to share its blessings.

On this day and throughout the year, let us consider the written instruments that have so profoundly shaped our experience and pay tribute to all those who enforce and maintain our legal and judicial systems—including police officers, community policing volunteers, lawyers, and members of our independent judiciary. Their efforts help to ensure that Americans will always enjoy individual liberties and a just society.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with Public Law 87-20 of April 7, 1961, do hereby proclaim May 1, 1996, as Law Day, U.S.A. I urge all Americans to recognize the rule of law as the basis for freedom in our democratic society and to learn more about the United States Constitution. I call upon members of the legal profession, civic associations, educators, librarians, public officials, and the media to promote the observance of this day with appropriate programs and activities. I also call upon public officials to display the flag of the United States on all government buildings throughout the day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, 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.

William J. Clinton

[FR Doc. 96–11194
Filed 5–1–96; 11:51 am]
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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.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Nectarines and peaches grown in California; published 5-1-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic mackerel, squid, and butterfish; published 4-2-96

Pacific Coast groundfish; published 4-2-96

FEDERAL COMMUNICATIONS COMMISSION

Communications equipment:

Radio frequency devices--

Vehicle-mounted radar system transmitters; frequency bands above 40 GHz made available for use; published 4-2-96

Freedom of Information Act; implementation:

Fee schedule; published 4-2-96

Radio stations; table of assignments:

Florida; published 5-2-96

Illinois; published 3-21-96

FEDERAL RESERVE SYSTEM

Electronic fund transfers (Regulation E):

Home banking services disclosure; new accounts error resolution, and stored-value cards, etc.; published 5-2-96

Official staff commentary; published 5-2-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airports:

National Capital airports; CFR part removed; published 5-2-96

Airworthiness directives:

Societe Nationale Industrielle Aerospatiale et al.; published 3-28-96

TRANSPORTATION DEPARTMENT

Federal Transit Administration

Charter service; and elderly and handicapped persons transportation; published 5-2-96

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Common trust funds diversification at time of combinaion or division; published 5-2-96

Investment companies; transfers of assets; published 5-2-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Spearmint oil produced in Far West; comments due by 5-9-96; published 4-9-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Bird quarantine facilities, privately owned; screening; comments due by 5-10-96; published 3-12-96

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Federal regulatory review; comment period reopening; comments due by 5-10-96; published 3-11-96

Meat and poultry inspection:

Substances suitable for use in meat and poultry products preparation; approval procedures; comments due by 5-6-96; published 3-6-96

COMMERCE DEPARTMENT

Census Bureau

Foreign trade statistics:

Softwood lumber from Canada; province of manufacture information collection for Customs entry records; comments due by 5-6-96; published 4-9-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic surf clam and ocean quahog; comments due by 5-10-96; published 5-2-96

Atlantic swordfish; comments due by 5-6-96; published 4-5-96

Gulf of Mexico and South Atlantic spiny lobster; comments due by 5-9-96; published 3-25-96

Gulf of Mexico stone crab; comments due by 5-9-96; published 3-25-96

Northern anchovy; comments due by 5-10-96; published 3-26-96

Salmon fisheries off coast of Alaska; comments due by 5-10-96; published 3-26-96

South Atlantic shrimp; comments due by 5-9-96; published 3-19-96

DEFENSE DEPARTMENT

Army Department

Military traffic management:

Freight traffic movement by air forwarders; comments due by 5-6-96; published 4-4-96

EDUCATION DEPARTMENT

Elementary and secondary education:

Elementary and Secondary Education Act; implementation; comments due by 5-10-96; published 3-26-96

ENERGY DEPARTMENT

National Environmental Policy Act implementing procedures:

Federal regulatory review--

Hearing and comment period reopening; comments due by 5-10-96; published 4-19-96

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Energy conservation:

Home energy rating system; voluntary guidelines; comments due by 5-9-96; published 4-9-96

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric uitilities (Federal Power Act):

Merger policy; inquiry; comments due by 5-7-96; published 2-7-96

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 5-9-96; published 4-9-96

Arizona; correction; comments due by 5-6-96; published 4-4-96

California; comments due by 5-9-96; published 4-9-96

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Wisconsin; comments due by 5-6-96; published 4-4-96

Hazardous waste:

Treatment, storage, and disposal facilities—

Tanks, surface impoundments, and containers; organic air emission standards,; comments due by 5-7-96; published 4-23-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

1,1,1,2-Tetrafluoroethane; comments due by 5-10-96; published 4-10-96

2-Bromo-2-nitro-1,3-propanediol; comments due by 5-10-96; published 4-10-96

Potassium citrate; comments due by 5-10-96; published 4-10-96

Triphenyltin hydroxide; comments due by 5-6-96; published 3-6-96

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Age Discrimination in Employment Act:

Apprenticeship programs coverage; comments due by 5-8-96; published 4-8-96

FEDERAL COMMUNICATIONS COMMISSION

Practice and procedure:

Television broadcast signals and multichannel multipoint distribution services; preemption of restrictions on over-the-air reception devices; comments due by 5-6-96; published 4-18-96

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Maritime and aviation services--

Domestic ship and aircraft radio stations; operation without individual licenses; comments due by 5-10-96; published 4-24-96

Television broadcasting:

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FEDERAL DEPOSIT INSURANCE CORPORATION

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FEDERAL TRADE COMMISSION

Textile Fiber Products Identification Act:

Federal regulatory review; comments due by 5-10-96; published 2-12-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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Feed amd drinking water of animals--

Formaldehyde; comments due by 5-9-96; published 4-9-96

Food additives:

Polymers--

Poly(oxy-1,2-ethanediyloxycarbonyl-2,6-naphthalenediylcarbonyl); comments due by 5-6-96; published 4-4-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid:

Personal care services coverage; comments due by 5-7-96; published 3-8-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

Vaccine injury compensation:

Vaccine injury table revision; comments due by 5-6-96; published 11-8-95

INTERIOR DEPARTMENT

Land Management Bureau

Federal regulatory review:

Recreation management; comment request; comments due by 5-9-96; published 4-9-96

Recreation programs; comment request; comments due by 5-9-96; published 4-9-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Nontoxic shot approval procedures for shot and shot coatings; test protocol; comments due by 5-10-96; published 4-29-96

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:

Surety bond coverage for leases; comments due by 5-6-96; published 3-6-96

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Montana; comments due by 5-10-96; published 4-10-96

SECURITIES AND EXCHANGE COMMISSION

Securities:

Disclosure of accounting policies for derivative financial instruments, etc.; comments due by 5-8-96; published 1-8-96

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:

National Sweepstakes Regatta et al.; event notification; Federal Register publication requirement eliminated; comments due by 5-6-96; published 3-22-96

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Federal Aviation Administration

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TRANSPORTATION DEPARTMENT

Federal Highway Administration

Federal regulatory review:

Rules of procedure for invoking sanctions under the 1966 Highway Safety Act; comments due by 5-6-96; published 3-22-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Federal regulatory review:

Rules of procedure for invoking sanctions under the 1966 Highway Safety Act; comments due by 5-6-96; published 3-22-96

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Practice and procedure:

Licensing and related services; user fees; comments due by 5-6-96; published 4-5-96

Rail rate reasonableness and exemption/revocation proceedings; expedited procedures; comments due by 5-6-96; published 3-22-96

LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 255/P.L. 104–135

To designate the Federal Justice Building in Miami, Florida, as the ''James Lawrence King Federal Justice Building''. (Apr. 30, 1996; 110 Stat. 1322)

H.R. 869/P.L. 104–136

To designate the Federal building and United States courthouse located at 125 Market Street in Youngstown, Ohio, as the ''Thomas D. Lambros Federal Buildingand United States Courthouse''. (Apr. 30, 1996; 110 Stat. 1323)

H.R. 1804/P.L. 104–137

To designate the United States Post Office-Courthouse located at South 6th and Rogers Avenue, Fort Smith, Arkansas, as the ''Judge Isaac C. Parker Federal Building''. (Apr. 30, 1996; 110 Stat. 1324)

H.R. 2415/P.L. 104–138

To designate the United States Customs Administrative Building at the Ysleta/Zaragosa Port of Entry located at 797 South Zaragosa Road in El Paso, Texas, as the ''Timothy C. McCaghren Customs Administrative Building''. (Apr. 30, 1996; 110 Stat. 1325)

H.R. 2556/P.L. 104–139

To redesignate the Federal building located at 345 Middlefield Road in Menlo Park, California, and known as the Earth Sciences and Library Building, as the ''Vincent E. McKelvey Federal Building''. (Apr. 30, 1996; 110 Stat. 1326)

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