

Federal Register

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- WHO: Sponsored by the Office of the Federal Register.
- WHAT: Free public briefings (approximately 3 hours) to present:
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 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

- WHEN: July 23, 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)
- RESERVATIONS: 202-523-4538



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Rules and Regulations

Federal Register

Vol. 61, No. 136

Monday, July 15, 1996

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.

GENERAL ACCOUNTING OFFICE

4 CFR Parts 28 and 29

Personnel Appeals Board; Procedural Regulations

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Final rule.

SUMMARY: The General Accounting Office Personnel Appeals Board is issuing a final rule to govern appeals of employees who are separated from employment as a result of a Reduction in Force (RIF) action. The rule is published according to the Board's authority under section 753(d) of the General Accounting Office Personnel Act of 1980 (GAOPA). The revision provides affected employees with an optional streamlined process for pursuing appeals of RIF-based terminations.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Catherine McNamara, Solicitor, Personnel Appeals Board, 202-512-6137.

SUPPLEMENTARY INFORMATION: The Personnel Appeals Board (PAB) authority with respect to employment practices within the General Accounting Office (GAO or the agency) includes authority over appeals from RIF actions taken by the agency. The GAO recently revised Order 2351.1, Reduction in Force, applicable to GAO employees.

The PAB has long had published regulations which define the role of its Office of General Counsel (PAB/OGC) and the procedures to be followed in pursuing an appeal before the Board. See 4 CFR part 28. Previous regulations required that in all cases an individual obtain a Right to Appeal Letter from the PAB's Office of General Counsel before filing with the Board. See 4 CFR 28.18(a). The Board or an administrative judge can waive a PAB regulation in an

individual case for good cause shown, consistent with the requirements of the GAOPA. 4 CFR 28.16(b).

On March 7, 1996, the Board adopted interim regulations (61 FR 9089) to provide employees who are separated from employment as a result of a RIF action with the option of appealing directly to the PAB without first filing a charge with the Board's Office of General Counsel, as prescribed in § 28.11 of this part, and obtaining a Right to Appeal Letter. This change was designed to expedite the appeal process, at the employee's option, in situations in which the RIF action results in separation from employment. Because of the need to have regulations in place prior to agency implementation of its RIF order, the revisions were made effective immediately on an interim basis. With several modifications as explained below, the regulations are adopted as final. Because the appeal period for recent RIF action at GAO is currently running, this final rule is made effective immediately.

Brief Summary of the Interim Regulations

The interim regulations published by the Board on March 7, 1996, contained a new § 28.13, defining a special procedure for actions challenging a RIF-based termination to bypass the PAB/OGC at the option of the employee. See 61 FR 9089 (March 7, 1996). In addition, the interim regulations amended § 28.18, paragraphs (a) and (b), to specify that a person whose employment was terminated as a result of a RIF action may choose to file directly with the Board, and that such an action must be filed within 30 days of the effective date of the RIF action.

The PAB invited comments from the public through May 31, 1996, and stated that it would carefully consider such comments before the regulations were adopted in final form. See 61 FR 9089. In addition to publishing the interim regulations in the Federal Register, the PAB also provided GAO employees with notice of the revised procedures, applicable to individuals separated from employment because of a RIF, by means of a summary of the changes in the "GAO Management News." See GAO Management News, Vol. 23, No. 25 (Week of April 8-12, 1996).

The Board received one comment concerning the interim regulations. That comment, submitted by Patricia Shahren,

Acting Director of GAO's Affirmative Action/Civil Rights Office, addressed a perceived ambiguity in the regulations as revised. The perceived ambiguity involved whether an employee raising discrimination issues in challenging a RIF-based separation may bypass the Civil Rights Office as well as the PAB/OGC.

In revised § 28.13, the Board streamlined the appeal process for employees separated by a RIF by allowing them to file directly with the Board without first filing a charge with the PAB's Office of General Counsel. Ms. Shahren's comment pointed out that under 4 CFR 28.98(a), employees raising charges of prohibited discrimination are required to file a discrimination complaint with GAO's Civil Rights Office before filing such a complaint with the PAB General Counsel. Section 28.98(c) provides an exception to this rule for employees affected by a removal, suspension for more than 14 days, reduction in grade or pay, or furlough of not more than 30 days. If an employee alleges that the subject action was due at least in part to unlawful discrimination, he or she may elect to file a charge directly with the PAB General Counsel. The comment pointed out that the exception in § 28.98(c) does not specifically refer to RIF actions.

Ms. Shahren expressed concern that the revised regulations "could be interpreted to mean that employees who allege discrimination because of a RIF, may go directly to the Board without going through the Civil Rights Office process; but if they want to go through the PAB General Counsel, they must first go through the Civil Rights Office process. This does not seem to be the intent of the proposed regulation."

Summary of Changes

After carefully considering the comment received, the Board has adopted several modifications to the regulations to clarify their effect on RIF-based termination actions raising discrimination claims. In addition, conforming changes were made to assure that the streamlined procedures would be available to Board employees, and several technical changes were made to reflect a revision to the Board's address.

Section 28.13, added in the interim regulations, is revised to clarify that individuals raising discrimination issues in RIF-based actions may avail

themselves of the streamlined procedures which allow bypassing the PAB/OGC. The revised section also specifies that, pursuant to § 28.98, such individuals also may bypass the agency Civil Rights Office in the interest of reaching an expeditious resolution of their complaints.

Section 28.98, which was not specifically addressed in the interim regulations, is amended to clarify that in RIF-based actions raising discrimination claims, an employee may elect to (1) file directly with the PAB/OGC, (2) proceed through the agency's discrimination complaint processing system, or (3) file directly with the PAB, thus bypassing both the PAB/OGC and the Civil Rights Office. The Board notes that when § 28.98(c) was published for comment, the agency did not object to the change which gave employees a choice of procedures for adverse or performance-based actions alleged to be due to discrimination. See 58 FR 61988, 61990-91 (November 23, 1993).

In reconsidering the regulatory revisions, the Board also concluded that a further change was necessary to clarify that PAB personnel may avail themselves of the streamlined procedures for pursuing RIF-based termination appeals. Section 28.17(a) was revised to specify that Board employees, whether or not raising equal employment opportunity (EEO) claims, may choose to file an appeal of a RIF-based termination directly with the PAB.

Several technical changes were made in 4 CFR parts 28 and 29 to reflect the Board's change of address. These sections specify where to file at the PAB or the PAB/OGC: §§ 28.11(c) (1) and (2); 28.18(c) (1) and (2); 28.86(b) (1) and (2); 29.8(c) (1) and (2); and 29.10(c) (1) and (2).

Accordingly, 4 CFR parts 28 and 29 are amended and the interim rule amending title 4, part 28, Code of Federal Regulations, which was published at 61 FR 9089 on March 7, 1996, is adopted as final, with changes as follows.

List of Subjects

4 CFR Part 28

Administrative practice and procedure, Equal employment opportunity, Government employees, Labor-management relations, Reductions in force.

4 CFR Part 29

Administrative practice and procedure, Equal employment opportunity, Government employees.

PART 28—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT PRACTICES AT THE GENERAL ACCOUNTING OFFICE

1. The authority citation for part 28 continues to read as follows:

Authority: 31 U.S.C. 753.

2. Section 28.11, paragraph (c)(1) and the first sentence of paragraph (c)(2) are revised to read as follows:

§ 28.11 Filing a charge with the General Counsel.

* * * * *

(c) * * *

(1) *Filing in person:* A charge may be filed in person at the Office of the General Counsel, Suite 580, Union Center Plaza II, 820 First Street, NE., Washington, DC.

(2) *Filing by mail:* A charge may be filed by mail addressed to the General Counsel, Personnel Appeals Board, Suite 580, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548.

* * * * *

3. Section 28.13 is revised to read as follows:

§ 28.13 Special procedure for Reduction in Force.

In the event of a Reduction in Force resulting in an individual's separation from employment, an aggrieved employee may choose to file an appeal directly with the Personnel Appeals Board, without first filing the charge with the PAB's Office of General Counsel pursuant to § 28.11. This option is available to individuals raising discrimination issues in connection with a RIF action. Pursuant to § 28.98, such individuals need not file a complaint with GAO's Civil Rights Office before pursuing a RIF challenge alleging discrimination, either by filing directly with the PAB or by filing a charge with the PAB's Office of General Counsel.

4. In § 28.17, paragraphs (a)(2) and (a)(3) are revised to read as follows:

§ 28.17 Internal appeals of Board employees.

(a) * * *

(1) * * *

(2) When an employee of the Board believes that he or she has been denied his or her right to equal employment opportunity, the employee shall consult either with the Solicitor or with the General Counsel and seek advice on filing an EEO complaint. If the matter cannot be resolved within 10 days, the Solicitor or General Counsel shall notify

the employee of his or her right to file an EEO complaint. The employee shall have 20 days from service of this notice to file an EEO complaint with the General Counsel. Upon receipt of an EEO complaint, the General Counsel shall arrange for processing in accordance with paragraph (b) of this section. If the EEO allegations involve challenge to a RIF-based separation, the employee may choose to expedite the procedures by filing a charge directly with the Board.

(3) When an employee of the Board wishes to raise any other issue that would be subject to the Board's jurisdiction, the employee shall file a charge with the General Counsel and the General Counsel shall arrange for processing in accordance with paragraph (b) of this section. If the challenged action is a RIF-based separation from employment, the employee may choose to expedite the procedures by filing a charge directly with the Board.

* * * * *

5. Section 28.18, paragraph (c)(1) and the first sentence of paragraph (c)(2) are revised as follows:

§ 28.18 Filing a petition for review with the Board.

* * * * *

(c) * * *

(1) *Filing in person:* A petition may be filed in person at the office of the Board, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC.

(2) *Filing by mail:* A petition may be filed by mail addressed to the Personnel Appeals Board, Suite 560, Union Center Plaza II, 441 G Street NW., Washington, DC 20548. * * *

* * * * *

6. Section 28.86, paragraph (b)(1) and the first sentence of paragraph (b)(2) are revised to read as follows:

§ 28.86 Board procedures; recommended decisions.

* * * * *

(b) * * *

(1) *Filing by hand delivery:* Exceptions may be filed by hand delivery at the office of the Board, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC.

(2) *Filing by mail:* Exceptions may be filed by mail addressed to the Personnel Appeals Board, Suite 560, Union Center Plaza II, 441 G Street, NW., Washington DC 20548. * * *

* * * * *

7. Section 28.98 is amended by redesignating paragraph (d) as (e)(1), by adding new paragraphs (d) and (e)(2), by revising the paragraph heading of

paragraph (c) and by revising newly redesignated paragraph(e)(1) as follows:

§ 28.98 Individual charges in EEO cases.

(c) *Special rules for adverse and performance based actions.* * * *
 (d) *Special rules for RIF based actions.* An individual alleging discrimination issues in connection with a RIF-based separation may follow the procedures outlined above in paragraph (c) of this section for adverse and performance based actions, or may choose instead a third option. In accordance with the provisions of § 28.13, such an individual may appeal that action by filing directly with the PAB, thus bypassing both the Civil Rights Office and the PAB's Office of General Counsel.

(e)(1) The charging party shall file the charge with the General Counsel in accordance with § 28.11. The General Counsel shall investigate the charge in accordance with § 28.12.

(2) A charging party challenging a RIF action by filing directly with the PAB shall follow the procedures prescribed in § 28.13 and § 28.18.

PART 29—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT AT THE ARCHITECT OF THE CAPITOL

8. The authority citation for part 29 continues to read as follows:

Authority: 31 U.S.C. 753.

9. Section 29.8, paragraph (c)(1) and the first sentence of paragraph (c)(2) are revised to read as follows:

§ 29.8 Filing a charge with the General Counsel.

(1) *Filing in person:* A charge may be filed in person at the Office of the General Counsel, Suite 580, Union Center Plaza II, 820 First St. NE., Washington, DC.

(2) *Filing by mail:* A charge may be filed by mail addressed to the General Counsel, Personnel Appeals Board, Suite 580, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548.

10. Section 29.10, paragraph (c)(1) and the first sentence of paragraph (c)(2) are revised to read as follows:

§ 29.10 Filing a petition for review with the Board.

(1) *Filing in person:* A petition may be filed in person at the office of the Board, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC.

(2) *Filing by mail:* A petition may be filed by mail addressed to the Personnel Appeals Board, Suite 560, Union Center Plaza II, 441 G Street, NW., Washington DC 20548.

Nancy A. McBride,
 Chair, Personnel Appeals Board General Accounting Office.
 [FR Doc. 96-17873 Filed 7-12-96; 8:45 am]
 BILLING CODE 1610-01-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 96-016-9]

Karnal Bunt; Public Forum

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public forum.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is hosting a public forum in Washington, DC, on the Agency's program to control and eradicate Karnal bunt. The forum will provide an additional opportunity for the public to comment on the regulations established and amended by a series of interim rules published in the Federal Register since March, 1996. The regulations quarantine portions of Arizona, California, New Mexico, and Texas because of infestations of Karnal bunt, restrict the movement of regulated articles from the quarantined areas, and provide compensation for certain individuals in order to mitigate losses and expenses incurred because of Karnal bunt. Comments will also be accepted addressing any aspect of the Karnal bunt program not included in the regulations, including control and survey activities conducted in the quarantined areas, the national Karnal bunt survey program, and the certification of wheat for export. Information gathered at the public forum will be considered by the Department in developing guidelines and procedures for conducting the Karnal bunt program for the 1996-97 wheat growing season. USDA intends to schedule additional public forums on the Karnal bunt program, to be held in Arizona, California, and Kansas over the

next 2 months. We will give notice of these additional forums in the Federal Register.

DATES: The public forum will be held in Washington, DC, on Wednesday, July 17, 1996, from 9 a.m. until 5 p.m.

Consideration will be given only to comments received on or before September 3, 1996.

ADDRESSES: The public forum will be held in room 107A, Jamie L. Whitten Federal Building, United States Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC. Persons attending the forum should use the entrance to the building facing the Mall, and will be required to show picture identification at the Guard Desk. Any persons who are unable to attend the forum, but who wish to comment on any aspect of the Karnal bunt program, may send written comments.

Please send an original and three copies of written comments to Docket No. 96-016-9, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 96-106-9. Comments received, including a transcript from the public forum, may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247.

SUPPLEMENTARY INFORMATION: This public forum is being held concerning the Animal and Plant Health Inspection Service's (APHIS) program to control and eradicate Karnal bunt. Comments will be accepted on the regulations established and amended by a series of interim rules published by APHIS in the Federal Register since March, 1996. These interim rules were published on March 28, 1996 (61 FR 13649-13655, Docket No. 96-016-3), April 25, 1996 (61 FR 18233-18235, Docket No. 96-016-5), and July 5, 1996 (61 FR 35107-35109, Docket No. 96-016-6 and 61 FR 35102-35107, Docket No. 96-016-7). The public forum in Washington, DC, will be held on Wednesday, July 17, 1996, in room 107A, Jamie L. Whitten Federal Building, United States Department of Agriculture, 14th Street

and Independence Avenue SW., Washington, DC.

Comments were required to be received on Docket No. 96-016-3 on or before May 28, 1996, and on Docket No. 96-016-5 on or before June 24, 1996. We are reopening and extending the comment periods for both of these interim rules until September 3, 1996, in order to receive additional public comments at this forum, and at forums in Arizona, California, and Kansas to be scheduled over the next 2 months. We will give notice of these additional forums in the Federal Register. The comment periods for Docket No. 96-016-6 and Docket No. 96-016-7 are already scheduled to close on September 3, 1996.

A representative of the United States Department of Agriculture (USDA) will preside at the public forum. Any interested person may appear and be heard in person, or through an attorney or other representative. Persons who wish to speak at the public forum will be asked to provide their names and affiliations. Parties wishing to make oral presentations may register in advance by calling the Legislative and Public Affairs staff of APHIS, USDA, at (202) 720-2511 before close of business on July 15, 1996. Registration will also be held at the hearing site on July 17, 1996, from 8 a.m. until 8:45 a.m. Speakers will be scheduled in the order their registration is received.

The public forum will begin at 9 a.m. and is scheduled to end at 5 p.m. local time. However, the forum may be terminated at any time after it begins if all persons desiring to speak have been heard. The presiding officer may limit the time for each presentation so that all interested persons have an opportunity to participate. Attendees who wish to speak but who did not register will be provided time to speak only after all registered speakers have been heard.

The purpose of the forum is to give interested persons an opportunity for oral presentation of data, views, and information to the Department concerning APHIS' program to control and eradicate Karnal bunt. Questions about the content of the interim rules concerning Karnal bunt may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of the Department will respond to the comments on the interim rules at the forum, except to clarify or explain provisions of the interim rules.

We ask that anyone who reads a statement provide two copies to the presiding officer at the forum. A transcript will be made of the public forum and the transcript will be placed

in the rulemaking record and will be available for public inspection.

Done in Washington, DC, this 10th day of July 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96-17994 Filed 7-11-96; 10:25 am]

BILLING CODE 3410-34-P

7 CFR Part 301

[Docket No. 96-016-8]

Karnal Bunt; Removal of Quarantined Areas; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; technical amendment.

SUMMARY: In an interim rule effective June 27, 1996, and published in the Federal Register on July 5, 1996, we amended the Karnal bunt regulations by removing certain areas in Arizona, New Mexico, and Texas from the list of areas quarantined because of infestations of Karnal bunt. We removed a portion of Mohave County, AZ, from the list of quarantined areas that should not have been removed. Therefore, we are amending the boundaries of the quarantined area in Mohave County, AZ, to add that portion of the county to the list of quarantined areas.

DATES: This amendment is effective July 9, 1996. We will consider written comments on the interim rule (Docket No. 96-016-6) published at 61 FR 35107, as corrected by this document, received on or before September 3, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96-016-6, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale MD 20737-1238. Please state that your comments refer to Docket No. 96-016-6. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPD, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737-1236, (301) 734-8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: In an interim rule effective June 27, 1996, and published in the Federal Register on July 5, 1996 (Docket No. 96-016-6) (61 FR 35107), we amended the Karnal bunt regulations in 7 CFR 301.89-3(e) by removing areas in Arizona, New Mexico, and Texas from the list of areas quarantined because of infestations of Karnal bunt. We removed a portion of Mohave County, AZ, from the list of quarantined areas that should not have been removed. Therefore, we are amending the boundaries of the quarantined area in Mohave County, AZ, to add that portion of the county to the list of quarantined areas.

Before the effective date of this document, the portion of Mohave County, AZ, that remained under quarantine for Karnal bunt was located in the western central region of the county and, therefore, was isolated from the larger, continuous area quarantined for infestations of Karnal bunt that includes counties, and portions of counties, in Arizona, California, New Mexico, and Texas. We are expanding the quarantined area in Mohave County, AZ, to include the portion of the county that connects the previously isolated quarantined area to the larger quarantined area. The portion of Mohave County, AZ, that we are adding to the list of quarantined areas does not produce wheat and has no association with Karnal bunt contaminated seed, but regulated articles from areas that are quarantined because of infestations of Karnal bunt are transported through this area. As amended by this document, the quarantined area of Mohave County, AZ, is that portion of the county bounded as follows: Beginning at the intersection of Arizona/Nevada State line and State Route 68; then east along State Route 68 to U.S. Highway 93; then southeast along U.S. Highway 93 to Interstate 40; then east along Interstate 40 to U.S. Highway 93; then south along U.S. Highway 93 to the Mohave/Yavapai County line; then south along the Mohave County line to the Mohave/La Paz County line; then west along the Mohave County line to the Arizona/California State line; then north along the State line to the point of beginning.

This action prevents the artificial spread of Karnal bunt into noninfested areas of the United States while allowing the movement of regulated articles within the area quarantined for Karnal bunt, including counties, and portions of counties, in Arizona, California, New Mexico, and Texas.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine,

Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.89–3, paragraph (e) is amended by revising the entry for Mohave, County, AZ, to read as follows:

§ 301.89–3 Quarantined areas.

* * * * *

(e) * * * *

Arizona

* * * * *

Mohave County. Beginning at the intersection of Arizona/Nevada State line and State Route 68; then east along State Route 68 to U.S. Highway 93; then southeast along U.S. Highway 93 to Interstate 40; then east along Interstate 40 to U.S. Highway 93; then south along U.S. Highway 93 to the Mohave/Yavapai County line; then south along the Mohave County line to the Mohave/La Paz County line; then west along the Mohave County line to the Arizona/California State line; then north along the State line to the point of beginning.

* * * * *

Done in Washington, DC, this 9th day of July 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–17919 Filed 7–12–96; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV96–948–2IFR]

Irish Potatoes Grown in Colorado; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) under Marketing Order No. 948 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the

handling of Irish potatoes grown in Colorado. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on September 1, 1996. Comments received by August 14, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. 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: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698, or Dennis L. West, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724, FAX 503–326–7440.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

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

This rule has been reviewed under Executive order 12778, Civil Justice Reform. Under the marketing order now in effect, Colorado potato 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 potatoes beginning September 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. 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 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 285 producers of Colorado Area II potatoes in the production area and approximately 118 handlers subject to regulation under the marketing order. 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 Colorado Area II potato producers and handlers may be classified as small entities.

The Colorado potato marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Colorado Area II potatoes. 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 is

formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met on May 23, 1996, and unanimously recommended 1996-97 expenditures of \$60,999 and an assessment rate of \$0.0030 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were \$62,328. The assessment rate of \$0.0030 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996-97 year include \$34,624 for salaries for the Executive Director, Administrator, and Assistant Administrator, and \$3,000 for utilities. Budgeted expenses for these items in 1995-96 were \$36,978 and \$3,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area II potatoes. Potato shipments for the year are estimated at 16,500,000 hundredweight which should provide \$49,500 in assessment income. Income derived from handler assessments, along with 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.

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 AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

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 of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at those meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996-97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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, 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 September 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes 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 rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. A new § 948.216 is added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

§ 948.216 Assessment rate.

On and after September 1, 1996, an assessment rate of \$0.0030 per hundredweight is established for Colorado Area II potatoes.

Dated: July 8, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-17867 Filed 7-12-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 989

[FV96-989-1FIR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1995-96 Crop Year for Natural (Sun-Dried) Seedless, Zante Currant, and Other Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which established final free and reserve percentages for 1995-96 crop Natural (sun-dried) Seedless (NS), Zante Currant (ZC), and Other Seedless (OS) raisins. The percentages are 79 percent free and 21 percent reserve, 70 percent free and 30 percent reserve, and 51 percent free and 49 percent reserve for NS, ZC, and OS raisins, respectively. These percentages are intended to stabilize supplies and prices and to help counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. This rule was unanimously recommended by the Raisin Administrative Committee (Committee), the body which locally administers the marketing order.

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT:

Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: 209-487-5901 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: 202-205-2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This action finalizes final free and reserve percentages for NS, ZC, and OS raisins for the 1995-96 crop year, beginning August 1, 1995, through July 31, 1996. This 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 requesting a modification of the order or to be exempt 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/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.

An interim final rule was published in the Federal Register on February 26, 1996 (61 FR 7067), with an effective date of February 26, 1996. That rule established final free and reserve percentages for NS, ZC, and OS raisins for the 1995-96 crop year. The percentages were established in a new section 989.249 of the rules and regulations in effect under the marketing order. That rule provided a 30-day comment period which ended March 27, 1996. No comments were received.

The order prescribes procedures for computing trade demands and

preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

While this rule continues in effect restrictions limiting the amount of NS, ZC, and OS raisins that enter domestic markets, final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, and authorizing sales of reserve raisins under certain conditions.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specifies that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of a final percentage which makes available 100 percent of the computed trade demand and the additional offering of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use. A total of 62,578 tons of NS, 960 tons of ZC, and 638 tons of OS were purchased by handlers for free use pursuant to these offers.

Pursuant to section 989.54(a) of the order, the Committee met on August 15, 1995, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90

percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. As specified in section 989.154, the desirable carryout for each varietal type shall be equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one fourth of October. If the prior year's shipments are limited because of crop conditions, the total shipments during that period of time during one of the three years preceding the prior crop year may be used. In accordance with these provisions, the Committee computed and announced 1995-96 trade demands of 257,314 tons, 2,208 tons, and 1,047 tons for NS, ZC, and OS raisins, respectively.

As required under section 989.54(b) of the order, the Committee met on October 3, 1995, and computed and announced preliminary crop estimates and preliminary free and reserve percentages for NS and ZC raisins which released 65 percent of the trade demand since the field prices had not been established, and 85 percent of the trade demand for OS raisins because the field price had been established. The preliminary crop estimates and preliminary free and reserve percentages were as follows: 335,118 tons, 50 percent free, and 50 percent reserve for NS raisins; 3,696 tons, 39 percent free, and 61 percent reserve for ZC raisins; and 2,197 tons, 40 percent free, and 60 percent reserve for OS raisins. The Committee authorized the Committee staff to modify the preliminary percentages to release 85 percent of the trade demand when the field prices were established for NS and ZC raisins. The preliminary percentages for NS and ZC raisins were adjusted soon thereafter to 65 percent free, 35 percent reserve, and 51 percent free and 49 percent reserve, respectively.

Also at that meeting, the Committee computed and announced preliminary crop estimates and preliminary free and reserve percentages for Dipped Seedless, Oleate and Related Seedless, Golden Seedless, Sultana, Muscat, and Monukka raisins. It determined that the supplies of these varietal types would be less than or close enough to the computed trade demands for each variety, and that volume control percentages would not be necessary to maintain market stability for these varietal types.

On January 12, 1996, the Committee recommended final percentages of 79 percent free, 21 percent reserve for NS raisins; 70 percent free, 30 percent reserve for ZC raisins; and 51 percent free, 49 percent reserve for OS raisins.

Pursuant to section 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type. The Committee also computed interim free and reserve percentages at the January 12, 1996, meeting. Interim percentages were announced as 78.75 percent free, 21.25 percent reserve for NS raisins; 69.75 percent free, 30.25 percent reserve for ZC raisins; and 50.75 percent free, 49.25 percent reserve for OS raisins. That action released most, but not all, of the computed trade demand for NS, ZC, and OS raisins.

Under section 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type.

The Committee's final estimate of 1995-96 production of NS raisins is 325,808 tons. Dividing the computed trade demand of 257,314 tons by the final estimate of production results in a final free percentage of 79 percent and a final reserve percentage of 21 percent for NS raisins.

The Committee's final estimate of 1995-96 production of ZC raisins is 3,158 tons. Dividing the computed trade demand of 2,208 tons by the final estimate of production results in a final free percentage of 70 percent and a final reserve percentage of 30 percent for ZC raisins.

The Committee's final estimate of 1995-96 production of OS raisins is 2,048 tons. Dividing the computed trade demand of 1,047 tons by the final estimate of production results in a final free percentage of 51 percent and a final reserve percentage of 49 percent for OS raisins.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially

small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 4,500 producers in the production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts (from all sources) are less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. No more than eight handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least \$5,000,000, and the remaining eight handlers have sales less than \$5,000,000, excluding receipts from any other sources.

In recent years, the California raisin industry has been faced with a burdensome oversupply. A major reason for its oversupply problem is that wineries have not been purchasing as many raisin variety grapes. Raisin variety grapes which wineries will not buy generally are dried into raisins. The volume control procedures specified in the order provide a means of lessening the impact of year-to-year variations in raisin supplies on producer prices. The percentages contribute toward orderly marketing and market stability.

The free and reserve percentages established by the interim final rule, and continued in effect, without change, by this rule, apply uniformly to all handlers in the industry, whether small or large, and release the full trade demand. There are no known additional costs incurred by small handlers that are not incurred by large handlers. As the season progressed, additional quantities of the trade demand were released. For some varieties of raisins, no volume control was implemented.

Although raisin markets are limited, they are available to all handlers, regardless of size. While the level of benefits of this action are difficult to quantify, the stabilizing effects of the percentages impact both small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate from season to season. Between the 1989-90 and 1994-95 crop years, total California raisin shipments increased by three percent, which benefitted both small and large handlers.

Accordingly, the Agricultural Marketing Service has determined that the issuance of this final rule will not have a significant economic impact on

a substantial number of small entities in the California raisin industry.

After consideration of all relevant information presented, including the Committee's recommendations and other information, it is found that finalizing the interim final rule, without change, as published in the Federal Register on February 26, 1996 (61 FR 7067), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 61 FR 7067 on February 26, 1996, is adopted as a final rule without change.

Dated: July 8, 1996.
Robert C. Keeney,
Director, Fruit and Vegetable Division.
[FR Doc. 96-17869 Filed 7-12-96; 8:45 am]
BILLING CODE 3410-02-P

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 91-101-2]

Goats Imported From Mexico for Immediate Slaughter; Horse Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal importation regulations to clarify the quarantine requirements for horses imported into the United States. We are not taking final action in this document to remove the requirements for a health certificate for goats imported into the United States from Mexico for immediate slaughter.

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1228, (301) 734-8170, or e-mail: dvogt@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 govern the importation into the United

States of certain animals and poultry and certain animal and poultry products. Section 92.308 establishes requirements for the quarantine of certain horses imported into the United States. Section 92.308(c)(2)(ii)(B), which contains the physical requirements for a quarantine facility, provides that "Doors, windows, and other openings of the facility shall be provided with double screens which will prevent insects from entering the facility." However, the preceding paragraph, § 92.308(c)(2)(ii)(A) states that "All walls, floors and ceilings shall be constructed of solid impervious material or be screened as provided in paragraph (c)(2)(ii)(B) of this section." The last phrase of this sentence has led some readers to believe that walls, floors, and ceilings, of quarantine facilities could somehow be constructed of screening. However, our intention is that if a facility's solid and impervious walls, floor or ceiling have openings, they must be screened in accordance with § 92.308(c)(2)(ii)(B).

On March 1, 1994, we published in the Federal Register (59 FR 9679-9681, Docket No. 91-101-1) a proposal to amend the regulations by removing the last phrase of the misleading sentence in § 92.308(c)(2)(ii)(A) to make it read "All walls, floors and ceilings shall be constructed of solid impervious material."

We also proposed, in the same Federal Register document, to amend the regulations in §§ 92.428 and 92.429, concerning importation of goats by allowing goats from Mexico to be imported into the United States without a health certificate if the goats were imported for immediate slaughter.

We solicited comments concerning our proposal for 60 days ending May 2, 1994. We received one comment addressing this proposed change to § 92.308(c)(2)(ii)(A), and the comment was supportive.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the portion of the proposal that pertained to horse quarantine facilities as a final rule without change.

We received three comments on this proposed change to §§ 92.428 and 92.429 by the close of the comment period. They were from a research organization, a State agricultural department, and a goat industry representative. One was supportive; the other two expressed concern that the goats could present a disease risk.

The proposed provisions concerning goats are not adopted by this document. At this time, we are considering major revisions to the regulations for importing ruminants, including goats,

and to the regulations for importing swine and products of ruminants and swine. Interested persons should see Docket No. 94-106-1 (61 FR 16978-17105), a proposed rule published for comment on April 18, 1996. The three comments received on the proposed change to §§ 92.428 and 92.429 will be considered in conjunction with that rulemaking.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule is making a minor change for clarity in our regulations concerning horses subject to quarantine after importation into the United States. Since this rule change is only a clarification, there will be no economic impact on any large or small entities.

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

Executive Order 12778

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

Paperwork Reduction Act

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

Accordingly, 9 CFR part 92 is amended as follows:

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

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

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

§ 92.308 [Amended]

2. In § 92.308, paragraph (c)(2)(ii)(A) is amended by removing the phrase "or be screened as provided in paragraph (c)(2)(ii)(B) of this section".

Done in Washington, DC, this 9th day of July 1996.

Terry L. Medley,
Administrator, Animal and Plant Health
Inspection Service.

[FR Doc. 96-17917 Filed 7-12-96; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-CE-35-AD; Amendment 39-9689; AD 93-15-02 R2]

RIN 2120-AA64

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises Airworthiness Directive (AD) 93-15-02 R1, which requires the following on Fairchild Aircraft SA226 and SA227 series airplanes that are equipped with a certain Simmonds-Precision pitch trim actuator: repetitively measuring the freeplay of the pitch trim actuator and repetitively inspecting the actuator for rod slippage; immediately replacing any actuator if certain freeplay limitations are exceeded or rod slippage is evident; and eventually replacing the actuator regardless of the inspection results. The compliance times for the first inspection of an actuator that is installed in accordance with AD 93-15-02 R1 was inadvertently referenced incorrectly. This action retains the repetitive inspection and replacement requirements of the current AD, corrects the above-referenced compliance times, and adds an additional replacement actuator option that will then require repetitive inspections and replacements of that actuator. The actions specified by this AD are intended to prevent the horizontal stabilizer from going nose-down or jamming because of pitch trim actuator failure, which could result in loss of control of the airplane.

DATES: Effective July 25, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of July 25, 1996.

Comments for inclusion in the Rules Docket must be received on or before August 30, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Field Support Engineering, Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490; telephone (210) 824-9421; facsimile (210) 820-8609. This information may also be examined at the FAA, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

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

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

On July 20, 1993, the FAA issued AD 93-15-02, Amendment 39-8648 (59 FR 40734, July 30, 1993), to require the following on Fairchild Aircraft SA226 and SA227 series airplanes that are equipped with a Simmonds-Precision pitch trim actuator, part number (P/N) DL5040M5:

- repetitively measuring the freeplay of the pitch trim actuator and
- repetitively inspecting the actuator for rod slippage; and,
- if certain freeplay limitations are exceeded or rod slippage is evident, replacing any actuator with a new actuator of the same part number or with a part of improved design, P/N 27-19008-001 or P/N 27-19008-002.

The requirements of the AD will no longer apply when an actuator of improved design, P/N 27-19008-001 or P/N 27-19008-002, is installed. AD 93-15-02 specified accomplishment of the freeplay measurements and inspections in accordance with the instructions in Fairchild Aircraft SA226 Series Service Letter (SL) 226-SL-005, and Fairchild Aircraft SA227 Series SL 227-SL-011, both Issued: April 8, 1993, Revised: April 28, 1993, as applicable; and specified accomplishment of the pitch trim actuator replacement in accordance with the applicable maintenance manual.

AD 93-15-02 was issued based on reports of two in-flight incidents where the above-referenced pitch trim actuator failed on Fairchild Aircraft SA226 and SA227 series airplanes. In one case, the horizontal stabilizer went full-nose down, and in the other instance, the horizontal stabilizer jammed. Fortunately, the pilots were able to safely land in both of these instances. Upon removal and inspection of each of

these pitch trim actuators, fatigued barrel nuts were found and the actuator usage time was well over 5,000 hours time-in-service (TIS).

After AD 93-15-02 became effective, the FAA received a report of an in-flight incident where the referenced actuator on one of the affected airplanes failed. The airplane operator had accomplished the 5,000-hour TIS initial inspection (with satisfactory results), but had not reached the 6,500-hour TIS mandatory replacement threshold.

This prompted the FAA to revise AD 93-15-02 (to the R1 level, Amendment 39-9180, 60 FR 15667, March 27, 1995) to require the same repetitive inspections and actuator replacement as AD 93-15-02, but changes the compliance times by (1) reducing the number of hours time-in-service (TIS) before the initial inspection is required; and (2) shortening both the time period between repetitive inspections and the actuator replacement compliance time, unless the replacement actuator is new or if the tube nut assemblies have been replaced during overhaul. Fairchild Aircraft revised the applicable service bulletins to reflect the inspection time changes. Accomplishment of the inspections required by AD 93-15-02 R1 is in accordance with the instructions in Fairchild Aircraft SA226 Series Service Letter (SL) 226-SL-005, and Fairchild Aircraft SA227 Series SL 227-SL-011, both Issued: April 8, 1993, Revised: March 2, 1995, as applicable.

AD 93-15-02 R1 inadvertently referenced incorrect compliance times for the first inspection for an actuator that is installed in accordance with AD 93-15-02 R1. That AD specifies repetitively inspecting the actuator at either 250 or 300-hour TIS intervals after replacing the actuator. The intent was to initially inspect upon accumulating 3,000, 5,000, or 7,500 hours TIS (depending on the type of actuator replacement) after installing the actuator, and repetitively inspecting every 250 or 300 hours TIS thereafter.

In addition, the FAA has become aware of an additional replacement actuator that should be incorporated into the existing AD. This replacement actuator is a modified P/N DL5040M5 actuator that is re-identified as P/N DL5040M6. Installation of this actuator would then require repetitive inspections and replacements.

After examining all available information related to the subject discussed above, the FAA has determined that further AD action should be taken to correct these compliance times of AD 93-15-02 R1 and to prevent the horizontal stabilizer from going nose-down or jamming

because of pitch trim actuator failure, which could result in loss of control of the airplane.

Fairchild Aircraft has revised (dated May 22, 1996) SA226 Series SL 226-SL-005 and SA227 Series 227-SL-011, to reflect the information discussed above.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design that are equipped with a Simmonds-Precision pitch trim actuator, P/N DL5040M5 or P/N DL5040M6, this AD requires the same repetitive inspections and actuator replacement as AD 93-15-02 R1, but revises the initial inspection compliance times after installing the actuator as previously specified. This action incorporates Simmonds-Precision pitch trim actuator, P/N DL5040M6, as a replacement option that will then require repetitive inspections and replacements. The P/N DL5040M6 actuator can consist of a new part or a modified DL5040M5 actuator, both of which can be obtained from Simmonds-Precision.

This action revises a previous action to correct an error in a final rule by changing the compliance time for the initial inspection after installing the actuator, and incorporates the additional replacement option. This change in the compliance time reduces the burden upon the public. The replacement option imposes the same burden that is currently required. Since this action does not impose any additional burden (financial or otherwise) upon the public than is already required by AD 93-15-02 R1 or than was previously required by AD 93-15-02, it is found that notice and prior public comment hereon are unnecessary.

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.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-9180 (60 FR 15667, March 27, 1995), and by adding a new airworthiness directive to read as follows:

93-15-02 R2 Fairchild Aircraft: Amendment 39-9689; Docket No. 93-CE-35-AD. Revises AD 93-15-02 R1, Amendment 39-9180.

Applicability: All SA226 and SA227 series airplanes (all models and serial numbers), certificated in any category, that are equipped with a Simmonds-Precision pitch trim actuator, part number (P/N) DL5040M5 or P/N DL5040M6.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the pitch trim actuator, which could result in the horizontal stabilizer going nose-down or jamming, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.

Level 2: (1), (2), (3), etc.

Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) Accomplish the following at the times specified in the chart in paragraph (b) of this AD:

(1) *Initial and repetitive inspections:*

Measure the freeplay (inspection) of the pitch trim actuator and inspect the actuator for rod slippage in accordance with the INSTRUCTIONS section of Fairchild Aircraft SA226 Series Service Letter (SL) 226-SL-005, and Fairchild Aircraft SA227 Series SL 227-SL-011, both Issued: April 8, 1993, Revised: May 22, 1996, as applicable.

(2) *Initial and repetitive replacements:*

Replace the pitch trim actuator with one of the following in accordance with the instructions in the applicable maintenance manual at the times specified in the Initial Inspection and Repetitive Inspection columns of the chart in paragraph (b) of this AD and, replace the pitch trim actuator prior to further flight if certain freeplay limitations that are specified in the service letters are exceeded or if rod slippage is found.

(i) A new Simmonds-Precision actuator, P/N DL5040M5 or DL5040M6.

(ii) A pitch trim actuator with an overhauled, zero-timed part of the same design and part number.

(iii) A new actuator of improved design, P/N 27-19008-001 or 27-19008-002. This replacement eliminates the repetitive inspection and replacement requirements of this AD, and may be accomplished at any time to eliminate the inspection requirement of this AD.

(b) The following chart presents the initial and repetitive inspection and replacement compliance times of this AD:

Condition	Initial inspection	Repetitive inspection	Repetitive replacement
With an original Simmonds-Precision actuator, P/N DL5040M5, installed.	Upon accumulating 3,000 hours TIS on a Simmonds-Precision P/N DL5040M5 actuator or within 50 hours TIS after April 17, 1995 (the effective date of AD 93-15-02 R1), whichever occurs later.	Every 250 hours TIS after initial inspection until accumulating 5,000 hours TIS on the actuator or 500 hours TIS after the last inspection required by AD 93-15-02 R1, whichever occurs later.	Initially upon accumulating 5,000 hours TIS on the actuator or 500 hours TIS after the initial inspection, whichever occurs later, and thereafter as indicated below.
With a replacement Simmonds-Precision actuator, P/N DL5040M5, installed.	Initially upon accumulating 5,000 hours TIS on the new actuator.	Every 300 hours TIS after the initial inspection until accumulating 6,500 hours TIS on the actuator.	Upon accumulating 6,500 hours TIS on the actuator.
With a replacement Simmonds-Precision actuator, P/N DL5040M6, installed. This part can be new, modified from a P/N DL5040M5 actuator or overhauled and zero-timed.	Initially upon accumulating 7,500 hours TIS on the new or modified actuator.	Every 300 hours TIS after the initial inspection until accumulating 9,900 hours TIS on the actuator..	Upon accumulating 9,900 hours TIS on the actuator.

Condition	Initial inspection	Repetitive inspection	Repetitive replacement
With a replacement P/N DL5040M5 actuator installed that was overhauled and zero-timed where both nut assemblies, P/N AA56142, were replaced with new assemblies during overhaul.	Initially upon accumulating 5,000 hours TIS on the overhauled actuator.	Every 300 hours TIS after the initial inspection until accumulating 6,500 hours TIS on the actuator.	Upon accumulating 6,500 hours TIS on the actuator.
With a replacement P/N DL5040M5 actuator installed that was overhauled and zero-timed where both nut assemblies, P/N AA56142, were not replaced with new assemblies during overhaul.	Initially upon accumulating 3,000 hours TIS on the overhauled actuator.	Every 250 hours TIS after the initial inspection until accumulating 5,000 hours TIS on the actuator.	Upon accumulating 5,000 hours TIS on the actuator.
With a pitch trim actuator of improved design installed, P/N 27-19008-001 or 27-19008-002.	No action necessary	No action necessary	No action necessary.

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

(d) 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, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

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

(e) The inspections and modification required by this AD shall be done in accordance with Fairchild Aircraft SA226 Series Service Letter 226-SL-005, and Fairchild Aircraft SA227 Series Service Letter 227-SL-011, both Issued: April 8, 1993, Revised: May 22, 1996, as applicable. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Field Support Engineering, Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39-9689) revises AD 93-15-02 R1, Amendment 39-9180.

(g) This amendment (39-9689) becomes effective on July 25, 1996.

Issued in Kansas City, Missouri, on June 25, 1996.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-17483 Filed 7-12-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 95-AGL-19]

Modification of Class E Airspace; Rice Lake, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the summary portion of the Rice Lake Regional-Carl's Field Airport, Rice Lake, WI, docket published in the final rule on April 24, 1996 (61 FR 18061). Airspace Docket Number 95-AGL-19. There is no change to the legal description of the airspace.

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

Federal Register Document 96-9997, Airspace Docket 95-AGL-19, published on April 24, 1996, (61 FR 18061), established the Class E5 to accommodate a Very High Frequency Omnidirectional Range (VOR) for runway 19 approach and a Nondirectional Radio Beacon (NDB) for runway 1/19 approach at Rice Lake Regional-Carl's Field Airport, Rice Lake, WI.

Upon review of the final rule errors were discovered in the summary portion of the airspace action.

The correct summary should read as follows: This action modifies Class E5 airspace to accommodate a VOR approach to runway 01, a VOR approach to runway 19 and an NDB approach to

runway 19 at Rice Lake Regional-Carl's Field Airport, Rice Lake, WI.

* * * * *

Issued in Des Plaines, Illinois, June 25, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96-17593 Filed 7-12-96; 8:45 am]

BILLING CODE 4910-13-M

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 608

Service of Process; Production of Official Information; and Testimony of Agency Employees

AGENCY: Arms Control and Disarmament Agency.

ACTION: Final rule.

SUMMARY: This rule establishes or clarifies policies, practices, responsibilities, and procedures for the service of legal process upon the United States Arms Control and Disarmament Agency (ACDA, the Agency), its officers, and employees, and the production of official ACDA information and the appearance of and testimony by ACDA employees as witnesses in connection with litigation. This rule is procedural in nature.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Frederick Smith, Jr., United States Arms Control and Disarmament Agency, Room 5635, 320 21st Street, NW., Washington, DC 20451, telephone (202) 647-3596.

SUPPLEMENTARY INFORMATION:

General

This rule is intended to clarify ACDA policies and practices regarding litigation-related matters such as service of process upon ACDA and ACDA

employees and the production of official ACDA information in litigation. ACDA anticipates that the rule will eliminate or reduce current ambiguities regarding such matters for ACDA employees, as well as for private attorneys and judicial and quasi-judicial authorities. ACDA also expects that this rule will promote consistency in ACDA's assertions of privileges and objections, thereby reducing the potential for both inappropriate, potentially harmful disclosure of protected information and wasteful or inappropriate allocation of Agency resources. Although the rule is largely self-explanatory, we describe the general scheme of the several subsections below for the readers' ease of reference.

Service of Process

Part 604.4(b) of 22 CFR establishes the Agency's Office of the General Counsel as the designated office for the presentation of administrative claims asserted under the Federal Tort Claims Act (and 22 CFR parts 602, 603, and 605 set forth procedures for administrative requests under the Freedom of Information Act, under the Privacy Act, and for declassification of national security information, respectively). However, until the present, the Agency has not had regulations establishing the Agency's General Counsel, or his/her delegate, as the sole Agency recipient for litigation-related demands, whether civil or criminal, for official Agency information, whether oral or documentary, or for other Agency action. The rule also clarifies that ACDA is not an agent for service on behalf of its employees in respect of purely private legal disputes and explains that ACDA will counsel its employees not to use their official positions to evade judicial process.

Compliance With Requests or Demands for Official Information

Fundamentally, the compliance sections of the rule (§§ 608.4–608.9) simply track, to a greater or lesser degree, similar regulations which have been adopted by other federal agencies and which derive from the Supreme Court's decision in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). Thus, the principal thrust of the compliance provisions of the rule is that Agency employees (including former employees) must obtain the approval of the Agency's General Counsel, or his/her delegate, prior to responding to any subpoenas or other litigation-related requests or demands for Agency information, whether classified or unclassified, that relate to the employee's official duties.

Significantly, § 608.5 requires the party who initiates a litigation-related request or demand for official ACDA information to provide a written statement providing specified information concerning the nature and scope of the demand.

Finally, the rule describes factors, among others, that Agency officials shall take into consideration when considering litigation-related requests or demands and specifies that Agency employees may ordinarily not provide expert or official testimony on behalf of private parties.

On May 28, 1996, ACDA published a notice of proposed rulemaking (61 FR 26474–26477) with a 31-day comment period. No comments were received during the comment period. Accordingly, the rule is adopted as proposed.

List of Subjects in 22 CFR Part 608

Administrative practice and procedure, Classified information, Government employees.

Chapter VI of title 22 of the Code of Federal Regulations is amended by adding a new part 608 to read as follows:

PART 608—SERVICE OF PROCESS; PRODUCTION OR DISCLOSURE OF OFFICIAL INFORMATION IN RESPONSE TO COURT ORDERS, SUBPOENAS, NOTICES OF DEPOSITIONS, REQUESTS FOR ADMISSIONS, INTERROGATORIES, OR SIMILAR REQUESTS OR DEMANDS IN CONNECTION WITH FEDERAL OR STATE LITIGATION; EXPERT TESTIMONY

Sec.

- 608.1 Purpose and scope; definitions.
- 608.2 Service of summonses and complaints.
- 608.3 Service of subpoenas, court orders, and other demands or requests for official information or action.
- 608.4 Testimony and production of documents prohibited unless approved by appropriate Agency officials.
- 608.5 Procedure when testimony or production of documents is sought—general.
- 608.6 Procedure when response to demand is required prior to receiving instructions.
- 608.7 Procedure in the event of an adverse ruling.
- 608.8 Considerations in determining whether the Agency will comply with a demand or request.
- 608.9 Prohibition on providing expert or opinion testimony.

Authority: 22 U.S.C. 2581(j).

§ 608.1 Purpose and scope; definitions.

(a) This part sets forth the procedures to be followed with respect to:

(1) service of summonses and complaints or other requests or demands directed to the U.S. Arms Control and Disarmament Agency (ACDA, the Agency) or to any ACDA employee or former employee in connection with federal or state litigation arising out of or involving the performance of official activities of ACDA; and

(2) the oral or written disclosure, in response to subpoenas, orders, or other requests or demands of federal or state judicial or quasi-judicial authority (collectively, "demands"), whether civil or criminal in nature, or in response to requests for depositions, affidavits, admissions, responses to interrogatories, document production, or other litigation-related matters, pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or applicable state rules (collectively, "requests"), of any material contained in the files of the Agency, any information relating to material contained in the files of the Agency, or any information acquired while the subject of the demand or request is or was an employee of the Agency as part of the performance of the person's duties or by virtue of the person's official status.

(b) For purposes of this part, and except as ACDA may otherwise determine in a particular case, the term employee includes the Director of ACDA and former Directors of ACDA, and all employees and former employees of ACDA or other federal agencies who are or were appointed by, or subject to the supervision, jurisdiction, or control of the Director of ACDA, whether residing or working in the United States or abroad, including United States nationals, foreign nationals, and contractors.

(c) For purposes of this part, the term *litigation* encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature. This part governs, inter alia, responses to discovery requests, depositions, and other pre-trial, trial, or post-trial proceedings, as well as responses to informal requests by attorneys or others in situations involving litigation. However, this part shall not apply to any claims by ACDA employees (present or former), or applicants for Agency employment, for which

jurisdiction resides with the U.S. Equal Employment Opportunity Commission; the U.S. Merit Systems Protection Board; the Office of Special Counsel; the Federal Labor Relations Authority; the Foreign Service Labor Relations Board; the Foreign Service Grievance Board; or a labor arbitrator operating under a collective bargaining agreement between ACDA and a labor organization representing ACDA employees; or their successor agencies or entities.

(d) For purposes of this part, *official information* means all information of any kind, however stored, that is in the custody and control of ACDA, relates to information in the custody and control of ACDA, or was acquired by ACDA employees as part of their official duties or because of their official status within ACDA while such individuals are employed by or served on behalf of ACDA.

(e) Nothing in this part affects disclosure of information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, Executive Order 12958, 3 CFR, 1995 Comp., p. 333, the Government in the Sunshine Act, 5 U.S.C. 552b, the Agency's regulations in 22 CFR chapter VI implementing any of the foregoing, or pursuant to congressional subpoena. Nothing in this part otherwise permits disclosure of information by ACDA or its employees except as provided by statute or other applicable law.

(f) This part is intended only to inform the public about ACDA procedures concerning the service of process and responses to demands or requests and is not intended to and does not create, and may not be relied upon to create, any right or benefit substantive or procedural, enforceable at law by a party against ACDA or the United States.

(g) Nothing in this part affects:

(1) The disclosure of information during the course of legal proceedings in foreign courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals; or

(2) The rules and procedures, under applicable U.S. law and international conventions, governing diplomatic and consular immunity.

(h) Nothing in this part affects the disclosure of official information to other federal agencies or Department of Justice attorneys in connection with litigation conducted on behalf or in defense of the United States, its agencies, officers, and employees, or to federal, state, local, or foreign prosecuting and law enforcement authorities in conjunction with criminal law enforcement investigations,

prosecutions, extradition, deportation or other proceedings.

§ 608.2 Service of summonses and complaints.

(a) Only ACDA's General Counsel, or his/her delegate, is authorized to receive and accept summonses or complaints sought to be served upon ACDA or ACDA employees. All such documents should be delivered or addressed to General Counsel, U.S. Arms Control and Disarmament Agency, 320 21st St. NW., Room 5635, Washington, DC 20451. Pursuant to 42 U.S.C. 659(b) and 5 U.S.C. 5520a(c)(1), this same officer has been designated specifically to accept service of process for the enforcement of the legal obligation to provide child support or to make alimony payments by employees of the Agency and to accept service of process for the enforcement of the legal obligation to pay monies owed for other than child support or alimony by employees of the Agency, respectively.

(b) In the event any summons or complaint described in § 608.1(a) is delivered to an employee of ACDA other than in the manner specified in this part, such attempted service shall be ineffective, and the recipient thereof shall either decline to accept the proffered service or return such document under cover of a written communication which directs the person attempting to make service to the procedures set forth in this part.

(c) Except as otherwise provided in §§ 608.2(d) and 608.3(c), ACDA is not an authorized agent for service of process with respect to civil litigation against ACDA employees purely in their personal, non-official capacity. Copies of summonses or complaints directed to ACDA employees in connection with legal proceedings arising out of the performance of official duties may, however, be served upon ACDA's General Counsel, or his/her delegate.

(d) Although ACDA is not an agent for the service of process upon its employees with respect to purely personal, non-official litigation, ACDA recognizes that its employees stationed overseas should not use their official positions to evade their personal obligations and will, therefore, counsel and encourage ACDA employees to accept service of process in appropriate cases, and will waive applicable diplomatic or consular privileges and immunities when ACDA determines that it is in the interest of the United States to do so. Pursuant to section 302 of Executive Order 12953 (3 CFR, 1995 Comp., p. 325), ACDA's General Counsel has been designated in Appendix B to 5 CFR part 581 as the

official to assist in the service of legal process in civil actions pursuant to orders of State courts to establish paternity and to establish or to enforce support obligations by making ACDA employees available for service of process, regardless of the location of the employee's workplace.

(e) Documents for which ACDA's General Counsel, or his/her delegate, accepts service in official capacity only shall be stamped "Service Accepted in Official Capacity Only." Acceptance of service shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the laws or rules applicable for the service of process.

§ 608.3 Service of subpoenas, court orders, and other demands or requests for official information or action.

(a) Except in cases in which ACDA is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only ACDA's General Counsel, or his/her delegate, is authorized to receive and accept subpoenas, or other demands or requests directed to ACDA or any component thereof, or its employees, or former employees, whether civil or criminal in nature, for:

(1) Material, including documents, contained in the files of the Agency;

(2) Information, including testimony, affidavits, declarations, admissions, response to interrogatories, or informal statements, relating to material contained in the files of the Agency or which any Agency employee acquired in the course and scope of the performance of official duties;

(3) Garnishment or attachment of compensation of current or former employees; or

(4) The performance or non-performance of any official ACDA duty.

(b) In the event that any subpoena, demand, or request is sought to be delivered to an Agency employee (including former employee) other than in the manner prescribed in paragraph (a) of this section, such attempted service shall be ineffective. Such employee shall, after consultation with the Office of the General Counsel, decline to accept the subpoena, demand, or request or shall return it to the server under cover of a written communication referring to the procedures prescribed in this part.

(c) Except as otherwise provided in this part, ACDA is not an agent for service or otherwise authorized to accept on behalf of its employees any subpoenas, show-cause orders, or

similar compulsory process of federal or state courts, or requests from private individuals or attorneys, which are not related to the employees' official duties except upon the express, written authorization of the individual ACDA employee to whom such demand or request is directed.

(d) Acceptance of such documents by ACDA's General Counsel, or his/her delegate, does not constitute a waiver of any defenses that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure or other applicable rules.

§ 608.4 Testimony and production of documents prohibited unless approved by appropriate Agency officials.

(a) No employee of ACDA shall, in response to a demand or request in connection with any litigation, whether criminal or civil, provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any information acquired while such person is or was an employee of ACDA as part of the performance of that person's official duties or by virtue of that person's official status, unless authorized to do so by ACDA's General Counsel, or his/her delegate.

(b) No ACDA employee shall, in response to a demand or request in connection with any litigation, produce for use at such proceedings any document or any other material acquired as part of the performance of that employee's duties or by virtue of that employee's official status, unless authorized to do so by ACDA's General Counsel, or his/her delegate.

§ 608.5 Procedure when testimony or production of documents is sought—general.

(a) If official ACDA information is sought, through testimony or otherwise, by a request or demand, the party seeking such release or testimony must (except as otherwise required by federal law or authorized by the Office of the General Counsel) set forth in writing and with as much specificity as possible, the nature and relevance of the official information sought. Where documents or other materials are sought, the party should identify the record or reasonably describe it in terms of date, format, subject matter, the office originating or receiving the record, and the names of all persons to whom the record is known to relate. Subject to § 606.7, ACDA employees may produce, disclose, release, comment upon, or testify concerning only those matters that were specified in writing and properly approved by ACDA's General Counsel or his/her delegate. See *United*

States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951). The Office of the General Counsel may waive this requirement in appropriate circumstances.

(b) To the extent it deems necessary or appropriate, ACDA may also require from the party seeking such testimony or documents a plan of all reasonably foreseeable demands, including but not limited to the names of all employees and former employees from whom discovery will be sought, areas of inquiry, expected duration of proceedings requiring oral testimony, and identification of potentially relevant documents.

(c) ACDA's General Counsel, or his/her delegate, will notify the ACDA employee and such other persons as circumstances may warrant of the decision regarding compliance with the request or demand.

(d) The Office of the General Counsel will consult with the Department of Justice regarding legal representation for ACDA employees in appropriate cases.

§ 608.6 Procedure when response to demand is required prior to receiving instructions.

(a) If a response to a demand is required before ACDA's General Counsel, or his/her delegate, renders a decision, ACDA will request that either a Department of Justice attorney or an ACDA attorney designated for the purpose:

(1) Appear with the employee upon whom the demand has been made;

(2) Furnish the court or other authority with a copy of the regulations contained in this part;

(3) Inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of ACDA's General Counsel, or his/her delegate; and

(4) Respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

(b) In the event that an immediate demand for production or disclosure is made in circumstances that would preclude the proper designation or appearance of a Department of Justice or ACDA attorney on the employee's behalf, the employee shall respectfully request the demanding court or authority for a reasonable stay of proceedings for the purpose of obtaining instructions from ACDA.

§ 608.7 Procedure in the event of an adverse ruling.

If the court or other judicial or quasi-judicial authority declines to stay the effect of the demand in response to a request made pursuant to § 608.6, or if the court or other authority rules that

the demand must be complied with irrespective of the Agency's instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy v. Ragen*, 340 U.S. 463 (1951).

§ 608.8 Considerations in determining whether the Agency will comply with a demand or request.

(a) In deciding whether to comply with a demand or request, ACDA officials and attorneys shall consider, among others:

(1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(3) The public interest;

(4) The need to conserve the time of ACDA employees for the conduct of official business;

(5) The need to avoid spending the time and money of the United States for private purposes;

(6) The need to maintain impartiality between private litigants in cases where a substantial government interest is not implicated;

(7) Whether compliance would have an adverse effect on performance by ACDA of its mission and duties; and

(8) The need to avoid involving ACDA in controversial issues not related to its mission.

(b) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which, *inter alia*, any of the following factors exist:

(1) Compliance would violate a statute or a rule of procedure;

(2) Compliance would violate a specific regulation or executive order;

(3) Compliance would reveal information properly classified in the interest of national security;

(4) Compliance would reveal confidential commercial or financial information or trade secrets without the owner's consent;

(5) Compliance would reveal the internal deliberative processes of the Executive Branch; or

(6) Compliance would potentially impede or prejudice an on-going law enforcement investigation.

§ 608.9 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, and subject to 5 CFR 2635.805, ACDA employees shall not provide opinion or expert testimony based upon information which they acquired in the scope and performance of their official ACDA duties, except on behalf of the United States or a party represented by the Department of Justice.

(b) Upon a showing by the requester of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, ACDA's General Counsel, or his/her delegate, may, consistent with 5 CFR 2635.805, in the exercise of discretion, grant special, written authorization for ACDA employees to appear and testify as expert witnesses at no expense to the United States.

(c) If, despite the final determination of ACDA's General Counsel, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of an ACDA employee, such employee shall immediately inform the office of the General Counsel of such order. If the Office of the General Counsel determines that no further legal review of or challenge to the court's order will be made, the ACDA employee shall comply with the order. If so directed by the Office of the General Counsel, however, the employee shall respectfully decline to testify. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

Dated: July 1, 1996.

Mary Elizabeth Hoinkes,
General Counsel.

[FR Doc. 96-17711 Filed 7-14-96; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Part 1952****Minnesota State Plan; Level of Federal Enforcement**

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; change in level of Federal enforcement.

SUMMARY: This document gives notice of a change in the level of federal enforcement authority in Minnesota. The Minnesota Department of Labor and Industry is excluding coverage of tribal and private sector employment on

Indian Reservations under its approved State plan. As a result, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) is assuming coverage over tribal and private sector employment on Indian reservations. OSHA is hereby amending sections of its regulations to reflect this change in the level of enforcement authority.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219-8148.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards, may do so by submitting, and obtaining Federal approval of, a State plan. State plan approval occurs in stages which include initial approval under section 18(b) of the Act and, ultimately, final approval under section 18(e).

The Minnesota State plan was initially approved on May 29, 1973. On July 30, 1985, OSHA announced the final approval of the Minnesota State plan pursuant to section 18(e) and amended Subpart N of 29 CFR Part 1952 to reflect the Assistant Secretary's decision. As a result, Federal OSHA relinquished its authority with regard to occupational safety and health issues covered by the Minnesota plan. Federal OSHA retained its authority over safety and health in private sector offshore maritime employment, employment at the Twin Cities Army Ammunition Plant, and with regard to Federal government employers and employees.

29 CFR 1952.205 states that "any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the plan which has received final approval and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest or [sic] administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In either of the two

aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal OSHA and the State designated agency."

On December 21, 1994 Darrell E. Anderson, Director, Minnesota OSHA Management Team, Minnesota Department of Labor and Industry, wrote that because of the many "obstacles Minnesota OSHA faces in gaining access to Indian reservation worksites and tribal employers, and because Federal OSHA is not subject to the same limitations as the State . . ." Minnesota will "exclude Indian reservations from coverage under the Minnesota Occupational Safety and Health Act" (December 21, 1994 letter to Area Director Charles E. Burin).

B. Decision

To assure worker protection under the OSH Act, Federal OSHA will assume coverage over tribal and private sector employment on Indian reservations. OSHA is hereby amending 29 CFR part 1952, Subpart N, to reflect this change in the level of Federal enforcement.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health, Reporting and recordkeeping requirements.

Signed at Washington, DC, this 28th day of June 1996.

Joseph A. Dear,
Assistant Secretary.

For the reasons set out in the preamble 29 CFR part 1952 is amended as set forth below:

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

1. The authority citation for part 1952 continues to read as follows:

Authority: Secs. 18, 84, Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1-90 (55 FR 9033).

2. Section 1952.204 is amended by revising paragraph (b) to read as follows:

§ 1952.204 Final approval determination.

* * * * *

(b) The plan which has received final approval covers all activities of employers and all places of employment in Minnesota except for private sector offshore maritime employment, employment at the Twin Cities Army Ammunition Plant, Federal government employers and employees, and any tribal or private sector employment

within any Indian reservation in the State.

* * * * *
 3. Section 1952.205 is amended by revising the first four sentences of paragraph (b) to read as follows:

§ 1952.205 Level of Federal enforcement.
 * * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Minnesota plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector offshore maritime activities and will continue to enforce offshore all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction is also retained over the Twin Cities Army Ammunitions Plant, over Federal government employers and employees, and over any tribal or private sector employment within any Indian reservation in the State. * * *

* * * * *
 4. Section 1952.205 is further amended by removing the word "or" immediately preceding the words "administrative practicability" in the second to last sentence in paragraph (b) and adding the word "of" in its place.

[FR Doc. 96-17794 Filed 7-12-96; 8:45 am]
 BILLING CODE 4510-26-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 960621181-6181-01]

RIN 0651-AA89

Elimination of Requirement for Proof of Service in Consented Requests for Extensions of Time To File a Notice of Opposition

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: This rule deletes the requirement for proof of service when a request for an extension of time to

oppose registration of a trademark is based upon a statement that applicant has consented to the request. This rule will simplify opposition proceedings by eliminating an unnecessary requirement.

EFFECTIVE DATE: July 15, 1996. This rule will be applicable to all relevant correspondence filed with the Office on or after the effective date.

FOR FURTHER INFORMATION CONTACT: David Sams by telephone at (703) 308-9330, by facsimile transmission at (703) 308-9333, or by mail marked to his attention and addressed to the Assistant Commissioner for Trademarks, Box TTAB, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

SUPPLEMENTARY INFORMATION: Section 2.102(c)(2), which provides for an extension of time for filing an opposition under 37 CFR Part 2, is revised to delete the requirement that proof of service be included in consented extension requests. This change permits potential opposers to request an extension of time to oppose aggregating more than 120 days from the date of publication based on a written statement that the applicant or its authorized representative has consented to the request. The Office believes that the requirement for proof of service is unnecessary when the applicant has assertedly consented to the filing of the extension request. The Trademark Trial and Appeal Board sends a copy of the request together with the Board's action thereon to the applicant, which may file a request for reconsideration of the Board's action if necessary.

The Patent and Trademark Office has determined that this revision is procedural and remedial in nature, and this revision is therefore being published as a final rule. 5 U.S.C. 553(b)(3) (A) and (B). This rule is not a significant rule for the purposes of Executive Order 12866. No notice of proposed rulemaking is required for this rule under 5 U.S.C. 553 or any other law, so a regulatory flexibility analysis is not required and has not been prepared. 5 U.S.C. 603(a).

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Conflicts of interest, Courts, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, and pursuant to the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 6, part 2 of title 37 of the Code of Federal Regulations is amended as set forth below:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.102(c)(2) is revised to read as follows:

§ 2.102 Extension of time for filing an opposition.

* * * * *

(c) * * * (2) a written request by the potential opposer or its authorized representative stating that the applicant or its authorized representative has consented to the request, or * * *

Dated: July 2, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96-17746 Filed 7-12-96; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192, 193, and 195

[Docket No. PS-143; Amdts. 192-76; 193-11; 195-56]

RIN 2137-AC74

Periodic Updates to the Pipeline Safety Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Corrections to the final rule.

SUMMARY: On May 24, 1996, RSPA published a final rule in the Federal Register (61 FR 26121) titled "Periodic Updates to the Pipeline Safety Regulations." This final rule updated the references to voluntary specifications and standards to reflect more recently published editions of each document, enabling pipeline operators to utilize current technology, materials, and practices, thereby reducing costs and enhancing economic growth. The final rule also eliminated the requirement for odorization of hydrogen transmission lines in cases where the odorization interferes with industrial end uses. Consistent with President Clinton's Regulatory Reinvention Initiative, these actions eliminated unnecessary regulatory burdens without compromising safety. This document makes minor corrections to the final rule to provide consistency in the regulations.

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT:
Eben M. Wyman, (202) 366-0918, regarding the subject matter of this document; or the Dockets Unit, (202) 366-4453; for copies of this document or other materials in the docket.

SUPPLEMENTARY INFORMATION:
Need for Correction

The final rule did not make note of amendment numbers to properly revise the pipeline safety laws. The amendment numbers for Docket No. PS-143 are "Amdt. 192-76; 193-11; 195-56."

In Section 192.63(a)(1) of the final rule, the word "fitting" is improperly used in discussing the marking of thermoplastic fittings in accordance with ASTM D 2513. The word "fittings" should replace the word "fitting."

The final rule also updated two references to the address of the American Society for Testing and Materials (ASTM). However, the correct address was not updated in the amended Section 195.3(b)(6). The address was listed as "Conshohocken, PA" not "West Conshohocken, PA," as correctly noted in the amended Appendix A of Part 192. To provide consistency in the pipeline safety regulations, this document corrects section 195.3(b)(6) to reflect the accurate address for ASTM. The correct address is "American Society for Testing and

Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428." Finally, the updated editions of voluntary consensus standards included in Appendix A of Part 192 were not updated in Appendix B—"Qualification of Pipe." Appendix B lists the pipe specifications incorporated by reference in Part 192. For consistency, the specifications in Appendix B should accurately reflect the updated references in Appendix A. This document updates the specifications in Appendix B to match Appendix A.

Correction of Publication

Accordingly, the publication on May 24, 1996, of the final rule (61 FR 26121) is corrected as follows:

§ 192.63—[Corrected]

On page 26122, in the third column, in § 192.63, paragraph (a)(1), in line four, the word "fitting" is corrected to read "fittings."

Appendix B to Part 192—[Revised]

On page 26123, in the third column, a new amendatory instruction is added following amendment 5.

6. Appendix B to Part 192, section I, is revised to read as follows:

Appendix B to Part 192—Qualification of Pipe

I. Listed Pipe Specifications (Numbers in Parentheses Indicate Applicable Editions)
API 5L—Steel pipe (1995).

ASTM A 53—Steel pipe (1995a).
ASTM A 106—Steel pipe (1994a).
ASTM A 333/A 333M—Steel pipe (1994).
ASTM A 381—Steel pipe (1993).
ASTM A 671—Steel pipe (1994).
ASTM A 672—Steel pipe (1994).
ASTM A 691—Steel pipe (1993).
ASTM D 2513—Thermoplastic pipe and tubing (1995c).
ASTM D 2517—Thermosetting plastic pipe and tubing (1994).
* * * * *

§ 195.3—[Corrected]

On page 26123, in the third column, in § 195.3, paragraph (b)(6), in line three, the name "Conshohocken" is corrected to read "West Conshohocken."

These updates were incorporated in the final rule, so RSPA does not need further rulemaking action to correct the updated specifications in Appendix B of Part 192. The purpose of this Notice is to provide consistency in the pipeline safety regulations. RSPA regrets any confusion this error may have occasioned, and publishes this document to provide clarification to all affected parties of this rulemaking.

Issued in Washington, DC, on July 3, 1996.
Richard B. Felder,
Associate Administrator for Pipeline Safety.
[FR Doc. 96-17580 Filed 7-12-96; 8:45 am]
BILLING CODE 4910-60-P

Proposed Rules

Federal Register

Vol. 61, No. 136

Monday, July 15, 1996

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[FV96-956-1PR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Proposed Establishment of Handler Reporting Requirements and Interest Charges on Overdue Assessment Payments, and Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish handler reporting requirements and establish interest charges on overdue assessments. This action also announces the Agricultural Marketing Service's (AMS) intention to request a revision to the currently approved information collection requirements issued under the marketing order. This proposed rule would contribute to the efficient operation of the program by helping to ensure that assessments are available in a timely manner to cover budgeted expenses incurred under the marketing order. The Committee believes that this is the only alternative available to ensure timely payments of assessments. These proposed changes are expected to reduce the need for compliance efforts and thereby reduce the costs to administer the order.

DATES: Comments must be received by July 30, 1996. Pursuant to the Paperwork Reduction Act, comments to the information collection burden must be received by September 13, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523, South

Building, P.O. Box 96456, Washington, DC 20090-6456, Fax: (202) 720-5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2724; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 690-0464.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 956 (7 CFR part 956; 60 FR 27624, May 24, 1995), regulating the handling of sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon, hereinafter referred to as the "order." The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This proposed rule was recommended by the Walla Walla Sweet Onion Committee (Committee), the agency responsible for the local administration of the marketing order for sweet onions grown in the Walla Walla Valley.

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with

law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction 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.

In compliance with the Small Business Regulatory Enforcement Act of 1996, the Agricultural Marketing Service (AMS) has published a "Small Business Guide for Complying with Marketing Agreements and Orders for Fruits, Vegetables and Specialty Crops." Interested persons may obtain a copy of the Guide by contacting: Jay Guerber, Marketing Order Administration Branch, P.O. Box 96456, room 2523-S, Washington, DC 29909-6456; telephone (202) 720-2491, FAX (202) 720-5698.

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

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

There are approximately 30 handlers of Walla Walla Sweet Onions subject to regulation under the marketing order and approximately 50 producers in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of Walla Walla Sweet Onion handlers and producers may be classified as small entities.

This proposed rule would establish interest charges on overdue assessments

and establish handler reporting requirements.

This proposed rule would contribute to the efficient operation of the program by helping to ensure that assessments are available in a timely manner to cover budgeted expenses incurred under the marketing order. Those persons large and small who pay in a timely manner would not be subject to an interest charge. The proposed changes establishing interest charges are expected to reduce the need for compliance efforts and thereby reduce the costs to administer the order which will benefit all persons who are subject to assessments.

The preparation of one form one time each year should not constitute a significant burden on a business unit, small or large. The estimated reporting burden per response is 0.323 hours. In addition, gift box and roadside stand sales would be exempt from reporting the region to which shipments are made, which should be particularly favorable to small entities.

Therefore, the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of the proposal on small businesses.

The Committee meets prior to each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Walla Walla Sweet Onions. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its February 15, 1996, meeting the Committee unanimously proposed the addition of administrative rules and regulations that would provide a late payment charge for delinquent assessments and a reporting requirement for handlers.

The Act provides that each handler shall pay to the Committee such handler's pro rata share of Committee expenses that the Secretary finds are reasonable and likely to be incurred for the maintenance and functioning of the Committee. Section 956.42 authorizes the Committee to levy assessments on handlers of Walla Walla Sweet Onions to cover each handler's share of Committee expenses.

Section 956.42(f) provides the authority for the Committee to impose, with the approval of the Secretary, a late payment or an interest charge on handlers who fail to pay any assessment in a timely manner. This proposed rule would establish an interest charge of 1 1/2 percent per month to be applied to any assessment balance remaining unpaid on October 1 of each year.

The Committee depends upon handler assessments for operating funds. Last year, the first season of operation of the order, some handlers were late with their assessment payments, with fewer than half submitting their assessment payments when due. When assessments are not paid in a timely manner, the handlers paying assessments on time are placed in an unfair situation compared to the delinquent handlers.

As part of its collection efforts, the Committee requested delinquent handlers to promptly submit assessment payments. However, such requests did not substantially hasten the payment of such delinquent assessments, a few of which were over 120 days delinquent. To facilitate the collection of assessments needed for the maintenance and functioning of the Committee, the Committee recommended the establishment of an interest charge of 1 1/2 percent per month to be applied to assessment balances unpaid after 30 days. Annual assessments are due from handlers on September 1. The 1-1/2 percent interest charge would be applied monthly, after September 30, to the unpaid balance, including any accumulated interest.

This proposed change is intended to encourage handlers to pay their assessments when due, thereby eliminating potential inequities towards handlers who pay their assessments on time. It would contribute to the efficient operation of the program by ensuring that adequate funds are available to cover expenses incurred under the marketing order.

Section 956.80 provides authority for the Committee, with the approval of the Secretary, to require that each handler furnish to the Committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the Committee to perform its duties under the marketing order.

This proposed rule would also establish a requirement that each handler submit an annual report, on a form provided by the Committee, showing their weekly and total yearly shipments of Walla Walla Sweet Onions by geographical region. The annual handler reporting requirement would

provide the Committee with statistical information regarding total industry shipments which would be useful to the Committee in developing a budget and in making marketing and promotion plans for the upcoming season. The form would include the total number of 50 pound equivalents of Walla Walla Sweet Onions shipped during each week of the shipping season and an end of season total. The form will also require handlers to indicate the geographical regions to which onions are shipped. The geographical region to which shipments are made would be useful in planning marketing and promotional activities. The Committee has drawn up boundaries of 11 geographical regions to help it in developing its marketing and promotional plans. To effectively promote and market Walla Walla Sweet Onions, knowledge of market conditions and access to accurate statistical information is invaluable. The Committee recommended that handlers be exempt from having to indicate the geographical region to where the onions were shipped when making roadside stand and gift box sales. The Committee felt that having to report the geographical region shipped for every bag of onions sold in these outlets would be burdensome to handlers making such shipments.

The form would also require handlers to provide their name and address to properly identify the firm, as a basis for verifying compliance with the assessment provisions of the order.

In addition to marketing and promotion planning, the information on the form would help compliance efforts by keeping the committee informed of handlers' operations. It would enable the Committee manager to become aware of potential problems and discuss them with the handlers involved before violations occurred, thus reducing the need for, and the expense of, compliance action by the Committee and the Department.

To implement these changes, a new Subpart—Rules and Regulations is proposed to be added to part 956. Sections 956.142 *Interest charges.*, and 956.180 *Reports.* would be included in that subpart.

A 15-day comment period is provided to allow interested persons to respond to this proposal. This period is deemed appropriate because the shipping season, which begins soon, is relatively short and the Committee needs to gather information on shipments made during the shipping period. The proposal was recommended by the Committee in a public meeting and all interested persons were invited to provide input.

All written comments received within the comment period will be considered before a final determination is made on this matter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the AMS announces its intention to request a revision to a currently approved information collection for Walla Walla sweet onions.

Title: Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, Marketing Order No. 956.

OMB Number: 0581-0172.

Expiration Date of Approval: March 31, 1998.

Type of Request: Revision of a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Agricultural Marketing Agreement Act, to provide the respondents the type of service they request, and to administer the program.

This proposed rule would establish a requirement that each handler submit an annual report, on a form provided by the Committee, showing Walla Walla Sweet Onion shipment information. This information would facilitate the billing and collection of handler assessments needed for the maintenance and functioning of the Committee. The information would also be useful to the Committee in developing a budget and in making marketing plans for the upcoming season.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarter's staff, and employees of the Committee. Committee employees are the primary users of the information and AMS employees are secondary users.

Estimate of Burden: Public reporting burden for this proposed collection of information is estimated to average 0.323 hours per response.

Respondents: Walla Walla Sweet Onion producers and for-profit businesses handling fresh Walla Walla Sweet Onions produced in southwestern Washington and northeastern Oregon.

Estimated Number of Respondents: 82.

Estimated Number of Responses per Respondent: 0.756.

Estimated Total Burden on Respondents: 25 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the functioning of the

Walla Walla Sweet Onion Marketing Order and the Department's oversight of the program; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated or electronic technologies.

Comments must be received by September 13, 1996. Comments should reference OMB No. 0581-0172 and the Walla Walla Sweet Onion Marketing Order No. 956, and be submitted to Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204; fax 503-326-7440. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

Because there is insufficient time for normal clearance procedures, AMS is seeking temporary approval from OMB for the use of this form for the coming season. The form would be added to the other 5 forms currently approved for use under OMB Number 0581-0172.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and record keeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 956 be amended as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In part 956, a new Subpart—Rules and Regulations consisting of sections 956.142 and 956.180 is added to read as follows:

Subpart—Rules and Regulations

§ 956.142 Interest charges.

The Committee shall impose an interest charge on any handler who fails to pay his or her annual assessments within thirty (30) days of the due date of September 1. The interest charge shall, after 30 days, be 1 1/2 percent of the unpaid assessment balance. In the event the handler fails to pay the delinquent assessment amount within

60 days following the due date, the 1 1/2 percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated interest. Any amount paid by a handler as an assessment, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the Committee office.

§ 956.180 Reports.

Each handler shall furnish to the Committee by September 1 of each year an annual report containing the following information, except that gift-box and roadside stand sales shall be exempt from paragraph (b):

(a) The number of 50 lb. equivalents of Walla Walla Sweet Onions shipped by each handler during each week of the shipping season and the total for the season;

(b) The geographical regions as defined by the Committee to which each shipment is made; and

(c) The name, address, and signature of each handler.

Dated: July 8, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-17868 Filed 7-12-96; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 256

RIN 1076-AD52

Housing Improvement Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to amend the regulations governing the Housing Improvement Program (HIP) by clarifying the terms and conditions under which the program is operated.

DATES: Comments must be received on or before September 13, 1996.

Comments will be available for inspection at the address below from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately July 29, 1996.

ADDRESSES: Mail comments to June Henkel, Division of Housing, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C St. NW, Mail Stop 4603-MIB, Washington, DC 20240; OR, hand deliver them to Room 4603 at the above address.

FOR FURTHER INFORMATION CONTACT: June Henkel, Office of Tribal Services, Bureau of Indian Affairs at telephone (202) 208-3707.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule reflects the recommendations of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, various tribal and Federal workgroups, and the Department of the Interior Office of the Inspector General. The proposed rule contains simplified administrative guidelines and makes the program more flexible and responsive to the needs of tribes.

On April 7, 1994, the Assistant Secretary-Indian Affairs published a Notice of Proposed Rulemaking (NPRM) proposing amendment of 25 CFR Part 256, Housing Improvement Program (59 FR 16726). One proposal concerned changing the HIP funding distribution methodology from one based on housing inventory to one based on documented eligible applicants. Proposed technical corrections were for the elimination of Category C, Downpayments, and elimination of eligibility for applicants whose dwellings were acquired under HUD through an Indian Housing Authority. The comment period closed on June 6, 1994 and on June 10, 1994, was extended to July 6, 1994. Public comment on the funding distribution methodology provided only a 1% margin of difference between those for and against the proposed change. As a result of the lack of clear direction on the funding distribution methodology, the numerous comments received on the proposed technical corrections and the need to improve the program, the program was recommended for reinvention. In July 1994 the Acting Deputy Commissioner of Indian Affairs agreed to a recommendation by the Office of Audit and Evaluation to place HIP in the National Performance Review (NPR) Reinventing Government Projects program. The HIP was approved as an NPR lab project by October 1994. Along with accommodating administrative corrective action tasks, the NPR lab was established to ensure tribal representation throughout the reinvention process resulting in a program that would be more responsive to tribal needs.

Evaluation and Certification

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

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.

Executive Order 12988

The Department has determined that this proposed rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This proposed rule is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12630

The Department has determined that this proposed rule does not have "significant" takings implications. The proposed rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this proposed rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this proposed rule does 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.

Unfunded Mandates Act of 1995

This proposed rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

The information collection requirements contained in § 256.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 et seq. and assigned clearance number 1076-0084. The information is collected to determine

applicant eligibility for services and eligibility to participate in the program based on the criteria referenced in 256.10 and in Table B. Response is required to obtain a benefit. The public reporting burden for this form is estimated to average thirty minutes per response, including the time for reviewing the instructions, gathering and maintaining data, and completing and reviewing the form.

Drafting Information

The primary author of this document is June Henkel, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 256

Housing, Indians, Reporting and recordkeeping requirements.

For the reasons given in the preamble, Part 256 of Title 25, Chapter I of the Code of Federal Regulations is proposed to be revised as set forth below.

PART 256—HOUSING IMPROVEMENT PROGRAM

Sec.

- 256.1 Purpose.
- 256.2 Definitions.
- 256.3 Policy.
- 256.4 Information collection.
- 256.5 What is the Housing Improvement Program?
- 256.6 Am I eligible for the Housing Improvement Program?
- 256.7 What are the Housing Improvement Program categories for which I am eligible?
- 256.8 Who administers the Housing Improvement Program?
- 256.9 How do I apply for the Housing Improvement Program?
- 256.10 What are the steps that must be taken to process my application for the Housing Improvement Program?
- 256.11 How long will I have to wait for the improvement, repair, or replacement of my dwelling to be done?
- 256.12 Who is responsible for identifying what work will be done on my dwelling?
- 256.13 What will the servicing housing office do to identify what work is to be done on my dwelling?
- 256.14 How will I be advised of what work is to be done?
- 256.15 Who performs the improvements, repairs, or replacement of my dwelling?
- 256.16 How are these repairs or construction trades persons and home building contractors selected and paid?
- 256.17 Will I have to vacate my dwelling while repair work or replacement of my dwelling is being done?
- 256.18 How can I be sure that the work that is being done on my dwelling meets minimum construction standards?
- 256.19 How will I be advised that the repair work or replacement of my dwelling has been completed?

256.20 How many times can I receive improvements, repairs, or replacement services under the Housing Improvement Program?

256.21 Will I need flood insurance?

256.22 Is my Federal Government assisted dwelling eligible for services under the Housing Improvement Program?

256.23 Are mobile homes eligible for services under the Housing Improvement Program?

256.24 Can Housing Improvement Program resources be supplemented with other available resources?

256.25 What can I do if I disagree with actions taken under the Housing Improvement Program?

Authority: 42 Stat. 208. (25 U.S.C. 13).

§ 256.1 Purpose.

The purpose of this part is to define the terms and conditions under which assistance is given to Indians under the Housing Improvement Program (HIP).

§ 256.2 Definitions.

As used in this part 256:

Agency means the current organizational unit of the Bureau that provides direct services to the governing body or bodies and members of one or more specified Indian Tribes.

Appeal means a written request for review of an action or the inaction of an official of the Bureau of Indian Affairs that is claimed to adversely affect the interested party making the request, as provided in part 2 of this chapter.

Applicant means an individual or persons on whose behalf an application for services has been made under this part.

Application means the process through which a request is made for services.

Area Director means the officer in charge of a Bureau of Indian Affairs area office, or his/her authorized delegate.

Bureau means the Bureau of Indian Affairs.

Child means a person under the age of 18 or such other age of majority as is established for purposes of parental support by tribal or state law (if any) applicable to the person at his or her residence, except that no person who has been emancipated by marriage can be deemed a child.

Family means one or more persons maintaining a household.

Handicapped means legally blind; legally deaf; lack of or inability to use one or more limbs; chair or bed bound; inability to walk without crutches or walker; mental disability in an adult of a severity that requires a companion to aid in basic needs, such as dressing, preparing food, etc.; or severe heart and/or respiratory problems preventing even minor exertion.

Household means persons living with the *head of household* who may be related or unrelated to the *head of household* and who function as members of a family.

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law 103-454, 108 Stat. 4791.

Secretary means the Secretary of the Interior.

Service area means reservations (former reservations in Oklahoma), allotments, restricted lands, and Indian-owned fee lands (including lands owned by corporations established pursuant to the Alaska Native Claims Settlement Act) within a geographical area designated by the tribe and approved by the Area Director to which equitable services can be delivered.

Servicing housing office means the Tribal Housing Office or Bureau Housing Assistance Office administering the Housing Improvement Program in the service area in which the applicant resides.

Superintendent means the Bureau official in charge of an agency office.

§ 256.3 Policy.

(a) The Bureau of Indian Affairs' housing policy is consistent with the objectives of the national housing policy that declares that every American family should have the opportunity for a decent home and suitable living environment. To the extent possible, the program will serve the neediest of the needy Indian families.

(b) Every Indian as defined in § 256.2 who meets the basic eligibility criteria defined in § 256.6 is entitled to participate in the program. Participation is based on priority of need, regardless of tribal affiliation, provided services can be delivered to the geographic area within which the participant resides.

(c) Tribal participation in and direct administration of the Housing Improvement Program is encouraged to the maximum extent possible. Tribal involvement is necessary to ensure that the services provided under the program are responsive to the needs of tribes and the program participants.

(d) Partnerships with complementary improvement programs are encouraged to increase the basic benefits derived from the Housing Improvement Program fund. An example is the agreement with Indian Health Services to provide water and sanitation facilities for Housing Improvement Program houses.

§ 256.4 Information collection.

The information collection requirements contained in § 256.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.* and assigned clearance number 1076-0084. The information is collected to determine applicant eligibility for services and eligibility to participate in the program based on the criteria referenced in § 256.10 and in Table B to this part. Response is required to obtain a benefit. The public reporting burden for this form is estimated to average thirty minutes per response, including the time for reviewing the instructions, gathering and maintaining data, and completing and reviewing the form.

§ 256.5. What is the Housing Improvement Program?

The Housing Improvement Program provides funds to repair or replace houses that fail to meet basic building standards for the neediest of the needy Housing Improvement Program applicants.

§ 256.6 Am I eligible for the Housing Improvement Program?

You are eligible for the Housing Improvement Program if:

(a) You are a member of a Federally-recognized American Indian tribe or Alaskan Native village; and

(b) You are living in an approved tribal service area; and

(c) Your annual income does not exceed 125% of the Department of Health and Human Services Poverty Income Guidelines. These guidelines are available from your servicing housing office.

§ 256.7 What are the Housing Improvement Program categories for which I am eligible?

(a) *Category A.* You are eligible to receive up to \$2,500 in housing repairs and improvements if the dwelling in which you are living cannot be brought to applicable building code standards.

(b) *Category B.* You are eligible to receive housing repairs and improvements if the cost to bring the dwelling to applicable building code standards does not exceed \$35,000, and:

(1) You are the owner of the dwelling in which you are living;

(2) The estimated cost of repairs and improvements, as determined by the Housing Improvement Program servicing office will result in making the dwelling meet applicable building code standards; and

(3) You sign a written agreement that if you sell the dwelling within five (5) years following the date of completion of the repairs, the grant will be voided

and you will repay the full amount of the cost of repairs to the Bureau of Indian Affairs at the time of settlement.

(c) *Category C*. You are eligible to receive a modest (see Table A to this part, Occupancy and Square Footage Chart) replacement home, if:

(1) You are the owner of the dwelling in which you are living;

(2) The dwelling in which you are living cannot be brought to applicable code standards within the Category B cost limit of \$35,000; or you do not own a home but have ownership of sufficient land suitable for housing, with adequate ingress/egress rights; and

(3) You sign a written agreement that if you sell the house within the first ten (10) years from the date of ownership, the grant is voided and you will repay the full amount of the cost of the house to the Bureau of Indian Affairs at the time of settlement. If you sell the house after the first ten years, you can retain ten (10) percent of the original cost of the house per year, beginning in the eleventh year, with the remaining amount payable to the Bureau of Indian Affairs. If the sale occurs twenty (20) years or more after the date of ownership, you will not have to make repayment.

§ 256.8 Who administers the Housing Improvement Program?

The Housing Improvement Program is administered by a servicing housing office operated:

(a) By a tribal housing office under a Public Law 93-638 contract or a self-governance annual funding agreement; or

(b) By the Bureau of Indian Affairs.

§ 256.9 How do I apply for the Housing Improvement Program?

(a) First, you must obtain an application, BIA Form 6407, and a Privacy Act Statement from your nearest servicing housing office.

(b) Second, you must complete and sign BIA Form 6407 and the Privacy Act Statement.

(c) Third, you must submit your completed application and signed Privacy Act Statement to your servicing housing office. Submission to the nearest BIA housing office does not preclude tribal approval of the application.

(d) Fourth, you must furnish documentation proving tribal membership. Examples of acceptable documentation include a copy of your Certificate of Degree of Indian Blood (CDIB) or a copy of your tribal membership card.

(e) Fifth, you must provide proof of income from all members of the household.

(1) You must submit *signed* copies of current 1040 tax returns from all members of the household, including W-2's and all attachments.

(2) You must provide proof of all other income from all members of the household. This includes unearned income such as social security, aid to families with dependent children (AFDC), retirement and unemployment benefits.

(3) If you or other household members did not file a tax return, you must submit a signed, notarized statement explaining why a tax return was not filed.

(f) Sixth, you must furnish a copy of your trust income statement, such as for royalty and lease monies, from your home agency. If you do not have an account, you must ask your agency to provide a statement to that effect.

(g) Seventh, you must provide proof of ownership (sole possessory interest) of the residence and/or land:

(1) For fee property, you must provide a copy of a fully executed Warranty Deed, Gift Deed, or other exclusive possessory agreement, which is available at your local county court house; or

(2) For trust property, you must provide a copy of certification from the Agency Realty Office; or

(3) For tribally-owned land, you must provide a copy of a properly executed tribal assignment; or

(4) For multi-owner property, you must provide a copy of a properly executed lease of not less than twenty-five (25) years.

(h) Eighth, you must furnish a copy of a map and a letter from an official source indicating whether your residence and/or land is in an area having special flood hazards:

(1) If your land is held in trust, you must obtain this information from your servicing housing office.

(2) If your land is fee land, you must obtain this information from the county in which your land is located.

§ 256.10 What are the steps that must be taken to process my application for the Housing Improvement Program?

(a) The servicing housing office must review your application for completeness. If your application is incomplete, it will be returned to you along with a written explanation and advice on how to complete and resubmit your application.

(b) The servicing housing office will use your completed application to determine if you are eligible for the Housing Improvement Program.

(1) If you are found ineligible for the Housing Improvement Program or

otherwise do not qualify for the program, the servicing housing office will advise you in writing within 45 days of receipt of your completed application. Your application may be placed in a file with the applications of other ineligible applicants for a period of not less than two (2) years. Your application may be used to develop workload and housing needs information by the servicing housing office.

(2) If you are found eligible for the Housing Improvement Program, the servicing housing office will inform you in writing within 45 days of receipt of your completed application.

(c) If you are found eligible for the Housing Improvement Program, the servicing housing office will assess your application for need, according to the factors and numeric values shown in Table B to this part.

(d) Based on the total numeric value assigned to each application, the servicing housing office will develop the List of Eligible Housing Improvement Program Applicants (LEHIPA), ranked in order of need, from highest to lowest. In the case of a tie, the family with the lower income will be served first.

(e) The servicing housing office will develop and include on the LEHIPA the estimated cost of improvements, repairs or replacement for each application.

(f) The servicing housing office will compare the LEHIPA with the total amount of funds available for the program. Starting with the most needy applicant, the amount of available funds is reduced by the amount of estimated, allowable costs to improve, repair or replace the applicant's dwelling. This process is repeated for the next applicant on the list until there are no more funds.

(1) The servicing housing office will advise you in writing within 45 days of completion of the LEHIPA whether funds are available for the improvement, repair or replacement of your dwelling.

(2) If funds are available to meet the estimated cost of improvement, repair, or replacement of your dwelling, the servicing housing office will identify your application as "active" on the LEHIPA.

(3) If there are no available funds for improving, repairing or replacing your dwelling, your application will be identified as having "no available funds" on the LEHIPA.

(g) Your application will be held for an indefinite period of time during which your servicing housing office will request, in writing, annual written confirmation from you that your application is still accurate.

(1) Your written confirmation will permit your application to be included in the next annual ranking of eligible applicants.

(2) Your servicing housing office will advise you in writing and provide written explanation should you need to submit a new or updated application.

(3) Should your circumstances change appreciably during the time that your application is pending funding, you are encouraged to submit an updated application at your earliest convenience.

(h) Your servicing housing office will prepare an annual report identifying construction work undertaken during the fiscal year and related construction expenditures. The annual report is due on October 15 of each year for fiscal year tribes and on January 15 of each year for calendar year tribes. The report, at a minimum, will contain:

(1) Number of Eligible Applicants;

(2) Number of Applicants Provided Service;

(3) Names of Applicants Provided Service;

(4) For Each Applicant Provided Service:

(i) Date of Construction start;

(ii) Date of Construction Completion, if applicable;

(iii) Cost; and.

(iv) HIP Category.

§ 256.11 How long will I have to wait for the improvement, repair, or replacement of my dwelling to be done?

The length of time that it takes to accomplish the work to be done on your dwelling is dependent on:

(a) Whether funds are available;

(b) The type of work to be done; and

(c) The climate and seasonal conditions where your dwelling is located.

§ 256.12 Who is responsible for identifying what work will be done on my dwelling?

The servicing housing office is responsible for identifying what work is to be done on your dwelling or whether your dwelling will be replaced.

§ 256.13 What will the servicing housing office do to identify what work is to be done on my dwelling?

(a) First, a trained and qualified representative of your servicing housing office must visit your dwelling to identify what improvements or repairs are to be done under the Housing Improvement Program. The representative must ensure that flood, National Environmental Protection Act (NEPA) and earthquake requirements are met.

(b) Second, based on the list of improvements or repairs to be done, the representative must estimate the total

cost of improvements or repairs to your dwelling. Cost estimates must be based on locally available services and product costs, or other regional-based, industry-recognized cost data, such as that provided by the MEANs or MARSHAL SWIFT. If the dwelling is located in Alaska, documented, reasonable and substantiated freight costs, in accordance with Federal Property Management Regulations (FPMR 101-40), not to exceed 100% of the cost of materials, can be added to the cost of the project.

(c) Third, the representative must determine which Housing Improvement Program category the improvements to your dwelling meet, based on the estimated cost of improvements or repairs. If the estimated cost to repair your dwelling is \$35,000 or more, the representative must approve your dwelling for replacement.

(d) Fourth, the representative must develop a detailed, written report, also called "bid specifications," that identifies what and how the improvement, repair and construction work is to be accomplished at the dwelling.

(1) When the work includes new construction, the "bid specifications" will be supplemented with a set of construction plans. The plans must not exceed the occupancy and square footage criteria identified in Table A of this part, Occupancy and Square Footage Chart. The plans must be sufficiently detailed to provide complete instructions to the builder for the purpose of construction.

(2) "Bid specifications" are also used to inform potential bidders of what work is to be done.

§ 256.14 How will I be advised of what work is to be done?

You will receive written notice from the servicing housing office of what work is being scheduled under the Housing Improvement Program. You will be requested to concur with the scheduled work by signing a copy of the notice and returning it to the servicing housing office. No work will be started until the signed copy is returned to the servicing housing office.

§ 256.15 Who performs the improvements, repairs, or replacement of my dwelling?

Independent repair and construction trades persons and home building contractors will perform the improvements, repairs or replacement of your dwelling.

§ 256.16 How are these repair or construction trades persons and home building contractors selected and paid?

(a) The servicing housing office must provide the prepared "bid specifications," also called a statement of work, to the local Bureau or tribal contracting office. The office will use the statement of work to advertise the work. Advertising will be accomplished by two or more of the following means: local or national newspapers; various tribal publications; physical or electronic bulletin boards; any other generally-recognized advertising media.

(b) Based on the statement of work, interested parties are invited to bid on the job.

(c) The winning bidder will be selected by the local Bureau or tribal contracting office, after technical review by and written recommendation from the servicing housing office. Prior to selection, bidders must be determined to be qualified contractors capable of completing the contract as advertised.

(d) Payments to the winning bidder are negotiated in the contract. Payments are based on specified delivery of services.

(1) Partial payments will not exceed 80 percent of the value of the completed work.

(2) Final payment will be made after final inspection and after all provisions of the contract have been met, including punch-up items.

§ 256.17 Will I have to vacate my dwelling while repair work or replacement of my dwelling is being done?

(a) You will be notified by the servicing housing office that you must vacate your dwelling only if:

(1) It is scheduled for major repairs requiring that all occupants vacate the dwelling for safety reasons; or

(2) It is scheduled for replacement which requires the demolition of your current dwelling.

(b) If you are required to vacate the premises for the duration of the construction, you are responsible for:

(1) Locating other lodging;

(2) Paying all costs associated with vacating and living away from the dwelling; and

(3) Removing all your belongings and furnishings prior to the scheduled, beginning work date.

§ 256.18 How can I be sure that the work that is being done on my dwelling meets minimum construction standards?

(a) At various stages of construction, a trained and qualified servicing housing office representative or building inspector will review the construction to ensure that it meets applicable minimum construction standards and

building codes. Upon completion of each stage, further construction is prohibited until the inspection occurs and approval is granted.

- (b) Inspections are, at a minimum, made at the following stages of construction:
- (1) Footings;
 - (2) Closed in, rough wiring and rough plumbing; and
 - (3) At final completion.

§ 256.19 How will I be advised that the repair work or replacement of my dwelling has been completed?

You will be advised in writing by the servicing housing office that the work has been completed in compliance with the project contract. Also, you will have a final walk-through of the dwelling with your servicing housing office representative. You will be requested to verify that you received the notice of completion of the work by signing a copy of the notice and returning it to the servicing housing office representative.

§ 256.20 How many times can I receive improvements, repairs, or replacement services under the Housing Improvement Program?

- (a) Under Category A you can receive services under the Housing Improvement Program more than one (1) time, for improvements to the dwelling in which you are living to improve the safety and sanitation of the dwelling:
- (1) For not more than a total cost of \$2,500; and,
 - (2) For not more than one dwelling; and,

- (b) Under Category B, after October 1, 1986, you may receive services one (1) time, for repairs to the dwelling that you own and occupy that requires not more than \$35,000 to make the dwelling meet applicable building code standards; or,
- (c) Under Category C, after October 1, 1986, you may receive services one (1) time, for a modest replacement home.

§ 256.21 Will I need flood insurance?

You will need flood insurance if your dwelling is located in an area identified as having special flood hazards under the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 977). Your servicing housing office will advise you.

§ 256.22 Is my Federal Government assisted dwelling eligible for services under the Housing Improvement Program?

No. Housing purchased with Federally subsidized funds are not eligible for services under the Housing Improvement Program.

§ 256.23 Are mobile homes eligible for services under the Housing Improvement Program?

No. A mobile home with an integral steel frame, also referred to as a manufactured home, is not eligible for any services under the Housing Improvement Program.

§ 256.24 Can Housing Improvement Program resources be supplemented with other available resources?

Yes. Housing Improvement Program resources may be supplemented through

other available resources for the purpose of:

- (a) Increasing the number of Housing Improvement Program recipients. Supplemental funds cannot be used to increase Housing Improvement Program limits or the scope of an individual project; or
- (b) Increasing the basic benefits derived from the Housing Improvement Program, such as, but not limited to, providing sanitation facilities, water or road access.

§ 256.25 What can I do if I disagree with actions taken under the Housing Improvement Program?

You may appeal action or inaction by an official of the Bureau of Indian Affairs, in accordance with 25 CFR part 2. You may appeal action or inaction by tribal officials through the appeal process established by the servicing tribe.

TABLE A TO PART 256.—OCCUPANCY AND SQUARE FOOTAGE CHART

Number of occupants	Number of bedrooms	Total house square footage (maximum)
1-4	2	900
5-7	3	1050
8+	14	11200

¹ Adequate for all but the very largest families.

TABLE B TO PART 256.—PRIORITY RANKING FACTORS

Factor—Ranking factor and definition	Ranking descriptors	Point descriptors
1. Annual Household Income	Income/125%/FPIG* (% of 125% of FPIG).	Points (Maximum=40)
• Must include income of all persons counted in Factors 2, 3, and 4	0-25 26-50 51-75 76-100 101-125	40 30 20 10 0
• Income includes earned income, royalties, and one-time income		
2. Aged Persons	Years of Age	Points
• For the benefit of persons age 55 or older, and	Less than 55	0
• Must be living in the dwelling	55 and over	1 point per year of age over 54
3. Handicapped Individual	% of Handicap (A+B%/2)	Points (Maximum=20)
• Any one (1) handicapped person living in the dwelling (The percentage of handicap must be based on the average (mean) of the % of disabilities identified from two (2) sources (A+B) of statements of condition which may include a physician's certification, Social Security or Veterans Affairs determination, or similar determination.)	100% or less than 100%.	20 10
4. Dependent Children	Dependent Child (Number of Children).	Points (Maximum=5)

TABLE B TO PART 256.—PRIORITY RANKING FACTORS—Continued

Factor—Ranking factor and definition	Ranking descriptors	Point descriptors
<ul style="list-style-type: none"> Must be under the age of 18 or such other age established for purposes of parental support by tribal or state law (if any). 	1	0
	2	1
	3	2
	4	3
	5	4
6 or more	5.	

* FPIG means Federal Poverty Income Guidelines

Dated: June 17, 1996.
 Ada E. Deer,
Assistant Secretary—Indian Affairs.
 [FR Doc. 96-16673 Filed 7-12-96; 8:45 am]
BILLING CODE 4310-02-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 430

[FRL-5535-5]

RIN 2060-AD03 and 2040-AB53

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Pulp, Paper, and Paperboard Category; National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production; Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: On December 17, 1993, EPA proposed standards to reduce the discharge of water pollutants and emissions of hazardous air pollutants from the pulp, paper, and paperboard industry (58 FR 66078). This document describes the Agency's goals for environmental improvement in this industry, announces a framework for the final wastewater standards, and presents the preliminary results of detailed analyses for a portion of this industry.

DATES: Comments on this notice are solicited and will be accepted until August 14, 1996. Comments are to be submitted in triplicate, and also in electronic format (diskettes) if possible.

ADDRESSES: Comments are to be submitted to Mr. David Hoadley at the following address: Engineering and Analysis Division (4303), EPA, 401 M Street, SW., Washington, DC 20460.

The framework and preliminary results of detailed analyses being announced today are based on data and information in the EPA Water Docket at

EPA Headquarters at Waterside Mall, room M2616, 401 M Street, SW, Washington, DC 20460, telephone (202) 260-3027. The Docket staff requests that interested parties call for an appointment before visiting the Docket. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For questions regarding wastewater standards, contact Mr. Donald Anderson at the following address: Engineering and Analysis Division (4303), EPA, 401 M Street, SW., Washington, DC 20460, telephone number (202) 260-7189, or Mr. Ronald Jordan also at this address, telephone number (202) 260-7115. For questions regarding air emissions standards, contact Ms. Penny Lassiter, Emissions Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541-5396.

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I. Summary of Notices for This Regulation

Today's notice announces the Agency's current thinking, based on preliminary detailed evaluation of the supplemented record and stakeholder discussions, regarding the technology bases to be considered for setting final effluent limitations and standards for a portion (i.e., certain subcategories) of this industry. These subcategories are the proposed bleached papergrade kraft and soda and papergrade sulfite subcategories. Today's notice continues the public review and participation process that began with the proposed rulemaking and continued with additional notices.

On December 17, 1993 (58 FR 66078), EPA proposed integrated air and water rules that included limitations and standards to reduce the discharge of toxic, conventional, and nonconventional pollutants in wastewaters and emissions of hazardous air pollutants from the pulp, paper, and paperboard industry. On March 17, 1994 (59 FR 12567), EPA published a correction notice to the proposed rules and extended the comment period to April 18, 1994.

In the preamble to the proposed rules, EPA solicited data on various issues and questions related to the proposed effluent limitations guidelines and standards and air emissions standards. The Agency received and added new material to the Air and Water Dockets. In a notice of data availability published on February 22, 1995 (60 FR 9813), EPA announced the availability of new data related to the proposed air emissions standards. Those new data are located in Air Docket A-92-40. In a second notice of data availability published on July 5, 1995 (60 FR 34938), EPA announced the availability of new information and data related to the proposed effluent limitations guidelines and standards. Those new data are located starting at Section 18.0 of the Post-Proposal Rulemaking Record, which is a continuation of the proposal record. The Post-Proposal Rulemaking Record is located in the Water Docket,

which is updated periodically to include other new information and analyses. EPA did not solicit comment on the new air and water data in either notice. EPA solicits comment on the information and data announced in those prior notices, on the information and approach discussed in this notice, on other newly docketed information, and on the preliminary results of the detailed analyses presented in this notice.

On March 8, 1996, EPA published a Federal Register notice pertaining to the air portions of the proposed rules, announced the availability of supplemental information, and proposed additional sources to be covered by the rulemaking (61 FR 9383). The comment period for that notice closed on April 8, 1996.

The Agency has held numerous meetings on these proposed integrated rules with many of the stakeholders from the pulp and paper industry, including a trade association (American Forest and Paper Association, or AF&PA), numerous individual companies, consultants and vendors, environmental groups, labor unions, and other interested parties. Materials have been added to the Air and Water Dockets to document these meetings and to make available for public review new information received at those meetings.

II. EPA's Long-Term Environmental Goals

The Agency envisions a long-term approach to environmental improvement that is consistent with sound capital expenditures. This approach, which is presented in today's notice, stems from extensive discussions with a range of stakeholders. The effluent limitations and air emissions standards are only one component of the framework to achieve long-term environmental goals. The overall regulatory framework also includes incentives to reward and encourage mills that implement pollution prevention beyond regulatory requirements.

EPA's long-term goals include improved air quality, improved water quality, the elimination of fish consumption advisories downstream of mills, and elimination of ecologically significant bioaccumulation. An integral part of these goals is an industry committed to continuous environmental improvement—an industry that aggressively pursues research and pilot projects to identify technologies that work together appropriately to reduce, and ultimately eliminate, pollutant discharges for existing and new sources.

A holistic approach to implementing these pollution prevention technologies would contribute to the long-term goal of minimizing impacts of mills in all environmental media by moving mills toward closed-loop process operations. Effective implementation of these technologies is capable of increasing reuse of recoverable materials and energy while concurrently reducing consumption of raw materials (e.g., process water, unrecoverable chemicals, etc.), and reducing generation of air emissions and hazardous and non-hazardous wastes. This combination of regulation, research, pilot projects, and incentives will foster continuous environmental improvement with each mill investment cycle.

III. Anticipated Schedule for Issuing Final Wastewater Standards

A. Schedule for Proposed Bleached Papergrade Kraft and Soda and Proposed Papergrade Sulfite Subcategories

EPA will promulgate final effluent limitations and standards for the Pulp, Paper, and Paperboard industrial category in stages consisting of several subcategories at a time. For the following reasons, EPA intends to promulgate final effluent limitations and standards for the proposed bleached papergrade kraft and soda subcategory and the proposed papergrade sulfite subcategory before promulgating such limitations and standards for any other proposed subcategory.

Under the consent decree entered in the case *Environmental Defense Fund and National Wildlife Federation v. Thomas*, Civ. No. 85-0973 (D.D.C.), and subsequently amended, EPA was required to use its best efforts to promulgate regulations addressing discharges of dioxins and furans from 104 bleaching pulp mills by June 17, 1995. Despite making its best efforts, EPA was not able to promulgate final effluent limitations and standards for those subcategories by this date. However, EPA believes that regulating the discharge of dioxins and furans from those mills remains a very high priority and for this reason plans to promulgate effluent limitations and standards for mills in the proposed bleached papergrade kraft and soda subcategory and the proposed papergrade sulfite subcategory before it finalizes limitations and standards for the other proposed subcategories.

B. Scheduled for Proposed Dissolving Kraft and Dissolving Sulfite Subcategories

EPA is evaluating the comments and preliminary new data affecting the proposed dissolving kraft and dissolving sulfite subcategories. The Agency anticipates that the final effluent limitations and standards for these subcategories will be based on different technologies than those that served as the basis for the proposed limitations and standards. For example, EPA has received data suggesting that oxygen delignification is not a feasible process for making some dissolving pulp products, particularly high grade products. In addition, some use of hypochlorite appears to be necessary to maintain product quality for some products. Affected companies have undertaken laboratory studies and mill trials to develop alternative bleaching processes and to document the effects on wastewater and air emissions. The Agency is working with these companies as their efforts progress.

For these reasons, EPA does not expect to promulgate final effluent limitations guidelines and standards for these proposed subcategories in 1996. Even in the absence of these limitations and standards, however, EPA anticipates that alternative bleaching processes developed as a result of these studies and trials should contribute to substantial reductions in the generation and release of pollutants, when compared to current operating practices. Among the pollutants EPA expects to be reduced are chlorinated organic compounds (e.g., chloroform) in air emissions and wastewaters. EPA encourages mills in these subcategories to undertake and expeditiously complete developmental work that will facilitate installation of alternative process technologies that achieve these pollution prevention goals.

C. Schedule for the Remaining Proposed Subcategories

EPA is assessing comments and data received since proposal for the remaining eight proposed subcategories. These eight proposed subcategories are: (1) Unbleached Kraft; (2) Semi-Chemical; (3) Mechanical Pulp; (4) Non-Wood Chemical Pulp; (5) Secondary Fiber Deink; (6) Secondary Fiber Non-Deink; (7) Fine and Lightweight Papers from Purchased Pulp; and (8) Tissue, Filter, Non-Woven, and Paperboard from Purchased Pulp. For example, EPA has received information from an industry-sponsored survey of secondary fiber non-deink mills. The Agency also has received additional data from mills

in other proposed subcategories, including semi-chemical, unbleached kraft, and secondary fiber deink. EPA plans to promulgate effluent limitations guidelines and standards for these subcategories after promulgation of the final rules for the proposed bleached papergrade kraft and soda subcategory and the proposed papergrade sulfite subcategory.

IV. Post-Proposal Data Gathering

EPA has gathered a substantial amount of new information and data since proposal. Much of this information was collected with the cooperation and support of AF&PA and the National Council of the Paper Industry for Air and Stream Improvement (NCASI), and with the assistance of many individual mills in the U.S. EPA also has gathered additional information from pulp and paper mills primarily in Canada and Europe. Some of the new information and data were generated through field sampling and related efforts at individual mills in the U.S., Canada, and Europe. The following paragraphs summarize some of these data gathering efforts.

For the proposed bleached papergrade kraft and soda subcategory, EPA has new data for several technologies, including: complete chlorine dioxide substitution (without oxygen delignification); oxygen delignification (OD) or extended cooking plus complete chlorine dioxide substitution; extended cooking plus OD plus complete chlorine dioxide substitution; OD plus ozone bleaching plus complete substitution with chlorine dioxide; and totally chlorine-free (TCF) processes. EPA has a combination of bleach plant and end-of-pipe data for these technologies. (See the record at Document Control Number (DCN) 13951.)

For the proposed papergrade sulfite subcategory, EPA has new bleach plant data for elemental chlorine-free processes and TCF processes. EPA also has information on trials for alternative processes beyond existing technologies for products that cannot be made with TCF processes. For example, EPA has data from trials using OD plus complete chlorine dioxide substitution for selected products.

For the proposed dissolving kraft and dissolving sulfite subcategories, EPA has information on trials for alternative processes beyond existing technologies (e.g., reduction in use of hypochlorite, chlorine dioxide substitution with OD and without OD). EPA also has a preliminary evaluation of minimum hypochlorite usage necessary to maintain product quality.

EPA has new information on several topics related to compliance cost estimation, such as process information and data for selected bleached chemical pulp mills and costs of process technology unit operations at selected mills. This information has been used by the Agency to verify its cost curves. EPA also has new information on best management practices, recovery systems, and equipment availability.

V. Regulatory Framework and Preliminary Results

A. Proposed Bleached Papergrade Kraft and Soda Subcategory

For this subcategory and all others addressed in the proposal, the Agency proposed numerical effluent limitations guidelines and standards based on certain model technologies. Although EPA similarly will employ model technologies to calculate the final effluent limitations guidelines and standards, individual mills will be free to use any combination of technologies that will result in compliance with the final effluent limitations and standards.

1. Preliminary Conclusion Regarding Technology Basis for BAT

After re-evaluating technologies for mills in the proposed bleached papergrade kraft and soda subcategory, EPA has determined that two technology options identified in the proposal merit careful consideration for effluent limitations based on best available technology economically achievable (BAT) and pretreatment standards for existing sources (PSES). These options include both in-plant process technologies (e.g., chemical substitution) and end-of-pipe biological treatment technologies (e.g., activated sludge systems). The first of these options is complete (100 percent) substitution of chlorine dioxide for chlorine as the key process technology. The second of these options is the technology basis from proposal, which includes oxygen delignification (OD) or extended cooking with complete (100 percent) substitution of chlorine dioxide for chlorine as the key process technologies. Although the final detailed analysis and decisions are not yet complete, the post-proposal analysis to date has demonstrated to the Agency that the first option—complete (100 percent) substitution of chlorine dioxide—should be given equal weight as a possible technology basis for the BAT effluent limitations and for PSES for this proposed subcategory. EPA anticipates that comments on this notice will assist in the final decision.

EPA's preliminary evaluation of information and data for these two BAT/PSES options indicates that both options appear to reduce dioxins and furans in wastewaters to concentrations at or below the current analytical minimum levels. EPA also anticipates that both technology options would reduce discharges of dioxin such that the number of dioxin-based fish consumption advisories related to discharges from these facilities are likely to be substantially reduced or eliminated over time (depending on stream hydrodynamics of each site).

The incremental environmental benefits that the Agency can attribute to the use of extended delignification (e.g., OD or extended cooking) in addition to complete (100 percent) substitution include reduced chronic toxicity to some aquatic life species. This reduced chronic toxicity is probably attributable to a reduction in mass loadings of certain nonchlorinated compounds that are indirectly measured by the bulk analytical parameter chemical oxygen demand (COD). The reduced chronic toxicity also may reflect an incremental reduction in the potential for formation of dioxin (2,3,7,8 TCDD) and furan (2,3,7,8 TDCF), which at many mills is no longer measurable by current analytical methods at the end-of-pipe, and a reduction in mass loadings of all chlorinated compounds which can be measured by the bulk analytical parameter adsorbable organic halides (AOX).

EPA is continuing to carefully review and analyze the information and data pertinent to establishing effluent limitations guidelines and standards under the Clean Water Act. This includes an analysis of compliance costs and economic achievability. Results of these and other analyses, presented in preliminary form below, will be carefully considered along with comments in preparing the final rule.

2. Incentives for Further Environmental Improvements

EPA is considering including compliance and enforcement incentives in the final regulations to recognize the achievements of those mills that use technology options more advanced than the technology option ultimately selected as BAT. If EPA chooses as the basis for the final BAT limitations and PSES complete (100 percent) substitution of chlorine dioxide for chlorine, without OD or extended cooking, qualifying technologies might include processes employing extended delignification (e.g., OD, extended cooking), ozone-based bleaching sequences, totally chlorine-free (TCF)

bleaching, process wastewater flow reduction (i.e., technologies which move mills toward closed loop operation), or other combinations of technologies. Many of these technologies also would qualify for incentives if EPA includes an extended delignification process as part of BAT. All of these technologies are already being implemented at some mills while further developmental work is ongoing to improve the performance of these technologies.

EPA is considering establishing two sets of incentives for further environmental improvements. The structure, with some variations, would apply regardless of the baseline BAT technology options ultimately selected. The first set of incentives would provide interested mills with additional time—up to 15 years beyond the effective date of these rules—to meet limitations more stringent than those based on the baseline BAT. This set of incentives would be available to any mill that voluntarily selects, as its BAT, technologies that can achieve more stringent effluent limits set forth in the incentives approach. The various incentives-related BAT limitations and standards would be codified in the Code of Federal Regulations and would represent BAT limitations for any mill choosing to participate in the incentives program. The second set of incentives, which could include various monitoring, enforcement, and public recognition elements, would be available only after compliance with the more stringent incentive-related BAT limits and standards is achieved. Any incentives adopted by EPA would be intended to encourage mills to investigate, develop, and implement technologies that are more advanced and that achieve more stringent limitations and standards than the technologies now being considered as the basis for baseline BAT limitations.

EPA has already received suggestions from several stakeholders on possible incentives. Details regarding the possible incentives are discussed in Section X of this notice. EPA solicits comments on this approach and invites specific ideas for incentives. EPA solicits comments on extending this approach to indirect dischargers. Such comments and suggestions would be considered as EPA formulates the final rule for the proposed bleached papergrade kraft and soda and papergrade sulfite subcategories.

3. Technology Options for BAT

As noted above, the post-proposal analysis focuses on two process technology options. The first option,

referred to as Option A, employs conventional pulping processes followed by complete (100 percent) substitution for elemental chlorine by chlorine dioxide. This is an elemental chlorine-free (ECF) technology.

The second option, referred to as Option B, employs oxygen delignification (OD) and/or extended cooking (EC), followed by complete (100 percent) substitution which reduces the lignin content of unbleached pulp beyond that typically provided through conventional pulping processes. The effectiveness of pulping processes in removing lignin is indicated by the unbleached pulp kappa number. A kappa number typical of unbleached pulp from traditional pulping processes for softwoods is approximately 30 and for hardwoods is approximately 20. Extended delignification processes (such as OD or EC) typically produce unbleached softwood pulps with an approximate kappa number of 15 (approximately 10 for hardwoods). Option B also is an ECF technology.

In analyzing performance for Option B, the Agency is considering performance data for mills with OD and/or EC. This analysis differs from proposal when the Agency distinguished between extended delignification sequences with only OD or EC, and sequences with both OD and EC.

This notice presents EPA's preliminary analysis of data pertaining to Option A and compares it to Option B. In addition to obtaining and analyzing data pertaining to Options A and B, the Agency also has endeavored to obtain and analyze additional data for TCF process technologies as a possible BAT technology. TCF technologies typically incorporate OD while relying on peroxide and/or ozone, rather than chlorine-containing compounds, to accomplish pulp bleaching and brightening. Only one U.S. bleached papergrade kraft mill employs a TCF process, and it produces a market pulp of somewhat less than full market pulp brightness. Since proposal of this rule, the U.S. bleached papergrade kraft TCF mill has achieved higher brightness targets, but still less than full market brightness pulp of approximately 90 ISO. EPA obtained bleach plant performance data from this mill, but because the mill discharges to territorial seas under Section 301(m) of the Clean Water Act and thus does not employ secondary treatment, end-of-pipe data reflecting the performance of biological treatment were not available. European TCF mills have achieved at or near full market brightness pulps for limited periods. However, EPA consistently

requested but obtained only limited process and pollutant removal performance data for TCF mills in Europe. The limited range of papergrade TCF products currently produced and sold in the U.S. market indicates that TCF technology is not yet available to make the full range of products produced by ECF or similar chlorine-based processes. Nonetheless, EPA continues to strongly encourage further development and implementation of TCF technologies and products. It is also probable that all TCF mills would qualify for the advanced technology incentives program described below; this should provide an opportunity to stimulate production and U.S. market share for TCF products.

The Agency considered other technology options in developing the proposed regulations for the proposed bleached papergrade kraft and soda subcategory. However, for reasons cited in the proposal, these technologies were not selected as the underlying process technologies for the proposed effluent limitations based on BAT, and have not been further pursued as options for the final rule.

4. Framework for PSES

In the proposal, EPA discussed three options for pretreatment standards for existing sources (PSES) for four proposed subcategories, including bleached papergrade kraft and soda. These options primarily concern end-of-pipe limitations for indirect dischargers. The conclusions in the discussion of BAT technology options also apply to technology options for bleach plant limits for indirect dischargers. See Section VIII of today's notice for a discussion of PSES options.

5. Pollutant Parameters

In the proposed regulations, EPA included both in-process (bleach plant) and end-of-pipe BAT limitations and PSES for mills that bleach chemical pulps covered in four proposed subcategories, including bleached papergrade kraft and soda.

The parameters proposed to be controlled at the bleach plant were 2,3,7,8 TCDD ("dioxin"), 2,3,7,8 TCDF ("furan"), 12 specific chlorinated phenolic compounds, and the volatile organic pollutants chloroform, methylene chloride, methyl ethyl ketone (MEK), and acetone. With respect to the proposed bleached papergrade kraft and soda and papergrade sulfite subcategories, EPA is considering codifying limits for all of these pollutants except for methylene chloride, MEK, and acetone. Based on EPA's most current data, the presence of

these pollutants or the levels at which they are found does not appear to be directly related to any of the pollution prevention process technologies being considered (extended delignification processes, such as extended cooking or oxygen delignification, or bleaching process changes, such as complete substitution for elemental chlorine by chlorine dioxide and elimination of hypochlorite). Acetone and MEK generally are amenable to biological treatment, while other forms of end-of-pipe physical treatment, for the concentrations levels involved, are likely to be costly. Methylene chloride has been found to be a sample and laboratory contaminant in certain cases. Therefore, EPA cannot at this time identify a pollution prevention basis for setting effluent limitations and standards for these pollutants for these proposed subcategories.

The parameters proposed to be controlled at the end-of-pipe were adsorbable organic halides (AOX), chemical oxygen demand (COD), and, for the proposed bleached papergrade kraft and soda subcategory only, color. EPA received comments asserting that neither AOX nor COD is an appropriate parameter to be controlled because, among other reasons cited, these parameters are not directly related to environmental effects or effluent toxicity. Commenters also asserted that color should not be controlled because it is an aesthetic concern more appropriately addressed in individual permits based on applicable water quality standards.

EPA continues to believe that AOX is a valid measure of the total chlorinated organic matter in wastewaters resulting from the bleaching of pulps. Although statistically significant relationships between AOX and a broad range of specific chlorinated organic compounds have not been established, trends in concentration changes, however, have been observed between AOX and specific pollutants, including dioxin, furan, and chlorinated phenolic compounds. Even though dioxin and furan are no longer measurable at the end-of-pipe at many mills, the potential for formation of these pollutants continues to exist at pulp and paper mills as long as any chlorine-containing compounds (including chlorine dioxide) are used in the bleaching process. Final effluent AOX loading is an appropriate measure of the performance of in-process and end-of-pipe technologies in reducing the mass of chlorinated organic pollutants such as dioxin and furan found in wastewaters discharged by this industry. Thus, EPA expects that process changes and treatment

technologies implemented to reduce AOX discharges at the end of the pipe will in turn further reduce the likelihood of the formation and discharge of these chlorinated organic pollutants. The analytical method for this bulk parameter is also very reliable and affords significant savings in monitoring costs over analytical methods for individual pollutants, which are substantially more expensive.

With regard to COD, the Agency notes that chronic sub-lethal aquatic toxicity has been found from wastewaters discharged by both bleached and unbleached pulp mills. Some evidence indicates that this toxicity is associated at least in part with families of non-chlorinated organic materials. Some of these materials are probably wood extractive constituents found in pulping liquors and are refractory or resistant to rapid biological degradation, and thus are not measurable by the five-day biochemical oxygen demand (BOD₅) analytical method. Several studies indicate that as wastewater COD is reduced, indices of these chronic toxicity effects also are reduced. In addition, final effluent COD loading is an appropriate measure of the performance of in-process and end-of-pipe technologies in reducing the mass of non-chlorinated pollutants found in wastewaters discharged by this industry. EPA also has found that COD is an appropriate parameter for use by mills for self-monitoring to evaluate the performance of spent pulping liquor spill prevention programs (BMPs), as noted in Section V.A.6 below. The analytical method for this bulk parameter also is very reliable and affords significant savings in monitoring costs over analytical methods for individual pollutants.

In evaluating comments on the proposal EPA has endeavored to obtain additional data that would supplement the current COD data base for setting final effluent limitations and standards. This supplemented data base would allow EPA to determine the need and, if appropriate, the basis for COD loadings allowances from other contributing sources on-site at mills, such as paper machines and semi-chemical pulping. EPA has received very limited (and, for some operations, insufficient) data to characterize COD loadings from these mill operations. Further, EPA has received only limited additional data to determine the combined performance of well designed and operated spill prevention programs (BMPs), process changes, and end-of-pipe biological treatment systems in removing COD. Moreover, data that are now available indicate a significant

range of values that may not accurately reflect the best performance of these technologies. (See the record at DCN 13958.) EPA solicits additional data that would further define the best performance of these technologies and provide a basis for EPA to assess the need for allowances for other on-site sources of COD and to develop such allowances if appropriate. EPA will evaluate any COD data and public comments received in response to this notice in establishing final limits and standards for this parameter for ECF and TCF mills. EPA also is considering whether it is appropriate that final COD limits and standards for ECF and TCF mills in the proposed bleached papergrade kraft and soda and papergrade sulfite subcategories should be deferred and developed concurrently with BAT COD limits that may be developed for other subcategories in a later rulemaking.

With regard to color, the Agency notes that some mills receive limitations for color in their National Pollutant Discharge Elimination System (NPDES) permits where stream water quality requires such limitations. The Agency is considering not promulgating a technology-based limit for color, but rather deferring control of color to individual permits where necessary to implement water quality standards under CWA Section 301(b)(1)(C).

6. Best Management Practices

In the proposed regulations, EPA included provisions for leak and spill prevention, containment, and control through best management practices (BMPs). The public comments on the proposal generally support the use of BMPs, although some commenters challenged the details of these provisions. EPA plans to incorporate BMPs into the final rule with substantial

restructuring of the program that was proposed. EPA anticipates that the BMPs in the final rule will apply to mills in the proposed bleached papergrade kraft and soda and papergrade sulfite subcategories. EPA also anticipates that the revised BMPs also will apply, as proposed, to mills in other chemical pulping subcategories (e.g., semi-chemical, unbleached kraft). Additional details about BMPs are presented in Section VII of today's notice.

7. Costs for Options A and B

EPA has used additional cost information and data to update its costing methodology. EPA has used costs for recently installed equipment at U.S. mills as well as vendor information to update cost curves and model algorithms for both capital costs and operation and maintenance (O&M) costs. EPA has updated mill specific information and has estimated compliance costs for Options A and B. EPA used these revised cost estimates to estimate economic impacts; the revised economic results are discussed in Section V.A.12 of today's notice. Reports included in the record contain detailed cost information (see DCN 13953).

Much of the cost data EPA is considering was submitted by AF&PA. One of the most significant sources of differences in costs developed by AF&PA and EPA are the assumptions regarding the impact on recovery boiler operation. EPA has investigated the differing assumptions and revised its cost analysis for selected boiler capacity and related recovery cycle components. EPA's preliminary findings are that relatively inexpensive boiler upgrades will accommodate OD filtrate streams and other increases in heat load. EPA's analysis of each mill in this proposed

subcategory indicates that boiler replacement will not be necessary with the installation of OD as defined in Option B.

The Agency's revisions to the costing methodology to reflect new information about the recovery cycle include, where appropriate, boiler upgrades, pulping process modifications, black liquor oxidation, and evaporator upgrades. Additional information about these cost components is presented in the record (see DCN 13959).

EPA also relied on new data and information to revise costs for BMPs. The new data were used to revise design assumptions and cost model algorithms for developing mill-specific costs for BMP upgrades. A significant increase in costs for BMPs resulted.

EPA also revised its analysis for changes in the cost of chemicals and other raw materials used in pulp mills and bleach plants. Costs for some of these raw materials and chemicals have increased while costs for other raw materials and chemicals have decreased. The net effect of these changes on total option costs varies among mills.

EPA updated its process information for each mill by reviewing comments on the proposed rule, information gathered by AF&PA and NCASI, other publicly available information, and by contacting mills directly. EPA considered process changes and upgrades or renovations either completed, underway, or committed to as of mid-1995. Costs in this notice are presented in 1995 dollars. EPA used the updated information for each mill, along with the costing methodology revisions, to determine the need for and the sizing of process change unit operations for Options A and B. The result of this mill-specific costing is summarized in Table 1.

TABLE 1.— CAPITAL, O&M, AND TOTAL ANNUALIZED COSTS FOR BAT AND BMPs

	Costs estimated at proposal for Option B (proposed Option 4)	Current cost estimates	
		Option A	Option B
Capital (\$ million)	2,184	998	2,036
O&M (\$ million/yr)	11.8	109	(7)
Total Annualized Costs:			
(million/yr)	223.2	140	155
(\$/UBMT)	7.50	4.78	5.27

8. Effluent Reduction Benefits

EPA has updated the calculation of effluent reduction benefits for each bleached papergrade kraft and soda mill

to a new baseline of mid-1995. In addition, EPA has revised and simplified the methodology used to estimate that baseline. The baseline

calculation methodology revisions along with details of the effluent reduction calculations are described in the record (see DCN 13592). The following

highlights are changes from the proposal based on comments and new information.

First, EPA used data characterizing the generation of pollutants by a variety of pulping and bleaching technologies and information about the pulping and bleaching technologies at each mill and associated wastewater flow data to characterize the pollutant loads generated as of mid-1995. EPA also used

data for individual mills from the NCASI 1994 Dioxin Profile (see DCN 13764) to estimate the effluent load of 2,3,7,8-TCDD and 2,3,7,8-TCDF. The revised baselines, which were found to be comparable to NCASI's industry-wide estimates, were used to calculate effluent reduction benefits, summarized in Table 2. These calculated reduction benefits are virtually the same for both options. It is interesting to note that the

baseline annual discharge loading in 1992 was 70 grams/year of 2,3,7,8 TCDD and 341 grams/year of 2,3,7,8 TCDF (total of 411 grams/year). The reduction since 1992 to estimated discharge loadings of 3-4 grams/year for 2,3,7,8 TCDD and 3-4 grams/year for 2,3,7,8 TCDF in mid-1995 represents a reduction of 95 percent for 2,3,7,8 TCDD and 99 percent for 2,3,7,8 TCDF.

TABLE 2.—BASELINE DISCHARGES AND ESTIMATED REDUCTIONS OF SELECTED POLLUTANTS FOR BLEACHED PAPERGRADE KRAFT AND SODA MILLS

Pollutant parameter	Baseline discharge	Estimated reductions from baseline attributable to Option A	Estimated reductions from baseline attributable to Option B
2,3,7,8-TCDD (g/yr)	15	11	12
2,3,7,8-TCDF (g/yr)	93	89	90
AOX (kkg/yr)	35,000	24,700	30,600

9. Revised Effluent Limitations

a. Changes to Statistical Methodology.

In developing the BAT limitations presented in today's notice, EPA included the new data discussed in Section IV to calculate the revised effluent limitations. EPA also made four changes to the proposed statistical methodology. First, EPA determined that limitations set at non-detect (ND) levels could be justified in some situations where the data included detected measurements. In the proposal, EPA had set ND limitations only when the data were all non-detected measurements or were detected below the minimum level of the analytical method. In today's notice, TCDF, chloroform, and AOX have numerical BAT limitations. The remaining analytes have ND limitations. Second, EPA determined that the value of half of the sample-specific detection limit should be substituted for all non-detect measurements. In the proposal, EPA had used a methodology for substituting a lower value for anomalously large detection limits. Third, EPA calculated

bleach plant limitations for TCDF and chloroform by aggregating the acid and alkaline measurements prior to calculating the limitations. In the proposal, EPA had calculated separate production-normalized mass limitations for the acid and alkaline streams and then summed the two for an overall production-normalized mass bleach plant limitation. Fourth, EPA calculated a concentration-based limitation for TCDF. In the proposal, EPA had calculated a production-normalized mass-based limitation for TCDF. Fifth, EPA adjusted for autocorrelation in the AOX limitations by using BOD autocorrelation factors. In the preamble to the proposed rules, EPA requested additional AOX data that would allow for evaluating autocorrelation in daily AOX measurements. The AOX data that EPA has received are insufficient for the purpose of evaluating the autocorrelation in Options A and B. Adjustment for positive autocorrelation appropriately leads to larger numerical values for limitations. EPA believes that positive autocorrelation is likely to be

present in daily measurements of AOX and has adjusted the AOX monthly average limitations using observed autocorrelation in BOD measurements. The numerical values of the AOX daily maximum and monthly average limitations for both options in today's notice are larger than the proposed limitations.

EPA has provided additional documentation in the record on the changes made to the BAT statistical methodology (see DCN 13963). The information added to the record also includes the time series analysis used in calculating the proposed BCT limitations; methodology used to aggregate data collected from different sample points; errata to the statistical support document; and the detailed results of the statistical analyses.

b. Revised Effluent Limitations Being Considered. Table 3 presents the proposed limitations and the preliminary results of revising bleach plant effluent limitations for Options A and B.

TABLE 3.—BLEACHED PAPERGRADE KRAFT AND SODA BLEACH PLANT LIMITATIONS

	Daily Maximum Limitation			Monthly Average Limitation ^a		
	As proposed for Option B	Option A	Option B	As proposed for Option B	Option A	Option B
TCDD	ND	ND	ND	N/A	N/A	N/A
TCDF (pg/l)	359 (ng/kkg)	24.1	24.1	N/A	N/A	N/A
Chlorinated Phenolics	ND ^b	ND	ND	N/A	N/A	N/A
Chloroform (g/kkg)	5.06	5.33	5.33	2.01	2.80 ^c	2.80 ^c

^a Where the monitoring frequency was proposed to be once a month, the monthly average limitation would not be applicable (N/A).

^bLimits > ND for two pollutants (trichlorosyringol and 2,4,6-trichlorophenol)(mg/kgg).
^cLimits based on low air-flow low-flow (pressure or diffusion) pulp washers in bleach plants.

Table 4 presents the proposed limitations and the preliminary results of revising end-of-pipe effluent limitations for AOX. Additional data from two mills representing Option A were submitted by the industry but not with sufficient lead time to allow EPA to complete all analyses necessary to use that data in this notice. Results of analyses for these additional data sets will be incorporated as appropriate in the final rule. Listings of these additional data sets are provided in the record (see DCNs 13960, 13961).

TABLE 4.— BLEACHED PAPERGRADE KRAFT AND SODA END-OF-PIPE AOX

	As proposed for Option B	Option A (kg/kkg)	Option B (kg/kkg)
Long-Term Average	0.143	0.413	0.153
Monthly Average Limitation	0.156	0.448	0.162
Daily Maximum Limitation	0.267	0.769	0.236

Table 5 presents the proposed limitations and the preliminary results of revising end-of-pipe effluent limitations for COD. The revised limitations reflect additional data submitted by the industry since proposal. However, as noted previously in this notice, the supplemented database upon which the revised limitations are based includes only limited data to determine the need for and magnitude of end-of-pipe COD allowances for on-site sources other than pulping and bleaching (e.g., paper machines, semi-chemical pulping). Therefore, while the revised COD limitations presented in Table 5 have been developed reflecting only market pulp operations, EPA intends that final COD limitations reflect integrated mills, both ECF and TCF. Table 5 includes a range of possible LTA values for an integrated mill based on the market pulp LTA plus a range of paper machine allowances (presented as such due to limitations of currently available data). EPA also is concerned that the limited COD data currently available for market pulp operations may not represent the best performance of BMPs and end-of-pipe biological treatment systems. Additional details on these preliminary revised COD limitations and underlying data sets are provided in the record (see DCN 13958).

TABLE 5.—BLEACHED PAPERGRADE KRAFT AND SODA SUBCATEGORY END-OF-PIPE COD

	As proposed for Option B	Option A (kg/kkg)	Option B (kg/kkg)
Long-Term Average:			
Market Pulp	NA	38.2	25.5
Only Integrated Mills.	21.3	44–61 ^a	31–48 ^a
Monthly Average Limitation:			
Market Pulp	NA	45.6 ^b	30.4 ^b
Only Integrated Mills.	25.4	TBD	TBD
Daily Maximum Limitation:			
Market Pulp	NA	64.0 ^b	42.7 ^b
Only Integrated Mills.	35.7	TBD	TBD

^a Market pulp plus range of values for paper machine allowances.
^b Derived with same variability factors used for proposed limits.
 TBD To Be Developed—insufficient data at this time.

In the proposal, the end-of-pipe “annual average” limitation for non-continuous dischargers was set equal to the long-term average. The daily maximum limitation applies to both continuous and non-continuous dischargers. The monthly average limitations apply only to continuous dischargers.

EPA is considering a change in the regulatory language defining non-continuous dischargers (see the general definitions section of the proposed regulation, at § 430.01 (k)). The proposed definition focuses on wastewaters stored for periods greater than 24 hours and released on a batch basis. Alternative language being considered by EPA describes the same non-continuous discharge patterns but focuses on wastewaters stored for periods as required by NPDES authorities and released on a variable flow or pollutant loading rate basis to protect receiving water quality. EPA solicits comments, particularly from NPDES authorities, on whether this change in emphasis is appropriate.

10. Conventional Pollutant Limitations (BPT and BCT)

EPA proposed to revise effluent limitations based on the best practicable control technology currently available (BPT) for all of the proposed subcategories, including bleached papergrade kraft and soda. EPA

highlighted several controversial issues concerning the BPT limitations, their calculation, and their interpretation. EPA also presented a rationale, methodology, and related controversies for establishing limitations based on the best conventional pollutant control technology (BCT).

Although the Agency believes that it has the statutory authority to revise BPT, the Agency also believes that it has the discretion to determine whether to revise BPT effluent limitations guidelines in particular circumstances.

For the final rule, the Agency is currently considering exercising its discretion not to revise BPT. Where more stringent effluent limitations for conventional pollutants pass the BCT cost test, EPA would revise BCT in this rulemaking. EPA is likely to apply this same discretion and reliance on the BCT cost test to final rules for this entire industry, not just the proposed bleached papergrade kraft and soda subcategory. EPA solicits comment on this approach.

The Agency also is carefully reviewing comments claiming that certain of the data sets used to establish the proposed revised conventional pollutant effluent limitations do not accurately represent secondary biological treatment technology. EPA also has received a suggestion from AF&PA regarding a different approach for identifying mills having secondary treatment for purposes of performing the BCT cost reasonableness test. This approach suggests that EPA’s secondary treatment regulations applicable to POTWs (see 40 CFR 133.101(m)) provide a basis for determining which mills performing at levels beyond secondary treatment should be excluded from EPA’s BCT analysis. See the record at DCN 14047. If EPA were to adopt this approach, datasets for certain mills asserted to represent more stringent performance than secondary treatment would be removed from the conventional pollutant database and the ensuing BCT cost reasonableness test. EPA solicits comments on this possible approach, particularly with respect to the use of 40 CFR 133.101(m) for this purpose. In response, EPA has made some adjustments to the data sets used to characterize effluent loadings of conventional pollutants typical of secondary biological treatment as applied in the proposed bleached papergrade kraft and soda subcategory. Additional discussion of the BCT datasets and calculations are in the record (DCN 13954). Table 6

summarizes the changes to the long-term average performance for the BCT options resulting from these adjustments.

TABLE 6.—BLEACHED PAPERGRADE KRAFT AND SODA SUBCATEGORY LONG-TERM AVERAGE PERFORMANCE LEVELS FOR BCT OPTIONS

	BOD ₅ Long- Term Average (kg/ OMMT)	TSS Long- Term Average (kg/ OMMT)
Proposal Option 1 (average of the best 90%)	2.65	4.46
Proposal Option 2 (average of the best 50%)	1.57	2.72
Revised Option 1 (average of the best 90%)	2.73	4.41
Revised Option 2 (average of the best 50%)	1.73	2.73

11. Technology Options for NSPS

For New Source Performance Standards (NSPS) in the proposed bleached papergrade kraft and soda subcategory, EPA is considering a minor revision to the proposed technology option. The likely technology basis will be Option B, described in Section V.A.3. This option includes extended delignification generally, including OD and/or extended cooking to produce softwood pulps with a kappa number of approximately 15 (approximately 10 for hardwoods) followed by complete (100 percent) substitution by chlorine dioxide for bleaching.

EPA's data do not indicate performance differences between the proposed NSPS option (then, Option 5) and the option being considered today. EPA plans to use performance data from both of these options to establish NSPS effluent limitations for priority and nonconventional pollutants for the final rule.

For NSPS for conventional pollutants, EPA proposed effluent limitations based on best demonstrated end-of-pipe secondary wastewater treatment. EPA used the treatment system with the lowest long-term average BOD discharge to characterize the best demonstrated performance. EPA's position is that the best existing performance can be achieved (or surpassed) by new facilities as demonstrated by recently built mills in Canada and Scandinavia. EPA has reviewed comments and the supplementary information gathered since proposal and is now considering the best existing performance as characterized by the average of the best 50 percent of the existing mills in the

subcategory. Based on that review of the supplemented database and other information available to date, EPA believes this may be a more appropriate representation of the best existing performance for mills in the proposed bleached papergrade kraft and soda subcategory because the single best mill does not account for all sources of process-related variability expected in the entire subcategory, including raw materials (i.e., furnish), process operations, and final products.

12. Revised Economic Impact Results

a. Revisions to the Economic Analysis. The Agency plans to base its decisions regarding the economic achievability of BAT and other cost considerations on several revisions since proposal. First, the revised economic impacts for the proposed bleached papergrade kraft and soda subcategory will be based on the revised mill-specific engineering costs described in Section V.A.7 of today's notice.

EPA also has revised the economic methodology to account for changes that have occurred in the industry. Some of these changes are summarized below; additional discussion is in the record (see Section 27.0). At proposal, EPA used both a financial model, which estimated facility closures and production changes, and a market model, which was used to estimate price and production effects. Though not fully integrated, these models validated each other's results. Between 1989 and 1995, the industry underwent a period of intensive capital investment, some for pollution control, but mostly to increase production and to change product lines. During this period, a full industry cycle was completed, with pulp mill revenues peaking in 1988, falling through 1992, and reaching new heights in 1995 as the capacity expansions of 1988–1991 were fully exploited. This same period was also one of considerable industry consolidation, with almost 15 percent of the facilities being acquired by others in the industry. In addition, several facilities ceased operation, while several new ones opened. EPA plans to update its financial profile of facilities that have changed ownership and to use those updates in the economic analysis.

As a result of the industry's changes, EPA believes that the market model used at proposal—based on information obtained in the 1989 survey—no longer provides reliable economic information. EPA does not plan to update the market model, which would only be possible through a new survey of every mill and all product lines. Instead, EPA plans to

incorporate some features of the market model, particularly product supply and demand elasticities, into the financial model.

The financial model will incorporate several additional changes to bring it up to date. For example, EPA is adjusting the start year of the model to 1996, which will reflect changes in prices, inflation, interest rates, and position in the pulp and paper industry cycle. Additionally, EPA plans to adjust the industry cycle used for the closure analysis in order to incorporate 1995 financial data. The revised cycle will be seven years instead of the six year cycle used at proposal. EPA also plans to adjust interest rates to reflect changes in industry borrowing costs. EPA used a 7 percent rate in the analyses reported in this notice.

EPA also plans to incorporate a cost pass-through or price change parameter into the model to improve estimates of the effects of closures on pulp and paper production. Although the results presented in today's notice assume no price increases (as assumed at proposal), this new feature will provide a more accurate estimate of the degree to which increased costs are passed through to consumers. Hence, various assumptions about cost pass-through will be considered when the Agency makes final decisions about economic impacts.

b. Economic Impacts of BAT Options A and B. The economic impact analysis will continue to use the three forecasting methods and the composite scoring technique used at proposal to predict mill closures. The revised economic impacts discussed in today's notice are based on an analysis of 85 bleached papergrade kraft and soda mills (76 direct dischargers and nine indirect dischargers). The compliance costs summarized here are expressed in 1995 dollars. The Agency has not yet completed its analysis of the combined impact of all components of the Cluster Rules (e.g., BAT, BCT, BMP and MACT) for this subcategory. The Agency plans to estimate economic impacts for the compilation of all compliance costs and will consider those results in making decisions for the final rules.

The total annualized costs (expressed as a sum of after-tax, or private, costs to each mill) for BAT and PSES for Option A are \$140 million. One mill is predicted to close with associated losses of approximately 500 jobs (1.3 percent of bleached papergrade kraft and soda mills and 0.6 percent of subcategory employment).

For Option B, total annualized costs for BAT and PSES are \$155 million. Three mills are predicted to close with associated losses of approximately 4,100

jobs (3.5 percent of bleached papergrade kraft mills and about 5 percent of subcategory employment).

c. *Cost-Effectiveness.* The Agency has revised the cost-effectiveness analysis for BAT and PSES to reflect the revised estimates of costs and pollutant reductions. In addition, the Agency has expanded its cost-effectiveness analysis since proposal to include two cost bases: pre-tax and after-tax compliance costs. The Agency uses pre-tax costs, which consider industry compliance costs as well as reductions in state and federal tax revenues occasioned by these costs, as a measure of direct social costs. After-tax costs are used to estimate the direct private costs to the regulated industry. While the after-tax cost basis was the only result presented for cost-effectiveness at proposal, both sets of results have been calculated and presented in the revised cost-effectiveness analysis. The additional set of results responds to comments and to policy discussions concerning cost-effectiveness ratios. Although AOX is likely to have an effluent limit in the final rule (see section V.A.5 of this notice), AOX reductions are not included in the cost-effectiveness ratios. This remains unchanged since proposal. Additional details about the cost-effectiveness analysis are in the record (See Section 26).

For BAT, the cost-effectiveness ratios using pre-tax compliance costs are \$12 (\$ 1981) per pound-equivalent removed for Option A and \$11 per pound-equivalent removed for Option B. For PSES, the cost-effectiveness ratios are \$12 per pound-equivalent removed for Option A and \$16 per pound-equivalent removed for Option B, and \$78 per pound-equivalent for the increment of Option A to Option B.

The cost-effectiveness ratios for Options A and B are very close and within the bounds of accuracy of EPA's costing analysis and data available for loadings estimates. The Agency solicits comment on whether these differences are meaningful for purposes of comparing the options. The relative costs for implementing Options A and B will differ among mills. The cost-effectiveness analysis is not presented as mill-specific results, but instead, the analysis is conducted on aggregate annualized compliance costs for direct and indirect dischargers in this subcategory.

When the costs of Options A and B are compared on a pre-tax, annualized basis, Option B is slightly less expensive than Option A for the sum of all direct dischargers in this subcategory. Such a result might appear counter-intuitive because Option B is a more capital

intensive option. This outcome occurs because, compared to industry process technologies in place in 1995, implementing oxygen delignification reduces operating costs at certain mills. At some of these mills, the operation and maintenance cost savings of Option B are sufficiently large that they outweigh that option's higher capital costs.

In calculating annualized costs, the Agency used fixed assumptions about discount rates (OMB's preferred 7 percent real rate) and tax shields (including depreciation and deductions for operation and maintenance costs), both of which may differ among mills due to the firms' differing capital (borrowing) costs. The significantly greater capital costs for Option B may be unachievable within normal compliance periods for firms with higher borrowing costs or more limited access to credit.

The Agency notes that there may be additional impacts associated with mill closures, such as job losses and related displacement costs (see Record Section 17, DCN 08587, pp. 5-5 to 5-6) that are not part of the cost-effectiveness calculation, but which are considered by the Agency when evaluating the economic achievability of options.

B. Proposed Papergrade Sulfite Subcategory

EPA is considering revisions to the proposed papergrade sulfite subcategory. EPA received comments that criticized the proposed effluent limitations for their inapplicability to specialty grade pulps and to ammonium-based pulping processes. Commenters also asserted that the proposed technology basis, which was totally chlorine-free (TCF) bleaching, is not feasible for certain products and processes.

1. Preliminary Conclusions Regarding Technology Basis for BAT

EPA is carefully reviewing the demonstration and feasibility of proposed effluent limitations and standards for all mills in the proposed papergrade sulfite subcategory. Preliminary conclusions are that certain specialty grade pulps have not been produced using totally chlorine-free bleaching, and that totally chlorine-free bleaching has not been demonstrated to be universally applicable to pulps made by ammonium-based processes. Therefore, the Agency is considering segmenting this proposed subcategory to better reflect the product considerations, the variation of manufacturing processes, and the demonstration and feasibility of pollution prevention

process changes. The segments being considered by EPA are:

(a) Production of pulp and paper at papergrade sulfite mills using an acidic cooking liquor of calcium, magnesium, or sodium sulfite.

(b) Production of pulp and paper at papergrade sulfite mills using an acidic cooking liquor of ammonium sulfite.

(c) Production of pulp and paper at specialty grade sulfite mills. Specialty grade sulfite mills are those papergrade mills producing specialty grade pulp characterized by a high percentage of alpha cellulose and high brightness. Typical end uses of such pulp include plastic molding compounds, saturating and laminating products, and photographic papers.

The technology basis for papergrade sulfite products made by the first segment (calcium-, magnesium-, and sodium-based processes) is likely to be totally chlorine-free bleaching, as proposed.

For the second segment (ammonium-based), EPA has received comments and data regarding the applicability of TCF bleaching. The Agency's preliminary conclusion regarding this information is that TCF bleaching is not demonstrated and may not be feasible for the full range of products produced by ammonium-based sulfite mills in the United States. This conclusion is based primarily on the greater difficulty in bleaching ammonium-based sulfite pulps (especially those pulps derived from softwood) without the use of chlorine-containing compounds compared to other sulfite pulps, and the inability to maintain product specifications for certain products within this segment using TCF bleaching. TCF bleaching has not been demonstrated for products with a high percentage of ammonium-based sulfite pulp that also require low dirt count and high strength. Laboratory scale data have been submitted by a firm producing such products indicating that such products can be produced with elemental chlorine-free (ECF) technologies.

EPA expects to promulgate bleach plant effluent limitations for dioxin, furan, and chlorinated phenolic compounds for the ammonium-based segment. EPA anticipates that it will reserve promulgation of bleach plant chloroform limitations and end-of-pipe AOX limitations for this segment until such time that sufficient performance data are available for a mill with the product quality concerns discussed above. EPA expects to have data that could serve as the basis of chloroform and AOX limits for this segment no later than mid-1997.

For the third possible segment (mills that produce specialty grade pulps), EPA has received comments and data that indicate key pulp and product characteristics have not been achieved using TCF bleaching technologies. Data from a firm producing specialty grade pulps indicate required product characteristics may be achievable using ECF bleaching technologies. These results are from limited laboratory scale trials.

The Agency is continuing to work with specialty sulfite pulp manufacturers as their research efforts progress and therefore does not expect to promulgate final effluent limitations guidelines and standards for this segment of the papergrade sulfite subcategory in 1996. EPA anticipates, however, that alternative bleaching processes developed as a result of these research efforts should contribute to substantial reductions from current operating practices in the generation and release of pollutants including, for example, air emissions of chloroform and discharge of chlorinated organic compounds in wastewaters. EPA encourages mills in this segment to undertake and expeditiously complete developmental work that will facilitate installation of alternative process technologies that achieve these pollution prevention goals at the earliest possible date.

2. Technology Options for BAT

For papergrade sulfite mills using an acidic cooking liquor of calcium, magnesium, or sodium sulfite, the TCF technology option being considered as the technology basis for limitations is oxygen and peroxide enhanced extraction, followed by peroxide bleaching. Although still TCF, the technology sequence is a change from proposal, when TCF was an oxygen stage with peroxide addition, followed by a peroxide bleaching stage. This change to the TCF bleaching sequence reflects the more common approach to TCF bleaching within the proposed papergrade sulfite subcategory, and also reflects the technology basis of the mill from which performance data have been collected.

For papergrade sulfite mills using an acidic cooking liquor of ammonium sulfite, the technology option being considered as the technology basis for limitations is complete (100 percent) substitution of chlorine dioxide for chlorine, peroxide enhanced extraction, and elimination of hypochlorite. This sequence reflects the results of laboratory trials showing the ability to produce the full range of products manufactured by mills in the

ammonium segment, with acceptable final product characteristics.

For production of pulp and paper at specialty grade sulfite mills, technology development work is still ongoing. The most likely technology basis for this segment is oxygen delignification, complete (100 percent) substitution, and oxygen and peroxide enhanced extraction.

3. Costs

EPA revised its cost estimates for mills in the subcategory by using the revised bleaching sequences outlined above. EPA also has updated equipment cost curves and unit operating costs. The detailed basis of these revised cost estimates are provided in the record (DCNs 13920, 13947). The preliminary estimates of capital costs for mills in the first two segments of the papergrade sulfite subcategory are \$57.9 million. The preliminary annual operating and maintenance costs are estimated to be \$1.3 million per year. Total annualized costs are estimated to be \$6.6 million per year. These estimates do not include costs for specialty grade sulfite mills.

4. Effluent Reduction Benefits

EPA has updated the calculation of effluent reduction benefits for each papergrade sulfite mill, adjusting the baseline to mid-1995. EPA used methodology similar to that used for the proposed bleached papergrade kraft and soda subcategory.

5. Revised Effluent Limitations for BAT and PSES

Table 7 presents the preliminary results of revising BAT effluent limitations for the proposed papergrade sulfite subcategory, based on TCF bleaching for the calcium-, magnesium-, and sodium-based segment and ECF bleaching for the ammonium sulfite segment. For a discussion of the pollutants EPA is considering addressing in its final rules for this proposed subcategory, see Section V.A.5 of today's notice.

TABLE 7.— PAPERGRADE SULFITE SUBCATEGORY BLEACH PLANT DAILY MAXIMUM LIMITATIONS

	Proposed	Calcium, magnesium, and sodium-based sulfite pulping TCF bleaching	Ammonium-based sulfite pulping ECF bleaching
TCDD (ng/kkg)	none	none	ND
TCDF (ng/kkg)	none	none	ND
Chlorinated Phenolics (mg/kkg).	none	none	ND
Chloroform (g/kkg).	none	none	TBD ^a
AOX (kg/kkg)	0.1 ^b	ND ^b ...	TBD ^a

^aTo Be Developed (TBD).
^bEnd-of-pipe limitation.

Table 8 presents the proposed effluent limitations for COD. However, the supplemented database for the proposed papergrade sulfite subcategory has very limited data to characterize COD loadings either for on-site sources (including pulping and bleaching and other sources) or the performance of the best spill prevention (BMPs), process changes, and end-of-pipe biological treatment systems. As noted previously, EPA will consider additional data and comments received in response to this notice in developing final COD limits for TCF (calcium-, magnesium-, and sodium-based sulfite) and ECF (ammonium-based sulfite) mills in this subcategory. However, EPA also is considering deferring developing COD limits until BAT COD limits are developed for other subcategories in a later rulemaking.

TABLE 8.—PAPERGRADE SULFITE SUBCATEGORY END-OF-PIPE COD

	As proposed	Segment A ^a (kg/kkg) TCF Bleaching	Segment B ^b (kg/kkg) ECF Bleaching
Long-Term Average.	63.7	TBD	TBD
Monthly Average Limitation.	71.2	TBD	TBD
Daily Maximum Limitation.	144	TBD	TBD

^aSegment A:Calcium-, magnesium-, and sodium-based sulfite pulping.

^b Segment B: Ammonium-based sulfite pulping.

6. Conventional Pollutant Limitations

As is the case for the proposed papergrade kraft and soda subcategory, the Agency is considering promulgating more stringent effluent limitations for conventional pollutants for the proposed papergrade sulfite subcategory only if such limits pass the BCT cost test. EPA solicits comment on this approach. The revised conventional pollutant limitations would apply to the calcium-, magnesium-, or sodium-sulfite segment and to the ammonium sulfite segment, but not to the specialty grade segment. Characteristics of wastewaters from specialty grade sulfite mills are significantly different than wastewaters from papergrade sulfite mills in the other two segments. The Agency does not as yet have sufficient data to establish performance levels for conventional pollutants for the specialty grade segment.

EPA has updated and revised its analysis of performance levels in response to comments and additional data. These changes are detailed in the record (see DCN 13954). Table 9 summarizes the adjustments to the proposed BCT options and the revised BCT option.

TABLE 9.—PAPERGRADE SULFITE SUB-CATEGORY^a Long-Term Average Performance of Proposed BCT Options and Revised BCT Option

	BOD ₅ Long-Term Average (kg/ OMMT)	TSS Long-Term Average (kg/ OMMT)
Proposal Option 1	4.97	5.46
Proposal Option 2	3.60	4.74
Revised Option	7.06	8.39

^aApplicable to Calcium-, Magnesium-, and Sodium-based Sulfite Pulping Segment, and to Ammonium-based Sulfite Pulping Segment.

7. Technology Options and Revised Effluent Limitations for NSPS

The technology basis of NSPS for the segments of the proposed papergrade sulfite subcategory is likely to be the same as for the BAT limitations. For calcium-, magnesium-, and sodium-based sulfite mills, TCF-based technology is the likely basis for NSPS. TCF bleaching has not been demonstrated as applicable to the full range of products made by ammonium-based sulfite mills; therefore, ECF-based technology is likely to be the basis of NSPS for mills in this segment. EPA

plans to reserve NSPS for specialty grade sulfite mills.

EPA proposed NSPS for conventional pollutants based on best demonstrated end-of-pipe secondary wastewater treatment. The treatment system with the lowest long-term average BOD₅ discharge was used to characterize the best demonstrated performance. EPA does not anticipate changing this methodology for developing NSPS for the proposed papergrade sulfite subcategory. EPA continues to maintain that any newly constructed mill will be able to achieve the same discharge load as the best existing mill. Because of the changes since proposal in the data sets characterizing typical treated effluent loads for conventional pollutants for the proposed papergrade sulfite subcategory, the best existing performance has changed, as summarized in Table 10. The end-of-pipe performance of the single best mill adequately represents the expected variability in raw materials, processes, and products for mills in this subcategory.

TABLE 10.—PAPERGRADE SULFITE NSPS CONVENTIONAL POLLUTANTS (LONG TERM AVERAGES)

	BOD ₅ (kg/ OMMT)	TSS (kg/ OMMT)
Proposed NSPS	2.69*	2.99*
Revised NSPS	5.61	8.98

*Note that this is the average load of the best mill identified in the Technical Development Document for the proposed rule.

8. Economic Impacts

a. *Costs and Impacts.* The economic analysis for papergrade sulfite mills was revised and updated in a manner similar to that described in Section V.A.12 of today's notice for the proposed bleached papergrade kraft and soda subcategory.

Total annualized BAT and PSES costs for the papergrade sulfite subcategory are estimated to be approximately \$6.6 million (post-tax). No mills would be expected to close as a result of these costs, with no related job losses.

b. *Cost-Effectiveness.* The following results are for the first two segments of the papergrade sulfite subcategory. Cost-effectiveness ratios are not yet available for each of these segments, reported separately.

For direct dischargers, the cost-effectiveness ratio using pre-tax-costs, is \$10 per pound-equivalent removed. For indirect dischargers, the cost-effectiveness ratio is \$284 per pound-equivalent removed.

VI. Environmental Assessment

At proposal, EPA estimated 2,3,7,8 TCDD ("dioxin") and 2,3,7,8 TCDF ("furan") concentrations in fish tissue and then used those concentrations to estimate individual cancer risks and non-cancer hazards from consuming contaminated fish. EPA calculated estimates for recreational and subsistence anglers using two water quality models. One is a simple dilution model that assumes complete mixing and bioavailability with contaminant accumulation in fish estimated by a bioconcentration factor (BCF). The other model is EPA's Dioxin Reassessment Evaluation Model (DRE), which estimates fish tissue concentrations by equilibrium partitioning between the fish tissue and contaminants adsorbed to the organic fraction of sediments suspended in the water column. EPA received comments asserting that EPA improperly employed the simple dilution model as a basis for predicting the risk from dioxin and furan discharges. The comments further suggest that EPA should only use the "more realistic" DRE model and not the simple dilution model to estimate human exposure.

After evaluating these comments and new data related to the water quality modeling for hydrophobic compounds, such as dioxin and furan, EPA is considering changing its methodology for estimating dioxin and furan concentrations in fish and for estimating individual cancer risks and non-cancer hazards for the final rule. EPA is considering not using the simple dilution model, which assumes complete mixing and bioavailability with contaminant accumulation in fish estimated by a bioconcentration factor, but instead using the DRE model. If EPA uses the DRE model, however, EPA would replace the Biota to Suspended Solids Accumulation Factor (BSSAF factor) of 0.09 (based on Lake Ontario data which is primarily historical sources) with a BSSAF factor of 0.2, a value considered more appropriate for ecosystems with ongoing impacts (see "Estimating Exposures to Dioxin-Like compounds" Volume III: Site-Specific Assessment Procedures; EPA 1994; DCN 13955).

EPA is still conducting its reassessment of dioxin and its impacts on human health and the environment. Results of that reassessment available prior to completing the Cluster Rules will be considered as appropriate. EPA also has made available the 1995 database update of the National Listing of Fish and Wildlife Consumption Advisories. See the record at DCN

14016, Section 20.3. This listing is PC-based and available to the public free of charge from the Internet through the following URL: [HTTP://www.epa.gov/OW/OST/Tools](http://www.epa.gov/OW/OST/Tools).

VII. Best Management Practices

In the proposed regulations EPA included provisions for leak and spill prevention, containment, and control through best management practices (BMPs). EPA has received comments that generally support the use of BMPs. However, some commenters challenged the details of these provisions. EPA continues to believe that leak and spill prevention, containment, and control through BMPs yield not only increased environmental benefits but also improved efficiency of operations at pulp and paper mills. The Agency also intends that BMPs apply in the final rule both for direct and indirect discharging mills.

The Agency has assessed preliminarily the comments and data received on BMPs and has held detailed discussions with stakeholders regarding options for BMPs and associated costs. EPA received a substantial amount of additional information and data, including costs, through a survey conducted by AF&PA and NCASI. Based on the information and data received from mills that have implemented spill prevention and control programs, EPA has reformulated the scope of BMPs to focus on spent pulping liquor (i.e., black liquor and red liquor) spill control. The Agency is also restructuring BMP program requirements to allow for further flexibility in how BMPs are implemented to achieve meaningful prevention and control of leaks and spills of spent pulping liquors. The Agency has prepared and included in the record (DCN 13894) a document that incorporates EPA's preliminary revisions to its proposed BMP program.

In response to comments, this document also describes a management program being considered by EPA for monitoring the implementation of BMPs. The purposes of this requirement are: (1) To provide a framework for monitoring the performance and effectiveness of BMPs on a continuing basis; and (2) to establish an early warning system to detect trends in spent pulping liquor losses that might otherwise not be obvious from other sources. The program entails establishing upper operating control limits on a measure of organic loading at the influent to wastewater treatment or at another key location or locations in the mill sewer system, and responding to exceedances of those control limits with investigative and

corrective actions, as appropriate. EPA does not intend that exceedances of the upper control limits will constitute violations of NPDES permits or pretreatment control mechanisms. Failure of the owner or operator to conduct the required monitoring or failure to conduct investigative or corrective actions when such limits are exceeded would constitute violations.

EPA believes, consistent with a comment received, that COD is among the best, if not the best, pulp mill wastewater characteristics to monitor to meet the requirements of this provision of the BMP regulation. The test method for COD is highly reproducible and can be run in a short period of time, unlike BOD₅. It also has the advantage of being responsive to losses of turpentine and soap, unlike conductivity which is not responsive to these materials. Accordingly, the revised BMP program incorporates COD as the control parameter to measure performance of pulping liquor spill controls. The Agency seeks comments on the revised approach to BMPs and related details, including costs. EPA also seeks comment on the management program described above, including its potential effectiveness and any implementation issues it might present, especially from a permit writer's perspective.

VIII. Pretreatment Standards

In the proposal, EPA discussed three options for pretreatment standards for existing sources (PSES) for the 13 indirect discharging facilities in four proposed subcategories, each of which contribute the majority of flow or pollutant loadings to a publicly owned treatment works (POTW). The option selected for proposal would have set PSES for these indirect dischargers for the same pollutants controlled by BAT for direct dischargers; the proposed standards would have applied at the point of discharge from the bleach plant and at the point of discharge to the POTW, depending upon the pollutant proposed to be regulated. EPA also solicited comment on whether pretreatment standards for BOD₅ and TSS were warranted to ensure that pass-through of these and other pollutants (e.g., AOX) did not occur.

For the proposed bleached papergrade kraft and soda subcategory and the proposed papergrade sulfite subcategory, EPA's record shows that both direct-discharging mills in those proposed subcategories and POTWs accepting wastewaters from pulp and paper mills in those proposed subcategories generally operate secondary biological treatment systems. Data now available to EPA suitable for

characterizing treatment system performance at these POTWs still are quite limited. In general, the data provided by indirect-discharging facilities, POTWs, and other interested parties lack paired influent and effluent AOX, COD, and color data points, accompanying information concerning operations (at either the treatment system or related to pulping and bleaching process areas of the mills), analytical methods, and quality control/assurance (QA/QC) associated with sample collection, handling, and laboratory analysis. In addition, some commenters provided summary information unaccompanied by individual analytical data points, particularly for POTW influent. As a result, EPA has been unable to develop a complete and rigorous database for conducting a pass-through analysis. Nevertheless, EPA has used the limited information available to the extent possible in comparing pollutant reductions attained by direct-discharging mill treatment systems and by POTWs accepting similar wastewaters in evaluating the potential for pass-through to take place. Based on the limited data available for the proposed bleached papergrade kraft and soda and the proposed papergrade sulfite subcategories, it appears that secondary biological treatment systems at POTWs and direct-discharging mills generally achieve comparable reductions of BOD₅, TSS, AOX, COD, and color. (See the record at DCN 13956.) Thus, EPA has concluded preliminarily that the data reviewed for this analysis do not indicate pass-through of these pollutants is likely to occur at these POTWs. EPA solicits comments on this finding.

Accordingly, EPA anticipates that it will not promulgate national pretreatment standards for new or existing sources for BOD₅, TSS, AOX, COD, or color for the proposed bleached papergrade kraft and soda subcategory or the proposed papergrade sulfite subcategory. Any new data received on these pollutants, particularly for POTWs that did not submit data usable for this analysis, will be considered in preparing the final rules and will be placed in the record. Notwithstanding EPA's preliminary decision not to set PSES or PSNS for those pollutants for these subcategories, other regulatory authorities may determine, based on a site-specific review of treatment system performance, that pass-through of these or other pollutants does indeed occur and that locally imposed limits are appropriate.

Concerning the pollutants discharged from the bleach plant, EPA continues to

believe that sludge contamination occurs and therefore is likely to promulgate PSES and PSNS for the same pollutants controlled at the bleach plant by BAT limitations, as included in the proposal and as now being considered in this notice, for direct-discharging facilities. See Sections V.A and V.B, *supra*, for discussion of pollutants selected for BAT regulation at the discharge from the bleach plant.

IX. Implementation Issues

A. Permit Limits for Multiple Subcategory Mills

The Agency has structured the revised effluent limitations guidelines and standards to be used in a building block approach. This means that the applicable NPDES permit limitations for mills with production in more than one subcategory will be the sum of the mass loadings based on the appropriate production in each subcategory and the respective subcategory effluent limitations guidelines or standards. In some cases, such as any BCT limitations for conventional pollutants, this may entail the use of two distinct subcategorization schemes, revised and current. Where the Agency has revised effluent limitations guidelines or standards, the appropriate production encompassed in the revised subcategories will be utilized for the calculation of mass limitations, with all remaining production categorized and mass loadings calculated according to the current subcategory scheme.

B. New Sources

In the proposed rule, EPA included definitions of types of facilities that would be considered new sources. EPA received comments that asserted that EPA had no basis for changing the definition of new sources as provided in National Pollutant Discharge Elimination System (NPDES) permit program regulations (found at 40 CFR 122.2 and 122.29). EPA is considering clarifying its definitions such that only new "greenfield" mills and new capacity increases at existing mills would be considered new sources. Any existing mills that renovate existing fiber lines at existing production levels for purposes of complying with either BAT or PSES effluent limitations or standards or any existing mills that voluntarily accept more stringent BAT limitations as part of the incentives program would not be considered new sources.

C. Monitoring

EPA proposed specific minimum monitoring requirements in the

regulation (at § 430.02) with monitoring frequencies for pollutant parameters included in both bleach plant effluent limitations and end-of-pipe effluent limitations. EPA is considering retaining these minimum monitoring requirements as proposed at least for the two proposed subcategories covered by this notice, and possibly also for remaining bleaching subcategories to be covered in a later rulemaking. However, EPA acknowledges that this approach would be a change from past effluent guidelines practice where EPA issued only guidance with respect to monitoring. EPA therefore welcomes comment—particularly from permitting authorities—regarding the appropriateness of promulgating specific minimum monitoring requirements. EPA also acknowledges that specific minimum monitoring requirements may be at odds with the Agency's recent initiative to tailor monitoring requirements to particular circumstances, notably compliance records.

EPA has received a suggestion from the industry that if mills certify that elemental chlorine is not being used in bleaching operations (i.e., ECF—complete substitution with chlorine dioxide and elimination of hypochlorite), monitoring should not be required for dioxin, furan, or any other chlorinated organic pollutant parameters proposed to be regulated (i.e., AOX, chloroform, chlorinated phenolic compounds, etc.). EPA does not agree with the industry's assertion that substitution of chemicals alone (changing to an ECF process), without regard for operational controls, is sufficient to warrant such an approach. There are data available for ECF operations indicating, for example, that detectable concentrations of dioxin still can be generated in bleach plant effluents. Contrary to the industry's assertion, this finding reflects the need for careful control of chemical (e.g., chlorine dioxide) application rates. Further, chloroform concentrations in wastewater, and also air emissions, can be expected to exhibit considerable variability reflecting pulp washing and other operational practices. Therefore, without meaningful monitoring data to reflect a range of operational practices, as well as raw materials and final products, there is no assurance that changes in process technologies that are installed are being properly operated or that bleach plant limits or end-of-pipe limits are being achieved consistently.

D. BMPs as NPDES Permit Special Conditions

EPA proposed that specific BMP requirements be fully implemented within thirty months from the effective date of the final rules, separate from the normal NPDES reissuance process. This structure would be retained for indirect dischargers because the BMPs would be promulgated as part of PSES. For direct dischargers, however, EPA is now considering requiring implementation of BMPs as special NPDES permit conditions and to require implementation of the BMPs within thirty months from the effective date of the final rule or the date the mill's next NPDES permit is issued, whichever is later. However, EPA expects that the compliance date for implementation shall not extend beyond five years from the effective date of the final rule, because EPA expects NPDES permit for those mills to be reissued on a timely basis.

E. Relationship Between the Cluster Rules and Project XL

As described in the May 22, 1995 Federal Register notice (60 FR 27282), EPA is participating in the development of regulatory reinvention excellence and leadership (Project XL) pilot projects. Such projects would involve the exercise of regulatory flexibility by EPA in exchange for a commitment on the part of the regulated entity to achieve better environmental results than would have been attained through full compliance with all applicable regulations. One bleached papergrade kraft mill is participating in Project XL. Many of the incentives listed in Section X of this notice provide regulatory flexibility in exchange for superior environmental benefits. EPA solicits comments on how, if at all, project XL should be reflected in this rulemaking.

F. Summary of Changes to Methods for Analysis of Pulp and Paper Industry Wastewaters

The pulp and paper industry and other commenters have provided suggestions for improvement of methods for analysis of pulp and paper industry wastewaters. Where these suggestions are expected to have a positive effect on the reliability of analytical data produced, EPA will incorporate the suggestions into the final versions of methods incorporated by reference into the final rule to be promulgated at 40 CFR part 430. Methods for which changes are anticipated and a summary of these changes are given below. This summary is not intended to be all-inclusive, but to be indicative of the

type of changes anticipated. Detailed revisions to these methods will be added to the record at a later date.

1. Method 1624, Volatiles by Purge-and-Trap and Isotope Dilution GC/MS

Suggested changes focused mostly on clarification of the language in Method 1624 rather than on substantive modifications of the method. These clarifications will be made when Method 1624 is revised, updated, and re-promulgated at 40 CFR Part 136. This update is expected in late 1996 or in 1997. No changes will be made to Method 1624 for promulgation of the pulp and paper industry Cluster Rules.

2. Method 1650, AOX by Adsorption and Coulometric Titration

EPA expects that changes will be made in Method 1650 as part of this rulemaking to improve the ease of use and the reliability of this method. Among the possible changes, EPA expects that the breakthrough specification will be adjusted based on data provided by the industry; that a 25-mL adsorption volume will be allowed, provided the sensitivity requirements in the method are met; that greater flexibility will be allowed in the apparatus cited in the method; that 2-mm columns only will be allowed; and that a minimum integration time of 10 minutes will be added to assure that all AOX is measured.

3. Method 1653, Chlorophenolics by In-Situ Derivatization and Isotope Dilution GC/MS

EPA expects that changes will be made to Method 1653 as part of this rulemaking to improve the reliability of the method and to lower costs of measurements. Among the possible changes, EPA anticipates lowering the spiking levels of the labeled compounds to reduce interferences with trace levels of the analytes of interest and to lower the cost of labeled compounds; allowing the use of solvents more appropriate to the particular analyte being dissolved; the addition of the labeled compounds to the sample prior to pH adjustment; and a reduction in method flexibility in certain critical areas.

4. Method NCASI Technical Bulletin No. 253, Color

Changes anticipated as part of this rulemaking are: Removal of extraneous tables; revision of text of interferences; use of a prefilter and/or centrifugation to reduce turbidity; and allowance of use of a buffer solution and prefiltration so long as these changes do not result in lower color values.

G. Regulatory Flexibility Analysis

At the time of proposal, EPA examined the potential economic impact of the proposed Cluster Rules on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., Pub. L. 96-354). See 58 FR 66077, 66154, (December 17, 1993). As part of this analysis, EPA estimated the economic impact of the proposed integrated regulatory alternative on small mills and small companies involved in pulp, paper and paperboard manufacturing. See 58 FR 66154. The analysis also presented the Agency's consideration of alternatives that might minimize the impacts of the proposed Cluster Rules on small entities. See 58 FR 66165. EPA did not analyze the alternative represented by Option A at proposal because it lacked the data and information necessary to perform that analysis. Based on the information and data EPA has received since proposal, EPA believes that Option A represents a significant alternative to the proposed BAT option. Because that alternative, if adopted, would afford more flexibility to small businesses than the proposed option and because the original analysis addressed what EPA regards as the most stringent set of regulatory alternatives, EPA believes that the original analysis continues to provide an adequate basis by which to evaluate the impact of the proposed Cluster Rules on small entities. Moreover, mills in the proposed bleached papergrade kraft and soda and papergrade sulfite subcategories typically are not small businesses, whereas the proposed Cluster Rules included other subcategories in which small businesses are more likely to be operating. As described earlier in this notice, these other subcategories will not be included in this initial phase of rulemaking but in a later phase of rulemaking. For this reason, EPA believes that no further regulatory flexibility analysis is necessary at this time. However, EPA will perform a final regulatory flexibility analysis in compliance with all applicable laws at the time it promulgates the Cluster Rules.

X. Incentives for Further Environmental Improvements

As noted earlier in this notice, EPA's vision of long term environmental goals for the pulp and paper industry includes continuing research and progress toward environmental improvement. The Agency believes that individual mills could be encouraged to explore and install technologies that could achieve further pollutant reductions through a voluntary

incentives program designed to complement the baseline BAT. This industry's participation in the 33/50 program and its progress toward reducing toxic discharges in advance of the proposed BAT revisions indicate that such an approach may be widely accepted and utilized by individual mills.

Further, EPA recognizes that technologies exist, and are currently employed by some mills, that have the ability to surpass the environmental protection that would be provided by compliance with limits and standards based on the final rules. These technologies include extended delignification (e.g., extended cooking and/or oxygen delignification) in conjunction with complete substitution (if Option A is selected), and TCF bleaching technologies. Some mills also are investigating and developing advanced technologies that achieve major reductions in water use and process wastewater flow through treatment and recycle of pulping and evaporator condensates and bleach plant filtrates to recovery systems.

EPA has received suggestions for an incentives program from a number of stakeholders. In addition to the suggestions EPA has incorporated into its preliminary incentives program, EPA also received ideas for other incentives; these ideas are summarized later in this notice. From these and other stakeholder suggestions, EPA has developed a preliminary program, presented below, that is intended to provide incentives for further long term environmental improvements. EPA is considering several types of incentives to encourage further environmental improvements by mills that have yet to decide on an approach to comply with BAT effluent limitations. Because mill-specific factors, including product specifications and existing equipment, may affect the technical approach taken or the environmental goal attainable by an individual mill, EPA is considering several tiers of performance-based incentives. The appropriate limits and standards for each of tier would be codified as an alternative BAT and, as appropriate, NSPS for any mill choosing to participate in the incentives program at that tier. Under this approach, greater incentives would be available for greater reductions in pollutant discharge.

EPA recognizes that there are mills in the proposed bleached papergrade kraft and soda subcategory that have already installed, have committed to install or may yet decide to install, advanced technologies that are achieving or have the potential to achieve effluent limitations more stringent than those

likely to be adopted in the final rules (particularly if Option A is selected). These mills would qualify for the incentives program, and the incentives would actually serve as rewards for actions already taken.

A key tenet of this program is that mills would voluntarily chose an incentives-related BAT/NSPS as the basis for their technology-based NPDES permit limits (e.g., inclusion in NPDES permits of AOX effluent limitations more stringent than those based on the baseline BAT as well as condensate and bleach plant wastewater flow reduction limitations) in order to qualify for these incentives. Mills would not be required to enter this program. A mill choosing not to accept incentives-related BAT limitations or NSPS would be subject to the baseline BAT limitations or NSPS of the type discussed in today's notice in Section V.

Any mill could voluntarily enter at any tier appropriate to its individual circumstances. Further, mills that enter either at Tier I or Tier II could decide, after making such a commitment in permits but before termination of the appropriate compliance period (i.e., not later than five years—Tier I, or not later than ten years—Tier II), to commit to the requirements of a more stringent tier (i.e., Tier II or Tier III). The limitations and standards corresponding to those tiers would then be BAT for that mill. Threshold requirements at Tier I being considered for mills to qualify would include unbleached pulp characteristics typical of extended delignification technologies (e.g., oxygen delignification) and recycle of pulp mill filtrate to recovery systems (for purposes of this discussion using Option A as the BAT baseline). For NSPS, the entry tier would probably be Tier II (as tentatively defined in this Notice), assuming that the baseline NSPS is codified as discussed in Section V.A.11 above.

Mills that operate a single fiber line and that achieve performance reflective of advanced technology on that line will be considered eligible as a whole mill for the incentives described below (except for operations outside of the pulp, paper and paperboard industrial category and the proposed bleached papergrade kraft and soda subcategory). At mills with more than one fiber line, only those fiber lines that achieve performance reflective of advanced technology performance standards will be eligible for the incentives described below.

A preliminary list of possible incentives along with the Agency's preliminary structure of these advanced

technology program tiers follows below. This structure consists of three tiers that would apply if Option A is selected as the baseline BAT in the final rule.

A. Advanced Technology Tiers

1. Definition of Incentives-Related BAT Limitations or NSPS by Tier

EPA is considering including in the final regulation three tiers of BAT limitations and two tiers of NSPS applicable to the proposed bleached papergrade kraft and soda subcategory, each of which would be defined in the Code of Federal Regulations. In addition to the possible limitations and standards described below, each tier also would include as limitations and standards for other parameters the bleach plant limitations EPA is considering promulgating as part of the baseline BAT/NSPS.

a. Tier I BAT Limitations. To qualify for this tier, a mill would need to operate its advanced technology (AT) fiber line(s) to achieve a final effluent AOX long term average (LTA) of 0.30 kg/kkg. AT fiber lines must also achieve reduced lignin content in unbleached pulps as measured by a kappa number of 20 for softwoods and 13 for hardwoods. Finally, AT fiber lines must recycle to recovery systems all filtrates up to the point at which the unbleached pulp kappa numbers are measured (e.g., brownstock into bleaching).

b. Tier II BAT Limitations and NSPS. To qualify for this tier, a mill would need to operate its AT fiber line(s) to achieve a final effluent AOX LTA of less than 0.10 kg/kkg, and total pulping area condensate, evaporator condensate, and bleach plant wastewater flow of 10 m³/kkg or less.

c. Tier III BAT Limitations and NSPS. To qualify for this tier, a mill would need to operate its AT fiber line(s) to achieve a final effluent AOX LTA of 0.05 kg/kkg, and total pulping area condensate, evaporator condensate, and bleach plant wastewater flow of 5 m³/kkg or less.

For each tier described above, EPA would also promulgate appropriate limitations (maximum monthly average and maximum for any one day) that account for variability around the long term average (LTA) limits presented above. See the record for discussion of limits and standards defining these tiers (DCN 13957).

2. Basis for Incentives-Related BAT Limitations and NSPS

For Tier I (if complete substitution is chosen as the baseline BAT), the BAT model technology would be that represented by BAT Option B. EPA is

not selecting a model technology for Tiers II and III (under the present structure) because these Tiers are intended to reflect evolution of advanced technologies that cannot be specified today. However, EPA expects that those technologies would move mills toward minimum impacts and closed loop operations. EPA has chosen to use AOX as a performance standard for each of the three incentives-related BAT tiers and the two NSPS tiers because AOX is a measure of progress in reducing the total chlorinated organic matter in wastewaters resulting from the bleaching of pulps. In addition, the use of AOX rather than other measures of organic matter (e.g., BOD) will further encourage a pollution prevention approach instead of end-of-pipe treatment technologies. EPA seeks comment on including COD as a performance criterion in addition to AOX, and seeks comment on and data supporting the performance-based COD value that would be appropriate for each of the tiers in terms of mass-loading or percent reduction beyond BAT/NSPS levels.

In addition to the AOX criterion, EPA is considering establishing BAT limitations for Tier I that include kappa numbers measured prior to bleaching and a narrative limitation calling for recycling of the filtrates generated prior to the point at which that kappa is achieved. By meeting the kappa number and recycle limitations, Tier I mills would achieve substantial reductions in precursors for chlorinated organic pollutants found in lignin (measured as kappa number values) beyond reductions achieved by mills with conventional pulping processes. Further, Tier I mills would be bleaching pulps with less lignin and would realize significant reductions in the amount of unrecoverable bleaching chemicals required to achieve their target brightness. By using less bleaching chemical, Tier I mills would further increase the margin of safety by reducing the formation and discharge of chlorinated organic pollutants generated by bleaching pulps with chlorine-containing compounds, including chlorine dioxide. By recycling the bleaching filtrates, Tier I mills also would be implementing an important building block for long-term flow reduction goals.

By defining Tier I with parameter values (AOX, kappa numbers) and recycle requirements as presented above, EPA intends to provide maximum encouragement to as many mills as possible to achieve the performance of at least the initial threshold of the advanced technology

program. Adopting threshold performance criteria that are too stringent could discourage mills from making additional capital investments beyond those necessary to achieve the baseline BAT. This could undermine one goal of the incentives program, which is to achieve the greatest environmental results possible consistent with mills' capital investment cycles. Conversely, setting threshold criteria at levels that could be met by some mills that only comply with the baseline BAT limitations and do not employ advanced technologies could serve as a disincentive to invest in advanced technologies that achieve dramatic reductions in pollutant loadings and flow. The kappa numbers defined above for Tier I, while at the upper end of the range of values achieved by these technologies, nonetheless appear to separate mills that employ them from mills that would use conventional pulping technologies and achieve the BAT effluent limitations now being considered by EPA. EPA seeks comment on this finding.

EPA is considering setting the incentives-related BAT limitations and NSPS for Tier II and Tier III based on a more stringent philosophy than for Tier I. EPA believes that Tiers II and III should reflect movement toward the long-term goal of minimizing impacts of mills in all environmental media through partially or fully closed loop processes. For Tier II, EPA is considering an AOX limit based on a long-term average (0.10 kg/kkg) that is currently being achieved by some of the best mills in the industry. For Tier III, EPA is considering an AOX limit based on a long-term average (0.05 kg/kkg) that is being achieved only by a very few mills, including one ECF mill. While this ECF mill achieved the AOX limit only with hardwood furnish, it did so without the level of flow reduction anticipated for Tier III. It is the Agency's judgment, based on trends in ECF technology development to date, that with recycle of pulping and evaporator condensates and bleach plant filtrates necessary to achieve a wastewater flow of 5 m³/kkg and removal of chlorides from filtrates (or at other points in the recovery cycle), commensurate reductions in the mass of chlorinated organic pollutants contained in wastewaters discharged also are likely to occur. For this reason, it is EPA's judgment that the Tier III AOX limit would be achievable by advanced ECF mills for both hardwood and softwood furnishes. It is also important to note that recently gathered data from TCF

mills indicate that end-of-pipe AOX levels below detection limits can be achieved. For this reason, EPA expects that all TCF mills should be eligible to participate in this program (based solely on AOX performance) and that separate BAT/NSPS AOX limitations would be unnecessary. Therefore, it is the Agency's judgment that either advanced ECF or TCF mills will be capable of achieving this AOX limit for Tier III.

Flow reduction and progress toward closed loop mill operations are very important long-term environmental goals because releases to all environmental media would be minimized. Review of currently available data and literature indicates that the numerical values set forth to define Tiers II (10 m³/kkg) and III (5 m³/kkg) are appropriately stringent reduced flow targets by comparison to current wastewater flow for mills with extended delignification technologies. Moreover, EPA indicated in the March 8, 1996 notice that the industry's "clean water alternative" could be a MACT compliance alternative that conceptually will facilitate segregation, treatment, and reuse of condensates. Inclusion of pulping and evaporator condensates in these reduced flow targets is therefore both consistent with this potential alternative and appropriate in that it will foster even greater flow reduction through recycle and reuse of the greatest possible volume of process wastewater. While completely closed loop operations offer a theoretically desirable goal, EPA is concerned that without considerably more research and mill trials, the potential exists for cross-media transfers or product quality concerns.

As EPA presently conceives the incentives program, a mill would qualify for incentives only if it agrees to accept permit limitations corresponding to the tier it selects (e.g., for Tier II, an AOX limitation of 0.10 kg/kkg and condensate and bleach plant wastewater flow of 10 m³/kkg) including all applicable bleach plant limitations (e.g., those corresponding to BAT Option B and the proposed NSPS). Those limitations would constitute BAT/NSPS for that mill. The permit developed for a mill participating in the incentives program also would need to contain all other permit limitations and conditions otherwise applicable to the mill, including any conventional pollutant limitations and standards established by these Cluster Rules, any water quality-based effluent limitations required under CWA section 301(b)(1)(C), and best management practices (BMPs) provisions.

3. Legal Authority to Establish Incentives-Related BAT Limitations and NSPS

EPA believes it has the legal authority to establish incentives-related BAT limits for Tier I, Tier II, and Tier III applicable solely at the election of the regulated entity. (Similar arguments support EPA's preliminary NSPS determination.) Under CWA section 304(b)(2), EPA is authorized to identify a technology as BAT after taking into account a variety of factors, including the cost of achieving such effluent reduction, non-water quality environmental impacts and such other factors as the Administrator deems appropriate. In this instance, EPA believes the limits corresponding to each of the tiers would reflect BAT for any participating mill for the following reasons.

First, having voluntarily agreed to make these limits enforceable in its permit, the mill represents to EPA that there is a technology that is the best available and economically achievable for that mill to achieve the limits. Thus, the costs of achieving the desired effluent reductions—evaluated against the mill's own choices—support the BAT finding. Second, EPA would conclude that a less stringent baseline BAT (e.g., for purposes of this discussion based on complete substitution) would not be BAT for such a mill on the date of promulgation because the mill is making investment and engineering decisions that would make a process focused solely on complete substitution technically and financially inappropriate (such as by over designing chlorine dioxide generation capacity). In other words, that process technology would not be "best" for those mills committed to moving beyond complete substitution to more stringent incentive-based limitations. Moreover, avoiding such over design would avoid unnecessary capital investments, with those investments possibly applied to projects to prevent other environmental impacts. Finally, application of incentives-related BAT limits would be completely voluntary; an Advanced Technology mill participating in the incentives program would always be free to forgo the incentives and to meet the baseline BAT limits instead.

The same analysis justifying the various pollutant parameter limits for the baseline (i.e., non-incentives) BAT applies equally to the incentives-related BAT limits for those parameters, with the addition of progressively more stringent end-of-pipe AOX limits, limits pertaining to lignin content in

unbleached pulp and recycle of filtrates for Tier I, and reductions in condensate and bleach plant wastewater flows for Tiers II and III. See Section V.A.5 and 9. EPA believes, for the reasons discussed in Section X.A.2, above, it has the authority to establish incentive-based BAT limits for lignin content in unbleached pulp, for recycle of filtrates, and for reduced condensate and bleach plant wastewater flows. Kappa numbers limits (representing the lignin content of unbleached pulp) can be used to reduce the presence of precursors for chlorinated organic pollutants in a mill's wastewater. Recycle of filtrates to chemical recovery processes reduces the mass of precursors for chlorinated organic pollutants, as well as all other pollutants in these wastewaters, that would otherwise be discharged. Limits for condensate and bleach plant wastewater flows move mills toward closed loop operations, thereby dramatically reducing chlorinated organic pollutants and all other pollutants otherwise found in mill wastewater discharges. The basis for these limits is discussed in Section X.A.2 above. EPA solicits comment on this approach, including the reasoning EPA offers in support of it.

B. Incentives Available Prior to Achievement of Incentives-Related BAT

1. Extended Compliance Schedules

A major obstacle to implementing advanced technologies in this industry is the disjunction between the statutory requirement that mills comply immediately with BAT and the longer time frames usually associated with a mill's investment plans. While the immediate compliance requirements of the Act promote, in the short term, prompt implementation of proven BAT technologies—and hence deliver over the long term the environmental benefits associated with achieving the BAT limits—EPA is concerned that the statutory deadlines also can discourage mills in this industry from implementing technologies superior to the BAT technology. EPA believes that many mills, were it not for the BAT time constraints, would choose to invest in more advanced technologies than BAT because the long-term environmental, operational, and market competitiveness benefits would be correspondingly greater. Such investments, however, typically require more time than the statute allows, especially in this industry where capital investment cycles are five years or longer. Mills wishing to implement—or to design and pilot—more advanced technologies are often faced with an unattractive choice:

either achieve BAT immediately with the risk that that technology will be overtaken imminently in whole or in part by more advanced technologies, or risk extended noncompliance with BAT in pursuit of superior performance levels. This is particularly the case here, where mills can design their bleach plants either to achieve BAT, such as that represented by Option A, or to adopt a long-term approach that includes more advanced extended delignification processes (such as those anticipated under Tier I) or TCF processes. For example, if immediate compliance with baseline BAT limitations (for purposes of this discussion Option A) were to be required, these mills may be compelled to expand chlorine dioxide generating capacity to meet those limitations immediately even though that expanded capacity would be unnecessary once their advanced systems are in place. See also 61 FR 9383, 9395 (March 8, 1996) where EPA discussed a similar quandary regarding how short-term compliance with MACT could create a disincentive to adopt more advanced wastewater control technology alternatives.

EPA is considering addressing this tension through an incentive. Under this possible incentive, mills selecting an incentives-related BAT requiring immediate compliance with the limits corresponding to the chosen tier would receive additional time through an enforcement order to meet those limits. In this way, EPA hopes to give mills an incentive to implement advanced technologies and to accommodate the realities of capital investment cycles and complex implementation tasks such as flow reduction. Because the Clean Water Act requires immediate compliance with BAT limitations (including those contemplated by the incentive tiers), the permitting authority is foreclosed from establishing a longer deadline for compliance in the permit. However, the permitting authority is authorized to exercise its enforcement discretion to issue an accompanying enforcement order that includes a schedule by which the mill must achieve full compliance, including interim milestones as appropriate. This could also be accomplished through negotiated consent decrees under CWA section 309(a)(3). Extended compliance schedules established pursuant to this possible incentive would apply only to the BAT limitations and standards for Tiers I, II or III, including the baseline BAT bleach plant limits applicable to the mill. These extended compliance schedules would not govern compliance

with other permit limitations and conditions, including those based on BCT, water quality concerns, or BMP requirements. Rather, any appropriate compliance periods pertaining to those requirements would need to be established under the authorities applicable to them.

When EPA is the permitting authority, EPA would exercise its enforcement discretion to extend BAT compliance periods for mills that accept incentives-related BAT limitations and standards in their NPDES permit. In addition, at the time the proposed Advanced Technology permit is made available for public comment, EPA would also make available the proposed enforcement order in order to give the public adequate notice of and opportunity to comment on the length of time contemplated by the compliance schedule and the proposed interim milestones. When EPA is not the permitting authority, EPA would issue guidance to States strongly urging States to issue similar compliance orders to Advanced Technology mills and to follow the public notice procedures described above.

EPA also would issue guidance strongly urging States to impose enforceable interim milestones as part of the compliance order that would incrementally benefit the environment during the interim period that would ensure that participating mills make reasonable progress toward achieving the superior performance represented by the various Advanced Technology Alternative BAT tiers. Where EPA is the permitting authority, EPA would impose such interim milestones itself. Milestones could include intermediate pollutant load and wastewater flow reductions in addition to research schedules, construction schedules, mill trial schedules, or other milestones appropriate to the advanced technology and the participating mill. EPA would encourage these interim milestones to be tailored to circumstances and process technologies at individual mills. The compliance order would also need to specify interim limits that function as the starting point for the mill's compliance schedule. EPA would issue guidance providing that the starting point for the in-plant limits and advanced technology AOX limit contained in the compliance orders would be no less stringent than existing effluent quality or the effluent limits imposed in the last permit, whichever are more stringent.

EPA recognizes that compliance orders also would be available for mills choosing not to participate in the incentives program. Typically

compliance orders for baseline BAT limitations require compliance no later than three years from the date the permit imposing such requirements is issued. In this possible incentive, EPA contemplates an approach that would be different from this typical practice in two respects: First, the compliance schedules would be longer, ranging from five to fifteen years; second, the extended compliance period would commence on the date the Cluster Rules are promulgated, not on the date the permit incorporating the relevant limits is issued.

With respect to the length of a compliance schedule for achieving incentives-related BAT limits and standards, EPA believes that the following time frames would be reasonable: Tier I—not later than five years beyond the effective date of the final rule; Tier II—not later than ten years beyond the effective date of the final rule; and Tier III—not later than fifteen years beyond the effective date of the final rule.

EPA regards five years as a reasonable time frame to achieve the incentives-related BAT limitations and standards corresponding to Tier I (including the bleach plant BAT effluent limitations) if Option A is the selected BAT because Tier I limitations could be achieved using known technologies (Option B technologies) within that timeframe without the closures predicted for Option B. In addition, premature compliance with certain BAT limitations could lead to counterproductive outcomes (e.g., installation of either excess or completely unnecessary chlorine dioxide generating capacity).

EPA regards ten years as a reasonable timeframe to achieve the incentives-related BAT limitations corresponding to Tier II because substantial flow reduction, to $10 \text{ m}^3/\text{kgg}$, is the most difficult and time consuming element of this tier. Recycle of a substantial portion of pulping and evaporator condensates and bleach plant filtrates, with the attendant complexities of total mill balances for very large volumes of process water and wastewater, requires considerable time before it can be implemented successfully at mill-scale. Nonetheless, achievement of enforceable interim milestones, including the BAT bleach plant limitations, in a period shorter than ten years is likely and should be required by the enforcement authority.

EPA regards fifteen years as a reasonable timeframe to achieve the incentives-related BAT limitations corresponding to Tier III. As for Tier II, flow reduction again is the most

difficult and time consuming task. However, because achieving or surpassing flow reduction to $5 \text{ m}^3/\text{kgg}$ for pulping and evaporator condensates and bleach plant filtrates approaches a closed mill configuration, even more technically difficult and time consuming tasks must be successfully completed. This probably would include removal of metals and chlorides by “kidney” technologies in order to control system scaling and corrosion problems while maintaining product quality and minimizing cross-media impacts. Successful completion of these tasks at individual mills will involve extensive research and mill trials. Nonetheless, achievement of interim milestones, including the BAT bleach plant limitations and intermediate levels of flow reduction, in a period shorter than fifteen years is likely and should be required by the enforcement authority.

EPA also believes that it has a reasonable basis to measure the extended time periods from the promulgation date of the Cluster Rules rather than from the date a participating mill's NPDES permit is issued. First, EPA wants to promote implementation of advanced technologies as soon as possible; if EPA were to measure the extended compliance period from the date of permit reissuance, compliance with Tier I limits could be deferred by as much as ten years from the date of promulgation. Second, EPA has determined that many mills in the proposed bleached papergrade kraft and soda subcategory are discharging under permits that have already expired, that will expire soon after the promulgation of the Cluster Rules, or that have reopener clauses to allow the permitting authority to adjust the permit to reflect the new effluent guideline limitations. EPA expects that permit writers will reissue these permits promptly after the Cluster Rules are published. Thus, the decision to measure an extended compliance period from the date of promulgation rather than from the date of permit issuance should have little practical effect on most mills. Third, mills in the proposed bleached papergrade kraft and soda subcategory have been on notice since at least 1993 that EPA was considering basing some portion of its Cluster Rules on extended delignification technologies. (In its 1993 proposal, EPA proposed to base BAT limitations on a process that included oxygen delignification and 100 percent substitution of chlorine dioxide for elemental chlorine.) In some cases, that proposal has already influenced investment decisions at some mills.

Finally, with the issuance of this notice detailing EPA's possible incentives program, mills potentially interested in participating can plan accordingly with little prejudice.

EPA acknowledges that a mill choosing not to participate in the advanced technology incentives program in some cases could obtain a three-year compliance schedule that, depending on the date its permit was reissued, could allow that mill to achieve BAT limits (including a less stringent AOX limit) at a later date than Advanced Technology mills would be required to achieve a lower AOX value and lower kappa numbers and filtrates recycling. However, EPA cannot foresee any circumstances in which such relief would be deemed necessary by the permitting authority.

Although EPA is considering implementing this incentives program through enforcement orders, EPA also recognizes that mills may be discouraged from participating in the program by the uncertainty inherent in obtaining additional time to comply through enforcement—rather than permitting—mechanisms. In order to address this uncertainty, EPA also is considering establishing an Alternative BAT at the Tier I level that would be effective five years from the date of promulgation, a second Alternative BAT at the Tier II level that would be effective ten years from the date of promulgation, and a third Alternative BAT at the Tier III level that would be effective fifteen years from the date of promulgation.

If EPA were to adopt a structure of Alternative BAT limitations at the Tier I, Tier II, and Tier III levels, EPA would codify “Tier I Alternative BAT limits,” “Tier II Alternative BAT limits,” and “Tier III Alternative BAT limits” in addition to the incentives-related BAT limitations for those tiers that would be effective immediately. Those Alternative BAT limits would apply—on a purely voluntary basis—to any mill in the proposed bleached papergrade kraft and soda subcategory choosing to gain additional time for compliance with the selected tier alternative BAT limits through a permitting rather than enforcement mechanism. Any mill that voluntarily chooses this Alternative BAT approach would qualify for any incentives applicable to the appropriate tier once it achieves the Alternative BAT limits for that tier.

The Alternative BAT limits would probably consist of two phases. The first phase would commence on the date the Cluster Rules are promulgated and would terminate five years from the date of promulgation for Tier I, ten years

from the date of promulgation for Tier II, and fifteen years from the date of promulgation for Tier III. During the first phase, any permit issued to a participating mill would need to include, as BAT limitations, interim effluent limits that would be equivalent either to the limits in the mill's last permit or to the mill's current effluent quality, whichever is more stringent. These first phase interim BAT limits would be effective immediately. The permit also would need to include any water quality-based effluent limitations required under CWA section 301(b)(1)(C) and any other applicable requirements including any BMPs required by these rules. The purpose of the interim BAT limits in the first phase would be to ensure that, at a minimum, current effluent quality is maintained while the mill moves toward achieving limits corresponding to the tier selected by the mill. During the second phase, the permit limits would be made more stringent to correspond to the tier limits the mill has committed to achieve. Those limits would be effective five years from the date the Cluster Rules are promulgated for Tier I, ten years for Tier II, and fifteen years for Tier III. Thus, mills electing to accept Alternative BAT at Tier I would have the appropriate limits and standards and any appropriate interim milestones leading toward achievement of the ultimate Alternative BAT Tier I limits incorporated into its permit as soon as it is reissued; the Tier I limits and standards, however, would not be "effective" until five years from the date of promulgation of the Cluster Rules. Mills electing to accept Alternative BAT Tier II limits would be required to meet interim BAT limits reflecting, at a minimum, existing effluent quality for the first five year permit term and any appropriate interim milestones leading toward achievement of the ultimate Alternative BAT Tier II limits selected by that mill. The second five year permit term would incorporate those interim limits, any further interim milestones, and the ultimate Alternative BAT Tier II limits which would become effective ten years from the date of promulgation of the Cluster Rules. Similarly, mills electing to accept Alternative BAT Tier III limits would maintain limits reflecting, at a minimum, existing effluent quality for the first and second five year permit terms (total of ten years), with any appropriate interim milestones leading toward achievement of the ultimate Alternative BAT Tier III limits selected by that mill. The third five year permit term would incorporate those interim

limits, any further interim milestones, and the Alternative BAT Tier III limits, which would become effective fifteen years from the date of promulgation of the Cluster Rules.

The only practical difference between the Alternative BAT structure with delayed effective dates and the other incentives-related BAT limitations, effective immediately, is the mechanism by which the participating mill receives additional time to achieve the tier limits. Under the Alternative BAT approach, the mechanism is the permit; under the other approach, the mechanism is an enforcement order. Mills choosing either approach will be required to maintain, at a minimum, existing effluent quality during the interim period before the date the ultimate BAT limits become enforceable. Mills under either approach also would be subject to interim milestones as appropriate. Finally, at the end of either five or ten or fifteen years from the date of promulgation of the Cluster Rules, every mill participating in the incentives program would be expected to achieve the final BAT limits represented by Tier I, Tier II, or Tier III. Thus, the only difference between the enforcement approach and the Alternative BAT structure would be the mechanism, not the result.

EPA believes it has the authority to adopt the Alternative BAT approach for the incentive tiers, which includes delayed effective dates. The delayed effective dates are intended to make the underlying tier technologies the best available technologies economically achievable for mills willing to go beyond the baseline BAT by allowing those mills more time to develop and implement technologies and plan for capital expenditures. EPA solicits comment on the alternative BAT approach. EPA also solicits comment regarding the applicability of this incentives-related program to new sources, including the appropriateness of "Alternative NSPS."

C. Incentives Available After Achievement of Advanced Technology BAT Limitations and NSPS

1. Greater Certainty Regarding Permit Limits and Requirements

Some industry stakeholders have suggested to EPA that mills could be encouraged to implement advanced technologies if they had a reasonable assurance that all limitations and conditions in their permits would remain constant over a specified period of time, once compliance with the Advanced Technology limits and

standards is achieved. EPA seeks comment on this incentive and on the details described below.

Under this incentive, EPA would issue guidance urging states, where allowed by state law, to administratively extend the permits of Advanced Technology mills for up to five years past the date the Advanced Technology permit would otherwise expire, subject to the following conditions. First, this incentive would be available only for the first permit issued after the facility achieves full compliance with its incentives-related BAT limits or NSPS, as appropriate. Second, as part of the permitting process, the permitting authority would inform the public that it regards the AT facility as a low priority for permit reissuance in the next permitting cycle and that it will consider allowing the permit (after it expires five years hence) to continue to be administratively extended for up to five additional years provided that the permittee has filed a timely application and that the permitting authority possesses no new water quality or facility-related data that would justify new or different permit conditions and limits. In EPA's view, the permitting authority could reasonably conclude at the time the AT permit would ordinarily be reissued, that the permit is a low priority for permit reissuance if there is no new water quality- or facility-related data or information that would justify new or different limits. Under these circumstances, EPA believes it would be reasonable for a permitting authority to conclude that the AT facility is a lower priority for permit reissuance because the mill is voluntarily achieving reductions greater than otherwise required by the effluent guidelines and hence presents a lower risk to water quality than other mills. Moreover, EPA expects that the permit eligible for an administrative extension already would contain BMPs and any water quality-based effluent limits necessary to achieve applicable water quality standards. Thus, EPA would not expect any adverse effect on the environment during the period the permit is administratively extended, in the absence of specific information indicating that more stringent water quality effluent limits need to be imposed.

EPA would also issue guidance urging states, when they reissue AT permits, to reissue without changing the terms and conditions contained in the initial AT permit, unless the permitting authority receives new facility- or watershed-specific information indicating that more stringent effluent limits are necessary to achieve applicable water

quality standards. In that case, EPA is considering issuing guidance to urge states to develop priorities for allocating any necessary load reductions in a way that gives preference to AT mills, particularly where AT mills contribute a small portion of the total pollutant loads to the stream. Moreover, where more than one AT mill discharges in a watershed, these priorities would further give preference first to Tier III mills, then to Tier II, and finally to Tier I mills. EPA seeks comment on this possible incentive.

2. Reduced Effluent Monitoring

EPA believes that reduced monitoring provisions would be appropriate to include in the final water regulation for mills that achieve incentives-related BAT limitations or NSPS, as appropriate. In EPA's view, consistent and successful implementation of the advanced technologies will make it increasingly less likely that the pollutants controlled by incentives-related BAT will be present in the wastewater from advanced technology fiber lines in levels of concern. Because of these reductions and because in-plant monitoring for these pollutants tends to be costly, EPA believes it is reasonable to allow mills achieving the incentives-related BAT limits or NSPS, as appropriate, to monitor less frequently for those pollutant parameters after establishing a reliable baseline of consistent achievement of those incentives-related BAT limits/NSPS. (This incentive would be adopted only if EPA decides to retain the monitoring requirements applicable to the entire proposed subcategory regardless of the BAT option selected.)

As part of an initiative separate from the incentives program being considered solely for the pulp and paper industry, EPA also has issued interim guidance on a performance-based schedule of reductions in the frequency of monitoring in NPDES permits. This separate initiative would be applicable to all industrial point sources, including pulp and paper mills choosing to comply with baseline BAT and not participate in the incentives program, where a facility consistently performs better than its permit limits. Under that initiative, facilities become eligible after passing through a set of entry criteria based on compliance history and review of two or more years of data demonstrating better than BAT performance. On a parameter by parameter basis, the greater the percentage of "beyond BAT" performance, the greater the reductions in required monitoring frequency. A statistical model was used to determine

the reductions in monitoring frequencies that would lead to little or no increase in the potential of detecting discharges in excess of permit limits. See the post-proposal rulemaking record for additional details of this emerging performance-based monitoring program, as set forth in interim guidance dated April 19, 1996.

The reduced monitoring incentive being considered specifically for this effluent limitations guideline would be incorporated in the Code of Federal Regulations, and is summarized as follows:

a. For any TCF process under Tiers I, II, and III, particularly for facilities with newly established TCF processes, the final regulation would require weekly end-of-pipe monitoring for AOX for the first six months to confirm that AOX is not present in detectable levels, and thereafter no monitoring for any pollutant controlled by the incentives-related BAT at the bleach plant or end-of-pipe AOX, provided that such facilities certify annually that they are using only totally chlorine-free processes. EPA seeks comment on any monitoring alternatives and invites suggestions regarding the content of such certification. EPA also particularly welcomes suggestions regarding indicators of totally chlorine-free processes, such as raw materials, process chemicals used and process variables, and products generated. EPA also seeks comment on how this incentive could apply at mills that swing from TCF to non-TCF processes.

b. For any ECF process under Tiers I, II, and III, an Advanced Technology mill would be required to perform in-plant monitoring of all pollutants controlled by incentives-related BAT, as applicable, on a monthly basis for one year. The mill would also be required for a year to perform weekly monitoring at the end of the pipe for at least AOX. That one year period must include "worst case" conditions for generation of chlorinated organic pollutants. In the event that reasonably anticipated "worst case" conditions do not occur in the first year but occur later on during a period of certification, limited monitoring of those "worst case" conditions would be required to confirm compliance with the incentives-related BAT limitations, with certification thereafter. If after one year of monitoring the advanced technology mill demonstrates that it is discharging pollutants at levels at or below the applicable BAT limits and standards, then it would not be required to monitor at the bleach plant for any pollutant controlled by BAT and would be authorized to monitor AOX at the end-

of-pipe on only a monthly basis, provided that the facility submits an annual certification.

EPA invites suggestions regarding the content of such certification and particularly seeks comment on relevant indicators of Tier I processes, such as raw materials used (e.g., softwood), process chemicals used and process variables (e.g., complete substitution of chlorine dioxide and elimination of hypochlorite at all times, bleaching chemical application factors such as active chlorine multiple), and products generated (notably, their ISO brightness), that, when taken together, lead to —worst case— circumstances for potential generation of chlorinated organic pollutants (e.g., TCDD, TCDF, chloroform, etc.). Minimum monitoring as stringent as that proposed to be required by the rules for BAT and PSES would resume if a violation occurs on the Advanced Technology fiber line and would continue until the correction and compliance is confirmed.

As an alternative to performing annual monitoring for pollutants regulated at the bleach plant is not done to verify a certification (for any Tier), mills could elect to implement the principles of environmental management systems (EMS) in order to qualify for this incentive. Weekly end-of-pipe monitoring would be required for AOX, and monthly monitoring would be permitted after compliance is established.

EPA seeks comments on this possible incentive, in particular with respect to the nature of a certification, the frequency of reduced monitoring, and methods of insuring the regulatory authorities and citizens have adequate information regarding the mill's environmental practices.

3. Reduced penalties

In recognition of the considerable capital expenditures that mills participating in the incentives-related Alternative BAT program will make to implement advanced technologies and to achieve pollutant reductions superior to those achievable through the baseline BAT, EPA is considering encouraging enforcement authorities to take into account those investments as appropriate when assessing penalties against these mills for violations of environmental statutes. EPA believes existing EPA settlement policies can be interpreted to provide consideration of advanced technology investments, where the evidence of environmental good faith is clear and unequivocal and circumstances are such that failing to take such investments into account would be a manifest injustice. See

Spang & Company, EPCRA Appeal No. 94-3 & 94-4 at 27-30 (Oct. 20, 1995). In EPA's view, if a facility has installed and is operating the advanced technology in good faith, reports violations in a prompt manner to EPA or the State, and either corrects the violations in a timely manner or agrees to and complies with reasonable remedial measures concurred on by the primary enforcement authority, then the enforcement authority would be justified in taking the AT investment into account in determining economic benefit and in reducing the gravity portion of the penalty up to 100 percent. EPA assumes that the installation and operation of any advanced technology will be more expensive than the installation and operation of the technology underlying the baseline BAT and therefore the advanced technology facilities will derive no economic benefit (i.e., zero BEN) from the violation associated with the advanced technology. This would be the case even when the advanced technology fails, as long as the design, operation and installation are within applicable engineering standards and operational procedures are within industry norms. The decision whether to take such AT investments into account in determining economic benefit would be left to the State's discretion when the State is the enforcing authority. EPA would issue guidance to clarify application of this incentive.

Mills also can take advantage of the recently issued audit policy providing they meet the criteria specified in that policy. (See the Federal Register for December 22, 1995, 60 FR 66706.) Moreover, EPA also is considering issuing guidance to interpret EPA's existing media-specific settlement policy in cases where advanced technology does not perform as well as initially required by limits included in NPDES permits but where interim milestones have been met and good faith efforts have been demonstrated. EPA welcomes comments on this possible incentive.

4. Reduced inspections

As another possible incentive, EPA is considering issuing guidance to the Regions indicating that mills with advanced technology fiber lines should be a lower priority for routine inspections in all media. Under this incentive, facilities achieving advanced technology limits would be targeted by EPA for routine inspections not more than once every two years. This incentive would reflect EPA's view that mills installing and operating advanced technologies at levels to meet the

appropriate tier effluent limits are likely to be complying with the other permit requirements applicable to that fiber line. EPA already has redirected Federal NPDES inspections away from annual inspections of all major dischargers to focus on high risk facilities on priority watersheds. Targeted efforts in these priority watersheds focus on such factors as facility compliance status and rates, location and affected population, citizen complaints, etc. Nonetheless, under this incentive, EPA would reserve the authority to conduct multi-media inspections without prior notice, and to inspect advanced technology fiber lines for cause, whether or not there is an ongoing violation. EPA would also reserve its right to inspect an advanced technology mill in the connection with watershed or airshed concerns. EPA seeks comment on this possible incentive. EPA is particularly interested in comments on the question whether reduced inspections should apply mill-wide and across various media and, if so, why.

5. Public Recognition Programs

While EPA public recognition programs already exist, the Agency believes that it would be appropriate to develop and implement a program unique to this industry as an incentive to advanced technology investments. As part of a public recognition program, EPA would establish criteria for mills to qualify for public recognition on an annual basis. In addition to commitments leading to and achievement of the limits specified in the selected tier, such criteria could include the use of the principles of environmental management system (EMS) programs. EPA would then recognize the qualifying mills each year through a public event. EPA would describe this program in greater detail in the preamble to the final Cluster Rules. EPA solicits comment on this possible incentive, the applicable criteria, the type of recognition accorded, and the period of recognition.

6. Fast-Track Permit Modification

EPA is considering issuing guidance encouraging states to accord permit process priority for advanced technology mills where it is consistent with watershed-based permitting strategies and air permitting policies. EPA solicits comment on whether this is an appropriate policy and on the availability of resources for implementing such a policy.

D. Solicitations of Comments on Incentives Program

In addition to all of the specific comment solicitations above, EPA seeks comment on the entire concept of establishing a voluntary program of advanced technology tiers with incentives-related BAT limits/NSPS unique to those tiers. EPA also seeks comment on the criteria defining each tier, including both the type of criteria and the numeric values ascribed to each. EPA also seeks comment regarding the philosophy EPA should adopt in establishing the incentives-related BAT limits and NSPS being considered to define the advanced technology tiers, and how these incentives-related alternative BAT limits/NSPS could be adapted to mills with indirect discharge to POTWs. EPA seeks comments and welcomes suggestions regarding the incentives offered and alternatives that might be included, and other ways of implementing the program. EPA seeks comments on defining and implementing such a program for other bleached chemical pulp subcategories, including the papergrade sulfite subcategory, the dissolving sulfite and dissolving kraft subcategories, and other subcategories for which EPA may develop revised effluent limitations based on BAT.

E. Alternative Incentives Programs and Provisions Suggested by Stakeholders

One of the principal objectives of this proposed incentives program is to promote pollution prevention technologies and practices. In EPA's view, each of the advanced technologies has a significant pollution prevention component with respect to effluent discharges. Nevertheless, in comments on the proposed regulations, industry voiced concerns that operation of technology options could produce increased emissions to the air and consequently trigger major New Source Review ("NSR") under the Clean Air Act.

In its March 8, 1996, Federal Register Notice discussing the MACT portion of the Cluster Rules, EPA acknowledged concerns about the interaction between the installation of MACT emission controls and the NSR requirements. (See 61 FR 9383, 9396). In particular, EPA noted that commenters expressed concern that EPA had not accounted for the impacts that would be incurred in triggering major NSR such as costs associated with permitting and implementation requirements, the burden imposed on state air quality offices, or the risk that delays in receiving major NSR preconstruction

permits might jeopardize timely compliance with the MACT portion of the Cluster Rules. *Id.* EPA considered those comments and the air pollutant reductions, environmental and energy impacts of implementing the MACT technologies. In response, EPA stated in its March Notice that it considers projects implemented to comply with the MACT portion of the Cluster Rules to be environmentally beneficial from an air quality perspective and hence eligible for exemption from major NSR as air pollution control projects under policy guidance issued by EPA on July 1, 1994. *Id.* EPA also noted that it expects such projects to qualify as pollution control projects under the NSR reform regulations, signed on April 3, 1996. EPA solicited comment on these determinations and on the question whether EPA should provide a specific exclusion in the major NSR rules for controls installed to comply with the MACT portion of the Cluster Rules. (See 61 FR 9396.)

Some members of the pulp and paper industry have suggested to EPA that controls installed to achieve incentives-related Alternative BAT limits corresponding to Tiers I, II or III should also be excluded from major New Source Review and have suggested that such an exclusion would be a significant incentive to encourage mills to install advanced water technologies. EPA is not prepared to offer such an incentive at this time. Unlike the MACT-related controls that EPA considers to be eligible for exemption from major NSR, advanced water technologies may not have a consistently positive effect on air emissions. EPA intends to address these cross-media issues in the context of its NSR Reform rulemaking proposal, which was signed on April 3, 1996. In that rulemaking proposal, EPA is soliciting comment on the broader issue of whether applicability of the pollution control project exemption should be extended to "cross media" pollution control projects generally and whether and how they should be required to meet the "environmentally beneficial" test typically required for pollution prevention projects. EPA recognizes that resolution of this issue is of particular interest to mills in the proposed bleached papergrade kraft and soda subcategory because of the possible value of this exemption as an incentive to implement advanced water technologies. EPA nevertheless believes that the question whether the pollution control project exemption should be extended to "cross media" pollution control projects should be resolved on a

broad, rather than industry-specific, basis. Accordingly, EPA is not including as a possible incentive in today's notice a provision that would exempt advanced water technologies from major NSR.

In order to promote full consideration of this issue, however, EPA welcomes comments in connection with today's notice on whether advanced water pollution control technology implemented by the pulp and paper industry should be eligible for an exclusion from major NSR (assuming that such technology increases air emissions in significant amounts at an existing major source) and, if so, whether the exclusion should be implemented under the provisions of the pollution control projects exclusion under the NSR proposed regulations. Specifically, EPA solicits comments on whether there are pollutant increases from such water pollution control projects, the nature of any such pollutant increases in terms of process conditions and equipment changes, and the types of air pollutants likely to increase that would warrant this special treatment. EPA also solicits comment on the type of criteria that should be used to evaluate the cross-media impacts of pollution control projects to determine whether the overall environmental benefits to one media are sufficient to waive environmental reviews and requirements otherwise applicable for other media and, if so, whether the project should be allowed to qualify under the proposed major NSR exclusion. EPA also solicits comments, with supporting rationale, on whether an exemption for cross-media pollution control projects should be extended to any project that achieves the required levels of control or whether, because of the cross-media nature of the controls, the exemption should be available only for controls that achieve greater than the required levels of treatment.

In addition to recommendations for incentives submitted by one group of four industry stakeholders (see the record at DCN 13930), an alternative set of recommendations for an incentives program was submitted by a group of seven companies in the pulp and paper industry (see the record at DCN 13937). Among other things, the latter proposal recommended that the incentives program be: broad-based, applicable to mills regulated under the Cluster Rules and available on a mill-by-mill basis and that it be extended throughout the individual mills participating in the program; available for mills using any processes or practices (with no restrictions) that achieve reductions of 25–30 percent (Tier I), and 55–60

percent (Tier II) for at least any two water pollutants (an eighth company recently endorsing this proposal also suggested that the two pollutants selected could be water or air pollutants; see the record at DCN 13965) regulated under the effluent guidelines portion of the Cluster Rules (excluding dioxin, furan, and the chlorinated phenolic pollutants), with Tier II mills also committing to achieving mill-wide process water usage of 12,000–14,000 gallons/short ton (50–58 m³/kkg) of pulp; and that it be expanded beyond the proposed bleached papergrade kraft and soda subcategory. Among the incentives suggested in this alternative program were: extended compliance period of five years for Tier I mills and 15 years for Tier II mills; extended permit terms, including an administrative presumption of additional time during which incentive-based effluent limits are not changed, for five years (total of ten years) beyond the prevailing statutory permit term for Tier I mills, and ten years (total of 15 years) beyond the prevailing statutory permit term for Tier II mills; and other provisions similar in principle but often differing in details to those in the program discussed above (e.g., fast track permitting, exemptions from PSD/NSR, reduced penalties, etc.). This set of alternatives also proposed a similar incentives program for mills that elect to achieve more stringent control of air emissions than required by the MACT standards.

Another set of alternative recommendations was submitted by a vendor of process technologies and raw materials used in the pulp and paper industry (see the record at DCN 13932). This set of alternative recommendations suggested that, in addition to achieving pollutant reductions greater than required by limits based on BAT, mills would be required to demonstrate that they achieve minimization in resource use (i.e., fiber, water, and energy consumption) and reduction (or at a minimum no increase) in air emissions or solid wastes. This alternative set of recommendations suggested as criteria for participation in the program a 10 percent reduction below COD limits (rather than AOX limits) promulgated by EPA, a bleach plant flow of 20 m³/ADMT (air dry metric tons), and use of process simulation techniques to identify practices that go beyond the minimum BMPs incorporated in the final rule.

Another suggested component of an incentives program involves Federal procurement. The President's Executive Order 12873, "Federal Acquisition, Recycling, and Waste Prevention" (58

FR 54911, October 22, 1993), establishes a Federal policy for procurement of environmentally friendly products. EPA solicits comment on whether it also is appropriate and effective public policy to provide a Federal procurement advantage to paper products containing pulp or paper from mills that achieve incentives-related BAT limitations or NSPS, as appropriate, corresponding to the Advanced Technology tiers or that otherwise demonstrate performance more stringent than that which is based on the baseline BAT/NSPS. Such an advantage might be a Federal agency preference for such paper products, consistent with other Federal preferences (e.g., recovered materials content) and Federal procurement law. EPA also solicits comment on the mechanics of implementing this type of a procurement preference.

EPA solicits comments on these alternate incentives programs, particularly regarding those components which differ from the incentives program described Section X through X.C of this notice, and how the most useful components of these alternate programs may be incorporated into an incentives program in the final rules.

Dated: July 2, 1996.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 96-17802 Filed 7-12-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 300

[FRL-5534-1]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Pomona Oaks Well contamination (Pomona Oaks) and the Vineland State School (currently known as the Vineland Developmental Center) Superfund sites from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II Office announces its intent to delete the Pomona Oaks and the Vineland State School Superfund sites from the National Priorities List (NPL) and requests public comment on these actions. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive

Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New Jersey have determined that no further fund-financed remedial actions are appropriate at these sites and actions taken to date are protective of public health, welfare, and the environment.

DATES: Comments concerning these sites may be submitted on or before August 14, 1996.

ADDRESSES: Comments may be mailed to: Kathleen Callahan, Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, NY 10007.

Comprehensive information on these sites is available through the EPA Region II public docket, which is located at EPA's Region II Office in New York City, and is available for viewing, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. Requests for appointments should be directed to: Mr. Matthew Westgate, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, NY 10007, (212) 637-4422.

Background information from the Regional public docket related to the Pomona Oaks site is also available for viewing at information repository noted below: Galloway Township Municipal Building, 300 East Jimmie Leeds Road, Absecon, New Jersey 08201.

Background Information from the Regional public docket related to the Vineland State School is available for viewing at the repository noted below: Vineland City Library, 1058 East Landis Ave, Vineland, New Jersey 08360.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Westgate, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, NY 10007, (212) 637-4422.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletions

I. Introduction

The Environmental Protection Agency (EPA) Region II announces its intent to delete the Pomona Oaks site, Galloway Township, Atlantic County, New Jersey, and the Vineland State School site, City of Vineland, Cumberland County, New Jersey from the National Priorities List (NPL) and requests public comment on

these actions. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments concerning the Pomona Oaks and the Vineland State School sites for thirty days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for these actions. Section IV discusses how the sites meet the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR Section 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site

from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Pomona Oaks and the Vineland State School sites:

1. EPA Region II has recommended deletion and has prepared the relevant documents.

2. The State of New Jersey has concurred with the deletion decisions.

3. Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate Federal, state and local officials, and other interested parties. This notice announces a thirty-day public comment period on the deletion package, which starts July 15, 1996, and will conclude on August 14, 1996.

4. The Region has made all relevant documents available in the Regional Office and local site information repositories.

The comments received during the notice and comment period will be evaluated before any final decision is made. EPA Region II will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

The deletion will occur after the EPA Regional Administrator places a notice in the Federal Register. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Region II Office.

IV. (A). Basis for Intended Deletion of the Pomona Oaks Site

The Pomona Oaks Site includes a residential subdivision and an adjacent shopping center in the Pomona area of Galloway Township, Atlantic County, New Jersey. The residential subdivision contains about 200 single family homes built in the 1970s and has a population of approximately 800 to 1000 people. It is surrounded by undeveloped wooded areas, scattered residences and small "strip" type shopping areas. Some of the outlying areas are farms. Southwest of the subdivision is a combination gas station-convenience store and a "strip"

mall containing a dry cleaner. Another gas station and a salvage yard are located to the west and northwest. The Pomona Oaks subdivision has both municipal water and sewers.

Construction of homes in the Pomona Oaks subdivision began in 1972. Initially, homes within the subdivision relied upon private wells as the source of potable water and upon individual septic systems for wastewater disposal. By 1982, all of the homes in the subdivision were connected to the public sewer system.

In June 1982, residents complained to the Atlantic County Health Department (ACHD) of foul tasting well water. Extensive testing of residential wells revealed high levels of organics including benzene and 1,2-dichloroethane. As a result the ACHD advised residents not to use their well water for drinking or cooking.

Over the next few years additional testing of individual wells was performed by the New Jersey Department of Health (NJDOH) and the EPA. The results of these sampling events in the Pomona Oaks subdivision indicated widespread contamination of the drinking water aquifer with organic compounds. As a result in August 1985, all 193 homes within the subdivision were connected to the Absecon water supply.

The Pomona Oaks site was formally added to the National Priorities List on June 1, 1986. In December 1986, EPA initiated a Remedial Investigation and Feasibility Study (RI/FS). The remedial investigation was designed to determine the nature, extent and source of the ground water and soil contamination at the site, which includes the Pomona Oaks subdivision, Pomona Plaza Shopping Center, and those residents downgradient of the subdivision. The RI fieldwork, conducted from October 1988 to March 1989, included a soil gas survey, subsurface soil sampling, sediment sampling, monitoring well and piezometer installation, one round of sampling from the monitoring wells, residential well sampling (outside the subdivision), aquifer slug testing, and gamma logging of wells.

The sources of contamination were not identified during the RI. There was not enough contamination present in the soil or the ground water to give an indication of its origin. Potential sources include two nearby gas stations, a local automobile salvage yard, and the now closed septic systems of the Pomona Plaza Shopping Center and the residences in the subdivision.

Data obtained during the extensive RI has shown that the ground water contamination in the Pomona Oaks

subdivision no longer exists above health risk or drinking water standard levels. On September 26, 1990, the EPA Regional Administrator, with the concurrence of the NJDEP, signed a Record of Decision for the Pomona Oaks site. The selected remedy was to take no remedial action.

This decision was based on the following facts:

- The immediate threat to the residents of the Pomona Oaks subdivision was removed by the installation of the alternate water supply in 1985;
- The RI indicated that the high concentrations of chemicals that were present during the 1982 to 1985 period had significantly decreased to below drinking water standards suggesting dispersion and/or biodegradation of contaminants over time; and
- The contamination was not present in the Pomona Oaks subdivision and, therefore, did not come from a continuous source, but most likely discrete events, such as spills.

(B). Basis for Intended Deletion of the Vineland State School Site

The Vineland State School, currently known as the Vineland Developmental Center (VDC), is located to the northeast of the intersection of Main Road (State Highway 555) and Landis Avenue (State Highway 56) in the City of Vineland, New Jersey. The Vineland Developmental Center is a residential treatment facility for mentally handicapped women operated by the New Jersey Department of Human Services. It has been in existence since the late 1800's. The 195 acre site is comprised of numerous buildings to house, feed, educate and care for the needs of approximately 1300 residents. Also on the grounds are administration and maintenance facilities, as well as large open fields for recreational purposes. The surrounding area is primarily residential, on land that was formerly orchards and agricultural fields.

As a result of allegations of improper disposal of hazardous materials made by VDC employees, investigations were conducted beginning in March 1980 on behalf of the New Jersey Department of Health Services (NJDOH). These investigations were carried out by the NJDEP, the City of Vineland and the EPA. The VDC site was added to the National Priorities List in September 1983. Based on the allegations by VDC employees that five separate areas of the VDC property were potential hazardous waste disposal areas, five distinct subsites were investigated within the facility.

A significant amount of investigation work prior to and during the RI performed at the VDC site. The investigative activities were performed in order to determine the nature and extent of contamination at the suspected subsites. The major investigative activities included potable well sampling, installation and sampling of monitoring wells, performing a conductivity survey, conducting exploratory excavations and collecting subsurface soil samples.

The results of these investigations failed to detect any significant contamination in four of the five subsites. Only subsite 2 was found to be contaminated to any meaningful degree. This area was remediated by the NJDEP in October 1988. The cleanup included

the removal of nearly 4,000 tons of soils contaminated with polychlorinated biphenyls (PCBs). Also, a public water supply was extended to service homes in the vicinity of the site.

In summary, although there were allegations of illegal dumping, investigations of the four other areas failed to detect any significant contamination. In fact, the risks associated with the low levels of contamination in these areas are within the acceptable range as determined by EPA and NJDEP.

In view of the above, the selected remedy in the September 30, 1989 Record of Decision (ROD) was to take no further remedial action. However, because sporadic low levels of subsurface soil contamination exist at

the site, a program to monitor groundwater and the existing disposal areas has been implemented. A review will be performed within five years to ensure that the selected remedial action provides adequate protection of human health and the environment.

Having met the deletion criteria, EPA proposes to delete this site from the NPL. EPA and the State have determined that the response actions are protective of human health and the environment.

Dated: May 14, 1996.
William J. Muszynski,
*Acting Regional Administrator, USEPA
Region II.*

[FR Doc. 96-17460 Filed 7-12-96; 8:45 am]

BILLING CODE 6560-50-P

Notices

Federal Register

Vol. 61, No. 136

Monday, July 15, 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

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on August 2, 1996 at the Northwest Forest Resources Office, 3033 Ingram Street, Hoquiam, Washington. The meeting will begin at 9:30 a.m. and continue until 3 p.m. Agenda topics are: (1) Cooperative Fire Protection; (2) Watershed Restoration Projects and Priority Setting; (3) Rechartering of Province Advisory Committee and New Members; (4) Update on timber and other programs on the Quinault District; (5) Northwest Forest Plan Monitoring Process; (6) Open Forum; and (7) Public Comments. All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this meeting to Kate Snow, Province Liaison, USDA, Quilcene Ranger District, P.O. Box 280, Quilcene, WA 98376, (360) 765-2211 or Ronald R. Humphrey, Forest Supervisor, at (360) 956-2301.

Dated: July 9, 1996.

Ann Stratton,

Budget and Finance Officer.

[FR Doc. 96-17877 Filed 7-12-96; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 13, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT:

Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 9, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Intergovernmental and Interagency Affairs

Type of Review: Extension.

Title: The Exchange Visitor Waiver Review Guidelines—Waiver Board Guidelines.

Frequency: On occasion.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden: Responses: 25.

Burden Hours: 38.

Abstract: The Exchange Visitor Waiver Review Board makes requests to the U.S. Information Agency (USIA) for waiver of the two-year home residency requirement for exchange visitors who have been granted J1 visas. The guidelines and applications, subject to Office of Management and Budget clearance, will be used by educational or rehabilitative institutions or organizations that apply to the Department of ED to act as interested agency and request waiver of the two-year home requirement on behalf of an exchange visitor. Also, as a result of regulation reinvention efforts, the Federal Regulations governing this process will be eliminated October 1, 1996.

[FR Doc. 96-17866 Filed 7-12-96; 8:45 am]

BILLING CODE 4000-01-P

Notice of Proposed Information Collection Requests

AGENCY: Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 14, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 9, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Application for Grants Under the Innovative Programs Section of the Magnet Schools Assistance Program.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs and LEAs.

Annual Reporting and Recordkeeping Burden:

Responses: 150.

Burden Hours: 3,600.

Abstract: The application is used by local educational agencies to apply for funds to administer innovative programs under the Magnet Schools Program. The proposed projects must involve strategies other than magnet schools, be organized around a special emphasis, theme, or concept, and involve parent and community input.

[FR Doc. 96-17865 Filed 7-12-96; 8:45 am]

BILLING CODE 4000-01-P

Office of Postsecondary Education; Federal Perkins Program Expanded Lending Option

AGENCY: Education.

ACTION: Notice of deadline of submission of institutional agreement for participation in the Federal Perkins Program Expanded Lending Option.

SUMMARY: This notice establishes the deadline for submission of the "Institutional Agreement For Participation In the Federal Perkins Loan Program Expanded Lending Option (ELO)" (ELO Participation Agreement) by those eligible institutions that elect to participate in the Federal Perkins Loan Program ELO in the 1996-97 award year (the period from July 1, 1996 through June 30, 1997).

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher education to help them pay their educational costs. The ELO is available for the 1996-97 award year for institutions of higher education that participate in the Federal Perkins Loan Program.

To be eligible to participate in the Federal Perkins Loan Program ELO for 1996-97, an institution must have had a Federal Perkins Loan cohort rate of 15 percent or less as of June 30, 1995, and must have participated in the Federal Perkins Loan Program for the two previous award years (1994-95 and

1995-96). In addition, an institution must enter into a special ELO Participation Agreement with the Secretary. An institution that elects to participate in the ELO must complete, sign, date and submit the ELO Participation Agreement by the deadline date to obtain approval.

Institutions that become Federal Perkins Loan Program ELO participants will be required to increase the Institutional Capital Contribution (ICC) to at least a dollar-for-dollar match with any portion of the 1996-97 award year Federal Capital Contribution (FCC) received. Only new FCC received on or after July 1, 1996, would be matched at the increased rate. Institutions would not match funds received prior to July 1, 1996, at the higher rate.

Institutions that become Federal Perkins Loan Program ELO participants may make loans to eligible students at higher maximum annual and aggregate limits than is the case with nonparticipating institutions. ELO participating institutions that do not ultimately make any loans at the higher ELO levels for the 1996-97 award year must still honor the ELO Participation Agreement to deposit in the Federal Perkins Loan Program Fund an ICC at least equal to the 1996-97 award year FCC deposited into the Fund. All other administrative procedures would remain the same as for institutions not participating in the Federal Perkins Loan Program ELO.

DATES: *Closing Date for Transmittal of ELO Participation Agreement:* To ensure participation in the Federal Perkins Loan Program ELO in the 1996-97 award year, an eligible institution that elects to participate must submit its ELO Participation Agreement by August 1, 1996.

ELO Participation Agreement Delivered By Mail: An ELO Participation Agreement delivered by mail must be addressed to the U.S. Department of Education, Student Financial Assistance Programs, Institutional Financial Management Division, Campus-Based Financial Operations Branch, 600 Independence Avenue, SW., Room 4714 Regional Office Building 3, Washington, DC 20202-5458.

An institution must show proof of mailing its ELO Participation Agreement by the closing date. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If an ELO Participation Agreement is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

ELO Participation Agreement delivered by hand and Commercial Delivery Services: An ELO Participation Agreement delivered by hand must be delivered to the U.S. Department of Education, Student Financial Assistance Programs, Institutional Financial Management Division, Campus-Based Financial Operations Branch, 7th and D Streets, SW., Room 4714 Regional Office Building 3, Washington DC. Hand-delivered ELO Participation Agreements will be accepted between 8 a.m. and 4:30 p.m. daily (eastern Daylight Time), except Saturdays, Sundays, and Federal holidays. An ELO Participation Agreement that is hand-delivered will not be accepted after 4:30 p.m. on August 1, 1996.

Applicable Regulations: The following regulations apply to this program:

Student Assistance General Provisions, 34 CFR Part 668.

Federal Perkins Loan Program, 34 CFR Part 674.

Federal Work-Study Program, 34 CFR Part 675.

Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

Federal Family Educational Loan Program, 34 CFR 682.

New Restrictions on Lobbying, 34 CFR part 82.

Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

FOR FURTHER INFORMATION CONTACT: For information concerning ELO Participation Agreement submissions, contact Sandra Donelson, Financial Management Specialist, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Office of Postsecondary Education, 600 Independence Avenue, SW. (Room 4714, ROB-3), Washington, DC 20202-5452. Telephone: 202-708-9751.

For technical assistance concerning the Federal Perkins Loan Program ELO, contact Susan Morgan, Chief, Campus-Based Loan Programs Section, or Sylvia R. Ross, Program Specialist, Policy Development Division, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, Telephone: 202-708-8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Catalog of Federal Domestic Assistance Numbers: 84.038, Federal Perkins Loan Program)

Dated: July 8, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96-17871 Filed 7-12-96; 8:45 am]

BILLING CODE 4000-01-P

Office of Postsecondary Education; Availability of the Amendments to the Federal Perkins Loan and National Direct Student Loan Programs Loan Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1995-96 School Year

AGENCY: Department of Education.

ACTION: Notice of availability of the amendments to the 1995-96 Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools.

SUMMARY: Institutions and borrowers participating in the Federal Perkins Loan and National Direct Student Loan Programs and other interested persons are advised that they may obtain information regarding the amendments to the Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1995-96 School Year (Directory). The amendments identify changes in the list of schools that qualify borrowers for teacher cancellation benefits under each of the loan programs.

DATES: The amendments to the Directory are currently available.

ADDRESSES: Information concerning specific schools listed in the amendments to the Directory may be obtained from Systems Administration Branch, Campus-Based Programs System Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Room

4621, ROB-3), Washington, D.C. 20202-5453. Telephone (202) 708-6730.

Information concerning deferment and/or cancellation of a National Direct Student Loan or Federal Perkins Loan may be obtained from Susan M. Morgan, Section Chief, Campus-Based Loan Programs Section, Loans Branch, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 3053, ROB-3), Washington, D.C. 20202-5345. Telephone (202) 708-8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: The amendments to the Directory are available at (1) each institution of higher education participating in the Federal Perkins Loan Program, (2) each of the fifty-seven (57) State and Territory Departments of Education, (3) each of the major Federal Perkins Loan billing services, and (4) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary of Education published a notice in the Federal Register on December 19, 1995, indicating that the Directory was available. The Secretary has revised the Directory due to the opening and closing of schools, school name changes, and the need for other corrections. These revisions are listed in the amendments to the Directory.

The procedures for selecting the schools that qualify borrowers for cancellation benefits are described in the Federal Perkins Loan Program regulations at 34 CFR 674.53 and 674.54. The Secretary has determined that for the 1995-96 academic year full-time teaching in the schools set forth in the Directory and the amendments to the Directory qualifies a borrower for cancellation benefits.

The Secretary is providing the amendments to the Directory to each institution participating in the Federal Perkins Loan Program. Borrowers and other interested parties may check with their lending institutions, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1995-96 academic year.

The Office of Postsecondary Education retains, on a permanent basis,

copies of all published Directories and amendments.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense/Direct and Federal Perkins Student Loan Cancellations)

Dated: July 8, 1996.

David A. Longanecker,
Assistant Secretary for Postsecondary Education.

[FR Doc. 96-17872 Filed 7-12-96; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM96-6-32-001]

Colorado Interstate Gas Company; Notice of Compliance Tariff Filing

July 9, 1996.

Take notice that on July 2, 1996, Colorado Interstate Gas Company (CIG) filed 1st Rev. Sixteenth Revised Sheet No. 11 of its FERC Gas Tariff, First Revised Volume No. 1, pursuant to the Commission's Letter Order issued June 17, 1996, which requires CIG to submit this filing to change incorrect paginated Sheet No. 11.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

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 Section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-17863 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96-6-70-000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 1, 1996, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as

part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective August 1, 1996:

Thirteenth Revised Sheet No. 018
Fourteenth Revised Sheet No. 019

Columbia Gulf states that by the instant filing, Columbia Gulf is submitting a Periodic TRA filing pursuant to Section 33 of the General Terms and Conditions of its FERC Gas Tariff, to effectuate an increase in the company-use component of the retainage percentage applicable to the Mainline Zone (Rayne, LA to Points North). The increase in the retainage percentage is caused by an unanticipated increase in the throughput in the Mainline Zone during the first five months of 1996. The higher utilization has been necessary to meet market needs and to refill a higher than projected level of Columbia Gas Transmission Corporation's storage following the extremely cold weather during this period. The increased use of Columbia Gulf's mainline system during the summer months is projected to continue through the end of the summer, given the remaining level of storage injections which are anticipated. The instant filing is necessary to prevent further underrecoveries, which would generate a significant deferral to be collected through the 1997 surcharge.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-17862 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ96-7-23-000 and TM96-11-23-000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 2, 1996 Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets in the above captioned dockets as part of its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of August 1, 1996.

ESNG states that the revised tariff sheets included herein are being filed pursuant to Sections 21 and 23, respectively, of the General Terms and Conditions of ESNG's Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth herein reflect an overall increase of \$0.0295 per dt in the Demand Charge and an overall increase of \$0.3785 per dt in the Commodity Charge, as measured against the following ESNG instant filings; Docket No. TQ96-6-23-000, a regularly scheduled Quarterly PGA filed on March 29, 1996 proposed to be effective May 1, 1996.

ESNG states that the instant filing also tracks rates attributable to storage service purchased from Columbia Gas Transmission (Columbia) under Columbia's Rate Schedules SST and FSS the costs of which are included in the rates and charges payable under ESNG's Rate Schedules CWS and CFSS effective August 1, 1996. The tracking portion of this filing is being made pursuant to Section 24 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and Section 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96-17864 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT96-70-000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 1, 1996, Equitrans, L.P. (Equitrans), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective July 1, 1996.

Third Revised Sheet No. 401

Equitrans states that this filing is made to update Equitrans' index of customers. In Order No. 581 the Commission established a revised format for the Index of Customers to be included in the tariffs of interstate pipelines and required the pipelines to update the index on a quarterly basis to reflect changes in contract activity. Equitrans requests a waiver of the Commission's notice requirements to permit the tariff sheet to take effect on July 1, 1996, the first calendar quarter, in accordance with Order No. 581.

Equitrans states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-17844 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket NO. RP96-309-000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996

Take notice that on July 3, 1996, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective September 1, 1996.

Fifteenth Revised Sheet No. 8A
Seventh Revised Sheet No. 8A.02
Twelfth Revised Sheet No. 8B
Fifth Revised Sheet No. 8B.01
Third Revised Sheet No. 208
Third Revised Sheet No. 300
Third Revised Sheet No. 302
Third Revised Sheet No. 303
Third Revised Sheet No. 308
Third Revised Sheet No. 310
Second Revised Sheet No. 311

On October 5, 1995, FGT filed an application in Docket No. CP96-12-000 requesting authorization pursuant to section 7(b) of the Natural Gas Act (NGA) to abandon certain facilities located in South Texas (South Texas Facilities) by transfer to its non-jurisdictional affiliate, Citrus Energy Services (Citrus Energy). In response to concerns raised by several parties to the proceeding, FGT stated that it would agree to make a limited NGA section 4 filing to reduce its rates concurrently with the effectiveness of the abandonment and closing of the sale to reflect the abandonment of the facilities.

In a Preliminary Determination on Abandonment Application and Declaring Jurisdictional Status of Facilities issued June 14, 1996 (June 14 Order), the Commission made a preliminary determination that the proposed abandonment is permitted by the public convenience and necessity. The June 14 Order required, as a precondition to a final determination, that FGT submit evidence that demonstrates that Citrus Energy has in place a regime of private contracts with FGT's firm service customers with primary points located on the South Texas Facilities in order to ensure continuity of service to the firm service customers potentially affected by the abandonment.

FGT states that on June 27, 1996, it filed a Submittal of Evidence of Replacement Service demonstrating that all affected firm service customers have either: (1) agreed to relocate or have relocated receipt points to points at or downstream of FGT's Compressor Station 2; or (2) entered into a new contract with Citrus Energy (or PanEnergy Services) for continued service through the facilities to be

abandoned. The June 14 Order also directed FGT to make a NGA section 4 filing to reflect the abandonment of the South Texas Facilities.

FGT states that the instant filing is submitted in compliance with the June 14 Order, and has requested an effective date of September 1, 1996, the proposed date of the transfer of the South Texas Facilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-17858 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. IN96-1-001]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on June 28, 1996, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing Twelfth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date of the tariff sheet is July 1, 1996.

Iroquois states that the purpose of the filing is to reflect the elimination of \$2,004,656 in gas plant in service and the applicable associated costs from its cost of service. Iroquois asserts that the filing is in compliance with the Commission's May 23, 1996 order in the captioned proceeding approving a Stipulation and Consent Agreement and that the rates are identical to those set forth in Attachment A to that Stipulation.

Iroquois states that copies of its filing were served on 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, NE., Washington, DC 20426, in accordance with and 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-17846 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-296-000]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

July 9, 1996.

Take notice that on July 1, 1996, K N Interstate Gas Transmission Co. (KNI) filed in their entirety Third Revised Volume Nos. 1-A and 1-B to its FERC Gas Tariff which completely supersede the currently effective Volume Nos. 1-A and 1-B. KNI requested an August 1, 1996 effective date.

KNI states that the purpose of this filing is to make certain substantive changes to its tariff based upon its nearly three years of operating experience since the implementation of Order No. 636, to revise its tariff consistent with Order No. 582, to update its tariff as required by Order Nos. 497, *et seq.*, and 566, to clarify existing procedures, to delete information no longer required, to reformat for ease of understanding, and to update references to Commission regulations and other miscellaneous housekeeping as more fully discussed in the filing.

KNI states that copies of the filing were served upon KNI's mainline jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to

the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96-17851 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96-3-53-000]

K N Interstate Gas Transmission Company; Notice of Fuel and Loss Filing

July 9, 1996.

Take notice that on June 28, 1996, K N Interstate Gas Transmission Company (KNI) made its annual fuel and loss reimbursement filing in the above captioned docket.

KNI states that the filing revises KNI's fuel and loss reimbursement percentages and details, for the twelve months January 1995 through December 1995, its actual fuel and loss and its fuel and loss reimbursement. KNI proposes an effective date of August 1, 1996.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to be heard or 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 Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96-17860 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP95-376-001 and MT96-18-000]

Mississippi River Transmission Corporation and NorAm Field Services Corp.; Notice of Compliance Filing

July 9, 1996.

Take notice on July 1, 1996, Mississippi River Transmission

Corporation (MRT) submitted for filing the following tariff sheets as part of its FERC Gas Tariff, Third Revised Volume No. 1:

Third Revised Sheet No. 249

Third Revised Sheet No. 250

MRT states that the tariff sheets reflect the terms and conditions as set forth in MRT's pro forma tariff sheets submitted on April 28, 1995 in this proceeding, which the Federal Energy Regulatory Commission (Commission) directed MRT to file in the Commission's May 31, 1996 "Order Authorizing Abandonment and Declaring Jurisdictional Status of Facilities" in Docket No. CP95-376-000. Specifically, MRT states that the tariff sheets address the standards of conduct between MRT and its affiliated gathering company, NorAm Field Services Corp. (NFS). MRT requests an effective date of September 1, 1996, the date of the intended sale of the subject gathering facilities to NFS, and respectfully requests a waiver of 18 CFR 154.207 and any other requirements so that the tariff sheets can be effective as proposed.

MRT states that a copy of this filing has been mailed to each of its customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 or 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must be a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96-17838 Filed 7-21-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP96-616-000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

July 9, 1996.

Take notice that on July 2, 1996, Northern Natural Gas Company (Northern), 111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP96-616-000, a request

pursuant to Sections 157.205 and 157.212 (18 CFR Sections 157.205 and 157.211) of the Commission's Regulations under the Natural Gas Act, and Columbia's authorization in Docket No. CP82-401-000, to upgrade an existing delivery point to accommodate increased natural gas deliveries to Michigan Gas Company (MiGas) for delivery to the Houghton #1 town border station (TBS) in Houghton County, Michigan, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that it requests authority to upgrade an existing delivery point in Michigan to accommodate increased natural gas deliveries to MiGas for delivery to the Houghton #1 TBS under Northern's currently effective throughout service agreements. Northern asserts that MiGas has requested the proposed upgrade to accommodate service, due to expansion, into an area not previously served by natural gas. It is stated that the estimated incremental volumes proposed to be delivered to MiGas at the Houghton #1 TBS are 575 MMBtu on a peak day and 71,291 MMBtu on an annual basis. Northern has stated that the upgrade of the proposed delivery point will not increase MiGas' existing firm entitlement under their currently effective throughput service agreements.

Northern has stated that the estimated cost to upgrade the delivery point is \$93,000. MiGas will reimburse Northern for the total cost of upgrading the delivery point.

Northern has stated that the estimated cost to upgrade the delivery point is \$93,000. MiGas will reimburse Northern for the total cost of upgrading the delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days within the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.
Lois D. Cashell,
Secretary.
[FR Doc. 96-17841 Filed 7-12-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP96-302-000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 1, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective August 1, 1996:

Thirty-First Revised Sheet No. 53
Second Revised Sheet No. 148
First Revised Sheet No. 226
First Revised Sheet No. 226A
First Revised Sheet No. 266
Original Sheet No. 266A
First Revised Sheet No. 290
Third Revised Sheet No. 291
Second Revised Sheet No. 292

Northern states that the above sheets propose an increase in the positive and punitive daily delivery variance charge (DDVC) applicable only on those limited days when a Critical Day is in effect on Northern's system. Also proposed are revisions to receipt point scheduling penalties and to the provision applicable to hourly takes of gas.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining appropriate action to be taken in this proceeding, but will not serve to make protestant a party 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 inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 96-17852 Filed 7-12-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES96-37-000]

PacifiCorp; Notice of Application

July 9, 1996.

Take notice that on July 1, 1996, PacifiCorp filed an application, under § 204 of the Federal Power Act, seeking authorization to issue unsecured commercial paper and unsecured short-term notes, from time to time, in an aggregate principal amount of not more than \$1 billion outstanding at any one time.

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 385.214). All such motions or protests should be filed on or before July 31, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 96-17843 Filed 7-12-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP96-306-000]

Paiute Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 1, 1996, Paiute Pipeline Company (Paiute) pursuant to Section 4, of the Natural Gas Act, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, the following tariff sheets to become effective August 1, 1996:

1st Rev. Third Revised Sheet No. 10
First Revised Sheet No. 21
First Revised Sheet No. 21A

Paiute has also tendered Alternate 1st Rev. Third Revised Sheet No. 10 in the event that the Commission does not accept proposed 1st Rev. Third Revised Sheet No. 10. The proposed changes would increase revenues from jurisdictional services by \$6,882,430 based on the 12-month period ending March 31, 1996, as adjusted.

Paiute proposes a general increase in its rates under all rate schedules contained in Second Revised Volume No. 1-A of its tariff. Paiute states that

based upon the test period cost of service and the projected throughput quantities employed in its filing, Paiute projected a deficiency of approximately \$6,882,430 in annual revenues under its existing rates. Paiute is therefore proposing to increase rates for its jurisdictional transportation and storage service in an amount that is sufficient to eliminate the revenue deficiency, and to recover the full cost of service reflected in its filing.

Paiute indicates that the principal items of cost changes producing its deficiency are: (1) increases in plant and related items; (2) increases in depreciation expenses; (3) increases in various operation and maintenance expenses; and (4) increases in the required rate of return and related income taxes. Paiute further indicates that in designing its proposed transportation rates, it has utilized the same straight fixed-variable method of rate design, cost classification, and cost allocation that was used to derive its present transportation rates in Docket No. RP93-6-000.

Paiute states that its proposed tariff sheets are submitted to revise its Statement of Rates tariff sheet and to make clarifications to its interruptible transportation revenue crediting mechanism.

Paiute states that it has served copies of its filing on all affected customers and all interested State Regulatory Commissions.

Any person desiring to be heard or to protest this 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 Section 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-17855 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96-5-28-000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 1, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, proposed to be effective August 1, 1996.

Panhandle states that the purpose of this filing is to comply with Section 26 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 which requires that at least 30 days prior to August 1 of each year Panhandle make a filing with the Commission to reflect the adjustment, if any, required to Panhandle's Base Transportation and Storage Rates to reflect the result of the Interruptible Revenue Credit Adjustment.

Panhandle states that no adjustment is required to Base Transportation Rates for Rate Schedules FT, EFT, SCT and LFT and that a (.10¢) reduction is required in the maximum Capacity Charge for storage service under Rate Schedules IOS, WS, PS and FS.

Panhandle states that a copy of this filing is being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-17861 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER96-1930-000]

Power Fuels, Inc.; Notice of Issuance of Order

July 9, 1996.

Power Fuels, Inc. (Power Fuels) submitted for filing a rate schedule under which Power Fuels will engage in wholesale electric power and energy transactions as a marketer. Power Fuels also requested waiver of various Commission regulations. In particular, Power Fuels requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Power Fuels.

On July 5, 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 Power Fuels 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, Power Fuels 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 Power Fuels' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is August 5, 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.

Lois D. Cashell,
Secretary.

[FR Doc. 96-17842 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP96-607-000]**Tennessee Gas Pipeline Company;
Notice of Request Under Blanket
Authorization**

July 9, 1996.

Take notice that on July 1, 1996, Tennessee Gas Pipeline Company (Tennessee), a Delaware corporation, Post Office Box 2511, Houston, Texas 77252, filed a request with the Commission in Docket No. CP96-607-000, pursuant to Sections 157.205, and 157.212(a) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install a new delivery point located on Tennessee's system in Montgomery County, Texas, for Hughes Natural Gas, Inc. (Hughes) authorized in blanket certificate issued in Docket No. CP82-413-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to install, own, operate and maintain a 2-inch hot tap on its existing right-of-way and inspect Hughes' installation of the interconnect piping, meter facilities, regulation and strainer facilities. Tennessee reports that they would operate the interconnect piping, regulation and strainer facilities and would own and maintain the meter facilities which would be located on a site, provided by Hughes, adjacent to and along Tennessee's existing right-of-way. The estimated cost of the new facilities would be \$15,400 which would be reimbursed by Hughes.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 96-17840 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-307-000]**Tennessee Gas Pipeline Company;
Notice of Tariff Filing**

July 9, 1996.

Take notice that on July 2, 1996, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of August 1, 1996.

First Revised Sheet No. 306
Second Revised Sheet No. 308

Tennessee states that it is filing the instant tariff sheets to eliminate the requirement that waivers of gas quality specifications be contained in shipper transportation contracts. Tennessee states that, as a result of unbundling, it is producers and not shippers who control and must meet the gas quality specifications and therefore the proposed changes conform Tennessee's tariff with post restructuring operations.

Any person desiring to be heard or to make any protest with reference to 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 Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-17856 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-308-000]**Tennessee Gas Pipeline Company;
Notice of Tariff Filing**

July 9, 1996.

Take notice that on July 2, 1996, Tennessee Gas Pipeline Company (Tennessee), submitted for filing as part of its FERC Gas Tariff, Fifth Revised Volume 1, the following revised tariff sheets, to be effective on September 1, 1996:

First Revised Sheet No. 209B
First Revised Sheet No. 209C
First Revised Sheet No. 209D

Second Revised Sheet No. 209E
First Revised Sheet No. 209F
First Revised Sheet No. 209G
First Revised Sheet No. 209H
Original Sheet No. 209I
Third Revised Sheet No. 316
Fourth Revised Sheet No. 317
Original Sheet No. 593C
Original Sheet No. 593D

Tennessee states that the purpose of this filing is to implement a modification to its Storage Swing Option (SSO) whereby delivery customers can utilize firm swing service provided by third parties for balancing purposes on the Tennessee system.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this 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 available for public inspection in the public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-17857 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-129-001]**Trunkline Gas Company; Notice to
Place Suspended Rates Into Effect**

July 9, 1996.

Take notice that on July 1, 1996 Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A of its filing to become effective August 1, 1996.

Trunkline states that the revised tariff sheets submitted herewith are being filed in compliance with Section 154.206 of the Commission's Regulations to move into effect the tariff sheets which the Commission suspended until August 1, 1996 in its February 29, 1996 Order in this Docket.

Trunkline states that copies of this motion filing are being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 North Capitol Street, N.E., Washington, D.C. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 96-17848 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-175-002]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 2, 1996, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, to be effective April 13, 1996:

Second Substitute First Revised Sheet No. 6B
Second Substitute Second Revised Sheet No. 250A

Second Substitute First Revised Sheet No. 250B

WNG states that on April 24, 1996, it filed tariff sheets in compliance with Commission order issued April 9, 1996, in the above referenced docket. By letter order issued June 17, 1996, the Commission rejected the tariff sheets for noncompliance with the April 9, 1996 order. The June 17, 1996 order directed WNG to refile within 15 days of the date of the order, reflecting that WNG would assess a zero fuel charge for all transportation backhauls between the specified receipt and delivery points. The instant filing is being made to reflect this tariff change. The tariff changes also clarify that the minimum percent for the production area is as provided in Article 13.3.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all jurisdictional customers and interested state commission.

Any person desiring to protest this filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-17849 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-281-001]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 2, 1996, Williams Natural Gas Company (WNG), filed Substitute Thirteenth Revised Sheet No. 6A, Second Revised Volume No. 1, to be effective on July 1, 1996.

WNG states that this filing is being made to correct an inadvertent error in the ITS-P maximum rate in its filing made June 19, 1996, in Docket No. RP96-281-000.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in Docket No. RP96-281 and on all jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-17850 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP96-303-000 and RP89-183-063]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 1, 1996, Williams Natural Gas Company (WNG), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with the proposed effective date of August 1, 1996:

Fourteenth Revised Sheet No. 6A
First Revised Sheet Nos. 8C and 8D

WNG states that this filing is being made pursuant to Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. WNG hereby submits its quarterly report of take-or-pay buyout, buydown and contract reformation costs and gas supply related transition costs, and the application or distribution of those costs and refunds.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or 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 Sections 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-17853 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT96-71-000]

Williston Basin Interstate Pipeline Company; Notice of Filing

July 9, 1996.

Take notice that on July 1, 1996, Williston Basin Interstate Pipeline

Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective July 1, 1996:

Second Revised Volume No. 1
Fifth Revised Sheet No. 775
Twelfth Revised Sheet No. 779
Eleventh Revised Sheet No. 780
Fifteenth Revised Sheet Nos. 787-788
Sixteenth Revised Sheet Nos. 789-790
Fifteenth Revised Sheet No. 791
Sixteenth Revised Sheet Nos. 792-794
Fourteenth Revised Sheet No. 832
Fifteenth Revised Sheet No. 833

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-17845 Filed 7-12-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. MT96-17-000]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

July 9, 1996.

Take notice that on July 1, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, second Revised Volume No. 1, the following revised tariff sheet to become effective August 1, 1996.

Fourth Revised Sheet No. 187

Williston Basin states that the revised tariff sheet reflects a change to the list of possible shared personnel.

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 Sections 385.214 and 385.211 of the

Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-17847 Filed 7-12-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP96-305-000]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

July 9, 1996.

Take notice that on July 2, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets as listed in Appendix A to the filing.

Williston Basin states that pursuant to Section 4 of the Natural Gas Act and part 154 of the Commission's Regulations, it is submitting the following revisions to comply with Commission Order Nos. 582 and 582-A in Docket Nos. RM95-3-000 and RM95-3-001, respectively: (1) its title page to include a telephone and fax number in compliance with Section 154.102 of the Commission's amended Regulations; (2) numerous tariff sheets to reflect the correct carrying charge reference to Section 154.501 of the Commission's amended Regulations; and (3) Sheet No. 362 to reflect the correct Annual Charge Adjustment reference to Section 154.402 of the Commission's amended Regulations.

Williston Basin states that in addition to the above revisions, it has added language to its FERC Gas Tariff in compliance with Section 154.109 (b) and (c) of the Commission's amended Regulations, to contain a statement which specifies the order in which each component of Williston Basin's rates will be discounted and a statement of Williston Basin's policy with respect to the financing and construction of laterals.

Williston Basin states it is also submitting the following "housekeeping" revisions: (1) Sheet Nos. 120 and 122 to delete subsections which pertain to Rate Schedule S-3; (2)

Sheet No. 207 to clarify that it is necessary for a shipper to designate between primary and alternate points; (3) Sheet No. 224 to clarify that Storage Service Requests do not pertain just to firm storage; and (4) Sheet No. 303 to reflect the correct reference in Section 284.7 of the Commission's Regulations with regard to discounting.

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. 20246, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 96-17854 Filed 7-12-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP96-304-000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Revisions

July 9, 1996.

Take notice that on July 2, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 the following revised tariff sheets to become effective August 1, 1996:

Second Revised Volume No. 1
First Revised Sheet No. 182
Original Sheet No. 182A

Williston Basin states that the revised tariff sheets are being filed to revise Section 5 of its General Terms and Conditions to: (1) allow gas measurement charts to be changed or indices read at intervals mutually agreed upon by Williston Basin and the affected Shipper; and (2) allow Shippers to access daily flow data from Williston Basin's Remote Terminal Units. Williston Basin states that such Shippers will assume sole responsibility for all use of the data and information.

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,

Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-17859 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP96-541-000]

**Southern Natural Gas Company;
Notice of Intent To Prepare an
Environmental Assessment for the
Proposed Zone III Expansion Project
and Request for Comments on
Environmental Issues**

July 9, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Zone III Expansion Project.¹ This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Southern Natural Gas Company (Southern) wants to expand the capacity of its facilities in Alabama, Georgia, and Mississippi to transport an additional 45,880 cubic feet per day of natural gas to nine companies and two municipalities. Southern seeks authority to construct and operate:

- 4.6 miles of 30-inch-diameter loop in Crawford and Monroe Counties, Georgia;
- 5.1 miles of 16-inch-diameter loop in Jones and Twiggs Counties, Georgia;
- 5.9 miles of 30-inch-diameter loop in Lee County, Alabama;
- 7.3 miles of 24-inch-diameter loop in Pickens and Tuscaloosa Counties, Alabama; and

¹ Southern Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

- 4.6 miles of 30-inch-diameter loop in Walthall, Lawrence, and Marion Counties, Mississippi.

Southern has also proposed to upgrade four turbine compressor engines which are located within the Selma Compressor Station in Dallas County, Alabama and the Bay Springs Compressor Station in Jasper County, Mississippi.

In addition, Southern would place an existing 104.6 mile 20-inch-diameter pipeline back in service. The Wrens-Savannah Pipeline is in Jefferson, Burke, Jenkins, Screven, Effingham, and Chatham Counties, Georgia.

The general location of the project facilities and specific locations for facilities on new sites are shown in appendix 1.²

Land Requirements for Construction

Construction of the proposed facilities would require about 83.38 acres of land. Following construction, about 19.52 acres would be maintained as new right-of-way. The remaining 63.86 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.

²The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208-1371. Copies of the appendices were sent to all those receiving this notice in the mail.

- Vegetation and wildlife.
- Land use.
- Cultural resources.
- Air quality and noise.
- Endangered and threatened species.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern. This preliminary list of issues may be changed based on your comments and our analysis.

- Two federally listed endangered species may occur in the proposed project area.
- Three residences are located within 50 feet of the proposed construction right-of-way.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposals, alternatives to the proposal including alternative routes, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, DC 20426.

• Reference Docket No. CP96-541-000.

- Send a copy of your letter to: Ms. Amy Olson, EA Project Manager, Federal Energy Regulatory Commission, 888 First St., N.E., PR-11.1, Washington, DC 20426; and

• Mail your comments so that they will be received in Washington, DC on or before August 19, 1996.

If you wish to receive a copy of the EA, you should request one from Ms. Olson at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Amy Olson, EA Project Manager, at (202) 208-1199.

Lois D. Cashell,

Secretary.

[FR Doc. 96-17839 Filed 7-12-96; 8:45 am]

BILLING CODE 6717-01-M

Sunshine Act Meeting

July 10, 1996.

The following Notice of Meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 17, 1996, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does

not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 656th Meeting—July 17, 1996; Regular Meeting (10:00 a.m.)

CAH-1.

DOCKET# P-5984-005, NIAGARA MOHAWK POWER CORPORATION

Consent Agenda—Electric

CAE-1.

DOCKET# ER96-1886-000, ORANGE AND ROCKLAND UTILITIES, INC.

OTHER#S ER96-1887-000, ORANGE AND ROCKLAND UTILITIES, INC.

CAE-2.

DOCKET# ER96-1888-000, ILLINOIS POWER COMPANY

CAE-3.

DOCKET# ER96-1902-000, NORTHEAST UTILITIES SERVICE COMPANY

CAE-4.

DOCKET# ER96-1695-000, FLORIDA POWER CORPORATION

OTHER#S ER96-1826-000, FLORIDA POWER CORPORATION

ER96-1893-000, FLORIDA POWER CORPORATION

ER96-1914-000, FLORIDA POWER CORPORATION

CAE-5.

DOCKET# ER96-1905-000, SOUTHWESTERN PUBLIC SERVICE COMPANY

OTHER#S ER96-1906-000, SOUTHWESTERN PUBLIC SERVICE COMPANY

ER96-1907-000, SOUTHWESTERN PUBLIC SERVICE COMPANY

ER96-1908-000, SOUTHWESTERN PUBLIC SERVICE COMPANY

ER96-1909-000, SOUTHWESTERN PUBLIC SERVICE COMPANY

ER96-1910-000, SOUTHWESTERN PUBLIC SERVICE COMPANY

CAE-6.

OMITTED

CAE-7.

DOCKET# FA94-23-001, CONNECTICUT YANKEE ATOMIC POWER COMPANY

CAE-8.

DOCKET# ER96-370-000, MAINE PUBLIC SERVICE COMPANY

OTHER#S ER96-561-000, MAINE PUBLIC SERVICE COMPANY

CAE-9.

DOCKET# ER95-634-000, FLORIDA POWER CORPORATION

OTHER#S ER95-634-001, FLORIDA POWER CORPORATION

ER95-634-002, FLORIDA POWER CORPORATION

ER95-1536-000, FLORIDA POWER CORPORATION

ER95-1536-001, FLORIDA POWER CORPORATION

CAE-10.

DOCKET# EL96-33-000, ALLEGHENY GENERATING COMPANY

OTHER#S EL96-33-001, ALLEGHENY GENERATING COMPANY

CAE-11.

DOCKET# ER95-222-002, DELMARVA POWER & LIGHT COMPANY

OTHER#S ER95-1639-001, DELMARVA POWER & LIGHT COMPANY

CAE-12.

DOCKET# EL95-53-000, ARKANSAS PUBLIC SERVICE COMMISSION V. ENTERGY SERVICES, INC.

CAE-13.

DOCKET# EL96-35-000, WABASH VALLEY POWER ASSOCIATION, INC. V. NORTHERN INDIANA PUBLIC SERVICE COMPANY, INC.

OTHER#S ER96-399-000, NORTHERN INDIANA PUBLIC SERVICE COMPANY, INC.

CAE-14.

DOCKET# EL95-58-000, ENTERGY SERVICES, INC.

CAE-15.

DOCKET# EL96-32-000, ILLINOIS MUNICIPAL ELECTRIC AGENCY V. CENTRAL ILLINOIS PUBLIC SERVICE COMPANY

Consent Agenda—Gas and Oil

CAG-1.

DOCKET# RP96-279-000, TEXAS EASTERN TRANSMISSION CORPORATION

CAG-2.

OMITTED

CAG-3.

DOCKET# RP95-128-002, EAST TENNESSEE NATURAL GAS COMPANY

CAG-4.

DOCKET# RP95-408-010, COLUMBIA GAS TRANSMISSION CORPORATION

CAG-5.

DOCKET# RP95-457-001, ANR PIPELINE COMPANY

CAG-6.

DOCKET# RP96-249-000, TENNESSEE GAS PIPELINE COMPANY

CAG-7.

DOCKET# RP94-52-000, NORTHWEST ALASKAN PIPELINE COMPANY
OTHER#S RP94-52-001, NORTHWEST ALASKAN PIPELINE COMPANY
RP94-250-000, NORTHWEST ALASKAN PIPELINE COMPANY
RP94-250-001, NORTHWEST ALASKAN PIPELINE COMPANY

CAG-8.

DOCKET# RP95-125-002, MIDWESTERN GAS TRANSMISSION COMPANY

CAG-9.

OMITTED

CAG-10.

DOCKET# RP96-129-000, TRUNKLINE GAS COMPANY

CAG-11.

DOCKET# RP96-137-000, NORTHERN NATURAL GAS COMPANY

CAG-12.

DOCKET# ST88-2555-007, LOUISIANA INTRASTATE GAS COMPANY L.L.C.

OTHER#S PR91-12-000, LOUISIANA INTRASTATE GAS COMPANY L.L.C.

PR92-7-000, LOUISIANA INTRASTATE GAS COMPANY L.L.C.

PR94-8-000, LOUISIANA INTRASTATE GAS COMPANY L.L.C.

PR94-8-001, LOUISIANA INTRASTATE GAS COMPANY L.L.C.

PR94-8-002, LOUISIANA INTRASTATE GAS COMPANY L.L.C.

- PR94-8-003, LOUISIANA INTRASTATE GAS COMPANY L.L.C.
ST88-2905-000, LOUISIANA INTRASTATE GAS COMPANY L.L.C.
ST89-1708-000, LOUISIANA INTRASTATE GAS COMPANY L.L.C.
ST89-1775-000, LOUISIANA INTRASTATE GAS COMPANY L.L.C.
ST89-3337-000, TEXAS GAS TRANSMISSION CORPORATION
CAG-13.
DOCKET# RP96-64-001, SOUTH GEORGIA NATURAL GAS COMPANY
OTHER#S RP96-64-000, SOUTH GEORGIA NATURAL GAS COMPANY
CAG-14.
DOCKET# RP96-61-000, TENNESSEE GAS PIPELINE COMPANY
CAG-15.
DOCKET# RP89-186-057, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
OTHER#S ST93-2038-001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93-2039-001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93-2040-001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93-2732-001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93-2733-001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93-3139-001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93-3140-001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93-3141-001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93-3142-001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG-16.
DOCKET# RP96-67-003, MOJAVE PIPELINE COMPANY
CAG-17.
DOCKET# RP96-78-001, STINGRAY PIPELINE COMPANY
CAG-18.
DOCKET# RP96-200-001, NORAM GAS TRANSMISSION COMPANY
CAG-19.
DOCKET# RP95-296-004, WILLIAMS NATURAL GAS COMPANY
CAG-20.
DOCKET# RP93-5-025, NORTHWEST PIPELINE CORPORATION
OTHER#S RP93-96-005, NORTHWEST PIPELINE CORPORATION
CAG-21.
DOCKET# RP92-163-007, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
OTHER#S RP92-170-007, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
RP92-236-006, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG-22.
DOCKET# RP91-166-030, NORTHWEST PIPELINE CORPORATION
CAG-23.
DOCKET# RP92-137-040, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG-24.
DOCKET# AC94-179-001, ALGONQUIN GAS TRANSMISSION COMPANY
OTHER#S AC93-61-001, TENNESSEE GAS PIPELINE COMPANY, MIDWESTERN GAS TRANSMISSION CO. AND EAST TENNESSEE NATURAL GAS COMPANY, ET AL.
AC93-186-001, CNG TRANSMISSION CORPORATION
AC94-40-001, MISSISSIPPI RIVER TRANSMISSION CORPORATION
AC94-48-001, PANHANDLE EASTERN PIPE LINE COMPANY
AC94-49-001, TRUNKLINE GAS COMPANY
CAG-25.
DOCKET# GP91-8-007, JACK J. GRYNBERG, ET AL. V. ROCKY MOUNTAIN NATURAL GAS COMPANY, A DIVISION OF K N ENERGY INC.
OTHER#S GP91-10-007, ROCKY MOUNTAIN NATURAL GAS COMPANY, A DIVISION OF K N ENERGY INC. V. JACK J. GRYNBERG, ET AL.
CAG-26.
DOCKET# RP96-172-001, KOCH GATEWAY PIPELINE COMPANY
CAG-27.
DOCKET# RP96-173-001, WILLIAMS NATURAL GAS COMPANY
OTHER#S RP89-183-061, WILLIAMS NATURAL GAS COMPANY
CAG-28.
DOCKET# RM95-3-002, FILING REQUIREMENTS FOR INTERSTATE NATURAL GAS COMPANY RATE SCHEDULES AND TARIFFS
CAG-29.
DOCKET# RP95-436-000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG-30.
DOCKET# OR96-13-000, ULTRAMAR, INC. V. GAVIOTA TERMINAL COMPANY
CAG-31.
DOCKET# OR89-2-007, TRANS ALASKA PIPELINE SYSTEM
OTHER#S IS89-7-000, AMERADA HESS PIPELINE CORPORATION
IS89-8-000, ARCO PIPELINE COMPANY
IS89-9-000, BP PIPELINES (ALASKA) INC.
IS89-10-000, EXXON PIPELINE COMPANY
IS89-11-000, MOBIL ALASKA PIPELINE COMPANY
IS89-12-000, PHILLIPS ALASKA PIPELINE CORPORATION
IS89-13-000, UNOCAL PIPELINE COMPANY
CAG-32.
DOCKET# RM96-10-000, OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS
CAG-33.
DOCKET# RP88-68-041, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S IN89-1-002, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG-34.
DOCKET# RP94-344-000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG-35.
DOCKET# CP94-172-002, MOJAVE PIPELINE COMPANY
CAG-36.
DOCKET# CP95-11-004, WILLIAMS NATURAL GAS COMPANY
OTHER#S CP95-11-005, WILLIAMS NATURAL GAS COMPANY
CP95-12-002, WILLIAMS GAS PROCESSING-KANSAS HUGOTON COMPANY
CAG-37.
DOCKET# CP95-783-000, COLORADO INTERSTATE GAS COMPANY
CAG-38.
DOCKET# CP96-29-000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG-39.
DOCKET# CP95-785-000, NORAM GAS TRANSMISSION COMPANY
CAG-40. OMITTED
CAG-41.
DOCKET# CP96-168-000, NORTHWEST PIPELINE CORPORATION
CAG-42.
DOCKET# CP95-735-000, MURPHY EXPLORATION & PRODUCTION COMPANY V. QUIVIRA GAS COMPANY
OTHER#S CP95-735-001, MURPHY EXPLORATION & PRODUCTION COMPANY V. QUIVIRA GAS COMPANY
CAG-43.
DOCKET# RP96-92-000, AMOCO PRODUCTION COMPANY V. ANR PIPELINE COMPANY
CAG-44.
OMITTED
CAG-45.
OMITTED
Hydro Agenda
H-1.
DOCKET# P-2113-038, WISCONSIN VALLEY IMPROVEMENT COMPANY
OTHER#S P-1999-004, WISCONSIN PUBLIC SERVICE CORPORATION
P-2212-001, WEYERHAEUSER COMPANY
P-2239-004, TOMAHAWK POWER AND PULP COMPANY
P-2255-003, NEKOOSA PAPERS, INC.
P-2256-001, CONSOLIDATED WATER POWER COMPANY
P-2291-001, NEKOOSA PAPERS, INC.
P-2292-001, NEKOOSA PAPERS, INC.
P-2476-001, WISCONSIN PUBLIC SERVICE CORPORATION
P-2590-001, CONSOLIDATED WATER POWER COMPANY
ORDER ON APPLICATIONS FOR NEW LICENSE.
H-2.
DOCKET# P-2113-022, WISCONSIN VALLEY IMPROVEMENT COMPANY

- ORDER ON APPLICATION FOR NEW LICENSE.
- H-3. DOCKET# P-2239-004, TOMAHAWK POWER AND PULP COMPANY ORDER ON APPLICATION FOR NEW LICENSE.
- H-4. DOCKET# P-2476-001, WISCONSIN PUBLIC SERVICE CORPORATION ORDER ON APPLICATION FOR SUBSEQUENT LICENSE.
- H-5. DOCKET# P-1999-004, WISCONSIN PUBLIC SERVICE CORPORATION ORDER ON APPLICATION FOR NEW LICENSE.
- H-6. DOCKET# P-2212-001, WEYERHAEUSER COMPANY ORDER ON APPLICATION FOR NEW LICENSE.
- H-7. DOCKET# P-2590-001, CONSOLIDATED WATER POWER COMPANY ORDER ON APPLICATION FOR NEW LICENSE.
- H-8. DOCKET# P-2256-001, CONSOLIDATED WATER POWER COMPANY ORDER ON APPLICATION FOR NEW LICENSE.
- H-9. DOCKET# P-2255-003, NEKOOSA PAPERS, INC. ORDER ON APPLICATION FOR NEW LICENSE.
- H-10. DOCKET# P-2291-001, NEKOOSA PAPERS, INC. ORDER ON APPLICATION FOR NEW LICENSE.
- H-11. DOCKET# P-2292-001, NEKOOSA PAPERS, INC. ORDER ON APPLICATION FOR NEW LICENSE.

Electric Agenda

- E-1. RESERVED

Oil and Gas Agenda

- I. PIPELINE RATE MATTERS
- PR-1. DOCKET# RM96-1-000, STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES FINAL RULE.
- PR-2. DOCKET# RP93-100-000, DAKOTA GASIFICATION COMPANY OTHER#S RP93-151-015, TENNESSEE GAS PIPELINE COMPANY RP94-39-006, TENNESSEE GAS PIPELINE COMPANY RP94-87-008, NATURAL GAS PIPELINE COMPANY OF AMERICA RP94-122-006, NATURAL GAS PIPELINE COMPANY OF AMERICA RP94-150-000, ANR PIPELINE COMPANY RP94-169-006, NATURAL GAS PIPELINE COMPANY OF AMERICA RP94-195-005, NATURAL GAS PIPELINE COMPANY OF AMERICA

- RP94-202-000, TENNESSEE GAS PIPELINE COMPANY RP94-208-000, NATURAL GAS PIPELINE COMPANY OF AMERICA RP94-222-000, TENNESSEE GAS PIPELINE COMPANY RP94-249-004, NATURAL GAS PIPELINE COMPANY OF AMERICA RP94-260-004, NATURAL GAS PIPELINE COMPANY OF AMERICA RP94-266-000, ANR PIPELINE COMPANY RP94-298-000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION RP94-305-002, NATURAL GAS PIPELINE COMPANY OF AMERICA RP94-309-003, TENNESSEE GAS PIPELINE COMPANY RP94-347-000, ANR PIPELINE COMPANY RP94-364-001, NATURAL GAS PIPELINE COMPANY OF AMERICA RP94-384-000, ANR PIPELINE COMPANY TM94-14-29-000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION ORDER ON INITIAL DECISION.

II.

PIPELINE CERTIFICATE MATTERS PC-1.

RESERVED
Lois D. Cashell,

Secretary.

[FR Doc. 96-18001 Filed 7-11-96; 12:11 pm]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00443; FRL-5383-9]

Renewal of Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that the following Information Collection Request (ICR) is coming up for renewal. This ICR, Trade Secret Clearance Justification, OMB No. 2070-0053, EPA No. 0613.06, expires on December 31, 1996. Before submitting the renewal packages to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before September 13, 1996.

ADDRESSES: Submit written comments identified by the docket control number OPP-00443 and the appropriate ICR number by mail to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments directly to the OPP docket which is located in Rm. 1132 of Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Copies

of the complete ICR and accompanying appendices may be obtained from the OPP docket at the above address or by contacting the person whose name appears under FOR FURTHER INFORMATION CONTACT.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as a ASCII file avoiding the use of special characters and any form or encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP-00443" and the appropriate ICR number. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ellen Kramer, Policy and Special Projects Staff, Office of Pesticide Programs, Environmental Protection Agency, Mail Code (7501C), 401 M St., SW., Washington, DC 20460, Telephone: (703) 305-6475, e-mail: kramer.ellen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Electronic Availability: Electronic copies of the ICR are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental Sub-Set entry for this document under "Rules and Regulations."

I. Information Collection Request

EPA is seeking comments on the following Information Collection Request (ICR).

Title: Trade Secret Clearance Justification. OMB No. 2070-0053. EPA ICR No. 0613.06. Expiration date: December 31, 1996.

Affected entities: Registrants of pesticide products subject to Freedom of Information Act (FOIA) requests.

Abstract: The purpose of the collection is to determine the confidentiality of information submitted to the Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The collection is usually prompted by a request under the Freedom of Information Act (FOIA) for a record which may be entitled to confidential treatment. The collection instrument consists of nine questions codified under 40 CFR part 2, subpart B. A final determination on the releasability of the requested record is issued by EPA upon evaluation of the business's response.

EPA may not disclose information which is described by FIFRA section 10(d)(1)(A),(B), or (C). Under 40 CFR 2.204(a), EPA may take action to determine whether business information is entitled to confidential treatment when a request for disclosure is received under FOIA, when the Agency anticipates receiving a request under FOIA, or when the Agency wishes to determine if information in its possession is confidential. When determining whether information is entitled to confidential treatment, EPA is required by 40 CFR 2.204(e) to notify the affected business and provide an opportunity for comment.

Burden Statement: The annual respondent burden for this program is estimated to average 21 hours per response, including time for: Reading collection request; conferring with EPA; gathering resources and coordinating actions; reviewing information to identify potential confidential portions; processing, compiling, and reviewing claims of confidentiality for accuracy and appropriateness; reporting and substantiating findings; and storing, filing, or maintaining the information.

The total number of registrants impacted by this ICR is estimated to be 90 per year. Total cost per respondent to comply with this ICR, including capital costs, labor costs, and other operating and maintenance costs is estimated at approximately \$1,708 per response. The total hours and respondents to comply with this ICR has remained the same as the previous ICR, but the total cost has increased due to updated labor costs provided by the Bureau of Labor Statistics. There is no third party notification associated with this activity.

Any Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control

numbers for EPA's regulations are contained in 40 CFR part 9.

II. Request for Comments

EPA solicits comments to:

(i) Evaluate whether the proposed collections of information described above are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the agency's estimates of the burdens of the proposed collections of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

Send comments regarding these matters, or any other aspect of these information collections, including suggestions for reducing the burdens, to the docket under ADDRESSES listed above.

III. Public Record

A record has been established for this action under docket number "OPP-00443" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in

ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection and information collection requests.

Dated: July 8, 1996.

Susan H. Wayland,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 96-17902 Filed 7-12-96; 8:45 am]

BILLING CODE 6560-50-F

[FRL-5537-2]

Toxics; Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The Agency is requesting the renewal of an existing approval, which expires on August 31, 1996. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 14, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, 202-260-2740, and refer to EPA ICR No. 1139.

SUPPLEMENTARY INFORMATION:

Review Requested: Extension of a currently approved information collection.

ICR Numbers: EPA ICR No. 1139; OMB No. 2070-0033.

Expiration Date: Current OMB approval expires on August 31, 1996.

Title: TSCA Section 4 Test Rules, Consent Orders/Agreement and Test Rule Exemptions.

Abstract: Section 4 of the Toxic Substances Control Act (TSCA) is designed to assure that chemicals that may pose serious risks to human health or the environment undergo testing by manufacturers or processors, and that the results of such testing are made available to EPA. EPA uses the information collected under the authority of TSCA section 4 activity to assess risks associated with the manufacture, processing, distribution, use or disposal of a chemical, and to support any necessary regulatory action with respect to that chemical.

EPA must assure that appropriate tests are performed on a chemical if it decides: (1) that a chemical being considered under TSCA section 4(a) may pose an "unreasonable risk" or is produced in "substantial" quantities that may result in substantial or significant human exposure or substantial environmental release of the chemical; (2) that additional data are needed to determine or predict the impacts of the chemical's manufacture, processing, distribution, use or disposal; and (3) that testing is needed to develop such data. Rules and consent orders under TSCA section 4 require that one manufacturer or processor of a subject chemical perform the specified testing and report the result of that testing to EPA. TSCA section 4 also allows a manufacturer or processor of a subject chemical to apply for an exemption from the testing requirement if that testing will be or has been performed by another party.

Responses to the collection of information are mandatory (see 40 CFR part 790). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 488 hours per response. This estimate includes the time needed to review instructions, develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Companies that manufacture, process, use, distribute or dispose of chemicals.

Estimated No. of Respondents: 152.

Estimated Total Annual Burden on Respondents: 95,728 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the

information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA ICR No. 1139 and OMB Control No. 2070-0033 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2137), 401 M Street, SW., Washington, DC 20460.

and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: July 9, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96-17907 Filed 7-10-96; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5537-5]

Agency Information Collection Activities Under OMB Review; Standards of Performance for Electric Utility Steam Generating Units; OMB No. 2060-0023, EPA No. 1053.05

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) for the electric utility steam generating units described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 14, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR No. 1053.05.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Electric Utility Steam Generating Units (OMB No. 2060-0023; EPA ICR No. 1053.05) This is a request for revision of a currently approved collection.

Abstract: In Administrator's judgement, nitrogen oxides (NO_x), particulate matter (PM) and sulfur dioxide (SO₂) emissions from electric utility steam generating units cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. In order to assure compliance with the emission standards, adequate monitoring and

recordkeeping is necessary. In the information required by the standards were not collected, the Agency would have no means for ensuring that compliance with the NSPS is achieved and maintained by sources subject to the regulation. The information collected is also used for targeting inspections, and is of sufficient quality to be used as evidence in court. The information collected is required under 40 CFR Part 60 Subpart Da and records of the information are required to be maintained for at least two years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 C.F.R. Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on 3/26/96 (FR 61, No. 59 pg 13173-13174).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.65 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents: Owners or operators of steam generating units.

Estimated Hours/Response: 0.65 hours.

Estimated Number of Respondents: 103.

Frequency of Response: quarterly.

Estimated Total Annual Hour Burden: 24,101 hours.

Estimated Total Annualized Cost Burden: \$0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses.

Please refer to EPA ICR No. 1053.05 and OMB Control No. 2060-0023 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460. and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: July 5, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96-17908 Filed 7-12-96; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5537-4]

Agency Information Collection Activities Under OMB Review; Standards of Performance for Fossil-Fuel-Fired Steam Generating Units; OMB No. 2060-0026; EPA No. 1052.05

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) for the fossil-fuel-fired steam generating units described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 14, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR No. 1052.05.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Fossil-Fuel-Fired Steam Generating Units (OMB No. 2060-0026; EPA ICR No. 1052.05) This is a request for revision of a currently approved collection.

Abstract: In Administrator's judgment, nitrogen oxides (NO_x), particulate matter (PM) and sulfur dioxide (SO₂) emissions from fossil-fuel-fired steam generating units cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. In order to assure compliance with the emission standards, adequate monitoring and recordkeeping is necessary. If the

information required by the standards were not collected, the Agency would have no means for ensuring that compliance with the NSPS is achieved and maintained by sources subject to the regulation. The information collected is also used for targeting inspections, and is of sufficient quality to be used as evidence in court. The information collected is required under 40 CFR Part 60 Subpart D and records of the information are required to be maintained for at least two years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on 3/26/96 (FR 61, No. 59 pg 13172-13173).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents: owners and operators of fossil-fuel-fired steam generating units
Estimated Hours/Response: 0.3 hours.
Estimated Number of Respondents: 660.

Frequency of Response: quarterly.
Estimated Total Annual Hour Burden: 62,865 hours.

Estimated Total Annualized Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1052.05 and OMB Control No. 2060-0026 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460. and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: July 5, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96-17909 Filed 7-12-96; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5537-3]

Agency Information Collection Activities Under OMB Review; Standards of Performance for New Stationary Sources (NSPS) Kraft Pulp Mills; Reporting and Recordkeeping

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D)), this notice announces that the Information Collection Request (ICR) for the New Source Performance Standards for Kraft Pulp Mills (40 CFR Part 60, Subpart BB) described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 14, 1996.

FOR FURTHER INFORMATION OR A COPY

CALL:

Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR No. 1055.05.

SUPPLEMENTARY INFORMATION:

Title: New Source Performance Standards for Kraft Pulp Mills (40 CFR Part 60, Subpart BB), Reporting and Recordkeeping Requirements

OMB Control No: 2060-0021 EPA ICR No: 1055.05 This information collection is a revision of an approved collection.

Abstract: New Source Performance Standards for Kraft Pulp Mills were developed to ensure that air emissions from these facilities do not cause ambient concentrations of particulate matter and Total Reduced Sulfur (TRS) to exceed levels that may reasonably be anticipated to endanger public health and the environment. In order to ensure compliance with the standards, adequate recordkeeping and reporting is

necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Responses are mandatory under 40 CFR Part 60. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 26, 1996 [61 FR 13174].

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.6 hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 74.

Estimated Number of Responses: 26,064.

Frequency of Response: semi-annual.

Estimated Total Annual Hour Burden: 16,238 hours.

Estimated Total Annualized Cost Burden: \$0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1055.05 and OMB Control No. 2060-0021 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460 and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for

EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: July 5, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96-17910 Filed 7-12-96; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5536-7]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Disposal Systems Inc., (DSI)

AGENCY: Environmental Protection Agency

ACTION: Notice of final decision on petition reissuance.

SUMMARY: Notice is hereby given that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to DSI, for the Class I injection wells located at Deer Park, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by DSI, of the specific restricted hazardous waste identified in the exemption modification, into the Class I hazardous waste injection wells at the Deer Park, Texas facility specifically identified in the modified exemption, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued May 8, 1996. The public comment period closed on June 24, 1996. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of July 3, 1996.

ADDRESSES: Copies of the reissued petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ-S), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Ken Williams, Acting Chief, Ground Water/

UIC Section, EPA—Region 6, telephone (214) 665-7165.

William B. Hathaway,

Director, Water Quality Protection Division (6WQ).

[FR Doc. 96-17911 Filed 7-12-96; 8:45 am]

BILLING CODE 6565-50-P

[FRL-5536-6]

Underground Injection Control Program; Hazardous Waste Land Disposal Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Well, Rollins Environmental Services of Louisiana, Inc., (Rollins)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on exemption modification.

SUMMARY: Notice is hereby given that a petition for modification to an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Rollins, for the Class I injection well located at the Plaquemine, Louisiana, facility. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Rollins of the specific restricted hazardous waste identified in the petition modification, into the Class I hazardous waste injection well at the Plaquemine, Louisiana, facility specifically identified in the petition for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued on April 25, 1996. The public comment period ended on June 10, 1996. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of July 3, 1996.

ADDRESSES: Copies of the petition for modification and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ-S), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Ken Williams, Acting Chief Ground Water/

UIC Section, EPA—Region 6, telephone (214) 665-7165.

William B. Hathaway,
Director, Water Quality Protection Division.
[FR Doc. 96-17912 Filed 7-12-96; 8:45 am]
BILLING CODE 6565-50-P

[FRL-5536-8]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Disposal Systems of Corpus Christi, Inc., (DSICC)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition reissuance.

SUMMARY: Notice is hereby given that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to DSICC, for the Class I injection well located at Corpus Christi, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by DSICC, of the specific restricted hazardous waste identified in the exemption modification, into the Class I hazardous waste injection well at the Corpus Christi, Texas facility specifically identified in the modified exemption, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued May 14, 1996. The public comment period closed on June 28, 1996. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of July 3, 1996.

ADDRESSES: Copies of the reissued petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ-S), 1445 Ross Avenue, Dallas, Texas 75202-2733.
FOR FURTHER INFORMATION CONTACT: Ken Williams, Acting Chief, Ground Water/

UIC Section, EPA—Region 6, telephone (214) 665-7165.

William B. Hathaway,
Director, Water Quality Protection Division (6WQ).
[FR Doc. 96-17913 Filed 7-12-96; 8:45 am]
BILLING CODE 6565-50-P

[FRL-5535-8]

Notice of Final Decision To Grant Chemical Waste Management, Inc., a Modification of An Exemption From the Land Disposal Restrictions of the Solid and Waste Disposal Amendments of 1984 Regarding Injection of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on a request to modify an exemption from the Hazardous and Solid Waste Amendments of the Resource Conservation and Recovery Act.

SUMMARY: Notice is hereby given by the United States Environmental Protection Agency (USEPA or Agency) that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA) has been granted to Chemical Waste Management, Inc. (CWM) of Oakbrook, Illinois. This modification allows CWM to inject RCRA-regulated hazardous wastes which will be banned from land disposal on July 8, 1996, January 8, 1997, and April 8, 1998 as a result of the Phase III Rule. Wastes designated by a total of 91 additional RCRA waste codes, may continue to be land disposed through four waste disposal wells at the facility at Vickery, Ohio. As required by 40 CFR Part 148, CWM has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone utilized by CWM's waste disposal facility located near Vickery, Ohio, for as long as the newly exempted waste remains hazardous. This decision constitutes a final Agency action for which there is no administrative appeal.

SUPPLEMENTARY INFORMATION:

Background

CWM submitted a petition for an exemption from the restrictions on land disposal of hazardous wastes on January 19, 1988. Revised documents were received on December 4, 1989, and several supplemental submittals were subsequently made. The exemption was granted on August 7, 1990. On September 12, 1994, CWM submitted a

petition to modify the exemption to include wastes bearing 23 additional wastes codes. Region 5 reviewed documents supporting the request and granted the modification of the exemption on May 16, 1995. A notice of the modification appeared on June 5, 1996 at 60 FR 29592 et seq.

On April 9, 1996, in response to the Land Disposal Restrictions Phase III Rule which set ban dates for a number of hazardous waste constituents, CWM submitted a request to add 91 additional waste codes to its exemption. After careful review of the material submitted, the USEPA has determined, as required by 40 CFR part 148.20(f), that there is a reasonable degree of certainty that waste streams containing constituents designated by these codes will behave hydraulically and chemically like wastes for which CWM was granted its original exemption and will not migrate from the injection zone within 10,000 years. The injection zone is the Mt. Simon Sandstone and the Rome, Conasauga, Kerbel, and Knox Formations. The confining zone is comprised of the Wells Creek and Black River Formations.

A public notice of the proposed decision was issued on May 1, 1996. A single comment letter was received during the public comment period which expired on June 14, 1996. This comment did not provide any information which affected the basis of the decision to modify the CWM exemption.

As a result of this action, CWM may continue to inject the wastes bearing the codes:

K156, K157, K158, K159, K160, K161, P127, P128, P185, P188, P189, P190, P191, P192, P194, P196, P197, P198, P199, P201, P202, P203, P204, P205, U271, U277, U278, U279, U280, U364, U365, U366, U367, U372, U373, U375, U376, U377, U378, U379, U381, U382, U383, U384, U385, U386, U387, U389, U390, U391, U392, U393, U394, U395, U396, U400, U401, U402, U403, U404, U407, U409, U410, and U411

after wastes denoted by these codes are banned from land disposal on July 8, 1996; CWM may continue to inject wastes denoted by the waste code K088 after wastes denoted by this code is banned from land disposal on January 8, 1997; and CWM may continue to inject wastes denoted by the RCRA waste codes:

D018, D019, D020, D021, D022, D023, D024, D025, D026, D027, D028, D029, D030, D031, D032, D033, D034, D035, D036, D037, D038, D039, D040, D041, D042, and D043

after the wastes denoted by these codes are banned from land disposal on April 8, 1998. These waste codes are added to

the waste codes which have been previously exempted and are listed in the Federal Register notice of June 5, 1995.

CONDITIONS: General conditions of this exemption are found at 40 CFR Part 148. The exemption granted to CWM on August 7, 1990 included a number of specific conditions. Conditions numbered (1), (2), (3), (4), and (9) remain in force. Monitoring under condition 5, which called for construction and operation of a deep monitoring well, will continue through the life of the facility. Conditions numbered (5), (6), (7), and (8) have been satisfied. The results of the work carried out under these conditions confirms that the model used to simulate fluid movement within the injection zone for the next 10,000 years is valid and results of the simulation bound the region of the injection zone within which the waste will be contained.

DATES: This action is effective as of June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Harlan Gerrish or Nathan Wiser, Lead Petition Reviewers, USEPA, Region 5, telephone (312) 886-2939 or (312) 353-9569, respectively. Copies of the petition and all pertinent information relating thereto are on file and are part of the Administrative Record. It is recommended that you contact the lead reviewer prior to reviewing the Administrative record.

Rebecca L. Harvey,
Acting Director, Water Division.

[FR Doc. 96-17914 Filed 7-12-96; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5536-9]

Underground Injection Control Program Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; EMPAK, Inc., (EMPAK)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition reissuance.

SUMMARY: Notice is hereby given that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to EMPAK, for the Class I injection well located at Deer Park, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation

that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by EMPAK, of the specific restricted hazardous waste identified in the exemption modification, into the Class I hazardous waste injection well at the Deer Park, Texas facility specifically identified in the modified exemption, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued May 8, 1996. The public comment period closed on June 24, 1996. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of July 3, 1996.

ADDRESSES: Copies of the reissued petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ-S), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Ken Williams, Acting Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665-7150.

William B. Hathaway,
Director, Water Quality Protection Division (6WQ).

[FR Doc. 96-17915 Filed 7-12-96; 8:45 am]

BILLING CODE 6565-50-P

[FRL-5537-6]

Notice of Open Meeting of the Environmental Financial Advisory Board on August 15-16, 1996

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board on August 15-16, 1996. The meeting will be held in the Visitors Center Conference Room of the Presidio National Park in San Francisco, California. The August 15 session will run from 9:00 a.m. to 5:00 p.m., while the August 16 session will run from 8:00 a.m. to 11:00 a.m.

EFAB is chartered with providing authoritative analysis and advice to the EPA Administrator on environmental finance. The purpose of this meeting is to develop a strategic action agenda to direct the Board's work activities over the remainder of this year and into 1997. Financing topics expected to be

discussed include: brownfields redevelopment, private sector participation in delivering environmental services, financial tools to pay for sustainable environmental systems, and funding options for drinking water systems.

The meeting will be open to the public, but seating is limited. For further information, please contact Eugene Pontillo, U.S. EPA on 202-260-6044, or Joanne Lynch, U.S. EPA on 202-260-1459.

Dated: June 28, 1996.

George Ames,

Acting Director, Resource Management Division.

[FR Doc. 96-17906 Filed 7-12-96; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

July 9, 1996.

SUMMARY: The Federal Communications Commission, 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 information collection, 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 Commission's burden estimate; (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: Persons wishing to comment on this information collection should submit comments September 13, 1996.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC

20554 or via internet to
dconway@fcc.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 Number: 3060-0461.

Title: Section 90.173 Policies governing the assignment of frequencies.

Form No.: N/A.

Type of Review: Extension of an existing collection.

Respondents: Individuals or households; Business or other for-profit; State or local governments.

Number of Respondents: 200.

Estimated Time Per Response: 4.5 hours.

Total Annual Burden: 9,000.

Needs and Uses: This rule allows individuals who provide the Commission with information that a current licensee is violating certain rules to be granted a license preference for any channels recovered as a result of that information. Information will be used to determine if licensee is in violation of certain rules.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96-17881 Filed 7-12-96; 8:45 am]

BILLING CODE 6712-01-P

Notice of Public Information Collections Being Reviewed by FCC for Extension Under Delegated Authority 5 CFR 1320 Authority; Comments Requested

July 9, 1996.

SUMMARY: The Federal Communications Commission, 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.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before September 13, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.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 Number: 3060-0435.

Title: Section 80.361 Frequencies for Narrow-Band Direct-Printing (NB-DP) and data transmissions.

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Individuals, business or other for-profit.

Number of Respondents: 2.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 4 hours.

Total Annual Cost: 0.

Needs and Uses: The reporting requirement contained in Section 80.361 is necessary to require applicants to submit a showing of need to obtain new or additional narrow-band direct-printing (NB-DP) frequencies. Applicants for new or additional NB-DP frequencies are required to show the schedule of service of each currently licensed or proposed series of NB-DP frequencies and to show a need for additional frequencies based on at least a 40% usage of existing NB-DP frequencies. The information is used to determine whether an application for a

NB-DP frequency should be granted. If the collection of this information was not conducted, the FCC would have no information available regarding the use of NB-DP frequencies by public coast stations, and, therefore would be handicapped in determining whether the frequencies were being hoarded and not put into use by public coast stations.

OMB Approval Number: 3060-0263.

Title: Section 90.177 Protection of certain radio receiving locations.

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Individuals and households; Businesses or other for-profit; Non-profit institutions; State and local governments.

Number of Respondents: 300.

Estimated Time Per Response: .5 hours.

Total Annual Burden: 150 hours.

Needs and Uses: This rule requires applicants proposing to locate near certain radio receiving sites to notify those parties. Requirement protects critical national security and research sites from interference.

OMB Approval Number: 3060-0225.

Title: Section 90.131(b) Amendment or dismissal of applications.

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for-profit; Non-profit institutions; State and local governments.

Number of Respondents: 25.

Estimated Time Per Response: .166 hours.

Total Annual Burden: 4.15 hours.

Needs and Uses: This rule allows applicants to dismiss any pending application by sending a written request. Information will alert licensing personnel of applicant's desire to discontinue processing of application.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96-17882 Filed 7-12-96; 8:45 am]

BILLING CODE 6712-01-P

Public Information Collection Requirement Submitted to OMB for Review and Approval

July 8, 1996.

SUMMARY: The Federal Communications Commission, 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 information collection, 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 Commission's burden estimate; (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: Persons wishing to comment on this information collection should submit comments September 13, 1996.

ADDRESSES: Direct all comments to Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395-3561 or via internet at fain_t@a1.eop.gov, and Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.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 Number: New collection.

Title: Telecommunications Relay Services (TRS), CC Docket No. 90-571, MO&O (Coin Sent-Paid Order).

Form No.: N/A.

Type of Review: New Collection

Respondents: Business or other for-profit.

Number of Respondents: 30 respondents for the 12 and 18 month reports; 3,000 respondents for the disclosure requirement.

Estimated Time Per Response: 7 hours per response for the 12 month report, 9 hours per response for the 18 month report and 2.5 hours per respondent to comply with the disclosure requirement.

Total Annual Burden: 7,980.

Needs and Uses: In Memorandum Opinion and Order, (Order) issued in CC Docket No. 90-571, the Bureau suspended the coin sent-paid

requirement until August 26, 1997. This Order requires that payphones be made accessible to TRS users pursuant to the alternative plan proposed and during the continued suspension, outlined in paragraph 18 of the attached Order. In addition, carriers must make either calling cards or prepaid (debit) cards available to TRS users. TRS providers and/or carriers must also implement programs to educate TRS users about these alternative payment methods.

The Bureau also required that Petitioners work with any other interested parties that wish to participate, to prepare and file a joint status report with the Commission on August 26, 1996 (twelve month status report) and February 26, 1997 (eighteen month status report).

The twelve month status report must address the following issues: (1) Implementation and effectiveness of the alternative payment methods, *i.e.*, free local calling, and calling cards and/or prepaid cards for toll calls; (2) implementation and effectiveness of consumer education and card distribution programs; (3) coordination with the TRS user community; and (4) identification of any problem areas and corrective actions taken or proposed.

The eighteen month status report must address issues (1) through (4) above, as well as the following: (5) technical feasibility of developing and implementing TRS coin sent-paid service; (6) estimated costs of developing and implementing TRS coin sent-paid service; (7) any significant difference, in technical feasibility or cost, between the provision of TRS coin sent-paid service for local calls and the provision of such service for toll calls; (8) data on call volume and payment methods for TRS and non-TRS payphone calls, including, to the extent feasible, data on both local and long distance calls; and (9) to the extent not provided in response to item (8) above, data indicating long term trends in the demand for coin sent-paid service.

OMB Approval Number: 3060-0003.

Title: Application for Amateur Operator/Primary Station License.

Form No.: FCC 610.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 93,000.

Estimated Time Per Response: 10 minutes.

Total Annual Burden: 15,438.

Needs and Uses: Fcc Rules require that applicants file the FCC 610 to apply for a new, renewed or modified license. The form is required by the Communications of 1934 as amended.

The form is being revised to include a space for applicants to provide an internet address and newly implemented antenna registration numbers. No other changes are being proposed to this form.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96-17883 Filed 7-12-96; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10 a.m. on Tuesday, July 9, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Matters relating to the Corporation's corporate and supervisory activities.

Matters relating to the probable failure of an insured depository institution.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Vice Chairman Andrew C. Hove, Jr. and Ms. Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: July 9, 1996.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 96-17971 Filed 7-10-96; 4:54 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM**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 August 8, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Centura Banks, Inc.*, Rocky Mount, North Carolina; to acquire 100 percent

of the voting shares of FirstSouth Bank, Burlington, North Carolina.

2. *FNB Bancshares, Inc.*, Gaffney, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of the Carolina, Gaffney, South Carolina.

3. *Key Capital Corporation, Inc.*, Owings Mills, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Key Bank and Trust, Randallstown, Maryland, successor to Key Federal Savings Bank.

In connection with this application Key Capital Corporation, Inc., also has applied to engage in making, acquiring, or service loans or other extensions of credit, including issuing letters of credit and accepting drafts, for Key Capital Corporation, Inc., or for the account of others, such as would be made by consumer finance, credit card, mortgage, and commercial finance companies, pursuant to §§ 225.25(b)(1)(i), (ii), (iii), and (iv) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *The Maddox Corporation*, Blakely, Georgia; to become a bank holding company by acquiring 25 percent of the voting shares of First State Bancshares of Blakely, Inc., Blakely, Georgia, and thereby indirectly acquire First State Bank of Blakely, Blakely, Georgia.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Country Bank Shares Corporation*, Mt. Horeb, Wisconsin; to merge with Belleville Bancshares Corporation, Belleville, Wisconsin, and thereby indirectly acquire Belleville State Bank, Belleville, Wisconsin.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *The Belknap Partnership, L.P.*, Poplar Bluff, Missouri; to become a bank holding company by acquiring 32.15 percent of the voting shares of Boothell Bancorp, Inc., Poplar Bluff, Missouri, and thereby indirectly acquire First Community Bank, Poplar Bluff, Missouri.

Board of Governors of the Federal Reserve System, July 9, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-17898 Filed 7-12-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The company listed in this notice has 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.

The 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 application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *SouthTrust Corporation*, Birmingham, Alabama; to engage *de novo* through its subsidiary, SouthTrust Securities, Inc., Birmingham, Alabama, in underwriting and dealing, to a limited extent, certain private ownership industrial development revenue bonds issued for the traditional

governmental services and certain unrated municipal revenue bonds (including unrated public ownership and private ownership industrial development bonds). These activities have been previously approved by the Board by order to be so closely related to banking as to be proper incident thereto within the meaning of section 4(c)(8) of the BHC Act. See *Bank South Corporation*, 81 Fed. Res. Bull. 1,116 (1995)(private ownership industrial development bonds); *Letter Interpreting Section 20 Orders*, 81 Fed. Res. Bull. 198 (1995) (unrelated municipal revenue bonds). Applicant previously received the Board's approval to engage through SouthTrust Securities in, among other things, underwriting and dealing in municipal revenue bonds, including public ownership industrial development bonds. See *SouthTrust Corporation*, 75 Fed. Res. Bull. 647 (1989).

Board of Governors of the Federal Reserve System, July 9, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-17899 Filed 7-12-96; 8:45 am]

BILLING CODE 6210-01-F

Federal Open Market Committee; Domestic Policy Directive of May 21, 1996

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 21, 1996.¹ The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that, on balance, economic activity has grown moderately in recent months. Nonfarm payroll employment changed little in April after rising substantially in the first quarter; the civilian unemployment rate fell to 5.4 percent. Industrial production increased sharply in April, largely reflecting a rebound in motor vehicle assemblies after a strike in March. Retail sales declined somewhat in April after posting a strong gain in the first quarter. Single-family housing starts rose considerably in April. Orders and contracts point to some deceleration in spending on business equipment and

nonresidential structures after a very rapid expansion in the first quarter. The nominal deficit on U.S. trade in goods and services widened significantly in the first quarter from its rate in the fourth quarter of last year. Upward pressures on food and energy prices have led to somewhat larger increases in the consumer price index over recent months.

Short-term market interest rates have changed little while long-term rates have risen somewhat further since the Committee meeting on March 26. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies has appreciated considerably over the intermeeting period.

Growth of M2 and M3 slowed substantially in April after recording sizable increases earlier in the year. For the year through April, both aggregates grew at rates somewhat above the upper bounds of their respective ranges for the year. Expansion in total domestic nonfinancial debt remained moderate on balance over recent months.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in January established ranges for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1995 to the fourth quarter of 1996. The monitoring range for growth of total domestic nonfinancial debt was set at 3 to 7 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, July 8, 1996.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 96-17835 Filed 7-12-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of July 1996:

Name: Subcommittee on Request for Proposal No. AHCPR-96-0004, Planning, Evaluation and Analyses.

Date and Time: July 18-19, 1996, 8:30 a.m.-5:00 p.m.

Place: Agency for Health Care Policy and Research, Executive Office Center, 6th Floor Conference Room, 2101 East Jefferson Street, Rockville, Maryland 20852.

This meeting will be closed to the public.

Purpose: The Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals. The purpose of this task order contract is to provide focused, high-priority planning, evaluation, and other types of analytical products to various AHCPR components on a short turnaround basis as the need arises. Multiple awards are anticipated with individual tasks orders to be competed among awardees. Task orders are anticipated to last no longer than 18 months at an estimated cost of \$10,000-\$250,000 each.

Agenda: The session of the Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. appendix 2, Department regulations, 45 CFR section 11.5(a)(6), and procurement regulations, 48 CFR section 315.604(d). Anyone wishing to obtain information regarding this meeting should contact Sharon Williams, Office of Management, Contracts Management Staff, Agency for Health Care

¹ Copies of the Minutes of the Federal Open Market Committee meeting of May 21, 1996, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

Policy and Research, Executive Office Center, 2101 East Jefferson Street, Suite 601, Rockville, Maryland. 20852, (301) 594-1445.

Dated: July 8, 1996.

Clifton R. Gaus,
Administrator.

[FR Doc. 96-17879 Filed 7-12-96; 8:45 am]

BILLING CODE 4160-90-M

Food and Drug Administration

[Docket No. 90F-0063]

Henkel Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to future filing, of a food additive petition (FAP 0B4194) proposing that the food additive regulations be amended to provide for the safe use of a mixed ester product resulting from the reaction of pentaerythritol and dipentaerythritol with C₁₄-C₂₂ fatty acids as a release agent for ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers, polyethylene phthalate polymers, and poly(tetramethylene terephthalate) intended to contact food.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3083.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of March 15, 1990 (55 FR 9772), FDA announced that a food additive petition (0B4194) had been filed by Henkel Corp., Organic Products Division, 300 Brookside Ave., Ambler, PA 19002, (Currently c/o Bruce A. Schwemmer, Bruce EnviroExcel Group, Inc., 94 Buttermilk Bridge Rd., Washington, NJ 07882). The petition proposed to amend the food additive regulations in § 178.3860 *Release agents* (21 CFR 178.3860) to provide for the safe use of a mixed ester product resulting from the reaction of pentaerythritol and dipentaerythritol with C₁₄-C₂₂ fatty acids as a release agent for ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers, polyethylene phthalate polymers, and poly(tetramethylene terephthalate) intended to contact food. Henkel Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 25, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval,
Center for Food Safety and Applied Nutrition.

[FR Doc. 96-17826 Filed 7-12-96; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 86D-0380]

Medical Devices; Medical Software Devices; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) and the National Library of Medicine (NLM) are announcing a public workshop to discuss definitions of medical software devices, criteria for defining risk categories, software quality audits and premarket notification, commercial distribution of software, and the options available for regulating medical software devices. FDA has noted some confusion among manufacturers regarding which requirements apply to medical software devices and accessories. This workshop will help to clarify the requirements, and provide FDA with information to better assess the risks to public health associated with different types of medical software devices.

DATES: The workshop will be held on September 3 and 4, 1996, from 9:30 a.m. to 4:30 p.m. Participants and other persons who want to present data or information must be present by 9 a.m. Written notices of participation must be submitted on or before August 5, 1996.

ADDRESSES: The workshop will be held at the National Institutes of Health, Natcher Conference Center, 45 Center Dr., Bethesda, MD 20892. Written comments, identified with the docket number found in brackets in the heading of this document, regarding the subjects being discussed at the workshop may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. A more detailed listing of the workshop topics, issues, background information, as well as registration forms, can be obtained after August 1, 1996, through the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system. To receive the public workshop on medical software devices documents to your FAX machine, call the CDRH Facts-On-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second

voice prompt press 2, and then enter the document number, 1072, followed by the pound sign (#). Then follow the remaining voice prompts to complete your request. The information will be sent by FAX. All workshop-related information can also be obtained by using the World Wide Web. FDA's home page address may be accessed at <http://www.fda.gov>.

FOR FURTHER INFORMATION CONTACT: Charles S. Furfine, Center for Devices and Radiological Health (HFZ-143), 12720 Twinbrook Pkwy., Rockville, MD 20852, 301-443-2536, ext. 16; FAX 301-443-9101; or EMail csf@fdadr.cdrh.fda.gov.

Registration forms should be sent to Charles Furfine (address above). There is no registration fee but advance registration is required. Interested persons are encouraged to register early because space is limited. If you have a disability that affects your attendance at, or participation in, this meeting, please contact Charles S. Furfine (address above) in writing and identify your needs. The availability of appropriate accommodations cannot be assured unless prior written notification is provided.

SUPPLEMENTAL INFORMATION:

I. Background

On September 25, 1987 (52 FR 36104), FDA published a notice of availability of a "Draft Policy Guidance for Regulation of Computer Products," which the agency was making available for comment. The guidance was intended to provide software developers and manufacturers of medical devices with guidance about which software products were regulated as medical devices and which might be exempt from particular regulatory controls, such as premarket notification. A 1989 draft of the FDA software policy reiterated the basic statements of the 1987 draft, but also addressed specific issues related to blood-bank software products. The 1989 draft also addressed the issue of which medical software devices should be exempt from general controls, including the current good manufacturing practice regulations. The agency stated in the 1989 draft that medical software devices (unclassified medical software devices that are not components, parts, or accessories to classified devices) would not be subject to active regulatory oversight if they "are intended to involve competent human intervention before any impact on human health occurs (e.g., where clinical judgment and experience can be used to check and interpret a system's output) * * *."

Since 1989, FDA has gained experience in applying the criterion of

competent human intervention on a case-by-case basis to medical software devices and has noted two problems that arise. First, some manufacturers have brought to market medical software devices that are actually accessories to classified medical devices without a premarket submission, most likely because of confusion over which devices were meant to be covered by the draft policy. Components, parts, or accessories to classified devices are regulated according to the class of the parent device and are not covered by the draft policy. Second, the increasing complexity and sophistication of current software devices makes it increasingly difficult to decide when healthcare practitioners can, in fact, comprehend the functions performed by the software sufficiently to know when significant errors have occurred.

FDA is, therefore, reassessing its position regarding the regulation of medical software devices. Further, it is important that any exemption from regulatory oversight continue to be based upon an assessment of the risk to human health, as provided by law. Additionally, FDA believes that increased application of proper engineering practices provides an opportunity to develop preproduction controls for the majority of medical software devices which may obviate the need for premarket submissions for such medical software devices in some cases.

II. Purpose and Tentative Agenda of the Workshop

The purpose of the workshop is to obtain information on subjects such as: (1) Definitions that could be used in the classification of medical software devices; (2) criteria that could be used to define risk categories; (3) the scope and content of a proposed software quality audit that might be used in lieu of premarket notification for certain medical software devices; (4) factors related to the unique characteristics of the distribution of software that the agency could consider in determining whether a particular medical software product is intended by the manufacturer or sponsor for commercial distribution; and (5) potential scenarios and regulatory hurdles to implementing a risk-based classification process. This will provide FDA with information to better assess the risks to public health associated with different types of medical software devices.

Presiding over the workshop will be: Harvey Rudolph, Acting Deputy Director, Office of Science and Technology, Center for Devices and Radiological Health, and Harold Schoolman, Deputy Director for

Education and Research, NLM. They will be assisted by other FDA and NLM officials.

Opening remarks will be made by representatives of the sponsoring institutions, FDA and NLM, identifying the respective agency's interests in medical software devices. Following these presentations, FDA will make a presentation outlining its responsibilities for regulating medical software devices and for identifying specific areas where information from the public could be most useful. Following FDA's presentation, a specific period of time will be provided for other participants to make presentations. There will be break-out sessions following these presentations where discussion can take place on specific topics, such as those noted above.

Interested persons who wish to present prepared comments at the plenary session to the public workshop may, on or before August 5, 1996, submit to the Dockets Management Branch (address above) a written notice of participation identified with the docket number found in brackets in the heading of this document, including name, address, telephone number, business affiliation, and a brief summary of the presentation. The limited time available will allow 10 minutes or less for each presentation.

FDA requests that individuals or groups having similar interests consolidate their comments and present them through a single representative. FDA may require joint presentations by persons with common interests. A schedule of the allotted times will be available at the workshop. Each participant will be notified before the workshop of the approximate time of his or her presentation. The schedule will be placed on file in the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document. The workshop will also include an opportunity for interested persons who did not submit a notice of participation to make brief statements or comments, if time permits.

The workshop is informal; however, no participant may interrupt the presentation of another participant.

Dated: July 9, 1996.
William K. Hubbard,
*Associate Commissioner for Policy
Coordination.*
[FR Doc. 96-17880 Filed 7-12-96; 8:45 am]
BILLING CODE 4160-01-F

[Docket No. 96M-0221]

Alcon Laboratories, Inc.; Premarket Approval of Acrysof® Models MA60BM and MA30BA Ultraviolet-Absorbing Soft Acrylic Posterior Chamber Intraocular Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Alcon Laboratories, Inc., Fort Worth, TX, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Acrysof® Models MA60BM and MA30BA ultraviolet-absorbing soft acrylic posterior chamber intraocular lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 22, 1994, of the approval of the application.

DATES: Petitions for administrative review by August 14, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donna L. Rogers, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2053.

SUPPLEMENTARY INFORMATION: On May 28, 1993, Alcon Laboratories, Inc., Fort Worth, TX 76134-2099, submitted to CDRH an application for premarket approval of Acrysof® Models MA60BM and MA30BA ultraviolet-absorbing soft acrylic posterior chamber intraocular lenses. The devices are posterior chamber intraocular lenses and are indicated for replacement of the human lens to achieve visual correction of aphakia in patients 60 years of age and older when extracapsular cataract extraction or phacoemulsification are performed. These lenses are intended for placement in the capsular bag.

On May 20, 1994, the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On December 22, 1994, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 14, 1996, file with the Docket Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in the brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 21, 1996.
Joseph A. Levitt,
Deputy Director for Regulations Policy, Center for Devices and Radiological Health.
[FR Doc. 96-17825 Filed 7-12-96; 8:45 am]
BILLING CODE 4160-01-F

[Docket No. 96M-0200]

Bayer Corp.; Premarket Approval of Technicon Immuno 1® PSA Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Bayer Corp., Tarrytown, NY, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Immuno 1® PSA Assay. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 22, 1995, of the approval of the application.

DATES: Petitions for administrative review by August 14, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1293.

SUPPLEMENTARY INFORMATION: On June 27, 1995 Bayer Corp., Tarrytown, NY 10591, submitted to CDRH an application for premarket approval of Immuno 1® PSA Assay. This device is an in vitro diagnostic device intended to quantitatively measure prostate specific antigen (PSA) in human serum on the Technicon Immuno 1® system. PSA values obtained should be used as an aid in the management (monitoring) of prostate cancer patients. This diagnostic method is not intended for use on any other system.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Immunology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially

duplicates information previously reviewed by this panel. On December 22, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 14, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 9, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96-17829 Filed 7-12-96; 8:45 am]

BILLING CODE 4160-01-F

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee. This meeting was announced in the Federal Register of June 24, 1996 (61 FR 32443 at 32445). The amendment is being made to announce the cancellation of the third day of the meeting and to change the agenda for the meeting. The location previously announced for the first 2 days remains the same. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT:

For matters relating to electronic fetal monitoring or implantable fetal stents: Alfred W. Montgomery, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1180.

For matters relating to commercial kits for Group B Streptococcus detection: Freddie M. Poole, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-2096.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 24, 1996, FDA announced that a meeting of the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee would be held on July 22, 23, and 24, 1996. On page 32445, in the first column, the "Date, time, and place" portion is amended to read as follows:

Date, time, and place. July 22 and 23, 1996, 8:30 a.m., Gaithersburg Marriott Washingtonian Center, Ballroom, 9751 Washingtonian Blvd., Gaithersburg, MD.

On the same page, in the first and second columns, the "Type of meeting and contact person" and "Open committee discussion" portions are amended as follows:

Type of meeting and contact person. Open committee discussion, July 22, 1996, 8:30 a.m. to 2 p.m.; open public hearing, 2 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 7 p.m.; open committee discussion, July 23, 1996, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 11:30 a.m. to 3 p.m.; open public hearing, 3 p.m. to 4 p.m., unless public participation does not last that long; open committee discussion, 4 p.m. to 6:15 p.m.; Alfred W. Montgomery, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1180, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Obstetrics and Gynecology Devices Panel, code 12524. Please call the hotline for information concerning any possible changes.

Open committee discussion. On July 22, 1996, the committee will be asked to consider new technological advances in intrapartum electronic fetal monitoring (EFM). After hearing a series of presentations on the subject, the committee will discuss appropriate recommended testing for such new technology applications. FDA will consider these recommendations in the future development of testing guidelines. Committee deliberations on this subject will continue on July 23, 1996. FDA recognizes that there continues to be questions asked about EFM and its place in the clinical management of the patient in labor. The intent of the committee discussion is not to resolve issues related to clinical practice and clinical standards in the area of EFM. Rather, the focus of discussions will be on reasonable study methodologies for establishing the safety and effectiveness of the new fetal monitoring technologies. On July 23, 1996, following the discussions on new technological advances in intrapartum EFM, the committee will discuss and vote on a premarket approval application (PMA) for an implantable stent used for in utero treatment of fetal post-vesicular uropathy. Also, on July 23, 1996, following deliberations on the above PMA, the committee will discuss issues concerning the performance of commercial kits for the direct detection of Group B Streptococcus from clinical specimens obtained from pre-term and intrapartum women, and neonates, in relation to the kits' indications for use.

Dated: July 3, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96-17828 Filed 7-12-96; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Notice is hereby given of the meeting of the National Center Institute Board of Scientific Advisors Prevention Program Working Group, August 21, 1996 at The DoubleTree Hotel, 1750 Rockville Pike, Rockville, Maryland.

The meeting will be closed to the public from 12 p.m. to adjournment for discussion of confidential issues relating to the review, discussion and evaluation of individual programs and projects conducted by the NCI Prevention Program. These discussions will reveal confidential trade secrets or commercial property such as patentable material, and personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting may be obtained from Dr. Jack Gruber, Executive Secretary, National Center Institute Prevention Program Working Group, National Cancer Institute, 6130 Executive Blvd., EPN, Rm. 540, Bethesda, MD 20892 (301-496-9740).

Dated: July 9, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96-17890 Filed 7-12-96; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Notice of Closed Meeting

Notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors Cancer Centers Program Working Group, July 22, 1996 at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA.

This meeting will be closed to the public from 8:30 am to adjournment for discussion of confidential issues relating to the review, discussion and evaluation of individual programs and projects conducted by the Cancer Centers Extramural Program. These discussions will reveal confidential trade secrets or commercial property such as patentable material, and

personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting may be obtained from Dr. Paulette Gray, Executive Secretary, National Cancer Institute Board of Scientific Advisors, National Cancer Institute, 6130 Executive Blvd., EPN, Rm. 600, Bethesda, MD 20892, (301-496-4218).

Dated: July 9, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96-17891 Filed 7-12-96; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R44 Applications (96-40).

Date: July 23, 1996.

Time: 1:00 p.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892 (Teleconference).

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892, (301) 594-2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of Contract RFP NLM 96-108/VMS (96-42).

Date: July 23, 1996.

Time: 3:00 p.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892 (Teleconference).

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892, (301) 594-2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R44 Applications (96-36).

Date: July 24, 1996.

Time: 12:30 p.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892 (Teleconference).

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892, (301) 594-2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R01's (96-38).

Date: July 24, 1996.

Time: 2:00 p.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892 (Teleconference).

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892, (301) 594-2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of RFP, NLM 96-106/DJH (96-41).

Date: July 25, 1996.

Time: 3:00 p.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892 (Teleconference).

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892, (301) 594-2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R44 Application (96-34).

Date: July 25, 1996.

Time: 3:00 p.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892 (Teleconference).

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892, (301) 594-2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of RFP, NLM 96-106/DJH (96-41).

Date: July 25, 1996.

Time: 3:00 p.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892 (Teleconference).

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892, (301) 594-2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the

disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: July 9, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96-17893 Filed 7-12-96; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: July 16, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4214, Telephone Conference.

Contact Person: Dr. Dan McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, Maryland 20892, (301) 435-1215.

Name of SEP: Clinical Sciences.

Date: July 24, 1996.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4214, Telephone Conference.

Contact Person: Dr. Dan McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, Maryland 20892, (301) 435-1215.

Name of SEP: Biological and Physiological Sciences.

Date: July 24, 1996.

Time: 11:30 a.m.

Place: NIH, Rockledge 2, Room 5202, Telephone Conference.

Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435-1260.

Name of SEP: Biological and Physiological Sciences.

Date: July 25, 1996.

Time: 8:00 a.m.

Place: Ramada Inn, Rockville, MD.

Contact Person: Dr. David Remondini, Scientific Review Administrator, 6701 Rockledge Drive, Room 6154, Bethesda, Maryland 20892 (301) 435-1038.

Name of SEP: Biological and Physiological Sciences.

Date: July 26, 1996.

Time: 8:00 a.m.

Place: NIH, Rockledge 2, Room 6154, Telephone Conference.

Contact Person: Dr. David Remondini, Scientific Review Administrator, 6701 Rockledge Drive, Room 6154, Bethesda, Maryland 20892, (301) 435-1038.

Name of SEP: Clinical Sciences.
Date: July 29, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4104, Telephone Conference,
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435-1787.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.
Date: August 8, 1996.
Time: 10:30 a.m.
Place: Holiday Inn-Olde Towne, Alexandria, VA.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda Maryland 20892, (301) 435-1787.

Name of SEP: Multidisciplinary Sciences.
Date: August 20-22, 1996.
Time: 7:00 p.m.
Place: Ramada Inn, Falmouth, MA.
Contact Person: Dr. Nadarajen A. Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435-1176.

The meetings will be closed in accordance with the provisions set forth sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 9, 1996.
 Margery G. Grubb,
Senior Committee Management Specialist, NIH.
 [FR Doc. 96-17892 Filed 7-12-96; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443-0525.

Alcohol and Drug Services Survey (ADSS) Phase I—New—ADSS Phase I will gather information from a sample of 2,200 substance abuse treatment programs nationwide, including data on treatment type and costs, program capacity, number of clients served, waiting lists, and services provided to special populations. ADSS is a three phase study that will be conducted twice. The total annualized burden estimate for both rounds of ADSS Phase I is 5,904 hours.

	No. of respondents	No. of responses per respondent	Avg. burden/response	Total burden (hour)
Treatment Facility Directors	4,800	1	1.23	5,904

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, D.C. 20503.

Dated: July 8, 1996.
 Richard Kopanda,
Executive Officer, SAMHSA.
 [FR Doc. 96-17875 Filed 7-12-96; 8:45 am]
BILLING CODE 4162-20-P

DEPARTMENT OF THE INTERIOR

Notice of Receipt of Application for Permit

AGENCY: Fish and Wildlife Service, Interior.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of

1973, as amended (16 U.S.C. 1531 *et seq.*):
 PRT-816862

Applicant: Mr. Jeffrey E. Hohman, East Kentucky Power Cooperative, Inc., Winchester, Kentucky.

The applicant requests a permit to take (capture by mist net, identify, and release) Indiana bats, *Myotis sodalis*, gray bats, *Myotis grisescens*, and Virginia big-eared bat, *Plecotus townsendii virginianus*, on Daniel Boone National Forest for the purpose of enhancement of survival of the species.
 PRT-815493

Applicant: Dr. Phillip Doerr, North Carolina State University, Raleigh, North Carolina.

The applicant requests a permit to take (capture, collect blood samples, and release) up to 132 red-cockaded woodpeckers, *Picoides borealis*, from throughout North Carolina for the purpose of enhancement of survival of the species.
 PRT-816864

Applicant: Mr. Benny E. Herring, Kilmichael, Mississippi.

The applicant requests a permit to take (capture, identify, and release) the Alabama beach mouse, *Peromyscus polionotus ammobates*, Anastasia beach mouse, *P.p. phasma*, Choctawahatchee beach mouse, *P.p. allophrys*, Perdido Key beach mouse, *P.p. trissyllepsis*, and southeastern beach mouse, *P.p. niveiventris*, throughout the species' ranges in Baldwin County, Alabama, and Walton and Bay Counties, Florida for the purpose of enhancement of survival of these species.
 PRT-815491

Applicant: Dr. Edward Menhinick, University of North Carolina, Charlotte, North Carolina.

The applicant requests a permit to take (capture, identify, and release; and to preserve selected specimens for range documentation) listed species of freshwater molluscs and crayfish throughout the waters of North Carolina for the purpose of enhancement of survival of these species.
 PRT-815492

Applicant: Mr. Vernon Compton, Blackwater River State Forest, Milton, Florida.

The applicant requests a permit to take (harass during nest cavity inspections) red-cockaded woodpeckers, *Picoides borealis*, throughout the species range on Blackwater River State Forest for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia (Attn: David Dell, Permit Biologist). Telephone: 404/679-7313, fax: 404/679-7081.

Dated: July 8, 1996.
Jerome M. Butler,
Acting Regional Director.
[FR Doc. 96-17876 Filed 7-12-96; 8:45 am]
BILLING CODE 4310-55-P

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Amendment II to the Tribal-State Compact Between the Mississippi Band of Choctaw Indians and the State of Mississippi, which was executed on May 24, 1996.

DATES: This action is effective July 15, 1996.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240; (202) 219-4068.

Dated: July 8, 1996.
Ada E. Deer,
Assistant Secretary—Indian Affairs.
[FR Doc. 96-17944 Filed 7-12-96; 8:45 am]
BILLING CODE 4310-02-P

Bureau of Land Management

[AK-020-1430-01; F-91792]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands near Galena, Alaska, have been examined and found suitable for classification for conveyance to the City of Galena pursuant to the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq*) and 43 Code of Federal Regulations (CFR) 2740. The City of Galena proposes to use the lands for a municipal landfill.

Kateel River Meridian, Alaska
Land within lot 7, U.S. Survey No. 7401 located between the Yukon River and the Galena to Campion Road in Sec. 18, T. 9 S., R. 11 E. Containing approximately 69 acres.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior; a right-of-way for ditches and canals constructed by the authority of the United States; all minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals; and any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the Bureau of Land Management, Northern District Office, 1150 University Avenue, Fairbanks, Alaska.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the BLM Manager, Northern District Office, 1150 University Avenue, Fairbanks, Alaska, 99709-3844. Any adverse comments will be reviewed by the State Director who may vacate or modify this realty action and issue a

final determination. In the absence of any adverse comments, the classification will be come effective 60 days from the date of publication of this notice.

COMMENTS: Interested parties may submit comments involving the suitability of the land for a community landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs. Comments on the application and plan of development may address whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a landfill.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Northern District Office (see address above) or by contacting Betsy Bonnell at (907) 474-2336.

Dated: July 8, 1996.
Richard W. Bouts,
Acting District Manager.
[FR Doc. 96-17874 Filed 7-12-96; 8:45 am]
BILLING CODE 4310-JA-P

National Park Service

Establishment of the James A. Garfield National Historic Site

PURPOSE: The purpose of this notice is to announce the formal establishment of the James A. Garfield National Historic Site, effective on the date of publication of this notice.

SUMMARY: Public Law 96-607 (94 Stat. 3545, 16 U.S.C. 461 note), dated December 28, 1980, authorized the Secretary of the Interior to establish the James A. Garfield National Historic Site in Mentor, Ohio, as a unit of the National Park System. This park was authorized in order to preserve for the benefit, education, and inspiration of present and future generations certain historically significant properties associated with the life of James A. Garfield, the 20th President of the United States.

Public Law 96-607 provided that the Secretary of the Interior may acquire by donation, purchase with donated or appropriated funds, or exchange, the lands and buildings thereon known as "Lawnfield" at 8059 Mentor Avenue, Mentor, Ohio. Further, upon completion of land acquisition, the Secretary of the Interior may establish the park area by

publishing a notice and boundary map of the site in the Federal Register. The National Park Service has acquired all land at the site encompassing the land and estate as described in detail on Corporate Warranty Deed No. 758227 and on Gratuitous Deed No. 901717. These deeds are on file in the Records of Lake County, Ohio. Copies of these deeds may be obtained by writing the Superintendent at the address listed below.

BOUNDARY MAP: The map described in Public Law 96-607 bears a National Park Service drawing number of 487/80,007 and is dated June 10, 1996. The map is on file in the office of the Department of the Interior, National Park Service, Washington, DC.; the office at the National Park Service, Midwest Field Area, 1709 Jackson Street, Omaha, Nebraska 68102; and the office of the Superintendent, Cuyahoga Valley.

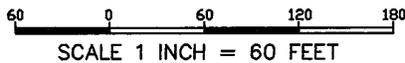
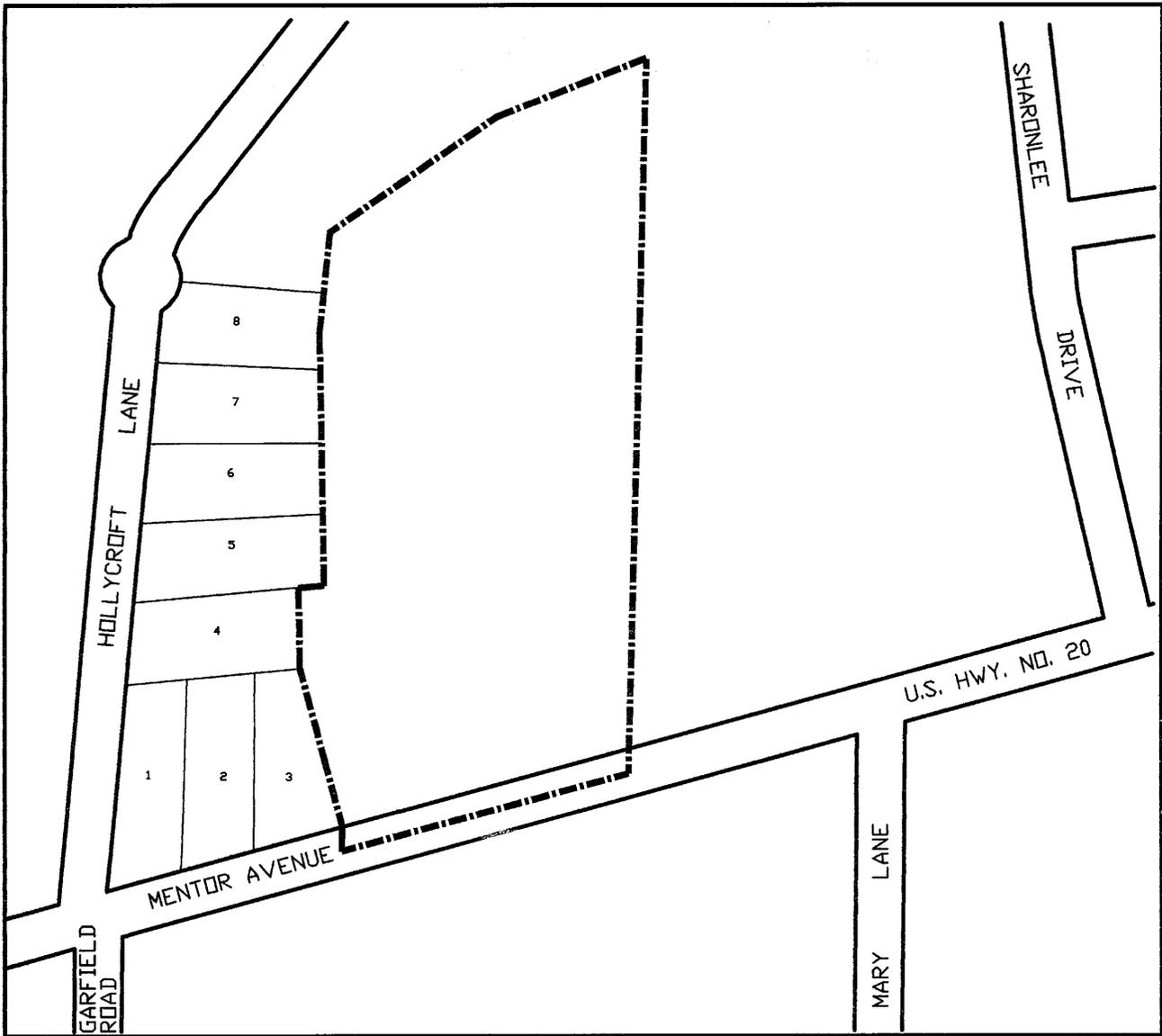
FOR FURTHER INFORMATION CONTACT: John Debo, Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio 44141; or telephone 216-650-4636.

Dated: June 10, 1996.

David N. Given,

Acting Field Director, Midwest Field Area.

BILLING CODE 4310-70-P



--- HISTORIC SITE BOUNDARY

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

JAMES A. GARFIELD
NATIONAL HISTORIC SITE

CITY OF MENTOR
LAKE COUNTY, OHIO
487-80,007 JUNE 10, 1996

Missouri/Niobrara/Verdigre Creek National Recreational Rivers Draft Environmental Impact Statement and General Management Plan

AGENCY: National Park Service.

ACTION: Availability of draft environmental impact statement and general management plan, for the Missouri/Niobrara/Verdigre Creek National Recreational Rivers located in Bon Homme, Charles Mix, and Gregory counties, South Dakota, and Boyd and Knox counties in Nebraska.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the draft environmental impact statement (DEIS) and general management plan, for the Missouri/Niobrara /Verdigre Creek National Recreation Rivers. The DEIS responds to Public Law 102-50, which amended the Wild and Scenic Rivers Act to add 39 miles of the Missouri, 20 miles of the Niobrara, and 8 miles of Verdigre Creek to the national wild and scenic rivers system. The NPS prepared the DEIS. Cooperating agencies included the U.S. Army Corps of Engineers; the U.S. Fish and Wildlife Service; the Nebraska Game and Parks Commission; the South Dakota Department of Game, Fish and Parks; the Nebraska and South Dakota State Historic Preservation Offices; Boyd and Knox counties in Nebraska; and Bon Homme, Charles Mix, and Gregory counties in South Dakota.

The document describes five management and boundary alternatives. Alternative 1, a no action alternative, is required in order to provide a description of baseline conditions from which the action alternatives can be compared; its boundary is 1/4 mile from the riverbank, which is the interim boundary noted in the establishing legislation. Alternative 2 would provide for the preservation of the rural landscape, primarily through local management, and would establish a boundary at 200 feet from the riverbank. Alternative 3 would emphasize management to preserve and restore the biological elements of the river ecosystem; its boundary would be 200 feet from the riverbank, plus significant biological bottomland. Alternative 4 would emphasize visitor use along with resource conservation; its boundary would be 200 feet from the riverbank, plus significant biologic and public use resource areas. Alternative 5, the preferred alternative, combines the local management and philosophy of Alternative 2, some resource management and boundary of

Alternative 3, and some interpretive and visitor experience aspects of Alternative 4.

Each management action alternative is expected to provide a mechanism for long-term resource protection and accommodate recreational use of the river with minimal impact on the private property owner. In each alternative, farming and ranching are considered appropriate activities within the boundaries of the recreational rivers. Each action alternative relies heavily on the cooperative efforts of property owners, local communities and the National Park Service. No alternative would require much, if any, acquisition of land; any acquisitions would be from willing sellers only.

DATES: Comments on the DEIS should be received no later than September 3, 1996. Public meetings will be held in various Nebraska and South Dakota towns and cities during August, 1996, and will be announced in local news media when schedules are final.

ADDRESSES: Comments on the DEIS should be submitted to the Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763.

SUPPLEMENTARY INFORMATION: Public reading copies of the DEIS will be available for review at the Department of Interior Natural Resources Library, 1849 C Street, N.W., Washington, D.C. 20240, and at public libraries and county courthouses in Center and Butte, Nebraska; and Burke, Lake Andes and Tyndall, South Dakota. Public reading copies will also be available at the public libraries in Verdigre and Niobrara, Nebraska.

FOR FURTHER INFORMATION CONTACT: Warren H. Hill, Superintendent, Niobrara/Missouri National Scenic Riverways at the above address or he can be reached at 402-336-3970.

Dated: July 3, 1996.
William W. Schenk,
Field Director, Midwest Field Area.
[FR Doc. 96-17889 Filed 7-12-96; 8:45 am]
BILLING CODE 4310-70-P

DEPARTMENT OF JUSTICE

Office of the Senior Counsel for Alternative Dispute Resolution

Policy on the Use of Alternative Dispute Resolution, and Case Identification Criteria for Alternative Dispute Resolution

AGENCY: Office of the Senior Counsel for Alternative Dispute Resolution, Justice.

ACTION: Notice.

SUMMARY: This notice publishes the Alternative Dispute Resolution Policy Statements prepared by each of the civil litigating components in the Department of Justice as well as their criteria for identifying cases as potentially suitable for dispute resolution. As indicated in the introduction by the Attorney General, these documents were prepared by teams of staff attorneys within each of the components. Each document reflects the nature of the practice of that component. These documents have been provided to all staff attorneys in the Department of Justice who handle civil litigation, in Washington and in United States Attorneys' Offices, and are being published in the Federal Register to make clear the Department's commitment to greater use of alternative dispute resolution. Nothing in these documents, however, creates any right or benefit by a party against the United States.

FOR FURTHER INFORMATION CONTACT: Peter R. Steenland, Jr., Senior Counsel for Alternative Dispute Resolution, United States Department of Justice, Room 5708, Washington, DC 20530. (202) 616-9471.

Dated: June 17, 1996.
Peter R. Steenland, Jr.,
Senior Counsel, Alternative Dispute Resolution.

ADR Federal Register Introduction

On April 6, 1995, I issued an Order directing greater use of Alternative Dispute Resolution by the Department of Justice. In part, that Order required our civil litigating components to provide their attorneys with policy guidance on the use of Alternative Dispute Resolution techniques and directed them to develop case selection criteria for using ADR in appropriate cases. Our commitment to make greater use of ADR is long overdue. Clearly, our federal court system is in overload. Delays are all too common, depriving the public of swift, efficient, and just resolution of disputes. The Department of Justice is the biggest user of the federal courts and the nation's most prolific litigator. Therefore, it is incumbent upon those Department attorneys who handle civil litigation from Washington and throughout the country to consider alternatives to litigation.

The Guidance documents for using Alternative Dispute Resolution were prepared by teams of attorneys in each of the components. Each policy statement and set of case selection criteria reflect the many varied types of litigation in which we represent the United States, federal agencies and federal officials. Each component head has approved the policy statement and case selection criteria, and has expressed a commitment to making greater use of Alternative Dispute Resolution. Working with our Senior Counsel

for Alternative Dispute Resolution, I expect our attorneys to implement our commitment to use ADR in appropriate cases. It is also my expectation that their ability to use ADR will be given as much recognition within the Department and elsewhere as their present contributions as dedicated and resourceful litigators.

If we are successful, the outcome will benefit litigants by producing better and quicker results, and will benefit the entire justice system by preserving the scarce resources of the courts for the disputes that only courts can decide. I urge everyone to work with us in this important civil justice reform effort.

Today, I am making available all of the Department's ADR case selection criteria developed pursuant to the Order. These criteria relate to the government's voluntary participation in ADR. Nothing in these Guidance documents shall be construed to create any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers or any other person. For further information contact: Peter R. Steenland, Jr., Senior Counsel for ADR, U.S. Department of Justice, Room 5708, Washington, DC 20530. Phone: (202) 616-9471.

Janet Reno,

Attorney General.

To: All Section and Field Office Chiefs, Antitrust Division.

From: Anne K. Bingaman, Assistant Attorney General, Antitrust Division.

Re: Use of Alternative Dispute Resolution Techniques.

On April 6, 1995, the Attorney General issued the attached order directing Department-wide initiatives to promote greater use of Alternative Dispute Resolution ("ADR") techniques in civil litigation. Under the AG Order, ADR techniques are defined to include arbitration, mediation, early neutral evaluation, neutral expert evaluation, mini-trials, and summary jury trials—essentially those techniques that employ the services of a third-party neutral to assist in the conciliatory resolution of a dispute. The ADR techniques addressed in the AG Order have the potential to eliminate unnecessary civil litigation, shorten the time that it takes to resolve civil disputes, and achieve better case resolutions with the expenditure of fewer resources.

General Policy

Although the Antitrust Division has an excellent record of settling its civil cases through the use of unassisted negotiations, the application of ADR techniques in appropriate circumstances to the negotiation process has the potential to provide even better results. Just as it is important for our attorneys to develop good advocacy and litigation

skills, and to be accomplished negotiators during settlement discussions, it is also important that they become knowledgeable concerning ADR techniques so that the Division can take advantage of the benefits that ADR provides.

It is, therefore, the policy of the Antitrust Division to encourage the use of ADR techniques in those civil cases where time permits and there is a reasonable likelihood that ADR would shorten the time necessary to resolve a dispute or otherwise improve the outcome for the United States. Because of the time constraints imposed by the H-S-R Act and the exigencies of the merger review process in general, ADR techniques will likely be difficult to apply during the course of merger investigations. On the other hand, non-merger investigations often have more timing flexibility. In order better to assess the potential for ADR to shorten the resolution time for such investigations or otherwise to improve their outcome, I am directing the chiefs of sections and offices conducting civil, non-merger investigations to work closely with Becky Dick to identify cases where ADR can be tried at different stages of the investigative process (e.g., prior to the issuance of CIDs; during settlement negotiations) as test cases, to provide a basis for comparison and to help serve as a guide to future use of ADR by the Division.

Please be assured that in implementing this ADR policy, the Antitrust Division will recognize the contributions made by staff attorneys who handle matters in ADR by providing the same opportunities for promotion, awards, and other professional recognition as those engaged in more traditional litigation. Often, ADR will accelerate settlements, avoid trials, and provide enhanced resolution of disputes that litigation cannot provide. Those who use ADR to these ends will be evaluated on their skills in these endeavors, and they will be recognized for the contributions they have made to the Department and the public.

Case Selection Criteria

In order for this policy to work, it is necessary that our attorneys become knowledgeable about the types of ADR techniques that are available and sensitive to the possibilities that they offer for improving antitrust civil enforcement. To assist this effort, I am today issuing case selection criteria to aid in selecting the types of cases and the types of ADR techniques that are appropriate for resolving various issues and impasses that can arise during the

course of civil investigations. For example, at the beginning of an investigation, prior to the issuance of a CID to the subject, it might be appropriate to engage in discussions with the subject about the nature of the Division's concerns, the type of information that we will be seeking, etc., in order to better formulate our CIDs, reduce compliance disputes, and speed the resolution of the investigation. A third-party neutral could be used to facilitate these discussions. This will not always be useful or lead to a better result, and there will be circumstances where various factors militate against employing ADR. But I believe that the best way initially to assess the value of ADR for the Division is actually to use it in some cases and evaluate the results.

Training Requirement

Acknowledging that ADR is a new concept for many Department attorneys, the AG Order requires attorneys who have substantial civil litigation responsibilities to receive regular training in negotiation and ADR techniques. We will be working with the Department's Senior Counsel for ADR to identify the training needs for Antitrust Division attorneys in this area in light of the results of our experience in the use of ADR as it develops.

In sum, ADR is another litigation tool that we have at our disposal. In appropriate circumstances it can help to enhance our investigation and negotiation efforts, conserve resources, and achieve better civil antitrust enforcement results.

Attachments

To: All Section and Field Office Chiefs, Antitrust Division.

From: Anne K. Bingaman, Assistant Attorney General, Antitrust Division.

Re: Case Selection Criteria for the Use of Alternative Dispute Resolution ("ADR") in Antitrust Division Civil Litigation.

The Administrative Dispute Resolution Act of 1990 ("ADR Act"), Pub. L. No. 101-552, 104 Stat. 2736-48, and Attorney General Order OBD 1160.1, "Promoting the Broader Appropriate Use of Alternative Dispute Resolution Techniques," (April 6, 1995) require careful consideration of the use of alternative means of dispute resolution by Antitrust Division personnel during the course of investigating, settling, and litigating civil disputes. ADR can be defined as any technique that results in the conciliatory resolution of a dispute, including facilitation, mediation, fact

finding, minitrials, early neutral evaluation, and arbitration. While unassisted negotiation is a well understood dispute resolution technique that is frequently successfully employed within the Antitrust Division, other ADR techniques—techniques that require the use of a third-party neutral—have received much less attention. These “formal” ADR techniques are the focus of the AG Order and this policy memorandum, which is intended to provide guidance to Antitrust Division attorneys in identifying civil cases that are possible candidates to be resolved through the use of formal ADR techniques.

As you are aware, federal courts are increasingly likely to require parties to disputes to consider the use of ADR in cases that do not settle rapidly following the filing of a complaint as part of a court-annexed ADR program. However, the use of ADR may also be of real value prior to the filing of a complaint as an aid to the settlement negotiation process.¹ ADR is not intended to replace traditional one-on-one negotiations, but rather to provide attorneys with additional tools that may facilitate negotiation where traditional two-party negotiation has not produced an acceptable resolution. In appropriate circumstances, ADR techniques can be used in conjunction with unassisted negotiation to resolve particular issues if, in the estimation of the parties, such ADR techniques would likely result in a speedier resolution of the overall dispute, increase the likelihood that the dispute will be resolved short of litigation, or result in a better resolution of the dispute than would otherwise be obtained.

Available ADR Techniques

A variety of ADR techniques exist that make use of the presence of a third-party neutral to assist in the negotiation

¹ In light of the congressional directive contained in the Antitrust Procedures and Penalties Act of 1974 (“Tunney Act”) that consent judgments in civil antitrust cases entered into by the Antitrust Division be publicly aired and approved by a federal judge as being in the public interest, see 15 U.S.C. 16 (b)–(h), civil investigations that result in a determination by the Division that an antitrust violation has occurred should ordinarily not be resolved without the filing of a complaint. (Merger investigations where the proposed transaction has been abandoned and there is no reasonable likelihood of that transaction being renewed within the time period for which the existing H–S–R filing remains valid are an exception.) When the Division and opposing parties are able to agree on the appropriate resolution of a dispute prior to the institution of litigation, the disposition of that dispute through the filing of a complaint and simultaneous consent decree is consistent with the goals of the ADR Act, the AG Order, and the Tunney Act.

or litigation process. The following are the most common:

- *Mediation*
 - Non-binding settlement process facilitated by a neutral who does not impose a resolution.
 - Neutral has no authority to impose decision.
 - Neutral meets with parties in joint session and in separate sessions to facilitate resolution that is acceptable to all parties.
 - Can be used to narrow issues for trial.
 - *Early Neutral Evaluation (ENE)*
 - Gives non-binding prediction of outcome.
 - Most useful in disputes involving specific legal issues.
 - Most useful if neutral is a recognized expert in the particular subject area or area of law.
 - *Neutral Expert Factfinder*
 - Makes findings of fact on specific issues.
 - Most useful in factual disputes.
 - May be binding or non-binding depending upon agreement of the parties.
 - Can be used to narrow factual issues for trial.
 - *Mini-trial*
 - Non-binding presentation of highlights of case by attorneys for each party to their decision makers in mock trial setting.
 - May include some witnesses and testimony.
 - Facilitated by a neutral who presides over presentation, engages parties in litigation risk analysis, and facilitates settlement discussions.
 - After presentation of the case, neutral meets with parties to facilitate settlement.
 - Allows decision makers to focus on and analyze their cases.
 - *Arbitration*
 - Can be binding or non-binding depending upon agreement and nature of the parties.
 - Neutral or panel of neutrals who impose a decision or resolution.
 - Is most adjudication-like of ADR processes.
 - May be more costly than other forms of ADR if it involves discovery, witnesses, and the presentation of the case.
- It is important to appreciate the diversity and flexibility of available ADR techniques. Some ADR techniques, such as ENE or arbitration, involve the neutral in making evaluations of the

respective parties claims or the strengths and weaknesses of their legal theories or evidence. Other techniques, such as mediation, use the neutral simply to facilitate the parties' negotiations without being in any way judgmental.

Neutrals only perform those functions agreed upon by the parties, and only for so long as both parties believe that the presence of the neutral is of value. Neutrals can be brought in at the beginning of a negotiation to get the ball rolling smoothly or after a particular problem has arisen to help resolve that problem amicably, and they can be dismissed if they are not proving useful or after a predetermined period of time. Parties do not lose control by employing a third-party neutral; if anything they gain control, especially if the application of ADR techniques enable the parties to avoid the litigation process.

Factors To Consider in Selecting an Appropriate ADR Technique

In those instances where a case is a good candidate for ADR, each of the available ADR techniques can be used effectively to break a litigation or negotiation deadlock, depending on the nature of the dispute that needs to be resolved. In reaching a decision concerning the selection of a particular ADR technique in any given case, there are a number of factors to consider.

- What is the nature of the problem that is preventing a consensual resolution of the dispute?
 - Hostility/lack of communication between the parties.
 - Technical or complex factual issues.
 - Legal issues.
 - Settlement issues.
- What would it take to break the negotiation stalemate?
 - Intervention by a neutral party to diffuse hostility.
 - Neutral evaluation of dispositive factual issues.
 - Neutral evaluation of dispositive legal issues.
 - Neutral evaluation of dispositive settlement issues.
- Presentation by each side of its case to party decision makers.
 - What resource constraints do the parties face?
 - Is there sufficient time available to employ a given ADR technique? Can the parties agree to an extension of time in order to attempt ADR?
 - Do the parties have the financial resources to employ a given ADR technique?
 - What practical constraints do the parties face?

- Have either of the parties expressed a willingness or a hostility to engaging in ADR?

- Do either of the parties have any history of using ADR?
- Are the attorneys handling the investigation/litigation experienced with one or more ADR techniques?

Of course, not every case or situation is appropriate for the use of ADR. There are a variety of factors that can be considered as either supporting the use of ADR or making the use of ADR less likely in a particular case.

Factors Favoring ADR

The Parties

• Continuing Relationships

The United States, aggrieved persons, or other litigants are likely to have continued contact with the defendants in implementation of the remedy or in other contexts.

• Barriers to Communication

The United States or other litigants foresee impasses developing because of conflicts within interest groups, political visibility, or poor or non-existent communication among the participants (including attorneys) due to personality difficulties or past history.

• Absent Stakeholder(s)

Participation of persons or groups who are not directly involved in the legal action may be beneficial or necessary to an optimal resolution.

• Divergence of Interests

There are gains and losses to be apportioned constructively, and in which varying priorities among the parties will allow trading off of those gains and losses to permit all involved to benefit from the outcome.

• Numerous Parties

The number of parties or interested persons or groups is so numerous that a structured/facilitated negotiation process would be helpful.

Nature of the Case

• Need for Problem Solving or Development of Creative Alternatives

A thorough exchange of information and generation of alternatives and options will improve the outcome.

• Factual or Technical Complexity or Uncertainty

The parties would benefit from reliance on the expertise of a third-party expert for technical assistance and/or fact-finding.

• Need for Facilitated Private Discussions

The settlement desired may be improved by the neutral's ability to conduct frank, private discussions among the parties.

• Flexibility Desired in Shaping Relief

The United States is seeking relief with detailed implementation and/or monitoring on multiple issues or subjects that may be difficult to obtain from the Court, or is amenable to resolution through cooperation between the parties.

• Ultimate Outcome Uncertain

Litigants face uncertain outcome at the time of trial based on the law, the facts, or the decisionmaker. Also important is the likelihood of prevailing on appeal should the United States lose at trial.

• Hostile Decisionmaker

Case will be tried in front of an unsympathetic judge, or jury venire is likely to be unsympathetic or even hostile.

• Conservation of Enforcement Resources

Preparing the case for trial would require a burdensome commitment of significant resources without achieving a proportionate impact.

• Numerous Issues

Discussion of multiple issues will be assisted by a structured/facilitated negotiation process.

• Direct Settlement Negotiations Unsuccessful

The United States has attempted traditional settlement negotiations without success or an impasse has been reached and the United States believes involvement of a third-party neutral will facilitate further progress and/or final resolution.

Representation

• Need to Speak Directly to Client

The parties (or aggrieved persons) need to hear an evaluation of the case from someone other than their lawyers.

• Lawyers Are Willing To Consider ADR

The lawyers involved are knowledgeable about ADR processes and intend to participate in the chosen ADR process in a good-faith attempt to resolve the dispute.

Timing

• Facts Are Sufficiently Developed

The parties have sufficient information to permit them to make informed decisions concerning the ultimate disposition of the dispute.

• Parties Are Prepared to Discuss Settlement

The parties are willing to resolve the case short of trial.

Factors Disfavoring ADR

• Public Sanction Necessary

There is a need for public sanctioning of conduct.

• Imbalance of Power or Ability

A party or parties are not able to negotiate effectively themselves or with assistance of counsel.

• Judicial Decision Required

Development of the law is important or the imprimatur of a court decision is necessary to secure vindication of rights, enforcement, or compliance.

• Biased Selection Process of ADR Neutral

Political sensitivity of case coupled with questionable neutral selection process would likely result in selection of "neutral" with ties to interests contrary to the United States.

• Successful Summary Judgment Certain

• Case Likely To Settle Through Unassisted Negotiation in Near Future * * *

Using these selection criteria as a guide, it should be possible to identify Antitrust Division cases that would benefit from the application of ADR, and to identify the most appropriate ADR technique to assist the investigation/litigation process. Although many civil cases brought by the Antitrust Division will not be good candidates for ADR—for example, most merger investigations will face time constraints that make the use of ADR impossible, and many of our non-merger cases move swiftly and smoothly to resolution—there will be instances where one-on-one settlement negotiations may benefit from the presence of a neutral, either from the start or once they have reached an impasse, time is available, and a third-party neutral would advance the case more effectively than simply involving higher-level Division officials or permitting a cooling-off period. There may also be instances where involving a neutral expert could resolve a factual

or legal dispute at the negotiation stage in a manner that would either speed the resolution of the case or result in a more favorable outcome for the United States than would unassisted negotiations or litigation. Such cases should be considered for the use of ADR.

The issuance by the Antitrust Division of case selection criteria for the use of alternative dispute resolution relates solely to the government's voluntary participation in ADR. Nothing herein shall be construed to limit the government's duty to participate in ADR according to court order or applicable local rules, except that Antitrust Division attorneys shall resist participation in ADR, by appropriate motion, whenever said participation would violate the United States Constitution or other governing law.

This memorandum shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers, or any other person. This memorandum shall not be construed to create any right to judicial review involving the compliance or noncompliance of any Antitrust Division attorney with its terms.

CIVIL DIVISION—STATEMENT ON ALTERNATIVE DISPUTE RESOLUTION

Introduction

On April 6, 1995, the Attorney General issued an order promoting the broader use of alternative dispute resolution techniques for the Department of Justice's litigating divisions in appropriate matters. The order requires each litigating division handling civil matters to issue: a policy statement on ADR; case selection criteria identifying appropriate cases for ADR; criteria for the selection of ADR providers; training requirements in negotiation and ADR; a statement on internal procedures for authorization and funding of ADR; and finally a reporting system for statistics on each division's use of ADR.

I. POLICY

The Civil Division is fully committed to encouraging consideration of alternative dispute resolution ("ADR") in appropriate cases and implementing all aspects of the Attorney General's April 6th Order on ADR. ADR is any consensual dispute resolution process facilitated by third-party neutrals which can be utilized prior to or during litigation. ADR is not meant to replace traditional litigation or unassisted negotiation, but rather is meant to supplement them. In other words, ADR is another tool to resolve disputes and

can provide unique advantages. ADR can be used when traditional negotiation is likely to be unsuccessful, has already been unsuccessful, or when it can expedite negotiations and/or allow them to proceed more efficiently. ADR can be used to resolve discrete parts of a particular case or, a series of cases; it can help narrow and/or eliminate issues; it can expedite critical discovery; and can help the parties gain a better understanding of the strengths and weaknesses of the case. ADR provides flexibility by allowing the parties to fashion their own resolutions to disputes—creative resolutions beyond what courts can offer.

In a similar vein, ADR allows the parties to fashion their procedures for resolving disputes. There are as many ADR processes as the parties can create. The most widely used ADR techniques are mediation, early neutral case evaluation, arbitration, mini-trial and summary jury trial (see attached appendix for descriptions). Consideration of whether ADR can be beneficial to a particular matter should begin as soon as a Civil Division attorney is assigned to a case, should be ongoing, and should be revisited at the watershed points in the litigation. Different forms of ADR may be useful at particular points in the case.

In analyzing a case for ADR and considering the particular component's case selection criteria, some general considerations should be kept in mind. The factors listed below for each Civil Division component will not all be relevant in any given case. Factors not listed may also be present that weigh in favor of or against the use of ADR. A threshold inquiry should be whether ADR will be beneficial to a case; that is, whether it will be more cost efficient, faster or will enhance the opportunities for a better result than would be the case with traditional litigation or unassisted negotiation. Even if the threshold inquiry is negative, consideration should still be given to whether ADR can be of benefit to a case even if it does not settle or entirely resolve the matter. For instance, if ADR can narrow the issues or expedite critical discovery, then ADR should be considered. In selecting a particular ADR process, each Civil Division component has listed a series of factors to evaluate for this selection, and there may be more than one ADR process appropriate for an individual case. Attorneys should also consider the different ADR processes that the relevant district or circuit court programs provide or require. Even where a particular district has an ADR program, Civil Division attorneys

should employ the analysis in this statement.

In determining whether a case can benefit from ADR, there are no hard and fast rules. It bears emphasizing that the use of ADR is not mandated, and the determination to use ADR and the selection of the particular ADR process should be done on a case-by-case basis. Because an understanding of the nature of the particular litigation is critical to an ADR assessment, and because the Civil Division handles such a wide variety of litigation, included below is a description of each Civil Division component's caseload.

Finally, it is the policy of the Civil Division to recognize the work made by staff attorneys who handle matters in ADR by providing the same opportunities for promotion, awards and other professional recognition as those engaged in more traditional litigation. Often, ADR will accelerate settlements, avoid trials, and provide enhanced resolution of disputes that litigation cannot provide. Those who use ADR to these ends will be evaluated on their skills in these endeavors, and they will be recognized for the contributions they have made to the Department and the public.

Commercial Litigation Branch: The Commercial Litigation Branch is the largest of the litigating components, accounting for 39% of the Division's caseload. Its cases consists of both affirmative and defensive work regarding financial disputes between the government and private parties. It has four principal litigating units:

The *Fraud* unit files affirmative litigation, usually under the False claims Act. Last year it recovered over 1 billion dollars. Almost 90% of its cases settle and approximately half of those are completed prior to filing a complaint. The nature of the cases indicates that they are good candidates for ADR mechanisms.

The *Court of Federal Claims* unit defends suits brought by contractors, (usually as the result of an adverse decision by an agency contracting officer.) and defends appeals filed by government employees from decisions of the Merit Systems Protection Board. They settle approximately 30% of their cases and win the majority of the balance on motions. Both types of cases follow administrative reviews which have afforded the parties settlement opportunities. Although personnel cases can often benefit from third party neutral participation, these cases are small and are almost always disposed of in favor of the government on routine motions. In addition OPM, the client in most cases, would like to see their

decisions, which have been the result of a rather lengthy administrative process, upheld. (Cases that have merit are usually disposed of in that administrative process.) Likewise, many contract cases are weeded out by dispositive motions on the basis of the Court's limited jurisdiction. However, the remaining complex contract actions can make use of not only mediation but informal fact finding and neutral evaluation procedures. The Court of Federal Claims has a standing order that provides for two modes of ADR. Other forms of consensual ADR are encouraged by the court.

The *Corporate/Financial Litigation* unit litigates both affirmative and defensive cases, including complex contractual and financial matters, bankruptcies and large foreclosure proceedings. These cases can often benefit from ADR mechanisms.

The *Intellectual Property* unit litigates matters involving patents and copyright issues. These are highly technical. They are often complex, especially regarding damage calculations.

The *Torts Branch*: The Torts Branch is responsible for defending government agencies and employees in tort suits and administrative claims. It is subdivided into four litigating sections, General Torts, Constitutional and Specialized Torts, Environmental Torts and Aviation and Admiralty.

The General Torts Staff's workload includes a broad array of traditional tort litigation (automobile cases, premise liability and medical malpractice). In addition, the FTCA Staff is responsible for conducting major litigation involving claims arising from financial institution failures and AIDS related tort suits. This Staff also handles highly visible suits that are likely to set significant precedents, involve large sums or are especially sensitive because of the factual context in which they arise.

Constitutional and Specialized Torts (CST) is responsible for representing present and former high ranking officials and other employees who are personally sued for monetary damages as a result of actions taken in the course of their duties. CST handles cases filed under the National Vaccine Injury Compensation Program, which involve allegations of injuries and death which are claimed to have been caused by the administration of certain childhood vaccines. This section also reviews and adjudicates claims brought by individuals under the Radiation Exposure Compensation Program. These claims involve injuries which are alleged to have been caused by radiation exposure from atmospheric nuclear

testing and from employment related to the mining of Uranium.

The Environmental Torts Section defends the United States in environmental contamination suits alleging personal injury and property damage as a result of alleged exposure to chemicals, asbestos, radiation and other environmental toxins. Typical suits allege negligence on behalf of the United States and/or its contractors in operating installations and industrial facilities throughout the nation. The cases are complex and rely heavily on expert scientific and medical evidence to protect out interests.

The Aviation and Admiralty section handles defensive and affirmative claims. Aviation litigation results from private, military and air carrier operations and accidents and from the Government's responsibility for air traffic control, airport and aircraft certification and weather information distribution. In Admiralty, on the defensive side, the cases involve collisions at sea, groundings, seaman's injury, search and rescue and other actions relating to the Government's regulation of the nation's waterways. On the affirmative side, the cases include mortgage foreclosure, oil pollution and damage to Government property. The admiralty section also handles cases filed in district courts involving maritime contracts, both defensive and affirmative.

The *Federal Programs Branch*: The Federal Programs Branch of the Civil Division is a large law office with a diverse civil practice representing over 100 federal agencies. The Branch defends against major suits challenging the constitutionality of statutes and the constitutionality and validity under the Administrative Procedure Act of government policies and programs; major Administration initiatives; and agency decisions, orders, and regulations. The Branch also handles significant government personnel litigation, including employment discrimination claims in federal district court and adverse action challenges before the Merit Systems Protection Board (when the Department of Justice is sued) and before federal district courts. Certain APA and personnel actions are amenable to ADR, especially those involving ongoing working relationships. The Branch also personally handles significant government information lawsuits, such as those brought under the Freedom of Information Act and the Privacy Act. About ten percent of the Branch's workload involves affirmative litigation to prevent interference with government operations and enforce various statutes

and regulations such as banking laws, the National Highway Traffic Safety Act, and the Ethics in Government Act.

Office of Consumer Litigation: The Office of Consumer Litigation (OCL) is responsible for enforcement of Federal consumer protection statutes, most of which provide for both civil and criminal remedies. OCL principally handles affirmative litigation. OCL receives most of its case referrals from the Food and Drug Administration, the Federal Trade Commission, the Consumer Product Safety Commission, and the National Highway Transportation Safety Administration. Approximately 73% of OCL attorney hours are spent on FDA cases (the approximately 409 pending FDA cases include both civil and criminal enforcement actions and defensive matters).¹ The Office also handles approximately 25 appellate cases per year.

Referrals from the FDA involve the illegal production, distribution, and sale of misbranded and adulterated drugs, medical devices, and foods. In pursuing these affirmative enforcement actions, OCL seeks a variety of remedies under the Food Drug and Cosmetic Act (FDCA), including seizures, injunctions, and criminal prosecutions. While OCL does not seek monetary relief in FDA affirmative cases, ADR techniques may nonetheless prove effective in obtaining expeditious civil settlements. OCL also handles a number of cases defending FDA. The majority of FDA defensive cases are administrative and constitutional challenges to FDA statutes and regulations. These cases rarely settle as both parties need a judicial resolution.

Referrals from the FTC typically involve allegations of FTC Rule violations (e.g. FTC's Franchise Rule, Used Car Rule, and Funeral Rule) or charges of false advertising. In pursuing these affirmative enforcement actions, OCL seeks a variety of remedies under the FTC Act, including civil penalties, consumer redress, and injunctions (which often require the defendants to modify and reform their consumer disclosure practices). Approximately 11% of OCL attorney hours are spent on FTC cases (the approximately 72 pending FTC cases include both FTC Rule and false advertising cases). Those cases are quite suitable for most ADR techniques.

CPSC referrals constitute a small fraction of OCL's case load. Approximately 3% of OCL attorney hours are spent on CPSC cases (the approximately 11 pending CPSC cases

¹ All statistics are for fiscal year 1994.

includes civil actions seeking civil penalties, consumer redress, and injunctions; OCL handles few CPSC criminal enforcement actions). NTSHA referrals involve criminal matters.

The Office of Immigration Litigation: The Office of Immigration Litigation (OIL) is responsible for civil trial and appellate litigation concerning immigration and nationality matters, ranging from high seas interdiction and alien detention, deportation and exclusion, visa and naturalization suits, to document fraud and litigation arising under the employer sanction provisions that affect citizens as well as aliens. OIL has both affirmative and defensive litigation responsibilities, and represents the Immigration and Naturalization Service, Department of State, Executive Office of Immigration Review, and other agencies that regulate the movement of aliens across and within U.S. borders. A number of factors and statutory obligations make this type of litigation unique and generally unsuited to most ADR programs. OIL defends government policies relating to immigration that have broad implications for the nation. They also defend against challenges to the constitutionality of statutes, regulations, and government programs, as well as agency decisions and orders. ADR techniques may be appropriate in settling suits challenging certain operational decisions in the INS districts, where the agency may have some flexibility and the outcome may be guided by existing legal precedent, or in resolving attorney fee disputes. The majority of OIL's cases, however, are: (1) statutory, constitutional, and regulatory challenges to the enforcement of immigration laws and policy which rarely settle; and (2) petitions for review challenging orders of deportation and exclusion, which are preceded by lengthy administrative proceedings during which the record is established, and where there is little to no flexibility for either outcome or relief (especially as most meritorious cases and applications for relief are resolved prior to this stage by agency adjudication), and where any opportunity for an additional procedure is more likely to result in an unwarranted delay of deportation than to speed resolution of the case.

The Appellate Staff: The Appellate Staff handles appeals in cases litigated by the individual Civil Division components, as well as by United States Attorneys' Offices. Most of the work emanates from the Torts, Federal Programs, and Commercial Litigation Branches, with a much smaller number of appeals from the Office of Consumer

Litigation and the Office of Immigration Litigation. The Appellate Staff also handles petitions for direct review in the courts of appeals challenging agency actions. While most of the appeals involve defensive litigation (defending statutes, regulations, agency decisions, civil rights/personnel actions), some of the Office's appeals are based on affirmative litigation (e.g., FDA enforcement, enforcement of the federal trade laws, civil penalty actions). Many of the cases that are good candidates for ADR at the district court level are also good candidates for ADR in the Court of Appeals.

II. Case Selection Criteria

A. Criteria for the Commercial Litigation Branch

In applying the below criteria, it is important to consider the development of the facts and whether any particular ADR mechanism is appropriate at the particular time to assist in a resolution of the case, or assist in the development of the facts toward a faster and more efficient resolution. Consideration should be given throughout the litigation to appropriate ADR assistance.

1. Factors Counseling in Favor of ADR

- (a) The Parties
 - (1) There is a continuous relationship
 - (2) There may be benefits to either client hearing directly from the opposing side
 - (3) Either party would be influenced by opinion of neutral third party
 - (4) The opposition does not have a realistic view of the case
 - (5) The parties have indicated that they want to settle
 - (6) Either party needs a swift resolution
- (b) Nature Of The Case
 - (1) Complex Facts
 - (2) Technical complexity
 - (3) Hostile forum or decisionmaker
 - (4) Flexibility in desired in relief
 - (5) Trial preparation will be difficult, costly or lengthy
 - (6) Need to avoid adverse precedent

2. Factors Counseling Against ADR

- (a) Need for precedent
- (b) Need for public determination or sanction
- (c) Case likely to settle soon without assistance
- (d) Case likely to be resolved efficiently by motion
- (e) Opposing counsel are not trustworthy

B. Criteria for ADR Use in Torts Branch

In applying the below criteria, it is important to consider the development of the facts and whether any particular

ADR mechanism is appropriate at the particular time to assist in a resolution of the case, or assist in the development of the facts toward a faster and more efficient resolution. Consideration should be given throughout the litigation to appropriate ADR assistance.

1. Factors Counseling for ADR

- (a) Seeking monetary relief is sole purpose of lawsuit
 - (1) Any unfavorable precedent may be established
 - (2) There are multiple defendants, with the United States having the greatest exposure
 - (3) There are no dispositive legal precedents established or desired
 - (4) Reasonable probability of unfavorable resolution of factual issues
 - (5) Where at various stages of the litigation, an evaluation shows that the future costs of discovery and litigation would be greater than the amount of the settlement
 - (6) In affirmative cases, there will be an unacceptable delay from the time suit is filed until payment
 - (7) Multiple party litigation desiring intermediate mediation to reduce the number of parties and/or issues
 - (8) In affirmative cases, the defendant is uninsured or under insured
- (b) Non-monetary relief sought
 - (1) Injunctive relief is not necessary even though desired
 - (2) A declaratory judgment is not necessary even though desired

2. Factors Counseling Against ADR

- (1) Need to obtain/maintain legal precedent
- (2) No liability on part of United States based on facts and/or well-established precedent
- (3) Case is anticipated to be one of many
- (4) Subject to a motion to dismiss in lieu of answer
- (5) Subject to a motion for summary judgment once facts are developed, where costs of proceeding are less than plaintiff would take in settlement
- (6) Individual is sued in his personal capacity as a Government employee
- (7) A case involving the seizure of property to pay a debt where the property is the only source of revenue
- (8) Injunctive relief sought where no compromise or relief available
- (9) Case is likely to settle soon without ADR

C. Criteria for the Office of Consumer Litigation

In applying the below criteria, it is important to consider the development of the facts and whether any particular ADR mechanism is appropriate at the

particular time to assist in a resolution of the case, or assist in the development of the facts toward a faster and more efficient resolution. Consideration should be given throughout the litigation to appropriate ADR assistance.

1. FDA Referrals

a. *FDA Civil Affirmative Litigation.* In civil affirmative actions under the Food Drug and Cosmetic Act (FDCA), the Government may pursue seizure remedies (e.g. in *in rem* actions against adulterated or misbranded food, drugs, or medical devices) and/or injunctive remedies (e.g. in actions against manufacturers or distributors of misbranded or adulterated food, drugs, or medical devices). Civil penalties and consumer redress are unavailable under the FDCA. While OCL does not seek monetary relief in FDA affirmative cases, ADR techniques may nonetheless prove effective in obtaining expeditious settlements.

Because FDA seizure and injunction cases almost always involve serious public health concerns, the client agency may be more receptive to ADR techniques in which the Government takes an active role in fashioning the settlement and retains the ability to accept or reject a third party neutral's recommendations. Accordingly mediation (rather than arbitration) is likely to be the ADR technique of choice. In addition, the Government is likely to favor the utilization of third party neutrals (whether U.S. Magistrates, retired Federal Judges, or private mediators) who have an expertise in food and drug or public health law.

Mediation may be particularly effective in the following situations:

(1) Mediating claimants' manner of reconditioning or destruction of adulterated or misbranded products in seizure actions.

(2) Mediating claimants' reimbursement of the Government's storage and destruction costs in seizure actions.

(3) Mediating claimants' agreement to injunctive language in consent decrees in actions initially filed as civil seizures. In contested seizures, the Government may wish to expand its scope of relief upon discovery of new facts or upon expenditure of considerable resources. ADR is of particular use in these situations as the relief sought extends beyond that prayed for in the Complaint. ADR should also be considered in settling appeals of seizure actions (a settlement which includes an injunction may prove more effective than an appellate court's affirmance of

a seizure that includes no prospective relief.)

(4) Mediating terms of injunctions, including reconditioning plans, consumer notification obligations; and defendants; reimbursement of the costs of FDA inspections conducted to ensure compliance with consent decree terms.

b. *FDA Civil Defensive Litigation.* Most of OCL's defensive litigation involves administrative and constitutional challenges to FDA statutes and regulations (e.g. Administrative Procedure Act challenges to the Nutrition Labeling and Education Act). Typically, both parties in these cases seek a judicial resolution of the dispute which will result in legal precedent. Nevertheless, ADR may be effective in certain cases in which the agency may wish to avoid publicity, a judicial decision is likely to be unfavorable, or the issue at stake (e.g. whether the FDA has engaged in unreasonable delay in evaluating an applicant's new drug application) is not of precedential importance to the Government.

c. *FDA Criminal Litigation.* FDA criminal cases are inappropriate for ADR consideration because a final judicial decision (whether through a plea agreement or trial) is required.

2. FTC Referrals

OCL's affirmative FTC Rule violation and false advertising actions include requests for monetary relief and are often most suitable for ADR techniques. Mediation or early neutral evaluation provided by U.S. Magistrates and/or Senior Judges is the ADR methodology currently preferred by the client agency for the following reasons: (1) The FTC recommends specific parameters to OCL regarding the acceptable range of monetary relief for which it will settle (settlement ranges are provided by the FTC's Bureau of Economics and are voted on by the FTC Commissioners). Any type of binding arbitration may therefore be inappropriate, as OCL must maintain an ability to reject a settlement proposal suggested by a third party neutral that is out of the range considered acceptable by the client agency. (2) Individual FTC Rule violation cases are often part of larger enforcement initiatives. OCL must therefore retain the ability to ensure that like cases are settled for like amounts. (3) The FTC's economic statistics used to guide the Government's settlement positions are confidential. The agency would be reluctant to release those statistics to third party neutrals who are not Judicial officers. However, other non-binding ADR techniques utilizing

third party neutrals should be considered.

Mediation may be particularly effective in the following situations:

(1) Mediating the terms of a consent decree for FTC Rule violations including modification of the defendant's consumer disclosure practices.

(2) Mediating the amount of civil penalties recovered.

(3) Mediating the amount of consumer redress recovered and the method for dispersing such funds among injured consumers.

3. CPSC Referrals

OCL's cases referred by the Consumer Product Safety Commission include civil actions seeking civil penalties, consumer redress, and injunctions. The criteria and concerns relating to civil CPSC matters mirror those relating to FTC civil enforcement actions discussed above. OCL also prosecutes a small number of criminal CPSC cases. These criminal matters are not amendable to ADR techniques as a judicial resolution is required.

4. NHTSA Referrals

OCL referrals from National Highway Transportation and Safety Administration (and, to a lesser extent, State Highway Patrols and the FBI) relate primarily to criminal odometer tampering prosecutions. These criminal actions require judicial resolution and are not amendable to ADR techniques.

D. Criteria for the Office of Immigration Litigation

In applying the below criteria, it is important to consider the development of the facts and whether any particular ADR mechanism is appropriate at the particular time to assist in a resolution of the case, or assist in the development of the facts toward a faster and more efficient resolution. Consideration should be given throughout the litigation to appropriate ADR assistance.

1. Factors Counseling for ADR

a. Lawsuits challenging INS operations other than enforcement measures controlled by statute or regulation may be amendable to ADR at various stages. (The factors regarding other types of OIL litigation identified in section 2 below, should also be considered in deciding whether ADR is appropriate for these cases.) Mediation is most likely, although other ADR methods such as early neutral evaluation may be appropriate if they are likely to reduce the time and cost of litigation in a specific case.

(1) Issue is localized or limited to a specific INS district or facility.

(2) Agency (or district) has some flexibility in resolving matters.

(3) Need exists to narrow issues, dispute is largely factual, or discovery needs to be tailored to material issues.

(4) Hostile forum (where more control of case and a fairer or more effective and favorable outcome may be obtained through mediation).

(5) Court appears to be unwilling to rule

(6) Expectations of party/parties are unreasonable (parties or aggrieved persons may benefit from an evaluation of their case by someone other than their lawyers).

(7) Statute or regulation has been rescinded.

b. Attorney Fee Disputes.

(1) Sole issue or remaining issue in the case

(2) ADR will speed anticipated settlement and avoid needless increase in attorney fees.

2. *Factors Counseling Against ADR*

a. Petitions for review of deportation orders in the courts of appeal and petitions for habeas corpus for judicial review of exclusion orders in the district court under 8 U.S.C. 1105a, or exercise of enforcement authority and discretion delegated to INS district directors or other officials:

(1) Statute provides the "exclusive" procedures for judicial review.

(2) Prescribed outcomes or statutory remedies are inflexible.

—Grounds for exclusion and deportation are determined by statute

—Requirements for relief are determined by statute

(3) There has been prior extensive administrative process

—Review is limited to the administrative record, and facts of these cases are rarely in dispute by the time case reaches federal court

—Actual challenge is to the agency's evaluation of facts, exercise of discretion, or other elements entitled to deference by the courts

(4) Additional procedure would most benefit the alien who seeks to delay his inevitable departure or to stall for the time he lacks to minimally qualify for relief such as suspension of deportation and 212(c) waivers.

(5) Actual error can be corrected by motion to remand to BIA or reconsideration by agency.

b. Litigation challenging implementation of the immigration laws, including new legislative initiatives, Executive orders, government policy, amended

regulations, and enforcement actions under existing authority, statutes and regulations:

(1) Judicial resolution or precedent is needed.

—case involves significant legal, policy, or constitutional issues where there is little or no likelihood of flexibility in the government's position

—case involves issue of first impression and is important to development of a particular area of law

—favorable facts make the case a good vehicle to establish legal ruling in development of law

—judicial resolution is unavoidable because statutory or regulatory program is at stake

(2) Injunctive relief is sought and delay would cause prejudice.

(3) Agency is exercising its judicially recognized exclusive authority over issues of immigration and needs to respond to changed circumstances.

(4) Executive Branch must be able to fully preserve its ability to respond to events that may implicate relations with other nations.

(5) Law enforcement function cannot be compromised.

—goal of opponent's suit is to undermine or minimize adverse consequences prescribed by Congress

—challenge is to principles so fundamental that productive negotiation is unrealistic

—nongovernmental party has an incentive to stall

(6) Issue needs uniform treatment.

—issue has nationwide impact

—similar suits pending or anticipated

—aliens' advocates are bringing similar actions in different courts in search of a sympathetic forum

—no legitimate reason to settle with one party or plaintiff group

—need to maintain established policies or consistent results between individual cases

—need to discourage similar suits

(7) Law is settled.

—no compromise or relief is available

—strong likelihood of success on the legal issues

—case is likely to be disposed of by summary judgment or other dispositive motion

—case is frivolous, dispute is different from actual grievance (i.e., due process claim when alien is ineligible for relief), or only discernible purpose is delay

(8) Case is likely to settle or settle faster through unassisted negotiation without ADR

(9) Parties are not willing to negotiate or prepared to settle case

(10) Government official, officer or other individual is sued in his personal capacity

(11) Parties are not represented by counsel

(12) Opponent is untrustworthy, his credibility is a disputed issue, or United States has reason to believe that he is engaging in fraudulent or criminal behavior

E. Criteria for the Federal Programs Branch

Among the Branch cases which appear most amenable to ADR are personnel actions, particularly those involving factual disputes and parties which have an ongoing work relationship. Less amenable as a group are the constitutional and major APA challenges, since the cases the Branch chooses to personally handle involve the most visible government policies and programs which impact not just the parties directly involved in the lawsuits but often have broad implications for the whole of society. These are often the cases whose policy determinations are considered the most important by the defendant agencies and for which flexibility in terms of settlement options is quite limited. Consideration of ADR may be appropriate, however, for routine APA challenges where there is more flexibility in the agency, substantial legal precedent already exists, and the use of a third-party neutral may be beneficial to expedite the settlement process.

In applying the below criteria, it is important to consider the development of the facts and whether any particular ADR mechanism is appropriate at the particular time to assist in a resolution of the case, or assist in the development of the facts toward a faster and more efficient resolution. Consideration should be given throughout the litigation to appropriate ADR assistance.

1. *Factors Counseling for ADR*

(a) Continuing relationships between plaintiffs and agency.

(b) Case involves largely a factual dispute.

(c) Relief sought is money damages.

(d) Agency is essentially a stakeholder, with plaintiffs or co-defendants trying to impose on agency diametrically opposed relief or requirements (this element may appear in some APA and other policy type cases); similarly, where there are many parties to the lawsuit with divergent interests which hamper standard negotiation efforts.

(e) Plaintiffs and agency are interested in seeking resolution but personality conflicts or poor communication

between opposing counsel adversely affects settlement negotiations.

(f) There are underlying issues which are not formally part of the complaint and which cannot be resolved by the relief legally available, but which are the catalyst for the lawsuit.

(g) Apparent unwillingness of court to rule on matters which would advance the case toward resolution.

(h) Where you expect to settle eventually, most likely on the "courthouse steps."

(i) Where plaintiffs' demands, or the agency's view of the case, are unrealistic, and a realistic appraisal of the situation by a neutral third party may help un lodge the recalcitrant party.

(j) Where there is a need to avoid adverse precedent but traditional settlement negotiations have reached an impasse.

2. Factors Counseling Against ADR

(a) Case involves significant legal, policy, or constitutional issues where there is little or no likelihood of flexibility in the government's position.

(b) Where judicial resolution is necessary for precedential value.

(c) The case can likely be efficiently disposed of by summary judgment or other dispositive motion.

(d) The case is likely to settle in near future without need for neutral assistance.

F. Criteria for the Appellate Staff

The criteria listed below are suggested as a starting point for analyzing whether a case on appeal could benefit from ADR. While each attorney should also examine the criteria of the trial component from which the appeal arose, other criteria come into play or take on a different degree of importance at the appellate level. For instance, the role of precedent at the court of appeals level is much greater. Attorneys should consider what if any ADR efforts were attempted earlier in the case, and whether and how the case has changed from its posture at the trial level, both factually and legally. The ADR techniques that are likely to be used by the Appellate Staff are mediation and case evaluation, because at the appellate level the issues are largely legal ones that would not benefit from the more fact-intensive techniques such as mini-trials.

1. Factors Counseling for ADR

(a) Predominantly factual case where government faces clearly erroneous standard.

(b) Monetary cases without significant precedential concerns.

(c) Risk of adverse precedent or publicity. E.g., case is poor vehicle to

establish favorable legal precedent, circuit has poor track record on type of issue, risk of circuit split and Solicitor General unlikely to authorize certiorari, loss on the issue may create poor precedent for other government agencies.

(d) Need for swift resolution. E.g., agency has programmatic needs that cannot await the usual length of the appellate process, the appeal is only one part of multi-issue litigation with the potential for future remands and appeals.

(e) Continuing relationships. E.g., ongoing federal/state relationship, ongoing relationship between agency and regulated entity, continued contact in implementation of remedy or class action.

(f) Numerous parties and issues.

(g) Need to avoid increased attorneys fees or post-judgment interest that unsuccessful appeal will incur.

(h) Need for problem solving or development of creative alternatives or flexibility in shaping relief e.g., suit is only one facet of a deeper dispute involving other issues court may not be able to address.

(i) Other parties are willing to consider ADR.

(j) Certain statutory, regulatory, or constitutional cases e.g., no continuing importance because statutes or regulations have been amended, constitutional challenge such as due process actually masks some underlying issue capable of resolution such as plaintiff's desire for expungement of record or consideration for job opening.

(k) Case is one which should have been settled in district court but was not.

2. Factors Counseling Against ADR

(a) Need for judicial precedent. E.g., need to establish legal ruling in development of a particular area of law and favorable facts make case a good vehicle, judicial resolution unavoidable because nothing short of validity of statutory/regulatory program is at stake.

(b) Need for uniform treatment. E.g., many similar suits pending and no legitimate reason to settle with only one party.

(c) Need to discourage similar suits.
(d) Need for continuous monitoring of compliance by court or public judicial decision in certain enforcement cases.

(e) Likelihood of success is great and relief sought is significant.

III. Which ADR Techniques Are Appropriate for a Case

A. Mediation

1 There is a continuing relationship among the parties.

2 The disputed facts are not technical, requiring subject-matter expertise.

3 There are multiple defendants, with the United States having the greatest exposure.

4 Risk of unfavorable precedent.

5 In affirmative cases, there will be an unacceptable delay from the time suit is filed until payment.

6 Either side can benefit from hearing directly from the client.

7 Opposition needs a realistic view of the case.

8 Flexibility in desired relief.

B. Early Neutral Case Evaluator/Expert

1 Know at the outset that case can be settled.

2 The parties disagree on the amount of damages.

3 Factual issues requiring expert testimony may be dispositive of liability or damage issues and use of an expert neutral is cost effective.

4 A resolution of the factual issue will assist in settlement.

5 Opposition needs a realistic view of the case.

C. Arbitration

1 The parties disagree on the amount of damages.

2 It is a District where the arbitrators are well-respected.

3 There are no complex factual issues involving several areas of expertise and the parties disagree on the facts.

D. Mini Trials

1 In affirmative cases, there will be an unacceptable delay from the time suit is filed until payment.

2 There are simple factual issues which do not necessarily require expert testimony, but would take an excessive amount of time to present in a traditional forum.

3 There are complex factual issues which are generally explained with expert testimony.

4 The attorneys can equably summarize the facts to the fact-finder, without the necessity of lengthy cross-examination.

IV. Criteria for the Selection of ADR Providers

In selecting an ADR provider for a case, Civil Division attorneys should consider the non-exclusive factors set out below. When assessing these factors, attorneys may also consider whether an ADR provider meets the requirements of the relevant state or federal court rules for neutrals. Attorneys may wish to interview the prospective neutral and obtain their resumes in ADR experience

where appropriate. Attorneys may also wish to consult other attorneys who have used the prospective neutral in other cases. In finding prospective ADR providers, attorneys may consult the Senior Counsel for Dispute Resolution, other attorneys in their office, division, or in the Department for such providers.

1. Neutrality, and Related Ethics Standards—Is the ADR provider unbiased, acting in good faith, diligent, and not seeking to advance his or her own interest at the expense of the parties? Will the ADR provider deal fairly with the parties, be reasonably available to the parties, show no personal interest in the content of the settlement? Does the neutral know counsel, and if so, what is the nature and context of that knowledge? Is the neutral subject to disqualification on grounds analogous to those found within 28 U.S.C. 455. Check Society of Professional for Dispute Resolution's Ethical Standards.

2. Training—What kind and extent of training for the particular ADR process has the neutral received? Has the neutral been trained by a well-recognized program?

3. Experience—

(a) *ADR Experience*: number of cases in which the neutral has employed the particular dispute resolution process or related processes, dollar amount in controversy, diversity of processes, complexity of the issues, years of experience in a particular process(es), breadth of experience in types of disputes, experience in multi-party and/or multi-issue disputes, affiliation with court-annexed programs.

(b) *Litigation Experience*: Is the neutral an attorney? Type of legal practice, years of experience, complexity of cases and issues, experience in government litigation.

4. Subject-Matter Expertise In The Type of Dispute and/or Issues—Factors Favoring Subject-Matter Expertise:

(a) Highly technical areas of law are central for understanding the dispute and/or issues and the fashioning of the options for resolution of the dispute (e.g. patent, subspecialties of science or medicine).

(b) Issue is one of damages—when offers are far apart, expertise in typical damage awards and in standard components of damage calculation may bring parties; offers closer (e.g. certain attorney fees, personal injury disputes).

(c) When the parties and attorneys are hesitant to use ADR for a particular case, and expertise will build credibility for them.

(d) There is an impasse over discrete factual and/or legal issues.

(e) Expertise is central to a particular kind of ADR process—e.g. case evaluation on factual issues, mini-trial, arbitration.

V. Training

Each Civil Division attorney will be trained in a basic, but comprehensive, 6-hour ADR course. The course will be skills-based and interactive. Classes should be comprised of 30–35 attorneys from a variety of Civil Division components. The small class size will permit an interactive focus and discussion format, while the class composition will facilitate a cross-pollination of experiences and ideas among the components. As many of the instructors as possible will be Civil Division litigators with substantial ADR experience. The agenda for the basic ADR training course is envisioned as follows:

A. ADR TECHNIQUES, CASE SELECTION CRITERIA, SELECTION OF PARTICULAR ADR PROCESS (lecture/discussion 1½ hours).

B. CONCRETE EXAMPLES BY GOVERNMENT LITIGATORS OF ADR AND HOW IT WORKS (lecture/discussion 30 minutes).

C. NEGOTIATION SKILLS (lecture 1 hour).

D. INTERNAL PROCEDURES, AUTHORIZATION & FUNDING OF NEUTRALS, SELECTION OF NEUTRALS (lecture 30 minutes). This section will include guidance on how to find an appropriate neutral and how to assess whether the prospective neutral will be a good fit for the case.

E. ATTORNEY PREPARATION FOR ADR (lecture 30 minutes)—includes discussion of case and client agency preparation for ADR, and pre-settlement & settlement authorization.

F. ADR ROLE-PLAYS (2 to 2½ hours)—class may be divided into smaller groups. Each member of the small groups will have the opportunity to participate in the role-play. Instructors and participants will have the opportunity to critique and give feedback both during and after the role-plays. The fact patterns for the role-plays will be chosen to reflect the Civil Division's diverse litigation responsibilities, for example, torts, contract, EEO, and an APA challenge. Every effort will be made to match the participant with a role-play relevant to their litigation caseload.

At the conclusion of the course, participants will be asked to complete and evaluation form. On the basis of those evaluations, comments from the instructors and our actual experiences with ADR, the Civil Division will continue to modify and refine the basic

course. All new Civil Division attorneys will also be required to take the course. Once experience with the basic ADR training occurs, the Civil Division will be able to develop supplemental ADR training as needed. This training will be coordinated with the Office of the Senior Counsel for ADR.

VI. Procedures for Authorization and Funding of Neutrals

These procedures supplement the instructions issued by the Office of Senior Counsel for Alternative Dispute Resolution (SCADR) in the Associate Attorney General's Office. Civil Division attorneys shall request authorization and funding for neutrals in accordance with these procedures. Prior to using these procedures you should make arrangements with the opposing party and third party neutral and execute a proposed ADR agreement (available from your ADR representative).

The revised Form OBD-47, Request for Authorization, and Agreement for Fees and Expenses for Witnesses and Alternative Dispute Resolution Neutrals will be used. This document will serve as the formal contract with the third party neutral.

STEP 1—It is impractical to obtain full and open competition for ADR in most cases. However, before the OBD-47 is completed, the case attorney must negotiate the best neutral rate possible.

STEP 2—Once the OBD-47 has been completed and approved by the branch director, forward the OBD-47, the ADR agreement, and any additional supporting documentation to Raziya Clouser of the Contracts and Procurement Branch (Room 7110, Todd Building) for processing. Contracts and Procurement Branch will obtain a commitment of funds from SCADR for each request; a neutral should not begin work in advance of a fully approved request.

STEP 3—After the Contracts and Procurement Branch has returned the approved agreement, the case attorney should sign it, obtain the neutral's signature, and return a copy of the fully executed agreement back to the Branch. It is not necessary for the case attorney to forward a copy of the signed agreement to the SCADR; the Contract and Procurement Branch will perform this task.

STEP 4—The neutral should forward all invoices to the case attorney for review and certification. Because of Prompt Payment Act requirements, it is critical that invoices are date stamped when they are received by the attorney. It is also vital that the case attorney review the invoice and (1) reject it, if it is defective, or (2) certify it for payment,

if it is proper, within seven days of the invoice's receipt (refer to the Civil Division directive on expert witnesses, CIV 2110A, § d. *Payment of the Expert Witness* for more detailed invoice rejection and certification instructions).

STEP 5—Once a neutral's invoice has been certified for payment, it should be forwarded along with a copy of the signed OBD-47 to Frank Free of the Office of Planning, Budget, and Evaluation (Room 7032, Todd Building) for payment.

Questions regarding the procurement of third party neutrals should be directed to Ms. Clouser at 606-0786. Questions regarding payment should be directed to Mr. Free at 307-0842.

VII. Coordination, Reporting, and Evaluation

The Civil Division ADR committee shall coordinate ADR activities on behalf of the Division. The committee consists of Stephen Altman (Chair), Deborah Kant (Vice Chair), Susan Cavanagh, Mary Doyle, Vince Faggioli, Debra Kossow, Cindy Lebow, Emily Radford, Deborah Smolover, and Sandy Schraibman and Kim Humphries.

A system of reporting on cases in ADR shall be established. A reporting form of one page shall be filled out when an ADR process is considered or used, and the data shall be included in the computerized data bank maintained by the Civil Division's Management Programs component.

In addition, a system of evaluation will be instituted that allows for civil division attorneys using ADR providers to give immediate feedback to a centralized data base. Attorneys using ADR providers' services will be asked to rate the provider on the general standards set out above in the selection of neutrals section. These evaluation forms should then be made available to any potential future users of an ADR provider's services. When any providers consistently receive poor evaluations, this information will be included in the data bank and made available to civil division attorneys.

VIII. Miscellaneous

The Civil Division's Statement On ADR relates to the government's voluntary participation in ADR. Nothing herein shall be construed to limit the government's duty to participate in ADR pursuant to court or applicable local rules, except that Civil Division attorneys shall resist participation in ADR, by appropriate motion, whenever said participation would violate the United States Constitution or other governing law.

This Statement shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers, or any other person. This Statement shall not be construed to create any right to judicial review involving the compliance or noncompliance of a Civil Division attorney with its terms.

Appendix

"*Alternative Dispute Resolution*" ("ADR") means any procedure, involving a "neutral," that is used in lieu of trial to resolve one or more issues in controversy, and includes but is not limited to the following "ADR techniques";

1. *Mediation* means a flexible, nonbinding process in which a neutral third party, the mediator, facilitates negotiations among the parties to help them reach a settlement. In doing so, the mediator may expand traditional settlement discussion and broaden resolution options, often by going beyond the legal issues in controversy or incorporating nonparties in discussions. Theoretically, the mediator does not provide an opinion as to how the case should be resolved, but merely helps the parties settle the case among themselves.

2. *Early neutral case evaluation*, unlike mediation, on liability and/or damages. The evaluator usually has subject-matter expertise. The opinion is non-binding and generally occurs early in the lawsuit. The parties may have the option of asking the evaluator to continue to mediate the dispute.

3. *Neutral expert evaluation* is similar to early neutral case evaluation; however, the evaluation does not necessarily occur early in the litigation. The expert is chosen based on the expertise needed to resolve some factual dispute in the case. The expert provides a non-binding opinion.

4. *Arbitration* usually consists of a panel of one or more arbitrators who listen to the parties present their respective views of the case in an expedited, adversarial hearing format. The formality varies and may involve presentation of documents and witnesses or simply a summary by counsel. A decision is rendered that addresses liability and damages, if necessary. As of this time, it is non-binding on the United States and either party may request a trial *de novo*.

5. *Minitrial* means a flexible, nonbinding hearing, generally reserved for complex cases, in which counsel for each party informally presents a shortened form of its case to settlement-authorized representatives of the parties in the presence of a presiding judge, magistrate judge, or other neutral, at the conclusion of which the representatives meet, with or without the judge or neutral, to negotiate a settlement, failing which the case proceeds to trial.

6. *Summary bench trial* means, in any case not triable by a jury, a pretrial procedure intended to facilitate settlement consisting of a summarized presentation of a case to a Judicial Officer whose decision and subsequent factual and legal analysis serves as an aid to settlement negotiations.

7. *Summary jury trial* means a flexible nonbinding procedure, usually reserved for

trial-ready cases in which protracted jury trials are anticipated, and involving a short hearing in which evidence is presented by counsel in summary form, following which a jury returns an advisory verdict that forms the basis for settlement negotiations.

Civil Rights Division, Alternative Dispute Resolution, Case Screening Factors

Alternative Dispute Resolution ("ADR"), as used here, is any dispute resolution process facilitated by a third-party neutral. The Civil Rights Division resolves consensually many of its civil cases through traditional two-party negotiation and will continue to do so. ADR is not meant to replace traditional negotiation, but rather to provide attorneys with additional tools that may facilitate communication and resolution of matters where party-to-party negotiations have been or are likely to be unsuccessful.

In evaluating whether an ADR process may be useful, there are no hard and fast rules. Attorneys should consider whether ADR might be helpful in a particular case at the beginning of the litigation and revisit the question throughout the progress of the case taking into account the ADR processes that may be available through or imposed by the court in a particular district or circuit as well as the private ADR providers available in the relevant market. The following is a brief description of the major ADR processes.

1. *Mediation*. An impartial third party facilitates confidential discussions or negotiations among the parties to help them reach settlement. Mediation is a creative, flexible process that may broaden resolution options, often by going beyond the legal issues in controversy.

2. *Neutral Evaluation*. Neutral evaluation is a confidential conference where the parties and their counsel present the factual and legal bases of their case and receive a non-binding assessment by an experienced neutral with subject-matter expertise and/or with significant trial experience in the jurisdiction. This assessment can form the basis for settlement discussions facilitated by the evaluator if the parties so choose.

3. *Joint Fact-Finding*. This term encompasses various processes in which facts relevant to a controversy are examined and determined by a neutral third party. Typically, the parties appoint a neutral expert to resolve complex factual, technical, scientific, or legal questions and agree in advance whether the findings will be treated as advisory or binding.

4. *Mini-Trial/Summary Jury Trial*. An informal hearing-like presentation by the parties of their best case in shortened form to settlement-authorized representatives. Following the hearing, the parties and representatives meet, with or without a neutral advisor, to negotiate a settlement. If a jury is used, the jury's non-binding verdict is used as a basis for subsequent settlement negotiations.

5. *Arbitration*. One or more arbitrators issue a judgment on the merits (binding or non-binding) after an expedited adversarial hearing.

The following is a non-exclusive list of factors to assist attorneys in determining whether to use ADR in a particular case. Not

all factors listed will be relevant to a given case, and factors not listed below may weigh in favor of or against use of ADR in a particular instance.

Factors Favoring Use of ADR

The Parties

- *Continuing Relationships.* The United States, aggrieved persons, or other litigants are likely to have continued contact with the defendants in implementation of remedy or in other contexts.

- *Barriers to Communication.* The United States or other litigants foresee impasses developing because of conflicts within interest groups, political visibility, or poor or non-existent communication among the participants (including attorneys) due to personality difficulties or past history.

- *Absent Stakeholder(s).* Participation of persons or groups who are not directly involved in the legal action may be beneficial or necessary to optimal resolution.

- *Divergence of Interests.* There are gains and losses to be apportioned constructively, and in which varying priorities among the parties will allow trading off of those gains and losses to permit all involved to benefit from the outcome.

- *Numerous Parties.* The number of parties or interested persons or groups is so numerous that a structured/facilitated negotiation process would be helpful.

- *Litigation Against Other Government Agencies.* Involvement of a third-party neutral may assist in sorting through and/or evaluating "public interest" claims of various governmental components (among federal agencies or between federal and state or local entities), provided non-Departmental litigants are acting in good faith.

Nature of the Case

- *Need for Problem Solving or Development of Creative Alternatives.* A thorough exchange of information and generation of alternatives and options will improve the outcome.

- *Factual or Technical Complexity or Uncertainty.* The parties would benefit from reliance on the expertise of a third-party expert for technical assistance and/or fact-finding.

- *Need for Facilitated Private Discussions.* The settlement desired may be improved by the neutral's ability to conduct frank, private discussions among the parties.

- *Flexibility Desired in Shaping Relief.* The United States is seeking relief with detailed implementation and/or monitoring on multiple issues or subjects that may be difficult to obtain from the Court, or is amenable to resolution through cooperation between the parties.

- *Ultimate Outcome Uncertain.* Litigants face uncertain outcome at the time of trial based on the law, the facts, or the decisionmaker. Also important is the likelihood of prevailing on appeal should the United States lose at trial.

- *Hostile Decisionmaker.* Case will be tried in front of an unsympathetic Judge, or jury venue is likely to be unsympathetic or even hostile.

- *Conservation of Enforcement Resources.* Preparing the case for trial would require a

burdensome commitment of significant resources without achieving a proportionate impact.

- *Numerous Issues.* Discussion of multiple issues will be assisted by a structured/facilitated negotiation process.

- *Direct Settlement Negotiations Unsuccessful.* The United States has attempted traditional settlement negotiations without success or an impasse has been reached and the United States believes involvement of a third-party neutral will facilitate further progress and/or final resolution.

Representation

- *Need To Speak Directly to Client.* The parties (or aggrieved persons) need to hear an evaluation of the case from someone other than their lawyers.

(For example, a case that appears to be headed for trial merely because a defendant does not understand the applicable law.)

- *Lawyers Are Willing To Consider ADR.* The lawyers involved are knowledgeable about ADR processes and intend to participate in the chosen ADR process in a good-faith attempt to resolve the dispute.

Timing

- *Facts Are Sufficiently Developed.* The parties have sufficient information to permit them to make informed decisions concerning the ultimate disposition of the dispute.

- *Parties Are Prepared To Discuss Settlement.* The parties are willing to resolve the case short of trial.

Factors Disfavoring Use of ADR

- *Public Sanction Necessary.* There is a need for public sanctioning of conduct.

- *Imbalance of Power or Ability.* A party or parties are not able to negotiate effectively themselves or with assistance of counsel.

- *Judicial Decision Required.* Development of the law is important or the imprimatur of a court decision is necessary to secure vindication of rights, enforcement, or compliance.

- *Biased Selection Process for ADR Neutral.* Political sensitivity of case coupled with questionable neutral selection process would likely result in selection of "neutral" with ties to local political powers or parochial interests contrary to the United States. (This situation may be dealt with by insisting that the United States have power to overturn final selection of neutral.)

- *Successful Summary Judgment Certain To Resolve Case Conclusively.*

- *Case Very Likely To Settle Through Unassisted Negotiation in Near Future.*

Civil Rights Division, Alternative Dispute Resolution, Case Screening Factors

Alternative Dispute Resolution ("ADR"), as used here, is any dispute resolution process facilitated by a third-party neutral. The Civil Rights Division resolves consensually many of its civil cases through traditional two-party negotiation and will continue to do so. ADR is not meant to replace traditional negotiation, but rather to provide attorneys with additional tools that may facilitate communication and resolution of matters where party-to-party negotiations have been or are likely to be unsuccessful.

In evaluating whether an ADR process may be useful, there are no hard and fast rules. Attorneys should consider whether ADR might be helpful in a particular case at the beginning of the litigation and revisit the question throughout the progress of the case taking into account the ADR processes that may be available through or imposed by the court in a particular district or circuit as well as the private ADR providers available in the relevant market. The following is a brief description of the major ADR processes.

1. *Mediation.* An impartial third party facilitates confidential discussions or negotiations among the parties to help them reach settlement. Mediation is a creative, flexible process that may broaden resolution options, often by going beyond the legal issues in controversy.

2. *Neutral Evaluation.* Neutral evaluation is a confidential conference where the parties and their counsel present the factual and legal bases of their case and receive a non-binding assessment by an experienced neutral with subject-matter expertise and/or with significant trial experience in the jurisdiction. This assessment can form the basis for settlement discussions facilitated by the evaluator if the parties so choose.

3. *Joint Fact-Finding.* This term encompasses various processes in which facts relevant to a controversy are examined and determined by a neutral third party. Typically, the parties appoint a neutral expert to resolve complex factual, technical, scientific, or legal questions and agree in advance whether the findings will be treated as advisory or binding.

4. *Mini-Trial/Summary Jury Trial.* An informal hearing-like presentation by the parties of their best case in shortened form to settlement-authorized representatives. Following the hearing, the parties and representatives meet, with or without a neutral advisor, to negotiate a settlement. If a jury is used, the jury's non-binding verdict is used as a basis for subsequent settlement negotiations.

5. *Arbitration.* One or more arbitrators issue a judgment on the merits (binding or non-binding) after an expedited adversarial hearing.

The following is a non-exclusive list of factors to assist attorneys in determining whether to use ADR in a particular case. Not all factors listed will be relevant to a given case, and factors not listed below may weigh in favor of or against use of ADR in a particular instance.

Factors Favoring Use of ADR

The Parties

- *Continuing Relationships.* The United States, aggrieved persons, or other litigants are likely to have continued contact with the defendants in implementation of remedy or in other contexts.

- *Barriers to Communication.* The United States or other litigants foresee impasses developing because of conflicts within interest groups, political visibility, or poor or non-existent communication among the participants (including attorneys) due to personality difficulties or past history.

- *Absent Stakeholder(s).* Participation of persons or groups who are not directly

involved in the legal action may be beneficial or necessary to a optimal resolution.

- *Divergence of Interests.* There are gains and losses to be apportioned constructively, and in which varying priorities among the parties will allow trading off of those gains and losses to permit all involved to benefit from the outcome.

- *Numerous Parties.* The number of parties of interested persons or groups is so numerous that a structured/facilitated negotiation process would be helpful.

- *Litigation Against Other Government Agencies.* Involvement of third-party neutral may assist in sorting through and/or evaluating "public interest" claims of various governmental components (among federal agencies or between federal and state or local entities), provided non-Departmental litigants are acting in good faith.

Nature of the Case

- *Need for Problem Solving or Development of Creative Alternatives.* A thorough exchange of information and generation of alternatives and options will improve the outcome.

- *Factual or Technical Complexity or Uncertainty.* The parties would benefit from reliance on the expertise of a third-party expert for technical assistance and/or fact-finding.

- *Need for Facilitated Private Discussions.* The settlement desired may be improved by the neutral's ability to conduct frank, private discussions among the parties.

- *Flexibility Desired in Shaping Relief.* The United States is seeking relief with detailed implementation and/or monitoring on multiple issues or subjects that may be difficult to obtain from the Court, or is amenable to resolution through cooperation between the parties.

- *Ultimate Outcome Uncertain.* Litigants face uncertain outcome at the time of trial based on the law, the facts, or the decisionmaker. Also important is the likelihood of prevailing on appeal should the United States lose at trial.

- *Hostile Decisionmaker.* Case will be tried in front of an unsympathetic Judge, or jury venire is likely to be unsympathetic or even hostile.

- *Conservation of Enforcement Resources.* Preparing the case for trial would require a burdensome commitment of significant resources without achieving a proportionate impact.

- *Numerous Issues.* Discussion of multiple issues will be assisted by a structured/facilitated negotiation process.

- *Direct Settlement Negotiations Unsuccessful.* The United States has attempted traditional settlement negotiations without success or an impasse has been reached and the United States believes involvement of a third-party neutral will facilitate further progress and/or final resolution.

Representation

- *Need To Speak Directly to Client.* The parties (or aggrieved persons) need to hear an evaluation of the case from someone other than their lawyers.

(For example, a case that appears to be headed for trial merely because a defendant does not understand the applicable law.)

- *Lawyers Are Willing To Consider ADR.* The lawyers involved are knowledgeable about ADR processes and intend to participate in the chosen ADR process in a good-faith attempt to resolve the dispute.

Timing

- *Facts Are Sufficiently Developed.* The parties have sufficient information to permit them to make informed decisions concerning the ultimate disposition of the dispute.

- *Parties Are Prepared To Discuss Settlement.* The parties are willing to resolve the case short of trial.

Factors Disfavoring Use of ADR

- *Public Sanction Necessary.* There is a need for public sanctioning of conduct.

- *Imbalance of Power or Ability.* A party or parties are not able to negotiate effectively themselves or with assistance of counsel.

- *Judicial Decision Required.* Development of the law is important or the imprimatur of a court decision is necessary to secure vindication of rights, enforcement, or compliance.

- *Biased Selection Process for ADR Neutral.* Political sensitivity of case coupled with questionable neutral selection process would likely result in selection of "neutral" with ties to local political powers or parochial interests contrary to the United States. (This situation may be dealt with by insisting that the United States have power to overturn final selection of neutral.)

- *Successful Summary Judgment Certain To Resolve Case Conclusively.*

- *Case Very Likely To Settle Through Unassisted Negotiation in Near Future.*

September 11, 1995.

ADR Criteria—Environment and Natural Resources Division

The Environment and Natural Resources Division ("ENRD") proposes the following ADR criteria for use by its attorneys.

ENRD has made substantial progress in developing an ADR docket. Approximately 18 months ago, we began to require each section regularly to review its docket for potential ADR cases and to make reports to the Assistant Attorney General. In this time, the sections have identified approximately 200 cases as candidates for resolution through ADR; of those matters, approximately 150 cases are now in an ADR process or have been resolved through ADR or otherwise.

We have several ideas for building on these initial successes. Principally, we seek to encourage the use of ADR in new types of cases and to increase the number of attorneys who are actively involved in ADR and who have ADR expertise. For our purposes, the ADR criteria should be inclusive, rather than exclusive, and should encourage attorneys to be creative in the use of ADR. The criteria are not intended to be utilized as a "checklist" of factors that must be present for an ADR process; rather, they are offered as some reasons among many others to use ADR. Further Division experience with ADR processes will likely allow refinement of these criteria.

We therefore propose that ENRD attorneys should use a single criterion and several factors in evaluating the use of ADR:

ADR Criterion: ENRD attorneys should consider and use ADR techniques in their cases whenever ADR may be an effective way to reach a consensual result that is beneficial to the United States.

ADR Factors: In its use of ADR thus far, ENRD has found that ADR can be helpful in achieving a beneficial settlement in various situations, some of which are identified below. ENRD attorneys should look to these factors as some reasons why ADR might be useful in their cases. Even cases that do not exhibit these factors are often appropriate for ADR.

One of the advantages of ADR is that it gives the parties to a dispute the flexibility to fashion their own procedures for resolving the dispute. There are almost as many kinds of ADR as there are parties and disputes. Thus, in evaluating whether ADR processes may be useful, there are no hard and fast rules. Attorneys should begin considering whether ADR might be helpful in a particular case at the beginning of the litigation and should continue to revisit the question throughout the progress of the case. Such analysis must take account of the ADR processes that may be available through or imposed by the court in a particular district court or circuit. Attorneys should keep in mind that many different kinds of ADR are available both through the courts and independent of the courts.

As ENRD gains more experience with ADR, we intend to amend and add to these factors:

- Ability of neutral to conduct frank, private discussions may improve the outcome.
- Range of issues are broad enough, or can be creatively made broad enough, to allow tradeoffs and creative generation of options presented, especially when some options cannot be ordered by a court. For example, in a NEPA dispute, underlying resource management decisions are likely the crux of concern, but cannot be reached by a court. Addressing concerns with respect to the underlying dispute can resolve the issue at hand, and may forestall future litigation. Money disputes can often be more complex than they first appear.
- A neutral may be helpful in facilitating negotiations by breaking through impasses that develop because of:
 - Conflicts within interest groups;
 - Technical complexity or uncertainty;
 - Political visibility;
 - Poor communication among the participants due to personalities or past history.

For example, a neutral can defuse tension with a citizens' group angry about a particular agency project by presenting negotiating proposals from all sides in an even-handed manner. If appropriate, a neutral or other joint expert might offer technical expertise on a given issue.

—Thorough exchange of information will improve the outcome. For example, a neutral can help to ensure that all issues are addressed, and that the heat of negotiating has not caused the parties to overlook an item that may be crucial to settlement implementation.

- Participation of parties not directly involved in a legal action is necessary or beneficial to the settlement. For example, numerous citizens' groups may be interested in a particular agency project; addressing the concerns only of the group that sued may be short-sighted, and invite future litigation from others.
- Number of parties and issues numerous, such that a facilitated, structured settlement process would be helpful, and no party is willing or able to take on his role. For example, CERCLA allocation disputes often involve multiple parties and issues, and a neutral who provides a structure for allocation can assist the parties in reaching a global settlement.

* * * * *

This document relates to the United States' voluntary participation in ADR. Nothing here shall be construed to limit the United States' duty to participate in ADR pursuant to court order or applicable local rules, except that Division attorneys shall resist participation in ADR, by appropriate motion, whenever such participation would violate the United States Constitution or other governing law.

This document shall not be construed to create any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers, or any other person. This document shall not be construed to create any right to judicial review involving the compliance or noncompliance of a Division attorney with its terms.

Executive Office for United States Attorneys' Policy Statement and Practice and Procedure Guide on the Use of Alternative Dispute Resolution

This Policy Statement and Practice and Procedure Guide ("Guide") is distributed to all United States Attorneys (USAs) nationwide pursuant to paragraph 7 of Department of Justice Order OBD 1160.1, dated April 6, 1995, and entitled, "Promoting the Broader Appropriate Use of Alternative Dispute Resolution Techniques." This Guide should be distributed immediately to all Assistant United States Attorneys (AUSAs) and Special Assistant United States Attorneys (SAUSAs) handling civil litigation in state or federal courts.

I. Introduction

The purpose of this Policy Statement and Practice and Procedure Guide is to encourage the use of Alternative Dispute Resolution (ADR) and to foster and develop alternatives to the traditional adversarial techniques used to resolve civil legal disputes involving the United States. Pursuant to the Department of Justice Order OBD 1160.1, the civil litigating components of the Department of Justice (DOJ) are expected to use ADR techniques in appropriate civil cases in an effort to resolve or avoid litigation. The USAs have the opportunity to take the lead in formulating and implementing ADR methods in order to promote less time consuming, more effective resolution of civil litigation.

The April 6, 1995 Order, requires each component of the Department of Justice, including the Executive Office for United States Attorneys (EOUSA) to:

(1) issue a policy statement concerning and promoting the use of ADR and to cooperate with court-annexed or court-sponsored ADR programs;

(2) create a set of criteria to be used in identifying specific cases appropriate for resolution through settlement negotiations or formal ADR techniques, identifying the most suitable methods of ADR for specific case categories and developing a criteria for selection of independent neutrals;

(3) implement a component-wide comprehensive basic training program in negotiation and ADR that shall be mandatory for all attorneys handling civil matters with periodic supplemental training;

(4) issue a complete explanation of the internal procedures attorneys should follow in obtaining authorization and funding for the use of formal ADR techniques;

(5) designate person(s) within the component who shall have primary responsibility for coordinating the component's ADR efforts so that a network of individuals with ADR expertise is established, and

(6) collect and maintain statistics regarding component use of ADR and report these statistics annually to the Associate Attorney General.

All attorneys within the litigating components of the DOJ, including AUSAs, who handle civil litigation, are urged to consider the appropriate use of ADR in each matter handled. Alternative Dispute Resolution should be used in conjunction and association with traditional settlement processes found within the litigation process.

Civil AUSAs will be responsible for reviewing their respective cases and matters to determine whether ADR is appropriate and what ADR process is most suitable for each case or matter in accordance with each district's approval procedures. Assistant United States Attorneys with primary case responsibility, with approval and oversight of the district's ADR Officer, will be responsible for analyzing the matter or case in light of the following guidelines.

It is important to the concept of Access to Justice that the courts provide for swift resolution of conflict for civil litigants. As the courts continue to be saturated with criminal matters and significant civil litigation, appropriate ADR will serve to reserve judicial time and court expense to the truly intractable issue.

II. General Civil Litigation Policy Statement

A. *Settlement Objectives.* The goal of USAs as participants in ADR and during other settlement discussions shall be as follows: In consultation with the client, to weigh the magnitude and likelihood of all costs, risks, and benefits associated with nonsettlement versus participation in ADR and to consider the best interests of the client and the government, and—through voluntary settlement and/or ADR, if possible and cost-efficient—to achieve the most favorable result reasonably obtainable under the circumstances on behalf of the client, consistent with applicable law and the highest standards of fairness, justice and equity.

B. Although the interest of the government in participating in ADR is compelling, this

Guide is intended neither to compel ADR nor any ADR technique in any particular case or category of cases, nor is it to compel pretrial settlement. Nothing in this Guide shall be construed to obligate the United States to offer funds to settle any case, to accept a particular settlement or resolution of a dispute, to alter its standards for accepting settlements, or to alter any existing delegation of settlement or litigating authority.

C. This Guide relates to the government's voluntary participation in ADR. Nothing herein shall be construed to limit the government's duty to participate in ADR pursuant to court order or applicable local rules, except that USAs shall resist participation in ADR, by appropriate motion, whenever said participation would violate the United States Constitution or other governing law.

D. The USAs are encouraged to recognize contributions made by AUSAs who handle matters in ADR by providing the same opportunities for promotion, awards and other professional recognition as those engaged in more traditional litigation.

E. This Guide shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers, or any other person. This Guide shall not be construed to create any right to judicial review involving the compliance or noncompliance of the USAs with its terms.

III. Purposes

The purposes of this Guide include the following:

A. To designate various categories of cases as generally "appropriate for ADR" according to cause of action and nature of disputed issues.

B. To designate various other categories of cases as generally "inappropriate for ADR."

C. With respect to those categories of cases designated as "appropriate for ADR," to suggest preferred ADR techniques, without limiting the discretion of the USA to employ other ADR techniques.

D. To identify, by way of example but not limitation, various circumstances under which the USA might wish to participate in ADR, notwithstanding that the particular case may fall outside a category designated as "appropriate for ADR" or may be designated as generally "inappropriate for ADR."

E. Generally to promote the broader appropriate use of ADR techniques by United States Attorneys through enhanced awareness, training, and recordkeeping, among other things.

IV. Definitions

The following definitions shall apply throughout this Guide¹

A. "Alternative Dispute Resolution" ("ADR") means any procedure, involving a "neutral," that is used in lieu of trial to

¹ Most of the definitions set forth herein have been excerpted, with minor adaptations, from National ADR Institute for Federal Judges, *Judge's Deskbook on Court ADR* (Harvard Law School, November 12–13, 1993).

resolve one or more issues in controversy, and includes, but is not limited to the following "ADR techniques":

1. "Arbitration" means a flexible adjudicatory dispute resolution process in which one or more arbitrators issue a nonbinding judgment on the merits after an expedited, adversarial hearing. The nonbinding decision of the arbitrator(s) addresses only the disputed legal issues and applies legal standards. Either party may reject the nonbinding ruling and request a trial *de novo*.

2. "Early neutral evaluation" means bringing all parties and their counsel together early in the pretrial phase of litigation to present summaries of their cases and receive a nonbinding assessment by an experienced, neutral evaluator with subject-matter expertise, usually an attorney, who may also provide case planning guidance and, if requested by the parties, settlement assistance.

3. A "judicial settlement conference" means a settlement conference before a judge or magistrate judge, who, upon hearing summaries of each party's case and applicable law, may articulate opinions about the merits of the case or otherwise facilitate the trading of settlement offers by mediatory or other techniques aimed at improving communication among the parties and eliminating barriers to settlement. Because the judicial settlement conference constitutes a more traditional litigation mechanism, judicial settlement conferences will not be reported as an ADR mechanism for statistical purposes.

4. "Mediation" means a flexible, nonbinding process in which a neutral third party, the mediator, facilitates negotiations among the parties to help them reach a settlement. In doing so, the mediator may expand traditional settlement discussion and broaden resolution options, often by going beyond the legal issues in controversy or incorporating nonparties in discussions.

5. "Minitrial" means a flexible, nonbinding hearing, generally reserved for complex cases, in which counsel for each party informally presents a shortened form of its case to settlement-authorized representatives of the parties in the presence of a presiding judge, magistrate judge, or other neutral, at the conclusion of which the representatives meet, with or without the judge or neutral, to negotiate a settlement. If settlement is not reached, the case then proceeds to trial.

6. "Neutral expert evaluation" means bringing all parties and their counsel together to present summaries of their cases to an experienced, neutral expert for the purpose of receiving a nonbinding assessment or otherwise resolving a "swearing contest" among competing experts.

7. "Summary bench trial" means, in any case not triable by a jury, a pretrial procedure intended to facilitate settlement consisting of a summarized presentation of a case to a judicial officer whose decision and subsequent factual and legal analysis serves as an aid to settlement negotiations.

8. "Summary jury trial" means a flexible nonbinding procedure, usually reserved for trial-ready cases in which protracted jury trials are anticipated, and involves a short

hearing in which evidence is presented by counsel in summary form to a jury. Following the evidentiary presentation, the jury returns an advisory verdict that forms the basis for settlement negotiations.

B. "Client" means the particular client represented by the USA in the case at issue and, depending on the circumstances, may include the United States of America or one or more of its agencies, officers or employees, or other individuals or entities for whom representation has been authorized.

C. "Government" means the United States of America and its agencies and officers.

D. "Nonbinding" means that the parties are not bound by any resolution unless they agree in advance to be bound. All of the ADR techniques described in this Guide produce nonbinding outcomes. (In contrast, the terms "mandatory" and "voluntary" describe how cases enter ADR. "Mandatory" means that the referral to ADR is court-ordered; "voluntary" means that the referral to ADR is by consent of the parties.)

E. "United States Attorney" includes any duly authorized designate of the USA.

V. General Case Analysis Criteria

In order to operate successfully, the chosen ADR technique must be specifically tailored to the particular dispute. Alternative Dispute Resolution is often appropriate in cases where litigation will produce an unsatisfactory result regardless of outcome or where litigation is too slow or cumbersome. Alternative Dispute Resolution also permits the parties to exercise more direct control over the dispute resolution remedy. ADR techniques have proven successful in many categories of cases where the cases are routine (not precedent setting), such as routine auto torts, slip and fall, and employment rights cases, or where confidential communication with a neutral third party will help to clarify issues. Alternative Dispute Resolution techniques also allow the parties to craft individualized, nontraditional remedies. The following are some general suggestions to consider when determining whether to undertake ADR in a give case.

Use of ADR should be seriously considered in matters involving contract performance or interpretation disputes, permit or licensing disputes, discrimination cases or any case in which the parties will have a continuing relationship regardless of outcome. ADR is also appropriate in many tort cases.

The use of an ADR technique should be considered, but is often inappropriate, in cases involving the need to set precedent or to clarify constitutional issues. In addition, ADR is rarely appropriate in cases where there are prescribed outcomes or statutory remedies are inflexible. For example, in Social Security cases, the agency has no real discretion to depart from the statutory mandates of the Social Security Act. Finally, in those cases in which it is clear that the parties are not ready to negotiate or are opposed to the use of any ADR process, ADR is inappropriate.

Alternative Dispute Resolution is not meant to replace traditional negotiation in every case. Rather, it may serve to provide attorneys with additional tools to facilitate

negotiation where traditional two-party negotiation has not produced an acceptable resolution or where the presence of a neutral may cause negotiations to proceed more efficiently.

The following, by way of example but not limitation, are factors to consider when determining whether to use ADR and when determining which ADR technique will be most suitable in a given case:

A. *General Considerations.* The following is a list of factors to consider and analyze when determining whether and when to use ADR in a given matter. These factors are neutral in the sense that whether they militate in favor of or against the use of ADR depends entirely upon the specific facts and circumstances of the case at issue.

1. The parties' purpose in filing the lawsuit demonstrates an agenda separate from the specific issues in the case.

2. Case procedural history, *i.e.*, what administrative proceedings have preceded filing in court.

3. Assessment of likely outcome including likelihood of appeal.

4. Where is the case in the discovery process? Has all of the information necessary to settle the case been discovered?

5. Where is the United States in terms of procuring settlement authority? Is more information necessary before authority can be obtained?

6. Who is in charge of the litigation, parties or counsel?

7. Are factual disputes significant?

8. Are legal disputes significant?

9. Are parties individuals, corporations or other governmental entities, and how does that affect their ability to participate in ADR process?

10. Witness credibility and its impact on the litigation.

11. Are there individuals or entities with interests in the outcome who are not parties to the case?

12. There has been prior extensive administrative process.

13. Position on the court docket.

14. Expenses of litigation versus expenses of ADR.

B. *Factors That Generally Favor ADR.* 1. If suit is one facet of a deeper dispute necessitating remedies unavailable to the court, for example, where the remedy available through the litigation may be different from the true agenda of the opposing party, ADR may be helpful to resolve the larger, underlying dispute by permitting the parties to fashion remedies not available to the court.

2. The relationship between the parties will continue beyond the resolution of the litigation. For example, in employment dispute cases where the plaintiff will continue to be employed by the agency, ADR may help to resolve the issues while minimizing damage to an employment relationship that will continue beyond the litigation.

3. There will be detrimental impact on parties, witnesses, and evidence because of crowded court dockets and projected trial dates.

4. Any of the parties has limited resources.

5. The relative resources of the parties are unequal.

6. Relative positions of multiple parties (while the entire case may not be resolved, with multiple parties, disputes may be narrowed for trial).

7. There is a need for confidentiality.

8. There is a large administrative record in cases involving APA review.

9. The client or other participants in the litigation may benefit from the input of an impartial third party.

C. Factors That Generally Disfavor ADR. 1. There is a need for precedential decision.

2. There is a need for resolution of public policy issues or constitutional issues.

3. There is a parallel criminal investigation or proceeding involving the parties or circumstances of the case.

4. There is a strong likelihood of swift resolution on jurisdictional or other legal issues.

5. The United States has reason to believe that the opponent is engaging in fraudulent or criminal behavior. For example, in an auto tort case there is reason to believe that the accident has been staged.

6. It is believed that settling the case would encourage future meritless litigation.

VI. Designation of Cases

A. The ADR techniques which may be appropriate for a case depend upon many specific factors peculiar to that case. The following categories of cases are generally "appropriate for ADR."

The ADR techniques to consider within the context of the given case include, but are not limited to, arbitration, early neutral evaluation, judicial settlement conference, mediation, mini-trial, neutral expert evaluation, summary bench trial, and summary jury trial.

1. Drivers, Motor Vehicle Accidents (TODR), Property Damage (TOPD), Personal Injury (TOPI), Medical Malpractice (TOMM) and Wrongful Death (TOWD).

2. Employment Discrimination (ED) and Civil Rights Fair Housing (CRTH), Veteran's Reemployment Rights Act (LBVR).

3. Employment Rights of Government Employees (ER), Back Pay (ERBP), Adverse Action (ERAA) and Grievance (ERGR).

4. Land/Real Property Condemnation (LDCN) (only where United States is plaintiff).

5. Commercial Litigation Adversarial Proceeding (COAD), other claims related to federal assistance programs (COOC) and Recovery of overpayments made by the government (CORO).

6. Recovery of Health Education Assistance Loans (COHE), Recovery of National Health Services Corps Scholarships (COHS) and Civil Penalty (CV).

7. Fraud (FR), Anti-Kickback (FRAK), Government Commercial Programs (FRCM), False Claims (FRFC), Health Care Fraud (FRHC), Education (FRED), Environmental (FREVE), Medicaid/Medicare (FRME), Medicare Only (FRMO) and Qui Tam suits (FRQT). In Qui Tam suits, there must be careful analysis of the relator's position on ADR.

B. The following categories of cases are generally "inappropriate for ADR":

1. Notwithstanding that a particular category may be enumerated in Part VI-A

above, any case in which there is a dispositive motion by the United States Attorney, to which opposition would be frivolous or insubstantial in the considered opinion of the USA.

2. Government agents sued in their individual capacity, e.g., *Bivens* (TOBI) and other non-government individuals (e.g., witnesses and jurors) sued in their individual capacities (TOOI). (In *Bivens* cases, careful consideration should be given to the fact that the individual defendant is the client rather than the government.)

3. Any case in which the adverse party appears *pro se*.

4. Preliminary injunctions/TRO's (IJ) (where United States or its agency is a defendant).

5. Foreclosure/Liens (COMC).

6. Constitutionality of Statute (CN).

7. Social Security cases (SS) and all related causes of action as presently structured.

8. Any case in which the United States Attorney has determined that a precedent setting decision is required on a significant issue in the case.

9. Freedom of Information Act (FO).

10. Privacy Act (PV).

11. Immigration (IM).

12. Prisoner Cases (PC), Post Conviction §2255 (PCST), Habeas Proceedings (PCHC).

13. Asset Forfeiture (COFF).

C. With the client's consent and input, the United States Attorney should consider voluntary participation in ADR in cases specifically designated as generally "inappropriate for ADR," including those designated in Part VI-B above, under the following circumstances:

1. The United States Attorney believes that the enhanced communication available through ADR will increase the likelihood of settlement or the scope of settlement options under construction.

2. The United States Attorney foresees a substantial probability that, even in the absence of complete settlement, ADR will result either in a stipulation narrowing the scope of disputed issues or a more focused, mutual effort of the parties to tailor further discovery to material issues that are genuinely disputed.

D. This Guide reflects recommendations formulated within the context of practice in United States Attorneys' Offices and may vary from guidance provided by other DOJ litigating components because of different underlying policy considerations.

VII. Specific Guidance for Cases Designated As Generally "Appropriate for ADR"

With respect to those categories of cases designated as "appropriate for ADR" in Part VI-A above and not otherwise excluded by Part VI-B, it is recommended that USAs pursue the following course:

A. With the client's consent and input, engage in genuine settlement discussions with opposing counsel at an early practicable opportunity and at reasonable times thereafter for the purpose of settling the case even without the necessity of ADR, if possible and appropriate under the circumstances.

B. Notify the court in writing, either in such case management reports or pretrial

statements as may be filed under Fed. R. Civ. P. 16 or under applicable local rules or otherwise, of:

1. The client's willingness, if any, to participate in ADR;

2. The client's preferred ADR technique, and

3. The preferred timing of ADR under the circumstances of the case (e.g., before, during or after discovery, before or after ruling on dispositive motion(s)).

C. Participate in ADR if ordered by the court or, with the client's consent, voluntarily, with such notice to the court of the employment of ADR as the circumstances may suggest.

VIII. Specific Guidance for Cases Designated As Generally "Inappropriate for ADR"

With respect to those categories of cases designated as "inappropriate for ADR" in Part VI-B above, it is recommended that USA's:

A. With the client's consent and input, engage in genuine settlement discussions with opposing counsel at an early practicable opportunity and at reasonable times thereafter for the purpose of settling the case, if possible and appropriate under the circumstances;

B. Participate in ADR if ordered by the court;

C. Participate in ADR voluntarily with the consent of the client at the discretion of the USA, if circumstances, including but not limited to those set forth at Part VI-C above, suggest that ADR may enhance the opportunity for a cost-efficient resolution of the case.

IX. Training Program

A. *Current Training:* The Office of Legal Education (OLE), EOUSA, has played a leading role in ADR and negotiations training. An ADR Seminar, where ADR is the exclusive subject, is offered twice a year by the Legal Education Institute (LEI) (whose primary target is agency counsel) and twice a year in the Attorney General's Advocacy Institute (AGAI) (whose primary target is AUSAs and Department of Justice Trial Attorneys). In addition, ADR is taught as part of several LEI and AGAI courses including: the Negotiations Skills Course, offered three times a year; the Federal Administrative Process Course, offered two to three times a year; the Civil Chiefs Seminar, offered for Supervisory Assistant U.S. Attorneys each year; the Affirmative Civil Enforcement Course, offered twice each year; the Advanced Civil Trial Course, offered at least once each year; and the Civil Practice Seminar, offered three times a year.

The Office of Legal Education also has an extensive video and audiotape lending library which includes several selections on ADR issues. The Office of Legal Education continually updates this library and makes it available to all USAOs offices and DOJ litigating divisions.

B. *Future Training:* The Office of Legal Education will develop future training within existing budgetary constraints in consultation with the USAOs, the AGAC Working Group on ADR and the Senior Counsel for ADR.

X. Internal Procedures for Authorization and Funding

A. ADR Officer: The USA shall designate one AUSA as the ADR Officer who shall oversee, implement and monitor the ADR activity within the district's civil litigation. It is suggested that the Civil Chief of the district be designated the ADR Officer.

The ADR Officer will be responsible for coordinating ADR activity within the district. Specific responsibilities of ADR Officers include:

1. Ensuring that each AUSA with civil litigation responsibility receives comprehensive basic training in negotiation and ADR with periodic supplemental training.
2. Coordinating the district's collection and reporting of statistics consistent with the provisions of section XIII of this Guide.

B. ADR Reporting Responsibilities: Each district will be responsible for making an annual report to EOUSA showing the frequency and type of ADR techniques utilized within the year and whether ADR was instrumental in resolving the litigation prior to trial.

C. Withdrawal From ADR Activity: The United States retains the right to object and withdraw from any ADR activity where the USA or his designate has made a determination that the selected neutral should be disqualified under conditions analogous to those found within 28 U.S.C. § 455. It is recommended that the USA or his designate should promptly communicate this objection and withdrawal to the Clerk of Court and should strive to identify an alternative neutral acceptable to the court and all parties prior to objection and withdrawal.

XI. Selection Criteria for Appointment of Neutrals

A. Selection Criteria for Neutrals: Factors to be considered when selecting a neutral include, but are not limited to:

1. Whether the neutral is an attorney;
2. What other training or expertise the neutral possesses;
3. Experience in the technical area of the dispute;
4. Experience in ADR processes;
5. Experience in government litigation;
6. Experience in multiparty litigation;
7. Whether the neutral knows counsel and the nature and context of that knowledge; and,
8. Cost associated with hiring neutral.

B. Selection and Certification: Any person qualified as a neutral by a federal judicial officer or pursuant to the rules promulgated by the highest court of a state, its legislative bodies or other government sanctioned ADR unit and who is not disqualified or disqualifiable under conditions analogous to those found within 28 U.S.C. § 455 may act as a neutral in a case or matter involving the United States.

XII. Payment of Fees and Expenses Associated With ADR

A. Neutrals: Neutrals shall be paid for through the neutrals fund established through JMD and in the manner prescribed by EOUSA.

B. Expert witnesses: Shall be paid in the same manner as expert witnesses in any civil litigation within the USAO.

C. Fact witnesses: Shall be paid in the same manner as fact witnesses in any civil litigation in the USAO.

Other fees and expenses: Fees and expenses associated with ADR proceedings, other than fees for neutrals, shall be paid from the litigation expense budget of the USAO.

XIII. Designation of ADR Coordinators

The following are designated as ADR coordinators for the USAOs and EOUSA:

1. William D. Wilmoth, United States Attorney for the Northern District of West Virginia, 304-234-0100
2. Jeanette Plante, Special Assistant United States Attorney, Executive Office for U.S. Attorneys, 202-616-6444

XIV. Statistics

The Executive Office will collect statistics on the use of ADR in the Districts. The statistical collection plan will be developed in consultation with the USAOs and the Senior Counsel for ADR and will be as minimally burdensome as possible.

XV. Miscellaneous

USAO Employees Serving As Neutrals: USAO employees, with the written approval of the United States Attorney, may render services as a "neutral" on a case by case basis when it has been determined that the United States has no known or future interest in the litigation and the USAO employee "neutral" is not disqualified under conditions analogous to those found within 28 U.S.C. § 455. The USAO employees who render services as a "neutral" may not receive reimbursement for said services, except for travel and *per diem*.

Tax Division—Policy for Tax Litigation

Introduction

On April 6, 1996, the Attorney General signed an order promoting broader use of Alternative Dispute Resolution as a toll for resolving disputes between the government and its citizens in as prompt, efficient, and inexpensive a manner as possible. Alternative Dispute Resolution ("ADR") is any non-binding dispute resolution process facilitated by a third-party neutral. ADR methods include, but are not limited to, arbitration, mediation, early neutral evaluation, neutral expert evaluation, mini-trials, and summary jury trials. ADR may be conducted pursuant to the agreement of the litigants, or it may be court-mandated.

Policy

The Tax Division always has had, and continues to have, a policy of settling cases, where appropriate, as early in the litigation as reasonably possible. I believe that the use of ADR will further this Division policy. Therefore, Tax Division attorneys are expected to use ADR in appropriate cases and to cooperate with and support court-annexed or court-sponsored ADR programs.

Tax Division lawyers should consider the use of ADR in all civil cases within the Division in a manner consistent with our

enforcement objectives and the need for consistent treatment of similarly situated taxpayers. In cases where the attorney assigned to the case, in consultation with his or her reviewer, believes that ADR may be appropriate, he or she should consider using an independent third-party neutral through a court-sponsored program, from another government agency, or from outside of the government. Where court-sponsored and/or court-annexed ADR programs are available, Division attorneys are expected to utilize and participate fully in such programs in all appropriate cases.

The Tax Division has a strong record of resolving disputes through settlements achieved through traditional negotiation between counsel. I expect that all attorneys in the Division will continue to use their negotiation skills to settle cases where settlement is appropriate. ADR is not a substitute for traditional negotiation, but rather provides attorneys with additional tools to facilitate settlement of cases on an appropriate basis at the earliest state at which such a settlement reasonably can be reached. Knowing how and when to settle a case is as important as knowing how to try a case. ADR processes can be important tools in the prompt and fair resolution of tax disputes and the skilled use of negotiation and ADR processes is part of the responsibility of every attorney in the Division. To facilitate the greater use of ADR, as well as to improve attorneys' negotiating skills in general, all Division attorneys will be required to participate in comprehensive and continuing training in both negotiation and ADR.

It is the policy of the Tax Division, in making promotions and giving awards and other professional recognition, to recognize the outstanding contributions of trial attorneys in skillfully negotiating settlements as well as in trying cases. Thus, skillful use of ADR will likewise be considered in evaluating attorneys and recognizing their contributions to the Division.

Attached is a set of case selection criteria to be used by the Civil Trial Sections, Court of Federal Claims Section, Appellate Section, and Office of Review in evaluating whether and when ADR is appropriate in a particular case.

Tax Division—Alternative Dispute Resolution

Case Selection Criteria

Alternate Dispute Resolution ("ADR"), as used here, is any non-binding dispute resolution process facilitated by a third-party neutral, whether or not appointed by a court. The Tax Division presently resolves a large number of its cases through settlements negotiated through traditional two-party negotiation and believes that it will continue to do so. ADR is not meant to replace traditional negotiation, but rather to provide attorneys with additional tools that may facilitate negotiation of settlement where traditional two-party negotiation has not produced an acceptable resolution or where the presence of a third party may cause negotiations to proceed more quickly or efficiently.

One of the advantages of ADR is that it gives the parties to a dispute the flexibility

to fashion their own procedures for resolving the dispute. There are almost as many kinds of ADR as there are parties and disputes. Thus, in evaluating whether ADR processes may be useful, there are no hard and fast rules. Attorneys should begin considering whether ADR might be helpful in a particular case at the beginning of the litigation and should continue to revisit the question throughout the progress of the case. Such analysis must take account of the ADR processes that may be available through or imposed by the court in a particular district or circuit.¹ Attorneys also should keep in mind that many different kinds of ADR are available both through the courts and independent of the courts. Some forms of ADR may be more useful than others at particular points in the litigation. For example, early neutral evaluation, a process whereby a third-party neutral evaluates each side's case and helps the parties agree on the most efficient method of exchanging factual material, is most appropriate at the beginning of litigation and can be a useful tool in quickly obtaining a better understanding of the strengths and weaknesses of your case. By contrast, mediation, a process where a third party facilitates negotiation between the parties, may be most useful after the case has been more fully developed.

This statement on ADR relates to the government's voluntary participation in ADR. Nothing herein shall be construed to limit the government's duty to participate in ADR pursuant to court order or applicable local rules, except that Tax Division attorneys shall resist participation in ADR, by appropriate motion, whenever said participation would violate the U.S. Constitution or other governing law or would not be in the best interest of the United States.

This statement shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers, or any other person. This statement shall not be construed to create any right to judicial review involving the compliance or noncompliance of Tax Division attorneys with its terms.

The following is a list of factors to assist attorneys in the Tax Division in determining whether to use ADR in a particular case.² Not all listed factors will have relevance in any given case and factors not listed below may also be present that weigh in favor of or against the use of an ADR process.

Factors Favoring ADR

1. The case involves largely factual issues and the legal principles are well established (e.g., valuation cases, substantiation cases, trust fund recovery cases).

¹ The taxpayer should be required to provide a waiver of 26 U.S.C. 6103 as a condition of the government's agreement to participate in ADR other than ADR imposed by the Court. In the absence of such a waiver, the government might not be able to make a full factual disclosure to the third-party neutral which would substantially undermine the utility of the ADR process.

² Many of these factors are equally applicable in determining whether a case should be settled using traditional, unassisted negotiations.

2. The case is legally and/or factually complex.

3. The case involves multiple independent factual issues (e.g., bankruptcy cases).

4. The case is one where there is a particular need for a prompt resolution of the dispute (e.g., summons, estate tax and bankruptcy cases).

5. The case is one where a consensual resolution may lead to greater future compliance (e.g., employee-independent contractor cases).

6. A settlement in the case would be based solely on collectibility.

7. The other party has a particular need to keep information confidential (e.g., financial information or trade secrets).

8. There are problems perceived either with respect to the decisionmaker or the forum, for example:

a. The judge is particularly slow in resolving cases;

b. The docket is backlogged with criminal and/or civil cases;

c. There is the potential for jury nullification.

9. The case is one where the Government will be required to litigate in a forum other than a federal court.

10. The case is one where the nature or status of a party to the dispute might, in itself, influence the outcome of the litigation (e.g., sympathetic plaintiff).

11. The case is one where there are substantial litigating hazards for both parties.

12. The case is one where trial preparation will be difficult, costly and/or lengthy and the expected out-of-pocket and lost opportunity costs outweigh any benefit the government can realistically expect to obtain through litigation.

13. The case is one where it is desirable to avoid adverse precedent.

14. The case is one where either the party or the attorney may have an unrealistic view of the merits of the case or an unreasonable desire to litigate, with insufficient regard for what may be in the client's best interest.

15. The case is one where the other party has expressed an interest in using ADR.

16. The case is one where the working relationship between the parties or their counsel suggests that the intervention of a neutral third party would be beneficial.

17. The case is one where traditional negotiations will be difficult and protracted.

18. The case is one where the progress of settlement discussions may be improved by a third-party neutral's ability to conduct frank, private discussions with each of the parties.

Factors Disfavoring ADR

1. Taxpayer's case clearly has no merit (e.g., certain *Bivens* cases or protestor suits).

2. The case is one that should be resolved on motion, such as a motion to dismiss or for summary judgment.

3. The case presents an issue where legal precedent is needed, for example:

a. Issue involved is of national or industry-wide significance;

b. Issue is presented in a substantial number of cases;

c. Issue is a continuing one with same taxpayer.

4. The importance of the issue involved in the case makes continued litigation necessary despite some adverse precedent.

5. The information presently available about the case is insufficient to evaluate meaningfully the issues involved or settlement potential.

6. The case involves significant enforcement issues, for example:

a. Case involves protestors;

b. Case is high profile and will involve publicity which could encourage taxpayer compliance;

c. Case involves a uniform settlement position (e.g., shelter cases).

7. The case involves a constitutional challenge.

8. The case is one where government concession is under consideration.

9. The case is one which is very likely to settle through traditional negotiations within a reasonable time after the facts have been ascertained, without a third-party neutral.

10. The case is one where Court imposed scheduling makes use of ADR impractical (e.g., "rocket-dockets").

11. The case is one where the other party has already engaged in ADR at the agency level.³

12. The case involves 26 U.S.C. Section 6103 information or privileges which would prevent open discussions with a third-party neutral (e.g., case involving request for third-party tax return information).

[FR Doc. 96-17744 Filed 7-12-96; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 28, 1996, Applied Science Labs, Division of Altech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

³ For purposes of this factor, normal agency administrative procedures, such as appellate conferences or administrative claims review, are not considered to be ADR procedures.

	Schedule
Drug:	
Heroin (9200)	I.
Morphine (9300)	II.

The firm plans to import the listed controlled substances in small quantities for the manufacture of reference standards.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: June 27, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96-17831 Filed 7-12-96; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

[Docket 72-8 (50-317/318)]

Notice of Transfer of Authority to Receive, Possess, Store and Transfer Spent Fuel at the Calvert Cliffs Independent Spent Fuel Storage Installation From Baltimore Gas and Electric Company to Constellation Energy Corporation

Notice is hereby given that the U. S. Nuclear Regulatory Commission (Commission) is considering approval under Title 10 of the Code of Federal Regulations (10 CFR), Section 72.50, of the transfer of the license to receive, possess, store and transfer spent fuel at the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI), from Baltimore Gas and Electric Company (BG&E) to Constellation Energy Corporation (CEC). By application dated April 5, 1996, BG&E requested consent to the transfer, pursuant to 10 CFR 72.50, of the Materials License SNM-2505 for the Calvert Cliffs ISFSI. The approval of the proposed license transfer is requested in connection with the pending merger between BG&E and Potomac Electric Power Company into Constellation Energy Corporation. The proposed license transfer would transfer authority to receive, possess, store, and transfer spent fuel at the Calvert Cliffs ISFSI from BG&E to CEC.

Pursuant to 10 CFR 72.50, the Commission may approve the transfer of a license, after notice to interested persons, upon the Commission's determination that the holder of the license following the transfer is qualified to be a holder of the license and the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission. BG&E submitted the April 5, 1996, application to amend the license to reflect the transfer of the license from BG&E to CEC.

For further details with respect to this action, see the April 5, 1996, letter, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 5th day of July, 1996.

For the Nuclear Regulatory Commission,
William D. Travers,
Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96-17940 Filed 7-12-96; 8:45 am]

BILLING CODE 7590-01-P

[Docket Nos. 50-321 and 50-366]

Georgia Power Company, et al.; Edwin I. Hatch Nuclear Plant, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DPR-57 and NPF-5, issued to Georgia Power Company, et al. (the licensee), for operation of the Edwin I. Hatch (Hatch) Nuclear Plants, Units 1 and 2, located in Appling County, Georgia.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 70.24, which requires, in each area in which special nuclear material is handled, used, or stored, a monitoring system that will energize clearly audible alarms if accidental criticality occurs. The proposed action would also exempt the licensee from the requirements of 10 CFR 70.24(a)(3) to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm and to conduct drills and designate responsible individuals for such emergency procedures.

The proposed action is in accordance with the licensee's application for exemption dated June 4, 1996.

The Need for the Proposed Action

Power reactor license applications are evaluated for the safe handling, use, and storage of special nuclear materials. The proposed exemption from criticality accident requirements is based on the original design for radiation monitoring at Hatch. Exemptions from the requirements of 10 CFR 70.24(a) "Criticality Accident Requirements" were granted in the Special Nuclear Material (SNM) licenses for each unit as part of the 10 CFR Part 70 license. However, with the issuance of the Part 50 license this exemption expired because it was inadvertently omitted in that license. Therefore, the exemption is needed to clearly define the design of the plant as evaluated and approved for licensing.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes that there is no significant

environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the Hatch Technical Specifications, the geometric spacing of fuel assemblies in the new fuel storage facility and spent fuel storage pool, and administrative controls imposed on fuel handling procedures.

Inadvertent or accidental criticality of SNM while in use in the reactor vessel is precluded through compliance with the Hatch Technical Specifications, including reactivity requirements (e.g., shutdown margins, limits on control rod movement), instrumentation requirements (e.g., reactor power and radiation monitors), and controls on refueling operations (e.g., control rod interlocks and source range monitor requirements). In addition, the operators' continuous attention directed toward instruments monitoring behavior of the nuclear fuel in the reactor assures that the facility is operated in such a manner as to preclude inadvertent criticality. Finally, since access to the fuel in the reactor vessel is not physically possible while in use and is procedurally controlled during refueling, there are no concerns associated with loss or diversion of the fuel.

SNM as a nuclear fuel is stored in one of two locations—the spent fuel pool or the new fuel vault. The spent fuel pool is used to store irradiated fuel under water after its removal from the reactor. The pool is designed to store fuel in a geometric array that precludes criticality. In addition, existing Technical Specification limits on k_{eff} are maintained less than or equal to 0.95, even in the event of a fuel handling accident.

The new fuel vault is used to receive and store new fuel in a dry condition upon arrival on site and prior to loading in the reactor. The new fuel vault is designed to store new fuel in a geometric array that precludes criticality. In addition, existing safety evaluations demonstrate that an effective multiplication factor is maintained less than or equal to 0.95 when the new fuel racks are fully loaded and dry or flooded with unborated water, or in the event of a fuel handling accident.

New fuel is shipped in a plastic wrap. When the fuel is removed from its transportation cask, the wrap is removed and the fuel is placed in the fuel inspection stand. Following inspection, the new fuel can either be placed in the new fuel storage vault or in the spent fuel pool (typically placed in the spent fuel pool). In no case is the plastic wrap reinserted on the fuel.

Removal of the wrap requires it to be slit down the length of the new fuel assembly, thereby making its reuse highly unlikely. Therefore, there is no concern that the plastic wrap used as part of the new fuel package will be capable of holding water from flooding from overhead sources. Additionally, as discussed above, the new fuel storage racks were analyzed for a postulated flooded condition, and the results show that k_{eff} is maintained less than or equal to 0.95.

Both irradiated and unirradiated fuel is moved to and from the reactor vessel and the spent fuel pool to accommodate refueling operations. Also, unirradiated fuel can be moved to and from the new fuel vault. In addition, fuel movements into the facility and within the reactor vessel and the spent fuel pool occur. In all cases, fuel movements are procedurally controlled and designed to preclude conditions involving criticality concerns. Moreover, previous accident analyses demonstrate that a fuel handling accident (i.e., a dropped fuel element) will not create conditions that exceed design specifications. In addition, the Technical Specifications and Technical Requirements Manuals specifically address refueling operations and limit the handling of fuel to ensure against an accidental criticality and preclude certain movements over the spent fuel pool and the reactor vessel.

In summary, exemptions from the requirements of 10 CFR Part 70, Section 70.24 approved by the NRC in connection with the SNM licenses for Hatch Units 1 and 2 were based upon NRC's finding that the inherent features associated with the storage and inspection of unirradiated fuel established good cause for granting the exemption and that granting such an exemption at this time will not endanger public life or property or the common defense and security and is otherwise in the public interest. The training provided to all personnel involved in fuel handling operations, the administrative controls, the Technical Specifications requirements, and the design of the fuel storage racks preclude inadvertent or accidental criticality. Since the facilities, storage, and inspection and procedures currently in place are consistent with those in place at the time the exemptions were granted in connection with the SNM licenses, an exemption from 10 CFR 70.24 is appropriate.

The proposed exemption will not affect radiological plant effluents nor cause any significant occupational exposures. Only a small amount, if any, of radioactive waste is generated during the receipt and handling of new fuel

(e.g., smear papers or contaminated packaging material). The amount of waste would not be changed by the exemption.

With regard to potential nonradiological impacts, the proposed exemption involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative would be to deny the requested exemption. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to an operating license for the Edwin I. Hatch Nuclear Plant, Unit 1, and of a construction permit for Unit 2, dated October 1972, and the Final Environmental Statement related to the operation of Edwin I. Hatch Nuclear Plant, Unit 2, dated March 1978.

Agencies and Persons Consulted

In accordance with its stated policy, on June 24, 1996, the staff consulted with the Georgia State official, Mr. James L. Setser, of the Georgia Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 4, 1996, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the

Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Rockville, Maryland, this 9th day of July 1996.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Senior Project Manager, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96-17939 Filed 7-12-96; 8:45 am]

BILLING CODE 7590-01-P

Correction to Director's Decision Under 10 CFR 2.206

On June 17, 1996 (61 FR 30643), notice of issuance of Director's Decision DD-96-06 under 10 CFR 2.206 was published, concerning Indian Point Nuclear Generating Units 2 and 3. However, reference to one of the licensees, the Power Authority of the State of New York, was inadvertently omitted from the heading on page 30643.

Dated at Rockville, Maryland, this 8th day of July 1996.

For the Nuclear Regulatory Commission.
William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96-17937 Filed 7-12-96; 8:45 am]

BILLING CODE 7590-01-P

[Docket No. 50-335]

Florida Power and Light Company, St. Lucie Plant, Units No. 1 and 2; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter dated June 12, 1996, Thomas J. Saporito, Jr., for himself and on behalf of the National Litigation Consultants (Petitioners) requested that the Nuclear Regulatory Commission (Commission) take action with regard to operations at the Florida Power and Light Company's (licensee's) St. Lucie Plant, Units No. 1 and 2 pursuant to 10 CFR 2.206.

The Petitioners request that the Commission (1) issue a confirmatory order requiring that the licensee not operate St. Lucie Plant, Unit No. 1, above 50 percent of its power level capacity, (2) require the licensee to specifically identify the "root cause" for the premature failure of the steam generator tubing, and (3) require the licensee to specifically state what corrective measures will be implemented to prevent recurrence of steam generator tube failures in all the steam generators in Unit 1 and Unit 2.

As basis for the requests, the Petitioners assert that (1) the licensee's

Unit 1 steam generator tubes have degraded to the extent that more than 2,500 of the tubes have been plugged, (2) the licensee has not identified the root cause for the premature failure of the steam generator tubing, (3) the licensee will most likely experience similar tube ruptures on other steam generators at the station, and (4) the licensee's "FSAR's [Final Safety Analysis Reports] and the NRC's CFR's [Code of Federal Regulations] require that the integrity of the primary systems on Unit 1 and Unit 2 not be breached."

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The Petition has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, and at the local public document room located at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida.

Dated at Rockville, Maryland, this 8th day of July 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96-17941 Filed 7-12-96; 8:45 am]

BILLING CODE 7590-01-P

[Docket No. 040-08724]

Issuance of Director's Decision Under 10 CFR 2.206

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Issuance of Director's Decision Under 10 CFR 2.206.

I. Introduction

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has issued a decision concerning a Petition dated January 6, 1989, submitted by Dr. Klaus R. Romer, on behalf of McGean-Rohco, Inc.

By letter dated January 6, 1989, Dr. Klaus R. Romer, on behalf of McGean-Rohco, Inc. (Petitioner or McGean), requested that the U.S. Nuclear Regulatory Commission (NRC) take action pursuant to 10 CFR 2.206 with respect to Chemetron Corporation (Chemetron), an NRC licensee. McGean requested that NRC exercise its enforcement powers to compel

Chemetron, at the time a subsidiary of Allegheny International, Inc. (Allegheny), to immediately commence decontamination of its facilities at 2910 Harvard Avenue, Cuyahoga Heights, Ohio, (the Harvard Avenue site) under the terms agreed to by Allegheny in its Confirmation of Commitment dated November 14, 1988. The Petitioner also requested the NRC to impose sanctions upon Chemetron for its failure to carry out the decontamination of the Harvard Avenue site. McGean alleged the following bases for its requests:

(1) On November 14, 1988, Chemetron committed to begin decontamination of the Harvard Avenue site immediately and complete the job by March 17, 1989;

(2) The NRC had stated that the March completion deadline would be relaxed only if Chemetron made a compelling showing of diligent efforts to clean up the site and good cause;

(3) Chemetron's letter to the NRC of December 12, 1988, which requests an extension of the deadline for good cause, fails to make a compelling showing of good cause; and

(4) Chemetron has not made a good faith effort to decontaminate the site.

On March 22, 1989, the Director of the Office of Nuclear Material Safety and Safeguards, formally acknowledged receipt of the Petition and informed Petitioner that its request was being treated pursuant to 10 CFR 2.206 of the NRC's regulations. A notice of the receipt of the Petition was published in the Federal Register notice on March 28, 1989 (54 FR 12698). In the March 22, 1989, letter, the Director denied the Petitioner's request for immediate relief because NRC considered that Chemetron's actions demonstrated minimally sufficient progress towards decontamination. However, the Director deferred a decision on the remainder of the Petition.

II. Background

In 1965, pursuant to 10 CFR Part 40, the Atomic Energy Commission issued Source Material License No. SUB-852 to Chemetron, which through its McGean Unit of the Inorganic Chemical Division, manufactured catalysts containing depleted uranium. These operations were carried out between 1965 and 1972 in facilities located at the Harvard Avenue site. By February 1972, manufacture of the catalysts had been terminated, and in December 1973, the License was amended to authorize storage only for the remaining depleted uranium. No activities involving source material, other than decontamination, have been conducted at the site since the termination of the catalyst production by Chemetron in 1972.

In 1975, the McGean Chemical Company, Inc., the predecessor to McGean-Rohco, Inc., purchased the Harvard Avenue site. The Chemetron Corporation, however, retained the License and responsibility for the depleted uranium remaining at the facility. In late 1977, the Licensee was acquired by Allegheny-Ludlum Industries. In 1979, the Licensee obtained a new NRC License, No. SUB-1357, to authorize the possession of depleted uranium contamination at the Harvard Avenue site and its remediation. License SUB-1357 superseded SUB-852. The License was last renewed, pursuant to 10 CFR 40.42(a), on January 10, 1990, and is continuing in effect.

Remediation activities at the Harvard Avenue site under License SUB-1357 began in 1979, with the expectation that the project would be completed in about six months. However, those activities were not completed within the term of the License. The NRC renewed the License five times between 1979 and 1984. As renewed on July 18, 1984, the Licensee included a condition requiring, within one year, the completion of decontamination, a final radiological survey, and a request for license termination. But again, these activities were not completed within the required timeframe.

From 1985 through 1989, the NRC continued to take actions intended to lead to decontamination of the Harvard Avenue site. These actions included (1) amending the License on October 1, 1987, to require completion of decontamination by October 1, 1988; (2) issuing a Demand for Information on June 13, 1988; and (3) requesting a Confirmation of Commitment to complete the Harvard Avenue decontamination by March 17, 1989. While Chemetron performed some survey and decontamination work during this time, Chemetron did not then complete decontamination of the Harvard Avenue site. Chemetron's parent, Allegheny International, entered bankruptcy on February 20, 1988, and Chemetron then stopped spending money for decontamination until the Bankruptcy Court authorized such expenditures on March 9, 1989. This was one of several factors Chemetron claimed prevented completion of decontamination according to the required schedules. Some of Chemetron's claimed reasons for failing to meet the schedules had merit, but some did not.

Shortly after the Bankruptcy Court's authorization, Chemetron resumed decontamination activities at the Harvard Avenue site. Chemetron soon

discovered, however, that it had significantly underestimated the amount of contamination at the site due to an inadequate characterization of that contamination. From 1989 to 1992, including Allegheny's emergence from bankruptcy in 1990 (Allegheny was reorganized as Sunbeam/Oster Company, Inc. (Sunbeam)), the NRC sought Chemetron's commitment to characterize and remediate the Harvard Avenue site. To that end, concurrent with the NRC's approval of a transfer of control over the License to Sunbeam through the reorganization, the NRC sought Chemetron's commitment to complete a revised remediation plan for the Harvard Avenue site, based on adequate site characterization. On August 31, 1990, Chemetron proposed to complete a revised remediation plan by March 1, 1991, and the NRC approved this schedule and the transfer of control of the License on September 11, 1990.

Chemetron, however, again failed to meet its schedule, and failed to meet subsequent revised schedules showing completion of site characterization by March 1, 1991, and completion of a revised remediation plan by August 16, 1991. While some characterization data had been obtained, the site characterization report submitted on July 28, 1991, was inadequate, and, consequently, Chemetron's August 16, 1991, remediation plan was also inadequate. Accordingly, the NRC sought to compel Chemetron to characterize the site. As a result, on May 5, 1992, the NRC and Chemetron entered into a Consent Order that established June 15, 1992, as the submittal date for the Final Site Characterization Report for the Harvard Avenue site. Chemetron met this date, and on January 8, 1993, the NRC approved the Final Site Characterization Report as an acceptable basis for developing a remediation plan.

After NRC acceptance of the Final Site Characterization Report, Chemetron, by License Condition, established October 1, 1993, as the submittal date for the remediation plan. Chemetron submitted a remediation plan on this date that was incomplete. Accordingly, the NRC issued a Confirmatory Order to Chemetron on October 26, 1993, which required, *inter alia*, that all required portions of the remediation plan be submitted by November 15, 1993. Chemetron complied with this order.

On February 28, 1995, Chemetron submitted Revision 1 to its site remediation plan, which incorporated modifications as requested by the NRC. On June 7, 1996, the NRC approved Chemetron's revised remediation plan

for the Harvard Avenue site and amended the License to authorize remediation of the site in accordance with the plan.

III. Discussion

Since the Petition was submitted to NRC, NRC staff and inspectors have made numerous site visits and inspections of the Harvard Avenue site. The inspections included routine safety inspections, which involved observing the status of site physical security provisions, verifying compliance with 10 CFR Part 20 radiation protection requirements, and observing the condition of tarpaulins securing soil piles. In April 1992, NRC inspectors installed air sampling devices and thermoluminescent detectors to measure radioactivity levels at the Harvard Avenue site and verify Chemetron measurements. These monitoring efforts were discontinued in 1993 because the results indicated radioactivity was at background levels consistent with the continuing Chemetron monitoring results. The NRC inspections, site visits, and monitoring have ensured that public health and safety have been adequately protected.

As set forth above, Chemetron made progress (except for some time while in bankruptcy) towards remediating the Harvard Avenue site, but this progress was very slow. One major impediment to remediating the site was the lack of an adequate site characterization. The NRC's frustration with the slow progress towards adequate characterization of the site resulted in the NRC's entering into the Consent Order of May 5, 1992, which compelled Chemetron to submit an adequate Final Site Characterization Report on June 15, 1992. The characterization report was acceptable because it provided information on: (1) depleted uranium concentration levels not only on the surface, but also at depth; (2) depleted uranium concentration levels in soil piles; and (3) groundwater monitoring results. The NRC then required Chemetron, through a license condition, to submit a remediation plan for the Harvard Avenue site by October 1, 1993.

As described above, Chemetron did not meet its schedule for submitting an adequate remediation plan for the Harvard Avenue site, which resulted in the NRC issuing the Confirmatory Order of October 26, 1993. The Confirmatory Order led to the NRC's June 7, 1996, approval of Chemetron's site remediation plan. The NRC staff concluded that this remediation plan, unlike the previous ones submitted by Chemetron, is adequate because (1) it is based on a comprehensive site

characterization; (2) adequately describes the decommissioning activities; (3) provides acceptable radiological controls to protect workers and the public; (4) provides an adequate plan for conducting a final survey; and (5) provides an acceptable decommissioning cost estimate. By authorizing Chemetron to proceed, NRC staff is confident that Chemetron can safely and successfully complete the remediation within the one-year schedule proposed. In the NRC review of the Harvard Avenue remediation plan, NRC staff considered the radiological controls that Chemetron would use during the remediation and the health and safety impacts of the proposed onsite disposal cell. Accordingly, NRC has now received adequate assurance from the Licensee that it has produced a final remediation plan that will lead to the ultimate decontamination of the Harvard Avenue site by the end of 1997.

In accordance with Commission policy, the Petitioner's request to impose sanctions was not granted as requested. On April 10, 1992, the Commission approved the "Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites." The Action Plan discussed the imposition of civil penalties for sites listed in NRC's Site Decommissioning Management Plan (SDMP). (Chemetron's Harvard Avenue site is one of the SDMP listed sites.) The Action Plan provides that civil penalties should be limited to two situations. Specifically, the Action Plan provides that "the NRC will consider civil penalties where (1) the licensee or responsible party fails to comply with an order compelling payment into an escrow account; or (2) the licensee or responsible party fails to comply with a requirement or an order compelling cleanup when there is already sufficient decommissioning funding."

The clear intent of the Action Plan is to take into account the financial impact of a civil penalty on achieving decommissioning. In the staff's view, for schedular violations, the test should be the reasonableness of the Licensee's efforts to achieve decommissioning in a timely manner. It is not the intent of NRC staff to impose civil penalties where such penalties adversely affect the financial ability of the Licensee to properly complete decommissioning.

On May 11, 1994, NRC staff issued a Notice of Violation and Proposed Civil Penalty of \$10,000 to Chemetron for submitting an incomplete remediation plan on the date established for the plan submittal set under a License Condition (i.e., October 1, 1993). The base civil

penalty of \$5,000 was escalated because NRC identified the violation and because of the Licensee's limited corrective action. The civil penalty reflected the poor progress that had been made at that time by the Licensee in the decommissioning. The NRC deferred imposition of the civil penalty until a final waste disposal option for both the Harvard Avenue site and Chemetron's Bert Avenue site is approved, to ensure that sufficient funds have been set aside to carry out the decommissioning.

As set forth above, based on the Commission's guidance in the Action Plan, NRC has not imposed sanctions as requested by the Petitioner. However, NRC staff has taken appropriate enforcement actions where the Licensee did not achieve decommissioning milestones set out in the License.

Based on the above, the NRC staff has taken appropriate actions to ensure the decontamination of the Harvard Avenue site. The most significant actions include the issuance of a License Amendment (dated May 25, 1993) and two Orders (dated May 5, 1992, and October 26, 1993) to establish schedules for the submittal of documents key to the Harvard Avenue site remediation and the issuance of a License Amendment on June 7, 1996, authorizing Chemetron to proceed with the remediation. Further, based on a review of the Licensee's actions regarding this decontamination effort, the NRC staff has concluded that the Licensee has made adequate progress towards this end. Therefore, for all practical purposes the Petitioner's request to compel the remediation of the Harvard Avenue site has been granted to the extent that this is required by the License Amendments of May 25, 1993, and June 7, 1996, and the Orders of May 5, 1992, and October 26, 1993. However, NRC staff does not consider that the imposition of sanctions, beyond those proposed on May 11, 1994, is needed to compel completion of the Harvard Avenue site remediation. Therefore, we are denying the Petitioner's request to impose further sanctions. Finally, the staff has concluded that no additional NRC actions are warranted concerning these requests. Should Chemetron fail to meet its one-year schedule for decontamination of the Harvard Avenue site, NRC staff will take appropriate action at that time.

IV. Conclusion

For the reasons discussed above, Petitioner's request that NRC compel Chemetron to commence action to decontaminate the Harvard Avenue site has been granted to the extent this is

required by the License Amendments of May 25, 1993, and June 7, 1996, and the Orders dated May 5, 1992, and October 26, 1993. However, to the extent these actions were not taken in the time originally specified by Petitioner, the request is denied. Petitioner's second request that NRC impose sanctions against Chemetron for failing to comply with its November 14, 1988, Confirmation of Commitment to decontaminate the Harvard Avenue site, as requested by the Petitioner, has been denied. Further, no substantial public health and safety concerns currently exist that warrant additional NRC action concerning these requests.

As provided by 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. The Decision will become a final action of the Commission twenty-five (25) days after issuance unless the Commission on its own motion institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 3rd day of July 1996.

For the Nuclear Regulatory Commission.
Carl J. Paperiello,
Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96-17936 Filed 7-12-96; 8:45 am]

BILLING CODE 7590-01-P

Chemical, Galvanic, or Other Reactions in Spent Fuel Storage and Transportation Casks; Issued

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Bulletin 96-04 to notify all holders of operating licenses or construction permits for nuclear power reactors; all holders of, and applicants for, certificates of compliance for storage/transportation casks for commercial spent fuel; all vendors of storage/transportation casks for commercial spent fuel; and all registered users of transportation casks for commercial spent fuel, about the potential for chemical, galvanic, or other reactions among the materials of a spent fuel storage or transportation cask, its contents, and the environments the cask may encounter during use, that may produce adverse conditions in cask loading, unloading and handling operations or degrade the performance and integrity of the cask. However, action is only requested from licensees with independent spent fuel storage installations, vendors of spent fuel storage and transportation casks, and

holders of certificates of compliance for spent fuel storage and transportation casks ("action addressees"). Action addressees are requested to evaluate the susceptibility of spent fuel storage and transportation cask designs to chemical, galvanic, or other reactions, and evaluate the effects of such reactions on the ability of the cask to maintain the structural integrity and retrievability of the spent fuel; action addressees are required to also submit a written response. This bulletin is available in the NRC Public Document Room under accession number 9607020241.

DATES: The bulletin was issued on July 5, 1996.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Marissa G. Bailey at (301) 415-8531.

SUPPLEMENTARY INFORMATION: This bulletin is an information request made pursuant to 10 CFR 2.204, 10 CFR 71.39, and 10 CFR 72.44(b)(3). The objective of the actions requested in this bulletin is to verify that licensees are in compliance with existing NRC rules and regulations pertaining to the appropriateness and adequacy of the design of spent fuel storage and transportation casks including, and without limitation, 10 CFR 71.43(d), 72.122(h), 72.122(l), 72.236(c), 72.236(f), 72.236(g), 72.40(a)(5), 72.212(b)(9), 72.236(h), 72.234(b), and 72.146(b). The staff is not establishing a new position for such compliance in this bulletin.

Dated at Rockville, Maryland, this 8th day of July, 1996.

For the Nuclear Regulatory Commission.
David B. Matthews,
Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96-17938 Filed 7-12-96; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Publication of Notices of Systems of Records and a Proposed New Routine Use

AGENCY: Office of Personnel Management.

ACTION: Notice; publication of notices of the eight Governmentwide systems of records managed by the Office of Personnel Management, adding a note of explanation to one system of records, deleting an existing routine use and proposing a routine use for one system of records.

SUMMARY: This notice provides an accurate and complete text with

administrative changes of the Office of Personnel Management's notices for its eight Governmentwide systems of records. This notice also adds a note of explanation to one of the routine uses to one Governmentwide system, deletes one routine use, and adds one routine use to a system of records. This action effects the administrative changes that have occurred in the Office's reorganization and makes readily available in one issue of the Federal Register an accurate and complete text of the Office notices most widely used by individuals and by agency Privacy Act officers.

DATES: The notice with the administrative (non-substantive) changes are effective on July 15, 1996. The proposed routine use will become effective, without further notice, on September 13, 1996, unless comments dictate otherwise.

ADDRESSES: Written comments may be sent or delivered to: Assistant Director for Workforce Information, Room 7439, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John Sanet, Privacy Act Advisor, Office of Workforce Information (202) 606-1955.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (the Office) last published its Governmentwide systems notices in 1992. To be in conformance with the recent reorganization of the Office, internal changes in the designation of the systems managers and location of records have occurred that are reflected in this publication. In addition one routine use was deleted and one routine use is proposed to a particular system of records. In addition, a note of explanation is added to one routine use for OPM/GOVT-1.

A brief description of the major changes follows:

OPM/GOVT-1. A note has been added to routine use "j" allowing the home addresses of bargaining unit employees to be disclosed to recognized labor organizations that are legally required to represent them from OPM's internal payroll system of records.

The note explains that home addresses contained in OPM/GOVT-1 or in any other system of records administered by OPM may not be disclosed to labor organizations under any circumstances.

In addition, volunteers, grantees, and contract employees on whom an agency is maintaining employment records may also be covered by this system.

OPM/GOVT-3, Records of Adverse Actions, Performance Based Reduction

in Grade and Removal Actions, and Terminations of Probationers. Routine Use "o" has been deleted as no longer necessary and a proposed new routine use is offered to allow records within this system to be made available to specified agencies (Federal, State, or county, municipal, or other publicly recognized charitable or income security, administrative agency like an unemployment compensation agency) when necessary to adjudicate a claim under the retirement, insurance, unemployment, or health benefits program, or to conduct an analytical study or audit of such programs. Presently, an identical routine use exists in the OPM/GOVT-1 system of records. This proposed routine use will enable agencies to disclose relevant information from the OPM/GOVT-3 system for the same purpose.

OPM/GOVT-6, Personnel Research and Test Validation Records. Administrative changes are made reflecting the title of the system manager and the system location for these records due to OPM's reorganization are incorporated in this notice.

OPM/GOVT-7, Applicant Race, Sex, National Origin, and Disability Status Records. Administrative changes reflecting the title of the system location and system location for these records due to OPM's reorganization are incorporated in this notice.

OPM/GOVT-9, File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals. An administrative change reflecting the identification of the system manager is incorporated in this notice.

The system report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Governmental Affairs of the United States Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Management and Budget.

Following is a complete text of these eight Office of Personnel Management systems of records.

Office of Personnel Management,
Lorraine A. Green,
Deputy Director.

OPM/GOVT-1

SYSTEM NAME:

General Personnel Records.

SYSTEM LOCATION:

Records on current Federal employees are located at the Office and with Personnel Officers or other designated offices of the local installation of the department or agency that currently

employs the individual. When agencies determine that duplicates of these records need to be located in a second office, e.g., an administrative office closer to where the employee actually works, such copies are covered by this system. Former Federal employees' Official Personnel Folders (OPFs) are located at the National Personnel Records Center, National Archives and Records Administration, 111 Winnebago Street, St. Louis, Missouri 63118. Records not considered long-term records, but which may be retained in the OPF or elsewhere during employment, and which are also included in this system, may be retained by agencies for a period of time after the employee leaves service.

The use of the phrase "long-term" to describe those records filed on the right-hand-side of OPFs is used throughout this notice because these records are not actually permanently retained. The term "temporary" is used when referencing short-term records filed on the left-hand-side of OPFs and all other records not filed in the OPF, but covered by this notice.

Note 1.—The records in this system are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee to access the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees as defined in 5 U.S.C. 2105. (Volunteers, grantees, and contract employees on whom the agency maintains records may also be covered by this system).

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records may include identifying information, such as name(s), date of birth, home address, mailing address, social security number, and home telephone. This system includes contents of the OPF as specified in OPM's Operating Manual, "The Guide to Personnel Recordkeeping." Records in this system are—

a. Records reflecting work experience, educational level achieved, and specialized education or training obtained outside of Federal service.

b. Records reflecting Federal service and documenting work experience and specialized education received while employed. Such records contain information about past and present positions held; grades; salaries; duty station locations; and notices of all

personnel actions, such as appointments, transfers, reassignments, details, promotions, demotions, reductions-in-force, resignations, separations, suspensions, Office approval of disability retirement applications, retirement, and removals.

c. Records on enrollment or declination of enrollment in the Federal Employees' Group Life Insurance Program and Federal Employees Health Benefit Program, as well as forms showing designation of beneficiary, Federal Employee's Thrift Savings Program.

d. Records relating to an Intergovernmental Personnel Act assignment or Federal-private sector exchange program.

Note 2.—Some of these records may also become part of the OPM/CENTRAL-5, Intergovernmental Personnel Act Assignment Record system.

e. Records relating to participation in an agency Federal Executive or SES Candidate Development Program.

Note 3.—Some of these records may also become part of the OPM/CENTRAL-3, Federal Executive Development Records; or OPM/CENTRAL-13, Senior Executive Service Records systems.

f. Records relating to Government-sponsored training or participation in an agency's Upward Mobility Program or other personnel program designed to broaden an employee's work experiences and for purposes of advancement (e.g., an administrative intern program).

g. Records contained in the Central Personnel Data File (CPDF) maintained by OPM and exact substantive representations in agency manual or automated personnel information systems. These data elements include many of the above records along with handicap and race and national origin codes. A definitive list of CPDF data elements is contained in OPM's Operating Manual, The Guide to Personnel Data Standards.

h. Records on the Senior Executive Service (SES) maintained by agencies for use in making decisions affecting incumbents of these positions, e.g., relating to sabbatical leave programs, reassignments, and details, that are perhaps unique to the SES and that may be filed in the employee's OPF. These records may also serve as the basis for reports submitted to OPM for implementing OPM's oversight responsibilities concerning the SES.

i. Records on an employee's activities on behalf of the recognized labor organization representing agency employees, including accounting of official time spent and documentation

in support of per diem and travel expenses.

Note 4.—Alternatively, such records may be retained by an agency payroll office and thus be subject to the agency's internal Privacy Act system for payroll records. The OPM/GOVT-1 system does not cover general agency payroll records.

j. To the extent that the records listed here are also maintained in an agency electronic personnel or microform records system, those versions of these records are considered to be covered by this system notice. Any additional copies of these records (excluding performance ratings of record and conduct-related documents maintained by first line supervisors and managers covered by the OPM/GOVT-2 system) maintained by agencies at field/administrative offices remote from where the original records exist are considered part of this system.

Note 5.—It is not the intent of OPM to limit this system of records only to those records physically within the OPF. Records may be filed in other folders located in offices other than where the OPF is located. Further, as indicated in the records location section, some of these records may be duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or supervisors work folder) and still be covered by this system. In addition, a working file that a supervisor or other agency official is using that is derived from OPM/GOVT-1 is covered by this system notice.

k. Records relating to designations for lump sum death benefits.

1. Records relating to classified information nondisclosure agreements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347, and Executive orders 9397, 9830, and 12107.

PURPOSE(S):

The OPF and other general personnel records files are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's Federal service. The personnel action reports and other documents, some of which are filed as long-term records in the OPF, give legal force and effect to personnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment.

These files and records are maintained by OPM and the agencies for the Office in accordance with Office regulations and instructions. They provide the basic source of factual data

about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses by agency personnel offices, including screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and other information needed to provide personnel services. These records and their automated or microform equivalents may also be used to locate individuals for personnel research.

Temporary documents on the left side of the OPF may pertain to a formal action but do not constitute a record of it nor make a substantial contribution to the employee's long-term record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used—

a. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes.

b. To disclose information to education institutions on appointment of a recent graduate to a position in the Federal service, and to provide college and university officials with information about their students working in the Student Career Experiment Program, Volunteer Service, or other similar programs necessary to a student's obtaining credit for the experience gained.

c. To disclose information to officials of foreign governments for clearance before a Federal employee is assigned to that country.

d. To disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, Department of Defense, or any other Federal agencies that have special civilian employee retirement programs; or to a national, State, county, municipal, or other publicly recognized charitable or income security, administration agency (e.g., State unemployment compensation agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment, or health benefits programs of the Office or an agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid under such programs.

e. To disclose to the Office of Federal Employees Group Life Insurance, information necessary to verify election,

declination, or waiver of regular and/or optional life insurance coverage, eligibility for payment of a claim for life insurance, or to TSP election change and designation of beneficiary.

f. To disclose, to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts.

g. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

h. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

i. To consider employees for recognition through quality-step increases, and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

j. To disclose information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

Note 6—The release of updated home addresses of all bargaining unit employees to labor organizations recognized under 5 U.S.C. Chapter 71 from an accurate internal system of records is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining under 5 U.S.C. 7114(b)(4). OPM has determined that retrieval of home addresses from OPM/GOVT-1 or any other system of records administered by OPM would yield a great deal of inaccurate information because the home addresses are not regularly updated, and frequently are inaccurate. Consequently, the release of the home addresses from this system would not serve the purpose of the disclosure, namely, the furnishing of correct and useful information. Use of this system, which is not wholly automated, would require an inordinate amount of time to locate information that was not even requested, namely, inaccurate home addresses. Accordingly, home addresses will not be released from OPM/GOVT-1 or any other system administered by OPM, but should be released from an accurate internal system. OPM's internal system of records, which is clearly the most accurate repository

of the home address of OPM employees, will be utilized to accomplish this release of information. See Federal Register of March 8, 1996 (61 FR 9510).

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision to hire or retain an employee, issue a security clearance, conduct a security or suitability investigation of an individual, classify jobs, let a contract, or issue a license, grant, or other benefits.

m. To disclose to a Federal agency in the executive, legislative, or judicial branch of government, in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

n. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

o. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual

p. to disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

q. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components.

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

r. By the National Archives and Records Administration in records management inspections and its role as Archivist.

s. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

t. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

u. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

v. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under—

(1) Fitness-for-duty examination procedures; or

(2) Agency-filed disability retirement procedures.

w. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

x. To disclose to a requesting agency, organization, or individual the home address and other relevant information on those individuals who it reasonably believed might have contracted an illness or might have been exposed to or suffered from a health hazard while employed in the Federal workforce.

y. To disclose specific civil service employment information required under law by the Department of Defense on individuals identified as members of the Ready Reserve to assure continuous mobilization readiness of Ready Reserve units and members, and to identify demographic characteristics of civil service retirees for national emergency mobilization purposes.

z. To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, U.S. Public Health Service, Department of Veterans Affairs, and the U.S. Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of section 5532 of title 5, United States Code.

aa. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. chapter 12, or as may be authorized by law.

bb. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

cc. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards when a question of material fact is raised, and in connection with matters before the Federal Service Impasses Panel.

dd. To disclose to prospective non-Federal employers the following information about a specifically identified current or former Federal employee:

(1) Tenure of employment;

(2) Civil service status;

(3) Length of service in the agency and the Government; and

(4) When separated, the date and nature of action as shown on the Notification of Personnel Action—Standard Form 50 (or authorized exception).

ee. To disclose information on employees of Federal health care facilities to private sector (i.e., other than Federal, State, or local government) agencies, boards, or commissions (e.g., the Joint Commission on Accreditation of Hospitals). Such disclosures will be made only when the disclosing agency determines that it is in the Government's best interest (e.g., to comply with law, rule, or regulation, to assist in the recruiting of staff in the community where the facility operates or to avoid any adverse publicity that may result from public criticism of the facility's failure to obtain such approval, or to obtain accreditation or other approval rating). Disclosure is to be made only to the extent that the information disclosed is relevant and necessary for that purpose.

ff. To disclose information to any member of an agency's Performance Review Board or other panel when the member is not an official of the employing agency; information would then be used for approving or recommending selection of candidates for executive development or SES candidate programs, issuing a performance rating of record, issuing performance awards, nominating for meritorious and distinguished executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

gg. To disclose, either to the Federal Acquisition Institute (FAI) or its agent, information about Federal employees in procurement occupations and other occupations whose incumbents spend the predominant amount of their work hours on procurement tasks; provided that the information shall only be used for such purposes and under such conditions as prescribed by the notice of the Federal Acquisition Personnel Information System as published in the Federal Register of February 7, 1980 (45 FR 8399).

hh. To disclose relevant information with personal identifiers of Federal civilian employees whose records are contained in the Central Personnel Data File to authorized Federal agencies and

non-Federal entities for use in computer matching. The matches will be performed to help eliminate waste, fraud, and abuse in Governmental programs; to help identify individuals who are potentially in violation of civil or criminal law or regulation; and to collect debts and overpayments owed to Federal, State, or local governments and their components. The information disclosed may include, but is not limited to, the name, social security number, date of birth, sex, annualized salary rate, service computation date of basic active service, veteran's preference, retirement status, occupational series, health plan code, position occupied, work schedule (full time, part time, or intermittent), agency identifier, geographic location (duty station location), standard metropolitan service area, special program identifier, and submitting office number of Federal employees.

ii. To disclose information to Federal, State, local, and professional licensing boards, Boards of Medical Examiners, or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications or registration necessary to practice an occupation, profession or speciality, in order to obtain information relevant to an Agency decision concerning the hiring retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate non-government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

jj. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

kk. To disclose information to a Federal, State, or local governmental entity or agency (or its agent) when necessary to locate individuals who are owed money or property either by a Federal, State, or local agency, or by a financial or similar institution.

ll. To disclose to a spouse or dependent child (or court-appointed guardian thereof) of a Federal employee enrolled in the Federal Employees Health Benefits Program, upon request, whether the employee has changed from

a self-and-family to a self-only health benefits enrollment.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, on lists and forms, microfilm or microfiche, and in computer processable storage media.

RETRIEVABILITY:

These records are retrieved by various combinations of name, birth date, social security number, or identification number of the individual on whom they are maintained.

SAFEGUARDS:

Paper or microfiche/microfilmed records are located in locked metal file cabinets or in secured rooms with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

The OPF is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage or, as appropriate, to the next employing Federal agency. Other records are either retained at the agency for various lengths of time in accordance with the National Archives and Records Administration records schedules or destroyed when they have served their purpose or when the employee leaves the agency.

a. Long-term records. The OPF is maintained by the employing agency as long as the individual is employed with that agency.

For non-SES employees, transfer performance ratings of record 4 years old or less from the Employee Performance File to the OPF, if the ratings and plans are not maintained by the agency in the OPF.

Within 90 days after the individual separates from the Federal service, the OPF is sent to the National Personnel Records Center for long-term storage. In the case of administrative need, a retired employee, or an employee who dies in service, the OPF is sent to the Records Center within 120 days.

Destruction of the OPF is in accordance with General Records Schedule-1 (GRS-1).

b. Other records. Other records are retained for varying periods of time. Generally they are maintained for a minimum of 1 year or until the employee transfers or separates.

c. Records contained on computer processable media within the CPDF (and in agency's automated personnel records) may be retained indefinitely as a basis for longitudinal work history statistical studies. After the disposition date in GRS-1, such records should not be used in making decisions concerning employees.

SYSTEM MANGER AND ADDRESS:

a. Assistant Director for Workforce Information, Human Resources Systems Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

b. For current Federal employees, OPM has delegated to the employing agency the Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system notice.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate Office or employing agency office, as follows:

a. Current Federal employees should contact the Personnel Officer or other responsible official (as designated by the employing agency), of the local agency installation at which employed regarding records in this system.

b. Former Federal employees should contact the Office's St. Louis office (address cited in "Records Access Procedure" below), or as explained in the Note in the "Records Access Procedure" below, the National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, Missouri 63118, regarding the records in this system.

Individuals must furnish the following information for their records to be located and identified:

- a. Full name(s).
- b. Date of birth.
- c. Social security number.
- d. Last employing agency (including duty station) and approximate date(s) of the employment (for former Federal employees).
- e. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the appropriate OPM or agency office, as specified in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name(s).
- b. Date of birth.
- c. Social security number.
- d. Last employing agency (including duty station) and approximate date(s) of

employment (for former Federal employees).

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297).

Note 7.—An individual who is a former Federal employee may direct a request to the National Personnel Records Center (NPRC) for a copy of a specific OPF document or for a transcript of his or her own employment history compiled from documents in the OPF. The transcript includes the individual's name; date of birth; social security number; all past grades held, position titles, duty stations, and salaries; and dates of personnel actions.

Under no circumstances shall an individual direct a request to NPRC for access to copies of all records maintained in his or her OPF. Though NPRC stores and services the OPFs of former Federal employees covered by this system, that record remains the property of the Office, and such requests will be handled and processed by the: OPF/EMF Access Unit, Office of Personnel Management, P.O. Box 18673, St. Louis, Missouri 63118.

CONTESTING RECORD PROCEDURE:

Current employees wishing to request amendment of their records should contact their current agency. Former employees should contact the system manager and not the Office. Individuals must furnish the following information for their records to be located and identified.

a. Full name(s).

b. Date of birth.

c. Social security number.

d. Last employing agency (including duty station) and approximate date(s) of employment (for former Federal employees).

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

Note 8.—Under no circumstances shall former employees direct a request for amendment to records in the OPF to the NPRC or to the Office's OPF/EMF Access unit in St. Louis, Missouri. NPRC only stores and services the OPFs on former Federal employees covered by this system, and the Office's office in St. Louis processes only access requests. Processing under the amendment provisions of the Privacy Act will be handled only by the system manager.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by—

a. The individual on whom the record is maintained.

b. Physicians examining the individual.

c. Educational institutions.

d. Agency officials and other individuals or entities.

e. Other sources of information for long-term records maintained in an employee's OPF, in accordance with Code of Federal Regulations Part 293, and OPM's Operating Manual, "The Guide to Personnel Recordkeeping."

OPM/GOVT-2

SYSTEM NAME:

Employee Performance File System Records.

SYSTEM LOCATION:

Records maintained in this system may be located as follows:

a. In an Employee Performance File (EPF) maintained in the agency office responsible for maintenance of the employee's Official Personnel Folder (OPF) or other agency-designated office. This includes those instances where the agency uses an envelope within OPF in lieu of a separate EPF folder.

b. In the EPF of Senior Executive Service (SES) appointees where the agency elects to have the file maintained by the Performance Review Boards required by 5 U.S.C. 4314(c)(1), or the administrative office supporting the Board.

c. In any supervisor/manager's work folder maintained in the office by the employee's immediate supervisor/manager or, where agencies have determined that records management is better served, in such folders maintained for supervisors/managers in a central administrative office.

d. In an agency's electronic personnel records system.

e. In an agency microformed EPF.

Note 1.—Originals or copies of records covered by this system may be located in more than one location, but if they become part of an agency internal system (e.g., administrative or negotiated grievance file), those copies then would be subject to the agency's internal Privacy Act implementation guidance regarding their use within the agency's system.

Note 2.—the records in this system are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee for access to the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees (including SES appointees).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system, wherever they are maintained, may include any or all of the following:

a. Annual summary performance ratings of record issued under employee appraisal systems and any document that indicates that the rating is being challenged under administrative procedures (e.g., when the employee files a grievance on the rating received).

b. A document (either the summary rating form itself or a form affixed to it) that identifies the job elements and the standards for those elements upon which the rating is based.

c. Supporting documentation for employee ratings of records, as required by agency rating systems or implementing instructions, and which may be filed physically with the rating of record (e.g., productivity and quality control records, records of employee counseling, individual development plans, or other such records as specified in agency issuances) and maintained, for example in a work folder by supervisors/managers at the work site.

d. Records on SES appraisals generated by Performance Review Boards, including statements of witnesses and transcripts of hearings.

e. Written recommendations for awards, removals, demotions, denials of within-grade increases, reassignments, training, pay increases, cash bonuses, or other performance-based actions (e.g., nominations of SES employees for Meritorious or Distinguished Executive), including supporting documentation.

f. Statements made (letter on or appended to the performance rating document) by the employee (e.g., a statement of disagreement with the rating or recommendation), in accordance with agency performance plans and implementing instructions, regarding a rating given and any recommendations made based on them.

Note 3.—When a recommendation by a supervisor/manager or a statement made by the employee regarding the rating issued (or a copy) becomes part of another Governmentwide system or internal agency file (e.g., an SF 52 filed in an OPF when the action is effected or when documents or statements of disagreement are placed in a grievance file), that document then becomes subject to that system's notice and appropriate Office or employing agency Privacy Act requirements, respectively, for the system of records covering that file.

g. Records created by Executive Resource Boards regarding performance of an individual in an executive development program.

h. Records concerning performance during the supervisory or managerial probationary period, the SES

appointment probationary period, or the employee's initial period of probation after appointment.

i. Notices of commendations (which are not considered a permanent OPF document), recommendations for training, such as an Individual Development Plan, and advice and counseling records that are based on work performance.

j. Copies of supervisory ratings used in considering employees for promotion or other position changes originated in conjunction with agency merit promotion programs when specifically authorized for retention in the EPF or work folder.

k. Performance-related material that may be maintained in the work folder to assist the supervisor/manager in accurately assessing employee performance. Such material may include transcripts of employment and training history, documentation of special licenses, certificates, or authorizations necessary in the performance of the employee duties, and other such records that agencies determine to be appropriate for retention in the work folder.

l. Standard Form 7B Cards. (While the use of the SF 7B Card system was cancelled effective December 31, 1992, this system notice will cover any of those cards still in existence.)

Note 4.—To the extent that performance records covered by this system are maintained in either an EPF, supervisor/manager work folder, or an agency's electronic or microform record system, they are considered covered under this system of records. Further, when copies of records filed in the employee's OPF are maintained as general records related to performance (item K above), those records are to be considered as being covered by this system and not the OPM/GOVT-1 system.

This notice does *not* cover these records (or copies) when they become part of a grievance file or a 5 CFR parts 432, 752, or 754 file (documents maintained in these files are covered by the OPM/GOVT-3 system of records, while grievance records are covered under an agency-specific system), or when they become part of an appeal or discrimination complaint file as such documents are considered to be part of either the system of appeal records under the control of the Merit Systems Protection Board (MSPB) or discrimination complaints files under the control of the Equal Employment Opportunity Commission (EEOC).

When an agency retains copies of records from this system in another system of records, not covered by this or another OPM, MSPB, or EEOC Government-wide system notice, the agency is solely responsible for responding to any Privacy Act issues raised concerning these documents.

The Office has adopted a position that when supervisors/managers retain personal "supervisory" notes, i.e., information on

employees that the agency exercises no control and does not require or specifically describe in its performance system, which remain solely for the personal use of the author and are not provided to any other person, and which are retained or discarded at the author's sole discretion, such notes are not subject to the Privacy Act and are, therefore, not considered part of this system. Should an agency choose to adopt a position that such notes are subject to the Act, that agency is solely responsible for dealing with Privacy Act matters, including the requisite system notice, concerning them.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

Sections 1104, 3321, 4305, and 5405 of title 5, U.S. Code, and Executive Order 12107.

PURPOSE(S):

These records are maintained to ensure that all appropriate records on an employee's performance are retained and are available (1) to agency officials having a need for the information; (2) to employees; (3) to support actions based on the records; (4) for use by the Office in connection with its personnel management evaluation role in the executive branch; and (5) to identify individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

a. To disclose information to the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and other functions as promulgated in 5 U.S.C. chapter 12, or for such other functions as may be authorized by law.

b. To disclose information to the EEOC when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal Affirmative Action programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

c. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards where a question of material fact is raised, and matters before the Federal Service Impasses Panel.

d. To consider and select employees for incentive awards, quality-step increases, merit increases and performance awards, or other pay bonuses, and other honors and to publicize those granted. This may include disclosure to public and private organizations, including news media, which grant or publicize employee awards or honors.

e. To disclose information to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

f. To disclose to an agency in the executive, legislative, or judicial branch, or to the District of Columbia's government in response to its request, or at the initiation of the agency maintaining the records, information in connection with hiring or retaining of an employee; issuing a security clearance; conducting a security or suitability investigation of an individual; classifying jobs; letting a contract; issuing a license, grant, or other benefits by the requesting agency; or the lawful statutory, administrative, or investigative purposes of the agency to the extent that the information is relevant and necessary to the decision on the matter.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To disclose information to a congressional office from the record or an individual in response to an inquiry from that congressional office made at the request of the individual.

i. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

j. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or
2. Any employee of the agency in his or her official capacity; or
3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or
4. The United States, when the agency determines that litigation is likely to

affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

k. By the National Archives and Records Administration in records management inspections and its role as Archivist.

l. By the Office or employing agency to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies to support the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

m. To disclose pertinent information to the appropriate Federal, State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the agency maintaining the record becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

n. To disclose information to any member of an agency's Performance Review Board or other board or panel when the member is not an official of the employing agency. The information would then be used for approving or recommending performance awards, nominating for meritorious and distinguished executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

o. To disclose to Federal, State, local, and professional licensing boards or Boards of Medical Examiners, when such records reflect on the qualifications of individuals seeking to be licensed.

p. To disclose to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, envelopes, and on magnetic tapes, disks, microfilm, or microfiche.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in file folders or envelopes, on electronic media, magnetic tape, disks, or microforms and are stored in locked desks, metal filing cabinets, or in a secured room with access limited to those whose official duties require access. Additional safeguarding procedures include the use of sign-out sheets and restrictions on the number of employees able to access electronic records through use of access codes and logs.

RETENTION AND DISPOSAL:

Records on former non-SES employees will generally be retained no longer than 1 year after the employee leaves his or her employing agency. Records on former SES employees may be retained up to 5 years under 5 U.S.C. 4314.

a. Summary performance appraisals (and related records as the agency prescribes) on SES appointees are retained for 5 years and ratings of record on other employees for 4 years, except as shown in paragraph b below, and are disposed of by shredding, burning, erasing of disks, or in accordance with agency procedures regarding destruction of personnel records, including giving them to the individual. When a non-SES employee transfers to another agency or leaves Federal employment, ratings of record and subsequent ratings (4 years old or less) are to be filed on the temporary side of the OPF and forwarded with the OPF.

b. Ratings of unacceptable performance and related documents, pursuant to 5 U.S.C. 4303(d), are destroyed after the employee completes 1 year of acceptable performance from the date of the proposed removal or reduction-in-grade notice. (Destruction to be no later than 30 days after the year is up.)

c. When a career appointee in the SES accepts a Presidential appointment pursuant to 5 U.S.C. 3392(c), the employee's performance folder remains active so long as the employee remains employed under the Presidential appointment and elects to have certain

provisions of 5 U.S.C. relating to the Service apply.

d. When an incumbent of the SES transfers to another position in the Service, ratings and plans 5 years old or less shall be forwarded to the gaining agency with the individual's OPF.

e. Some performance-related records (e.g., documents maintained to assist rating officials in appraising performance or recommending remedial actions or to show that the employee is currently licensed or certified) may be destroyed after 1 year.

f. Where any of these documents are needed in connection with administrative or negotiated grievance procedures, or quasi-judicial or judicial proceedings, they may be retained as needed beyond the retention schedules identified above.

g. Generally, agencies retain records on former employees for no longer than 1 year after the employee leaves.

Note 5—When an agency retains an electronic or microform version of any of the above documents, retention of such records longer than show is permitted (except for those records subject to 5 U.S.C. 4303(d) for agency use or for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains (after the manual record has been or should have been destroyed).

SYSTEM MANAGERS AND ADDRESS:

a. Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

b. For current Federal employees, OPM has delegated to the employing agency the Privacy Act responsibilities concerning access, amendment, and disclosure of the record within this system notice.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact their servicing personnel office, supervisor/manager, Performance Review Board office, or other agency designated office maintaining their performance-related records where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

- a. Full name(s).
- b. Social Security number.
- c. Position occupied and unit where employed.

RECORDS ACCESS PROCEDURE:

Individuals wishing access to their records should contact the appropriate

office indicated in the Notification Procedure section where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

- a. Full name(s).
- b. Social security number.
- c. Position occupied and unit where employed.

Individuals requesting access to records must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment to their records should contact the appropriate office indicated in the Notification Procedure section where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

- a. Full name(s).
- b. Social security number.
- c. Position occupied and unit where employed.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORDS SOURCE CATEGORIES:

Records in this system are obtained from:

- a. Supervisors/managers.
- b. Performance Review Boards.
- c. Executive Resource Boards.
- d. Other individuals or agency officials.
- e. Other agency records.
- f. The individual to whom the records pertain.

OPM/GOVT-3

SYSTEM NAME:

Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers.

SYSTEM LOCATION:

These records are located in personnel or designated offices in Federal agencies in which the actions were processed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees (including Senior Executive Service (SES) employees) against whom such an action has been proposed or taken in accordance with 5 CFR parts 315 (Subparts H and I), 432, 752, or 754 of the Office's regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents on: (1) The processing of adverse actions, performance based reduction in grade and removal actions, and (2) the termination of employees serving initial appointment probation and return to their former grade of employees serving supervisory or managerial probation. The records include, as appropriate, copies of the notice of proposed action, materials relied on by the agency to support the reasons in the notice, replies by the employee, statements of witness, hearing notices, reports, and agency decisions.

Note.—This system does not include records, including the action file itself, compiled when such actions are appealed to the Merit Systems Protection Board (MSPB) or become part of a discrimination complaint record at the Equal Employment Opportunity Commission (EEOC). Such appeal and discrimination complaint file records are covered by the appropriate MSPB or EEOC system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

5 U.S.C. 3321, 4303, 7504, 7514, and 7543.

PURPOSES:

These records result from the proposal, processing, and documentation of these actions taken either by the Office or by agencies against employees in accordance with 5 CFR parts 315 (subparts H and I), 432, 752, or 754 of the Office's regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested for processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request,

and identify the type of information requested.

d. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, or classifying jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or
2. Any employee of the agency in his or her official capacity; or
3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or
4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. By the National Archives and Records Administration in records management inspections and its role as Archivist.

i. By the agency maintaining the records or the Office to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection for elements of data

included in the study may be structured in such a way as to make the data individually identifiable by inference.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in pending judicial or administrative proceeding.

k. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, as promulgated in 5 U.S.C. 1205 and 1206, and as specified in 5 U.S.C. 7503(c) and 5 U.S.C. 7513(e), or as may be authorized by law.

l. To disclose information to the EEOC when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

n. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties or reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

o. To disclose information to the Department of Labor, Department of Veterans Administration, Social Security Administration, Department of Defense, or any other Federal agencies that have special civilian employee retirement programs; or to a national, State, county, municipal, or other publicly recognized charitable or income security, administration agency (e.g., State unemployment compensation agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment, or health benefits programs of the Office or an agency to conduct an analytical study or audit of benefits being paid under such programs.

p. To disclose to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These standards are maintained in file folders, in automated media, or on microfiche or microfilm.

RETRIEVABILITY:

These records are retrieved by the names and social security number of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked metal filing cabinets or in automated media to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records documenting an adverse action, performance-based removal or demotion action, or covered actions against probationers are disposed of not sooner than four years nor later than seven years after the closing of the case in accordance with each agency's records disposition manual. Disposal is by shredding, or erasure of tapes (disks).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Employee and Workforce Performance, Human Resources Systems Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415 for actions taken under Parts 432, 752 (Subparts A through D only), and 754. Assistant Director for Executive Policy and Services, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415 for actions taken against SES appointees under subparts E and F, of part 752. Associate Director for Employment Service for actions taken under Part 315.

NOTIFICATION PROCEDURE:

Individuals receiving notice of a proposed adverse, removal, or demotion action must be provided access to all documents supporting the notice. At any time thereafter, individuals subject to the action will be provided access to the complete record. Individuals should contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Approximate date of closing of the case and kind of action taken.
- d. Organizational component involved.

RECORD ACCESS PROCEDURE:

Individuals against whom such actions are taken must be provided access to the record. However, after the action has been closed, an individual may request access to the official file by contacting the agency personnel or designated office where the action was processed. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Approximate date of closing of the case and kind of action taken.
- d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations on verification of identity and access to records (5 CFR Part 297).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records that have or could have been the subject of a judicial, quasi-judicial, or administrative action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the agency personnel or designated office where the actions were processed. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Approximate date of closing of the case and kind of action taken.
- d. Organizational component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

- a. By supervisors/managers.
- b. By the individual on whom the record is maintained.
- c. By testimony of witnesses.
- d. By other agency officials.
- e. By other agency records.
- f. From related correspondence from organizations or persons.

OPM/GOVT-4 [Reserved]

OPM/GOVT-5

SYSTEM NAME:

Recruiting, Examining, and Placement Records

SYSTEM LOCATION:

Associate Director for Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, OPM regional and area offices; and personnel or other designated offices of Federal agencies that are authorized to make appointments and to act for the Office by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

a. Persons who have applied to the Office or agencies for Federal employment and current and former Federal employees submitting applications for other positions in the Federal service.

b. Applicants for Federal employment believed or found to be unsuitable for employment on medical grounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

In general, all records in this system contain identifying information including name, date of birth, social security number, and home address. These records pertain to assembled and unassembled examining procedures and contain information on both competitive examinations and on certain noncompetitive actions, such as determinations of time-in-grade restriction waivers, waiver of qualification requirement determinations, and variations in regulatory requirements in individual cases.

This system includes such records as—

a. Applications for employment that contain information on work and education, military service, convictions for offenses against the law, military service, and indications of specialized training or receipt of awards or honors. These records may also include copies of correspondence between the applicant and the Office or agency.

b. Results of written exams and indications of how information in the application was rated. These records also contain information on the ranking of an applicant, his or her placement on a list of eligibles, what certificates applicant's names appeared on, an agency's request for Office approval of the agency's objection to an eligible's qualifications and the Office's decision in the matter, an agency's request for Office approval for the agency to pass

over an eligible and the Office's decision in the matter, and an agency's decision to object/pass over an eligible when the agency has authority to make such decisions under agreement with the Office.

c. Records regarding the Office's final decision on an agency's decision to objection/pass over an eligible for suitability or medical reasons or when the objection/pass over decision applies to a compensable preference eligible with 30 percent or more disability. (Does not include a rating of ineligibility for employment because of a confirmed positive test result under Executive Order 12564.)

d. Responses to and results of approved personality or similar tests administered by the Office or agency.

e. Records relating to rating appeals filed with the Office or agency.

f. Registration sheets, control cards, and related documents regarding Federal employees requesting placement assistance in view of pending or realized displacement because of reduction in force, transfer or discontinuance of function, or reorganization.

g. Records concerning non-competitive action cases referred to the Office for decision. These files include such records as waiver of time-in-grade requirements, decisions on superior qualification appointments, temporary appointments outside a register, and employee status determinations. Authority for making decisions on many of these actions has also been delegated to agencies. The records retained by the Office on such actions and copies of such files retained by the agency submitting the request to the Office, along with records that agencies maintain as a result of the Office's delegations of authorities, are considered part of this system of records.

h. Records retained to support Schedule A appointments of severely physically handicapped individuals, retained both by the Office and agencies acting under the Office delegated authorities, are part of this system.

i. Agency applicant supply file systems (when the agency retains applications, résumés, and other related records for hard-to-fill or unique positions, for future consideration), along with any pre-employment vouchers obtained in connection with an agency's processing of an application, are included in this system.

j. Records derived from the Office-developed or agency-developed assessment center exercises.

k. Case files related to medical suitability determinations and appeals.

l. Records related to an applicant's examination for use of illegal drugs under provisions of Executive Order 12564. Such records may be retained by the agency (e.g., evidence of confirmed positive test results) or by a contractor laboratory (e.g., the record of the testing of an applicant, whether negative, or confirmed or unconfirmed positive test result).

Note 1.—Only Routine Use "p" identified for this system of records is applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and any supervisory or management official within the employee's agency having authority to take the adverse personnel action against the employee.

Note 2.—The Office does not intend that records created by agencies in connection with the agency's Merit Promotion Plan program be included in the term "Applicant Supply File" as used within this notice. It is the Office's position that Merit Promotion Plan records are not a system of records within the meaning of the Privacy Act as such records are usually filed by a vacancy announcement number or some other key that is not a unique personnel identifier. Agencies may choose to consider such records as within the meaning of a system of records as used in the Privacy Act, but if they do so, they are solely responsible for implementing Privacy Act requirements, including establishment and notice of a system of records pertaining to such records.

Note 3.—To the extent that an agency utilizes an automated medium in connection with maintenance of records in this system, the automated versions of these records are considered covered by this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

5 U.S.C. 1302, 3109, 3301, 3302, 3304, 3305, 3306, 3307, 3309, 3313, 3317, 3318, 3319, 3326, 4103, 4723, 5532, and 5533, and Executive Order 9397.

PURPOSES:

The records are used in considering individuals who have applied for positions in the Federal service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions. They are also used to refer candidates to Federal agencies for employment consideration, including appointment, transfer, reinstatement, reassignment, or promotion. Records derived from the Office-developed or agency-developed assessment center exercises may be used to determine training needs of participants. These

records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Note 4—With the exception of Routine Use “p,” none of the Other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within that agency, generally only to the agency Medical Review Officer (MRO), the administrator of the agency’s Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

a. To refer applicants, including current and former Federal employees to Federal agencies for consideration for employment, transfer, reassignment, reinstatement, or promotion.

b. With the permission of the applicant, to refer applicants to State and local governments, congressional offices, international organizations, and other public offices for employment consideration.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purposes of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant, or other benefit.

e. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency’s decision in the matter.

f. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with

private relief legislation as set forth in OMB Circular No. A–19.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

h. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to a judicial or administrative proceeding.

i. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

j. By the National Archives and Records Administration in records management inspections and its role as Archivist.

k. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response or in producing summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

l. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as

prescribed in 5 U.S.C. chapter 12, or as may be authorized by law.

m. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines or Employee Selection Procedures, or other functions vested in the Commission.

n. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

o. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

p. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

q. To disclose information to Federal, State, local, and professional licensing boards, Boards of Medical Examiners, or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning the issuance, retention, or revocation of licenses, certifications, profession, or specialty, in order to obtain information relevant to an agency decision concerning the hiring, retention, or termination of an employee or to inform a Federal agency or licensing board or the appropriate non-government entity about the health care practice of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

r. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are maintained on magnetic tapes, disk, punched cards, microfiche, cards, lists, and forms.

RETRIEVABILITY:

Records are retrieved by the name, date of birth, social security number, and/or identification number assigned to the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area or automated media with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records in this system are retained for varying lengths of time, ranging from a few months to 5 years, e.g., applicant records that are part of medical determination case files or medical suitability appeal files are retained for 3 years from completion of action on the case. Most records are retained for a period of 1 to 2 years. Some records, such as individual applications, become part of the person's permanent official records when hired, while some records (e.g., non-competitive action case files), are retained for 5 years. Some records are destroyed by shredding or burning while magnetic tapes or disks are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director Employment Service, Office of personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Social security number.
- d. Identification number (if known).
- e. Approximate date of record.
- f. Title of examination or announcement with which concerned.
- g. Geographic area in which consideration was requested.

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. (c)(3) and (d), regarding access to records.

The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kind of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their non-exempt records should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Social security number.
- d. Identification number (if known).
- e. Approximate date of record.
- f. Title of examination or announcement with which concerned.
- g. Geographic area in which consideration was requested.

Individuals requesting access must also comply with the Office's privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of material exempted and the reasons for exempting them from amendment. An individual may contact the agency or the Office where the application is filed at any time to update qualifications, education, experience, or other data maintained in the system.

Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of other records under the provisions of the Privacy Act should contact the agency or the Office where the application was made or the examination was taken. Individuals must provide the following information for their records to be located and identified:

- a. Name.
- b. Date of birth.
- c. Social security number.
- d. Identification number (if known).
- e. Approximate date of record.
- f. Title of examination or announcement with which concerned.
- g. Geographic area in which consideration was requested.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR Part 297).

Note 5.—In responding to an inquiry or a request for access or amendment, resource

specialists may contact the Office's area office that provides examining and rating assistance for help in processing the request.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individuals to whom it applies or is derived from information the individual supplied, reports from medical personnel on physical qualifications, results of examinations that are made known to applicants, agencies, and Office records, and vouchers supplied by references or other sources that the applicant lists or that are developed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigative materials that are used solely to determine the appropriateness of a request for approval of an objection to an eligible's qualifications for Federal civilian employment or vouchers received during the processing of an application. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such investigative material from certain provisions of the Act, to the extent that release of the material to the individual whom the information is about would—

a. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

b. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

This system contain testing and examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records.

The specific material exempted include, but are not limited to, the following:

- a. Answer keys.
- b. Assessment center exercises.
- c. Assessment center exercise reports.
- d. Assessor guidance material.
- e. Assessment center observation reports.
- f. Assessment center summary reports.

g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, structured interviews, and their associated evaluation guides and reports.

h. Item analyses and similar data that contain test keys.

i. Ratings given for validating examinations.

j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.

k. Rating sheets.

l. Test booklets, including the written instructions for their preparation.

m. Test item files.

n. Test answer sheets.

OPM/GOVT-6

SYSTEM NAME:

Personnel Research and Test Validation Records.

SYSTEM LOCATION:

Director, Office of Personnel Resources and Development, Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; OPM's Service Centers, and agency personnel offices (or other designated offices) conducting personnel research.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees, applicants for Federal employment, current and former State and local government employees, and applicants for State and local government employment, selected private sector employees, and applicants for sample comparison groups.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information on education and employment history, test scores, responses to test items and questionnaires, interview data, and ratings of supervisors regarding the individuals to whom the records pertain. Additional information (race, national origin, disability status, and background) is collected from applicants for certain examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

5 U.S.C. 1303, 3301, and 4702.

PURPOSE:

These records are collected, maintained, and used by the Office or other Federal agencies for the construction, analysis, and validation of written tests and other assessment

instruments used in personnel selection and appraisal, other assessment instruments used in personnel selection and appraisal, and for research on and evaluation of personnel/organizational management and staffing methods, including workforce effectiveness studies. Agencies and the Office may provide each other with data collected in support of these functions. Such research includes studies extending over a period of time (longitudinal studies). Private sector data are used in research only, to evaluate Federal study results against non-Federal comparison groups. Race and national origin data are used by the Office or other agencies to evaluate the role and effects of selection procedures in the total employee staffing process. Use of these race and national origin data is limited to such evaluation, oversight and research projects conducted by the employing agencies or the Office. The records may also be used by the Office or other Federal agencies to locate individuals for personnel research. Data are collected on a project-by-project basis under conditions assuring the confidentiality of the information. No personnel action or selection is made using these research records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Under normal circumstances, no individually identifiable records will be provided. However, under those unusual circumstances when an individually identifiable record is required, proper safeguards will be maintained to protect the information collected from unwarranted invasion of personal privacy. Such protection must be specified in writing by the requester and, to the satisfaction of the agency official responsible for maintaining the data, indicate that the proposed use of the data is in compliance with the letter and spirit of the Privacy Act. Under these circumstances, the routine uses are as follows:

a. By the OPM or employing agency maintaining the records to locate individuals for personnel research or survey responses and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

b. To furnish personnel records and information to the Equal Employment Opportunity Commission for use in determining the existence of adverse impact in the total selection program, reviewing allegations of discrimination, or assessing the status of compliance with Federal law.

c. To furnish information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with actions by offices relating to allegations of discriminatory practices on the part of an agency or one of its employees.

d. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

e. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

f. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or
2. Any employee of the agency in his or her official capacity; or
3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or
4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

g. To provide information to a congressional office from the record of an individual in response to a request from that congressional office made at the request of that individual.

h. To provide aggregate data to non-Federal organizations participating in workforce studies. These data will be limited to individuals associated with the organization requesting the data or to data aggregated for all organizations in a study.

i. To disclose information to contractors, grantees, or volunteers

performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

j. To disclose research records to a court or other body in camera when tests and other assessment instruments are involved.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETENTION AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on punched cards, disks, magnetic tape, CD Rom.

RETRIEVABILITY:

Records are generally maintained by project. Personal information can be retrieved by name or personal identifier only for certain research projects such as those involving longitudinal studies.

SAFEGUARDS:

Records are kept in locked files in a locked room with access limited to authorized staff. Access to tape, disk, and other files used in data processing will be only by authorized staff.

RETENTION AND DISPOSAL:

Records are retained for 2 years after completion of the project unless needed in the course of litigation or other administrative actions involving a research or test validation survey. Records collected for longitudinal studies will be maintained indefinitely. Manual records are destroyed by shredding or burning and magnetic tapes and disks are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Resources and Development, Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager, the OPM regional office servicing the State where they are employed, or their employing agency's personnel office. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. If known, the title, time, and/or place of the research study in which the individual participated.
- d. Social security number.
- e. Signature.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act

provisions at 5 U.S.C. 552a(d), regarding access to records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. If known, the title, time, and/or place of the research study in which the individual participated.
- d. Social security number.
- e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of materials exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment of any non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. If known, the title, time, and/or place of the research study in which the individual participated.
- d. Social security number.
- e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Individual applicants and employees; supervisors; assessment center assessors; and agency or Office personnel files and records (e.g., race, sex, national origin, and disability status data from OPM/GOVT-1 and OPM/GOVT-7 systems of records).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used

solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing and examination material and information from certain provisions of the Act, when the disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relates to access to and amendment of records.

This system contains records required to be maintained and used solely for statistical purposes. The Privacy Act, at 5 U.S.C. 552a(k)(4), permits an agency to exempt all such statistical records from certain provisions of the Act, when the disclosure of the material would compromise the objectivity and fairness of these records. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relates to access to and amendment of records.

The specific materials exempted include, but are not limited to, the following:

- a. Answer keys.
- b. Assessment center and interview exercises.
- c. Assessment center and interview exercise reports.
- d. Assessor guidance material.
- e. Assessment center observation reports.
- f. Assessment center and interview summary reports.
- g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, interviews, and reports.
- h. Item analyses and similar data that contain test keys.
- i. Ratings given for validating examinations.
- j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.
- k. Ratings sheets.
- l. Test booklets, including the written instructions for their preparation.
- m. Test item files.
- n. Test answer sheets.
- o. Those portions of research and development files that could specifically reveal the contents of the above exempt documents.
- p. Performance appraisals for research purposes.

OPM/GOVT-7

SYSTEM NAME:

Applicant Race, Sex, National Origin, and Disability Status Records.

SYSTEM LOCATION:

Records in this system may be located in the following offices:

- a. Director Office of Personnel Resources and Development, Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.
- b. Office of Diversity, Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.
- c. OPM's Service Centers, and any register-holding offices under the jurisdiction of the Service Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees and individuals who have applied for Federal employment, including—

- a. Applicants for examinations administered either by the Office or by employing agencies.
- b. Applicants on registers or in inventories by the Office and subject to its regulations.
- c. Applicants for positions in agencies having direct hiring authority and using their own examining procedures in compliance with the Office regulations.
- d. Applicants whose records are retained in an agency's Equal Opportunity Recruitment file (including any file an agency maintains on current employees from under-represented groups).
- e. Applicants (including current and former Federal employees) who apply for vacancies announced under an agency's merit promotion plan.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include the individual's names; social security number; date of birth; statement of major field of study; type of current or former Federal employment status (e.g., career or temporary); applications showing work and education experience; and race, sex, national origin, and disability status data.

Note—The race and national origin information in this system is obtained by three alternative methods: (1) Use of an agency's OMB approved form on which individuals identify themselves as to race and national origin;

(2) by visual observation (race) or knowledge of an individual's background (national origin); or (3) at the agency's option, from the OPM/GOVT-1 system in the case of applicants who are current Federal employees. Disability status is obtained by use of Standard Form 256, "Self Identification of Medical Disability," which allows for a description by self-identification of the handicap.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:
5 U.S.C. 7201, Sections 4A, 4B, 15A(1) and (2), 15B(11), and 15D(11); Uniform Guidelines on Employee Selection Procedures (1978); 43 FR 38297 *et seq.* (August 25, 1978); 29 CFR 720.301; and 29 CFR 1613.301.

PURPOSE(S):

- These records are used by OPM and agencies to—
- a. Evaluate personnel/organizational measurement and selection methods.
 - b. Implement and evaluate agency affirmative employment programs.
 - c. Implement and evaluate agency Federal Equal Opportunity Recruitment Programs (including establishment of minority recruitment files).
 - d. Enable the Office to meet its responsibility to assess an agency's implementation of the Federal Equal Opportunity Recruitment Program.
 - e. Determine adverse impact in the selection process as required by the Uniform Guidelines cited in the Authority section above. (See also "Questions and Answers," on those Guidelines published at 44 FR 11996, March 2, 1979.)
 - f. Enable reports to be prepared regarding breakdowns by race, sex, and national origin of applicants (by exams taken, and on the selection of such applicants for employment).
 - g. To locate individuals for personnel research.

Note 1.—These data are maintained under conditions that ensure that the individual's identification as to race, sex, national origin, or disability status does not accompany that individual's application nor is otherwise made known when the individual is under consideration by a selecting official.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

- a. To disclose information to the Equal Employment Opportunity Commission (EEOC), in response to its request for use in the conduct of an examination of an agency's compliance with affirmative action plan instructions and the Uniform Guidelines on Employee Selection Procedures (1978), or other requirements imposed on agencies under EEOC authorities in connection with agency Equal Employment Opportunity programs.
- b. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with the processing of appeals, special studies relating to the civil service and other merit systems in the executive branch, investigations into

allegations of prohibited personnel practices, and such other functions; e.g., as prescribed in 5 U.S.C. chapter 12, or as may be authorized by law.

c. By the Office or employing agency maintaining the records to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

d. To disclose information to a Federal agency in response to its request for use in its Federal Equal Opportunity Recruitment Program to the extent that the information is relevant and necessary to the agency's efforts in identifying possible sources for minority recruitment.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is party to a judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when

1. The agency, or any component thereof; or
2. Any employee of the agency in his or her official capacity; or
3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or
4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant

to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on magnetic tape and disks.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individuals on whom they are maintained.

SAFEGUARDS:

Records are retained in locked metal filing cabinets in a secured room or in a computerized system accessible by confidential passwords issued only to specific personnel.

RETENTION AND DISPOSAL:

Records are generally retained for 2 years, except when needed to process applications or to prepare adverse impact and related reports, or for as long as an application is still under consideration for selection purposes. When records are needed in the course of an administrative procedure or litigation, they may be maintained until the administrative procedure or litigation is completed. Manual records are shredded or burned and magnetic tapes and disks are erased.

Note 2—When an agency retains an automated version of any of the records in this system, maintenance of that record beyond the above retention schedules is permitted for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains after the prescribed destruction date.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Resources and Development, Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Those individuals wishing to inquire if this system contains information about them should contact the system manager; OPM's Service Centers covering the locations where the application for Federal employment was filed; or the personnel, Equal Employment Opportunity, or Equal Employment Opportunity Recruitment

office or other designated office where they took an exam, filed an application, or where they are employed. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Social security number.
- c. Title of examination, position, or vacancy announcement for which they filed.
- d. The OPM or employing agency office where they are employed or submitted the information.
- e. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the appropriate office shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Social security number.
- c. Title of examination, position, or vacancy announcement for which they filed.
- d. The OPM or employing agency office where they are employed or submitted the information.
- e. Signature.

An individual requesting access must also follow OPM's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the appropriate office shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified.

- a. Name.
- b. Social security number.
- c. Title of examination, position, or vacancy announcement for which they filed.
- d. The OPM or employing agency office where they are employed or submitted the information.
- e. Signature.

An individual requesting amendment must also follow OPM's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains, on forms approved by the Office of Management and Budget or is obtained directly from other agency or OPM records (e.g., race, sex, national origin, and disability status data may be

obtained from the OPM/GOVT-1, General Personnel Records system).

**OPM/GOVT-8 [Reserved]
OPM/GOVT-9**

SYSTEM NAME:

File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals.

SYSTEM LOCATION:

These records are located at the Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, OPM Oversight Division Offices, agency personnel offices (or other designated offices), and Federal records centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- a. Current and former Federal employees who have filed a position classification appeal or a job grading appeal with a U.S. Office of Personnel Management Oversight Division Office, or with their agency.
- b. Current and former Federal employees who have filed a retained grade or pay appeal with a U.S. Office of Personnel Management Oversight Division Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to the processing and adjudication of a position classification appeal, job grading appeal, or retained grade or pay appeal. The records may include information and documents regarding a personnel action of the agency involved and the decision or determination rendered by an agency regarding the classifying or grading of a position or whether an employee is to remain in a retained grade or pay category. This system may also include transcripts of agency hearings and statements from agency employees.

Note 1.—This system notice also covers agency files created when: (a) An employee appeals a position classification or job grading decision to OPM or within the agency regardless of whether that agency appeal decision is further appealed to OPM; and (B) an employee files a retained grade or pay appeal with OPM.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Includes the following with an revisions or amendments:
5 U.S.C. 5112, 5115, 5346, and 5366.

PURPOSES:

These records are primarily used to document the processing and adjudication of a position classification appeal, job grading appeal, or retained grade or pay appeal. Internally, OPM may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to any source from which additional information is requested in the course of adjudicating a position classification appeal, job grading appeal, or retained grade or pay appeal to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring, retaining or assigning of an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, and classifying positions, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or
2. Any employee of the agency in his or her official capacity; or
3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or
4. The United States, where the agency determines that litigation is likely to affect the agency or any of its

components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. By the Office or an agency in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. By the National Archives and Records Administration in records management inspections and its role as Archivist.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission, and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

n. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORAGE, RETRIEVAL, SAFEGUARDS, AND RETENTION AND DISPOSAL OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and binders and on index cards, magnetic tape, disks, and microfiche.

RETRIEVAL:

These records are retrieved by the subject's name, and the name of the employing agency of the individual on whom the record is maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or automated media in a secured room, with access limited to those persons whose official duties require and such access.

RETENTION AND DISPOSAL:

Records related to position classification appeal, job grading appeal, and retained grade or pay appeal files are maintained for 7 years after closing action on the case. Records are destroyed by shredding, burning, or erasing as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Merit Systems Oversight, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should—

a. For records pertaining to retained grade or pay appeals, contact the system manager or the appropriate OPM Oversight Division Office.

b. For records pertaining to a position classification appeal or job grading appeal, where the appeal was made only to OPM, contact the system manager or the OPM Oversight Division Office, as appropriate.

c. For records pertaining to a position classification appeal or a job grading appeal filed with both the agency and OPM, contact the agency personnel officer, other designated officer, or the system manager, or the OPM Oversight Division Office, as appropriate.

Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Agency in which employed when the appeal was filed and the approximate date of the closing of the case.
- d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

RECORD ACCESS PROCEDURE:

Individuals who have filed a position classification appeal, job grading appeal, or a retained grade or pay appeal, must be provided access to the record. However, after the appeal has been closed, an individual may request access to the official copy of the records by writing the official indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Agency in which employed when appeal was filed and the approximate date of the closing of the case.
- d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

Individuals requesting access must also follow OPM's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records that have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request an amendment to their records to correct factual errors should contact the appropriate official indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Date of birth.
- c. Agency in which employed when the appeal was filed and the approximate date of the closing of the case.
- d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

Individuals requesting amendment of their records must also follow OPM's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

- a. Individual to whom the record pertains.
- b. Agency and/or OPM records relating to the action.
- c. Statements from employees or testimony of witnesses.

- d. Transcript of hearings.

OPM/GOVT-10**SYSTEM NAME:**

Employee Medical File System Records.

SYSTEM LOCATION:

a. For current employees, records are located in agency medical, personnel, dispensary, health, safety, or other designated offices within the agency, or contractors performing a medical function for the agency.

b. For former employees, most records will be located in an Employee Medical Folder (EMF) stored at the National Personnel Records Center operated by the National Archives and Records Administration (NARA). In some cases, agencies may retain for a limited time (e.g., up to 3 years) some records on former employees.

Note 1.—The records in this system of records are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee to access the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal civilian employees as defined in 5 U.S.C. 2105.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include—

a. Medical records, forms, and reports completed or obtained when an individual applies for a Federal job and is subsequently employed;

b. Medical records, forms and reports completed during employment as a condition of employment, either by the employing agency or by another agency, State or local government entity, or a private sector entity under contract to the employing agency;

c. Records and pertaining and resulting from the testing of the employee for use of illegal drugs under Executive Order 12564. Such records may be retained by the agency (e.g., by the agency Medical Review Official) or by a contractor laboratory. This includes records of negative results, confirmed or unconfirmed positive test results, and documents related to the reasons for testing or other aspects of test results.

d. Reports of on-the-job injuries and medical records, forms, and reports generated as a result of the filing of a claim for Workers' Compensation, whether the claim is accepted or not. (The official compensation claim file is

not covered by this system; rather, it is part of the Department of Labor's Office of Workers' Compensation Program (OWCP) system of records.)

e. All other medical records, forms, and reports created on an employee during his/her period of employment, including any retained on a temporary basis (e.g., those designated to be retained only during the period of service with a given agency) and those designated for long-term retention (i.e., those retained for the entire duration of Federal service and for some period of time after).

Note 2.—Records maintained by an agency dispensary are included in this system only when they are the result of a condition of employment or related to an on-the-job occurrence.

Note 3.—Records pertaining to employee drug or alcohol abuse counseling or treatment, and those pertaining to other employee counseling programs conducted under Health Service Program established pursuant to 5 U.S.C. chapter 79, are not part of this system of records.

Note 4.—Only Routine Use "u" identified for this system of records is applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and any supervisory or management official within the employee's agency having authority to take the adverse personnel action against the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

Executive Orders 12107, 12196, and 12564 and 5 U.S.C. chapters 11, 31, 33, 43, 61, 63, and 83.

PURPOSE(S):

Records in this system of records are maintained for a variety of purposes, which include the following:

a. To ensure that records required to be retained on a long-term basis to meet the mandates of law, Executive order, or regulations (e.g., the Department of Labor's Occupational Safety and Health Administration (OSHA) and OWCP regulations), are so maintained.

b. To provide data necessary for proper medical evaluations and diagnoses, to ensure that proper treatment is administered, and to maintain continuity of medical care.

c. To provide an accurate medical history of the total health care and medical treatment received by the individual as well as job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual.

d. To enable the planning for further care of the patient.

e. To provide a record of communications among members of the health care team who contribute to the patient's care.

f. To provide a legal document describing the health care administered and any exposure incident.

g. To provide a method for evaluating quality of health care rendered and job-health-protection including engineering protection provided, protective equipment worn, workplace monitoring, and medical exam monitoring required by OSHA or by good practice.

h. To ensure that all relevant, necessary, accurate, and timely data are available to support any medically-related employment decisions affecting the subject of the records (e.g., in connection with fitness-for-duty and disability retirement decisions).

i. To document claims filed with and the decisions reached by the OWCP and the individual's possible reemployment rights under statutes governing that program.

j. To document employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to the OSHA and actions taken by that agency or by the employing agency.

k. To ensure proper and accurate operation of the agency's employee drug testing program under Executive Order 12564.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Note 5.—With the exception of Routine Use "u," none of the other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

These records and information in these records may be used—

a. To disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, Federal Retirement Thrift Investment Board, or a national, State, or local social security type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program.

b. To disclose information to a Federal, State, or local agency to the extent necessary to comply with laws

governing reporting of communicable disease.

c. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

d. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

e. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

h. To disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

i. To disclose information to the Merit System Protection Board or the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, the Equal Employment Opportunity Commission, arbitrators, and hearing examiners to the extent

necessary to carry out their authorized duties.

j. To disclose information to survey team members from the Joint Commission on Accreditation of Hospitals (JCAH) when requested in connection with an accreditation review, but only to the extent that the information is relevant and necessary to meet the JCAH standards.

k. To disclose information to the National Archives and Records Administration in records management inspections and its role as Archivist.

l. To disclose information to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program information necessary to verify eligibility for payment of a claim for health benefits.

m. By the agency maintaining or responsible for generating the records to locate individuals for health research or survey response and in the production of summary descriptive statistics and analytical studies (e.g., epidemiological studies) in support of the function for which the records are collected and maintained. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study might be structured in such a way as to make the data individually identifiable by inference.

n. To disclose information to the Office of Federal Employees Group Life Insurance or Federal Retirement Thrift Investment Board that is relevant and necessary to adjudicate claims.

o. To disclose information, when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary.

p. To disclose to the agency-appointed representative of an employee, all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under—

(1) Medical evaluation (formerly Fitness for Duty) examinations procedures; or

(2) Agency-filed disability retirement procedures.

q. To disclose to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal workforce.

r. To disclose information to a Federal agency, in response to its request or at the initiation of the agency maintaining the records, in connection with the retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency; or the lawful, statutory, administrative, or investigatory purpose of the agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

s. To disclose to any Federal, State, or local government agency, in response to its request or at the initiation of the agency maintaining the records, information relevant and necessary to the lawful, statutory, administrative, or investigatory purpose of that agency as it relates to the conduct of job related epidemiological research or the insurance of compliance with Federal, State, or local government laws on health and safety in the work environment.

t. To disclose to officials of labor organizations recognized under 5 U.S.C. chapter 71, analyses using exposure or medical records and employee exposure records, in accordance with the records access rules of the Department of Labor's OSHA, and subject to the limitations at 29 CFR 1910.20(e)(2)(iii)(B).

u. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

v. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement or job for the Federal Government.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche, in electronic record systems, and on file cards, x-rays, or other medical reports and forms.

RETRIEVABILITY:

Records are retrieved by the employee's name, date of birth, social security number, or any combination of those identifiers.

SAFEGUARDS:

Records are stored in locked file cabinets or locked rooms. Electronic

records are protected by restricted access procedures and audit trails. Access to records is strictly limited to agency or contractor officials with a bona need for the records.

RETENTION AND DISPOSAL:

The EMF is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage, or as appropriate, to the next employing Federal agency. Other medical records are either retained at the agency for various lengths of time in accordance with the National Archives and Records Administration's records schedules or destroyed when they have served their purpose or when the employee leaves the agency. Within 30 days after the individual separates from the Federal service, the EMF is sent to the National Personnel Records Center for storage. Destruction of the EMF is in accordance with General Records Schedule-1(21). Records arising in connection with employee drug testing under Executive Order 12564 are generally retained for up to 3 years. Records are destroyed by shredding, burning, or by erasing the disk.

SYSTEM MANAGER(S) AND ADDRESS:

a. Assistant Director for Workforce Information, Human Resources Systems Service, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

b. For current Federal employees, OPM has delegated to the employing agency the Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system notice.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains records on them should follow the appropriate procedure listed below.

a. Current Employees. Current employees should contact their employing agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Individuals must furnish such identifying information as required by the agency for their records to be located and identified.

b. Former employees. Former employees should contact their former agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Additionally, for access to their EMF,

they should submit a request to: OPF/EMF Access Unit, Office of Personnel Management, P.O. Box 18673, St. Louis, Missouri 63118.

Requests to the Office's OPF/EMF Access Unit in St. Louis, Missouri, must submit the following information for their records to be located and identified:

1. Full name.
2. Date of birth.
3. Social security number.
4. Agency name, dates, and location of last Federal service.
5. Signature.

RECORDS ACCESS PROCEDURE:

a. Current employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records sought.

b. Former employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records sought. Former employees may also submit a request to the Office's OPF/EMF Access Unit in St. Louis, Missouri, for access to their EMF. When submitting a request to the Office's OPF/EMF Access Unit in St. Louis, Missouri, the individual must furnish the following information to locate and identify the record sought:

1. Full name.
2. Date of birth.
3. Social security number.
4. Agency name, dates, and location of last Federal service.
5. Signature.

c. Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORDS PROCEDURE:

Because medical practitioners often provide differing, but equally valid medical judgments and opinions when making medical evaluations of an individual's health status, review of requests from individuals seeking amendment of their medical records, beyond correction and updating of the records, will be limited to consideration of including the differing opinion in the record rather than attempting to determine whether the original opinion is accurate.

Individuals wishing to amend their records should—

a. For a current employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as

required by the agency to locate and identify the records to be amended.

b. For a former employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the record to be amended. Former employees may also submit a request to amend records in their EMF to the system manager. When submitting a request to the system manager, the individual must furnish the following information to locate and identify the records to be amended:

1. Full name.
2. Date of birth.
3. Social security number.
4. Agency name, dates, and location of last Federal service.
5. Signature.

c. Individuals seeking amendment of their records must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORDS SOURCE CATEGORIES:

Records in this system are obtained from—

- a. The individual to whom the records pertain.
- b. Agency employee health unit staff.
- c. Federal and private sector medical practitioners and treatment facilities.
- d. Supervisors/managers and other agency officials.
- e. Other agency records.

[FR Doc. 93-17425 Filed 7-12-96; 8:45 am]

BILLING CODE 6325-01-M

POSTAL SERVICE

Specifications for Postal Security Devices and Indicia (Postmarks); Correction

AGENCY: Postal Service.

ACTION: Correction to Notice of proposed specifications with request for comments.

SUMMARY: The original notice (61 FR 34460; July 2, 1996) included incorrect dates. The **DATES** section is corrected to read as follows:

DATES: Comments on the two specifications must be received on or before September 30, 1996. Comments addressing intellectual property issues must be received on or before August 15, 1996. A general meeting on this subject is being planned for July 19, 1996 in Washington, DC. All persons who have expressed an interest in the proposed specifications will be invited to attend the meeting. This meeting will focus solely on technical aspects of the two specifications. Interested parties

may submit questions by July 17, 1996 which will be considered for incorporation into the meeting presentation.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 96-17961 Filed 7-10-96; 4:50 pm]

BILLING CODE 7710-12-P

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the changed meeting dates of the Prospective Payment Assessment Commission from Tuesday and Wednesday, October 1-2, 1996, to Tuesday and Wednesday, October 8-9, 1996 at the Madison Hotel, 15th & M Streets, NW., Washington, DC, 202/862-1600.

The meeting time and location will be published approximately one week in advance.

Donald A. Young,
Executive Director.

[FR Doc. 96-17830 Filed 7-12-96; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Chase Corporation, Common Stock, \$.10 Par Value) File No. 1-9852

July 9, 1996.

Chase Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange Incorporated ("BSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security is presently listed on the American Stock Exchange, Inc. In making the decision to withdraw its Security, from listing on the BSE, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Security on the BSE and the Amex. The Company does not see any particular advantage in the dual trading of its securities and believes that dual listing would fragment the market for its securities.

Any interested person may, on or before July 30, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 96-17933 Filed 7-12-96; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Laser Industries Limited, Ordinary Shares Par Value NIS 0.00001); File No. 1-8201

July 9, 1996.

Laser Industries Limited ("Company"), a Company incorporated in Israeli, has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, its Board of Directors unanimously approved resolutions on May 27, 1996, which authorized the Company's officers, among other things, to withdraw the Security from listing on the Amex and to apply for the quotation of the Security on the National Association of Securities Dealers Automated Quotations National Market System ("Nasdaq/NMS").

The Company's Board of Directors believes that quotation on Nasdaq will be more beneficial to the Company's shareholders than the present listing on the Amex for the following reasons:

(a) The Nasdaq's system of multiple, competing market makers provide the Company with increased visibility

within the financial community, resulting in increased awareness of the Company's activities among investors;

(b) Nasdaq system will enable the Company to attract its own market makers and to expand the capital base available for purchases of its Security;

(c) Nasdaq system will, in the Company's opinion, stimulate increased demand for its Security and result in greater liquidity for the Company's shareholders;

(d) The firms making a market in the Security on Nasdaq will be more likely to issue research reports with respect to the Company, which will increase the availability of information about the Company and increase its visibility to investors; and

(e) A significant number of the Company's competitors which are publicly owned have one or more classes of common equity securities which are quoted on Nasdaq, providing the Company's shareholders with a comparable peer group against which to assess the trading performance of the Security.

Any interested person may, on or before July 30, 1996 submit by letter to the Secretary of the securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 96-17932 Filed 7-12-96; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-22056; 812-10040]

**Norwest Bank Minnesota, N.A., et al.;
Notice of Application**

July 9, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Norwest Bank Minnesota, N.A. (the "Bank"), Norwest Advantage Funds, Forum Financial Services, Inc. ("Forum"), Core Trust (Delaware)

("Core Trust"), and Schroder Capital Management International, Inc. ("Schroder").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would supersede a prior order (the "Existing Order")¹ and would permit Norwest Advantage Funds to invest any percentage of their assets in an underlying Core Trust portfolio or in direct investments. It also would remove certain restrictions currently imposed on the Core Trust portfolios to permit them to accept investments from persons other than Norwest Advantage Funds.

FLING DATE: The application was filed on March 8, 1996 and amended on May 17, 1996, and June 27, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Forum Financial Group, Two Portland Square, Portland, Maine 04101, Attention: David I. Goldstein, Esq.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942-0574 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 at the SEC's Public Reference Branch.

Applicants' Representations

1. Norwest Advantage Funds is a registered open-end series investment

company organized as a Delaware business trust.² Norwest Advantage Funds currently consists of 30 series. Five of the Norwest Advantage Funds (the "Blended Funds") allocate their assets among a combination of different investment strategies or styles (e.g., small company stock, international stock, short-term corporate bonds). The Blended Funds currently are offered without a sales load or redemption fee and do not bear distribution expenses pursuant to a plan adopted under rule 12b-1 under the Act, although applicants anticipate revising these arrangements in the future. Other Norwest Advantage Funds offer multiple classes of shares in reliance on rule 18f-3, including classes subject to sales loads and distribution expenses pursuant to rule 12b-1 plans.

2. Core Trust is a registered open-end series investment company organized as a Delaware business trust. Core Trust does not offer its securities to the public; its securities are offered only in private placement transactions to registered investment companies and other institutional investors. Core Trust, however, reserves the right to offer its shares to the public in the future. Presently, there are seven series of Core Trust (the "Core Trust Portfolios"). Three series of Core Trust, Small Company Portfolio, International Portfolio II, and Index Portfolio, operate in a manner similar to master funds in a master-feeder arrangement, and currently offer their securities only to the Blended Funds pursuant to the Existing Order (the "Core Advantage Portfolios"). Four series of Core Trust operate as master funds in master feeder arrangements: Treasury Cash Portfolio, Government Cash Portfolio, Cash Portfolio (collectively, the "Money Fund Portfolios"), and International Portfolio. The Money Fund Portfolios (which currently are unrelated in any way to the Bank and/or Norwest Advantage Funds) invest in money market instruments. International Portfolio currently offers its securities only to International fund, a series of Norwest Advantage Funds, in reliance on section 12(d)(1)(E) of the Act. The Core Trust Portfolios may, in the future, be offered to Funds (as defined below) relying on any order granting this application, or to any other investor legally entitled to purchase securities issued by the Core Trust Portfolios. Shares of the Core Trust Portfolios that intend to rely on the requested order presently are offered

¹ *Norwest Bank Minnesota, N.A., et al.*, Investment Company Act Release Nos. 20640 (Oct. 19, 1994) (notice) and 20697 (Nov. 10, 1994) (order).

² At the time of the Existing Order, Norwest Advantage Funds was known as "Norwest Funds" Effective October 1, 1995, Norwest Funds changed its name to Norwest Advantage Funds.

without a sales load or redemption fee and do not bear distribution expenses pursuant to a rule 12b-1 plan.

3. The Bank is a wholly-owned subsidiary of Norwest Corporation. The Bank is the investment adviser to each Norwest Advantage Fund and two Core Advantage Portfolios. Schroder, a registered investment adviser, serves as subadviser to International fund and, with respect to investments in international securities, to each Blended Fund. Schroder also serves as investment adviser to International Portfolio and International Portfolio II of Core Trust. Forum, a registered broker-dealer and investment adviser, provides distribution, management, and related services to the Norwest Advantage Funds and Core Trust. Applicants request that any relief granted pursuant to this application also apply to (a) any registered open-end investment company or series thereof for which the Bank, Schroder, Forum, or any entity that controls, is controlled by, or is under common control with the Bank, Schroder, or Forum serves as investment adviser, administrator (as that term is defined in item 5 of Form N-1A), principal underwriter, or placement agent (together with Norwest Advantage Funds, the "Funds") that in the future determines to invest its assets in another registered open-end investment company that is part of the same "group of investment companies," (together with Core Trust, the "Portfolios")³ and (b) to any such Portfolio.⁴

4. The Existing Order allows each Blended Fund to invest a portion of its assets, within a specified range, in the outstanding voting shares of the three Core Advantage Portfolios, and imposes several restrictions on the operation of the Blended Funds and Core Advantage Portfolios. For example, the Existing Order applies only to investments in the three Core Advantage Portfolios. A Blended Fund that allocates part of its assets to a different investment style must invest in portfolio securities

³The Money Fund Portfolios currently offer their securities to three series of Monarch Funds, and currently intend to offer their securities to at least two series of forum Funds in reliance on section 12(d)(1)(E) of the act. Both Monarch Funds and forum Funds are registered open-end management investment companies whose securities are distributed by Forum. Neither Monarch Funds nor forum Funds currently intends to invest in Portfolios in reliance on this order, but may do so in the future.

⁴For purposes of this application, "group of investment companies" has the same meaning as that term is assigned in rule 11a-3(a)(5) under the Act, modified to the extent that an investment company that does not offer its shares to the public has a placement agent rather than a principal underwriter.

directly, without the benefits of pooled investment. Each Core Advantage Portfolio is barred from offering securities to persons other than Blended Funds relying on the Existing Order, including feeder funds relying on section 12(d)(1)(E) of the Act. Moreover, each Blended Fund must allocate a "base percentage" of its assets to each of the three Core Advantage Portfolios in which it invests, and may deviate from these base allocations only within specified ranges. Applicants contend that the Existing Order is outdated and that the proposed revisions constitute a cost-effective response to investor demand for diversification of fund portfolios.

5. Applicants request an exemption under section 6(c) of the Act from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act from section 17(a) of the Act. The requested order would supersede the Existing Order and would permit the Funds to invest any percentage of their assets in underlying Portfolios or in direct investments to the extent consistent with their investment policies and registration statements. It also would remove certain restrictions currently imposed on the Core Trust portfolios to permit the Portfolios to accept investments from persons other than the Norwest Advantage Funds.

6. The funds will not invest in any Portfolio unless the Portfolio may not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A), except for securities received as a dividend or as a result of a plan of reorganization of any company. The exception for securities received as a dividend or as a result of a plan of reorganization is based on section 12(d)(1)(D).⁵ No Portfolio will participate in any plan or reorganization devised for the purpose of evading the provisions of section 12(d)(1)(A). Applicants assert that the legislative history of section 12(d)(1)(D) indicates that the enumerated exceptions are warranted because they do not involve any new commitment on the part of the acquiring investment company, and consequently do not present the abuses section 12(d)(1)(A) was intended to address.

⁵Section 12(d)(1)(D) permits an investment company to exceed the limits contained in section 12(d)(1)(A) in the event that the investment company exceeds the limits because it acquires investment company shares as a dividend, as a result of an offer of exchange, or pursuant to a plan of reorganization (other than a plan devised for the purpose of evading section 12(d)(1)(A)).

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) provides that the SEC may exempt persons or transactions if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) exempting them from sections 12(d)(1)(A) and (B) to permit the Funds to invest in shares of the Portfolios in excess of the percentage limitations of section 12(d)(1).

3. Applicants believe that the proposed investment structure will not be subject to any of the abuses that section 12(d)(1) was intended to prevent. One of the concerns that led to the enactment of section 12(d)(1) was the layering of fees. Applicants assert that fees charged to the Funds and Portfolios in which they invest will not be duplicative. Any advisory fees that are charged to a Fund would be subject to the approval of the Fund's director or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"). This approval process is designed to ensure that any advisory fee that may be borne by any Fund would be for services that augment, rather than duplicate, those services provided to the Portfolios. If the requested relief is granted, applicants expect to seek shareholder approval to the extent required by section 15 of the Act to reorganize the fee structure of the Blended Funds and the Portfolios such that advisory fees would be charged only at the Portfolio level. If shareholder approval is obtained, advisory fees then would be assessed at the Fund level only for (a) services related to the direct investment activities undertaken by the

Funds, and (b) any non-duplicative services rendered only at the Fund level. Any advisory fee charged at the Fund level would compensate the adviser for services (e.g., asset allocation) that were unique to the Fund and that would not be provided at the Portfolio level.

4. Applicants assert that granting the requested relief would not present any danger of duplicative or excessive sales loads. Applicants intend that sales charges will continue to be incurred only at the Fund level. Applicants have, however, reserved the right to have different sales load structures in the future, which may include the payment of sales charges or service fees at both the Portfolio and Fund levels. If a Fund determines to invest in shares of a Portfolio that also bears a sales charge or service fee, it will do so only in conformity with the National Association of Securities Dealers' ("NASD") restrictions on aggregated sales charges and service fees. The funds would pay no sales charges on account of their investments in the Portfolios unless such charges had been reviewed and approved by the Fund's Independent Trustees.

5. Applicants assert that the requested relief would not lead to undue control or the threat of large-scale redemptions. Applicants contend that the excessive from the threat of redemptions and the concomitant loss of advisory fees does not apply in the context of funds of funds, all of which belong to the same group of investment companies. Because of the relationship among the investment advisers and/or principal underwriters/placement agents for a Fund and the Portfolio in which it invests, the threat of redemption as a means of exercising control is remote.

6. Section 17(a) makes it unlawful for an affiliated person of a registered investment company, or an affiliated person of such person, to sell securities to, or purchase securities from, the company. Because Norwest Advantage Funds and the index Portfolio and the Small Company Portfolio of Core Trust are each advised by the Bank, and because six Norwest Advantage Funds and International Portfolio and International Portfolio II are advised by or subadvised by Schroder, Norwest Advantage Funds and Core Trust could be deemed to be affiliates of one another. Purchases by the Norwest Advantage Funds of the shares of the Core Trust Portfolios and the sale by the Core Trust Portfolios of their shares to the Norwest Advantage Funds could thus be deemed to be principal transactions between affiliated persons under section 17(a).

7. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if (a) the terms of the proposed transaction, including the consideration paid or received, are reasonable and fair and do not involve overreaching on the part of any persons concerned; (b) the proposed transaction is consistent with the policies of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the Portfolios to sell their shares to the Funds.⁶ Applicants believe that the proposed transaction meet the standards of sections 6(c) and 17(b).

Applicant's Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Fund will be part of the same "group of investment companies" as any Portfolio in which it invests. For purposes of this condition, "group of investment companies" mean any two or more registered open-end investment companies that hold themselves out to investors as related companies for purposes of investment and investor services, and (a) that have a common investment adviser or principal underwriter/placement agent, or (b) the investment adviser or principal underwriter/placement agent of one of the companies is an affiliated person as defined in section 2(a)(3) of the Act of the investment adviser or principal underwriter/placement agent of each of the other companies.

2. A Fund will not invest in any Portfolio unless the Portfolio may not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except for securities received as a dividend or as a result of a plan of reorganization of any company.

3. At least a majority of each Fund's directors or trustees will be Independent Trustees, and the selection of Independent Trustees necessary to fill any vacancies on the board of directors or trustees, as well as the nomination of those persons to be recommended by the board of directors or trustees in connection with any shareholder vote, will be committed to the discretion of such Independent Trustees.

⁶ Section 17(b) applies to a specific proposed transaction rather than an ongoing series of future transactions. See *Keystone Custodian Funds*, 21 S.E.C. 295, 298-99 (1945). Section 6(c), along with section 17(b), frequently is used to grant relief from section 17(a) to permit an ongoing series of future transactions.

4. Prior to approving any advisory or management contract under section 15 of the Act or promptly upon the termination of a fee waiver, the directors or trustees of each Fund, including a majority of the Independent Trustees, shall find that the management and advisory fees charged under such contract, if any, are based on services that will be in addition to, rather than duplicative of, the services provided under the contracts of any Portfolio in which the Fund may invest; provided that no such findings will be necessary if the Bank or other investment adviser to a Portfolio waives all advisory fees that may be imposed for serving as investment adviser to the Portfolio or, if only a portion of such advisory fees are waived, the Bank or another party reimburses the Portfolio for any advisory fee or portion thereof that is not waived. These findings and their basis will be recorded fully in the minute books of the Fund.

5. Any Sales Charges or Service Fees, as such terms are defined under Section 26(b) of Article III of the NASD Rules of Fair Practice, as may be charged with respect to securities of a Fund, when aggregated with any such sales charges and/or service fees borne by the Fund with respect to the shares of a Portfolio, shall not exceed the limits set forth in section 26(d) of Article III of the NASD Rules of Fair Practice.

6. Applicants will provide the following information in electronic format to the Chief Financial Analyst of the SEC's Division of Investment Management as soon as reasonably practicable following each fiscal year-end of each Fund, unless the Chief Financial Analyst notifies applicants that the information need no longer be submitted: (a) monthly average total assets for each Fund and each Portfolio in which a Fund invests; (b) monthly purchases and redemptions (other than by exchange) for each Fund and each Portfolio in which a Fund invests; (c) monthly exchanges into and out of each Fund and each Portfolio in which a Fund invests; (d) month-end allocations of each Fund's assets among the Portfolios in which it invests; (e) annual expense ratios for each Fund and each Portfolio in which a Fund invests; and (f) a description of any vote taken by the shareholders of any Portfolio in which a Fund invests, including a statement of the percentage of votes cast for and against the proposal by the Fund and by the other shareholders of that Portfolio.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-17931 Filed 7-12-96; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Penn Engineering & Manufacturing Corp., Common Stock, \$.01 Par Value; Class A Common Stock, \$.01 Par Value) File No. 1-5356

July 9, 1996.

Penn Engineering & Manufacturing Corp. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, it has listed the Security with the New York Stock Exchange, Inc. ("NYSE"). In making the decision to withdraw the Securities from listing on the Amex, the Company considered that, in order to avoid the direct and indirect costs and the division of the market resulting from dual listing of the Securities on the Amex and the NYSE, it was in its best interest to delist and suspend the trading of the Securities on the Amex upon the admission of the Securities to trading on the NYSE.

Any interested person may, on or before July 30, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96-17934 Filed 7-12-96; 8:45 am]

BILLING CODE 8010-01-M

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of July 15, 1996.

A closed meeting will be held on Wednesday, July 17, 1996, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, July 17, 1996, at 10:00 a.m., will be:

Institution and settlement of administrative proceedings of an enforcement nature.

Institution and settlement of injunctive actions.

Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting times. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: July 10, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96-18051 Filed 7-11-96; 1:37 pm]

BILLING CODE 8010-01-M

[Release No. 34-37414; File No. SR-BSE-96-07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to Its Fee Schedule

July 9, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 24, 1996, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4.

("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 is proposing to amend its fee schedule pertaining to Transaction Fees.

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

The Exchange has determined to amend its Transaction Fee schedule in order to improve the Exchange's competitive position in the overall marketplace. As such, the Exchange plans to implement a maximum transaction fee cap (the total of all Trade Recording and Comparison Charges and all Value Charges) of \$.45 per 100 average monthly shares as of July 1, 1996.³

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁴ in general and furthers the objectives of Section 6(b)(4)⁵ in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

³ The Commission notes that the Exchange's proposal is based on a rule filing that was recently approved by the Commission. See Securities Exchange Act Release No. 36828 (February 12, 1996), 61 FR 6403 (February 20, 1996) (File No. SR-CHX-96-04).

⁴ 15 U.S.C. 78f(b) (1988).

⁵ 15 U.S.C. 78f(b)(4) (1988).

B. Self-Regulatory Organization's Statement on Burden on Competition

The self-regulatory organization 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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A) of the Act⁶ and subparagraph (e) of Rule 19b-4 thereunder on July 1, 1996.⁷

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 also will be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-96-07

and should be submitted by August 5, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-17927 Filed 7-12-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37413; File Nos. SR-MBSCC-96-02, SR-GSCC-96-03, and SR-ISCC-96-04]

Self-Regulatory Organizations; MBS Clearing Corporation, Government Securities Clearing Corporation, and International Securities Clearing Corporation; Notice of Filings of Proposed Rule Changes Seeking Authority To Enter Into Limited Cross-Guarantee Agreements

July 9, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 11, 1996, May 10, 1996, and May 16, 1996, the MBS Clearing Corporation ("MBSCC"), the Government Securities Clearing Corporation ("GSCC"), and the International Securities Clearing Corporation ("ISCC") (collectively referred to as "the clearing corporations"), respectively, filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR-MBSCC-96-02, SR-GSCC-96-03, and SR-ISCC-96-04) as described in Items I, II, and III below, which items have been prepared primarily by MBSCC, GSCC, and ISCC, respectively. On May 13, 1996, GSCC filed an amendment to the proposed rule change to a change the specific rule numbers used in the proposed rule change.² On July 2, 1996 and July 3, 1996, ISCC and GSCC, respectively, filed amendments to their proposed rule changes to make certain technical corrections.³ The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

¹ 15 U.S.C. 78s(b)(1) (1988).

² Letter from Karen Walraven, Vice President and Associate Counsel, GSCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation ("Division"), Commission (May 13, 1996).

³ Letter from Julie Beyers, ISCC, to Peter Geraghty, Special Counsel, Division, Commission (July 1, 1996), and letter from Karen Walraven, Vice President and Associate Counsel, GSCC, to Peter Geraghty, Special Counsel, Division, Commission (July 2, 1996).

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The purpose of the proposed rule change is to modify the clearing corporations' rules to enable them to enter into limited cross-guarantee agreements with other clearing agencies.

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, MBSCC, GSCC, and ISCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments that they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. MBSCC, GSCC, and ISCC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.⁴

(A) Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed rule changes is to modify the rules of the clearing corporations to enable them to enter into limited cross-guarantee agreements with other clearing agencies. Generally, limited cross-guarantee agreements contain a guarantee from one clearing agency to another clearing agency that can be invoked in the event of a default of a common member. The guarantee provides that resources of a defaulting common member remaining after the defaulting common member's obligations to the guaranteeing clearing agency have been satisfied will be used to satisfy the obligations of the defaulting common member that remain unsatisfied at the other clearing agency. The guarantee is limited to the amount of a defaulting common member's resources remaining at the guaranteeing clearing agency.⁵

Generally, limited cross-guarantee agreements should be beneficial to the clearing corporations because amounts available under limited cross-guarantee agreements may be applied to unpaid obligations of the defaulting participant. With regard to GSCC, these amounts may reduce possible pro rata allocations against original counterparties of the defaulting participant. Similarly, these

⁴ The Commission has modified the text of the summaries submitted by MBSCC, GSCC, and ISCC.

⁵ In the case of GSCC, the principal resources likely to exist are funds-only settlement payments and clearing fund deposits.

⁶ 15 U.S.C. 78s(b)(3)(A) (1988).

⁷ CFR 240.19b-4.

⁸ 17 CFR 200.30-3(a)(12).

amounts available to ISCC may reduce the possibility of pro rata charges against its clearing fund. Furthermore, even though MBSCC does not mutualize risk, these amounts may reduce allocations against and losses of the original contrasides of a defaulting participant.

The benefits accruing to the clearing corporations from a limited cross-guarantee agreement are illustrated by the following example:

Dealer A, a common participant of Clearing Agency X and Clearing Agency Y, declares bankruptcy. Upon insolvency, Dealer A owes Clearing Agency Y \$10 million and Clearing Agency X owes A \$7 million. In the absence of an inter-clearing agency limited cross-guarantee agreement, Clearing Agency X would be obligated to pay \$7 million to Dealer A's bankruptcy estate and Clearing Agency Y would have a claim for \$10 million against Dealer A's bankruptcy estate as a general creditor with no assurance as to the extent of recovery. However, an effective cross-guarantee arrangement would obligate Clearing Agency X to pay Clearing Agency Y an amount equal to Dealer A's \$7 million receivable from Clearing Agency X thereby reducing Clearing Agency Y's net exposure from \$10 million to \$3 million. This approach would enable Clearing Agency Y to secure earlier payment and would allow Clearing Agency X to fulfill its obligations without making an actual payment to Dealer A's bankruptcy estate.

The benefits specifically accruing to MBSCC from a limited cross-guarantee agreement are illustrated by the following example:

A sells to B who sells to C. A also sells to X who sells to Y; and A also sells to Q. B and X net out, leaving obligations of A owing to C, Y, and Q. A becomes insolvent. Under MBSCC's rules, if A's participants fund contribution is not adequate to cover the aggregate of C's and Y's losses, then B, X, and Q, as original contra-sides, would be responsible for covering such losses. However, before allocating C's and Y's aggregate loss to B, X, and Q, MBSCC may obtain resources under a limited cross-guarantee agreement to reduce, if not eliminate, the amount of such allocations. If those resources are sufficient to satisfy C's and Y's losses, any remaining funds would also be available for the satisfaction of O's losses.

The limited cross-guarantee agreements are designed to preserve substantial flexibility to the counterparty clearing corporation. The agreements will provide a list of all the limited cross-guarantee agreements to which the clearing agencies are a party, including the counterparties to those agreements. The agreements will set forth the clearing agency's priority structure with respect to the order in which it will make guarantee payments to its counterparty clearing agencies (if

more than one exist) in the event of a defaulting common participant. GSCC intends to prioritize its counterparty clearing agencies in the following manner: (1) Pro rata to those counterparty clearing agencies with a transactional nexus to GSCC; (2) the National Securities Clearing Corporation; and (3) pro rata to all other counterparty clearing agencies.⁶

An additional source of flexibility in a limited cross-guarantee agreement is the length of time within which a demand for payment must be made. This period is negotiated and agreed to by the counterparty clearing agencies. GSCC believes that an appropriate time period for this purpose is six months.⁷ During this six month period, the limited cross-guarantee agreement would permit recalculations of each clearing agency's available resources and losses. A six month period would allow for changed circumstances at one or several clearing corporations.

The Commission has stated its support of the use of limited cross-guarantee agreements and other similar arrangements among clearing agencies as a method of reducing clearing agencies' risk of loss due to a common member's default and has encouraged clearing agencies to explore such agreements or arrangements.⁸

Accordingly, GSCC's proposed rule change modifies GSCC's rules to enable GSCC to enter into one or more limited cross-guarantee agreements. Proposed Rule 41 governing limited cross-guarantee agreements provides that a participant is obligated to GSCC for any guarantee payment that GSCC is required to make to a clearing agency pursuant to the terms of any limited cross-guarantee agreement. GSCC's Rule 41 and the proposed modifications to Section 8 of Rule 4 provide that amounts received by GSCC under any limited cross-guarantee agreement will be applied to the common participant's unpaid obligations to GSCC and will reduce assessments against original counterparties of the defaulting participant. The proposed rule change also modifies Rule 1 of GSCC's rules to add definitions of the terms "common member," "cross-guarantee obligation," "cross-guarantee party," "defaulting

common member," "defaulting member," and "limited cross-guarantee agreement." GSCC is proposing to amend Section 6 of Rule 4 to clarify that liabilities of GSCC include limited cross-guarantee payments made to a counterparty clearing agency pursuant to a limited cross-guarantee agreement.⁹

MBSCC's proposed rule change will add new Rule 4 to Article III of MBSCC's rules. The new rule will enable MBSCC to enter into one or more limited cross-guarantee agreements. The new rule provides that a former participant¹⁰ is obligated to MBSCC for any guarantee payment MBSCC is required to make to a clearing agency pursuant to the terms of any limited cross-guarantee agreement. The new rule also provides that amounts received by MBSCC under any limited cross-guarantee agreement will be applied to unpaid obligations of the former participant to MBSCC and to reduce assessments against and losses of original contra-side participants. A technical modification will be made to the current Rule 4 of Article III to renumber such rule as Rule 5. MBSCC's proposed rule change also modifies Rule 1 of Article I of MBSCC's rules to add definitions of the terms "limited cross-guarantee agreement," "cross-guarantee obligation," and "cross-guarantee party." MBSCC's proposed rule change also modifies Chapter VI of MBSCC's procedures relating to application of the participants fund to reflect that amounts received by MBSCC under any limited cross-guarantee agreement will be applied to unpaid obligations of a former participant of MBSCC and to reduce assessments against and losses of original contra-side participants.¹¹

ISCC's proposed rule change will add new Rule 13 to ISCC's rules. The new rule provides that an ISCC member is obligated to ISCC for any guarantee payment ISCC is required to make to a clearing agency pursuant to the terms of any limited cross-guarantee agreement. ISCC's proposed rule change also modifies ISCC's rules to indicate that amounts available to satisfy aggregate

⁹ The definitions of the terms described above as well as the specific changes to GSCC's rules and procedures are attached as Exhibit A to GSCC's proposed rule change which is available through GSCC or through the Commission's public reference room.

¹⁰ Under Section 10 of Rule 3 of Article III of MBSCC's rules, the term "former participant" is defined as a participant for whom MBSCC has ceased to act pursuant to Sections 1 and 2 of Rule 3 of Article III.

¹¹ The definitions of the terms described above as well as the specific changes to MBSCC's rules and procedures are attached as Exhibit A to MBSCC's proposed rule change which is available through MBSCC or through the Commission's public reference room.

⁶ At this time, MBSCC and ISCC have not determined the priority structures of their limited cross-guarantee agreements.

⁷ At this time, MBSCC and ISCC have not determined a specific recovery period for their limited cross-guarantee agreements.

⁸ Securities Exchange Act Release Nos. 36431 (October 27, 1995), 60 FR 55749 [File No. SR-GSCC-95-03] and 36597 (December 15, 1995), 60 FR 66570 [File No. SR-MBSCC-95-05] (orders approving proposed rule changes authorizing the release of clearing data relating to participants).

losses will include amounts available under limited cross-guarantee agreements. ISCC's proposal also modifies Rule 1 of the ISCC's rules to add definitions of the terms "limited cross-guaranty agreement," "cross-guaranty obligation," and "cross-guaranty party."¹²

MBSCC, GSCC, and ISCC believe the proposed rule changes are consistent with Section 17A of the Act and the rules and regulations thereunder because the proposals should help to safeguard securities and funds in their custody or control or for which they are responsible and should foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organizations' Statements on Burden on Competition

MBSCC, GSCC, and ISCC do not believe that the proposed rule changes will impact or impose a burden on competition.

(C) Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

No written comments relating to the proposed rule changes have been solicited or received. MBSCC, GSCC, and ISCC will notify the Commission of any written comments they receive.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety 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 MBSCC, GSCC, and ISCC consents, the Commission will:

- (a) By order approve such proposed rule changes or
- (b) Institute proceedings to determine whether the proposed rule changes 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.,

¹²The definitions of the terms described above as well as the specific changes to ISCC's rules and procedures are attached as Exhibit A to ISCC's proposed rule change which is available through ISCC or through the Commission's public reference room.

Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the respective filings will also be available for inspection and copying at the respective principal offices of MBSCC, GSCC, and ISCC. All submissions should refer to file number SR-MBSCC-96-02, SR-GSCC-96-03, and SR-ISCC-96-04 and should be submitted by August 5, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-17929 Filed 7-12-96; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-37412; File No. SR-NASD-96-26]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Obligations of CQS Market Makers To Have Available Quotation Services That Provide Quotation Information for CQS Securities

July 9, 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 June 21, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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

The NASD proposes to amend NASD Rule 6630, formerly Section 2 of Part VI of Schedule D to the NASD By-Laws, to

¹³ 17 CFR 200.30-3(a)(12) (1995).

require NASD members registered with The Nasdaq Stock Market, Inc. ("Nasdaq") as Consolidated Quotation Service¹ ("CQS Service" or "CQS") market makers to have available in close proximity to the Nasdaq terminals at which they make markets in CQS securities a quotation service that disseminates the bid prices and offer prices then being furnished by or on behalf of all exchanges and CQS market makers in the CQS issues for which they are registered. (Additions are in italic; deletions are bracketed.)

NASD Rule 6330 Obligations of CQS Market Makers

- (a)-(c). No change.
- (d) *A CQS market maker shall be obligated to have available in close proximity to the Nasdaq terminal at which it makes a market in a CQS security a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of all exchanges and CQS market makers trading and quoting that CQS security.*

* * * * *

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 NASD 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 NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to amend NASD Rule 6330,² the NASD's rule governing CQS market maker obligations, to provide that a CQS market maker must have available, in close proximity to the Nasdaq terminal at which it makes a market in a CQS security, a quotation service that disseminates the bid price and offer

¹ CQS is Nasdaq's service that provide subscribers with quotation, last sale, and volume information for securities listed on the New York and American Stock Exchanges. With respect to quotations, the Service provides a non-dynamically-updated montage of quotations from all exchanges and NASD members registered as CQS market makers in a particular issue.

² NASD Rule 6330 was formerly Section 2 of Part VI of Schedule D to the NASD By-Laws prior to the revision of the NASD Manual.

price then being furnished by or on behalf of all exchanges and CQS market makers trading and quoting that CQS security.³ As discussed in more detail below, this proposed rule change is necessitated by a planned modification to CQS by Nasdaq that will substantially augment Nasdaq's computer processing capacity. Specifically, Nasdaq is planning to modify CQS so that quotation montages for exchange-listed securities will consist only of CQS market makers' quotations.

The planned modification to CQS reflects Nasdaq's strategic decision to enhance its computer processing capacity in an efficient and cost-effective manner by withdrawing from the business of vending quotation information in exchange-listed securities. By eliminating exchange quotations from CQS, Nasdaq will be able to redeploy its computer processing capacity presently devoted to processing these quotations toward meeting the demands associated with processing Nasdaq trading volume greater than one billion shares a day.⁴ Once exchange quotations have been deleted from CQS, CQS will essentially function as a means by which CQS market makers can monitor their current quotations resident in Nasdaq's computers as well as the timeliness with which their quotation updates are being processed and disseminated by Nasdaq. Thus, rather than providing quotation information to a broad spectrum of

market participants, CQS will function primarily as a quotation verification mechanism for CQS market makers.

Under Section 6(a)(i)(A) of the ITS Plan, however, the NASD has agreed that "for each ITS/CAES security in which an ITS/CAES Market Maker is registered as such with the NASD for the purposes of the Applications [of the ITS Plan], there shall be available at each location on the premises of such ITS/CAES Market Maker at which ITS/CAES stations are located a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of each other Participant." Accordingly, since Nasdaq is planning to eliminate exchange quotations from CQS quotation montages, the NASD is submitting this rule proposal to ensure the NASD's ongoing compliance with Section 6(a)(i)(A) of the ITS Plan. In particular, by mandating that all CQS market makers have available, in close proximity to the Nasdaq terminals at which they make markets in CQS securities, the same exchange quotation information that is scheduled to be deleted from CQS (i.e., exchange quotes in CQS issues), the NASD will be continuing to satisfy its obligation under section 6(a)(i)(A) of the ITS Plan.⁵

The NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities associated be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, because of the increase in Nasdaq's processing capacity that would result from the deletion of exchange quotations from CQS, the NASD and Nasdaq believe the planned modification to CQS is consistent with the protection of investors, the maintenance of fair and orderly markets,

and the preservation of the integrity of the Nasdaq market. At the same time, the NASD and Nasdaq do not believe eliminating exchange quotes from CQS will contribute to unfair competition among ITS Participant Markets or compromise the best executive of customer orders. Because CQS quotations are not updated dynamically, market participants rely on other vendor services for quotation and last-sale information on exchange-listed securities. These other vendor services provide the same information as CQS in a dynamic fashion, often with additional analytical features and the ability to customize the presentation of such information. As a result, CQS is principally only subscribed to by CQS market makers, and even then only to monitor their quotes. Thus, the NASD and Nasdaq do not believe that deleting exchange quotes from CQS will jeopardize the ability of financial intermediaries to obtain best execution for their customers' orders or the ability of customers to monitor the quality of the executions they receive. In addition, because CQS market makers will be required by the instant rule proposal to display in close proximity to their Nasdaq terminals montages of all exchange and CQS market maker quotes in the CQS issues for which they are registered, the NASD and Nasdaq do not believe any ITS Participant Market will be adversely affected by the planned modification to CQS. In addition, the NASD, NASD Regulation, Inc., and Nasdaq do not believe that eliminating exchange quotations from CQS will compromise the NASD's ability to surveil trading in the third market. This is because NASDR's Market Regulation Department already receives market information concerning exchange-listed securities from securities information vendors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal

³ An NASD member cannot enter quotes into CQS unless it is registered with Nasdaq as a CQS market maker. CQS market makers are obligated under NASD rules to quote continuous, firm, two-sided markets with a minimum size of 500 shares. The minimum quotation size for an individual CQS Security may be lowered, under unique circumstances, from 500 shares to 200 shares by the NASD. All CQS market makers in Rule 19c-3 securities must also be registered with Nasdaq as ITS/CAES market makers and CAES market makers. ITS/CAES is the Nasdaq's link to the Intermarket Trading System ("ITS") that enables CQS Market Makers in Rule 19c-3 securities to direct agency and principal orders to and receive orders from the floors of participating ITS exchanges. CAES is an automated system operated by Nasdaq that allows NASD members to direct agency and principal orders in exchange-listed securities to CAES for automatic execution against CQS market makers. For non-19c-3 securities, CQS market makers must be registered as CAES market makers.

⁴ In order to provide exchange quotations through CQS, Nasdaq receives and processes a feed of quotation and last sale information from the Securities Information Automation Corporation ("SIAC"). Thus, at present, Nasdaq computers are not only processing all quotation updates in Nasdaq-listed securities, but also all quotation updates in exchange-listed securities. The demands on Nasdaq system capacity to process exchange quotation updates are also exacerbated because of the regional exchanges' use of auto-quoting programs. In fact, at times, the processing of exchange quotations through CQS can consume approximately 40 percent of Nasdaq's computer capacity on a given day.

⁵ Because Nasdaq must adhere to the requirements of the SEC's Vendor Display Rule, Rule 11Ac1-2 under the Act, which requires, among other things, that vendors may not exclude quotation information based on the market center making available such information, Nasdaq also has submitted a request, pursuant to paragraph (g) of the Vendor Display Rule, for an exemption from the Rule to facilitate the planned modification to CQS. See letter from Robert E. Aber, Vice President & General Counsel, Nasdaq, to Howard L. Kramer, Associate Director, Division of Market Regulation, SEC, dated June 21, 1996.

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 NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 5, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-17930 Filed 7-12-96; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-37411; File No. SR-PTC-96-01]

Self-Regulatory Organizations; Participants Trust Company; Order Approving a Proposed Rule Change Eliminating the Deduction of Reserve on Gain in the Calculation of Net Free Equity for Proprietary and Agency Accounts of a Receiving Participant in Certain Transactions

July 8, 1996.

On February 5, 1996, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change

(File No. SR-PTC-96-01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the Federal Register on May 28, 1996.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends Article I, Rule 1 of PTC's rules to eliminate the deduction of reserve on gain ("ROG")³ in the calculation of net free equity ("NFE")⁴ for proprietary and agency accounts of a receiving participant in certain transactions. PTC will retain the deduction of ROG as it applies to the calculation of NFE for proprietary and agency accounts of a delivering participant.

NFE measures the value associated with the account of a participant that is available to support transaction processing to or from the participant's account. Under Article II, Rule 9, Section 2 and Article II, Rule 13, PTC will not process an account transfer of securities if as a result of such transfer the account of the delivering participant or receiving participant will have negative NFE.

In any account transfer versus payment from a proprietary or agency account in which the contract value of the securities exceeds the market value, the deliverer's ROG is the difference in those values. The deliverer's ROG is deducted in calculating the NFE of the account of the delivering participant to prevent the gain on the transaction from increasing the delivering participant's NFE (*i.e.*, the amount available to the participant to support other activity in its account). The deduction of the deliverer's ROG creates an NFE

"reserve" to ensure that if necessary sufficient funds exist in the delivering participant's account to permit the debit of the contract value from the cash balance in the account in the event the transaction is reversed (*i.e.*, "DK'ed") by the receiving participant because of error or other circumstances permitted under the guidelines for good delivery. The ROG deduction also prevents a delivering participant, which inputs the terms of the trade on PTC's system, from abusing the system by creating additional NFE through the delivery versus payment of securities at an artificially inflated value.

The receiver's ROG is the difference in value that results when the market value of securities received into a proprietary or agency account versus payment exceeds the contract value of the securities. (*I.e.*, on the receive-side of a transaction, the amount of the potential NFE gain is the excess of market value of the securities over contract value). The rationale for deducting the receiver's ROG is different from that for deducting the deliverer's ROG. Unlike deliver-side ROG, receive-side ROG is not needed to ensure a receiving participant's ability to reverse a securities transaction because the receiving participant initiates the reversal and controls the availability of NFE in its account.

The deduction of ROG in the NFE calculation for an account of a receiving participant was incorporated into PTC's rules in 1989 pursuant to the order granting PTC's registration as a clearing agency. The rule's purpose was to assure sufficient NFE in an account to enable PTC to reverse securities deliveries to achieve settlement in the event of participant default.⁵ The provisions of PTC's rules providing the ability to reverse transactions has been deleted.⁶ Accordingly, deduction of

¹ 15 U.S.C. 78s(b)(1) (1988).

² Securities Exchange Act Release No. 37227 (May 20, 1996), 61 FR 26552.

³ In connection with any account transfer versus payment, ROG is: (i) with respect to a delivering participant, the amount by which the contract value credited to the cash balance of the account of the delivering participant exceeds the market value of the securities delivered or (ii) with respect to a receiving participant, the amount by which the market value of the securities credited to the transfer account associated with the account of the receiving participant exceeds the contract value of the transaction.

⁴ Article II, Rule 9 of PTC's rules provides that NFE for any agency or proprietary account is the sum of (i) the applicable percentage, as defined in Article I, Rule 1 of PTC's rules, of the market value of securities in the account and the associated transfer account, (ii) the cash balance in the account, and (iii) the participant's supplemental processing collateral, as calculated pursuant to the formula set forth in Article I, Rule 1 of PTC's rules, to the extent not required to collateralize an account transfer in any other account, minus the amount, if any, of ROG with respect to the account.

⁵ In 1988, MBS Clearing Corporation ("MBSCC"), PTC's predecessor, proposed a rule change to its Depository Division rules to include ROG in the NFE calculation of a receiving participant's account. Securities Exchange Act Release No. 26101 (September 22, 1988), 53 FR 37895 [File No. SR-MBS-88-14] (notice of filing of proposed rule change relating to Depository Division rules). Subsequently, the order granting PTC's registration as a clearing agency incorporated the proposed rule change stating that PTC's rules were essentially identical to MBSCC's Depository Division rules including the most recently proposed rule changes. Securities Exchange Act Release No. 26671 (March 31, 1989), 54 FR 13266, [File No. 600-25] (order granting registration as a clearing agency and statement of reasons).

⁶ For a more complete discussion of PTC's reasons for removing the reversal capability, refer to Securities Exchange Act Release No. 34701 (September 22, 1994), 59 FR 49730 [File No. SR-PTC-94-03] (order approving proposed rule change eliminating PTC procedures relating to deliverer's

Continued

⁶ 17 CFR 200.30-3(a)(12) (1989).

ROG from the NFE on the receive-side is no longer required.

II. Discussion

Section 17A(b)(3)(F)⁷ of the act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that PTC's proposed rule change is consistent with PTC's obligation under the Section 17A of the Act. Elimination of the NFE deduction for receive-side ROG is consistent with the prior repeal of PTC's authority to reverse transactions. Because PTC no longer can reverse transactions and because the receive-side participant initiates any reversal due to erroneous delivery or other permitted circumstances and thus controls the availability of NFE in its account, the ROG deduction is no longer necessary. As a result, participants with receive-side ROG should benefit from the increased liquidity resulting from the release of NFE previously encumbered by PTC should not incur any additional risks by such release. Moreover, by maintaining the NFE ROG deduction for deliver-side participants, PTC should be able to continue to protect itself from the risks associated with permitted reversals initiated by receive-side participants by ensuring that sufficient NFE exists in delivering participants' accounts. The exclusion of deliver-side ROG from NFE also should continue to dissuade deliver-side participant from taking actions to artificially inflate their NFE.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-PTC-96-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

security interests). In the notice of proposed rule change pertaining to this order, the Commission erroneously referred to Release No. 27193 (August 29, 1989), 54 FR 37065 [File No. SR-PTC-89-02] (order approving proposed rule change) as the rule change that removed PTC's reversal capability.

⁷ 15 U.S.C. 78q-1(b)(3)(F) (1988).

⁸ 17 CFR 200.30-3(a)(12) (1995).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 96-17928 Filed 7-12-96; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION
[License No. 04/74-0263]

Javelin Capital Fund, L.P.; Notice of Issuance of a Small Business Investment Company License

On Tuesday, June 20, 1995, a notice was published in the Federal Register (Vol. 60, No. 118, FR 32193) stating that an application had been filed by Javelin Capital Fund, L.P., at 1075 13th Street, South, Birmingham, Alabama 35205, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1996)) for a license to operate as a small business investment company.

Interested parties were given until close of business Wednesday, July 5, 1995 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/74-0263 on August 28, 1995, to Javelin Capital Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 10, 1996.

Don A. Christensen,
Associate Administrator for Investment.
[FR Doc. 96-17949 Filed 7-12-96; 8:45 am]
BILLING CODE 8025-01-P

[Declaration of Disaster Loan Area #2871]

Florida; Declaration of Disaster Loan Area

Manatee County and the contiguous counties of DeSoto, Hardee, Hillsborough, Polk, and Sarasota in the State of Florida constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on June 20, 1996. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 3, 1996 and for economic injury until the close of business on April 3, 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:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	7.625
Homeowners without Credit Available Elsewhere	3.875
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 287106 and for economic injury the number is 895300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 3, 1996.

Ginger Lew,

Acting Administrator.

[FR Doc. 96-17947 Filed 7-12-96; 8:45 am]

BILLING CODE 8025-01-P

[Declaration of Disaster Loan Area #2870]

New Jersey; Declaration of Disaster Loan Area

Mercer County and the contiguous counties of Burlington, Hunterdon, Middlesex, Monmouth, and Somerset in the State of New Jersey constitute a disaster area as a result of damages caused by severe storms and flooding which occurred June 12 through June 24, 1996. Applications for loans for physical damage may be filed until the close of business on September 3, 1996 and for economic injury until the close of business on April 2, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, New York 14303 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	7.625
Homeowners without Credit Available Elsewhere	3.875
Businesses with Credit Available Elsewhere	8.000

	Percent
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 287006 and for economic injury the number is 895200.

Any county contiguous to the above-named county and not listed herein has been previously declared in a separate declaration for the same occurrence.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 2, 1996.

Ginger Lew,

Acting Administrator.

[FR Doc. 96-17946 Filed 7-12-96; 8:45 am]

BILLING CODE 8025-01-P

[Declaration of Disaster Loan Area #2867]

Pennsylvania; Declaration of Disaster Loan Area (Amendment #1)

In accordance with notices from the Federal Emergency Management Agency, effective June 28, 1996, the above-numbered Declaration is hereby amended to include Adams, Beaver, Bedford, and Franklin Counties in the State of Pennsylvania as a disaster area. This declaration is further amended to expand the incident type for this disaster to include damages resulting from severe storms as well as flooding, and to establish the incident period as June 12 through June 19, 1996.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Allegheny, Blair, Butler, Cambria, Cumberland, Fulton, Huntingdon, Juniata, Lawrence, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Somerset, Washington, and York Counties in Pennsylvania; Burlington, Hunterdon, Mercer, and Warren Counties in New Jersey; Allegany, Carroll, Frederick, and Washington Counties in Maryland; and Columbiana and Hancock Counties in Ohio.

All other information remains the same, i.e., the termination date for filing applications for physical damage is August 17, 1996, and for loans for

economic injury the deadline is March 18, 1997.

The economic injury numbers assigned to this are 894700 for Pennsylvania; 894800 for New Jersey; 895400 for Maryland; and 895500 for Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 8, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96-17948 Filed 7-12-96; 8:45 am]

BILLING CODE 8025-01-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Pakistan

July 10, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 11, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6714. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Category 360 is being increased by recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62393, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round

Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 10, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on July 11, 1996, you are directed to amend the November 29, 1995 directive to increase the limit for Category 360 to 4,300,000 numbers¹, as provided for under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96-17942 Filed 7-12-96; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Singapore

July 10, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 11, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6716. For information on

¹ The limit has not been adjusted to account for any imports exported after December 31, 1995.

embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Categories 338/339 is being increased by recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62403, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the

implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 10, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on July 11, 1996, you are directed to increase the limit for Categories 338/339 to 1,198,218 dozen¹, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96-17943 Filed 7-12-96; 8:45 am]

BILLING CODE 3510-DR-F

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1996 Correlation

July 9, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1996 Correlation

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1996) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the textile program. The Correlation should be amended to include the following HTS numbers for Categories 218 and 847 inadvertently omitted from the Correlation at the time of publication. Also, there are changes in Category 362 due to statistical breakouts effective on July 1, 1996.

Changes to the 1996 Correlation

Add 5209.49.0090 (218)—Woven fabrics containing 85 percent or more by weight of cotton, weighing more than 200 g/m², or yarns of different colors, other fabrics not elsewhere specified or included.

Add 5211.49.0090 (218)—Woven fabrics of cotton, containing less than 85 percent by weight of cotton, mixed mainly or solely with man-made fibers, weighing more than 200 g/m², of yarns of different colors, other fabrics not elsewhere specified or included.

Add 6203.49.8045 (847)—Men's or boys' trousers and breeches, not knit, of other textile materials of silk blends or non-cotton vegetable fibers. Delete 6307.90.8990 (362).

Add 6307.90.8995 (362)—Shells for quilts, eiderdowns, comforters, and similar articles, containing other than 85 percent or more by weight of cotton.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96-17834 Filed 7-12-96; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 6/28/96

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST-96-1476.

Date filed: June 24, 1996.

Parties: Members of the International Air Transport Association.

Subject: TC2 Reso/P 1967, dated June 21, 1996, Europe-Mideast Resos 080aa (r) & 080ee (r-2) (Summary attached.), Intended effective date: November 1, 1996.

Docket Number: OST-96-1477.

Date filed: June 24, 1996.

Parties: Members of the International Air Transport Association.

¹ The limit has not been adjusted to account for any imports exported after December 31, 1995.

Subject: TC3 Telex Mail Vote 809, Korea-Japan fare revisions r1-4, r-1-063d, r-2-053d, r-3-043d, r-4-0855r, Intended effective date: July 15, 1996.

Docket Number: OST-96-1478.

Date filed: June 24, 1996.

Parties: Members of the International Air Transport Association.

Subject: COMP Reso/C 0667, dated May 31, 1996, r1-7, COMP Reso/C 0669, dated May 31, 1996, r8-9, Expedited Cargo Resolutions (Summary attached), Intended effective date: August 1, 1996.

Docket Number: OST-96-1488.

Date filed: June 26, 1996.

Parties: Members of the International Air Transport Association.

Subject: TC2 Reso/P 1966, dated June 21, 1996, Europe-Mideast Expedited Resos, r-21, (Summary attached.), Intended effective date: August 1, 1996. Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96-17885 Filed 7-12-96; 8:45 am]

BILLING CODE 4910-62-P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending June 28, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-96-1492.

Date filed: June 28, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 26, 1996.

Description: Application of United Parcel Service Co. pursuant to Subpart Q of the Department's Procedural Regulations and Section 41101 of Title 49 of the United States Code, for an amendment to its certificate of public convenience and necessity for Route 581 so as to authorize UPS to engage in scheduled foreign air transportation of cargo (property and mail) between a point or points in the United States, on

the one hand, and Osaka, Japan, on the other hand, and to two beyond points.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96-17884 Filed 7-12-96; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. On April 8, 1996, a notice was published in the Federal Register to request comments on the paperwork burden associated with the following collection of information.

DATES: Comments must be submitted on or before August 10, 1996.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT:

Judith Street, ABC-100; Federal Aviation Administration; 800 Independence Avenue, S.W.; Washington, DC 20591; Telephone number (202) 267-9895.

Title: Security Programs for Foreign Air Carrier.

OMB Control Number: 2120-0536.

Abstract: Security Programs required by FAR Part 129 set forth procedures to be used by Foreign Air Carriers in carrying out their responsibilities involving the protection of persons and property against acts of criminal violence, aircraft piracy, and terrorist activities.

Need: Each foreign air carrier landing or taking off in the United States is to submit a security program for the Administrator's acceptance to ensure adequate security measures are being implemented by those foreign air carriers.

Respondents: An estimated 171 foreign air carriers/governments.

Burden: The estimated total annual burden is 27,360 hours.

Issued in Washington, DC, on July 9, 1996.

Phillip A. Leach,

Information Clearance Officer, United States Department of Transportation.

[FR Doc. 96-17887 Filed 7-12-96; 8:45 am]

BILLING CODE 4910-62-P

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss emergency evacuation issues.

DATES: The meeting will be held on July 25, 1996, beginning at 9 a.m. Arrange for oral presentations by July 12, 1996.

ADDRESSES: The meeting will be held at McDonnell Douglas, 1735 Jefferson-Davis Highway, Suite 1200, Crystal City, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Courtney, Federal Aviation Administration, Office of Rulemaking (ARM-200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3327; facsimile number (202) 267-5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on July 25 at McDonnell Douglas, 1735 Jefferson-Davis Highway, Suite 1200 Crystal City, Virginia.

The agenda will include:

- Opening Remarks
- Review of the activities of the Performance Standards Working Group

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by July 12, 1996, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation Issues or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the

heading FOR FURTHER INFORMATION CONTACT.

Issued in Washington, DC, on June 26, 1996.

Ava L. Robinson,

Assistant Executive Director for Emergency Evacuation Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 96-17922 Filed 7-12-96; 8:45 am]

BILLING CODE 4910-03-M

RTCA, Inc., Special Committee 165; Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463, 5 U.S.C., appendix 2), notice is hereby given for Special Committee (S.C.) 165 meeting to be held July 31-August 2, 1996, starting at 9:30 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will be as follows:

- (1) Welcome and Introductions;
- (2) Approval of the Summary of the Previous Meeting;
- (3) Chairman's Remarks;
- (4) Overview of New Developments Relevant to AMSS and SC-165
 - a. Required Communications Performance (SC-169/Working Group (WG) #2);
 - b. AMCP WG-A on AMSS;
 - c. Industry, Users Government (Planned Presentations on Next-Generation Satellite Systems and Their Relevance to Aeronautical Safety Communications);
 - (5) Review of Working Group Activities: a. WG#1 (AMSS Avionics Equipment MOPS); b. WG#3 (System/Service Performance Criteria); c. WG#5 (AMS(R)S Satcom Voice);
 - (6) Other Business;
 - (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833-9339 (phone) or (202) 833-9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 9, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96-17923 Filed 7-12-96; 8:45 am]

BILLING CODE 4810-13-M

Federal Transit Administration

[FTA Docket No. FTA-96-1527]

Notice of Request for the Extension of Currently Approved Information Collections

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collections:

- (1) Prevention of Alcohol Misuse in Transit Operations;
- (2) Nondiscrimination as it applies to FTA Grant Programs;
- (3) Title VI as it applies to FTA Grant Programs;
- (4) Technical Activities Form;
- (5) Bus Testing Program.

DATES: Comments must be submitted before September 13, 1996.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL-401, 400 Seventh Street, S.W., Washington, D.C. 20590. All comments received will be available for examination at the above address from 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT:

Control of Alcohol Misuse in Transit Operations—Ms. Judy Meade, Office of Program Management, (202) 366-2896

Nondiscrimination as it applies to FTA Grant Programs and Title VI as it applies to FTA Grant Programs—Mr. Akira Sano, Office of Civil Rights, (202) 366-4018

Reporting of Technical Activities by FTA Grant Recipients—Sean Libberton, Office of Program Management, (202) 366-1626

Bus Testing Program—Mr. Frank Borris, Office of Research, Demonstration and Innovation, (202) 366-8089.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of these information collections, including: (1) the necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated

burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB reinstatement of this information collection.

Title: Prevention of Alcohol Misuse in Transit Operations (OMB Number: 2132-0557)

Background: The Omnibus Transportation Employee Testing Act of 1991 (Pub.L. 102-143, October 28, 1991, now codified in relevant part at 49 U.S.C. Section 5331) requires any recipient of Federal financial assistance under 49 U.S.C. Sections 5309, 5307, or 5311 or under 23 U.S.C. Section 103(e) (4) to establish a program designed to help prevent accidents and injuries resulting from the misuse of drugs and alcohol by employees who perform safety-sensitive functions. FTA's regulation, 49 CFR Part 654, "Prevention of Alcohol Misuse in Transit Operations," effective March 17, 1994, requires recipients to submit to FTA annual reports containing data which summarize information concerning the recipients' alcohol testing program, such as the number and type of test given, number of positive test results, and the kind of safety-sensitive function the employee performs. FTA uses these data to ensure compliance with the rule, to assess the misuse of alcohol in the transit industry, and to set the random testing rate. The data will also be used to assess the effectiveness of the rule in reducing the misuse of alcohol among safety-sensitive transit employees and making transit safer for the public.

Respondents: State and local government, business or other for-profit, non-profit institutions, and small businesses organizations.

Estimated Annual Burden on Respondents: 20.1 hours for each of the 1,615 respondents.

Estimated Total Annual Burden: 32,480 hours.

Frequency: Annual.

Title: Nondiscrimination As It Applies to FTA Grant Programs (OMB Number: 2132-0542)

Background: All entities receiving Federal financial assistance from FTA are prohibited from discriminating against any employee or applicant for employment because of race, color, creed, sex, national origin, age, or disability. To ensure that FTA's equal employment opportunity (EEO)

procedures are followed, FTA requires grant recipients to submit written EEO plans to FTA for approval. FTA's assessment of this requirement shows that the formulating, submitting, and implementing of EEO programs should minimally increase costs for FTA applicants and recipients.

To determine a grantee's compliance with applicable laws and requirements, grantee submissions are evaluated and analyzed based on the following criteria. First, an EEO program must include an EEO policy statement issued by the chief executive officer covering all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment. Second, the policy must be placed conspicuously so that employees, applicants, and the general public are aware of the agency's EEO commitment.

The data derived from written EEO and affirmative action plans will be used by the Office of Civil Rights in monitoring grantees' compliance with applicable EEO laws and regulations. This monitoring and enforcement activity will ensure that minorities and women have equitable access to employment opportunities and that recipients of Federal funds do not discriminate against any employee or applicant because of race, color, creed, sex, national origin, or age, or disability.

Respondents: FTA grant recipients.

Estimated Annual Burden on

Respondents: 40 hours for each of the 150 EEO submissions.

Estimated Total Annual Burden: 6,000 hours.

Frequency: On occasion, every 3 years, annually.

Title: Title VI As It Applies to FTA Grant Programs (OMB Number: 2132-0542)

Background: Section 601 of Title VI of the Civil Rights Act of 1964 states: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." This information collection is required by the Department of Justice (DOJ) Title VI Regulation, 28 CFR Part 42, Subpart F (Section 42.406), and DOT Order 1000.12. FTA policies and requirements are designed to clarify and strengthen these regulations. This requirement is applicable to all applicants, recipients, and subrecipients receiving Federal financial assistance. Experience has demonstrated that a

program requirement at the application stage is necessary to assure that benefits and services are equitably distributed by grant recipients. The requirements prescribed by the Office of Civil Rights accomplish that objective while diminishing possible vestiges of discrimination among FTA grant recipients. FTA's assessment of this requirement indicated that the formulation and implementation of the Title VI program should occur with a decrease in costs to such applicants and recipients.

All FTA grant applicants, recipients, and subrecipients are required to submit applicable Title VI information to the FTA Office of Civil Rights for review and approval. If FTA did not conduct pre-award reviews, solutions would not be generated in advance and program improvements could not be integrated into projects. FTA's experience with pre-award reviews for all projects and grants suggests this method contributes to maximum efficiency and cost effectiveness of FTA dollars and has kept post-award complaints to a minimum. Moreover, the objective of the Title VI statute can be more easily attained and beneficiaries of FTA funded programs have a greater likelihood of receiving transit services and related benefits on a nondiscriminatory basis.

Respondents: FTA grant recipients.

Estimated Annual Burden on

Respondents: 8.1 hours for each of the 371 Title VI submissions.

Estimated Total Annual Burden: 2,998 hours.

Frequency: Annual.

Title: Reporting of Technical Activities by FTA Grant Recipients (OMB Number: 2132-0549)

Background: 49 U.S.C. Sections 5303 and 5313 (a) and (b) authorize the use of Federal funds to assist metropolitan planning organizations (MPOs), states, and local public bodies in developing transportation plans and programs to serve future transportation needs of urbanized areas over 50,000 in population and States throughout the nation. As part of this effort, MPOs are required to consider a wide range of goals and objectives and to analyze alternative transportation system management and investment strategies. These objectives are measured by definable activities such as suburban mobility planning and other related activities.

The information collected by these forms is used to report annually to Congress, the Secretary, and to the FTA Administrator on how grantees are responding to national emphasis areas

and congressional direction, and allows FTA to track grantees' use of Federal planning and research funds.

Respondents: FTA grant recipients.

Estimated Annual Burden on

Respondents: 3 hours for each of the 50 respondents.

Estimated Total Annual Burden: 150 hours.

Frequency: Annual.

Title: Bus Testing Program (OMB Number: 2132-0550)

Background: 49 U.S.C. Section 5323(c) provides that no Federal funds appropriated or made available after September 30, 1989, may be obligated or expended for the acquisition of a new bus model (including any model using alternative fuels) unless the bus has been tested at the Bus Testing Center (Center) in Altoona, Pennsylvania. 49 U.S.C. Section 5318(a) further specifies that each new bus model is to be tested for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise.

The operator of the Bus Testing Center, the Pennsylvania Transportation Institute (PTI), is under contract to the FTA. PTI operates and maintains the Center, and establishes and collects fees for the testing of the vehicles at the facility. Upon completion of the testing of the vehicle at the Center, a test report is provided to the manufacturer of the new bus model. The bus manufacturer certifies to an FTA grantee that the bus the grantee is purchasing has been tested at the Center. Also, grantees about to purchase a bus use this report to assist them in making their purchasing decisions. PTI maintains a reference file for all the test reports which are made available to the public.

Respondents: Bus manufacturers.

Estimated Annual Burden on

Respondents: 3 hours for each of the 20 bus manufacturers.

Estimated Total Annual Burden: 60 hours.

Frequency: Annual.

Issued: July 10, 1996.

Gordon J. Linton,

Administrator.

[FR Doc. 96-17950 Filed 7-12-96; 8:45 am]

BILLING CODE 4910-57-U

DEPARTMENT OF THE TREASURY**Customs Service****Interim List of Records Required To Be Maintained and Produced Pursuant to 19 U.S.C. 1509(a)(1)(A)**

AGENCY: U.S. Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document sets forth for the information of the general public the text of a document that was previously published in the *Customs Bulletin* on January 3, 1996 concerning a list of records or entry information required to be maintained and produced under section 509(a)(1)(A) of the Tariff Act of 1930, as amended by title VI of the North American Free Trade Agreement Implementation Act.

FOR FURTHER INFORMATION CONTACT: Stuart P. Seidel, Assistant Commissioner, Office of Regulations and Rulings at (202) 482-6920 or William Inch, Director, Office of Regulatory Audit at (202) 927-1100.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the President signed the North American Free Trade Agreement Implementation Act (Pub. L. 103-182). Title VI of the act is entitled "Customs Modernization" and is popularly known as the Customs Modernization Act. Section 615 of the Customs Modernization Act amends § 509(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1509(a)(1)(A)) to require the maintenance and production of a record if "such record is required by law or regulation for the entry of merchandise (whether or not the Customs Service required its presentation at the time of entry)." Section 509 was further amended by adding a new subsection (e) which requires the Customs Service to identify and publish a list of records or entry information that is required to be maintained and produced under § 509(a)(1)(A)—commonly referred to as "the (a)(1)(A) list." In their respective discussions of section 615, both the House Report and Senate Report on the North American Free Trade Agreement Implementation Act indicate that the requirement to publish the (a)(1)(A) list refers to publication in the *Customs Bulletin*. On January 3, 1996, Customs published the (a)(1)(A) list in the *Customs Bulletin*.

This publication of the (a)(1)(A) list in the Federal Register is for the information of the general public.

Dated: July 9, 1996.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

Accordingly, the document setting forth the (a)(1)(A) list, as discussed above, is reproduced below:

DEPARTMENT OF THE TREASURY

UNITED STATES CUSTOMS SERVICE

(T.D. 96-1)

INTERIM LIST OF RECORDS REQUIRED TO BE MAINTAINED AND PRODUCED PURSUANT TO 19 U.S.C. § 1509(a)(1)(A)

AGENCY: U.S. Customs Service, Treasury.

ACTION: Interim "(a)(1)(A) list".

SUMMARY: This document lists records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) required by law or regulation for the entry of the merchandise (whether or not the Customs Service requires its presentation at the time of entry). Publication is required by section 509(a)(1)(A) of the Tariff Act of 1930, as amended by section 615 of Public Law 103-182 (19 U.S.C. § 1509(a)(1)(A)). This interim list addresses public comments solicited by the Proposed List which was posted on Customs Electronic Bulletin Board on September 12, 1994 and published in the *Customs Bulletin* on September 21, 1994. The list is being published as an interim listing because the Customs Service is re-engineering its entry and related processes and the list is expected to change as entry requirements are revised.

EFFECTIVE DATE: Since this document merely lists records already required by law or regulation, it is effective on January 3, 1996, the date of publication in the *Customs Bulletin*.

ADDRESSES: Comments should be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW. (Franklin Court), Washington, D.C. 20229. Comments may be inspected at the Regulations Branch, Office of Regulations and Rulings, Suite 4000W, 1099 14th Street NW., Washington, DC 20005. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Stuart Seidel, Assistant Commissioner, Office of Regulations and Rulings at (202) 482-6920 or William Inch, Director, Office of Regulatory Audit at (202) 927-1100.

SUPPLEMENTARY INFORMATION:

Background

Section 509(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. § 1509(a)(1)(A)) as amended by 615 of title VI of the North American Free Trade Agreement Implementation Act

(generally referred to as the "Customs Modernization Act") requires the maintenance and production of a record if "such record is required by law or regulation for the entry of merchandise (whether or not the Customs Service required its presentation at the time of entry)." Section 509 was further amended by adding a new subsection (e) which requires the Customs Service to identify and publish a list of records or entry information that is required to be maintained and produced under section 509(a)(1)(A)—commonly referred to as "the (a)(1)(A) list." On September 12, 1994, the proposed (a)(1)(A) list was placed on the Customs Electronic Bulletin Board for public comment, followed by publication in the September 21, 1994 *Customs Bulletin*. Comments were received from the following organizations or their counsel: the Air Courier Conference of America, National Customs Brokers & Forwarders Association of America, Inc., The United States Association of Importers of Textiles and Apparel, The Joint Industry Group, American Association of Exporters and Importers, U.S. Transportation Coalition, and a group of petroleum and petrochemical companies. In addition comments were received from a Customs broker, a law firm, an express consignment company and its brokerage, and a Customs office. A total of eleven comments were received. However, many of the submissions were from trade groups, or their counsel, representing hundreds of interested parties. A summary of the comments received and Customs response follows:

Comment: One commenter opined that NAFTA records should be excluded from the (a)(1)(A) list because it would subject record keepers to the additional penalties available under 19 U.S.C. 1509, and NAFTA exporter's records are already subject to penalties.

Customs Response: Customs agrees that records required to be kept by U.S. exporters should be excluded from the (a)(1)(A) list (unless the same party is also an importer and is relying upon those records to claim a NAFTA preference on reimportation) since (a)(1)(A) only applies to entry records. However, Customs believes that certain other NAFTA records are entry records. The law requires a person claiming NAFTA preferences to be in possession of a NAFTA Certificate of Origin at the time the preference is claimed. Thus, when NAFTA preferences are claimed at the time of entry, the NAFTA records are entry records and properly fall within the purview of (a)(1)(A). To make this clear, the NAFTA certificate of origin and supporting records required by 19 CFR 181.22 have been specifically added to the list.

Comment: One commenter suggested that for petroleum and petrochemical products, only the following should be required to be kept for five years: CF 7501 and related documents, purchase orders or contracts (except when made orally), invoice and payment records (including canceled checks, wire transfer evidence, inter company accounts and similar records, bills of lading or charter agreements, freight invoices, import inspection reports, etc, evidence of use (for classification where use controls), TSCA and EPA certifications.

Customs Response: The record retention period is beyond the scope of the (a)(1)(A) list and will be addressed in a separate regulatory package. As indicated in the Background portion, Customs will consider changes in entry record requirements as Customs processes are revised. However, until those requirements are changed, the law requires that all records required for the entry of merchandise be included in the (a)(1)(A) list.

Comment: One commenter expressed concern that the size of the (a)(1)(A) list will result in the list being a tool to penalize persons during routine audits. The commenter points out that under current practice, the failure to present certain required records results in a denial of a preference. In other cases, the record (19 CFR 10.174, for example) may be required within 60 days of entry, after which it does not appear to be required. In other cases, importation is prohibited without the required record (19 CFR 12.161 fur seal certificate). The commenter suggested that the (a)(1)(A) list be limited to those presently required to be produced, and not routinely the subject of waivers. The commenter suggested that the entry not be accepted without a statement that the required document is in the importer's possession, because without the statement, potential third party record keepers might not be willing to undertake this responsibility since there would be no guarantee that records would be available. The commenter further suggested reducing the maintenance period from five years to not longer than liquidation of the entry.

Customs Response: In an automated environment, Customs must be able to use a post-entry record demand to ensure that an importer's claims on entry were valid. In order to expedite the release of merchandise, Customs may initially waive production of certain required records and then verify them at a later date. This is especially true in the case of records not affecting admissibility. This fact is recognized in the law, which refers to a record which is required by law or regulation for the entry of the merchandise *whether or not the Customs Service required its presentation at the time of entry*, emphasis added. A record retention period beyond liquidation was clearly contemplated by Congress, because the statute specifically permits reliquidation and denial of claimed preferences if the record is demanded within two years of the original liquidation and is not produced. As pointed out in other comments, Customs is reviewing its entire entry process and the (a)(1)(A) list will be adjusted in the future. With regard to the penalty process, Customs intends to follow the legislative history which states, "[o]nce this listing has been made available and importers have had an opportunity to familiarize themselves with the contents, the Committee expects the person on whom a demand has been made for any of the records under section 509(a)(1)(A) of the Act will furnish them under the 'reasonable time' standard embodied in the law. The Committee also believes that Customs headquarters should exercise tight control over the imposition of record keeping

penalties, and until the Customs Service gains some experience in administering this penalty, no such penalty should be issued without prior headquarters review and approval."

Comment: One commenter was of the opinion that the (a)(1)(A) list should only contain those records required for "entry," which the commenter equates with "admission" or "release" of the merchandise. The commenter further points out that many of the documents on the list are not required for release. The commenter suggests that as electronic textile visas are introduced, importers will not have any visa documentation to produce and the (a)(1)(A) list should reflect that. The commenter also believes it is inappropriate to list documents, such as origin declarations and quota charge statements which are presented at the time of entry and retained by Customs. The commenter also believes that purchase orders and contracts are not required for entry and refers to 19 CFR 141.83 and 141.86, and therefore should be eliminated from the list. The commenter also believes that the manifest description of the goods should be stricken from the list since the carrier, not the importer is responsible for producing this to Customs. Finally, the commenter believes that the broker power of attorney should be eliminated since the record is not, in the commenter's view, required for entry.

Customs Response: The term "entry" is used in the Customs laws and regulations in two ways. The first refers to a specific document, the "entry" form (such as consumption entry, vessel repair entry, etc); the second to a procedure, "entry of merchandise," "entry and clearance." Customs believes that the (a)(1)(A) list refers to the procedure—that is, records required to complete the entry process. Section 1484 of title 19 of the United States Code (19 U.S.C. 1484) refers to an importer using reasonable care to make entry by filing such information as is necessary to obtain release of the merchandise, and completing the entry by filing such additional information as may be necessary to enable Customs to fix the final appraisement and classification of the merchandise and insure compliance with applicable law. Thus, the scope of the (a)(1)(A) list is broader than contemplated by the commenter. This is supported by the examples listed in the legislative history which include not only any record required for admissibility, but also the following which are not required for release: a commercial invoice, a packing list, certificate of origin Form A (where a claim for a preference is made), and declarations of a foreign manufacturer. With regard to purchase orders and contracts, Customs notes that while not every importation requires such records for entry, importations covered by sections 12.99, 10.84 and 10.183 of the Customs Regulations do require contracts. Customs has deleted purchase orders from the (a)(1)(A) list, although they must be retained and made available for examination pursuant to other provisions of 19 U.S.C. 1508 and 1509. With regard to the comment that electronic visas may be transmitted to the Customs Service, we note that the visa will still be a record required for entry and

thus will have to be listed, but the importer will not be subject to penalties, since the record is transmitted to and retained by Customs, and the penalty provisions do not apply when Customs retains the record.

Comment: Several commenters recommended that the (a)(1)(A) list be simplified, to eliminate unnecessary material, and suggest Customs review documents which are routinely waived to see if they can be eliminated. One commenter believed that the list was accurate, but far too complex. The commenter suggested a "front end" summary of which documents contain which data elements and that the list be restructured to simplify it. Finally, several commenters suggested that the list could be clarified by referencing the documents currently required rather than the data elements or information.

Customs Response: Customs agrees that the list should be rearranged to show which data is routinely provided to Customs on entry forms and has tried to group the records to show which ones are required by all, or most, import transactions. We agree that the list is complex, and lists some records which are not required in most import transactions, but only are required for imports of certain specific merchandise, or in certain situations. We have tried to list those situations and hope to simplify and reduce the list in the future as new procedures and regulations are implemented. The law requires that the (a)(1)(A) list contain not only documents but also data elements and other information required for entry.

Comment: Several commenters suggested that Customs list the parties responsible for maintaining specific documents. For example, one commenter points out that carriers are responsible for the manifest under regulations issued pursuant to 19 U.S.C. 1321, but should not be responsible for the summary manifest for letters and documents and return shipments since these intangibles are, in the commenter's view exempt from entry under General Notes 13 (d), (e) of the Harmonized Tariff Schedule of the United States (HTSUS) and § 681c of the Mod Act. The commenter questions the inclusion of the vessel entry form 226 since, in the commenter's view, it does not relate to the "entry of merchandise."

Customs Response: Whether or not an article is covered by the HTSUS is not determinative of whether the article is "merchandise" within the Tariff Act of 1930. Section 401 (19 U.S.C. 1401) defines "merchandise" as goods, wares, and chattels of every description and includes merchandise the importation of which is prohibited, and monetary instruments. Thus, returned articles and documents are in fact merchandise, albeit exempt from the HTSUS. In fact, 19 U.S.C. 1498 specifically permits the Secretary to promulgate regulations for the declaration and entry of returned merchandise. With regard to the vessel entry form, we note that while it is used to report vessel repairs, it is also used to report the entry of equipment and spare parts and is also referenced in 19 U.S.C. 1498.

Comment: One commenter suggested that express carriers (operating under part 128, Customs Regulations) be required to keep the

manifest, consolidated entry summary or its equivalent and invoices for informal entries, and the manifest, individual entry summaries or their equivalent and invoices for formal entries. The commenter did not believe that individual house airway bills and packing lists should be listed because the airway bill's data elements duplicated the manifest, and the packing lists were rarely used for express consignments. The commenter expressed the view that since express carriers have "a statutory right under 19 U.S.C. 1484 to designate their own brokers to make entry," no power of attorney was needed and it should therefore be eliminated from the (a)(1)(A) list. The commenter suggested that other federal or state agency documents should be listed. The commenter believed that the list should include (for carriers), records relating to entry for immediate transportation pursuant to 19 U.S.C. 1552, transportation and exportation pursuant to 19 U.S.C. 1553 and records relating to instruments of international traffic pursuant to 19 U.S.C. 1322. Several commenters pointed out that Customs Forms 3311, 4455 and Form A are no longer required (see 59 FR 25503) and should be removed from the (a)(1)(A) list. One commenter pointed out that since only "an owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 1641" may make formal entry, carriers should not be liable for maintaining records on the (a)(1)(A) list except in limited circumstances.

Customs Response: Customs agrees that a power of attorney is not required by a broker who is the importer of record, since in that capacity, the broker is the principal and is liable for duties, fees and taxes. However, powers of attorney, when required by the regulations, are entry records. Customs agrees that the CF 3311 and CF 4455 are no longer required for certain entries pursuant to 19 CFR 10.1(a) and 10.8 and 10.9. However, the CF 3311 and/or CF 4455 remain entry records for certain importations (see revised 19 CFR 7.8(b), 10.1 (h), (i), (j) and 10.66, 10.67, for example. The Origin Form A has been deleted from the (a)(1)(A) list for GSP and CBI importations. Customs also agrees that records required by 19 U.S.C. 1552, 1553 and 1322 are entry records and has added them to the (a)(1)(A) list.

CONCLUSION

Customs has revised the (a)(1)(A) list in accordance with the foregoing and is publishing it at this time as an interim document to allow future modifications as procedures change. The "Background" section has been renamed "General Information" and expanded and clarified. The list will also be published as an Appendix to the revised record keeping regulations when that document is published. Customs intends the importing community to familiarize themselves with the (a)(1)(A) list and expects that a person on whom a demand has been made for any of the entry records will furnish them under the "reasonable time" standard embodied in the law. Although the record keeping penalties are effective upon publication of the list, Customs headquarters will, as recommended

in the legislative history, exercise tight control over the imposition of record keeping penalties, and until the Customs Service gains some experience in administering this penalty, Customs officers will not issue such a penalty without prior headquarters review and approval.

Dated: December 21, 1995

Stuart P. Seidel, Assistant Commissioner,
Office of Regulations and Rulings

INTERIM (a)(1)(A) LIST

LIST OF RECORDS REQUIRED FOR THE ENTRY OF MERCHANDISE

GENERAL INFORMATION: Section 508 of the Tariff Act of 1930, as amended (19 U.S.C. 1508), sets forth the general record keeping requirements for Customs-related activities. Section 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1509) sets forth the procedures for the production and examination of those records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data).

Section 509(a)(1)(A) of the Tariff Act of 1930, as amended by title VI of Public Law 103-182, commonly referred to as the Customs Modernization Act (19 U.S.C. 1509(a)(1)(A)), requires the production, within a reasonable time after demand by the Customs Service is made (taking into consideration the number, type and age of the item demanded) if "such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry)". Section 509(e) of the Tariff Act of 1930, as amended by Public Law 103-182 (19 U.S.C. 1509(e)) requires the Customs Service to identify and publish a list of the records and entry information that is required to be maintained and produced under subsection (a)(1)(A) of section 509 (19 U.S.C. 1509(a)(1)(A)). This list is commonly referred to as "the (a)(1)(A) list."

The Customs Service has tried to identify all the presently required entry information or records on the following list. However, as automated programs and new procedures are introduced, these may change. In addition, errors and omissions to the list may be discovered upon further review by Customs officials or the trade. Pursuant to section 509(g), the failure to produce listed records or information upon reasonable demand may result in penalty action or liquidation or reliquidation at a higher rate than entered. A record keeping penalty may not be assessed if the listed information or records are transmitted to and retained by Customs.

OTHER RECORDKEEPING REQUIREMENTS: The importing community and Customs officials are reminded that the (a)(1)(A) list only pertains to records or information required for the entry of merchandise. An owner, importer, consignee, importer of record, entry filer, or other party who imports merchandise, files a drawback claim or transports or stores bonded merchandise, any agent of the foregoing, or any person whose activities require them to file a declaration or entry, is *also* required to make, keep and render for examination and inspection records (including, but not limited to, statements, declarations, documents and

electronically generated or machine readable data) which pertain to any such activity or the information contained in the records required by the Tariff Act in connection with any such activity; and are normally kept in the ordinary course of business. While these records are not subject to administrative penalties, they are subject to examination and/or summons by Customs officers. Failure to comply could result in the imposition of significant judicially imposed penalties and denial of import privileges.

The following list does not replace entry requirements, but is merely provided for information and reference. In the case of the list conflicting with regulatory or statutory requirements, the latter will govern.

LIST OF RECORDS AND INFORMATION REQUIRED FOR THE ENTRY OF MERCHANDISE

The following records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) are required by law or regulation for the entry of merchandise and are required to be maintained and produced to Customs upon reasonable demand (whether or not Customs required its presentation at the time of entry). Information may be submitted to Customs at time of entry in a Customs authorized electronic or paper format. Not every entry of merchandise requires all of the following information. Only those records or information applicable to the entry requirements for the merchandise in question will be required/mandatory. The list may be amended as Customs reviews its requirements and continues to implement the Customs Modernization Act. When a record or information is filed with and retained by Customs, the record is not subject to record keeping penalties, although the underlying backup or supporting information from which it is obtained may also be subject to the general record retention regulations and examination or summons pursuant to 19 U.S.C. 1508 and 1509.

(All references, unless otherwise indicated, are to title 19, Code of Federal Regulations, April 1, 1995 Edition, as amended by subsequent Federal Register notices.)

- I. General list or records required for most entries. Information shown with an asterisk (*) is usually on the appropriate form and filed with and retained by Customs:
 - 141.11-.15 Evidence of right to make entry (airway bill/bill of lading or *carrier certificate, etc.) when goods are imported on a common carrier.
 - 141.19 *Declaration of entry (usually contained on the entry summary or warehouse entry)
 - 141.32 Power of attorney (when required by regulations)
 - 141.54 Consolidated shipments authority to make entry (if this procedure is utilized)
 - 142.3 Packing list (where appropriate)
 - 142.4 Bond information (except if 10.101 or 142.4(c) applies) Parts 4,18,122,123 *Vessel, Vehicle or Air Manifest (filed by the carrier)

II. The following records or information are required by 141.61 on Customs Form (CF) 3461 or CF 7533 or the regulations cited.

Information shown with an asterisk (*) is contained on the appropriate form and/or otherwise filed with and retained by Customs:

- 142.3, .3a *Entry Number
 - *Entry Type Code
 - *Elected Entry Date
 - *Port Code
 - 142.4 *Bond information
 - 141.61,142.3a *Broker/Importer Filer Number
 - 141.61,142.3 *Ultimate Consignee Name and Number/street address of premises to be delivered
 - 141.61 *Importer of Record Number
 - *Country of Origin
 - 141.11 *IT/BL/AWB Number and Code
 - *Arrival Date
 - 141.61 *Carrier Code
 - *Voyage/Flight/Trip
 - *Vessel Code/Name
 - *Manufacturer ID Number (for AD/CVD must be actual mfr.)
 - *Location of Goods—Code(s)/Name(s)
 - *U.S. Port of Unlading
 - *General Order Number (only when required by the regulations)
 - 142.6 *Description of Merchandise
 - 142.6 *HTSUSA Number
 - 142.6 *Manifest Quantity
 - *Total Value
 - *Signature of Applicant
- III. In addition to the information listed above, the following records or items of information are required by law and regulation for the entry of merchandise and are presently required to be produced by the importer of record at the time the Customs Form 7501 is filed.
- 141.61 *Entry Summary Date
 - 141.61 *Entry Date
 - 142.3 *Bond Number, Bond Type Code and Surety code
 - 142.3 *Ultimate Consignee Address
 - 141.61 *Importer of Record Name and Address
 - 141.61 *Exporting Country and Date Exported
 - *I.T. (In-bond) Entry Date (for IT Entries only)
 - *Mode of Transportation (MOT Code)
 - 141.61 *Importing Carrier Name
 - 141.82 Conveyance Name/Number
 - *Foreign Port of Lading
 - *Import Date and Line Numbers
 - *Reference Number
 - *HTSUS Number
 - 141.61 *Identification number for merchandise subject to Anti-dumping or Countervailing duty order (ADA/CVD Case Number)
 - 141.61 *Gross Weight
 - *Manifest Quantity
 - 141.61 *Net Quantity in HTSUSA Units
 - 141.61 *Entered Value, Charges, and Relationship
 - 141.61 *Applicable HTSUSA Rate, ADA/CVD Rate, I.R.C. Rate, and/or Visa Number, Duty, I.R. Tax, and Fees (e.g. HMF, MPF, Cotton)
 - 141.61 Non-Dutiable Charges
 - 141.61 *Signature of Declarant, Title, and Date
 - *Textile Category Number

- 141.83,.86 Invoice information which includes—e.g., date, number, merchandise (commercial product) description, quantities, values, unit price, trade terms, part, model, style, marks and numbers, name and address of foreign party responsible for invoicing, kind of currency
 - Terms of Sale
 - Shipping Quantities
 - Shipping Units of Measurements
 - Manifest Description of Goods
 - Foreign Trade Zone Designation and Status
 - Designation (if applicable)
 - Indication of Eligibility for Special Access Program (9802/GSP/CBI)
 - 141.89 CF 5523
 - 141.89, et al Corrected Commercial Invoice
 - 141.86 (e) Packing List
 - 177.8 *Binding Ruling Identification Number (or a copy of the ruling)
 - 10.102 Duty Free Entry Certificate (9808.00.30009 HTS)
 - 10.108 Lease Statement
- IV. Documents/records or information required for entry of special categories of merchandise (The listed documents or information is only required for merchandise entered (or required to be entered) in accordance with the provisions of the sections of 19 CFR (the Customs Regulations) listed). These are in addition to any documents/records or information required by other agencies in their regulations for the entry of merchandise:
- 4.14 CF 226 Information for vessel repairs, parts and equipment
 - 7.8(a) CF 3229 Origin certificate for insular possessions
 - 7.8(b) CF 3311 and Shipper's declaration for insular possessions
- Part 10 Documents required for entry of articles exported and returned:
- 10.1–10.6 foreign shipper's declaration or master's certificate, declaration for free entry by owner, importer or consignee
 - 10.7 certificate from foreign shipper for reusable containers
 - 10.8 declaration of person performing alterations or repairs
 - declaration for non-conforming merchandise
 - 10.9 declaration of processing
 - 10.24 declaration by assembler endorsement by importer
 - 10.31,.35 Documents required for Temporary Importations Under Bond: Information required, Bond or Carnet
 - 10.36 Lists for samples, professional equipment, theatrical effects
 - Documents required for Instruments of International Traffic:
 - 10.41 Application, Bond or TIR carnet
 - Note: additional 19 U.S.C. 1508 records: see 10.41b(e)
 - 10.43 Documents required for exempt organizations
 - 10.46 Request from head of agency for 9808.00.10 or 9808.00.20 HTSUS treatment
 - Documents required for works of art
 - 10.48 declaration of artist, seller or shipper, curator, etc

- 10.49,.52 declaration by institution
- 10.53 declaration by importer
- USFWS Form 3–177, if appropriate
- 10.59,.63 Documents/CF 5125 for withdrawal of ship supplies
- 10.66,.67 Declarations for articles exported and returned
- 10.68,.69 Documents for commercial samples, tools, theatrical effects
- 10.70,.71 Purebred breeding certificate
- 10.84 Automotive Products certificate
- 10.90 Master records and metal matrices: detailed statement of cost of production.
- 10.98 Declarations for copper fluxing material
- 10.99 Declaration of non-beverage ethyl alcohol, ATF permit
- 10.101–102 Stipulation for government shipments and/or certification for government duty-free entries, etc.
- 10.107 Report for rescue and relief equipment
- 15 CFR 301 Requirements for entry of scientific and educational apparatus
- 10.121 Certificate from USIA for visual/auditory materials
- 10.134 Declaration of actual use (When classification involves actual use)
- 10.138 End Use Certificate
- 10.171– Documents, etc. required for entries of GSP merchandise
- 10.173,10.175 GSP Declaration (plus supporting documentation)
- 10.174 Evidence of direct shipment
- 10.179 Certificate of importer of crude petroleum
- 10.180 Certificate of fresh, chilled or frozen beef
- 10.183 Civil aircraft parts/simulator documentation and certifications
- 10.191–198 Documents, etc. required for entries of CBI merchandise CBI declaration of origin (plus supporting information)
- 10.194 Evidence of direct shipment
- † [10.306 Evidence of direct shipment for CFTA]
- † [10.307 Documents, etc. required for entries under CFTA
- Certificate of origin of CF 353]
- [† CFTA provisions are suspended while NAFTA remains in effect. See part 181]
- 12.6 European Community cheese affidavit
- 12.7 HHS permit for milk or cream importation
- 12.11 Notice of arrival for plant and plant products
- 12.17 APHIS Permit animal viruses, serums and toxins
- 12.21 HHS license for viruses, toxins, antitoxins, etc for treatment of man
- 12.23 Notice of claimed investigational exemption for a new drug
- 12.26–.31 Necessary permits from APHIS, FWS & foreign government certificates when required by the applicable regulation
- 12.33 Chop list, proforma invoice and release permit from HHS
- 12.34 Certificate of match inspection and importer's declaration
- 12.43 Certificate of origin/declarations for goods made by forced labor, etc.
- 12.61 Shipper's declaration, official certificate for seal and otter skins
- 12.73 12.80 Motor vehicle declarations

- 12.85 Boat declarations (CG-5096) and USCG exemption
- 12.91 FDA form 2877 and required declarations for electronics products
- 12.99 Declarations for switchblade knives
- 12.104-.104i Cultural property declarations, statements and certificates of origin
- 12.105-.109 Pre-Columbian monumental and architectural sculpture and murals certificate of legal exportation evidence of exemption
- 12.110 Pesticides, etc. notice of arrival
- 12.118-.127 Toxic substances: TSCA statements
- 12.130 Textiles & textile products
 - Single country declaration
 - Multiple country declaration
 - VISA
- 12.132 NAFTA textile requirements
- 54.5 Declaration by importer of use of use of certain metal articles
- 54.6(a) Re-Melting Certificate
- 114 Carnets (serves as entry and bond document where applicable)
- 115 Container certificate of approval
- 128 Express consignments
- 128.21 *Manifests with required information (filed by carrier)
- 132.23 Acknowledgment of delivery for mailed items subject to quota
- 133.21(b)(6) Consent from trademark or trade name holder to import otherwise restricted goods
- 134.25,.36 Certificate of marking; notice to repacker
- 141.88 Computed value information
- 141.89 Additional invoice information required for certain classes of merchandise including, but not limited to:
 - Textile Entries:* Quota charge Statement, if applicable including Style Number, Article Number and Product
 - Steel Entries:* Ordering specifications, including but not limited to, all applicable industry standards and mill certificates, including but not limited to, chemical composition.
- 143.13 Documents required for appraisement entries bills, statements of costs of production value declaration
- 143.23 Informal entry: commercial invoice plus declaration
- 144.12 Warehouse entry information
- 145.11 Customs Declaration for Mail, Invoice
- 145.12 Mail entry information (CF 3419 is completed by Customs but formal entry may be required.)
- 148 Supporting documents for personal importations
- 151 subpart B Scale Weight
- 151 subpart B Sugar imports sampling/lab information (Chemical Analysis)
- 151 subpart C Petroleum imports sampling/lab information
 - Out turn Report 24. to 25.—Reserved
- 151 subpart E Wool and Hair invoice information, additional documents
- 151 subpart F Cotton invoice information, additional documents
- 181.22 NAFTA Certificate of origin and supporting records
- 19 U.S.C. 1356k Coffee Form O (currently suspended)

Other Federal and State Agency Documents
 State and Local Government Records
 Other Federal Agency Records (See 19 CFR Part 12, 19 U.S.C. 1484, 1499)
 Licenses, Authorizations, Permits

Foreign Trade Zones

146.32 Supporting documents to CF 214
 [FR Doc. 96-17833 Filed 7-12-96; 8:45 am]
BILLING CODE 4820-02-P

Office of Thrift Supervision

[96-65]

Review of OTS Decisions

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final guidelines.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing guidelines for the review, appeal and reconsideration of various agency findings and decisions as Thrift Bulletin 68 (TB 68). The guidelines issued today establish an independent appellate process available to review supervisory decisions, examination findings and application decisions. TB 68 also provides for an agency Ombudsman to act as a liaison between the OTS and persons dealing with the OTS. The text of TB 68 appears as Appendix A to this document.

Section 309(a) of the Community Development and Regulatory Improvement Act of 1994 (CDRIA) requires the OTS and the other Federal banking agencies to develop an intra-agency supervisory review process. One purpose of TB 68 is to fulfill OTS's statutory mandate under section 309 of the CDRIA. The guidelines that the OTS previously followed for its supervisory review process were set forth in Regulatory Bulletin 4a (RB 4a), dated September 20, 1993. TB 68 incorporates, with certain modifications, the guidelines provided for in RB 4a and RB 4a is hereby rescinded.

Irrespective of the statutory mandate of Section 309(a) of the CDRIA, but related to the appellate process, TB 68 also provides a process for the reconsideration of decisions made with respect to applications filed with the OTS. Previously, as part of a restructuring of its applications regulations, in April 1992, the OTS deleted review provisions in several individual application regulations with the intent of developing uniform procedures that would cover all applications filed with the OTS. The guidelines issued today in TB 68 set forth these procedures.

The CDRIA also requires that each Federal banking agency appoint an Ombudsman to "act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and assure that safeguards exist to encourage complainants to come forward and preserve confidentiality." The responsibilities of and procedures to be used by the OTS Ombudsman are also set forth in TB 68.

DATES: The final guidelines are effective July 15, 1996.

FOR FURTHER INFORMATION CONTACT: The Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552: Alvin W. Smuzynski, Director, Regional Operations (202) 906-5669 or Valerie J. Lithotomos, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office (202) 906-6439, regarding supervisory appeals; David A. Sjogren, Program Manager, Applications, Corporate Activities Division (202) 906-6739 or John P. Harootunian, Senior Counsel, Business Transactions Division, Chief Counsel's Office (202) 906-6415, regarding application reconsiderations; and Lee Lassiter (202) 906-5685, regarding Ombudsman matters.

SUPPLEMENTARY INFORMATION:

I. Supervisory Review and Appeals

Section 309(a) of the CDRIA¹ requires the OTS and the other banking agencies to establish an "independent intra-agency appellate process" for the review of "material supervisory determinations" (as defined in Section 309(f)(1) of the CDRIA) made at insured depository institutions. Prior to the statutory mandate of section 309 of the CDRIA, the OTS provided a supervisory review process since 1992 that is described in RB 4a. On December 29, 1994, the OTS published a notice of proposed guidelines with a request for comments, describing a revised supervisory review and appeals process.² The public comment period closed on February 27, 1995. No comments were received and so the guidelines published today incorporate the supervisory review and appeals process proposed in December 1994. To ensure that OTS decisions and findings are fair, equitable and consistent, the guidelines in TB 68 being issued today go beyond the statutory mandate of section 309 by providing an appellate

¹ Pub. L. 103-325, 108 Stat. 2160, 2218-20 (September 23, 1994) (codified at 12 U.S.C. 4806).

² 59 FR 67383 (December 29, 1994).

process for *all* supervisory decisions and examination findings which is more expansive than the statutorily required "material supervisory determination." The discussion below sets forth OTS's compliance with the statutory mandate of section 309 of the CDRIA.

A. Independence

Section 309 of the CDRIA sets forth certain standards for the agencies' supervisory appeals process. First, the process must be "independent." The statute defines independence to mean that the review provided must be conducted "by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review."

TB 68 specifies that the final decision maker for supervisory appeals is the Executive Director, Supervision in Washington, D.C. who reports directly to the Director of OTS. This reporting arrangement satisfies the independence requirement of Section 309. Furthermore, supervisory reviews will be conducted by an agency official who does not directly report to the agency official who made the determination under review.

Notwithstanding the supervisory appeals process at the Executive Director's level, the OTS believes that open discussions between examination and supervisory staff at the regional level is a productive means to address a savings association's concerns. Accordingly, the OTS continues to encourage savings associations to attempt to resolve issues directly with regional examination or supervisory staff before filing an appeal with the Executive Director, Supervision in Washington, D.C.

B. Prompt Disposition of Appeal

The statute also requires that the supervisory appeals process be structured so that appeals are "heard and decided expeditiously." TB 68 sets a deadline of sixty calendar days for review by the Executive Director, Supervision. Before filing an appeal with the Executive Director, however, savings associations are encouraged to utilize an optional regional review procedure. The deadline for action on a regional review is thirty calendar days. These deadlines may be extended in writing by the OTS stating the reason for the extension and the expected date of decision.

C. Material Supervisory Determinations

Section 309 of the CDRIA requires that the appeals process be available for the review of "material supervisory

determinations" (as defined in section 309(f)(1) of the CDRIA). The guidelines in TB 68 specifically include "material supervisory determinations" within the scope of the appeals process in conformance with section 309 of the CDRIA. In addition, under the guidelines contained in TB 68, savings associations may also appeal *all* supervisory decisions and examination findings. TB 68 may also be used to appeal supervisory actions affecting individuals or affiliates of savings associations. Such appeals may be filed by the individual or affiliate and do not require the concurrence of the savings association's board of directors.

The guidelines in TB 68 recite the statutory definition of "material supervisory determinations" and clarify that the reference to "examination ratings" in such definition includes ratings for any type of examination that the OTS conducts, including safety and soundness, trust, information systems, compliance and savings and loan holding company examinations and CRA evaluations of savings associations.

The OTS will initially exclude from the section 309 appeals process, matters for which some other special review process is available. However, a savings association may appeal a supervisory action resulting from a special review process using the supervisory appeals process described in TB 68 if the specialized review process results in a decision adverse to the savings association and an additional appeal would further the OTS's mandate under section 309 of the CDRIA.

The statute specifically exempts from the supervisory appeals process decisions to appoint a conservator or receiver and decisions to take action pursuant to the prompt corrective action provisions of section 38 of the Federal Deposit Insurance Act.³ The revised guidelines also retain the exclusions for preliminary examination results and formal enforcement-related actions.

D. Safeguards Against Retaliation

Section 309 requires that the appeals process contain "appropriate safeguards" to protect savings associations from retaliation by agency examiners. TB 68 makes explicit the OTS's policy of prohibiting any employee, including examiners and supervisory staff, from taking retaliatory action against a savings association or other parties that pursue a review or an appeal.

In addition, section 309 of the CDRIA requires that the OTS appoint an Ombudsman whose duties include

assuring "that safeguards exist to encourage complainants to come forward and preserve confidentiality." The OTS does not contemplate that its Ombudsman will be involved in the review of the merits of supervisory decisions in dispute. However, the Ombudsman will be the appropriate recipient for any complaints of retaliation and will investigate and resolve such complaints. The OTS will take appropriate action to remedy any occurrence of employee retaliation against a savings association or other party that seeks a review of a supervisory determination.

II. Application Reconsiderations

The 1992 Applications Restructuring Regulation⁴ deleted various procedures from individual application regulations for the reconsideration of applications that had been denied by the OTS. The intent was to develop a single uniform procedure that would cover all applications filed with the agency. In order to consolidate the OTS's appellate process for all decisions and findings, the OTS has described the procedures for reconsideration of an application in TB 68.

The application reconsideration process provides for prompt review and decision by an independent decision maker. An applicant that believes that the OTS's decision on an application is inconsistent with existing regulations, policies, procedures or facts presented in the application may request the OTS's reconsideration of that decision. The right to request reconsideration extends to decisions to deny applications and decisions to impose non-standard conditions of approval. Applicants are encouraged to discuss any concerns they have about an OTS decision on an application with the office that made the initial decision (e.g., the OTS Regional Office or the Washington, D.C. office) before requesting reconsideration. Reconsideration decisions will be made in Washington, D.C. by either the Director or the Director's designee.

The application reconsideration process described in TB 68 does not supersede any statutory provisions for judicial or administrative review of OTS decisions concerning applications.

III. Ombudsman

Section 309 of the Act provides that the Ombudsman is to:

(1) Act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency

³ 12 U.S.C. 1831o.

⁴ 57 FR 14329 (April 20, 1992).

resulting from the regulatory activities of the agency; and

(2) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

TB 68 describes the responsibilities of and procedures to be used by the Ombudsman. TB 68 also provides guidance regarding the relationship between the Ombudsman and the agency's other appeals processes.

Dated: July 9, 1996.

By the Office of Thrift Supervision.

John F. Downey,

Executive Director, Supervision.

Appendix A to Final Guidelines Regarding Review of OTS Decisions

Office of Thrift Supervision

Thrift Bulletin

Handbook:	Thrift Activities	Section: 060, 310.
Subject:	Examination Strategy, Management and Scoping Oversight by Board of Directors	TB 68, July 15, 1996.

Supervisory Review, Appeal and Reconsideration Process and Ombudsman Matters

Summary: This bulletin provides a process for the review and appeal of OTS supervisory decisions and examination findings; reconsideration of OTS application decisions; and utilization of the OTS Ombudsman. Regulatory Bulletin 4a, dated September 20, 1993, is rescinded.

For Further Information Contact: Director, Regional Operations (202) 906-5669 regarding the OTS supervisory review and appeals process; Program Manager, Corporate Activities (202) 906-6739 regarding application reconsiderations; and Ombudsman (202) 906-5685 regarding complaints, concerns or problems in dealing with the OTS.

The OTS recognizes that its decisions have a significant effect on OTS regulated savings associations and that certain OTS supervisory decisions and examination findings may be challenged. Because it is the OTS's objective to ensure OTS decisions and findings are fair, equitable and consistent, the OTS has developed a process for the review, appeal and reconsideration of disputed OTS decisions and findings. Filings and submissions made pursuant to this Bulletin are not subject to 12 CFR Part 516.

The OTS supervisory review and appeals process is provided in Section I of this Bulletin. The reconsideration of application decisions process is provided in Section II of this Bulletin. Section III provides for the utilization of the OTS Ombudsman in dealing with the OTS in any matter, regardless of whether the matter relates to the OTS supervisory review and appeals process or the application reconsideration process.

I. Appeal of OTS Supervisory Decisions and Examination Findings, Including "Material Supervisory Determinations"

Background

Section 309(b) of the Community Development and Regulatory Improvement Act of 1994 (CDRIA) requires that the OTS (and the other Federal banking agencies) establish an intra-agency appellate process for the review of "material supervisory determinations" made by agency officials. Decisions and findings made during the examination process by the OTS staff may affect savings associations directly and immediately. From time to time, savings associations may disagree with supervisory decisions or with examination findings upon which those decisions are based. The OTS previously followed guidelines set forth in Regulatory Bulletin 4a (RB 4a), dated September 20, 1993, for its supervisory review process which was applicable to all supervisory decisions and examination findings. This section of this Bulletin incorporates, with certain modification, the guidelines set forth in RB 4a and establishes the guidelines that govern the OTS supervisory review and appeals process for all OTS supervisory decisions and examination findings, including all "material supervisory determinations" as defined in Section 309 of the CDRIA (these terms shall be collectively referred to as "supervisory determinations"). RB 4a is hereby rescinded and replaced by this Thrift Bulletin 68 (TB 68).

The OTS encourages the resolution of supervisory disputes through informal communications between savings associations and the OTS regional supervisory and examination staff. If disputes cannot be resolved successfully at the regional level, however, savings associations may appeal and seek independent review by the Executive Director, Supervision in Washington, D.C. pursuant to the procedures specified below. Other parties affected by an OTS supervisory determination may also seek review under these guidelines.

Scope of the OTS Supervisory Review and Appeals Process

Matters that may be reviewed or appealed are all OTS supervisory decisions and examination findings, including "material supervisory determinations" such as:

- examination ratings;
- the adequacy of loan loss reserve provisions; and
- classifications of loans that are significant to the savings association.

Matters that may not be reviewed or appealed include:

- decision to appoint a conservator or receiver;
- preliminary examination findings and conclusions prior to issuance of a final report of examination;
- any decision relating to formal enforcement-related action, such as a decision to initiate a formal investigation, to file a notice of charges, or to assess civil money penalties; or
- any decision to take action pursuant to the Prompt Corrective Action provisions that

appear at Section 38 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1831o.

Matters that are subject to a special review or appeals process, such as modification of the interest rate risk component discussed in Thrift Bulletin 67, dated August 21, 1995, are not immediately appealable through the OTS supervisory review and appeals process. However, if the special review or appeals process results in a supervisory determination that is adverse to the savings association and an additional appeal would further OTS's mandate under Section 309 of the CDRIA, the savings association may seek OTS supervisory review and appeal of the determination under these guidelines.

Supervisory Review at the Regional Level

A. During the On-Site Examination. If a disagreement arises during an on-site examination, the matter should be raised directly with the examiner-in-charge (EIC) while the EIC is at the savings association. If issues remain unresolved, the savings association should request that the EIC's supervisor (e.g., Field Manager or Assistant Regional Director) be included in the discussions. Disagreements will be briefly noted in the final report of examination.

B. With the Regional Office. Savings associations are encouraged to raise with the appropriate OTS Regional Office disagreements with examination findings during the examination or disagreements with supervisory decisions at any time. A final supervisory determination in dispute may be raised either orally or in writing to the Assistant Regional Director, Deputy Regional Director, or Regional Director or his designee, who was not directly involved in the determination being reviewed. If the savings association elects to state the issue or problem in writing, the written request for review should describe the issue or problem, specify the related facts, and be signed by the Chief Executive Officer. The Regional Office will act within 30 calendar days of receipt of the request for a supervisory review, unless the Regional Director responds to the savings association, in writing, stating the reason why a decision will take longer than 30 calendar days and specifying the expected date for a decision.

Supervisory Appeal to the Executive Director, Supervision

A. The Savings Association's Appeal Submission. If the above-described discussions or supervisory review do not result in satisfactory resolution of the disagreement or if the savings association elects to use the supervisory appeals process without first obtaining regional supervisory review, an appeal may be filed with the Executive Director, Supervision. The following procedures apply to supervisory appeals:

- The board of directors of the savings association must authorize the supervisory appeal by resolution and forward one copy of such resolution to the Executive Director, Supervision with the appeal. A supervisory appeal by an individual or affiliate does not require an authorization from the savings association's board of directors.
- The savings association will have 60 calendar days from notification of a

supervisory determination (or, in the event a request for regional supervisory review has been made, from the date of the Regional Office's decision) to file a supervisory appeal with the Executive Director, Supervision.¹ Requests for a supervisory appeal should be directed to: Executive Director, Supervision, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

- The supervisory appeal should contain:
 - A concise statement, no longer than five pages, of the dispute and why it is material. For example, identify the precise loans(s), property, appraisal, etc.
 - The remedy being sought and its financial effect.
 - A statement of whether the savings association has attempted to resolve the dispute at the regional level.
 - A description of any applicable statutes, regulations, policies, or procedures on which the savings association relies.
 - Confirmation as to whether the savings association has, in the interim, complied with the supervisory determination being appealed. If the savings association has not complied with the supervisory determination, the supervisory appeal must include a request for a suspension of the supervisory determination.
 - Copies of any relevant excerpts from supervisory documents, reports and correspondence with the region about the supervisory determination. (These copies do not count toward the five page limit.)
 - The name, address and telephone number of an individual at the savings association designated to provide additional information.

- No fee is required for submission of the supervisory appeal. Savings associations are encouraged to minimize costs by internally preparing the supervisory appeal rather than using outside attorneys, accountants or consultants. If warranted by the circumstances and agreed to by the savings association, the OTS may use outside experts to evaluate issues. In such circumstances, the savings association shall pay the costs of such experts.

B. Review by the Executive Director, Supervision

- The OTS will acknowledge receipt of a supervisory appeal within five calendar days of receipt.
 - Within 15 calendar days of receipt, the OTS will make a request for any additional information necessary to complete the decision on the supervisory appeal.
 - The savings association shall furnish additional information within 15 calendar days of receipt of the OTS's request, unless the time is extended by the Executive Director, Supervision or his designee.
 - Absent unusual circumstances, the OTS will provide its decision on the supervisory appeal within 60 calendar days of receipt of

the filing of the supervisory appeal or, if additional information is requested, within 60 calendar days of receipt of any additional information.

- Any of the above timeframes may be extended by the Executive Director, Supervision or his designee. Any extensions granted will be in writing, and will include the reason for the extension, and the expected date that a decision will be made.

Effect of Initiating a Supervisory Review or Appeal

An OTS supervisory review or appeal will not suspend or delay the pursuit of any enforcement action or formal investigation. An OTS supervisory review or appeal will not stay the obligation of a savings association or an institution-affiliated party to comply with any order or other determination resulting from an enforcement action. An OTS supervisory review or appeal will not operate automatically to relieve a savings association or other party of the obligation to comply with the supervisory determination under review. Upon the request of the savings association or other party filed simultaneously with its supervisory appeal, the Executive Director, Supervision may relieve the savings association or other party of the obligation to comply while the supervisory appeal is pending in Washington, D.C. The appropriate regional official may grant similar relief while a supervisory review is pending at the regional level. The OTS retains the right to take any action and to apply any standards deemed appropriate to ensure the safety and soundness of a savings association.

Prohibition on Retaliation

The OTS prohibits any employee, including members of its examination and supervision staff, from acts of retaliation against a savings association or other party that seeks review or appeal of a supervisory determination. See Section III of this Bulletin.

II. Reconsideration of Application Decisions

A request to reconsider a decision made on an application or notice (collectively referred to as an "application") may be made when, in the applicant's judgment, the OTS's decision on an application or its decision to impose non-standard conditions of approval is inconsistent with existing OTS regulations, policies, procedures or the facts presented in the application. In all cases, before filing a request to reconsider a decision made on an application, applicants are encouraged to discuss with the decision-making office (e.g., Regional or Washington, D.C.) any concerns regarding the OTS decision on the application.

Requests for reconsideration of application decisions or non-standard conditions of approval should be filed in the following manner:

- Applicants requesting a reconsideration of an application should file an original request with the OTS Applications Filing Room, and conformed copies with the Corporate Activities Division and Business Transactions Division, 1700 G Street, N.W., Washington, D.C. 20552 within 30 calendar days of the OTS action on the application.

- The request should contain:
 - The type of application on which review is sought.
 - A statement of whether the applicant is submitting a request for reconsideration of an OTS application decision or the imposition of non-standard conditions of approval.
 - A concise statement of the reasons why the applicant disagrees with the OTS application decision or non-standard conditions of approval.
 - A description of any applicable statutes, regulations, policies or procedures on which the applicant relies.
 - Confirmation as to whether the applicant has, in the interim, complied with the terms of the application decision or non-standard conditions of approval.
 - Copies of any supporting documents.
 - The name, address and telephone number of an individual designated to provide additional information.
 - No fees will be charged for a request for reconsideration.
 - The Director, or his designee(s) will make every effort to take action upon a request for reconsideration within 60 calendar days of the receipt of a request, or if additional information is requested, within 60 calendar days of receipt of any additional information.

Effects of Filing a Request for Reconsideration

The procedures described in this section of the Bulletin regarding the reconsideration of application decisions do not supersede any statutory provisions for judicial or administrative review of agency decisions concerning applications. An applicant's election to use the procedures in this section of this Bulletin will not toll or suspend the running of any statutorily-prescribed period for seeking judicial review. In addition, when a statute requires the OTS to make a decision on an application within a specific period of time, the OTS will deem the original decision, and not the decision rendered in response to a request for reconsideration, to determine compliance with such a requirement.

Prohibition on Retaliation

The OTS prohibits any employee, including members of its examination and supervisory staff, from acts of retaliation against an applicant that files for the reconsideration of an application. See Section III of this Bulletin.

III. Ombudsman Matters

Section 309(d) of the CDRIA requires that each Federal banking agency appoint an Ombudsman. Section 309 provides that the Ombudsman is to:

- (1) Act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and
- (2) Assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

Section 309(b)(2) of the CDRIA provides that each Federal banking agency shall

¹ The OTS will grant to a savings association a suspension from the requirement to publicly disclose the savings associations's Community Reinvestment Act (CRA) Performance Evaluation in its public file within 30 calendar days after its receipt from the OTS; provided, however, that the savings association submits a supervisory appeal pertaining to its CRA rating within the 30 calendar day period.

ensure that appropriate safeguards exist for protecting any party who appeals a "material supervisory determination" from retaliation by agency examiners.

Responsibilities of the Ombudsman. The OTS believes that the proper role of the Ombudsman under Section 309 is to act as a facilitator and mediator for the resolution of complaints. The Ombudsman will ensure that complaints about OTS regulatory actions are addressed in a fair and timely manner. The Ombudsman's major function is to provide assistance as a liaison with the thrift industry and the public on issues, concerns or problems that they may have in dealing with the OTS. The OTS Ombudsman reports directly to the Director.

Handling of Complaints. When a problem is brought to the attention of the Ombudsman for which there is an existing avenue of appeal on the merits or another appropriate forum for resolution, the Ombudsman will explain the process or forum for resolution, and direct the party to the appropriate appeals process or forum for the dispute. The OTS's regulations provide existing mechanisms for resolutions of disputes in many instances, such as: prompt corrective action directives under Section 38 of the Federal Deposit Insurance Act; denials or partial denials of Freedom of Information or Privacy Act requests; issuance of capital directives; and supervisory decisions and examination findings; application decisions; and matters within the jurisdiction of the Department of the Treasury's Inspector General or Federal or State investigatory or prosecutorial authorities.

Where an established appeals process or forum may not be available to resolve a dispute or if a party has a complaint with regard to the process, the Ombudsman will meet with the appropriate OTS official, or arrange a meeting between the complainant and the appropriate OTS official and attempt to resolve the problem. If the Ombudsman believes a problem or complaint has not been satisfactorily addressed, the Ombudsman may raise the matter with a higher level official and/or the Director for resolution.

Safeguards. Section 309(d)(2)(B) of the CDRIA requires that the Ombudsman ensure that safeguards exist to encourage complainants to come forward and preserve

confidentiality. In the OTS's view, the OTS's existing avenues for appeal or complaints, the Ombudsman's authority to compel meetings with appropriate OTS officials at all levels in Washington, D.C. and the regions, as well as the authority of the Ombudsman to review complaints of retaliation, should encourage complainants to come forward.

All information and materials utilized in the Ombudsman's review of a complaint shall be used only for purposes of the review and not disclosed outside of the Ombudsman's office, except to appropriate reviewing officials or with appropriate authorization. The Ombudsman will honor requests to keep confidential the identity of a complaining party. It must be recognized, however, that the resolution of certain complaints (such as complaints of retaliation against an individual institution) may not be possible should the identity of the complainant remain confidential. In such cases, the Ombudsman will discuss the circumstances limiting confidentiality with the complaining party involved. The OTS believes these provisions should assist in preserving the confidentiality of complainants and the Ombudsman function.

Retaliation. The Ombudsman is authorized to receive complaints of retaliation against a party as a result of utilizing the Ombudsman or any existing avenue of appeal or complaint forum. Upon receiving a complaint of retaliation, the Ombudsman will investigate the supervisory basis for the alleged retaliatory conduct. Upon completion of the review, the Ombudsman will report any findings of retaliation to the Director of OTS with a recommendation for remedial action to protect the complainant. A finding of retaliation will be referred to the Chief Counsel, for possible disciplinary action against the OTS employee who retaliated.

Procedures. A party may contact the Ombudsman at any time regarding a problem resulting from the regulatory activities of the OTS by calling (202) 906-5685 or writing to: Ombudsman, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552. John F. Downey,

Executive Director, Supervision.

[FR Doc. 96-17878 Filed 7-12-96; 8:45 am]

BILLING CODE 6720-01-P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "From Court Jews to the Rothschilds: Art, Patronage and Power 1600-1800" (See list ¹), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Jewish Museum in New York City from on or about September 8, 1996, through January 19, 1997, is in the national interest. Public Notice of this determination is ordered to be published in the Federal Register.

Dated: July 10, 1996.

Les Jin,

General Counsel.

[FR Doc. 96-17970 Filed 7-12-96; 8:45 am]

BILLING CODE 8230-01-M

¹ A copy of this list may be obtained by contacting Ms. Carol Epstein, Assistant General Counsel, at 202/619-6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547-0001.

Corrections

Federal Register

Vol. 61, No. 136

Monday, July 15, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 923

[Docket No. 960126015-6165-02]

RIN 0648-A143

Coastal Zone Management Program Regulations

Correction

In rule document 96-16402, beginning on page 33802 in the issue of Friday, June 28, 1996, make the following corrections:

§ 923.12 [Corrected]

1. On page 33806, in the third column, in the third paragraph of § 923.12, in line one, "(5)" should read "(b)".

§ 923.13 [Corrected]

2. On the same page, in the same column, in the third paragraph of § 923.13, in line one, "(5)" should read "(b)".

§ 923.25 [Corrected]

3. On page 33808, in the first column, in the first paragraph of § 923.25, in line eight, "this" is corrected as "This".

§ 923.81 [Corrected]

4. On page 33815, in the third column, in § 923.81(b)(2), in line one, insert "An" after "(2)".

§ 923.83 [Corrected]

5. On page 33816, in the first column, the section heading "§ 923.89 Mediation of amendments." should read "§ 923.83 Mediation of amendments."

§ 923.84 [Corrected]

6. On the same page, in the third column, in § 923.84(b)(5), the paragraph designated "(1)" should read "(i)".

§ 923.133 [Corrected]

7. On page 33818, in the third column, in the fourth line of amendatory instruction 9, "§ 928.3(d)" should read "§ 928.2(d)".

§ 923.124 [Corrected]

8. On page 33819, in the first column, in the sixth line of amendatory instruction 16, "§§ 923.121(b)" should read "§§ 923.121(b)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 24802; Amendment No. 29-39]

RIN 2120-AB36

Airworthiness Standards; Transport Category Rotorcraft Performance

Correction

In rule document 96-11494, corrected on page 33963-33999, in the issue of Monday, July 1, 1996, in the first column, "Amendment No. 29-40" appearing in the heading should read "Amendment No. 29-39".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 28008; Amendment No. 27-33,29-40]

RIN 2120-AF65

Rotorcraft Regulatory Changes Based on European Joint Aviation Requirements

Correction

In rule document 96-11493, corrected on page 33963-33999, in the issue of Monday, July 1, 1996, in the third column, "Amendment No. 27-33,29-39" appearing in the heading should read "Amendment No. 27-33,29-40".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-ANM-001]

Amendment of Class E Airspace; Baker, Montana

Correction

In rule document 96-14878 appearing on page 29645 in the issue of Wednesday, June 12, 1996 make the following corrections:

§ 71.1 [Corrected]

In the second column, in § 71.1, in the last paragraph:

(a) Fourteen lines from the bottom "46°20'00"N" should read "46°29'00"N".

(b) Twelve lines from the bottom "104°31'00"W; to lat. 46°37'00"N, long." was incorrectly repeated.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1150

[STB Ex Parte No. 529]

Class Exemption for Acquisition Or Operation Of Rail Lines By Class III Rail Carriers Under 49 U.S.C. 10902

Correction

In rule document 96-15895 beginning on page 32355 in the issue of Monday, June 24, 1996, make the following corrections:

§ 1150.44 [Corrected]

On page 32356, in the first column, in § 1150.44, after the introductory text, the headings should read as follows:

Surface Transportation Board

Notice of Exemption

STB Finance Docket No.

(1) — Exemption (2) — (3)

BILLING CODE 1505-01-D

Federal Reserve

Monday
July 15, 1996

Part II

**Pension Benefit
Guaranty
Corporation**

**29 CFR Part 4044
Allocation of Assets in Single-Employer
Plans; Interest Rates and Assumptions
Used in Making Benefits Valuations; Final
Rule and Notice**

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Rate for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans. The regulation prescribes interest assumptions for valuing benefits under terminating single-employer plans. This rule adopts interest assumptions for plans with valuation dates in August 1996 and advises the public of the new assumptions. These interest assumptions are also used under the PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This rule adopts the August 1996 interest assumptions to be used in benefit valuations for terminating single-employer plans. Before July 1996, the interest assumptions used for such benefit valuations were contained in PBGC regulations codified at 29 CFR part 2619. In a final rule effective July 1, 1996 (61 FR 34001), the PBGC reorganized and renumbered its regulations. The single-employer benefit valuation provisions are now codified in the PBGC's regulation on Allocation of Assets in Single-Employer Plans at 29 CFR part 4044, and this rule amends that regulation. As discussed in a notice published elsewhere in today's Federal Register, these interest assumptions are also used in valuations of multiemployer plans following mass withdrawal.

Part 4044 prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Under ERISA section 4041(c), a single-employer plan administrator wishing to terminate the plan in a distress termination must value guaranteed benefits and "benefit liabilities" (*i.e.*, all benefits provided under the plan as of the plan termination date) in accordance with part 4044. (Benefit liabilities may also be valued in accordance with part 4044 for purposes of the Standard Termination Notice filed with the PBGC by a plan terminating in a standard termination, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it values benefits in accordance with part 4044 to determine the amount of the plan's underfunding.

Among the actuarial assumptions prescribed in part 4044 are interest rates and factors, which are set forth in appendix B to part 4044. Because these interest rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

Two sets of interest rates and factors are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the two sets of interest rates and factors for valuing benefits in plans with valuation dates during August 1996.

For annuity benefits, the interest rates will be 6.30 percent for the first 20 years following the valuation date and 4.75 percent thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.25 percent for the period during which benefits are in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The annuity interest assumptions represent an increase (from those in effect for July 1996) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions represent an increase (from those in effect for July 1996) of 0.25 percent for the period during which benefits are in pay status and the seven years directly preceding that period and are otherwise unchanged.

Generally, the interest rates and factors under part 4044 are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions are normally published in the Federal Register on or about the 15th of the preceding month.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during August 1996, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, part 4044 of chapter XL, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 4044—[AMENDED]

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

Appendix B to Part 4044—[Amended]

2. In appendix B, a new entry is added to Table I, and Rate Set 34 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, \dots , and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
August 19960630	1-20	.0475	>20	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
34	08-1-96	09-1-96	5.25	4.50	4.00	4.00	7	8

Issued in Washington, DC, on this 5th day of July 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96-17792 Filed 7-12-96; 8:45 am]

BILLING CODE 7708-01-P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's home page (<http://www.pbgc.gov>).

DATES: The interest assumptions for determining the variable-rate premium under part 4006 apply to premium payment years beginning in May, June, and July 1996. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in August 1996. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the third quarter (July through September) of 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: Before July 1996, the rates and assumptions to be used under the PBGC regulations discussed below were set forth in tables in the regulations, even though the tabulated rates were merely copied from (or based on) rates published by other agencies, or were identical to rates in other PBGC regulations. In a final rule effective July 1, 1996 (61 FR 34001), the PBGC reorganized, renumbered, and significantly shortened its regulations. Tables that simply set forth information available elsewhere were among the unnecessary items that were removed. The PBGC will now publish the new

rates and assumptions in Federal Register notices on or about the 15th of each month, with tables of the rates for recent periods. The rates will be published monthly or quarterly, as appropriate, regardless of whether they have changed.

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe methods for determining a single-employer plan's unfunded vested benefits for premium computation purposes. These methods (previously codified at 29 CFR part 2610) involve use of an assumed interest rate equal to a specified percentage (currently 80 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15. The assumed interest rates to be used for computing premiums for plan years beginning in May, June, and July 1996 (*i.e.*, 80 percent of the yield figures for April, May, and June 1996) are 5.43 percent, 5.54 percent, and 5.65 percent respectively.

The following table lists the interest rates required under 29 CFR 4006.4(b)(1) to be used in valuing vested benefits for purposes of determining variable-rate premiums for plans with premium payment years beginning within the specified months:

For premium payment years beginning in	The required interest rate is
August 1995	5.38
September 1995	5.49
October 1995	5.24
November 1995	5.10
December 1995	5.01
January 1996	4.85
February 1996	4.84
March 1996	4.99
April 1996	5.28
May 1996	5.43
June 1996	5.54
July 1996	5.65

Late Premium Payments; Underpayments and Overpayments of Single-employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the

Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. (These provisions were previously codified at 29 CFR parts 2610 and 2622.) The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the third quarter (July through September) of 1996, as announced by the IRS, is 9 percent.

The following table lists the late payment interest rates under 29 CFR §§ 4007.7(a) and 4062.7 for the specified time periods:

From	Through	Interest rate (percent)
10/1/89	3/31/91	11
4/1/91	12/31/91	10
1/1/92	3/31/92	9
4/1/92	9/30/92	8
10/1/92	6/30/94	7
7/1/94	9/30/94	8
10/1/94	3/31/95	9
4/1/95	6/30/95	10
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	9/30/96	9

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. (These provisions were previously codified at 29 CFR part 2644.) For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the third quarter (July through September) of 1996 (*i.e.*, the rate reported for June 17, 1996) is 8.25 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates under 29

CFR § 4219.32(b) for the specified time periods:

From	Through	Rate (per-cent)
4/1/90	3/31/91	10.00
4/1/91	6/30/91	9.00
7/1/91	9/30/91	8.50
10/1/91	12/31/91	8.00
1/1/92	3/31/92	7.50
4/1/92	9/30/92	6.50
10/1/92	6/30/94	6.00
7/1/94	9/30/94	7.25
10/1/94	12/31/94	7.75
1/1/95	3/31/95	8.50
4/1/95	9/30/95	9.00
10/1/95	3/31/96	8.75
4/1/96	9/30/96	8.25

Multiemployer Plan Valuations
Following Mass Withdrawal

Section 4281.13 of the PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes methods for valuing benefits and certain assets of multiemployer plans following mass withdrawal under sections 4219(c)(1)(D) and 4281(b) of ERISA. These methods (previously codified at 29 CFR part 2676) involve use of the same interest assumptions used and prescribed under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). However, only part 4044 actually sets forth the prescribed

interest assumptions; part 4281 simply refers to the assumptions in part 4044. The interest assumptions applicable to valuation dates in August 1996 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's Federal Register. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 5th day of July 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96-17793 Filed 7-12-96; 8:45 am]

BILLING CODE 7708-01-P

Final Rule

Monday
July 15, 1996

Part III

**Department of
Energy**

**Office of Energy Efficiency and
Renewable Energy**

**10 CFR Part 430
Procedures for Consideration of New or
Revised Energy Conservation Standards
for Consumer Products; Final Rule**

DEPARTMENT OF ENERGY**Office of Energy Efficiency and Renewable Energy****10 CFR Part 430**

RIN [1904-AA83]

Energy Conservation Program for Consumer Products: Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of final rulemaking.

SUMMARY: The Department of Energy (DOE or Department) today promulgates a rule to elaborate on the procedures, interpretations and policies that will guide the Department in establishing new or revised energy efficiency standards for consumer products. The process described in this rule provides for greatly enhanced opportunities for public input, improved analytical approaches, and encouragement of consensus-based standards. This enhanced approach was developed by the Department on the basis of extensive consultations with many stakeholders.

EFFECTIVE DATE: The procedures, interpretations and policies established in this rule take effect on August 14, 1996.

ADDRESSES: A copy of the report entitled "Results of the Appliance Rulemaking Process Improvement Effort," from which much of the enhanced process described in this rule is derived, may be obtained from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, EE-43, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-7574. This report may be read at the DOE Freedom of Information Reading Room, U.S. DOE, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael J. McCabe, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Station EE-43, 1000 Independence Avenue, SW, Washington, DC 20585-0121, (202) 586-0371

Douglas W. Smith, Office of General Counsel, U.S. Department of Energy, Mail Station GC-70, 1000 Independence Avenue, SW, Washington, DC 20585-0103, (202) 586-3410

Deborah E. Miller, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Station EE-1, 1000 Independence Avenue, SW, Washington, DC 20585-0121, (202) 586-8888.

SUPPLEMENTARY INFORMATION:

- I. Background on Appliance Standards Program
- II. Process Leading to Development of this Rule
- III. Description of Rule
 1. Objectives
 2. Scope
 3. Setting Priorities for Rulemaking Activity
 4. Process for Developing Efficiency Standards and Factors to be Considered
 5. Policies on Selection of Standards
 6. Effective Date of a Standard
 7. Test Procedures
 8. Joint Stakeholder Recommendations
 9. Principles for the Conduct of Engineering Analysis
 10. Principles for the Analysis of Impacts on Manufacturers
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- IV. Related DOE Actions to Implement Process Improvements
 1. Finalized process improvement report
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- V. Status of Ongoing Rulemakings
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I. Background on Appliance Standards Program

The Department of Energy's appliance standards program is conducted pursuant to Title III, Part B of the Energy Policy and Conservation Act (EPCA). 42 U.S.C. 6291-6309. In 1987, EPCA was amended to establish by law national efficiency standards for certain appliances and a schedule for DOE to conduct rulemakings to periodically review and update these standards. National Appliance Energy Conservation Act, Pub. L. 100-12 (1987). The products covered by these standards included refrigerators and freezers, room air conditioners, central air conditioners and heat pumps, water heaters, furnaces, dishwashers, clothes washers and dryers, direct heating equipment, ranges and ovens, pool heaters, and fluorescent lamp ballasts. In conducting the rulemakings to update the standards, the Secretary of Energy is to set standards at levels that achieve the maximum improvement in energy

efficiency that is technologically feasible and economically justified.

The Energy Policy Act of 1992 (EPACT) further amended EPCA to expand the coverage of the standards program to include certain commercial and industrial equipment, including commercial heating and air-conditioning equipment, water heaters, certain incandescent and fluorescent lamps, distribution transformers, and electric motors. Energy Policy Act of 1992, Pub. L. 102-486 (1992). EPACT also established maximum water flow-rate requirements for certain plumbing products and provided for voluntary testing and consumer information programs for office equipment, luminaires, and windows.

EPCA also provides for DOE to establish test procedures to be used in evaluating compliance with efficiency standards. These test procedures are revised periodically to reflect new product designs or technologies.

As prescribed by EPCA, energy efficiency standards are established by a three-phase public process: Advance Notice of Proposed Rulemaking (ANOPR); Notice of Proposed Rulemaking (NOPR); and Final Rule. The process to develop test procedures is similar, except that an Advance Notice is not required.

In updating standards as required by EPCA, DOE revised standards for refrigerators and freezers in November 1989, with those standards becoming effective in January 1993. 54 FR 47916 (Nov. 17, 1989). These standards resulted in an approximately 25 percent reduction in refrigerator energy use. In May 1991, DOE issued revised energy conservation standards for clothes washers, clothes dryers, and dishwashers which became effective on May 14, 1994. 56 FR 22250 (May 14, 1991).

DOE has published notices of proposed rulemaking on revised standards for a number of covered products. A NOPR for energy conservation standards for eight products (water heaters, room air-conditioners, mobile-home furnaces, direct-heating equipment, pool heaters, kitchen ranges and ovens, fluorescent lamp ballasts, and televisions) was published in March 1994. 59 FR 10464 (March 4, 1994). DOE has since withdrawn the proposal to establish standards for television sets. 60 FR 32627 (June 23, 1995). With regard to ballasts and electric water heaters, DOE is gathering further inputs and conducting further analysis. 60 FR 5880 (Jan. 31, 1995). In July 1995, the Department issued a NOPR for energy conservation standards for refrigerator

products which was based largely on a proposal made by a coalition of refrigerator manufacturers, electric utilities, states and energy conservation advocates. 60 FR 37388 (July 20, 1995).

The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1996 included a moratorium on proposing or issuing energy conservation appliance standards for the remainder of Fiscal Year 1996. See Pub. L. 104-134. The Department is continuing to work on the analyses underlying proposed standards and on test procedure revisions during this fiscal year.

The appliance standards program supports key objectives of the Administration's Sustainable Energy Strategy, which include: Increasing the efficiency of energy use in order to strengthen our economy and improve living standards; reducing the adverse environmental impacts associated with energy production, delivery and use; and keeping America secure by reducing our vulnerability to global energy market shocks. Although the Department recognizes that policies that rely on market forces or market-based incentives are preferable in many circumstances, appropriate regulatory intervention can achieve efficiency gains that will benefit consumers, businesses, and the Nation. Existing appliance standards are projected to save 23 quadrillion BTUs of energy from 1993 to 2015, resulting in estimated consumer savings of \$1.7 billion per year in 2000 and estimated annual emission reductions of 107 million tons of carbon dioxide and 280 thousand tons of nitrogen oxides by 2000. An aggressive program for promoting the efficient use of energy resources, including appliance efficiency standards that are technically feasible and economically justified, is a critical element of the Sustainable Energy Strategy.

II. Process Leading to Development of This Rule

Since the National Performance Review's recommendations on Regulatory Reform were issued over two years ago, the U.S. DOE has forged new ways of carrying out its appliance standards rulemaking responsibilities. To supplement the traditional rulemaking process established by law, the Department has encouraged consensus-based alternatives and invited interest group participation in the early stages of standards development with mechanisms such as technical sessions and workshops.

In September 1995, the Department announced a formal effort to consider

further improvements to the process used to develop appliance efficiency standards, calling on energy efficiency groups, manufacturers, trade associations, state agencies, utilities, and other interested parties to provide input to guide the Department's work. To date, the Department's process improvement effort has consisted of several elements:

- A series of preliminary meetings were held with interested parties to identify opportunities for improvement in the rulemaking process, standards priority setting, analysis methods and Department decision-making;
- Interviews were conducted with thirty organizations that have participated in past appliance rulemakings to solicit information regarding the perceived strengths and weaknesses of the process;
- A preliminary draft "Process Improvement Plan" was developed from these initial meetings and interviews;
- A public workshop was held to obtain broad-based input on the Department's draft "Process Improvement Plan" and other elements of the Department's proposed new approach;
- A draft report entitled "Results of the Appliance Rulemaking Process Improvement Effort" was prepared and distributed for comment to the workshop participants;
- Follow-up meetings were held with interested parties on the issues raised in the draft report; and
- Several drafts of today's rule were shared with stakeholders, and the Department addressed numerous comments made by interested parties in written submissions and during two well-attended stakeholder workshops.

The publication of this rule is an important step in institutionalizing the procedural improvements identified in this process. It is not, however, the only step. Other actions in the Department's process improvement effort include: A review of the manufacturing impact analysis model and methodologies; a review of non-regulatory approaches; the prioritization of future rules; and the creation of an advisory committee consisting of a representative group of interested parties, to oversee the implementation of these commitments. (See section IV of the Supplementary Information.) The objective is to act quickly to implement this enhanced standards development process, and to continue to invite extensive stakeholder consultation in the implementation phase.

The Department's many stakeholders have contributed tremendously to this effort to review the Department's procedures. The Department appreciates that sustained contribution, and is committed to implement a process that is more responsive to stakeholder concerns.

III. Description of Rule

1. Objectives

Section 1 of the rule articulates the Department's major objectives for the enhanced process to be employed for considering new or revised appliance efficiency standards. The Department's objectives are to:

- (a) Provide for early input from stakeholders
- (b) Increase predictability of the rulemaking timetable
- (c) Increase use of outside technical expertise
- (d) Eliminate problematic design options early in the process
- (e) Fully consider non-regulatory approaches
- (f) Conduct thorough analysis of impacts
- (g) Use transparent and robust analytical methods
- (h) Articulate policies to guide selection of standards
- (i) Support efforts to build consensus on standards
- (j) Reduce time and cost of developing standards

2. Scope

Section 2 describes the applicability of the enhanced process contained in the rule. The Department has adopted a common sense approach to the transition to this enhanced process.

DOE will use the new approach for all new rulemakings. With regard to rulemakings that are already underway, DOE and interested parties have invested substantial effort and resources. In balancing whether the benefits of using this enhanced process justify the delay of starting these rulemakings anew, DOE has concluded that the new process will be used, from the start, with respect to rulemakings in which a NOPR has not yet been published. To the extent analytical work has already been done or public comment on an ANOPR has already been provided, such analysis and comment will be considered, as appropriate, in proceeding under the new process. A case-by-case review is needed to determine how to proceed (i.e., whether some or all of the analytical or procedural steps should be repeated) with respect to products for which a NOPR has been issued and the

analysis is nearly complete. DOE's intentions concerning how to proceed with those rulemakings that are beyond the NOPR stage are discussed in some detail in section V below. Note that the rulemakings beyond the NOPR stage include one rule based on a consensus stakeholder recommendation and others for which there has been shared analysis and public workshops consistent with the direction of this rule.

3. Setting Priorities for Rulemaking Activity

Section 3 describes the process that will be used in developing rulemaking priorities, including factors to be considered. The annual process invites public input on the program's rulemaking agenda for the coming year, establishes factors to be considered in establishing priorities, and provides, in conjunction with the Department's Regulatory Agenda, a clear set of expectations about the scheduled rulemaking activities.

4. Process for Developing Efficiency Standards and Factors To Be Considered

Section 4 establishes the process for developing efficiency standards. This process is designed to provide for greater, and more productive, interaction between the Department and interested parties throughout the process. It is also designed so that key analyses are performed earlier in the process, with early opportunities for public input to and comment on the analyses. The process is consistent with the procedural requirements of law, but adds some important steps to enhance the process.

Building upon the National Performance Review's regulatory reform initiative, an effort has been underway at the Department to increase consultation with interested parties at every stage of the rulemaking process. In addition to holding the formal public hearings and soliciting written comments, the Department has increased its use of public workshops and other less formal tools to develop more effective standards. The Department has received broad support for its recent efforts to open the standards development process and its commitment to obtain input from interested parties early—well in advance of the ANOPR—and often in the rulemaking process.

Section 4 also articulates factors that DOE will take into account in screening design options, selecting candidate standard levels, and selecting proposed and final standard levels.

(a) Pre-ANOPR Screening and Analysis of Design Options

As described in section 4(a), the first step in a rulemaking will be a screening analysis that will identify the product categories and technologically feasible design options and then narrow the range of design options being considered for the development of candidate standard levels. This screening analysis, along with the engineering analysis and the selection of candidate standard levels, will occur before DOE publishes an ANOPR.

Some manufacturers have expressed concern that the Department may devote too much attention to consideration of design options that: Are not practical to mass manufacture, install or service; have substantial impacts on consumer utility; or raise significant safety concerns. The screening step is designed to address these concerns. The Department will develop, with input from interested parties, a list of design options for further consideration. The Department will eliminate from further consideration a design option that: Is not technologically feasible; is not practicable to manufacture, install and service; has significant adverse impact on the utility of the product to consumers; or adversely affects health or safety. Consistent with *Natural Resources Defense Council v. Herrington*, 768 F.2d 1355 (D.C. Cir. 1985), the Department will evaluate design options for technological feasibility on the basis of whether the options are in use by industry or research has progressed to the development of a prototype. However, consideration of practicability to manufacture, impacts on consumer utility and health and safety effects at this stage is designed to ensure that commercially impractical designs, even if technologically feasible, are screened out on the basis of other statutory criteria early in the process. This early screening approach should reduce uncertainty as to the direction of standards development.

The Department will seek expert input to conduct the necessary analyses. The Department, with input from interested parties, will identify issues that will be examined in the engineering analysis and the types of specialized expertise that may be required. With these specifications, DOE will select appropriate contractors, subcontractors, and as necessary, expert consultants to perform the engineering analysis and the impact analysis. DOE, in consultation with interested parties, also will identify technology/industry experts who can provide independent,

expert review of the results of the engineering analysis and the subsequent impact analysis. The Department will consider in the analyses, wherever feasible, data, information and analyses received from stakeholders.

After the screening of design options, the DOE contractor will perform engineering and initial economic analysis of the design options. The results of this analysis will be distributed for review by experts and interested parties. If appropriate, a public workshop will be conducted to review these results.

The process does not contemplate that the early screening process will be the final opportunity to gather and consider input on whether a design option is technologically feasible; is practicable to manufacture, install and service; has significant adverse impact on utility of the product to consumers; or adversely affects health or safety. Any new information on these issues that is provided in later stages of the rulemaking will be considered, as provided in sections 4(b)(4) and 4(d)(7)(ix), and a preliminary determination to include or exclude consideration of a design option based on the screening analysis may be revised if supported by a reexamination of these factors based on new information.

This emphasis on the early stages of the process is designed to enable interested parties and DOE to engage in a more productive, informative interaction on standards issues prior to the publication of the ANOPR, so that the standards development process starts with the best possible foundation of common understanding.

(b) Factors in Selection of Proposed Standard

Section 4(c) provides that following review of comments on the ANOPR, DOE's contractor will conduct specified impact analyses to be used by DOE in selecting proposed standards. The factors to be considered by DOE in selection of proposed standard levels include:

- (i) Consensus stakeholder recommendations
- (ii) Impacts on manufacturers
- (iii) Impacts on consumers
- (iv) Impacts on competition
- (v) Impacts on utilities
- (vi) National energy, economic and employment impacts
- (vii) Impacts on the environment and energy security
- (viii) Impacts of non-regulatory approaches
- (ix) New information relating to factors use for screening design options.

The Department's approach to analysis and consideration of several of these key factors is discussed in sections 10, 11, and 12 of the rule.

(c) Enhanced Opportunities for the Public to Receive Information and Provide Input

Throughout the process, the Department will provide interested parties with opportunities to provide data, recommendations and other comments. DOE will share with the public both analyses and preliminary decisions to inform interested parties as to the progress of standards development. This information from the Department will enable the public to provide informed input to DOE at each step of the process.

With the goal of better informing stakeholders about DOE rulemaking activities, the Department will use various methods, in addition to Federal Register notices, to notify interested parties of upcoming meeting and rulemaking notices, such as industry publications, Inside Energy, Air Conditioning News, Appliance Magazine, Product Safety Letter, and the Energy Efficiency and Renewable Energy Network (EREN) located on the Internet at <http://www.eren.doe.gov>.

(d) Timely Completion of Rulemakings

The Department's intent is to use a process that will produce standards that have sound analytical grounding and have been subject to thorough review and comment without making the process unduly time-consuming. The entire process provided for in section 4, from the date of issuance of the listing of priorities indicating that work is about to begin on the development of a new standard, to issuance of the final rule, should take no more than three years. The time required from issuance of an ANOPR to issuance of a final rule should be no more than 18 months.

Timely completion of rulemakings is essential. If experience demonstrates rulemakings are not being completed within a 3-year timeframe using this new process, DOE will reconsider this process to explore how changes can be made to expedite the process.

5. Policies on Selection of Standards

Section 5 describes Department policies concerning the selection of new or revised standards, and decisions preliminary thereto. These policies are intended to provide guidance for making the determinations required by section 325 of the EPCA, 42 U.S.C. 6295.

Section 5(b) states policy guidance for screening design options. In particular, it states that a design option will not be

considered further if it is determined that the technology: is not incorporated in a commercial product or a working prototype; will not be capable of being mass produced and installed and serviced by persons serving the relevant market at the time a standard would take effect; will have significant adverse impact on the utility of the product to consumers, or result in the unavailability of any product type generally available in the U.S. market; or will have significant adverse impacts on health or safety.

Section 5(c) and (d) describe the policies pertaining to the selection of candidate standard levels.

Sections 5(e) and (f) describe Department policies guiding selection of proposed and final standard levels. Section 325(o)(2)(A) of EPCA provides that any new or revised standard must be designed to achieve the maximum improvement in energy efficiency that is determined to be technologically feasible and economically justified. A candidate standard level will not be proposed or promulgated if the Department determines that it is not technologically feasible and economically justified. See EPCA section 325(o)(3)(B). A standard level is economically justified if the benefits exceed the burdens. See EPCA section 325(o)(2)(B)(i).

The Department encourages efforts to develop consensus among interested parties on proposals for new or revised standards as an effective mechanism for balancing the economic, energy, and environmental interests affected by standards. Thus, notwithstanding any other policy on selection of proposed standards, a consensus recommendation on an updated efficiency level submitted by a group that represents all interested parties will be proposed by the Department if it is determined to meet the statutory criteria.

Section 5(e) articulates a number of policies to guide the application of EPCA's economic justification criterion in selecting a proposed standard. Although many factors are pertinent to the ultimate judgment about whether the benefits of a standard level exceed the burdens, these policies reflect special concern about particular types of significant adverse impacts on consumers and manufacturers in reaching that judgment.

The policies articulated in section 5(e)(3)(i) are stated as rebuttable presumptions. Although these presumptions reflect the great significance DOE attaches to these factors, DOE will consider evidence that rebuts an applicable presumption that a

standard level is not economically justified. Any applicable presumption will be rebutted if the Department determines that specifically identified expected benefits of the standard would outweigh the expected adverse effects.

6. Effective Date of a Standard

Section 6 provides that the lead time between the publication of a final rule in the Federal Register and the effective date of the new or revised standard will be at least the period contemplated by the rulemaking schedules contained in EPCA. The Department will consider, on a case-by-case basis, further extending this lead time if the circumstances warrant. For instance, the lead time might be extended to mitigate the cumulative burden of implementing multiple product regulations or to permit time for market acceptance of new products. This section also provides that the period between the effective date of one standard and the effective date of any revision to that standard will be at least the period contemplated by the rulemaking schedules contained in EPCA. These policies will ensure that the time available for manufacturers to prepare for implementation of a new or revised standard and the time available for the amortization of any fixed costs associated with compliance will be no less than anticipated in the statute.

7. Test Procedures

Section 7 states the Department's commitment to ensure that revisions to test procedure rules necessary to evaluate revisions to standards are developed and finalized in a timely fashion.

Any necessary modifications in test procedures will be proposed before issuance of an ANOPR on revised standards and will be finalized prior to the issuance of a NOPR on revised standards. Where significant test procedure changes are needed, DOE will attempt to finalize test procedure revisions before the issuance of an ANOPR on revised standards.

8. Joint Stakeholder Recommendations

Section 8 states that the Department supports efforts by groups of interested parties to develop and present consensus recommendations on standards to DOE. Throughout the standards development process, and especially following the issuance of the ANOPR, interested parties are welcome to develop common recommendations to the Department on product categories and standard levels as well as on more specific analytical issues. The

Department will seek to support these efforts in whatever way possible.

9. Principles for the Conduct of Engineering Analysis

Section 9 states the Department's commitment to solicit input from interested parties and experts in conducting the engineering analysis. The Department will use this input to develop the design options to be considered in the subsequent analyses, identify any engineering models necessary, and estimate the likely cost and performance improvement potential of design options. The Department will use analytical methods that explicitly account for uncertainty.

10. Principles for the Analysis of Impacts on Manufacturers

Section 10 describes the approach DOE will use in the analysis and consideration of impacts on manufacturers. The process addresses a number of concerns raised in the process improvement effort. First, the process provides opportunities for comments in the pre-ANOPR screening process and at the beginning of the impact assessment process. This will focus attention on items of specific concern to each individual regulatory proceeding. Discussions on what data are critical as well as the specific approaches for generating those data will be conducted in open proceedings. Second, the Department will utilize an annual cash flow approach to determine quantitative impacts on manufacturers including a short term assessment based on the cost and capital requirements during the period between the announcement of a regulation and the time when the regulation comes into effect. Third, with input from manufacturers and other interested parties, the Department will develop estimates of the critical variables affecting manufacturers (such as expected changes in product prices, sales, and possible fuel switching) drawing on multiple sources of data both quantitative and qualitative. Fourth, the Department will analyze the impacts of a standard on different types of manufacturers, with particular attention to impacts on small manufacturers. This will be done with scenario analysis or other appropriate methods. Fifth, the Department will use models that: are clear and understandable; feature accessible calculations; and recognize and report the range of uncertainty. Finally, the Department will assess and describe the effects on manufacturers of other significant product-specific regulations that will take effect within three years

of the effective date of the standard under consideration and will affect significantly the same manufacturers. This assessment is intended to capture the impacts of different DOE standards affecting multiple products made by the same manufacturing division.

With respect to overlapping efficiency standards on a product and components of the product, the Department will pay special attention to the cumulative regulatory burden being borne by the manufacturer of finished products containing that component. In such cases, the Department will specifically address the cost of potential component standards plus the overlapping costs of existing parallel standards on both the component and the system in which the component is installed.

11. Principles for the Analysis of Impacts on Consumers

Section 11 describes the Department's approach to consideration of consumer impacts. First, in the very early stages of standard development, DOE will consider adverse impacts of design options on consumer utility and will identify other possible impacts on consumers of updated efficiency standards which may warrant closer examination during the standards development process. Second, DOE will determine, on the basis of any information submitted during the standard development process, whether a proposed standard is likely to result in the unavailability of any covered product type with performance characteristics, features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time. Consistent with EPCA, DOE will not promulgate a standard at a level where it concludes that it would result in such unavailability. Third, the Department will consider the views of the Department of Justice on any impacts of a proposed standard on competition, and will not issue a standard determined to have significant anticompetitive impacts. Fourth, the Department will use regional analysis and sensitivity analysis tools, as appropriate, to evaluate the potential distribution of impacts of candidate standards levels on consumers. The Department will consider impacts on significant segments of society in determining standards levels. Where significant subgroups would be expected to bear significant adverse impacts, DOE will place increased emphasis on voluntary programs to bring about additional potential energy savings.

The Department will be sensitive to first cost increases and make greater use of sensitivity analysis and scenario analysis in reporting consumer Life-Cycle Cost, Payback Period and Cost of Conserved Energy. The Department expects that the use of these methods will result in more economically efficient standards than reliance on pay-back period alone, while achieving the similar result of avoiding negative impacts to identifiable population groups.

Substantial increases in product prices may adversely affect low-income households or cause shifts in product purchasing patterns. Thus, if a candidate standard level would cause a substantial increase in the product first costs to consumers or would not pay back such additional first costs through energy cost savings in less than three years, Department will specifically assess the likely impacts of such a standard on low-income households, product sales and fuel switching. The results of this assessment will be considered in the evaluation of consumer and manufacturer impacts.

As noted during the process improvement effort, consumers have rarely participated directly in standards development. In order to address concerns about the lack of such direct participation, DOE will seek to strengthen its efforts to inform and involve consumers and consumer representatives in the process of developing standards. This will include expanded notification of consumer representatives during the process of developing updated efficiency standards and, where appropriate, DOE may seek the direct input of consumers.

The Department is committed to improving the analysis of engineering issues and consumer and manufacturer impacts. The Department also is cognizant that using ever more elaborate quantitative approaches carries the risk of unacceptable delays and incomprehensible analysis and results. For these reasons, the Department will seek to balance appropriately the use of quantitative and qualitative approaches, with the goal of providing the most useful information upon which to make the required judgments.

12. Consideration of Non-Regulatory Approaches

Section 12 states the Department's commitment to consider fully the likely effects of market forces and any non-regulatory initiatives in assessing the incremental benefits of efficiency standards. DOE considers voluntary "market pull" programs to be an

important complement to its standards program.

13. Crosscutting Analytical Assumptions

Section 13 describes the principles the Department intends to follow in selecting the key assumptions which are critical to the quantitative analysis of the impacts of candidate standard levels, including rates of economic growth, energy price and demand trends, product specific energy efficiency trends, real discount rates and emission rates. These cross-cutting analytical assumptions will continue to be specifically identified in all notices of proposed rulemaking and will continue to be subject to public comment and review as part of each such rulemaking.

Certain crosscutting analytical assumptions will change regularly as forecasts of economic growth, energy price, demand, efficiency and other trends are modified. In other cases, such as the real discount rates used to assess the present value of future costs or savings for consumers, commercial businesses, manufacturers or the Nation, the Department hopes that the crosscutting analytical assumptions will remain relatively stable. For residential consumers, the Department currently uses real discount rates of 2, 6 and 15% in the analysis of likely impacts of appliance standards. For commercial users, the Department currently uses 4, 8 and 12%. For manufacturers, the Department currently uses 12%, but is likely to develop a range of values for future use. For National benefits, the Department currently uses 7%.

With respect to the consideration of the impacts of candidate standards on the environment and energy security, the Department can find no sound analytical method for accurately estimating the monetary value of such environmental or energy security benefits (or costs). Therefore, the Department will not attempt to incorporate the estimated monetary value of such externalities into its estimates of the national net present values of candidate standard levels. However, as required by the National Environmental Policy Act, the Department will continue to consider the likely effects of candidate standard levels on the environment and energy security in reaching a decision as to whether the benefits of the such standard levels exceed their burdens.

EPCA provides that energy conservation standards prescribed under EPCA are to be based on energy consumption at the point of use (*i.e.*, site energy). See EPCA sections 321 (4),

(5) and (6). For purposes of estimating energy savings in evaluating the benefits of a proposed standard, DOE considers the energy savings associated with the production of the fuel used by the appliance covered by the standard (*i.e.*, source energy).

14. Deviations, Revisions and Judicial Review

The Department has crafted this rule to include procedures, interpretations and policies that it believes will be appropriate for general use in the future conduct of the appliance standards program. However, given the possibility of unanticipated circumstances affecting either particular rulemakings or the program generally, the rule includes provision for case-specific deviations and modifications of the generally applicable rule. If the Department concludes that elements of this rule are not appropriate in a particular standards rulemaking, DOE will provide interested parties with notice of the deviation and an explanation of why such a deviation was deemed appropriate. If the Department concludes, based on experience with this approach, that changes in this Appendix are appropriate, DOE will provide notice of such modifications to the rule with an accompanying explanation. DOE will consult with interested parties, probably through the advisory committee (described in section IV.5 of this Supplementary Information), prior to any such modification to the rule. The procedures, interpretations, and policies stated in this Appendix are not intended to establish any new cause of action or right to judicial review. Judicial review of final rules is provided for in section 336 of EPCA.

IV. Related DOE Actions To Implement Process Improvements

In addition to promulgation of this rule, DOE employed other activities to address some of the concerns raised by stakeholders during the process improvement. These activities are described below.

1. Finalized Process Improvement Report

The Department will issue the final report on "Results of the Appliance Rulemaking Process Improvement Effort" in August 1996.

2. Process To Develop Rulemaking Priorities

On June 14, 1996, the Department held a public workshop on priority-setting and DOE will make available a draft priority listing based on the results of our priority-setting analysis in late

July. The draft rulemaking priority listing and the accompanying analysis will: Indicate for which covered products DOE is proposing to initiate or continue, during the next two years, the development of updated standards; document the priority-setting analysis which DOE used to develop the draft priority listing; indicate the next steps for all currently active rulemakings; describe any variations from the enhanced process that will be followed for specific products; and provide a schedule for completion of each rulemaking identified.

The final list of rulemaking priorities will be available at the time that the Regulatory Agenda is published in the Federal Register in the fall of 1996. During the summer, the Department will obtain public comments on the draft listing of rulemaking priorities.

3. Review of Manufacturer Impact Analysis

In order to initiate the process of developing new and substantially improved methods for assessing the impacts of standards on manufacturers, DOE will review in detail the existing analyses methodologies, develop a draft work plan for the development of new methods for assessing manufacturer impact, and invite comments and suggestions from interested parties.

4. Review of Non-Regulatory Approaches

DOE has initiated a process for developing methods for comparing the likely benefits and costs of updated efficiency standards to various non-regulatory alternatives. For instance, DOE held a public workshop on June 20, 1996 which examined, among other issues, alternatives and complements to standards for fluorescent lamp ballasts. DOE expects to hold one or more similar workshops to examine these issues with regard to other products.

5. Creation of an Advisory Committee

DOE is establishing an Advisory Committee on Appliance Energy Efficiency Standards. The Committee will provide an official, organized forum for interested parties to provide the Department with advice, information, and recommendations on the Appliance Efficiency Standards rulemaking process. Committee members will be chosen to ensure an appropriately balanced representation of various points of view and functions of interested parties and experts, such as manufacturer trade associations, manufacturers, energy efficiency groups, consumers, utilities, retailers, and state energy offices. The Assistant Secretary

for Energy Efficiency and Renewable Energy will chair the Committee.

It is anticipated that this advisory committee will be a useful forum for obtaining advice on the desirability of making changes to the procedures, interpretations and policies set out in this rule, and on cross cutting analytical issues affecting all product standards. The Advisory Committee may recommend that DOE undertake generic proceedings relating to crosscutting analytical issues.

V. Status of Ongoing Rulemakings

As stated in section 2 of the rule, the Department will apply the new process described in section 4 of the rule to all rulemakings for which a NOPR has not yet been published. To the extent analytical work has already been done, and public comment on an ANOPR already has been provided, such analysis and comment will be considered, as appropriate, in proceeding with the new process.

The Department is precluded through September 1996 from using funds appropriated under the Fiscal Year 1996 Interior Appropriations Act to propose or promulgate new or revised efficiency standards. With respect to rulemakings for which a NOPR has already been published, DOE currently intends to proceed as follows:

Refrigerators. The analysis of comments on the NOPR is complete. At this time, DOE believes that no major changes to the underlying analysis of the proposed refrigerator standards is necessary. However, the Department expects to consult further with interested parties to determine whether it is appropriate to make alterations to the proposed standards to take into account the interaction between the revised efficiency standards and Clean Air Act and Montreal Protocol on Substances that Deplete the Ozone Layer regulations relating to manufacture of HCFCs, which take effect in 2003, as suggested by some stakeholders. The Department expects that any further consideration of this issue would be consistent with the approach taken in today's rule on pertinent topics such as cumulative regulatory burden.

Ballasts. The analysis underlying the previously proposed standards has been substantially revised and has been circulated for technical review by manufacturers and other interested parties. A public workshop to review this revised analysis was held on June 20, 1996.

Cooking Products and Room Air Conditioners. The analyses underlying the proposed standards for these two

product categories have been substantially revised and are now being circulated for technical review by manufacturers and other interested parties. On the basis of these analyses and any comments received on these analyses, the Department expects to proceed to issue a final rule after the current fiscal year 1996 moratorium expires.

Water Heaters. The analyses for gas, oil and electric water heaters are being revised and will be completed and made available for review depending on the priority given this product. A revised NOPR would be issued following the new procedure.

Mobile Home Furnaces, Direct Heating Equipment and Pool Heaters. The analyses for these products have been revised and will be made available for review depending on the priority given them. Revised NOPRs would be issued following the new procedure.

In the near term, DOE will consider these rulemakings among others in the upcoming priority setting effort, and will solicit and consider public comment on how to proceed with these rules in that process.

VI. Administrative Procedure

The rule published today describes procedures, interpretations, and policies DOE will follow in conducting rulemakings on appliance standards. DOE is not required to provide for prior notice and opportunity for comment on today's final regulations because they fall within the Administrative Procedure Act's exception for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). Moreover, these procedures, interpretations and policies were developed with extensive consultation with representatives of all of the interests that typically participate in standards rulemakings. The consultations to date are described in detail in section II of this Supplementary Information.

VII. Administrative Reviews

A. Review Under Executive Order 12866

This regulatory action is not a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," October 4, 1993. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any

other policy actions be reviewed for any substantial direct effect on states, on the relationship between the National Government and states, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The final rules published today do not regulate the states. They primarily will affect the manner in which DOE develops proposed rules to revise consumer product energy efficiency standards. Section 327 of the EPCA provides for preemption of state regulation in this area. The final rules published today do not alter the distribution of authority and responsibility to regulate in this area. Accordingly, DOE has determined that preparation of a federalism assessment is unnecessary.

C. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's final regulations under the standards of section 3 of the Executive Order and determined that, to the extent permitted

by law, they meet the requirements of those standards.

D. Regulatory Flexibility Act

If an agency is required by law to issue a general NOPR, and if a rule has, or is likely to have, a significant negative economic impact on a substantial number of small entities, then the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial and final regulatory flexibility analysis to accompany proposed and final rulemakings, respectively. Because the rule published today is exempt from notice and comment rulemaking under the Administrative Procedure Act, there is no requirement to prepare a regulatory flexibility analysis.

E. Review Under the National Environmental Policy Act

The Department has concluded that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, 4331–35, 4341–47, because they would not individually or cumulatively have a significant impact on the human environment as determined by DOE's regulations. 10 CFR part 1021, subpart D. Therefore this rule does not require preparation of an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Pub.L. 104–4, requires each Federal agency to assess the possible effects of Federal regulatory action on state, local, and tribal governments, and the private sector of Federal mandates. If a Federal mandate is expected to have an impact of \$100 million or more in any year, then the mandate is significant and the issuing agency is obliged to undertake a detailed assessment of costs and benefits. If the Federal mandate is a significant intergovernmental mandate, then the issuing agency is obliged to provide a meaningful and timely opportunity for affected governments to participate in the development of the rule. The final regulations in this notice apply only to the conduct of DOE officials and do not place regulatory obligations on anyone outside of DOE. Accordingly, there are no legal requirements under the Unfunded Mandates Reform Act of 1995 that apply to this rulemaking.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

Consistent with the Small Business Regulatory Enforcement Fairness Act of 1996, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will note the Office of Management and Budget's determination that this rule does not constitute a "major rule" under that Act. 5 U.S.C. 801, 804.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on July 9, 1996.
Christine A. Ervin,
Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority cite continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Appendix A to Subpart C of Part 430—Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products—is added as set forth below:

Appendix A to Subpart C of Part 430—Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products

1. Objectives
2. Scope
3. Setting Priorities for Rulemaking Activity
4. Process for Developing Efficiency Standards and Factors to be Considered
5. Policies on Selection of Standards
6. Effective Date of a Standard
7. Test Procedures
8. Joint Stakeholder Recommendations
9. Principles for the Conduct of Engineering Analysis
10. Principles for the Analysis of Impacts on Manufacturers
11. Principles for the Analysis of Impacts on Consumers
12. Consideration of Non-Regulatory Approaches
13. Crosscutting Analytical Assumptions
14. Deviations, Revisions, and Judicial Review

1. Objectives

This Appendix establishes procedures, interpretations and policies to guide the DOE

in the consideration and promulgation of new or revised appliance efficiency standards under the Energy Policy and Conservation Act (EPCA). The Department's objectives in establishing these guidelines include:

(a) *Provide for early input from stakeholders.* The Department seeks to provide opportunities for public input early in the rulemaking process so that the initiation and direction of rulemakings is informed by comment from interested parties. Under the guidelines established by this Appendix, DOE will seek early input from interested parties in setting rulemaking priorities and structuring the analyses for particular products. Interested parties will be invited to provide input for the selection of design options and will help DOE identify analysis, data, and modeling needs. DOE will gather input from interested parties through a variety of mechanisms, including public workshops.

(b) *Increase predictability of the rulemaking timetable.* The Department seeks to make informed, strategic decisions about how to deploy its resources on the range of possible standards development activities, and to announce these prioritization decisions so that all interested parties have a common expectation about the timing of different rulemaking activities. The guidelines in this Appendix provide for setting priorities and timetables for standards development and test procedure modification and reflect these priorities in the Regulatory Agenda.

(c) *Increase use of outside technical expertise.* The Department seeks to expand its use of outside technical experts in evaluating product-specific engineering issues to ensure that decisions on technical issues are fully informed. The guidelines in this Appendix provide for increased use of outside technical experts in developing, performing and reviewing the analyses. Draft analytical results will be distributed for peer and stakeholder review.

(d) *Eliminate problematic design options early in the process.* The Department seeks to eliminate from consideration, early in the process, any design options that present unacceptable problems with respect to manufacturability, consumer utility, or safety, so that the detailed analysis can focus only on viable design options. Under the guidelines in this Appendix, DOE will eliminate from consideration design options if it concludes that manufacture, installation or service of the design will be impractical, or that the design option will adversely affect the utility of the product, or if the design has adverse safety or health impacts. This screening will be done at the outset of a rulemaking.

(e) *Fully consider non-regulatory approaches.* The Department seeks to understand the effects of market forces and voluntary programs on encouraging the purchase of energy efficient products so that the incremental impacts of a new or revised standard can be accurately assessed and the Department can make informed decisions about where standards and voluntary "market pull" programs can be used most effectively. Under the guidelines in this

Appendix, DOE will solicit information on the effectiveness of market forces and non-regulatory approaches for encouraging the purchase of energy efficient products, and will carefully consider this information in assessing the benefits of standards. In addition, DOE will continue to support voluntary efforts by manufacturers, retailers, utilities and others to increase product efficiency.

(f) *Conduct thorough analysis of impacts.* In addition to understanding the aggregate costs and benefits of standards, the Department seeks to understand the distribution of those costs and benefits among consumers, manufacturers and others, and the uncertainty associated with these analyses of costs and benefits, so that any adverse impacts on significant subgroups and uncertainty concerning any adverse impacts can be fully considered in selecting a standard. Under the guidelines in this Appendix, the analyses will consider the variability of impacts on significant groups of manufacturers and consumers in addition to aggregate costs and benefits, report the range of uncertainty associated with these impacts, and take into account cumulative impacts of regulation on manufacturers.

(g) *Use transparent and robust analytical methods.* The Department seeks to use qualitative and quantitative analytical methods that are fully documented for the public and that produce results that can be explained and reproduced, so that the analytical underpinnings for policy decisions on standards are as sound and well-accepted as possible. Under the guidelines in this Appendix, DOE will solicit input from interested parties in identifying analysis, data, and modeling needs with respect to measurement of impacts on manufacturers and consumers.

(h) *Articulate policies to guide selection of standards.* The Department seeks to adopt policies elaborating on the statutory criteria for selecting standards, so that interested parties are aware of the policies that will guide these decisions. Under the guidelines in this Appendix, policies for screening design options, selecting candidate standard levels, selecting a proposed standard level, and establishing the final standard are established.

(i) *Support efforts to build consensus on standards.* The Department seeks to encourage development of consensus proposals for new or revised standards because standards with such broad-based support are likely to balance effectively the economic, energy, and environmental interests affected by standards. Under the guidelines in this Appendix, DOE will support the development and submission of consensus recommendations for standards by representative groups of interested parties to the fullest extent possible.

(j) *Reduce time and cost of developing standards.* The Department seeks to establish a clear protocol for initiating and conducting standards rulemakings in order to eliminate time-consuming and costly missteps. Under the guidelines in this Appendix, increased and earlier involvement by interested parties and increased use of technical experts should minimize the need for re-analysis. This

process should reduce the period between the publication of an Advance Notice of Proposed Rulemaking (ANOPR) and the publication of a final rule to not more than 18 months, and should decrease the government and private sector resources required to complete the standard development process.

2. Scope

(a) The procedures, interpretations and policies described in this Appendix will be fully applicable to:

(1) Rulemakings concerning new or revised Federal energy conservation standards for consumer products initiated after August 14, 1996, and

(2) Rulemakings concerning new or revised Federal energy conservation standards for consumer products that have been initiated but for which a Notice of Proposed Rulemaking (NOPR) has not been published as of August 14, 1996.

(b) For rulemakings described in paragraph (a)(2) of this section, to the extent analytical work has already been done or public comment on an ANOPR has already been provided, such analyses and comment will be considered, as appropriate, in proceeding under the new process.

(c) With respect to incomplete rulemakings concerning new or revised Federal energy conservation standards for consumer products for which a NOPR was published prior to August 14, 1996, the Department will conduct a case-by-case review to decide whether any of the analytical or procedural steps already completed should be repeated. In any case, the approach described in this Appendix will be used to the extent possible to conduct any analytical or procedural steps that have not been completed.

3. Setting Priorities for Rulemaking Activity

(a) *Priority-setting analysis and development of list of priorities.* At least once a year, the Department will prepare an analysis of each of the factors identified in paragraph (d) of this section based on existing literature, direct communications with interested parties and other experts, and other available information. The results of this analysis will be used to develop rulemaking priorities and proposed schedules for the development and issuance of all rulemakings. The DOE analysis, priorities and proposed rulemaking schedules will be documented and distributed for review and comment.

(b) *Public review and comment.* Each year, DOE will invite public input to review and comment on the priority analysis.

(c) *Issuance of final listing of rulemaking priorities.* Each fall, the Department will issue, simultaneously with the issuance of the Administration's Regulatory Agenda, a final set of rulemaking priorities, the accompanying analysis, and the schedules for all priority rulemakings that it anticipates within the next two years.

(d) *Factors for priority-setting.* The factors to be considered by DOE in developing priorities and establishing schedules for conducting rulemakings will include:

- (1) Potential energy savings.
- (2) Potential economic benefits.

(3) Potential environmental or energy security benefits.

(4) Applicable deadlines for rulemakings.

(5) Incremental DOE resources required to complete rulemaking process.

(6) Other relevant regulatory actions affecting products.

(7) Stakeholder recommendations.

(8) Evidence of energy efficiency gains in the market absent new or revised standards.

(9) Status of required changes to test procedures.

(10) Other relevant factors.

4. Process for Developing Efficiency Standards and Factors to be Considered

This section describes the process to be used in developing efficiency standards and the factors to be considered in the process. The policies of the Department to guide the selection of standards and the decisions preliminary thereto are described in section 5.

(a) *Identifying and screening design options.* Once the Department has initiated a rulemaking for a specific product but before publishing an ANOPR, DOE will identify the product categories and design options to be analyzed in detail, and identify those design options eliminated from further consideration. Interested parties will be consulted to identify key issues, develop a list of design options, and to help the Department identify the expertise necessary to conduct the analysis.

(1) *Identification of issues for analysis.* The Department, in consultation with interested parties, will identify issues that will be examined in the standards development process.

(2) *Identification of experts and other interested parties for peer review.* DOE, in consultation with interested parties, will identify a group of independent experts and other interested parties who can provide expert review of the results of the engineering analysis and the subsequent impact analysis.

(3) *Identification and screening of design options.* In consultation with interested parties, the Department will develop a list of design options for consideration. Initially, the candidate design options will encompass all those technologies considered to be technologically feasible. Following the development of this initial list of design options, DOE will review each design option based on the factors described in paragraph (a)(4) of this section and the policies stated in section 5(b). The reasons for eliminating any design option at this stage of the process will be fully documented and published as part of the ANOPR. The technologically feasible design options that are not eliminated in this screening will be considered further in the Engineering Analysis described in paragraph (b) of this section.

(4) *Factors for screening of design options.* The factors for screening design options include:

(i) Technological feasibility. Technologies incorporated in commercial products or in working prototypes will be considered technologically feasible.

(ii) Practicability to manufacture, install and service. If mass production of a

technology in commercial products and reliable installation and servicing of the technology could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will be considered practicable to manufacture, install and service.

(iii) Adverse Impacts on Product Utility or Product Availability.

(iv) Adverse Impacts on Health or Safety.

(5) *Selection of contractors.* Using the specifications of necessary contractor expertise developed in consultation with interested parties, DOE will select appropriate contractors, subcontractors, and as necessary, expert consultants to perform the engineering analysis and the impact analysis.

(b) *Engineering analysis of design options and selection of candidate standard levels.* After design options are identified and screened, DOE will perform the engineering analysis and the benefit/cost analysis and select the candidate standard levels based on these analyses. The results of the analyses will be published in a Technical Support Document (TSD) to accompany the ANOPR.

(1) *Identification of engineering analytical methods and tools.* DOE, in consultation with outside experts, will select the specific engineering analysis tools (or multiple tools, if necessary to address uncertainty) to be used in the analysis of the design options identified as a result of the screening analysis.

(2) *Engineering and life-cycle cost analysis of design options.* The DOE and its contractor will perform engineering and life-cycle cost analyses of the design options.

(3) *Review by expert group and stakeholders.* The results of the engineering and life-cycle cost analyses will be distributed for review by experts and interested parties. If appropriate, a public workshop will be conducted to review these results. The analyses will be revised as appropriate on the basis of this input.

(4) *New information relating to the factors used for screening design options.* If further information or analysis leads to a determination that a design option, or a combination of design options, has unacceptable impacts based on the policies stated in section 5(b), that design option or combination of design options will not be included in a candidate standard level.

(5) *Selection of candidate standard levels.* Based on the results of the engineering and life-cycle cost analysis of design options and the policies stated in section 5(c), DOE will select the candidate standard levels for further analysis.

(c) *Advance Notice of Proposed Rulemaking.*

(1) *Documentation of decisions on candidate standard selection.* (i) If the screening analysis indicates that continued development of a standard is appropriate, the Department will publish an ANOPR in the Federal Register and will distribute a draft TSD containing the analyses performed to this point. The ANOPR will specify candidate standard levels but will not propose a particular standard. The ANOPR will also include the preliminary analysis of

consumer life-cycle costs, national net present value, and energy impacts for the candidate standard levels based on the engineering analysis.

(ii) If the preliminary analysis indicates that no candidate standard level is likely to meet the criteria specified in law, that conclusion will be announced. In such cases, the Department may decide to proceed with a rulemaking that proposes not to adopt new or amended standards, or it may suspend the rulemaking and conclude that further action on such standards should be assigned a low priority under section 3.

(2) *Public comment and hearing.* There will be 75 days for public comment on the ANOPR with at least one public hearing or workshop.

(3) *Revisions based on comments.* Based on consideration of the comments received, any necessary changes to the engineering analysis or the candidate standard levels will be made.

If major changes are required at this stage, interested parties and experts will be given an opportunity to review the revised analysis.

(d) *Analysis of impacts and selection of proposed standard level.* After the ANOPR, economic analyses of the impacts of the candidate standard levels will be conducted. The Department will propose updated standards based on the results of the impact analysis.

(1) *Identification of issues for analysis.* The Department, in consultation with interested parties, will identify issues that will be examined in the impacts analysis.

(2) *Identification of analytical methods and tools.* DOE, in consultation with outside experts, will select the specific economic analysis tools (or multiple tools if necessary to address uncertainty) to be used in the analysis of the candidate standard levels.

(3) *Analysis of impacts.* DOE will conduct the analysis of the impacts of candidate standard levels including analysis of the factors described in paragraphs (d)(7)(ii)–(viii) of this section.

(4) *Review by expert group and stakeholders.* The results of the analysis of impacts will be distributed for review by experts and interested parties. If appropriate, a public workshop will be conducted to review these results. The analysis will be revised as appropriate on the basis of this input.

(5) *Efforts to develop consensus among stakeholders.* If a representative group of interested parties undertakes to develop joint recommendations to the Department on standards, DOE will consider deferring its impact analysis until these discussions are completed or until participants in the efforts indicate that they are unable to reach a timely agreement.

(6) *Selection of proposed standard level based on analysis of impacts.* On the basis of the analysis of the factors described in paragraph (d)(7) of this section and the policies stated in section 5(e), DOE will select a proposed standard level.

(7) *Factors to be considered in selecting a proposed standard.* The factors to be considered in selection of a proposed standard include:

(i) Consensus stakeholder recommendations.

(ii) Impacts on manufacturers. The analysis of manufacturer impacts will include: Estimated impacts on cash flow; assessment of impacts on manufacturers of specific categories of products and small manufacturers; assessment of impacts on manufacturers of multiple product-specific Federal regulatory requirements, including efficiency standards for other products and regulations of other agencies; and impact on manufacturing capacity, plant closures, and loss of capital investment.

(iii) Impacts on consumers. The analysis of consumer impacts will include: Estimated impacts on consumers based on national average energy prices and energy usage; assessments of impacts on subgroups of consumers based on major regional differences in usage or energy prices and significant variations in installation costs or performance; sensitivity analyses using high and low discount rates and high and low energy price forecasts; consideration of changes to product utility and other impacts of likely concern to all or some consumers, based to the extent practicable on direct input from consumers; estimated life-cycle cost with sensitivity analysis; and consideration of the increased first cost to consumers and the time required for energy cost savings to pay back these first costs.

(iv) Impacts on competition.

(v) Impacts on utilities. The analysis of utility impacts will include estimated marginal impacts on electric and gas utility costs and revenues.

(vi) National energy, economic and employment impacts. The analysis of national energy, economic and employment impacts will include: Estimated energy savings by fuel type; estimated net present value of benefits to all consumers; and estimates of the direct and indirect impacts on employment by appliance manufacturers, relevant service industries, energy suppliers and the economy in general.

(vii) Impacts on the environment and energy security. The analysis of environmental and energy security impacts will include estimated impacts on emissions of carbon and relevant criteria pollutants, impacts on pollution control costs, and impacts on oil use.

(viii) Impacts of non-regulatory approaches. The analysis of energy savings and consumer impacts will incorporate an assessment of the impacts of market forces and existing voluntary programs in promoting product efficiency, usage and related characteristics in the absence of updated efficiency standards.

(ix) New information relating to the factors used for screening design options.

(e) *Notice of Proposed Rulemaking.*

(1) *Documentation of decisions on proposed standard selection.* The Department will publish a NOPR in the Federal Register that proposes standard levels and explains the basis for the selection of those proposed levels, and will distribute a draft TSD documenting the analysis of impacts. As required by § 325(p)(2) of EPCA, the NOPR also will describe the maximum improvement in energy efficiency or

maximum reduction in energy use that is technologically feasible and, if the proposed standards would not achieve these levels, the reasons for proposing different standards.

(2) *Public comment and hearing.* There will be 75 days for public comment on the NOPR, with at least one public hearing or workshop.

(3) *Revisions to impact analyses and selection of final standard.* Based on the public comments received and the policies stated in section 5(f), DOE will review the proposed standard and impact analyses, and make modifications as necessary. If major changes to the analyses are required at this stage, interested parties and experts will be given an opportunity to review the revised analyses.

(f) *Notice of Final Rulemaking.* The Department will publish a Notice of Final Rulemaking in the Federal Register that promulgates standard levels and explains the basis for the selection of those standards, accompanied by a final TSD.

5. Policies on Selection of Standards.

(a) *Purpose.* (1) Section 4 describes the process that will be used to consider new or revised energy efficiency standards and lists a number of factors and analyses that will be considered at specified points in the process. Department policies concerning the selection of new or revised standards, and decisions preliminary thereto, are described in this section.

These policies are intended to elaborate on the statutory criteria provided in section 325 of the EPCA, 42 U.S.C. 6295.

(2) The policies described below are intended to provide guidance for making the determinations required by EPCA. This statement of policy is not intended to preclude consideration of any information pertinent to the statutory criteria. The Department will consider all pertinent information in determining whether a new or revised standard is consistent with the statutory criteria. Moreover, the Department will not be guided by a policy in this section if, in the particular circumstances presented, such a policy would lead to a result inconsistent with the criteria in section 325 of EPCA.

(b) *Screening design options.* Section 4(a)(4) lists factors to be considered in screening design options. These factors will be considered as follows in determining whether a design option will receive any further consideration:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility to consumers.* If a technology is determined to have significant adverse impact on the utility of the product to significant subgroups of

consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time, it will not be considered further.

(4) *Safety of technologies.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

(c) *Identification of candidate standard levels.* Based on the results of the engineering and cost and benefit analyses of design options, DOE will identify the candidate standard levels for further analysis. Candidate standard levels will be selected as follows:

(1) *Costs and savings of design options.* Design options which have payback periods that exceed the average life of the product or which cause life-cycle cost increases relative to the base case, using typical fuel costs, usage and discount rates, will not be used as the basis for candidate standard levels.

(2) *Further information on factors used for screening design options.* If further information or analysis leads to a determination that a design option, or a combination of design options, has unacceptable impacts under the policies stated in paragraph (b) of this section, that design option or combination of design options will not be included in a candidate standard level.

(3) *Selection of candidate standard levels.* Candidate standard levels, which will be identified in the ANOPR and on which impact analyses will be conducted, will be based on the remaining design options.

(i) The range of candidate standard levels will typically include:

(A) The most energy efficient combination of design options;

(B) The combination of design options with the lowest life-cycle cost; and

(C) A combination of design options with a payback period of not more than three years.

(ii) Candidate standard levels that incorporate noteworthy technologies or fill in large gaps between efficiency levels of other candidate standard levels also may be selected.

(d) *Advance notice of proposed rulemaking.* New information provided in public comments on the ANOPR will be considered to determine whether any changes to the candidate standard levels are needed before proceeding to the analysis of impacts. This review, and any appropriate adjustments, will be based on the policies in paragraph (c) of this section.

(e) *Selection of proposed standard.* Based on the results of the analysis of impacts, DOE will select a standard level to be proposed for public comment in the NOPR. Section 4(d)(7) lists the factors to be considered in selecting a proposed standard level. Section 325(o)(2)(A) of EPCA provides that any new or revised standard must be designed to achieve the maximum improvement in energy efficiency that is determined to be technologically feasible and economically justified.

(1) *Statutory policies.* The fundamental policies concerning selection of standards are

established in the EPCA, including the following:

(i) A candidate standard level will not be proposed or promulgated if the Department determines that it is not technologically feasible and economically justified. See EPCA section 325(o)(3)(B). A standard level is economically justified if the benefits exceed the burdens. See EPCA section 325(o)(2)(B)(i). A standard level is rebuttably presumed to be economically justified if the payback period is three years or less. See EPCA section 325(o)(2)(B)(iii).

(ii) If the Department determines that a standard level is likely to result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time, that standard level will not be proposed. See EPCA section 325(o)(4).

(iii) If the Department determines that a standard level would not result in significant conservation of energy, that standard level will not be proposed. See EPCA section 325(o)(3)(B).

(2) Selection of proposed standard on the basis of consensus stakeholder recommendations.

Development of consensus proposals for new or revised standards is an effective mechanism for balancing the economic, energy, and environmental interests affected by standards. Thus, notwithstanding any other policy on selection of proposed standards, a consensus recommendation on an updated efficiency level submitted by a group that represents all interested parties will be proposed by the Department if it is determined to meet the statutory criteria.

(3) Considerations in assessing economic justification.

(i) The following policies will guide the application of the economic justification criterion in selecting a proposed standard:

(A) If the Department determines that a candidate standard level would result in a negative return on investment for the industry, would significantly reduce the value of the industry, or would cause significant adverse impacts to a significant subgroup of manufacturers (including small manufacturing businesses), that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(B) If the Department determines that a candidate standard level would be the direct cause of plant closures, significant losses in domestic manufacturer employment, or significant losses of capital investment by domestic manufacturers, that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(C) If the Department determines that a candidate standard level would have a significant adverse impact on the environment or energy security, that standard level will be presumed not to be

economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(D) If the Department determines that a candidate standard level would not result in significant energy conservation relative to non-regulatory approaches, that standard level will be presumed not to be economically justified unless the Department determines that other specifically identified expected benefits of the standard would outweigh the expected adverse effects.

(E) If the Department determines that a candidate standard level is not consistent with the policies relating to practicability to manufacture, consumer utility, or safety in paragraphs (b) (2), (3) and (4) of this section, that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(F) If the Department determines that a candidate standard level is not consistent with the policies relating to consumer costs in paragraph (c)(1) of this section, that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(G) If the Department determines that a candidate standard level will have significant adverse impacts on a significant subgroup of consumers (including low-income consumers), that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(H) If the Department or the Department of Justice determines that a candidate standard level would have significant anticompetitive effects, that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(ii) The basis for a determination that triggers any presumption in paragraph (e)(3)(i) of this section and the basis for a determination that an applicable presumption has been rebutted will be supported by substantial evidence in the record and the evidence and rationale for making these determinations will be explained in the NOPR.

(iii) If none of the policies in paragraph (e)(3)(i) of this section is found to be dispositive, the Department will determine whether the benefits of a candidate standard level exceed the burdens considering all the pertinent information in the record.

(f) *Selection of a final standard.* New information provided in the public comments on the NOPR and any analysis by the Department of Justice concerning impacts on competition of the proposed standard will be considered to determine whether any change to the proposed standard level is

needed before proceeding to the final rule. The same policies used to select the proposed standard level, as described in section 5(e) above, will be used to guide the selection of the final standard level.

6. *Effective Date of a Standard*

The effective date for new or revised standards will be established so that the period between the publication of the final rule and the effective date is not less than any period between the dates for publication and effective date provided for in EPCA. The effective date of any revised standard will be established so that the period between the effective date of the prior standard and the effective date of such revised standard is not less than period between the two effective dates provided for in EPCA.

7. *Test Procedures*

(a) *Identifying the need to modify test procedures.* DOE, in consultation with interested parties, experts, and the National Institute of Standards and Technology, will attempt to identify any necessary modifications to established test procedures when initiating the standards development process.

(b) *Developing and proposing revised test procedures.* Needed modifications to test procedures will be identified in consultation with experts and interested parties early in the screening stage of the standards development process. Any necessary modifications will be proposed before issuance of an ANOPR in the standards development process.

(c) *Issuing final test procedure modification.* Final, modified test procedures will be issued prior to the NOPR on proposed standards.

(d) *Effective date of modified test procedures.* If required only for the evaluation and issuance of updated efficiency standards, modified test procedures typically will not go into effect until the effective date of updated standards.

8. *Joint Stakeholder Recommendations*

(a) *Joint recommendations.* Consensus recommendations, and supporting analyses, submitted by a representative group of interested parties will be given substantial weight by DOE in the development of a proposed rule. See section 5(e)(2). If the supporting analyses provided by the group addresses all of the statutory criteria and uses valid economic assumptions and analytical methods, DOE expects to use this supporting analyses as the basis of a proposed rule. The proposed rule will explain any deviations from the consensus recommendations from interested parties.

(b) *Breadth of participation.* Joint recommendations will be of most value to the Department if the participants are reasonably representative of those interested in the outcome of the standards development process, including manufacturers, consumers, utilities, states and representatives of environmental or energy efficiency interest groups.

(c) *DOE support of consensus development, including impact analyses.* In order to facilitate such consensus development, DOE will make available, upon

request, appropriate technical and legal support to the group and will provide copies of all relevant public documents and analyses. The Department also will consider any requests for its active participation in such discussions, recognizing that the procedural requirements of the Federal Advisory Committee Act may apply to such participation.

9. *Principles for the Conduct of Engineering Analysis*

(a) The purpose of the engineering analysis is to develop the relationship between efficiency and cost of the subject product. The Department will use the most appropriate means available to determine the efficiency/cost relationship, including an overall system approach or engineering modeling to predict the improvement in efficiency that can be expected from individual design options as discussed in the paragraphs below. From this efficiency/cost relationship, measures such as payback, life cycle cost, and energy savings can be developed. The Department, in consultation with interested parties, will identify issues that will be examined in the engineering analysis and the types of specialized expertise that may be required. With these specifications, DOE will select appropriate contractors, subcontractors, and expert consultants, as necessary, to perform the engineering analysis and the impact analysis. Also, the Department will consider data, information and analyses received from interested parties for use in the analysis wherever feasible.

(b) The engineering analysis begins with the list of design options developed in consultation with the interested parties as a result of the screening process. In consultation with the technology/industry expert peer review group, the Department will establish the likely cost and performance improvement of each design option. Ranges and uncertainties of cost and performance will be established, although efforts will be made to minimize uncertainties by using measures such as test data or component or material supplier information where available. Estimated uncertainties will be carried forward in subsequent analyses. The use of quantitative models will be supplemented by qualitative assessments as appropriate.

(c) The next step includes identifying, modifying or developing any engineering models necessary to predict the efficiency impact of any one or combination of design options on the product. A base case configuration or starting point will be established as well as the order and combination/blending of the design options to be evaluated. The DOE, utilizing expert consultants, will then perform the engineering analysis and develop the cost efficiency curve for the product. The cost efficiency curve and any necessary models will be subject to peer review before being issued with the ANOPR.

10. *Principles for the Analysis of Impacts on Manufacturers*

(a) *Purpose.* The purpose of the manufacturer analysis is to identify the likely

impacts of efficiency standards on manufacturers. The Department will analyze the impact of standards on manufacturers with substantial input from manufacturers and other interested parties. The use of quantitative models will be supplemented by qualitative assessments by industry experts. This section describes the principles that will be used in conducting future manufacturing impact analysis.

(b) *Issue identification.* In the impact analysis stage (section 4(d)), the Department, in consultation with interested parties, will identify issues that will require greater consideration in the detailed manufacturer impact analysis. Possible issues may include identification of specific types or groups of manufacturers and concerns over access to technology. Specialized contractor expertise, empirical data requirements, and analytical tools required to perform the manufacturer impact analysis also would be identified at this stage.

(c) *Industry characterization.* Prior to initiating detailed impact studies, the Department will seek input on the present and past industry structure and market characteristics. Input on the following issues will be sought:

(1) Manufacturers and their relative market shares;

(2) Manufacturer characteristics, such as whether manufacturers make a full line of models or serve a niche market;

(3) Trends in the number of manufacturers;

(4) Financial situation of manufacturers;

(5) Trends in product characteristics and retail markets; and

(6) Identification of other relevant regulatory actions and a description of the nature and timing of any likely impacts.

(d) *Cost impacts on manufacturers.* The costs of labor, material, engineering, tooling, and capital are difficult to estimate, manufacturer-specific, and usually proprietary. The Department will seek input from interested parties on the treatment of cost issues. Manufacturers will be encouraged to offer suggestions as to possible sources of data and appropriate data collection methodologies. Costing issues to be addressed include:

(1) Estimates of total cost impacts, including product-specific costs (based on cost impacts estimated for the engineering analysis) and front-end investment/conversion costs for the full range of product models.

(2) Range of uncertainties in estimates of average cost, considering alternative designs and technologies which may vary cost impacts and changes in costs of material, labor and other inputs which may vary costs.

(3) Variable cost impacts on particular types of manufacturers, considering factors such as atypical sunk costs or characteristics of specific models which may increase or decrease costs.

(e) *Impacts on product sales, features, prices and cost recovery.* In order to make manufacturer cash flow calculations, it is necessary to predict the number of products sold and their sale price. This requires an assessment of the likely impacts of price changes on the number of products sold and on typical features of models sold. Past

analyses have relied on price and shipment data generated by economic models. The Department will develop additional estimates of prices and shipments by drawing on multiple sources of data and experience including: actual shipment and pricing experience, data from manufacturers, retailers and other market experts, financial models, and sensitivity analyses. The possible impacts of candidate standard levels on consumer choices among competing fuels will be explicitly considered where relevant.

(f) *Measures of impact.* The manufacturer impact analysis will estimate the impacts of candidate standard levels on the net cash flow of manufacturers. Computations will be performed for the industry as a whole and for typical and atypical manufacturers. The exact nature and the process by which the analysis will be conducted will be determined by DOE, in conjunction with interested parties. Impacts to be analyzed include:

(1) Industry net present value, with sensitivity analyses based on uncertainty of costs, sales prices and sales volumes;

(2) Cash flows, by year;

(3) Other measures of impact, such as revenue, net income and return on equity, as appropriate;

The characteristics of atypical manufacturers worthy of special consideration will be determined in consultation with manufacturers and other interested parties and may include: manufacturers incurring higher or lower than average costs; and manufacturers experiencing greater or fewer adverse impacts on sales. Alternative scenarios based on other methods of estimating cost or sales impacts also will be performed, as needed.

(g) *Cumulative impacts of other Federal regulatory actions.* (1) The Department will recognize and seek to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same products. DOE will analyze and consider the impact on manufacturers of multiple product-specific regulatory actions. These factors will be considered in setting rulemaking priorities, assessing manufacturer impacts of a particular standard, and establishing the effective date for a new or revised standard. In particular, DOE will seek to propose effective dates for new or revised standards that are appropriately coordinated with other regulatory actions to mitigate any cumulative burden.

(2) If the Department determines that a proposed standard would impose a significant impact on product manufacturers within three years of the effective date of another DOE standard that imposes significant impacts on the same manufacturers (or divisions thereof, as appropriate), the Department will, in addition to evaluating the impact on manufacturers of the proposed standard, assess the joint impacts of both standards on manufacturers.

(3) If the Department is directed to establish or revise standards for products that are components of other products subject to standards, the Department will consider the interaction between such standards in setting rulemaking priorities and assessing

manufacturer impacts of a particular standard. The Department will assess, as part of the engineering and impact analyses, the cost of components subject to efficiency standards.

(h) *Summary of quantitative and qualitative assessments.* The summary of quantitative and qualitative assessments will contain a description and discussion of uncertainties. Alternative estimates of impacts, resulting from the different potential scenarios developed throughout the analysis, will be explicitly presented in the final analysis results.

(i) *Key modeling and analytical tools.* In its assessment of the likely impacts of standards on manufacturers, the Department will use models which are clear and understandable, feature accessible calculations, and have assumptions that are clearly explained. As a starting point, the Department will use the Government Regulatory Impact Model (GRIM). The Department will consider any enhancements to the GRIM that are suggested by interested parties. If changes are made to the GRIM methodology, DOE will provide notice and seek public input. The Department will also support the development of economic models for price and volume forecasting. Research required to update key economic data will be considered.

11. Principles for the Analysis of Impacts on Consumers

(a) *Early consideration of impacts on consumer utility.* The Department will consider at the earliest stages of the development of a standard whether particular design options will lessen the utility of the covered products to the consumer. See section 4(a).

(b) *Impacts on product availability.* The Department will determine, based on consideration of information submitted during the standard development process, whether a proposed standard is likely to result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time. DOE will not promulgate a standard if it concludes that it would result in such unavailability.

(c) *Department of justice review.* As required by law, the Department will solicit the views of the Justice Department on any lessening of competition that is likely to result from the imposition of a proposed standard and will give the views provided full consideration in assessing economic justification of a proposed standard. In addition, DOE may consult with the Department of Justice at earlier stages in the standards development process to seek to obtain preliminary views on competitive impacts.

(d) *Variation in consumer impacts.* The Department will use regional analysis and sensitivity analysis tools, as appropriate, to evaluate the potential distribution of impacts of candidate standards levels among different subgroups of consumers. The Department will consider impacts on significant segments

of consumers in determining standards levels. Where there are significant negative impacts on identifiable subgroups, DOE will consider the efficacy of voluntary approaches as a means to achieve potential energy savings.

(e) *Payback period and first cost.* (1) In the assessment of consumer impacts of standards, the Department will consider Life-Cycle Cost, Payback Period and Cost of Conserved Energy to evaluate the savings in operating expenses relative to increases in purchase price. The Department intends to increase the level of sensitivity analysis and scenario analysis for future rulemakings. The results of these analyses will be carried throughout the analysis and the ensuing uncertainty described.

(2) If, in the analysis of consumer impacts, the Department determines that a candidate standard level would result in a substantial increase in the product first costs to consumers or would not pay back such additional first costs through energy cost savings in less than three years, Department will specifically assess the likely impacts of such a standard on low-income households, product sales and fuel switching.

12. Consideration of Non-Regulatory Approaches

(a) The Department recognizes that voluntary or other non-regulatory efforts by manufacturers, utilities and other interested parties can result in substantial efficiency improvements. The Department intends to consider fully the likely effects of non-regulatory initiatives on product energy use, consumer utility and life cycle costs, manufacturers, competition, utilities and the environment, as well as the distribution of these impacts among different regions, consumers, manufacturers and utilities. DOE will attempt to base its assessment on the actual impacts of such initiatives to date, but also will consider information presented regarding the impacts that any existing initiative might have in the future. Such information is likely to include a demonstration of the strong commitment of manufacturers, distribution channels, utilities or others to such voluntary efficiency improvements. This information will be used in assessing the likely incremental impacts of establishing or revising standards, in assessing appropriate effective dates for new or revised standards and in considering DOE support of non-regulatory initiatives.

(b) DOE believes that non-regulatory approaches are valuable complements to the standards program. In particular, DOE will consider pursuing voluntary programs where it appears that highly efficient products can

obtain a significant market share but less efficient products cannot be eliminated altogether because, for instance, of unacceptable adverse impacts on a significant subgroup of consumers. In making this assessment, the Department will consider the success more efficient designs have had in the market, their acceptance to date, and their potential market penetration.

13. Crosscutting Analytical Assumptions

In selecting values for certain crosscutting analytical assumptions, DOE expects to continue relying upon the following sources and general principles:

(a) *Underlying economic assumptions.* The appliance standards analyses will generally use the same economic growth and development assumptions that underlie the most current Annual Energy Outlook (AEO) published by the Energy Information Administration (EIA).

(b) *Energy price and demand trends.* Analyses of the likely impact of appliance standards on typical users will generally adopt the mid-range energy price and demand scenario of the EIA's most current AEO. The sensitivity of such estimated impacts to possible variations in future energy prices are likely to be examined using the EIA's high and low energy price scenarios.

(c) *Product-specific energy-efficiency trends, without updated standards.* Product specific energy-efficiency trends will be based on a combination of the efficiency trends forecast by the EIA's residential and commercial demand model of the National Energy Modeling System (NEMS) and product-specific assessments by DOE and its contractors with input from interested parties.

(d) *Discount rates.* For residential and commercial consumers, ranges of three different real discount rates will be used. For residential consumers, the mid-range discount rate will represent DOE's approximation of the average financing cost (or opportunity costs of reduced savings) experienced by typical consumers. Sensitivity analyses will be performed using discount rates reflecting the costs more likely to be experienced by residential consumers with little or no savings and credit card financing and consumers with substantial savings. For commercial users, a mid-range discount rate reflecting the DOE's approximation of the average real rate of return on commercial investment will be used, with sensitivity analyses being performed using values indicative of the range of real rates of return likely to be experienced by typical commercial

businesses. For national net present value calculations, DOE would use the Administration's approximation of the average real rate of return on private investment in the U.S. economy. For manufacturer impacts, DOE plans to use a range of real discount rates which are representative of the real rates of return experienced by typical U.S. manufacturers affected by the program.

(e) *Environmental impacts.* The emission rates of carbon, sulfur oxides and nitrogen oxides used by DOE to calculate the physical quantities of emissions likely to be avoided by candidate standard levels will be based on the current average carbon emissions of the U.S. electric utilities and on the projected rates of emissions of sulfur and nitrogen oxides. Projected rates of emissions, if available, will be used for the estimation of any other environmental impacts. The Department will consider the effects of the proposed standards on these emissions in reaching a decision about whether the benefits of the proposed standards exceed their burdens but will not determine the monetary value of these environmental externalities.

14. Deviations, Revisions, and Judicial Review

(a) *Deviations.* This Appendix specifies procedures, interpretations and policies for the development of new or revised energy efficiency standards in considerable detail. As the approach described in this Appendix is applied to the development of particular standards, the Department may find it necessary or appropriate to deviate from these procedures, interpretations or policies. If the Department concludes that such deviations are necessary or appropriate in a particular situation, DOE will provide interested parties with notice of the deviation and an explanation.

(b) *Revisions.* If the Department concludes that changes to the procedures, interpretations or policies in this Appendix are necessary or appropriate, DOE will provide notice in the Federal Register of modifications to this Appendix with an accompanying explanation. DOE expects to consult with interested parties prior to any such modification.

(c) *Judicial review.* The procedures, interpretations, and policies stated in this Appendix are not intended to establish any new cause of action or right to judicial review.

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31 Parts:				43 Parts:			
0-199	(869-026-00122-7)	15.00	July 1, 1995	1-999	(869-026-00166-9)	23.00	Oct. 1, 1995
200-End	(869-026-00123-5)	25.00	July 1, 1995	1000-3999	(869-026-00167-7)	31.00	Oct. 1, 1995
32 Parts:				4000-End	(869-026-00168-5)	15.00	Oct. 1, 1995
1-39, Vol. I		15.00	² July 1, 1984	44	(869-026-00169-3)	24.00	Oct. 1, 1995
1-39, Vol. II		19.00	² July 1, 1984	45 Parts:			
1-39, Vol. III		18.00	² July 1, 1984	1-199	(869-022-00170-7)	22.00	Oct. 1, 1995
1-190	(869-026-00124-3)	32.00	July 1, 1995	200-499	(869-026-00171-5)	14.00	Oct. 1, 1995
191-399	(869-026-00125-1)	38.00	July 1, 1995	500-1199	(869-026-00172-3)	23.00	Oct. 1, 1995
400-629	(869-026-00126-0)	26.00	July 1, 1995	1200-End	(869-026-00173-1)	26.00	Oct. 1, 1995
630-699	(869-026-00127-8)	14.00	⁵ July 1, 1991	46 Parts:			
700-799	(869-026-00128-6)	21.00	July 1, 1995	1-40	(869-026-00174-0)	21.00	Oct. 1, 1995
800-End	(869-026-00129-4)	22.00	July 1, 1995	41-69	(869-026-00175-8)	17.00	Oct. 1, 1995
33 Parts:				70-89	(869-026-00176-6)	8.50	Oct. 1, 1995
1-124	(869-026-00130-8)	20.00	July 1, 1995	90-139	(869-026-00177-4)	15.00	Oct. 1, 1995
125-199	(869-026-00131-6)	27.00	July 1, 1995	140-155	(869-026-00178-2)	12.00	Oct. 1, 1995
200-End	(869-026-00132-4)	24.00	July 1, 1995	156-165	(869-026-00179-1)	17.00	Oct. 1, 1995
34 Parts:				166-199	(869-026-00180-4)	17.00	Oct. 1, 1995
1-299	(869-026-00133-2)	25.00	July 1, 1995	200-499	(869-026-00181-2)	19.00	Oct. 1, 1995
300-399	(869-026-00134-1)	21.00	July 1, 1995	500-End	(869-026-00182-1)	13.00	Oct. 1, 1995
400-End	(869-026-00135-9)	37.00	July 5, 1995	47 Parts:			
35	(869-026-00136-7)	12.00	July 1, 1995	0-19	(869-026-00183-9)	25.00	Oct. 1, 1995
36 Parts				20-39	(869-026-00184-7)	21.00	Oct. 1, 1995
1-199	(869-026-00137-5)	15.00	July 1, 1995	40-69	(869-026-00185-5)	14.00	Oct. 1, 1995
200-End	(869-026-00138-3)	37.00	July 1, 1995	70-79	(869-026-00186-3)	24.00	Oct. 1, 1995
37	(869-026-00139-1)	20.00	July 1, 1995	80-End	(869-026-00187-1)	30.00	Oct. 1, 1995
38 Parts:				48 Chapters:			
0-17	(869-026-00140-5)	30.00	July 1, 1995	1 (Parts 1-51)	(869-026-00188-0)	39.00	Oct. 1, 1995
18-End	(869-026-00141-3)	30.00	July 1, 1995	1 (Parts 52-99)	(869-026-00189-8)	24.00	Oct. 1, 1995
39	(869-026-00142-1)	17.00	July 1, 1995	2 (Parts 201-251)	(869-026-00190-1)	17.00	Oct. 1, 1995
40 Parts:				2 (Parts 252-299)	(869-026-00191-0)	13.00	Oct. 1, 1995
1-51	(869-026-00143-0)	40.00	July 1, 1995	3-6	(869-026-00192-8)	23.00	Oct. 1, 1995
52	(869-026-00144-8)	39.00	July 1, 1995	7-14	(869-026-00193-6)	28.00	Oct. 1, 1995
53-59	(869-026-00145-6)	11.00	July 1, 1995	15-28	(869-026-00194-4)	31.00	Oct. 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995	29-End	(869-026-00195-2)	19.00	Oct. 1, 1995
61-71	(869-026-00147-2)	36.00	July 1, 1995	49 Parts:			
72-85	(869-026-00148-1)	41.00	July 1, 1995	1-99	(869-026-00196-1)	25.00	Oct. 1, 1995
86	(869-026-00149-9)	40.00	July 1, 1995	100-177	(869-026-00197-9)	34.00	Oct. 1, 1995
87-149	(869-026-00150-2)	41.00	July 1, 1995	178-199	(869-026-00198-7)	22.00	Oct. 1, 1995
150-189	(869-026-00151-1)	25.00	July 1, 1995	200-399	(869-026-00199-5)	30.00	Oct. 1, 1995
190-259	(869-026-00152-9)	17.00	July 1, 1995	400-999	(869-026-00200-2)	40.00	Oct. 1, 1995
260-299	(869-026-00153-7)	40.00	July 1, 1995	1000-1199	(869-026-00201-1)	18.00	Oct. 1, 1995
300-399	(869-026-00154-5)	21.00	July 1, 1995	1200-End	(869-026-00202-9)	15.00	Oct. 1, 1995
400-424	(869-026-00155-3)	26.00	July 1, 1995	50 Parts:			
425-699	(869-026-00156-1)	30.00	July 1, 1995	1-199	(869-026-00203-7)	26.00	Oct. 1, 1995
				200-599	(869-026-00204-5)	22.00	Oct. 1, 1995
				600-End	(869-026-00205-3)	27.00	Oct. 1, 1995
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¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

⁵ No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.