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Tuesday
July 16, 1996

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

WASHINGTON, DC

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)

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Contents

Federal Register

Vol. 61, No. 137

Tuesday, July 16, 1996

Agriculture Department
See Animal and Plant Health Inspection Service
See Farm Service Agency
PROPOSED RULES
Acquisition regulations:
Federal regulatory review, 37032–37034

Alcohol, Tobacco and Firearms Bureau
RULES
Firearms:
Firearms and ammunition; manufacturers excise taxes, 37005–37007
Technical amendments, 37002–37004
PROPOSED RULES
Firearms:
Firearms and ammunition; manufacturers excise tax, 37022–37023

Animal and Plant Health Inspection Service
PROPOSED RULES
Plant-related quarantine, domestic:
Corn cyst nematode, 37018–37019

Centers for Disease Control and Prevention
NOTICES
Meetings:
National Center for HIV, STD and TB Prevention, 37070–37071

Children and Families Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37071

Coast Guard
NOTICES
Agency information collection activities:
Proposed collection; comment request; correction, 37113

Commerce Department
See Export Administration Bureau
See International Trade Administration
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration

Defense Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37049

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Applied Science Labs, 37078–37079
Mallinckrodt Chemical, Inc., 37079–37081
MD Pharmaceutical, Inc., 37081
RX Returns, Inc., 37081–37090

Education Department
PROPOSED RULES
Direct grant programs, 37184–37194

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 37030
NOTICES
Confidential business information and data transfer, 37050–37051
Drinking water:
Underground injection control program—
Texas, 37051
Meetings:
National Environmental Education Advisory Council, 37051–37052
Superfund; response and remedial actions, proposed settlements, etc.:
Chemical Handling Corp. Site, CO, 37052–37065

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37043

Farm Service Agency
RULES
Farm marketing quotas, acreage allotments, and production adjustments:
Peanuts, 36997–37001

Federal Aviation Administration
RULES
Class E airspace, 37001–37002
Correction, 37113
PROPOSED RULES
Air carrier certification and operations:
Digital flight data recorder requirements, 37144–37181
Airworthiness directives:
de Havilland, 37019–37022
Class E airspace
Correction, 37113
NOTICES
Exemption petitions; summary and disposition, 37105–37107

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Alaska, 37065, 37065
Iowa, 37065–37066
Nebraska, 37066
Ohio, 37066
Vermont, 37066–37067

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Entergy Services, Inc., 37049–37050

Federal Maritime Commission
NOTICES
Agreements filed, etc., 37067
Freight forwarder licenses:
Hung Ng, Herman Wai et al., 37067

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 37067
Permissible nonbanking activities, 37068
Meetings; Sunshine Act, 37068

Financial Management Service
See Fiscal Service

Fiscal Service
RULES
Bonds and notes, U.S. Treasury:
Payments by banks and other financial institutions of United States savings bonds and notes (Freedom Shares), 37196–37197
Marketable book-entry Treasury bills, notes, and bonds; sale and issue, 37007–37011

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Copperbelly water snake, 37034–37035
NOTICES
Meetings:
Sport Fishing and Boating Partnership Council, 37077

Food and Drug Administration
NOTICES
Medical devices; premarket approval:
Arrow International; Model 3000 Constant Flow Inplantable Pump with Bolus Safety Valve, 37071–37072

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 37068

General Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37049

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Organization, functions, and authority delegations:
Budget Office, 37068–37070

Health Care Financing Administration
RULES
Medicare:
Interest expense and income from zero coupon bonds; reporting by providers, 37011–37015

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Nursing informatics for faculty in medically underserved communities; continuing education, 37072–37074
Primary care research center; medically underserved and vulnerable populations, 37074–37075

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Economic development initiative, 37132–37141
Mortgage and loan insurance programs:
Debenture interest rates, 37076

Indian Affairs Bureau
PROPOSED RULES
Indian Gaming Regulatory Act; implementation:
Tribal revenue allocation plans
Correction, 37022

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Natural resource damage assessments
Type B procedures, 37031–37032

International Trade Administration
NOTICES
Antidumping:
Fresh cut flowers from—
Ecuador, 37044–37047
Antidumping duty orders and findings:
Determinations not to revoke, 37043–37044

International Trade Commission
NOTICES
Meetings; Sunshine Act, 37078

Justice Department
See Drug Enforcement Administration

Labor Department
See Labor Statistics Bureau
See Mine Safety and Health Administration
NOTICES
Privacy Act:
Computer matching program, 37090–37091

Labor Statistics Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37091

Land Management Bureau
RULES
Minerals management:
Mining laws; use and occupancy, 37116–37130
NOTICES
Public land orders:
North Dakota; correction, 37113
Realty actions; sales, leases, etc.:
Utah, 37077

Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37091–37092

Minority Business Development Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Capital development center; nationwide, 37047–37048

National Aeronautics and Space Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37049
Inventions; Government-owned; availability for licensing, 37092–37093
Meetings:
Space Science Advisory Committee, 37093

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 37107–37108
Motor vehicle safety standards; exemption petitions, etc.:
General Motors Corp., 37109

National Institutes of Health
NOTICES
Meetings:
National Institute on Drug Abuse, 37075

National Labor Relations Board
NOTICES
Senior Executive Service:
Performance Review Board; membership, 37093

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 37041–37042
Marine mammals:
Commercial fishing operations—
Commercial fisheries authorization; list of fisheries categorized according to frequency of incidental takes, 37035–37041
NOTICES
Environmental statements; availability, etc.:
Texas coastal management program, 37048–37049

National Park Service
NOTICES
Concession contract negotiations:
Rock Creek Park, MD; trail ride and horse boarding service, 37077–37078

Nuclear Regulatory Commission
PROPOSED RULES
Radiation protection standards:
Performance requirements for radiography equipment, 37019
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37093–37094
Meetings; Sunshine Act, 37095
Petitions; Director's decisions:
Watts Bar Nuclear Plant, 37095–37096
Applications, hearings, determinations, etc.:
Tennessee Valley Authority, 37094–37095

Personnel Management Office
RULES
Conflict of interest, 36993–36997
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37096–37097

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 37097

Presidential Documents
RULES
China
Export-Import Bank loan for equipment and services for Xiaolangdi hydroelectric power plant in Henan Province (Presidential Determination No. 96-38 of June 29, 1996), 36991
Export-Import Bank loan for plant equipment and services at Qinshan II nuclear power plant (Presidential Determination No. 96-37 of June 29, 1996), 36989

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
FMR Corp. et al., 37097–37102
Sherry Lane Growth Fund, Inc. et al., 37102–37104

Small Business Administration
NOTICES
License surrenders:
San Joaquin Capital Corp., 37104
Applications, hearings, determinations, etc.:
Gateway Partners, L.P., 37104

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Knowledge dissemination and substance abuse treatment conference programs
Receipt date cancellation, 37075–37076

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
West Virginia, 37023–37024
NOTICES
Valid existing rights determinations:
Buckingham Coal Co., Inc.; Wayne National Forest, OH, 37078

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Norfolk Southern Railway Co. et al., 37109–37110

Thrift Supervision Office
NOTICES
Applications, hearings, determinations, etc.:
Foundation Savings Bank, 37110
Park Federal Savings Bank, 37110

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
RULES
Omnibus Transportation Employee Testing Act of 1991:
Drug and alcohol testing requirements for foreign-based drivers operating in U.S.; participation by Canadian and Mexican laboratories, 37015–37017
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37104
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 37105

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Fiscal Service
See Thrift Supervision Office

United States Information Agency
RULES
Exchange visitor program:
Program extension procedures, research programs design and conduct, etc.; clarification, 37002

Veterans Affairs Department
PROPOSED RULES
Medical benefits:
Homeless providers grant and per diem program, 37024–37030
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37110–37111
Submission for OMB review; comment request, 37111–37112

Separate Parts In This Issue

Part II
Department of the Interior, Bureau of Land Management, 37116–37130

Part III
Housing and Urban Development Department, 37132–37141

Part IV
Department of Transportation, Federal Aviation Administration, 37144–37181

Part V
Department of Education, 37184–37194

Part VI
Department of Treasury, Fiscal Service, 37196–37197

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

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

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 96–37 of June 29, 1996 36989

No. 96–38 of June 29, 1996 36991

5 CFR

1001.....36993

Ch. XXXV 36993

7 CFR

729.....36997

Proposed Rules:

301.....37018

10 CFR

Proposed Rules:

34.....37019

14 CFR

71 (2 documents) 37001, 37113

Proposed Rules:

39.....37019

71.....37113

121.....37144

125.....37144

129.....37144

135.....37144

22 CFR

514.....37002

25 CFR

Proposed Rules:

290.....37022

27 CFR

18.....37002

30.....37002

53.....37005

275.....37005

Proposed Rules:

53.....37022

30 CFR

Proposed Rules:

948.....37023

31 CFR

321.....37196

356.....37007

34 CFR

Proposed Rules:

75.....37184

206.....37184

231.....37184

235.....27184

369.....27184

731.....27184

373.....27184

375.....27184

376.....27184

378.....27184

380.....27184

381.....27184

385.....27184

386.....27184

387.....27184

389.....27184

390.....27184

610.....27184

612.....27184

630.....27184

637.....27184

658.....27184

660.....27184

661.....27184

669.....27184

38 CFR

Proposed Rules:

17.....37024

40 CFR

Proposed Rules:

52.....37030

42 CFR

413.....37011

43 CFR

3710.....37116

Proposed Rules:

11.....37031

48 CFR

Proposed Rules:

401.....37032

453.....37032

49 CFR

40.....37015

50 CFR

Proposed Rules:

17.....37034

229.....37035

679.....37041

Federal Register
Vol. 61, No. 137
Tuesday, July 16, 1996

Presidential Documents

Title 3—

The President

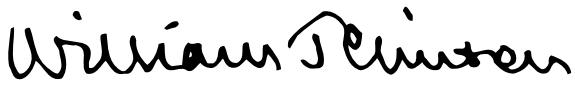
Presidential Determination No. 96–37 of June 29, 1996

Determination Under Section 2(b)(2)(D)(ii) of the Export-Import Bank Act of 1945, as Amended: People's Republic of China

Memorandum for the Secretary of State

Pursuant to Section 2(b)(2)(D)(ii) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United States to extend a loan in the amount of approximately $120 million to the People's Republic of China in connection with the purchase of (1) non-nuclear island balance of plant equipment and services and (2) Westinghouse engineering services to the nuclear island, for two units of the Qinshan II nuclear power plant.

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



THE WHITE HOUSE,
Washington, June 29, 1996.

[FR Doc. 96–18098
Filed 7–15–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

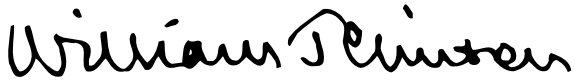
Presidential Determination No. 96–38 of June 29, 1996

Determination Under Section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as Amended: People's Republic of China

Memorandum for the Secretary of State

Pursuant to Section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United States to extend a loan in the amount of approximately $56,000,000 to the People's Republic of China in connection with the purchase of U.S. equipment and services for the Xiaolangdi hydroelectric power plant in Henan Province.

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



THE WHITE HOUSE,
Washington, June 29, 1996.

[FR Doc. 96–18099
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Rules and Regulations

Federal Register
Vol. 61, No. 137
Tuesday, July 16, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 1001

5 CFR Chapter XXXV

RIN 3206–AG87, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Office of Personnel Management

AGENCY: Office of Personnel Management (OPM).

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management, with the concurrence of the Office of Government Ethics (OGE), is issuing an interim rule for employees of OPM that supplements the executive branch-wide Standards of Ethical Conduct (Standards) issued by OGE. The interim rule contains a notice requirement designed to ensure that OPM employees do not use their official positions or nonpublic information to obtain an advantage for themselves or for certain other persons on competitive and other examinations relating to Federal service, and a requirement for OPM employees to obtain prior approval before engaging in certain types of outside activities. The Office of Personnel Management is also repealing that portion of its internal standards of conduct regulations that was retained on an interim basis pending issuance of its supplemental regulations, and those portions of its internal standards of conduct regulations that were superseded by the new Standards or by the executive branch financial disclosure regulations issued by OGE. The Office of Personnel Management is retaining in its internal standards of conduct regulation a separate Privacy Act conduct code and adding a cross-reference to ethics and other conduct-related statutes and regulations.

DATES: Interim rule effective July 16, 1996. Comments must be received on or before August 15, 1996.

ADDRESSES: Send comments to: Lorraine Lewis, General Counsel, Office of Personnel Management, Room 7353, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Nancy Lee Gregg, Alternate Designated Agency Ethics Official, Office of the General Counsel, Office of Personnel Management, (202) 606–1701.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch. *See* 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, with additional grace period extensions for certain existing provisions at 59 FR 4779–4780, 60 FR 6390–6391, and 60 FR 66857–66858. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel. With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Office of Personnel Management, with OGE's concurrence, has determined that the following supplemental regulations, being codified in new 5 CFR chapter XXXV, consisting of part 4501, are necessary in light of OPM's unique programs and operations for the successful implementation of OPM's ethics program.

The Office of Personnel Management is simultaneously repealing the provisions of its internal employee responsibilities and conduct regulations in 5 CFR part 1001 which have already been superseded or which will be superseded upon issuance of these supplemental regulations, and is replacing those provisions with a new section that provides cross-references to 5 CFR part 2635 and other precepts that pertain to employee conduct. A Privacy Act conduct code is also being retained.

II. Analysis of the Regulations

Section 4501.101 General

Section 4501.101 explains that the regulations apply to all OPM employees and supplement the executive branch-wide Standards in 5 CFR part 2635. Section 4501.101 also provides a cross-reference to the executive branch employee responsibilities and conduct regulations contained in 5 CFR part 735, the OPM employee responsibilities and conduct regulations in 5 CFR part 1001, the executive branch-wide financial disclosure regulations contained in 5 CFR part 2634, and the executive branch-wide regulation regarding outside employment at 5 CFR part 2636.

Section 4501.102 Examination Information

Section 4501.102 supplements the prohibitions on use of public office for private gain at 5 CFR 2635.702 and the prohibitions on use of nonpublic information at 5 CFR 2635.703.

Under § 4501.102(a), an OPM employee who takes part in the construction of written tests or other assessment devices, has access to such material, or is involved in the examination rating process must notify his or her supervisor before filing to take a competitive examination, an internal competitive examination or an Armed Services entrance examination. Supervisory notification is also required when an employee knows that the employee's spouse, minor child, or business general partner intends to take such an examination.

As indicated by the supervisory responsibilities set forth in paragraph (b) of § 4501.102, the purpose of the notification requirement is to ensure, either by the assignment of official duties that will not place the employee in contact with information relating to the examination to be taken or by substituting an examination about which the employee does not have information, that the employee does not have knowledge of questions on, answers to, or methods of scoring the test or other assessment device in issue. Proper exercise of these supervisory responsibilities will foreclose the possibility of any suggestion that an OPM employee who has a role in devising tests or other assessment devices has profited unfairly, or that the employee's spouse, minor child, or general partner has profited unfairly,

from possible use of nonpublic information or other knowledge gained in the course of the employee's official duties. It also protects the integrity of the examination process and ensures that the prospects of others subject to that process are not diminished by any OPM employee's use of nonpublic information or use of public office for private gain.

The examination information provisions of § 4501.102 are similar to, but more specific than, those which had been in effect under OPM's employee responsibilities and conduct regulations at 5 CFR 1001.735–206, which is now being repealed (see below). Whereas § 1001.735–206 had imposed the notice requirement on all OPM employees, § 4501.102 applies only to those OPM employees who have some direct connection with the examination process.

Section 4501.103 Prior Approval for Certain Outside Activities

Under 5 CFR 2635.803, agencies may, by supplemental regulations, require employees to obtain approval before engaging in outside employment and activities. Under 5 CFR 1001–735.203, which is now being revoked, OPM employees have long been required to provide notice of, or obtain approval for, proposed outside employment and activity under a variety of circumstances. OPM has found this requirement useful in ensuring that the outside employment activities of employees conform with all applicable laws and regulations. In accordance with 5 CFR 2635.803, OPM has determined that it is necessary to the administration of its ethics program to continue to require prior approval for certain types of outside employment and activities that pose a potential for employees to engage in conduct that might violate applicable laws and regulations.

As compared to the requirement that has been imposed by 5 CFR 1001–735.203, § 4501.103(a) has been changed to clarify the requirement, and to narrow its scope, consistent with the Standards. Section 1001–735.203 has required OPM employees, other than special Government employees, who engage in any kind of outside paid employment on a substantially regular basis to provide notice of such employment to their supervisors. In addition, § 1001–735.203 has required OPM employees to obtain approval before serving as members of committees or boards which plan or advise on training courses or programs offered by non-Government organizations; before accepting appointments as faculty members for after-hours teaching; and in order to hold elective office in the employee's local community government. In contrast to § 1001.735.203, § 4501.–103(a) requires prior approval for four types of outside activities on the part of OPM employees (again excluding special Government employees).

Under § 4501.103(a)(1), the first type of outside activity for which OPM employees must obtain prior approval is the provision of professional services that involve the application of the same specialized skills or the same educational background as performance of the employee's official duties. Such outside activities may raise a strong possibility of a violation of the Standards. For purposes of this section, ''professional services'' is defined in § 4501.103(d)(3) on the basis of the definition of ''profession'' established by OGE in its executive branch-wide regulations at 5 CFR 2636.305(b)(1), and means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession. Secretarial and clerical positions are not, for purposes of this requirement, considered to provide ''professional services.''

Under § 4501.103(a)(2), the second type of outside activity for which OPM employees must obtain prior approval is teaching, speaking, or writing that relates to the employee's official duties. Unlike the requirement in 5 CFR 1001.735–203 for prior approval of after hours teaching, this section requires prior approval of outside speaking and writing, as well as outside teaching, but only if it ''relates to the employee's official duties.'' Consistent with the Standards, the term ''relates to the employee's official duties'' is defined in § 4501.103(d)(5) as having the meaning given in 5 CFR 2635.–807(a)(2)(i)(B) through (a)(2)(i)(E). Under that definition, teaching, speaking, or writing relates to the employee's official duties if the invitation to teach, speak, or write is extended primarily because of the employee's official position; if the invitation or the offer of compensation (when the employee is to be compensated for the activity) is extended by a person whose interests may be affected substantially by the employee's performance or nonperformance of his or her official duties; if the activity draws substantially on ''nonpublic information,'' a term which § 4501.103(d)(2) defines as having the meaning set forth in § 2635.703(b) of the Standards and which therefore includes information that the employee gains by reason of Federal employment and that the employee knows or reasonably should know has not been made available to the general public; if the subject of the activity deals in significant part with OPM programs, operations or policies or with the employee's current or recent assignments; or, in the case of a noncareer employee as defined in 5 CFR 2636.303(a), if the subject of the activity deals in significant part with the general subject matter area, industry, or economic sector primarily affected by the programs and operations of OPM.

Under § 4501.103(a)(3), the third type of outside activity for which OPM employees must obtain prior approval is certain service for a ''prohibited source.'' The term ''prohibited source'' is defined in § 4501.103(d)(4) as having the meaning set forth in § 2635.203(d) of the Standards, and therefore means any person who is (and also any organization more than half of whose members are) seeking official action by OPM, doing or seeking to do business with OPM, regulated by OPM, or substantially affected by the performance or nonperformance of the employee's duties. The kind of services for a prohibited source for which § 4501.103(a)(3) requires prior approval are those which could raise a question of conflicting financial interests under subpart D of the Standards or a question of loss of impartiality in performing official duties under subpart E of the Standards. Those services include service as an officer, director, trustee, general partner, employee, agent, attorney, consultant, contractor, or ''active participant.'' The term ''active participant'' is defined in § 4501.103(d)(1) as having the meaning set forth in subpart E of the Standards, at 5 CFR 2635.502(b)(1)(v). In accordance with that definition, payment of dues to an organization, or the donation or solicitation of financial support, alone does not constitute active participation.

An exception to the prior approval requirement in § 4501.–103(a)(3) excludes from the prior approval requirement therein a number of uncompensated and volunteer activities that are unlikely to raise issues under the Standards. Specifically, employees do not have to obtain approval before providing the services listed in § 4501.103(a)(3), if the service is without compensation (other than reimbursement of expenses) and the prohibited source for which the service is to be provided is a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic

organization. However, prior approval for such an activity is required if the activity is covered by another of the prior approval requirements in this section. In addition, because OPM exercises general supervision over all operations of the Combined Federal Campaign (CFC), through which nonprofit organizations receive or seek to receive charitable fundraising support in the Federal workplace, prior approval is required by § 4501.103(a)(3) if the organization that is a prohibited source receives or seeks to receive fundraising support through the CFC, and the employee's official duties would involve him in administration of the CFC program.

Under § 4501.103(a)(4), the fourth type of outside activity for which OPM employees must obtain prior approval is the provision of services, other than clerical services or service as a fact witness, on behalf of any other person in connection with a particular matter in which the United States is a party, or in which the United States has a direct and substantial interest, or if the provision of services involves the preparation of materials for submission to, or representation before, a Federal court or executive branch agency. Under 5 CFR 2635.805, employees are required to obtain authorization before acting as expert witnesses, other than on behalf of the United States, in any proceeding before a Federal court or agency in a matter in which the United States is a party or has a direct and substantial interest. Paragraph (a)(4) of § 4501.103 is intended to cover such testimony as an outside activity, thus eliminating the need to create a separate procedure for the required authorization. In addition, requiring prior approval under these circumstances will help employees to avoid violating the representational bars in 18 U.S.C. 203 and 205. Consistent with the Federal Service Labor Management Relations Statute (5 U.S.C. chapter 71) and the ''personnel administration proceedings'' exception at 18 U.S.C. 205(d), an exception in § 4501.103(a)(4) provides that prior approval is not required for OPM employees acting on behalf of the labor organization that is the exclusive representative of the OPM employees in the unit it represents to represent an employee who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

Section 4501.103(b) sets forth the procedures for submitting a request for approval of an outside activity, specifying the information to be included in the employee's request, and the contents of a certification the employee is to submit with the request for approval.

Section 4501.103(c) specifies the standard for granting approval. Approval shall be granted only upon a determination by the agency official designated authority to make such a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation.

Section 4501.103(d) defines the terms ''active participant,'' ''nonpublic information,'' ''professional services,'' ''prohibited source,'' and ''relates to the employee's official duties,'' for purposes of the section, as explained above, consistent with the Standards and other regulations issued by OGE.

Requiring prior approval will give OPM managers the opportunity to review the proposed employment or activity in light of the employee's official duties and to consult with an agency ethics official concerning the applicability of Federal conflict of interest statutes and ethics regulations to the proposed activity. The executive branch-wide Standards, at 5 CFR 2635.802, explain that an activity conflicts with an employee's official duties if it is prohibited by statute or by an agency supplemental regulation, or if, under the standards set forth in §§ 2635.402 and 2635.502 of the Standards, it would require the employee's disqualification from matters so central or critical to the performance of the employee's official duties that the employee's ability to perform the duties of his or her position would be materially impaired. Even where prior approval is not required, conflict of interest statutes and the Standards may restrict the actions of employees in connection with participation in such activities or organizations.

III. Repeal of Portions of OPM's Internal Regulations Regarding Employee Conduct and Related Modifications

The interim rule repeals those portions of the regulations at 5 CFR part 1001 governing OPM employees' responsibilities and conduct that were superseded by the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, or by the financial disclosure regulations at 5 CFR part 2634, the requirement for prior approval of outside employment at 5 CFR 1001.735–203 (which now appears, in revised form, at 5 CFR 4501.103), and 5 CFR 1001.735–208, which was in the nature of a directive to OPM procurement personnel. It also repeals portions of part 1001 that duplicate the employee responsibilities and conduct regulations contained in 5 CFR part 735.

These actions leave in 5 CFR part 1001 only the code of conduct required by the Privacy Act of 1974, at 5 U.S.C. 552a(e)(9). The Privacy Act code of conduct for OPM employees, previously contained at 5 CFR 1001.735–206a, is redesignated as § 1001.102 and follows a new § 1001.101 which provides a cross-reference to ethics and other conduct-related statutes and regulations.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

Under 5 U.S.C. 1103(b)(1) and 1105, these regulations are not subject to the rulemaking requirements of the Administrative Procedure Act, at 5 U.S.C. 553 (b), (c), and (d), because they apply solely to OPM or its employees. Furthermore, OPM finds good cause that it is in the public interest that these internal regulations take effect as an interim rule upon the date of publication of this Federal Register rulemaking document.

Executive Order 12866

In promulgating these interim regulations, OPM has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These regulations have not been reviewed by the Office of Management and Budget under that Executive order, as they deal with agency management and personnel matters and are not, in any event, ''significant'' thereunder.

Regulatory Flexibility Act

As Director of OPM, I certify that this regulation will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

As Director of OPM, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 1001

Conflict of interests, Government employees.

5 CFR Part 4501

Conflict of interests, Government employees.

Dated: July 2, 1996.

James B. King,

Director, Office of Personnel Management.

Approved: July 5, 1996.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Personnel Management, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations as follows:

CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT

PART 1001—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 1001 is revised to read as follows:

Authority: 5 U.S.C. 552a, 7301.

Subparts A, B, C and D [Amended]

2. Subpart A, consisting of §§ 1001.735–101 through 1001.735–103; §§ 1001.735–201 through 1001.735–206 and 1001.735–207 through 1001.735–214 of subpart B; and subparts C and D, consisting of §§ 1001.735–301 through 1001.735–304 and 1001.735–401 through 1001.735–412, respectively, of part 1001 are removed.

3. A new § 1001.101 is added to read as follows:

§ 1001.101 Cross-reference to financial disclosure requirements and other conduct rules.

In addition to the regulations contained in this part, employees of the Office of Personnel Management (OPM) should refer to:

(a) The Standards for Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635;

(b) The OPM regulations at 5 CFR part 4501, which supplement the executive branch-wide standards;

(c) The Employee Responsibilities and Conduct regulations at 5 CFR part 735;

(d) The executive branch financial disclosure regulations at 5 CFR part 2634;

(e) The executive branch outside employment regulations at 5 CFR part 2636; and

(f) The restrictions upon use of political referrals in employment matters at 5 U.S.C. 3303.

4. Section 1001.735–206a is redesignated as § 1001.102, and the heading is revised to read ''Privacy Act rules of conduct.''

5. A new chapter XXXV, consisting of part 4501, is added to read as follows:

CHAPTER XXXV—OFFICE OF PERSONNEL MANAGEMENT

PART 4501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE OFFICE OF PERSONNEL MANAGEMENT

Sec.

4501.101 General.
4501.102 Examination information.
4501.103 Prior approval for certain outside activities.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.702, 2635.703, 2635.–802, 2635.803, 2635.805.

§ 4501.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Office of Personnel Management (OPM) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the regulations in 5 CFR part 2635 and this part, OPM employees are subject to the responsibilities and conduct regulations contained in 5 CFR parts 735 and 1001, the executive branch-wide financial disclosure regulations contained in 5 CFR part 2634, and the executive branch regulations regarding outside employment at 5 CFR part 2636.

§ 4501.102 Examination information.

(a) An employee of OPM who takes part in the construction of written tests or any other assessment device, has access to such material, or is involved in the examination rating process, shall notify his supervisor, in writing, when he intends to file for a competitive examination, an internal competitive examination, or an Armed Services entrance examination. The employee also must give such notice if he knows that his spouse, minor child, or business general partner intends to take any of these examinations.

(b) The employee's supervisor or other appropriate authority will arrange the employee's duty assignments to prevent his contact with materials related to the examination or examinations that will be taken. If the test material involved in the forthcoming examination has already been exposed to the employee, arrangements will be made for the employee or other person concerned to be given an alternate test.

(c) The employee's supervisor is responsible for seeing that notifications given by employees under this section are transmitted promptly to the Test Security Officer in OPM's Employment Service.

§ 4501.103 Prior approval for certain outside activities.

(a) *Prior approval requirement.* An employee, other than a special Government employee, shall obtain written approval before engaging—with or without compensation—in the following outside activities:

(1) Providing professional services involving the application of the same specialized skills or the same educational background as performance of the employee's official duties;

(2) Teaching, speaking, or writing that relates to the employee's official duties;

(3) Serving as an officer, director, trustee, general partner, employee, agent, attorney, consultant, contractor, or active participant for a prohibited source, except that prior approval is not required by this paragraph (a)(3) to provide such service without compensation (other than reimbursement of expenses) for a prohibited source that is a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless prior approval for the activity is required by paragraph (a)(1), (a)(2), or (a)(4) of this section, or unless the organization receives or seeks to receive fundraising support through the Combined Federal Campaign (CFC) under 5 CFR part 950 and the employee's official duties involve the administration of the CFR program; or

(4)(i) Except as provided in paragraph (a)(4)(ii) of this section, providing services, other than clerical services or service as a fact witness, on behalf of any other person in connection with a particular matter:

(A) In which the United States is a party;

(B) In which the United States has a direct and substantial interest; or

(C) If the provision of services involves the preparation of materials for submission to, or representation before, a Federal court or executive branch agency.

(ii) Prior approval is not required by paragraph (a)(4)(i) of this section for OPM employees acting on behalf of the labor organization that is the exclusive representative of the OPM employees in the unit it represents to provide services as an agent or attorney for, or otherwise to represent, such an OPM employee who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

(b) *Submission of requests for approval.* (1) Requests for approval shall

be submitted in writing to the agency designee, through normal supervisory channels. Such requests shall include, at a minimum, the following:

(i) The employee's name and position title;

(ii) The name and address of the person or organization for whom the outside activity is to be performed;

(iii) A description of the proposed outside activity, including the duties and services to be performed while engaged in the activity; and

(iv) The proposed hours that the employee will engage in the outside activity, and the approximate dates of the activity.

(2) Together with his request for approval, the employee shall provide a certification that:

(i) The outside activity will not depend in any way on nonpublic information;

(ii) No official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside activity; and

(iii) The employee has read subpart H (''Outside Activities'') of 5 CFR part 2635.

(3) Upon a significant change in the nature or scope of the outside activity or in the employee's official position, the employee shall submit a revised request for approval.

(c) *Approval of requests.* Approval shall be granted only upon a determination by the agency designee, in consultation with an agency ethics official when such consultation is deemed necessary by the agency designee, that the outside activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(d) *Definitions.* For purposes of this section:

(1) *Active participant* has the meaning set forth in 5 CFR 2635.502(b)(1)(v).

(2) *Nonpublic information* has the meaning set forth in 5 CFR 2635.703(b).

(3) *Professional services* means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1).

(4) *Prohibited source* has the meaning set forth in 5 CFR 2635.203(d).

(5) *Relates to the employee's official duties* has the meaning set forth in 5 CFR 2635.807(a)(2)(i)(B) through (a)(2)(i)(E).

[FR Doc. 96–18020 Filed 7–15–96; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

RIN 0560–AE82

Amendments to the Peanut Poundage Quota Regulations

AGENCY: Farm Service Agency, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule sets forth regulations for Federal farm peanut poundage quotas in order to implement provisions of the Agricultural Market Transition Act of 1996 (the 1996 Act) for the 1996 through 2002 crops of peanuts. The amendments to the regulations adopted in this interim rule involve: eliminating the national poundage quota floor; eliminating the undermarketing carryover provisions; establishing temporary seed quota allocations; establishing the ineligibility of certain farms for quota allocation; authorizing the inter-county transfer of farm poundage quota in all States, subject to certain percentage limitations on certain transfers in certain States; eliminating the special allocations of increased quotas for certain Texas counties; and establishing new provisions for ''considered-produced'' credit with respect to a farm whose quota has been transferred.

DATES: Effective April 4, 1996.

Comments must be received on or before August 15, 1996, to be assured consideration.

ADDRESSES: Submit comments on the interim rule to: Director, Tobacco and Peanuts Division, Farm Service Agency, U.S. Department of Agriculture, Room 5750–S, Ag Code 0514, P.O. Box 2415, Washington, DC 20013–2415. All written submissions made pursuant to this rule will be made available for public inspection in Room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., during regular Federal workdays.

FOR FURTHER INFORMATION CONTACT: David Kincannon, (202) 720–7914.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Unfunded Federal Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule do not preempt State laws to the extent that such laws are inconsistent with the provisions of this interim rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 729, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted. This rule has been made retroactive to April 4, 1996, in order to affirm determinations for the current crop year that had to be made in advance of this notice because of the time of the passage of the 1996 Act and the onset of the planting season for peanuts.

National Appeals Division Rules of Procedure

The procedures set out in 7 CFR parts 11 and 780 apply to appeals of adverse decisions made under the regulations adopted in this notice.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 161(d) of the 1996 Act provides the regulation necessary to implement Title I of the 1996 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of section 553 of the United States Code. These regulations affect the immediate planting and marketing decisions of an extraordinarily large number of agricultural producers and previous decisions of the agency. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, this rule is effective as of April 4, 1996, the date of enactment of the 1996 Act.

Paperwork Reduction Act

As provided in section 161(d) of the 1996 Act, the Paperwork Reduction Act is not applicable to these regulations. However, the forms necessary to conduct these programs have been previously submitted for clearance to the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Background

This rule addresses peanut quota amendments for the 1996 through 2002 crops which were enacted in section 155 of the 1996 Act.

A. Certain Farms Ineligible to Hold Peanut Poundage Quota

Section 358–1(b)(1) of the 1938 Act, as amended by the 1996 Act, provides that, effective beginning with the 1998 crop of peanuts, quotas shall not be established for farms owned or controlled by municipalities, airport authorities, schools, colleges, refuges, and other public entities (not including universities for research purposes), or by a person who is not a producer and resides outside the State in which the quota is allocated. Section 729.205 has been added to the regulations accordingly and provides, consistent with the 1996 Act, that if a farm is ineligible for peanut poundage quota as of August 1, 1997, under the provisions of the 1996 Act, the quota held by such ineligible farms must be sold by October 1, 1997, or it will be allocated to other farms within the same State, beginning with the next crop year. Under the interim rule, if an ineligible party acquires a quota farm after that date, no quota will be established for the farm, but the quota, for subsequent crop years, may be sold to a qualifying farm, provided that the normal conditions for sale are met.

B. Elimination of Quota Floor, Establishment of the National Poundage Quota, and Peanut Quota Referendum

The 1996 Act provides for referenda for peanut quotas and amends section 358–1(a)(1) of the 1938 Act to eliminate the floor for the national quota. In addition, the 1996 Act excludes seed peanuts from the calculation of the basic national quota. This rule revises section 729.216 (as redesignated) of the regulations accordingly.

C. Temporary Seed Quota Allocation

The 1996 Act amendments to the 1938 Act also, however, provide for adding to a farm's basic quota a temporary allocation of quota for the amount of seed peanuts planted on a farm. This rule amends the definition of ''effective quota'' in section 729.103 of the regulations accordingly.

This rule adopts a national seeding rate for each type of peanut and provides that the quantity of temporary seed quota allocated to a farm shall equal the amount determined by multiplying the acres planted to peanuts by the national per-acre planting rate by peanut type. The seed planted will be converted to farmers stock basis by multiplying, by a factor of 1.5, the amount of seed so calculated. Another option considered was setting a rate as a maximum with producers required to prove actual seed purchases and use, with the lower of the standardized maximum or the proven seed use establishing the seed quota allocation. Comments are requested on these and any other options, and on: (a) the issues of increased producer workload involved with proving seed use, (b) the use of a standardized national seeding rate vs. a standardized State seeding rate, and (c) the seeding rate amounts.

For purposes of determining seed use, the national per-acre planting rate by type shall, for this calculation, be equal to:

(i) 95 pounds for Runner-type peanuts;

(ii) 110 pounds for Virginia peanuts;

(iii) 80 pounds for Spanish peanuts; and

(iv) 80 pounds for Valencia peanuts.

The temporary seed allocation will be made after the producer files a proper certification of planted acres.

D. Elimination of ''Undermarketings'' From Quotas

In accord with the 1996 Act, this rule also eliminates previous undermarketings from quota calculation for peanuts.

E. Reallocations in Texas of Increased Quota

The 1996 Act removes the special quota allocation provisions that formerly applied to Texas only, in cases where the national quota is increased. This rule amends section 729.206(f)(former 729.204(f)) of the regulations, as redesignated, accordingly.

F. Inter-county Transfers

The 1996 Act removes the previous prohibition of inter-county quota transfers in large-quota States to allow, with limits, the transfer of farm poundage quota by sale or lease to any county within each of those States. Such transfers are limited to an aggregate of 40 percent of the total poundage quota within a county as of January 1, 1996, and may not exceed a crop year limit of 15, 25, 30, and 35 percent for the 1996 through 1999 crops respectively and 40 percent for the 2000 and subsequent crops. Further, however, in any county with a quota allocation less than 50 tons for the preceding year's crop, all or any part of a farm poundage quota may be transferred by sale or lease or otherwise from a farm in the county to a farm in the same State. These prescriptions are set by the 1996 Act.

This rule has adopted selection by lottery to implement the out-of-county sale and lease limitation provisions in counties where the amount of farm poundage quota requested for such sale and lease was greater than the limitation for the current year. This rule amends section 729.214 (former 729.212) of the regulations, as redesignated by this rule, to implement the limitation requirements. Other options considered with respect to administering the transfer limitation included a first-come, first-considered basis and a proration of the limited amount among all applicants. Time constraints and the practicality of transferring only portions of a farm's quota were the major determinants in selecting the lottery method. Comments are requested on these or any other options for controlling the transfer limitation and on the issue of giving priority to quota sales over quota leases.

Also, current regulations in part 729 have prohibited the approval of any transfers filed after January 31 and before August 1 if the approval of such transfer would result in a transfer both to and from either the transferring or receiving farm during such period. Although this rule does not revise the regulation, comments are requested on whether to allow a farm to make a transfer both ways in the same period so

long as the transfer from the farm is a temporary transfer.

In addition, section 729.214(f)(3)(i), as redesignated, is amended to ease the prohibition against permanent transfers of quota from a farm to which quota had been transferred during the base period (the 3 immediately preceding crop years). The revised paragraph will limit the prohibition to the amount of quota permanently transferred to the farm during the 3-year period.

G. Considered-Produced Credit

Section 358–1(b) (3) and (4) of the 1938 Act provides that to the extent practicable and on such fair and equitable basis as the Secretary may provide, a farm will, generally, lose any quota which is not produced or considered produced on the farm in 2 out of 3 consecutive years. That section contains a specific provision allowing considered-produced credit for in-county transfers, but only once every 3 years. The new act leasing provisions in the 1996 Act, as indicated, revamp the spring lease provisions for quotas and provide that the transfer of quota under that paragraph will not reduce the quota of the transferring farm if the quota is produced or considered produced on the receiving farm. Since no change was made to the in-county transfer provisions of 358–1(b)(3) (for those transfers which do not involve the same owner or operator), it appears that the 1996 Act did not intend for a modification to be made with respect to within-county transfers as allowed prior to the 1996 Act. Accordingly, the interim rule maintains the same considered-produced provisions, as in the past, for such in-county transfers (that is, considered-produced credit for leased quota will be allowed only once every 3 years). For inter-county transfers, however, the rule allows the transferring farm to receive considered-produced credit for any year in which the receiving farm produces, or is considered to have produced, the quota. This is the same rule that has been applied to out-of-county transfers in past years when such transfers were only allowed in States with a small total quota.

H. Other Provisions

The interim rule makes several technical changes including: (i) changes necessitated by a recent USDA reorganization, and (ii) changes to reflect applicability of the regulations through the 2002 crops.

Other provisions of the 1996 Act regarding peanuts will be the subject of subsequent notices.

List of Subjects in 7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and recordkeeping requirements.

Interim Rule

Accordingly, 7 CFR Part 729 is amended as follows:

PART 729—[AMENDED]

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

Authority: 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375, and 7271.

2. Section 729.102 is amended by removing ''1991 through 1995'' and adding ''1996 through 2002'' in its place, and by adding a sentence at the end of the paragraph to read as follows:

§ 729.102 Applicability.

* * * The peanut marketing quota and disposition requirements for peanuts for the 1991 through 1995 crops shall, as applicable, continue to be governed by the regulations codified at 7 CFR Part 729, as of April 1, 1996.

3. Section 729.103 is amended as follows:

a. The definition for ''FSA'' is moved to its proper place in alphabetical order.

b. The definition of ''Considered-produced credit'' is amended by revising paragraph (iii) to read as follows:

§ 729.103 Definitions.

* * * * *

(b) * * *

Considered-produced credit. * * *

(iii) A farm's basic quota that was not produced if the Farmers Home Administration or the Farm Service Agency had control of, or title to, such farm.

* * * * *

c. The definition of ''DASCO'' is removed, and the definition of ''Deputy Administrator'' is added in alphabetical order to read as follows:

Deputy Administrator. The Deputy Administrator for Farm Programs, Farm Service Agency.

d. The definition of ''Effective quota'' is amended by revising paragraph (v) to read as follows:

Effective quota. * * *

(v) Temporary seed quota allocated to the farm.

e. The definition of ''First purchaser'' is added in alphabetical order to read as follows:

First purchaser. Any person acquiring peanuts from a producer except that in the case of peanuts forfeited by a producer to CCC or bought from the price support loan inventory, the term means the person acquiring the peanuts from CCC or the inventory.

f. The definition of ''Preliminary quota'' is revised to read as follows:

Preliminary quota. For the current year and an eligible farm, the basic quota established for the farm for the preceding year to the extent that the farm is not subject to a reduction in quota.

g. The definition of ''Temporary seed quota'' is added in alphabetial order to read as follows:

Temporary seed quota. Quota temporarily allocated for the current crop year only and in an amount determined by FSA to account for the amount of seed peanuts planted on the farm for production of peanuts, excluding green peanuts and peanuts produced under the one-acre exemption set forth in § 729.306 of this part.

* * * * *

h. The definition of ''Undermarketings'' is removed.

4. Section 729.104(a) is revised to read as follows:

§ 729.104 Administration.

(a) The regulations in this part will be administered under the general supervision of the Administrator, FSA, and shall be carried out in the field by State and county FSA committees.

* * * * *

5. Section 729.104(c) is amended by removing the phrase ''committee shall'' and adding ''committee'' in its place, and removing ''Instruct'' and adding ''Shall instruct'' in its place.

§ 729.108 [Amended]

6. Section 729.108 is amended by removing ''ASC'' and adding ''FSA'' in its place.

§ 729.201 [Amended]

7. Section 729.201 is amended by removing ''1991 through 1995'' wherever it appears and adding in its place ''1996 through 2002 and removing ''1990'' wherever it appears and adding in its place''1995''.

§ 729.204–729.214 [Redesignated as § 729.206–729.216]

8. Sections 729.204 through 729.214 are redesignated as sections 729.206 through 729.216 respectively, and new sections 729.204 and 729.205 are added to read as follows:

§ 729.204 Temporary seed quota allocation.

(a) *Applicability.* The temporary allocation of quota pounds, as provided in this section shall be determined:

(1) For the marketing year only in which the crop is planted;

(2) For eligible producers for each of the 1996 through 2002 marketing years; and

(3) To exclude the production of green peanuts and peanuts produced under the one-acre exemption provided for in 7 CFR 729.306.

(b) *Quantity of allocation.* The temporary quota allocated to a producer shall be the farmers stock equivalent pounds of qualifying seed peanuts considered planted on the farm as determined by FSA by multiplying the acres determined planted to qualifying peanuts times the per-acre planting rates of:

(1) 95 pounds for Runner-type peanuts;

(2) 110 pounds for Virginia peanuts;

(3) 80 pounds for Spanish peanuts; and

(4) 80 pounds for Valencia peanuts.

(c) *Conversion factor.* For the purpose of determining the farmers stock basis for temporary seed quota allocations under this section, the amount of seed planted as determined in accord with paragraph (b) of this section shall be multiplied by a factor of 1.5.

(d) *Time of notification.* The notice of determination for temporary seed quota allocations shall be made by the Deputy Administrator as soon as practicable following the deadline for filing certifications of planted acres.

§ 729.205 Farms ineligible for farm poundage quota.

(a) *Ineligible farms.* Except for quota allocated under the provisions of § 729.208 for experimental and research programs, effective beginning with the 1998 crop year, farm poundage quotas shall not be established for farms which are determined by FSA to be owned or controlled by:

(1) Municipalities, airport authorities, schools, colleges, refuges, and other public entities.

(2) A person:

(i) Who is not a peanut producer; and

(ii) Whose primary domicile, in the case of individual, or primary place of business, in the case of an entity, as determined by FSA, is located outside the State in which the quota is allocated.

(b) *Determination of Residency and Related Rules.* For purposes of administering paragraph (a) of this section, with respect to farms owned or controlled by a partnership or corporation or other entity, the forfeiture in paragraph (a)(2) of this section shall not be deemed to apply if a person or persons with at least a 20 percent interest in any such entity are individuals whose primary residence is in the State in which the quota is allocated; provided further, that paragraph (a)(2) of this section shall not apply to any involuntary acquisition of a farm by foreclosure, or otherwise, resulting directly from the conduct of a public business in the State in which the quota is allocated, or an acquisition resulting directly by reason of a death. The exemption for involuntary farm acquisitions allowed under the preceding sentence shall only apply to the establishment of quota in the three crop years immediately following the date of the involuntary acquisition of the quota farm. Further, for purposes of applying the rules in paragraph (a) of this section as they regard production, the determination of whether paragraph (a)(2) of this section applies shall be made based on the crop last planted before the date on which the determination is to be made.

(c) *Allocating forfeited quota and sales of quotas subject to paragraph (a).* Any farm poundage quota held on or after August 1, 1997, by an ineligible person as determined under paragraph (a) of this section shall be allocated from the quota farm to other farms in the same State in accordance with § 729.206 of this part. In the event that the ineligible party acquired the subject farm on or before August 1, 1997, such person shall have until October 1, 1997, to permanently dispose of the quota by sale to another farm for subsequent crop years in which case the transfer will be deemed to be effective as of August 1, 1997. If the farm in dispute was acquired after August 1, 1997, then no quota shall be established for the farm until such time as the ineligibility is removed provided further, however, that the quota may be sold to another qualifying farm effective with the next crop year following the sale or such later date as may be approved by FSA.

9. Redesignated § 729.206 is amended:

a. In the heading of paragraph (f), by removing the phrase ''increased quota,'' and by removing the comma following the word ''nonproduction'';

b. In the first sentence of paragraph (f)(1), by removing the phrase ''33 percent of any increase in the Texas peanut poundage quota resulting from an increase in the national quota and'';

c. In paragraph (f)(3), by removing the phrase, '', as determined in accordance with paragraph (f)(2) of this section for the 1991 through 1995 crops'' and adding in its place ''granted under any special rules for Texas under this section and its predecessor for the 1991 and subsequent crops''; and

d. In paragraph (f)(7), removing the phrase ''except for the 33 percent allocated to eligible Texas counties in accordance with paragraph (f)(2) of this section,''.

10. Redesignated § 729.207 is amended:

a. In paragraph (c), by removing ''§ 729.204(b)(2)'' and adding ''§ 729.206(b)(2)'' in its place;

b. In paragraph (d)(1)(ii)(B), by removing ''§ 729.212'' and adding ''§ 729.214'' in its place; and

c. In paragraph (d)(2), by removing ''§ 729.204(e)'' and adding ''§ 729.206(e) in its place.

11. Redesignated § 729.208 is amended by revising paragraph (d) to read as follows:

§ 729.208 Allocation of quota for experimental and research programs.

* * * * *

(d) *Quota for 1996 through 2002 crops.* For each institution with continuing eligibility for which a 1995 basic quota was determined in accordance with this section or its predecessor, a basic quota shall be established for the 1996 through 2002 crops in the same manner as for other farms within the State.

12. Redesignated § 729.210 is amended by revising paragraph (a)(1) to read as follows:

§ 729.210 Determining a farm's effective quota.

* * * * *

(a) Upward adjustment. * * *

(1) The temporary seed quota allocated to the farm;

* * * * *

13. Redesignated § 729.213 is revised to read as follows:

§ 729.213 Erroneous notice of effective farm poundage quota.

If the official notice of effective quota issued for a farm erroneously stated a quota larger than the correct effective quota, the quota shown on the erroneous notice shall serve as the basis for marketing penalty computations for the farm for the current marketing year only if the county committee determines and the State Executive Director concurs that:

(a) *Extent of error.* The error was not so substantial as to place the operator on notice that such notice of quota was incorrect; and

(b) *Response to notice.* The operator, relying upon such notice and acting in good faith:

(1) Has made plans, or is engaged in activities, to produce the quota in the amount set forth on the erroneous notice (for example, land preparation; purchase of seed, fertilizer, and other production materials; or reducing the acreage of other crops); or

(2) Has planted the acreage of peanuts needed to produce the erroneous farm poundage quota.

14. Redesignated § 729.214 is revised:

a. In paragraph (a)(2) by removing ''with respect to the 1992 and subsequent crops'';

b. By redesignating paragraphs (d) through (l) as (e) through (m); and

c. By revising paragraph (c), adding a new paragraph (d), and revising redesignated paragraphs (f)(1)(iii)(A), (f)(3)(i), and (l) to read as follows:

§ 729.214 Transfer of quota by sale, lease, owner, or operator.

* * * * *

(c) *Location of farms.* In order to transfer poundage quota between two farms, such farms must be located within the same State and, to the extent required by paragraph (d) of this section, in the same county. It is not necessary for the receiving farm to have had a basic quota in the current or prior year, except as provided in paragraph (d)(4) of this section.

(d) *Limitations on transfer by sale or lease.* Subject to the provisions of paragraph (m) of this section:

(1) *States with less than 10,000 tons of quota.* With respect to farms in any State for which the State's poundage quota for the year preceding the current year was less than 10,000 tons, transfers of peanut quota by sale or lease may be made to any other farm in any county within the State.

(2) *States with 10,000 tons or more of quota.* For farms in States with 10,000 tons or more of quota:

(i) Poundage quota may be transferred to any other farm within the same county.

(ii) If the farm is in a county with less than a total of 50 tons of quota, the poundage quota may be transferred to any other farm within the same State without regard to the limitations set forth in paragraph (d)(2)(iii) of this section.

(iii) If the farm is in a county with a total of 50 tons or more of quota, poundage quota transferred out of county shall be limited to 40 percent of the quota in the transferring county as of January 1, 1996. Further, the cumulative unexpired out-of-county transfers for a crop year may not exceed the following percentages of the quota in the transferring county as of January 1, 1996:

(A) 15 percent for the 1996 crop;

(B) 25 percent for the 1997 crop;

(C) 30 percent for the 1998 crop;

(D) 35 percent for the 1999 crop; and

(E) 40 percent for the 2000 and subsequent crops.

(iv) *Selecting approved transfers.* For purposes of administering the limitations on the amount of transfers, the Director shall establish a method for selecting, by lot, those applications which are to be approved. The Director may give preference to permanent transfers.

(3) *Fall transfers.* The limitations in paragraph (d)(2)(iii) of this section do not apply to 1-year fall transfers, which may, in all cases, be made to any farm in the same State, subject to such restrictions as otherwise apply for fall transfers.

(4) *Owner or operator transfer.* Owner or operator transfers of poundage quota are permitted to contiguous counties within the same State without regard to the percentage limitations of paragraph (d)(2)(iii) of this section; provided that, the receiving farm had a basic quota established for the preceding year's crop and has the same owner, in an owner transfer, or the same operator, in an operator transfer.

* * * * *

(f) *Other transfer provisions.*—(1) *Temporary transfer of quota from a farm.* * * *

(iii) *Filed after July 31 and before February 1 (''Fall transfers'').* * * *

(A) The reported or determined acreage of peanuts plus prevented planted credit for the transferring farm for the current year, when multiplied by the larger of the farm yield or the highest actual yield during the base period, is equal to or greater than 90 percent of the farm's effective quota;

* * * * *

(3) *Permanent transfer of quota from a farm.* * * *

(i) *Permanent transfer of quota to the farm.* For the amount of quota purchased or otherwise permanently transferred to the farm during the base period, as adjusted for any increase or decrease in such quota due to adjustment in the national quota during the base period.

* * * * *

(l) *Adjustment of marketings.* For the purpose of computing production history for quota increase based on production, in the case of temporary transfers by owner to the same owner or operator to the same operator and all out-of-county transfers, if the current year's produced or considered-produced credit from the receiving farm exceeds such farm's basic quota, such produced or considered-produced credit on the receiving farm shall be reduced by the amount of such excess, to the extent of the quota temporarily transferred to such farm by owner or operator, and such reduced amount shall be added to the current year produced or considered-produced credit for the transferring farm.

* * * * *

§ 729.15 [Amended]

15. Redesignated § 729.215 is amended in paragraph (f)(2) by removing ''§ 729.204'' and adding ''§ 729.206'' in its place.

16. Redesignated § 729.216 is revised to read as follows:

§ 729.216 National poundage quota.

(a) *National poundage quota for 1996 and subsequent crop years.* The national poundage quota for the 1996 and subsequent crop years shall be established by the Secretary at a level that is equal to the quantity of peanuts that the Secretary estimates will be devoted in each marketing year to domestic edible use (except seed), and related uses.

(b) *Disapproval of quotas.* No loan for quota peanuts may be made available for any crop of peanuts with respect to which it is determined by the Deputy Administrator that poundage quotas have been disapproved by producers pursuant to a referendum conducted in accordance with section 358–1(d) of the Agricultural Adjustment Act of 1938, as amended.

Signed at Washington, D.C., on July 5, 1996.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 96–17690 Filed 7–12–96; 2:18 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ACE–5]

Amendment to Class E Airspace; Ames, IA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Ames, IA, to accommodate a planned Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at the Ames Municipal Airport. This action will provide for additional controlled airspace necessary for the aircraft utilizing the new SIAP.

EFFECTIVE DATE: 0901 UTC August 15, 1996.

FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO, 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On May 13, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Ames, IA (61 FR 21984). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Ames Municipal Airport.

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

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at Ames, IA, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

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

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE IA E5 Ames, IA

Ames Municipal Airport, IA
(lat. 41°59′31″N., long. 93°37′18W.)
Ames NDB
(lat. 41°59′42″N., long. 93°37′37″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Ames Municipal Airport, and within 2.1 miles each side of the 197° bearing from the Ames NDB extending from the 6.6-mile radius to 7.4 miles south of the airport, and within 2 miles each side of the 136° bearing from the airport extending from the 6.6-mile radius to 10 miles southeast of the airport.

* * * * *

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

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 96–18058 Filed 7–15–96; 8:45 am]
BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Notice of policy statement.

SUMMARY: Notice is hereby given that Agency-designated sponsors currently authorized the professor and research scholar categories, who seek authority to utilize the short-term scholar category provided for in existing regulations, may do so by written request to the Agency.

ADDRESSES: Letter requests should be addressed to: Sally J. Lawrence, Chief, Program Designation Branch, Office of the General Counsel, Room 700, 301 4th Street, SW, Washington, D.C. 20547.

FOR FURTHER INFORMATION CONTACT: Sally J. Lawrence, Chief, Program Designation Branch, at the above address or by telephone, (202) 401–9810.

SUPPLEMENTARY INFORMATION: The Agency published a final rule in the Federal Register on June 10, 1996 that amended existing regulations governing Exchange Visitor Program eligibility requirements for prospective professor and research scholar participants. These amendments placed a twelve month bar from continued program participation upon individuals who had been physically present in the United States for all or part of the twelve months immediately preceding their commencement of program participation as a professor or research scholar. This regulation further provided an exception to the application of a twelve month bar to prospective participants who had previously participated in the Exchange Visitor Program as a short-term scholar participant.

By providing this exception to the twelve month bar, the Agency seeks to promote the proper use of the short-term scholar category, having determined that such use will foster and promote collaborative international research and exchange. Currently, some but not all of the Agency's designated Exchange Visitor Program sponsors are authorized to utilize the short-term scholar category. As stated, the Agency endorses the use of this category and accordingly has determined that designated sponsors currently authorized to utilize the professor and research scholar category shall be authorized to utilize the short-term scholar category solely upon written request to the Agency.

Les Jin,

General Counsel.

[FR Doc. 96–18065 Filed 7–15–96; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 18, 30, and 275

[T.D. ATF–381]

RIN 1512–AB47

Technical Amendments (95R–008P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This Treasury decision makes technical amendments and conforming changes to chapter I of title 27 Code of Federal Regulations (CFR). All changes are to provide clarity and uniformity throughout title 27 CFR.

EFFECTIVE DATE: July 16, 1996.

FOR FURTHER INFORMATION CONTACT: Angela R. Shanks, Alcohol and Tobacco

Programs Division, Wine, Beer, and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202–927–8230)

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms (ATF) administers regulations published in chapter I of title 27 Code of Federal Regulations (CFR). These regulations are updated April 1 of each year to incorporate new or revised regulations that were published by ATF in the Federal Register during the preceding year. Upon reviewing title 27 CFR for the annual revision, ATF and the CFR Unit of the Office of the Federal Register identified several amendments and conforming changes that are needed to provide uniformity in chapter I of title 27, CFR.

These amendments do not make any substantive changes and are only intended to improve the clarity of title 27 CFR or relieve regulatory requirements.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. A copy of this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Administrative Procedures Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Angela R. Shanks, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 18

Administrative practice and procedure, Authority delegations, Excise taxes, Exports, Labeling, Reporting requirements, Security measures, Spices and flavorings, Stills, Surety bonds.

27 CFR Part 30

Alcohol and alcoholic beverages, Measurement standards, Scientific equipment.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspections, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirement, Seizures and forfeitures, Surety bonds, U.S. Possessions, Warehouses.

Authority and Issuance

Title 27, Code of Federal Regulations is amended as follows:

PART 18—PRODUCTION OF VOLATILE FRUIT-FLAVOR CONCENTRATE

Par. 1. The authority citation for part 18 continues to read as follows:

Authority: 26 U.S.C. 5001, 5172, 5178, 5179, 5203, 5511, 5552, 6065, 7805; 44 U.S.C. 3504(h).

§ 18.13, 18.14, 18.17, 18.21, 18.22, and 18.24 [Amended]

Par. 2. Sections 18.13, 18.14, 18.17, 18.21, 18.22 and 18.24 are amended by adding, at the end of the section, the approved OMB Control Number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0046)

§ 18.26 [Amended]

Par. 3. Section 18.26 is amended by adding, at the end of the section, the approved OMB Control Number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0079)

§§ 18.27, 18.31, 18.32, 18.33, 18.34, 18.35, 18.36, 18.37 and 18.38 [Amended]

Par. 4. Sections 18.27, 18.31, 18.32, 18.33, 18.34, 18.35, 18.36, 18.37 and 18.38 are amended by adding, at the end of the section, the approved OMB Control Number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0046)

§ 18.51 [Amended]

Par. 5. Section 18.51 is amended by adding, at the end of the section, the approved OMB Control Number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0098)

§ 18.52 [Amended]

Par. 6. Section 18.52 is amended by adding, at the end of the section, the approved OMB Control Number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0046)

§ 18.54 and 18.55 [Amended]

Par. 7. Section 18.54 and 18.55 are amended by adding, at the end of the section, the approved OMB Control Number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0098)

§ 18.56, 18.61, 18.62 and 18.63 [Amended]

Par. 8. Section 18.56, 18.61, 18.62 and 18.63 are amended by revising the approved OMB Control Number at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0098)

§ 18.65 [Amended]

Par 9. Section 18.65 is amended by adding, at the end of the section, the approved OMB Control Number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0098)

PART 30—GAUGING MANUAL

Par. 10. The authority citation for part 30 is revised to read as follows:

Authority: 26 U.S.C. 7805.

§ 30.22 [Amended]

Par. 11. Section 30.22 is amended by removing the phrase ''furnished to ATF officers'' in the first sentence, and adding in its place the word ''used''.

§ 30.23 [Amended]

Par. 12. Section 30.23 is amended by revising two computations in the example which follows the text. The first revised computation follows the introductory text of the example, and the second computation appears in the paragraph before the last paragraph of the example. As revised, they read as follows:

§ 30.23 Use of precision hydrometers and thermometers.

* * * * *

Example. * * *

From Table 1:		
193.0° at 72.0° F.	=	190.2°
192.0° at 72.0° F.	=	189.1°
Difference	=	1.1°
192.0° at 72.0° F.	=	189.1°
192.0° at 73.0° F.	=	188.9°
Difference	=	0.2°

* * * * *

Proof at 60° F.=189.1+0.902–0.03=189.972°=190.0°.

* * * * *

§ 30.24 [Amended]

Par. 13. Section 30.24 is amended by removing the degree symbol following the number ''0.0005'' from the concluding sentence in paragraph (a).

§ 30.32 [Amended]

Par. 14. Section 30.32 is amended by removing the word ''distilate'' in the third sentence of paragraph (c) and adding in its place the word ''distillate''.

§ 30.43 [Amended]

Par. 15. Section 30.43 is amended by removing the word ''wight'' in the second sentence of the introductory text and adding in its place the word ''weight''.

§ 30.51 [Amended]

Par. 16. The example following § 30.51 is amended by removing the number ''868'' from the line which begins ''Proof of spirits'' and by adding in its place the number ''86.8'' and by removing the number ''995'' from the line which begins ''Temperature correction factor'' and adding in its place the number ''0.995''.

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 17. The authority citation for part 275 continues to read as follows:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 18. Section 275.30 is revised to read as follows:

§ 275.30 Pipe tobacco.

On pipe tobacco imported or brought into the United States after January 1, 1993, the tax imposed by law is 67.5 cents per pound and a proportionate tax at the like rate on fractional parts of a pound. (*See* 26 U.S.C. 5701(f).)

Par. 19. Section 275.31 is revised to read as follows:

§ 275.31 Cigar tax rates.

(a) On cigars imported or brought into the United States on or after January 1, 1993, the taxes imposed by law are:

(1) Small cigars. $1.125 per thousand.

(2) Large cigars. 12.75 percent of the sale price, but not more than $30 per thousand.

(b) Cigars not exempt from tax under this part which are removed but not intended for sale are taxed at the same rate as similar cigars removed for sale. (*See* 26 U.S.C. 5701(a).)

Par. 20. Section 275.32 is revised to read as follows:

§ 275.32 Cigarette tax rates.

(a) On cigarettes imported or brought into the United States on or after January 1, 1993, the taxes imposed by law are:

(1) Small cigarettes. $12 per thousand.

(2) Large cigarettes. $25.20 per thousand.

(b) Special rule for large cigarettes. If large cigarettes are more than 6½ inches in length, the rate of tax is the rate prescribed for small cigarettes, counting each 2 3/4 inches, or fraction thereof, of the length of each as one cigarette. (*See* 26 U.S.C. 5701(b).)

Par. 21. Section 275.33 is revised to read as follows:

§ 275.33 Smokeless tobacco tax rates.

On smokeless tobacco imported or brought into the United States, the following taxes are imposed by law:

(a) Snuff. Snuff removed on or after January 1, 1993, 36 cents per pound and a proportional tax at a like rate on fractional parts of a pound.

(b) Chewing tobacco. Chewing tobacco removed on or after January 1, 1993, 12 cents per pound and a proportional tax at the like rate on fractional parts of a pound. (*See* 26 U.S.C. 5701(e).)

Par. 22. Section 275.34 is revised to read as follows:

§ 275.34 Cigarette papers.

(a) On each book or set of cigarette papers containing more than 25 papers imported or brought into the United States on or after January 1, 1993, the taxes imposed by law are 0.75 cent for each 50 papers or fractional part thereof.

(b) Where cigarette papers measure more than 6½ inches in length, they shall be taxable at the above rates, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper. (*See* 26 U.S.C. 5701(c).)

Par. 23. Section 275.35 is revised to read as follows:

§ 275.35 Cigarette tubes.

(a) On cigarette tubes imported or brought into the United States on or after January 1, 1993, the taxes imposed by law are 1.5 cents for each 50 tubes or fractional part thereof.

(b) Where cigarette tubes measure more than 6½ inches in length, they shall be taxable at the above rates, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube. (*See* 26 U.S.C. 5701(d).)

§ 275.39 [Removed] and § 275.39a [Redesignated as 275.39]

Par. 24. Section 275.39 is removed and section 275.39a is redesignated as section 275.39.

§ 275.72a [Removed], § 275.72b [Redesignated as 275.72a] and § 275.72c [Removed]

Par. 25. Section 275.72a is removed, section 275.72b is redesignated as section 275.72a, and section 275.72c is removed.

Subpart H (§§ 275.151–275.153) [Removed]

Par. 26. Subpart H consisting of §§ 275.151 through 275.153, is removed and reserved.

§ 275.183 [Removed]

Par. 27. Section 275.183 is removed and reserved.

Signed: June 3, 1996.

John W. Magaw,

Director.

Approved: June 10. 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–17996 Filed 7–15–96; 8:45 am]

BILLING CODE 4810–31–P

27 CFR Part 53

[T.D. ATF–380]

RIN 1512–AB42

Manufacturers Excise Taxes—Firearms and Ammunition (95R–055P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending the regulations in 27 CFR Part 53 to simplify the regulations relating to exemption certificates. The regulations are being revised to give taxpayers the option of using a preprinted document for use as exemption certificates and vendor(vendee) statements or designing their own certificates and statements using specified information. The temporary rule will remain in effect until superseded by final regulations.

These amendments are part of the Administration's Reinventing Government effort to reduce burden and streamline requirements.

In the proposed rules section of this Federal Register, ATF is also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day period following the publication date of this temporary rule.

EFFECTIVE DATE: The temporary regulations are effective July 16, 1996.

ADDRESS: Send written comments to: Chief, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20226–0221.

FOR FURTHER INFORMATION CONTACT: Mary Lou Blake, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW, Washington, DC 20226; (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

Under current regulations, persons who sell firearms or ammunition tax-free must obtain certain exemption certificates or statements to support such sales. Current regulations include suggested forms for each type of statement and certificate. These certificates and statements are now available through the Bureau's Distribution Center. Taxpayers may order these preprinted documents and reproduce them as needed.

Since the forms are available from ATF, there is no need to reproduce them in the regulations. Accordingly, this Treasury Decision removes the text of the forms from the regulations, but retains all information required for taxpayers who wish to design and use their own certificates or statements.

This temporary rule also includes technical amendments to the regulations in 27 CFR Part 53.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

Administrative Procedure Act

Because this document merely furnishes the taxpayer with an optional method of providing exemption certificates or statements and does not change the existing regulatory requirements, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities or impose or otherwise cause an increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities. The factual basis for such certification is that this revision does not add any new requirement for reporting or recordkeeping. This revision serves only to clarify and streamline current regulatory requirements. Pursuant to section 7805(f) of the Internal Revenue Code, this proposed regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1329, do not apply to this regulation because there are no new reporting or recordkeeping requirements.

Drafting Information

The author of this document is Mary Lou Blake, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 53

Administrative practice and procedure, Arms and munitions, Authority delegations, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

Authority and Issuance

27 CFR Part 53 is amended to read as follows:

PART 53—MANUFACTURERS EXCISE TAXES—FIREARMS AND AMMUNITION

Paragraph 1. The authority citation for 27 CFR Part 53 continues to read as follows:

Authority: 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416.

Par. 2. Section 53.3 is revised to read as follows:

§ 53.3 Exemption certificates.

Several sections of the regulations in this part, relating to sales exempt from manufacturers excise tax, require the manufacturer to obtain an exemption certificate from the purchaser to substantiate the exempt character of the sale. Any form of exemption certificate will be acceptable if it includes all the information required to be contained in such a certificate by the pertinent sections of the regulations in this part. These certificates are available as preprinted documents which may be ordered from the Bureau's Distribution Center (see § 53.21 for the address of the Distribution Center). The preprinted certificates may be reproduced as needed.

Par. 3. Section 53.131 is amended by revising the third sentence in paragraph (a)(5) to read as follows:

§ 53.131 Tax-free sales; general rule.

(a) * * *

* * * * *

(5) * * * See paragraph (c) of this section for provisions relating to evidence required in support of tax-free sales. * * *

* * * * *

Par. 4. Section 53.132 is amended by revising paragraph (c)(2)(i) and by adding paragraph (c)(2)(iii) to read as follows:

§ 53.132 Tax-free sale of article to be used for, or resold for, further manufacture.

* * * * *

(c) * * *

(2) * * *

(i) *Certificate of purchaser.* The proof of resale to be received by the

manufacturer, as required under section 4221(b)(1) of the Code, may consist of either a copy of the invoice of the manufacturer's vendee directed to his purchaser which discloses the certificate of registry number held by each party or a statement described in this paragraph. In the case of an invoice of manufacturer's vendee, it must appear from such invoice (or by statement attached thereto) that the article was in fact resold for use in further manufacture. In lieu of such an invoice, proof of resale may consist of a statement, executed and signed by the manufacturer's vendee which includes the following:

(A) Date statement was executed.

(B) Name and address of manufacturer's vendee (if other than the person executing statement).

(C) Certificate of registry number held by vendee.

(D) Specify article(s) purchased tax-free, by whom purchased, certificate of registry number of second purchaser, date of purchase(s), whether articles were purchased as material in the manufacture or production of, or as a component part or parts of, an article or articles taxable under Chapter 32 of the Code.

(E) Statement that person executing statement or manufacturer's vendee possesses proof of tax-free resale of the article(s) in the form of purchase orders and sales invoices and identifying the person who will maintain custody of such proof for 3 years from the date of the statement and will make such proof available for inspection by ATF during such 3 year period.

(F) Statement that a previous statement has not been executed in respect of such certificate of resale and that the person signing the statement is aware that fraudulent use of the statement may subject the person signing the statement and all parties making fraudulent use of the statement to all applicable criminal penalties under the Code.

(G) Name, signature, and title of individual executing statement.

(ii) * * *

(iii) *ATF I 5600.37.* A preprinted statement, ATF I 5600.37, Statement of Manufacturer's Vendee, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed statement. Extra copies of ATF I 5600.37 may be reproduced as needed.

Par. 5. Section 53.133 is amended by revising paragraph (d)(2) and by adding paragraph (d)(4) to read as follows:

§ 53.133 Tax-free sale of article for export, or for resale by the purchaser to a second purchaser for export.

* * * * *

(d) * * *

* * * * *

(2) In any case where the manufacturer is not the exporter, the manufacturer must have in its possession a statement from the vendee to whom the manufacturer sold the article stating the following:

(i) Date statement was executed.

(ii) Name and address of manufacturer's vendee (if other than the person executing statement).

(iii) Certificate of registry number held by vendee.

(iv) Specify article(s) purchased tax-free, by whom purchased, and date of purchase.

(v) Statement that article(s) was either exported in due course by the vendee or was sold to another person who in due course exported the article(s).

(vi) Name and address of vendee who will maintain possession of the proof of exportation documents, description of the documents, and statement that vendee will maintain documents for 3 years and make them available to ATF for inspection.

(vii) Statement that a previous statement has not been executed in respect of the articles covered by this statement and that fraudulent use of this statement may subject person executing statement and all parties making fraudulent use of statement to all applicable criminal penalties under the Code.

(viii) Name, signature, title, and address of individual executing certificate.

(3) * * *

(4) *ATF I 5600.36.* A preprinted statement, ATF I 5600.36, Statement of Manufacturer's Vendee, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed statement. Extra copies of ATF I 5600.36 may be reproduced as needed.

Par. 6. Section 53.134 is amended by revising paragraph (d)(2)(iii) and by adding paragraph (d)(2)(iv) to read as follows:

§ 53.134 Tax-free sale of articles for use by the purchaser as supplies for vessels or aircraft.

* * * * *

(d) * * *

(2) * * *

(iii) *Acceptable form of exemption certificate.* A certificate of exemption to support tax-free sales under this section must include the following:

(A) Name of owner, charterer, or authorized agent.

(B) Name of company and vessel.

(C) List article(s) covered by the certificate or beginning and ending dates during which orders will be placed (not to exceed 12 calendar quarters).

(D) Statement that articles will be used only for fuel supplies, ships' stores, sea stores, or legitimate equipment on a vessel belonging to one of the class of vessels to which section 4221 of the Code applies. Identify class of vessel certificate covers (see paragraphs (a) and (b) of this section).

(E) If articles are purchased for use on civil aircraft engaged in foreign trade or trade between the United States and any of its possessions, state the country in which the aircraft is registered.

(F) Statement that it is understood that if any articles are used for any purpose other than as stated in the certificate, or are resold or otherwise disposed of, the person executing the certificate must notify the manufacturer.

(G) Statement that the certificate shall not be used to purchase tax-free articles for use as supplies, etc. on pleasure vessels or any type of aircraft except: (1) Civil aircraft employed in foreign trade or trade between the United States and any of its possessions; (2) Aircraft owned by the United States or any foreign country and constituting a part of the armed forces thereof.

(H) Statement that it is understood that any fraudulent use of the certificate may subject person executing certificate and all parties making fraudulent use of the certificate to all applicable criminal penalties under the Code.

(I) Statement that person executing certificate is prepared to establish by satisfactory evidence the purpose for which the article(s) was used.

(J) Date, name, signature, and address of person executing the certificate.

(iv) *ATF I 5600.34.* A preprinted certificate, ATF I 5600.34, Exemption Certificate, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed certificate. Extra copies of ATF I 5600.34 may be reproduced as needed.

Par. 7. Section 53.135 is amended by revising paragraph (c)(1) and by adding paragraph (c)(3) to read as follows:

§ 53.135 Tax-free sale of articles to State and local governments for their exclusive use.

* * * * *

(c) * * *

(1) In the case of a State or local government which is registered (see § 53.141 for provisions under which a State or local government may register if it so desires), the provisions of

paragraph (c) of § 53.131 have application as to the evidence required in support of tax-free sales. If a State or local government is not registered, the evidence required in support of a tax-free sale to the State or local government shall, except as provided in paragraph (c)(2) of this section, consist of a certificate, executed and signed by an officer or employee authorized by the State or local government to execute and sign the certificate. If it is impracticable to furnish a separate certificate for each order or contract because of frequency of purchases, a certificate covering all orders between given dates (such period not to exceed 12 calendar quarters) will be acceptable. The certificates and proper records of invoices, orders, etc., relative to tax-free sales must be retained by the manufacturer as provided in § 53.24(d). A certificate of exemption to support tax-free sales under this section must contain the following:

(i) Title of official executing certificate, branch of government, date executed, and statement that official is authorized to execute certificate.

(ii) List articles covered by the certificate or beginning and ending dates during which orders will be placed by the purchaser (period not to exceed 12 calendar quarters).

(iii) Name of manufacturer from which articles purchased.

(iv) Governmental unit purchasing articles.

(v) Statement that is understood that articles purchased under this certificate of exemption are limited to use exclusively by the purchasing governmental entity.

(vi) Statement that is understood that any fraudulent use of this certificate may subject the person executing the certificate and all parties making fraudulent use of the certificate to all applicable criminal penalties under the Code.

(vii) Name, address, and signature of person executing the certificate.

(2) * * *

(3) *ATF I 5600.35.* A preprinted certificate, ATF I 5600.35, Exemption Certificate, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed certificate. Extra copies of ATF I 5600.35 may be reproduced as needed.

* * * * *

Par. 8. Section 53.179 is amended by revising paragraph (b)(1)(iii) and by adding paragraph (b)(1)(iv) to read as follows:

§ 53.179 Supporting evidence required in case of manufacturers tax involving exportations, uses, sales, or resales.

* * * * *

(b) * * *

(1) * * *

(iii) *Certificate of ultimate vendor.* Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person who paid the tax as provided in paragraph (a)(4) of this section may be executed with respect to any one or more overpayments by the person which arose under section 6416(b)(2) and § 53.178 by reason of exportations, uses, sales or resales, occurring within any period of not more than 12 consecutive calendar quarters, the beginning and ending dates of which are specified in the certificate. A certificate supporting a claim for credit or refund under this section shall contain the following:

(A) Name of ultimate vendor if other than person executing the certificate.

(B) Statement that article(s) was purchased by the ultimate vendor tax-paid and was thereafter exported, used, sold, or resold.

(C) Description of proof which supports exportation or certificate as to use executed by ultimate purchaser.

(D) Statement that ultimate vendor retains such proof for 3 years from the date of the statement and will, upon request, supply such proof at any time within such 3 year period to the taxpayer to establish that credit or refund is due in respect of the article.

(E) Statement that to the best knowledge and belief of the person executing the certificate, no statement in respect of the proof of exportation or certificate has previously been executed and that the person executing the certificate understands that any fraudulent use of the certificate may subject the person executing the certificate or any other party to all applicable criminal penalties under the Code.

(F) Name, title, address and signature of person executing certificate and date signed.

(G) Description of all articles covered by the certificate, with the corresponding vendor's invoice number, date of resale of article, quantity, whether articles were exported or used and the use made of article or to be made of article.

(iv) *ATF I 5600.33.* ATF I 5600.33, Statement of Ultimate Vendor, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed certificate. Additional copies may be reproduced as needed.

* * * * *

Signed: May 30, 1996.

Bradley A. Buckles,

Acting Director.

Approved: June 10, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–17995 Filed 7–15–96; 8:45 am]

BILLING CODE 4810–31–P

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Department of the Treasury Circular, Public Debt Series No. 1–93)

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (''Department'') is issuing an amendment to its regulations governing the sale and issue of marketable book-entry Treasury securities (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). The amendment defines the term ''investment adviser'' and contains a new section on bidding through investment advisers. The amendment also makes certain technical and clarifying changes.

EFFECTIVE DATE: The amendment is effective on September 16, 1996.

FOR FURTHER INFORMATION CONTACT: Donald V. Hammond, Assistant Director, Government Securities Regulations Staff, Bureau of the Public Debt (202) 219–3632; or Margaret Marquette, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt (202) 219–3320.

SUPPLEMENTARY INFORMATION:

I. Background

31 CFR part 356, also referred to as the uniform offering circular, sets out the terms and conditions for the sale and issuance by the Department of the Treasury to the public of marketable book-entry Treasury bills, notes, and bonds. The uniform offering circular was originally published on January 5, 1993 (58 FR 412), as a comprehensive statement of those terms and conditions. Amendments to the circular were published on June 3, 1994 (59 FR 28773), and March 15, 1995 (60 FR 13906). In the time since the rule was

first published, several questions have arisen about the application of the circular in situations where an investment adviser formulates a bid or otherwise makes bidding decisions for a managed or controlled account. In response, the Department is defining the term ''investment adviser'' and is setting out the specific terms and conditions for bidding through investment advisers.

Previously, the treatment of investment advisers was found in a discussion in the preamble to the January 5, 1993, publication. The preamble and rule did not specify how the various provisions of the rule should be applied with respect to accounts that participate in auctions through investment advisers, leaving ambiguous the answers to a number of technical questions. Accordingly, the Department published a proposed amendment on January 5, 1996,[1] which provided a definition of the term ''investment adviser'' and clarified how the provisions of the uniform offering circular would be applied to bids submitted for accounts that are managed by investment advisers (controlled accounts). Additionally, the existing exclusion for certain controlled accounts on whose behalf an investment adviser is not bidding in an auction was proposed to be substantially modified. The proposed modification would have reduced from $500 million to $10 million the dollar threshold applied to the position of a non-participating controlled account in determining eligibility for the exclusion.

Though not required to, the Department published the clarifications and changes in proposed form in order to receive the full benefit of input from affected auction participants. The comment period closed on March 5, 1996.

II. Comments Received in Response to the Proposed Rule

The Department received one comment letter, from the Public Securities Association (PSA), in response to the proposed amendment.[2] The PSA letter strongly supported the clarifications and guidance that the proposed amendment provided but expressed significant objections to the proposed modification of the exclusion available for non-participating controlled accounts.

[1] 61 FR 402 (January 5, 1996).

[2] March 4, 1996, letter from Stephanie Wolf, Assistant General Counsel, Public Securities Association, to Kenneth R. Papaj, Director, Government Securities Regulations Staff, Bureau of the Public Debt.

A. Definition of Investment Adviser

The PSA supported the definition for the term ''investment adviser,'' which also describes what is meant by the phrase ''investment discretion.'' However, the PSA stated that the phrase ''or otherwise exercises control,'' describing investment discretion in the proposed definition, introduces an element of ambiguity. It was noted that the current net long position reporting requirement, which the definition seeks to clarify, uses the phrase ''exercising control'' which has been understood to mean the exercise of investment discretion. With the addition of the definition of the term ''investment adviser,'' the commenter believes that inclusion of a general provision such as ''or otherwise exercises control'' raises the question as to what other types of control might exist and is contrary to the intent behind the amendment. The Department agrees and has deleted the phrase from the final definition.

B. Bidding Through Investment Advisers

The PSA expressed support for the codification and clarification of the manner in which investment advisers may bid for their controlled accounts. The commenter requested that the application of the restriction against noncompetitive and competitive bidding in the same auction be addressed for the situation in which an investment adviser bids both competitively for its own proprietary account and noncompetitively for its controlled accounts in the names of those accounts. As stated in § 356.15(a) of the proposed rule, an investment adviser may bid for a controlled account either in the name of the investment adviser, in which case the adviser is considered the bidder, or in the name of the account, in which case the account is considered the bidder. This means that, for purposes of bidding noncompetitively, an investment adviser that bids for its controlled accounts in the name of the adviser is limited to the maximum allowed bid and award amount for a noncompetitive bid for that auction, e.g., $1 million total in a bill auction. An investment adviser that bids noncompetitively for its controlled accounts in the names of the accounts may bid for each account for the maximum allowed noncompetitive amount, e.g., $1 million for each account in a bill auction. Additionally, the investment adviser may not bid for the controlled account both competitively and noncompetitively in the same auction, regardless of whether the bidding is in the name of the adviser or in the name of the controlled account.

The proposed rule did not specifically address, with respect to the restriction against bidding both competitively and noncompetitively in the same auction, the situation in which an investment adviser is bidding for its own account in the same auction that it is bidding for controlled accounts. It is the Department's intention that the proprietary account of an investment adviser be treated in the same manner as that of any other bidder.[3] In other words, an investment adviser may bid competitively in its own name for its proprietary account so long as it is also not bidding noncompetitively in its own name. Therefore, if a controlled account is being bid for noncompetitively in the name of the account, the investment adviser may bid competitively in its own name for its proprietary account. It may also bid competitively, in the name of the investment adviser or the account, for any controlled accounts that are not being bid for noncompetitively. However, the investment adviser may NOT bid both competitively and noncompetitively in its own name in the same auction, regardless of whether the bids represent its own account or controlled accounts. Also the investment adviser may not bid both competitively and noncompetitively in the same auction for any one controlled account, regardless of whether the bid is in the name of the investment adviser or in the name of the account.

C. Reporting Net Long Positions

The proposed rule stated that, in determining if it has reached the $2 billion net long position reporting threshold, an investment adviser must include in its calculation those bids and positions it controls in addition to bids and positions it would otherwise have to include as a bidder. This provision clarified the existing requirement for the calculation of a net long position. The proposal also contained a significant change from the current rule in the amount of a controlled account's position that may be excluded from the investment adviser's net long position calculation. The rule currently allows the adviser to exclude net long positions

[3] An investment adviser, under the bidder definitions, may itself need to be aggregated with its affiliates as part of a larger bidder. The restriction against bidding both noncompetitively and competitively in the same auction is applicable to all the affiliates that are required to be aggregated since they form a single bidder, i.e., if an entity is bidding competitively in an auction, an affiliate of that entity may not bid noncompetitively in the same auction, unless that affiliate has received recognition as a separate bidder.

less than $500 million for certain controlled accounts that are not bid for in an auction. The proposal provided for a similar type of exclusion but decreased the amount to $10 million per controlled account.

The PSA strongly objected to the proposed change. While understanding the Department's objective of obtaining more information than is currently provided about the positions that an investment adviser may control, the commenter believed that this objective could not justify the cost to auction participants of reporting on controlled accounts at the significantly reduced amount. It was the commenter's opinion that in order to include controlled accounts at a $10 million threshold within the current net long position reporting timeframes, auction participants would have to develop automated systems to track the information. The PSA represented that the cost to develop such systems would be prohibitive and might adversely affect investment advisers' participation in auctions. Accordingly, the PSA recommended that the Department retain the current exclusionary amount or set a lower amount that would not impose such significant costs. The letter did not provide any suggestions for an appropriate alternative amount. Additionally, the commenter did not address the alternative approach for an exclusion discussed in the proposal or offer any other approaches for providing Treasury with better information about the size of a position that an investment adviser might control.

The reduction in the exclusionary amount was proposed because the Department believes that a lower amount is necessary to give a more accurate picture of the amount of a security controlled by an investment adviser. The Department is sensitive to the concerns of auction participants about the cost of compliance with the auction rules and recognizes, in particular, that the net long position reporting provisions are costly because of the scope of the aggregation provisions and the short reporting timeframe. Balanced against this compliance cost is the Department's goal of avoiding undue concentrations of ownership or control upon original issue. The net long position report is an essential tool in achieving this goal.

In developing the proposal, the Department considered and rejected alternatives, such as providing investment advisers an exclusion based on an aggregate amount rather than separate position amounts in specific accounts, because of a concern that they would be more burdensome or costly for advisers. Nothing in the comment letter would lead the Department to a different conclusion. Therefore, the approach outlined in the proposal is believed to be the best approach for excluding non-participating accounts.

However, a cost-effective exclusion threshold needs to be determined. A tradeoff exists between the time and cost necessary for an investment adviser to determine the holdings of non-participating controlled accounts and the meaningfulness of the net long position information submitted with the bid. The higher the exclusion amount the less costly compliance is for the investment adviser, but also the less useful the information is to the Department. The higher the threshold the fewer number of nonparticipating controlled accounts that would be needed to control a significant undisclosed position in the auctioned security. After due consideration of the potential compliance costs versus the usefulness of the net long position report, the Department has determined that an exclusion threshold of $100 million is appropriate. A $100 million threshold is at a high enough level that relatively few managed accounts should be affected, thus minimizing systems and compliance costs, and yet is low enough that Treasury will receive useful information on the control of the security.

D. Other Comments

The PSA letter briefly discussed the modification that would allow investment advisers to submit bids for their controlled accounts directly to a Federal Reserve Bank or to the Bureau of the Public Debt. The PSA did not object to the proposed change but observed that it had no impact on its membership since its members are all either banks or broker-dealers who are already authorized to submit bids for others directly. The provision allowing an adviser to submit or forward bids in the names of its controlled accounts is an exception to the restriction against anyone other than a depository institution or dealer submitting or forwarding bids for others. The Department reiterates that it is not its intent to authorize an investment adviser that does not also meet the definition of a depository institution or dealer to submit or forward bids for customers. A controlled account is not the same as a customer since, unlike a customer, the beneficial owner of a controlled account is not involved in determining the terms of the auction bid and is generally not aware of the bid until after the fact. (See the definition of ''customer'' in § 356.2 which refers to directing a depository institution or dealer to bid for a specified amount of securities in a specific auction.)

III. Changes from the Proposed Rule

In § 356.2, the definition of ''investment adviser'' has been modified to delete the phrase ''or otherwise exercises control'' in response to a comment from the PSA. The Department believes that this deletion does not affect the intended meaning of the definition and that the change reduces possible confusion.

The language of § 356.15(b) regarding competitive and noncompetitive bidding has not been changed. However, the Department is clarifying that the provision permits an investment adviser to bid competitively for its proprietary account and noncompetitively for one or more controlled accounts in the same auction provided that the noncompetitive bids are in the names of the controlled accounts. The investment adviser would not be permitted to bid both competitively and noncompetitively in the adviser's name in the same auction, regardless of which accounts the bids are for; nor would the adviser be allowed to bid both competitively and noncompetitively for a controlled account. (See Discussion in Section II.B. of this release.)

The only change to proposed § 356.15(c) is the dollar level of the exclusion threshold. The $10 million threshold proposed was strongly criticized by auction participants as being at a level so low as to cause them to incur substantial compliance costs which they believed could not be justified by the benefits received by Treasury. Upon due consideration of this comment and further discussions with the commenter, the Department has concluded that a threshold of $100 million would be more appropriate. This revised threshold provides sufficient additional information about the size of positions controlled by an investment adviser while not imposing unreasonable costs on affected entities. (See Discussion in Section II.C. of this release.)

The proposed changes in §§ 356.11, 356.13, 356.21, and 356.22, as well as appendix A to part 356, are being adopted as proposed. Other sections have been renumbered as a result of adding new § 356.15. Additionally, § 356.36 has been amended to reflect approval under the Paperwork Reduction Act of the new information collections in § 356.15.

IV. Procedural Requirements

The rule does not meet the criteria for a ''significant regulatory action'' pursuant to Executive Order 12866.

Although the rule was published in proposed form to secure the benefit of public comment, the notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

The collection of information contained in this rule, in § 356.15, has been reviewed and approved by the Office of Management and Budget under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under Control Number 1535–0112. Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

This information is being collected by the Department in order to determine the amount of a Treasury security controlled by an investment adviser bidding competitively in an auction for that security. The information will be used for the purpose of determining the award to be made as the result of a competitive bid for a security. Responses to the collection of information are required in order for the potential respondent to purchase securities. Information concerning securities holdings and transactions is protected against disclosure under Treasury regulations (31 CFR Part 323) and in certain instances, the Privacy Act. The information may be disclosed only as authorized by law.

The burden hours estimated in the notice of proposed rulemaking have been reduced as a result of a change in the final rules that increases the number of accounts that would be eligible for the reporting exclusion. This change was made in response to a comment received from the public.

Estimated total annual reporting burden: 100 hours.

Estimated average annual burden hours per respondent: 5 hours.

Estimated number of respondents: 20.

Estimated annual frequency of responses: on occasion.

Comments on the accuracy of the estimate for this collection of information or suggestions to reduce the burden should be sent to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Department of the Treasury/Bureau of the Public Debt, Washington, D.C. 20503, with copies to the Government Securities Regulations Staff, Bureau of the Public Debt, Room 515, 999 E Street, NW, Washington DC 20239–0001.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons set forth in the preamble, 31 CFR chapter II, subchapter B, part 356, is amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for part 356 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

2. Section 356.2 is amended by adding in alphabetical order the definition of ''investment adviser'' to read as follows:

§ 356.2 Definitions.

* * * * *

Investment adviser means any person or entity that has investment discretion for the bids or positions of a person or entity not considered part of the investment adviser under the bidder definitions in Appendix A of this part. Investment discretion includes determining what, how many, and when securities shall be purchased or sold. A person or entity managing investments for itself is not considered an investment adviser for such investments. Where a person is employed or supervised by an entity in connection with his activities as an investment adviser, such person is considered to be part of that entity.

* * * * *

3. Section 356.11(a)(1) is amended by revising the second sentence to read as follows:

§ 356.11 Submission of bids.

(a) *General.*

(1) * * * Except as otherwise provided, tenders must be submitted in an approved format, including the use of preassigned identification numbers, where applicable. * * *

* * * * *

4. Section 356.13 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a). The last two sentences of newly redesignated paragraph (a) are revised to read as follows:

§ 356.13 Net long position.

(a) *Reporting net long positions.* * * * In cases where a bidder that is required to report the amount of its net long position has more than one bid, the bidder's total net long position should be reported in connection with only one bid. A bidder that is a customer must report its reportable net long position through only one depository institution or dealer. (See § 356.14(c).)

* * * * *

5. Sections 356.15 and 356.16 are redesignated as §§ 356.16 and 356.17 respectively and new § 356.15 is added to read as follows:

§ 356.15 Bidding through investment advisers.

(a) *General.* Where bids or positions of a person or entity are controlled by an investment adviser, such bids or positions are considered to be a controlled account, separate from the bids and positions of any person or entity with which they would otherwise be associated under the bidder definitions in Appendix A of this part. The investment adviser may bid for controlled accounts by including, in a bid in the adviser's name, amounts that it is investing for the controlled accounts. The investment adviser may also bid for controlled accounts in the names of such accounts. Where bids are in an investment adviser's name, the investment adviser is considered the bidder for such bids and, where bids are in the name of a controlled account, the named controlled account is considered the bidder, for all purposes of this part 356, except as specified in this § 356.15.

(b) *Noncompetitive and competitive bidding.* Regardless of whether the bid for a controlled account is in the name of the investment adviser or in the name of the controlled account, such account may not be bid for both noncompetitively and competitively in the same auction. In addition, such account is subject to the noncompetitive bidding restrictions and award limitations contained in §§ 356.12(b) and 356.22(a).

(c) *Reporting net long positions.* In calculating the amount of its bids and positions for purposes of the net long position reporting requirement found in § 356.13(a), the investment adviser must include, in addition to what would otherwise be included for the investment adviser as a bidder under the bidder definitions, all other competitive bids and positions controlled by the investment adviser. The investment adviser may exclude any net long position less than $100 million of any nonproprietary controlled account unless the adviser is

placing a competitive bid for that account either in the name of the investment adviser or in the name of the account. However, if any net long position less than $100 million of any nonproprietary account not being bid for is excluded, then all net short positions less than $100 million of nonproprietary accounts not being bid for must also be excluded. Regardless of whether the investment adviser bids in its own name or in the name of its controlled accounts, if the net long position is reportable, it must be reported as a total in connection with only one bid in accordance with § 356.13(a).

(d) *Submitting bids for controlled accounts.* Notwithstanding the definition of submitter found in § 356.2, and the restriction against submitting bids for others found in § 356.14, an investment adviser may submit bids, whether in the adviser's own name or in the names of its controlled accounts, directly to a Federal Reserve Bank or the Bureau of the Public Debt, in which case the investment adviser is considered a submitter. In the alternative, the investment adviser may forward such bids to a depository institution or dealer.

(e) *Certifications.* By bidding for a controlled account, an investment adviser is deemed to have certified that it is in compliance with this part and the offering announcement governing the sale and issue of the security. Further, the investment adviser is deemed to have certified that the information provided on the tender or provided to a submitter or intermediary with regard to bids for controlled accounts is accurate and complete.

(f) *Proration of awards.* In auctions where bids at the highest accepted yield or discount rate are prorated under § 356.20(a)(2) of this part, investment advisers that submit bids for controlled accounts in the names of such accounts are responsible for prorating awards for their controlled accounts at the same percentage as that announced by the Department. The same prorating rules apply to controlled accounts as apply to submitters. See § 356.21 of this part.

6. Section 356.21 is amended by revising paragraph (a) to read as follows:

§ 356.21 Proration of awards.

(a) *Awards to submitters.* In auctions where bids at the highest accepted yield or discount rate are prorated under § 356.20(a)(2) of this part, the Federal Reserve Banks are responsible for prorating awards for submitters at the percentage announced by the Department. For example, if 80% is the announced percentage at the highest yield or discount rate, then each bid at that rate or yield shall be awarded 80% of the amount bid. Hence, a bid for $100,000 at the highest accepted yield or discount rate would be awarded $80,000. In all cases, awards will be for, at least, the minimum to hold, and awards must be in an appropriate multiple to hold. Awards at the highest accepted yield or rate are adjusted upwards, if necessary, to an appropriate multiple to hold. For example, Treasury bills may be issued with a minimum to hold of $10,000 and multiples of $1,000. Where an $18,000 bid is accepted at the high discount rate, and the percent awarded at the high discount rate was 88%, the award to that bidder would be $16,000, representing an upward adjustment from $15,840 ($18,000 × .88) to an appropriate multiple to hold. If tenders at the highest accepted rate were prorated at, for example, a rate of 4%, the award for a $100,000 bid would be $10,000, instead of $4,000, in order to meet the minimum to hold for a bill issue.

* * * * *

7. Section 356.22(b) is amended by revising the last sentence to read as follows:

§ 356.22 Limitation on auction awards.

* * * * *

(b) *Awards to competitive bidders.* * * * When the bids and net long positions of more than one person or entity must be combined as required by § 356.15(c), such combined amount will be used for the purpose of this award limitation.

8. Section 356.36 is revised to read as follows:

§ 356.36 Paperwork Reduction Act approval.

The collections of information contained in §§ 356.11, 356.12, 356.13, 356.14, and 356.15 and in appendix A of this part have been approved by the Office of Management and Budget under control number 1535–0112.

9. Appendix A to Part 356 is amended by adding to section (a) a new paragraph between the second and third paragraphs of the introductory text to read as follows:

Appendix A To Part 356—Bidder Definitions

* * * * *

(a) *Corporation*—* * *

For the purpose of this part, a business trust, such as a Massachusetts business trust or a Delaware business trust, is considered to be a corporation.

* * * * *

Dated: July 9, 1996.

John A. Kilcoyne,

Acting Fiscal Assistant Secretary.

[FR Doc. 96–17896 Filed 7–15–96; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–647–F]

RIN 0938–AH11

Medicare Program; Reporting of Interest From Zero Coupon Bonds

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

ACTION: Final rule.

SUMMARY: This final rule requires Medicare providers to report all interest expense and interest income from zero coupon bonds in the cost reporting period in which the interest was accrued. This final rule is necessary to add provisions to the Medicare regulations that specifically address the reporting by providers of interest expense and income from zero coupon bonds.

EFFECTIVE DATE: This regulation is effective on August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Ann Pash, (410) 786–4615.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) defines reasonable cost for any service under Medicare as the cost actually incurred, excluding any cost unnecessary in the efficient delivery of needed health services. That section of the Act also provides that reasonable costs must be determined in accordance with regulations that establish the methods to be used and the items to be included for purposes of determining which costs are allowable for various types or classes of institutions, agencies, and services. In addition, section 1861(v)(1)(A) of the Act specifies that regulations implementing the principles of reasonable cost payment may provide for the use of different methods in different circumstances. This section of the Act is implemented by regulations at 42 CFR part 413. In particular, § 413.24 establishes the methods to be used and the adequacy of data needed to determine allowable costs for various types or classes of institutions, agencies, and services.

Under Medicare, providers are paid for inpatient and outpatient services that they furnish to beneficiaries under Part A (Hospital Insurance) or Part B (Supplementary Medical Insurance). Currently, most hospitals are paid for their hospital inpatient operating costs and capital-related costs under the prospective payment systems in accordance with sections 1886 (d) and (g) of the Act and regulations at 42 CFR part 412. Under these systems, Medicare payment is made at a predetermined, specific rate for inpatient operating costs and inpatient capital-related costs for each hospital discharge based on the information contained in actual bills submitted. Section 1886(f)(1)(A) of the Act requires us to maintain a system for reporting costs of hospitals paid under the prospective payment systems. This provision is implemented by regulations at § 412.52. Section 412.52 requires all prospective payment system hospitals to meet the cost reporting requirements of §§ 413.20 and 413.24, which include submitting a cost report for each 12-month period.

Hospital outpatient units and hospitals and hospital units that are excluded from the prospective payment systems, as well as most other providers, are generally paid an amount based on the reasonable cost of items and services furnished to beneficiaries, in accordance with section 1861 (v)(1)(A) of the Act, the regulations at 42 CFR part 413, and the Provider Reimbursement Manual. These cost-based providers are subject to the same cost reporting requirements of §§ 413.20 and 413.24 and thus must maintain financial records and statistical data sufficient for the proper determination of costs payable under the Medicare program and submit cost reports on an annual basis.

For cost-based providers (and for prospective payment hospitals during the capital prospective payment system transition period), interest expense on capital indebtedness such as loans for acquiring facilities and equipment or for making capital improvements and on current indebtedness is an allowable cost as set forth at §§ 413.130(a)(7) and 413.153. Interest must be necessary—that is, incurred on a loan made to satisfy the financial need of a provider, and for a purpose reasonably related to patient care. It must also be proper—that is, incurred at a rate not in excess of that which a prudent borrower would have to pay in the money market when the loan was made.

One source of financing for providers is the sale of zero coupon bonds. Similarly, one source of provider investment income is the purchase of zero coupon bonds. The name ''zero coupon bond'' is derived from the fact that there are no coupons issued with these bonds. Zero coupon bonds are issued by government agencies, corporations (including Medicare providers), and banks at a price substantially below the face value of the bond. The difference between the purchase price of a zero coupon bond and the face amount payable at maturity reflects the actual amount of interest and is neither a discount nor an adjustment to the interest rate as with most other bonds. All interest is actually paid when the bond is presented for redemption, at face value, on the date of maturity.

II. Policy Changes

A. Interim Policy

As discussed in detail in our December 13, 1993 proposed rule (58 FR 65150), on December 22, 1989, we issued a Regional Office memorandum for distribution to all intermediaries that allowed providers to choose which method they would use to report interest expense or income from zero coupon bonds—either at maturity in a lump sum, or each year as the interest accrues, as long as their treatment of interest expense is consistent with their treatment of interest income.

We stated that this interim policy would apply to all zero coupon bonds issued or purchased on or after December 22, 1989, as well as to any zero coupon bond interest reported on cost reports that could be amended or reopened as of December 22, 1989. Thus, a provider's options under the interim policy are as follows:

- *Bonds Issued before December 22, 1989:* For interest from zero coupon bonds issued before December 22, 1989, that is reportable on cost reports that could be amended or reopened as of December 22, 1989, a provider could request amendment or reopening and specify the method to be used for reporting interest expense and income on zero coupon bonds. Conversely, by not requesting an amendment or reopening, a provider could choose to continue the method already in use.
- *Bonds Issued on or after December 22, 1989, and before February 22, 1991:* For all zero coupon bonds issued on or after December 22, 1989, but before February 22, 1991, a provider could choose the method it would use to report interest expense or income, as discussed above. Therefore, in cases where a provider's cost reports are not amended, or cost report determinations are not reopenable, on or after December 22, 1989, the provider's preference would be evidenced by the choice the provider exercises for the first zero coupon bonds issued or purchased on or after December 22, 1989, but before February 22, 1991. In either case, once the provider has exercised its choice, the method of reporting interest accrued on all zero coupon bonds issued or purchased from that date through February 21, 1991, should be consistent with that choice.

B. Current Policy (Applicable to Bonds Issued on or after February 22, 1991)

We revised the Medicare Provider Reimbursement Manual (Transmittal No. 358) in February 1991 to establish our current policy. In developing the manual issuance, we concluded that it was not appropriate to continue to permit the provider to report accrued interest in a lump sum at maturity because the interest accrues during the life of the bond. We now require that, for zero coupon bonds issued or purchased by providers on or after February 22, 1991, all interest expense and income must be reported in the cost reporting period in which the interest accrues.

Neither the policy enunciated in our December 22, 1989, Regional Office memorandum nor the one in the Provider Reimbursement Manual has been set forth in regulation.

III. Provisions of the Proposed Rule

On December 13, 1993, we published in the Federal Register (58 FR 65150) a proposed rule to add to the Medicare regulations at 42 CFR 413.153 provisions that specifically address the reporting by providers of interest expense and interest income from zero coupon bonds. We also proposed to add the definition of ''zero coupon bond'' to the regulations.

Under our proposal, for zero coupon bonds issued on or after the effective date of a final regulation, interest expense incurred to finance capital-related costs would be an allowable expense, and interest income earned for investment purposes would be an allowable offset, in the cost reporting period in which the interest accrues. We proposed that earned interest from zero coupon bonds must be offset against all allowable interest expense as set forth in § 413.130(g)(2). In addition, interest expense must meet the definition of ''necessary'' in § 413.153(b)(2)(iii).

For cost reporting purposes, we proposed to require the use of the effective interest method rather than the straight line method. Under the straight line method, the interest for a computation period is computed by dividing the total interest payable (the

value at maturity less the amount paid) by the number of compensation periods. This method recognizes the average interest expense or income for each compensation period.

Under the effective interest method, we indicated that in each computation period (as specified by the bond instrument) we would apply the interest rate to the sum of the face amount and the accrued interest from prior periods. If the interest computation period involves portions of more than one cost reporting period, the amount of interest for that computation period would be apportioned to each cost reporting period. This method recognizes the actual accrual of interest expense or income for each interest computation period (as specified by the bond instrument) throughout the life of the bond to maturity. A constant effective yield rate is determined and applied to the book value (outstanding loan balance including prior accrued interest) of the bond at the beginning of each period to determine the total interest for the period. We also proposed to set forth in the regulations under proposed § 413.153(f)(3)(iv) an example of the computation of interest using the effective interest method.

IV. Analysis of and Responses to Public Comments

We received two letters of comment on the December 22, 1993 proposed rule. These comments and our responses are discussed below.

Comment: One commenter questioned whether the effective date of the final regulation would be the February 22, 1991, effective date of the manual provisions. The commenter also wanted us to explain the current applicability of the interim policies in the Regional Office memorandum dated December 22, 1989, and in the Provider Reimbursement Manual for the interim period before the effective date of this final rule. The commenter stated that if the final rule has an effective date other than February 22, 1991, the manual provisions would be inconsistent with the regulation.

Response: This final rule is effective on August 15, 1996 and applies to bonds issued on and after that date. This date is not inconsistent with the effective dates of HCFA's prior policies addressing reimbursement for zero coupon bond interest. The reimbursement policies in existence before the effective date of this final rule apply to cost reporting periods that precede the promulgation of this final rule, and the policies continue in force only with respect to bonds issued before August 15, 1996. The December 22, 1989 memorandum provided that for interest from zero coupon bonds issued before December 22, 1989 (that is reportable on a cost report that can be reopened on or after December 22, 1989), a provider could request amendment or reopening to specify the method of reporting the interest expense and income on the zero coupon bonds.

The memorandum did not establish a time limitation on these requests. However, in order to effectuate an orderly implementation of this rule, we are requiring providers to submit requests for reopening or amendment within 60 days of publication of this final rule, that is by September 16, 1996. Any request received after that date will not be considered timely and will not be honored.

The provisions of this final rule supersede any agency policy that is inconsistent with the regulation's terms.

Comment: One commenter stated that while the preamble and the regulation text of the proposed rule referred to interest expense incurred to finance capital-related costs, section 213(A) of the Provider Reimbursement Manual refers to ''issuing zero coupon bonds for a purpose related to patient care.'' The commenter asked for consistent use of language as the Manual wording implies that interest expense for operating purposes, such as working capital, is also an allowable cost.

Response: The language in section 213(A) of the Manual is correct. Zero coupon bonds may be used to provide funds for either capital-related costs or operating costs, as long as the costs are for a purpose related to patient care. We have revised § 413.153(f)(1) to clarify that interest expense incurred to provide funds for ''patient care-related costs'' is an allowable expense.

Comment: One commenter suggested that in the final rule we reference a specific exception to our general policy on the liquidation of liabilities, established at section 2305 of the Provider Reimbursement Manual, since the actual payment of interest expense will not be made until the bonds mature.

Response: Section 2305 of the Manual requires that short-term liabilities be liquidated within 1 year of the end of the cost reporting period in which the liability is incurred, subject to certain specified exceptions. With zero coupon bonds, the interest accrues during the life of the bond but is not payable until maturity or redemption of the bond. Since there are no specified interest payments due during the life of the bond, the liability for payment does not occur until the bond matures or is redeemed. There is no short-term liability. We note, in section 2305, that it does not apply to zero coupon bonds until they mature or are redeemed.

Comment: One commenter objected to the language in § 413.153(f)(2), which specified that earned interest from zero coupon bonds must be offset against all allowable interest expense. The commenter's concern was that in the case of a bond defeasance (an advance refunding of debt) there are specific guidelines regarding the treatment of costs associated with advance refunding and with the allocation of investment income. These guidelines are laid out in the Provider Reimbursement Manual in sections 2806.G.1, 233, and 213. The commenter believed that the proposed regulations are in conflict with specific instructions for bond defeasance.

Response: The commenter is correct. In an advance refunding of debt (which includes bond defeasance), the investment income is offset against the interest expense of both the refunded debt and the refunding debt and is included in determining the gain or loss on the advanced refunding rather than included with other investment income and prorated under § 413.130(g)(2). We agree that some changes in the language of the regulations are needed to better reflect the treatment of investment income in an advance refunding. We have removed the reference to ''all'' in § 413.153(f)(2) and revised the section to indicate that if zero coupon bonds are purchased with the proceeds of an advance refunding, offset of the investment income is required under § 413.153(b)(2)(iii), but the investment income is not prorated under § 413.130(g)(2).

Comment: One commenter raised a question about the current applicability of the section of the memorandum dated December 22, 1989, that allowed a provider, under certain circumstances, to reopen or amend a cost report to specify the method to be used for reporting interest expense and income on zero coupon bonds issued before December 22, 1989.

Response: The memorandum dated December 22, 1989, provided that for interest from zero coupon bonds issued before December 22, 1989, that is reportable on a cost report that can be reopened on or after December 22, 1989, a provider could request amendment or reopening to specify the method of reporting the interest expense and income on the zero coupon bonds. The memorandum did not contain a time limitation on the requests. However, in order to effectuate an orderly implementation of these provisions, we are requiring providers to submit request for reopenings or amendments

within 60 days of publication of this final rule. Any request received after that date will be considered not timely filed and will not be honored.

V. Provision of the Final Regulations

This final rule adopts the provisions of the proposed rule as final, with the following minor revisions:

- In § 413.153(f)(1), we have changed the phrases ''capital-related cost'' to ''patient care-related cost'' and to ''provide funds'' rather than ''finance''.
- In § 413.153(f)(2), we deleted the word ''all'', rewrote part of the section for clarity, and added an appropriate cross-reference provision for handling zero coupon bonds purchased with the proceeds of an advance refunding of debt.

VI. Regulatory Impact

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

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that will have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area.

In the December 22, 1993 proposed rule, we concluded that the proposed rule changes would not have a significant economic impact on a substantial number of small entities, and would not have a significant impact on the operations of a substantial number of small rural hospitals. As discussed above, we received two letters of comments on the proposed rule, neither of which objected to our conclusion that these changes will not have a significant impact. This final rule adopts the provisions at the proposed rule with only minor technical changes. Therefore, we have determined, and certify, that this final rule will not have a significant economic impact on a substantial number of small entities. Also, this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or a rural hospital impact analysis.

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

Under the provisions of Public Law 104–121, we have determined that this final rule is not a major rule.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the Federal Register and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the collection burden on the affected public, including automated collection techniques.

The overall recordkeeping and information collection burden associated with filing the provider cost report has been approved by OMB through August 31, 1996 under OMB No. 0938–0050.

In the December 13, 1993, proposed rule (58 FR 65150), we indicated that there would be no additional reporting burden on those providers who have zero coupon bonds and solicited comments. No comments were received.

Section 413.153 defines when interest expense is an allowable cost and how interest income is treated. The changes to this section represent a clarification of the current policy on interest expense and income as it applies to zero coupon bonds. It does not change the information collection and recordkeeping requirements. The information and recordkeeping required is that which is already required to file a cost report and approved by OMB as indicated above.

List of Subjects in 42 CFR Part 413

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

42 CFR chapter IV, part 413, is amended as follows:

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

A. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

Subpart G—Capital-Related Costs

B. Section 413.153 is amended by adding paragraphs (b)(4) and (f) to read as follows:

§ 413.153 Interest expense.

* * * * *

(b) *Definitions*—* * *

(4) *Zero coupon bonds.* Zero coupon bonds are issued by government agencies, corporations, and banks at a price substantially below the face value. The difference between the purchase price and the face value reflects the actual amount of interest and is neither a discount nor an adjustment to the interest rate as with other bonds. Interest is paid at maturity when the bond is redeemed at face value.

* * * * *

(f) *Zero coupon bonds*—(1) *Interest on bonds issued on or after August 15, 1996.* For zero coupon bonds issued on or after August 15, 1996, interest expense incurred to provide funds for patient care-related costs is an allowable expense, and interest income earned for investment purposes is an allowable offset, in the cost reporting period in which the interest accrues.

(2) *Interest income offset.* Interest income from zero coupon bonds must be offset against allowable interest expense as prescribed in paragraph (b)(2) of this section and in § 413.130(g)(2). If zero coupon bonds are purchased with the proceeds of an advanced refunding of debt, offset of the investment income is required under § 413.153(b)(2)(iii), but the investment income is not prorated under § 413.130(g)(2).

(3) *Use of effective interest method.* (i) Interest expense and interest income from zero coupon bonds that are reported as they accrue must be amortized using the effective interest method. This method recognizes the actual accrual of interest expense or income for each interest computation period (as specified by the bond instrument) throughout the life of the bond.

(ii) A constant effective yield rate is determined and applied to the book value (outstanding loan balance including prior accrued interest) of the bond at the beginning of each period to determine the total interest for the period.

(iii) If the interest computation period involves portions of more than one cost reporting period, the amount of interest for that computation period shall be apportioned to each cost reporting period.

(iv) An example of the computation of interest using the effective interest method follows:

Facts

Life of zero coupon bond: 15 years.

Value at maturity: $50,000.

Bondholder pays $6,996 for the bond.

Annual interest rate is 13.5506% compounded semi-annually.

From the table below, interest for the first year would be $980.11 ($474.00 plus $506.11).

Col 1 Six-month periods	Col 2 Book value beginning of period	Col. 3 Effective interest*	Col. 4 Book value end of period (columns 2 + 3)
1	$6,996.00	$474.00	$7,470.00
2	7,470.00	506.11	7,976.11
3	7,976.11	540.40	8,516.51
4	8,516.51	577.02	9,093.53
29	43,855.94	2,971.37	46,827.31
30	46,827.31	3,172.69	50,000.00

*Computed by multiplying the book value at the beginning of each period (Column 2) by 6.7753% (the annual interest rate of 13.5506% 2 = 6.7753%).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 23, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 96–17895 Filed 7–15–96; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 40

[OST Docket No. OST–96–1532]

RIN 2105–AC37

Amendments to Laboratory Certification Requirements

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes provisions that would permit drug testing laboratories located outside the U.S. to participate in the Department's drug testing program. The Department of Transportation would take action permitting the laboratories to participate based on recommendations from the Department of Health and Human Services.

EFFECTIVE DATE: This rule is effective on July 16, 1996.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Room 10424, (202–366–9306); 400 7th Street, SW., Washington DC 20590; or Mary Bernstein, Director, Office of Drug Enforcement and Program Compliance, same street address, Room 10317, (202) 366–3784.

SUPPLEMENTARY INFORMATION: Recently, the Federal Highway Administration (FHWA) issued a final rule applying its drug and alcohol testing requirements to foreign-based drivers operating in the United States (60 FR 49322; September 22, 1995). Under the rule, Canadian and Mexican drivers who come into the United States will be subject to testing on the same basis as U.S. drivers, beginning July 1, 1996, for employees of larger carriers and a year later for employees of smaller carriers.

In any case, Canadian and Mexican employers who collect drug urine specimens under FHWA rules will be able to have the specimens tested in U.S. laboratories certified by the Department of Health and Human Services (DHHS), on the same basis as U.S. employers. In the interest of facilitating program implementation, the Department hopes that it will be possible for Mexican and Canadian laboratories to participate in the program as well. (If Canadian and Mexican laboratories are not authorized to participate in the program as provided in this rule, Canadian and Mexican employers must send specimens to DHHS-certified laboratories in the U.S. for testing.)

Canadian and Mexican laboratories may participate in the DOT-mandated testing program only if their participation is consistent with the Department's statutory authority. Strict safeguards for the accuracy and quality of laboratory tests are a key mandate of the Omnibus Transportation Employee Testing Act of 1991.

The motor carrier portion of the Act (49 U.S.C. 31306(b), which parallels the other modal sections of the Act), provides that, in carrying out the requirement to establish a motor carrier drug testing program , the Secretary ''shall'' develop requirements ''that shall''

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing; * * *

(C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section.

(3) require that a laboratory involved in testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests; * * *

The language of these provisions is clearly mandatory, a point which the legislative history reinforces. Senate Report 102–54 (May 2, 1991), concerning S. 676, the bill that became the Act, notes, in response to concerns about testing accuracy and false positive tests, that ''By incorporating laboratory certification and testing procedures developed by HHS and DOT * * * the Committee has taken affirmative steps to ensure accuracy.'' (S. Rept. 102–54 at 7.) Later, in speaking of the laboratory and other safeguards in the bill, the report says that

These safeguards are critical to the success of any testing program. They are designed to ensure that * * * there is accountability and accuracy of testing. They provide what the Committee believes are the basic minimums * * * the Secretary is urged to carefully review the safeguards in any testing program to ensure they are adhered to in a vigorous manner. (*Id.* at 31)

More specifically on laboratory matters, the Committee said that

Incorporating the HHS guidelines relating to laboratory standards and procedures * * * as DOT has done in Part 40 * * * is an essential component of the procedural safeguards specified in this subsection.* * * Realizing that these guidelines may be subject to future modification, the Committee has acted to specify that the basic elements of certain provisions now in effect are mandated, including the need for comprehensive standards and procedures for all aspects of laboratory testing of drugs * * * [and] the establishment of standards and procedures

for the periodic review of laboratories and the development of criteria for laboratory certification or revocation of such certification. (*Id.* at 32)

It is noteworthy that Congress explicitly accepts an active DOT role in establishing and carrying out the laboratory-related provisions of the statute. What is mandatory is not that one agency or the other play any particular administrative role in the process, but that the protections embodied in the DHHS guidelines be applied, through DOT's rules, to participants in the program. There is no bar in the statutory language to a DOT rule assigning to DOT the task of reviewing and certifying laboratories, so long as these actions by DOT are based on the conformity of the laboratories to DOT's incorporation of DHHS laboratory standards. Consequently, DOT has broad legal discretion to take action in the area of drug testing procedures, extending to the certification of laboratories.

DOT and DHHS are working closely together with respect to the potential certification of foreign laboratories. As the two agencies envision the process, there could be two different ways in which foreign laboratories become certified. First, DHHS could review the application of the foreign laboratory, in the same manner that it reviews applications from U.S. laboratories. If the laboratory meets DHHS standards, DHHS would recommend that DOT certify the laboratory under DOT authority. (The direct certifying authority of DHHS extends only to laboratories that would participate in the Federal employee testing program.) Second, DHHS could review the standards and procedures of a foreign certifying agency. If DHHS determined that the foreign agency had standards, procedures, and authority equivalent to those of DHHS, DHHS would recommend to DOT that DOT deem the foreign agency to be an equivalent certifying authority. Laboratories that the foreign agency certified would then be permitted to participate in the DOT testing program.

DOT and DHHS have discussed laboratory issues with officials of Transport Canada, the Canadian Trucking Association and its affiliates, and the Standards Council of Canada (a potential laboratory certification organization in Canada), as well as representatives of some Canadian laboratories. We have also had discussions with Mexican officials concerning program and laboratory matters. Following these discussions, the Department proposed a change to 49 CFR 40.39 to accommodate the possibility that foreign laboratories may be able to participate in DOT-mandated drug testing (61 FR 13809; March 28, 1996).

The NPRM proposed to add a new paragraph to authorize the participation of foreign laboratories in the DOT drug testing program in the two circumstances outlined above (i.e., based on a recommendation by DHHS that a particular laboratory meets DHHS certification requirements, or based on a certification by a foreign certifying organization whose standards and process had been deemed equivalent to those of DHHS). The Department received three comments on the proposal, all of which supported it. Two of the comments sought assurances that the rule would result in foreign laboratories that fully met all DHHS requirements, including periodic inspections and re-certifications.

The Department is adopting the proposal without change. The rule will result in full compliance with DHHS procedures and standards for laboratory certification by foreign laboratories authorized to participate in the program, including inspection and re-certification provisions. It should be emphasized that the rule does not have the effect of actually certifying any foreign laboratories. It simply puts in place a mechanism that would allow such laboratories to participate, if and when DOT and DHHS determine that all issues had been resolved satisfactorily, in full compliance with DHHS requirements for laboratory certification. Once authorized to participate in the DOT drug testing program by this process, a Canadian or Mexican laboratory would be on the same footing as any DHHS-certified laboratory concerning program participation, including the ability to test specimens collected in the U.S. by U.S. employers.

Regulatory Process Matters

The proposed rule is considered to be a nonsignificant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11034. It also is a nonsignificant rule for purposes of Executive Order 12886. The Department certifies, under the Regulatory Flexibility Act, that the rule does not have a significant economic effect on a substantial number of small entities. The rule does not impose any costs or burdens on regulated entities, since it deals with a subject (applying for laboratory certification) that is completely voluntary. Laboratories that are able to meet DHHS standards are typically not small entities, in any case. The rule makes it possible for Canadian and Mexican motor carriers to use laboratories that are closer to them than laboratories in the U.S., which may result in somewhat lower costs for these carriers, which include some small entities. The rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The rule is being made effective immediately. The Department has good cause to do so, on the basis that in order to give the Department the opportunity to authorize foreign laboratories to participate in the DOT drug testing program by the July 1, 1996, compliance date for Canadian and Mexican motor carriers, the Department needs this rule to be in place. Making this rule effective now will permit the Department to respond in a timely way if DHHS determines that foreign laboratories or certifying organizations meet DHHS standards. Even if foreign laboratories are not in a position to be approved for participation by July 1, it is important that the Department's authority to approve foreign laboratories be in place, as a matter of good faith on our part toward our trading partners.

List of Subjects in 49 CFR Part 40

Drug Testing, Alcohol Testing, Reporting and Recordkeeping Requirements, Safety, Transportation.

For the reasons set forth in the preamble, 49 CFR part 40 is amended as follows:

1. The authority citation for part 40 continues to read as follows:

Authority: 49 U.S.C. 102,301,322; 49 U.S.C. app. 1301nt., app. 1434nt., app. 2717, app. 1618a.

2. Section 40.39 is revised to read as follows:

§ 40.39 Use of certified laboratories.

(a) Except as provided in paragraph (b) of this section, employers subject to this part shall use only laboratories certified under the DHHS ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' April 11, 1988, and subsequent amendments thereto.

(b) Employers subject to this part may also use laboratories located outside the United States if—

(1) The Department of Transportation, based on a written recommendation from DHHS, has certified the laboratory as meeting DHHS laboratory certification standards or deemed the laboratory fully equivalent to a laboratory meeting DHHS laboratory certification standards; or

(2) The Department of Transportation, based on a written recommendation

from DHHS, has recognized a foreign certifying organization as having equivalent laboratory certification standards and procedures to those of DHHS, and the foreign certifying organization has certified the laboratory, pursuant to those equivalent standards and procedures.

Issued this 9th day of July 1996, at Washington, DC.

Federico Peña,

Secretary of Transportation.

[FR Doc. 96–18063 Filed 7–15–96; 8:45 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 61, No. 137
Tuesday, July 16, 1996

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–001–1]

Corn Cyst Nematode

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to remove the regulations that quarantine certain areas of the United States because of the corn cyst nematode and that restrict the interstate movement of certain articles, such as soil, from the quarantined areas. We are proposing this action because this pest is present in only five counties in two States and appears to be adequately contained by the two States affected. This action would relieve restrictions on the interstate movement of regulated articles.

DATES: Consideration will be given only to comments received on or before August 15, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–001–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–001–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Ms. Coanne O'Hern, Assistant Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1228, (301) 734–8247, or e-mail: cohern@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Corn cyst nematode (*Heterodera zeae*) is a cyst-forming nematode that attacks the roots of host plants such as corn, barley, oats, and sorghum. The nematode bores into the roots of the plants and feeds on the plant juices, resulting in poor root development and poor plant growth and potentially causing severe crop losses. The corn cyst nematode is spread through the movement of infested soil and equipment carrying infested soil.

The corn cyst nematode was first detected in the United States in Kent County, MD, in 1981. Subsequent surveys found infestations in Harford, Cecil, and Queen Anne's Counties, MD. Between 1981 and 1983, all 3 counties in Delaware, 13 in Maryland, 11 in New Jersey, 11 in Pennsylvania, and 2 in Virginia were surveyed for corn cyst nematode. The results of these surveys were negative. Since 1983, Maryland has completed surveys in all of its counties, and no additional counties have been found infested. In 1992, corn cyst nematode was confirmed on one property in Cumberland County, VA. Delimiting surveys have been conducted on adjacent properties and all properties leased or farmed by the owner of the infested property. Surveys were also conducted in corn fields located along the Appomattox River in Appomattox and Prince George's Counties, VA. These additional surveys were negative for corn cyst nematode.

The regulations in 7 CFR 301.90 through 301.90–10 designate areas that are quarantined because of the presence of corn cyst nematode. These regulations also restrict the interstate movement of soil and other articles from the quarantined areas to prevent the spread of corn cyst nematode.

Studies conducted by the Maryland State Agricultural Experiment Station (MAES) indicate that corn cyst nematode may not be an economic pest anywhere in the United States with the possible exception of south Florida and south Texas. This research has shown that corn cyst nematode develops best in soil temperatures of 33 to 36 °C. At soil temperatures below 30 °C, corn cyst nematode does not reproduce quickly enough to cause economic damage. Research conducted by MAES also indicates that corn cyst nematode is easily controlled by crop rotation. One year of a nonhost crop reduces corn cyst nematode populations drastically, and recovery may take several years.

The State of Maryland has established a State quarantine that restricts the movement of possible infested articles from the infested areas in Cecil, Harford, Kent, and Queen Anne's Counties. The owner of the infested property in Cumberland County, VA, has entered into a compliance agreement with the State of Virginia that restricts the movement from the property of farm machinery and other articles that may carry infested soil.

Under these circumstances, we believe that the regulations in § 301.90 through § 301.90–10 are no longer necessary to prevent the interstate spread of corn cyst nematode. We therefore propose to remove these regulations.

Executive Order 12866 and Regulatory Flexibility Act

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

This proposed rule change is not expected to have an effect on any entities in the regulated areas. This is because the States of Maryland and Virginia have restrictions in place to prevent the movement of potentially infested articles from the infested areas in Cecil, Harford, Kent and Queen Anne's Counties, MD, and Cumberland County, VA.

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

Executive Order 12372

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) State and local laws and regulations will not be preempted; (2) no retroactive effect will be given to this

rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

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 proposed to be amended as follows:

PART 301—[AMENDED]

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).

Subpart—Corn Cyst Nematode [Removed]

2. Subpart—Corn Cyst Nematode, consisting of §§ 301.90 and 301.90–1 through 301.90–10, would be removed.

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

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–17918 Filed 7–15–96; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

Radiography Equipment Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Public workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff plans to convene a public workshop with representatives of Agreement States, NRC radiography licensees, radiography equipment manufacturers and other interested persons to discuss and solicit comments and concerns relating to NRC regulations for radiography, specifically § 34.20. The purpose of the workshop is to establish whether there is a need for rulemaking related to design and control of radiography equipment.

DATES: The workshop will be held on August 29, 1996. The meeting time is: 8:30 am–5:00 pm or earlier if the business of the workshop is concluded at an earlier time.

ADDRESSES: Holiday Inn & Hotel Suites, 7787 Katy Freeway (I–10 West), Houston, Texas 77024. Telephone 1–800–822–8373 or (713) 681–5000.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Trottier, Office of Nuclear Regulatory Research, Mail Stop T–9C24, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, Telephone: (301) 415–6232.

SUPPLEMENTARY INFORMATION: During the currently ongoing revision of NRC regulations on radiography, 10 CFR Part 34, numerous comments were received from NRC and Agreement State licensees and manufacturers of radiography devices that expressed concerns in regard to § 34.20 of the regulations entitled ''Performance requirements for radiography equipment.'' Many of these comments related to the proposed requirements on accessories, referred to in the regulation as ''associated equipment,'' to the labelling of the various components, and to the modification of radiography devices and components. In addition, the NRC has received and is requesting public comment on a petition for rulemaking filed by Amersham Corporation (61 FR 30837) Docket No. PRM–34–5, that requests that the NRC amend its regulations to remove reference to ''associated equipment'' from § 34.20. In light of this petition and comments received during the development of the Part 34 final rule, the NRC is re-evaluating the applicability of the standard ANSI N432–1980 to associated equipment.

Conduct of the Meeting: The workshop will be chaired by Cheryl A. Trottier. The workshop will be conducted in a manner that will expedite the orderly conduct of business. A transcript of the workshop will be available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001 on or about September 30, 1996.

The following procedures apply to public attendance at the workshop:

1. Questions or statements from attendees other than participants will be entertained as time permits.

2. Seating for the public will be on a first come, first-served basis.

Dated at Rockville, Maryland on this 10th day of July, 1996.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 96–18006 Filed 7–15–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–72–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all deHavilland DHC–8–100 and –300 series airplanes, that currently requires repetitive inspections to detect loose bolts at the retract actuator support fitting of the main landing gear, and various follow-on actions, if necessary. That AD was prompted by a report of loose actuator supporting bolts and cracks in the relief radius of the boss at the forward surface of the fittings. This action would add a requirement to accomplish a new modification, which, when accomplished, would terminate the repetitive inspections. The actions specified by the proposed AD are intended to prevent loss of hydraulic systems and reduced controllability of the airplane due to loose actuator support bolts or cracks in the relief radius of the boss at the forward surface of the fittings.

DATES: Comments must be received by August 26, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe and Propulsion Branch, ANE–173, FAA, New York Aircraft Certification Office, Engine and

Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7523; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–72–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 12, 1991, the FAA issued AD 91–20–12, amendment 39–8046 (56 FR 47901, September 23, 1991), applicable to all de Havilland Model DHC–8–100 and –300 series airplanes. That amendment superseded AD 91–15–51, amendment 39–8016 (56 FR 41928, August 26, 1991), to add de Havilland Model DHC–8–300 series airplanes to the applicability; to require repetitive inspections to detect loose bolts at the retract actuator support fitting of the main landing gear (MLG); and, if necessary, to require a magnetic particle inspection, replacement of loose bolts, and replacement of cracked fittings. That action was prompted by a report of loose actuator supporting bolts and cracks in the relief radius of the boss at the forward surface of the fittings. The requirements of that AD are intended to prevent these conditions, which could result in loss of the hydraulic systems and reduced controllability of the airplane.

In the preamble to AD 91–20–12, the FAA indicated that inspections of the MLG's were considered ''interim action'' and that further rulemaking action was being considered. As a follow-on action from that determination, the FAA is now proposing additional, final action.

Explanation of Relevant Service Information

Since the issuance of AD 91–20–12, de Havilland has issued Service Bulletin S.B. 8–54–34, Revision 'A', dated July 21, 1995, which describes procedures for modification of the frame and the retraction actuator fitting of the MLG. This modification involves removing the enamel application from the interface surfaces of the frame and fitting.

This modification will allow the bracket to seat properly on the MLG frame and will prevent preload stress in the bracket.

De Havilland has also issued Service Bulletin S.B. 8–54–27, Revision 'B', dated August 22, 1994, which also describes procedures for modification of the frame and the retraction actuator fitting of the MLG. This modification involves installing modified brackets with improved fasteners. This modified bracket incorporates a material change to preclude hydrogen embrittlement cracking.

Accomplishment of these modifications eliminates the need for the repetitive inspections.

Transport Canada Aviation classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–91–25R2 in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of the Requirements of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 91–20–12. The proposed AD would continue to require repetitive inspections to detect loose bolts at the retract actuator support fitting of the MLG; and, if necessary, to require a magnetic particle inspection, replacement of loose bolts, and replacement of cracked fittings. In addition, this new proposed AD would require modification of the frame and the retraction actuator fitting of the MLG, which would constitute terminating action for the repetitive inspection requirements. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Operators should also note that the applicability of the proposed rule differs from the current applicability of AD 91–20–12. The proposed AD would limit the applicability to include only those airplanes having serial numbers 3 through 400 inclusive, except serial number 391. The FAA points out that, during production, Modifications 8/1830 and 8/2049 were installed on Model DHC–8–100 and –300 series airplanes having serial number 400 and subsequent; therefore, these airplanes are not subject to the requirements of this AD.

Differences Between Proposed AD and Relevant Service Information

Operators should note that, unlike the effectivity listing specified in de Havilland Service Bulletin 8–54–27, Revision 'B', dated August 22, 1994, the proposed AD would require that the modification be accomplished on Model DHC–8–100 and –300 series airplanes, serial numbers 3 through 400 inclusive, except serial number 391. The FAA points out that de Havilland inadvertently excluded the serial numbers of some affected airplanes from the effectivity listing of its service bulletin.

Cost Impact

There are approximately 125 de Havilland Model DHC–8–100 and –300 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 91–20–12, and retained in this proposed AD, take approximately

1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures the cost impact on U.S. operators of the actions currently required is estimated to be $7,500, or $60 per airplane.

The installation of modified brackets with new fasteners that would be required by this proposal would take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,500 per airplane. Based on these figures, the cost impact of the modification requirement of this proposal on U.S. operators is estimated to be $512,500 or $4,100 per airplane.

The removal of the enamel application (Modification 8/1830) that would be required by this proposal would take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $37,500, or $300 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8046 (56 FR 47901, September 23, 1991), and by adding a new airworthiness directive (AD), to read as follows:

De Havilland, Inc.: Docket 95–NM–72–AD, Supersedes AD 91–20–12, Amendment 39–8046.

Applicability: Model DHC–8–100 and –300 series airplanes, serial numbers 3 through 400 inclusive, except serial number 391; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of hydraulic systems and reduced controllability of the airplane due to loose actuator support bolt or cracks in the relief radius of the boss at the forward surface of the fittings, accomplish the following:

(a) For Model DHC–8–100 series airplanes: Within 24 hours after September 9, 1991 (the effective date of AD 91–15–51, amendment 39–8016), inspect the three actuator attachment fitting bolts on the right- and left-hand main landing gears (MLG) to detect loose bolts by applying a torque of not less than 10 foot-pounds to each bolt.

(1) If no loose bolt is found as a result of the inspection required by paragraph (a) of this AD, repeat this inspection thereafter at intervals not to exceed 500 landings.

(2) If any loose bolt is found as a result of the inspection required by paragraph (a) of this AD, accomplish paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD.

(i) Prior to further flight, replace the loose bolt with a new bolt of the same part number.

(ii) Within 250 landings after October 7, 1991 (the effective date of 91–20–12, amendment 39–8046) accomplish paragraphs (a)(2)(ii)(A) and (a)(2)(ii)(B) of this AD.

(A) Remove the associated support fitting having part number (P/N) 85410084.

(B) Perform a magnetic particle inspection to detect cracks throughout the fitting, paying particular attention to the relief radius at the forward surface boss. If any crack is detected as a result of this inspection, prior to further flight, replace the fitting with a serviceable part.

(iii) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 500 landings.

(b) For Model DHC–8–300 series airplanes: Within 250 landings after October 7, 1991 (the effective date of AD 91–20–12, amendment 39–8046), inspect the three actuator attachment fitting bolts on the right- and left-hand MLG's to detect loose bolts by applying a torque of not less than 10 foot-pounds to each bolt.

(1) If no loose bolt is found as a result of the inspection required by paragraph (b) of this AD, repeat this inspection thereafter at intervals not to exceed 500 landings.

(2) If any loose bolt is found as a result of the inspection required by paragraph (a) of this AD, accomplish paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this AD.

(i) Prior to further flight, replace the loose bolt with a new bolt of the same part number.

(ii) Within 250 landings after October 7, 1991 (the effective date of AD 91–20–12, amendment 39–8046), accomplish (b)(2)(ii)(A) and (b)(2)(ii)(B) of this AD.

(A) Remove the associated support fitting (P/N 85410084 for Model DHC–8–301 airplanes, and P/N 85411701 for Model DHC–8–311 airplanes).

(B) Perform a magnetic particle inspection to detect cracks throughout the fitting, pay particular attention to the relief radius at the forward surface boss. If any crack is detected as a result of this inspection, prior to further flight, replace the fitting with a serviceable part.

(iii) Repeat the inspection required by paragraph (b) of this AD thereafter at intervals not to exceed 500 landings.

(c) Within 90 days after the effective date of this AD, accomplish paragraphs (c)(1) and (c)(2), as applicable, of this AD. Accomplishment of this paragraph constitutes terminating action for the inspections required by paragraphs (a) and (b) of this AD.

(1) For Model DHC–8–100 and –300 series airplanes, having serial numbers 3 through 400 inclusive, except serial number 391: Modify the frame and the retraction actuator fitting of the MLG, in accordance with de Havilland Service Bulletin S.B. 8–54–34, Revision 'A', dated July 21, 1995.

(2) For Model DHC–8–100 and –300 series airplanes, having serial number 3 through 332 inclusive: Modify the retraction actuator fitting of the MLG, in accordance with de Havilland Service Bulletin S.B. 8–54–27, Revision 'B', dated August 22, 1994.

(d) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

(e) Special flight permits may be used in accordance with section 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. Any loose bolt found as a result of the inspections required by paragraph (a) or (b) of this AD, must be retorqued prior to application for a special flight permit. The upper bold, P/N 81812–7–22, must be retorqued to 36–39 foot-pounds; the lower two bolts, P/N 81812–6–22, must be retorqued to 22–25 foot-pounds.

Issued in Renton, Washington, on July 10, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17983 Filed 7–15–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 290

RIN 1076–AD14

Tribal Revenue Allocation Plans

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; correction.

SUMMARY: This document modifies the preamble to a proposed rule published on June 7, 1996 regarding tribal revenue allocation plans. This correction clarifies that the proposed rule applies prospectively to plans submitted for approval from the effective date of the final rule.

FOR FURTHER INFORMATION CONTACT: Nancy Pierskalla, Management Analyst, Indian Gaming Management Staff Office, at 202–219–4068.

SUPPLEMENTARY INFORMATION: In proposed rule FR Doc 96–14061, beginning on page 29044 in the issue of Friday, June 7, 1996, make the following correction on page 29044:

1. In ''Supplementary Information'' add at the end of the second paragraph the following, ''This rule applies to Tribal Revenue Allocation Plans submitted and approved after the effective date of the final rule. Previously approved Tribal Revenue Allocation Plans need not be resubmitted for review and approval by the Bureau of Indian Affairs and continue to remain in effect. However, amendments to approved Tribal Revenue Allocation Plans will need to be submitted to the BIA for approval under the proposed regulation.''

Dated: July 1, 1996

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–17430 Filed 7–15–96; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 53

[Notice No. 831]

RIN 1512–AB42

Manufacturers Excise Taxes-Firearms and Ammunition (95R–055P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rule; request for comments on temporary regulations.

SUMMARY: In the Rules and Regulations portion of this Federal Register, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations to simplify the regulations in 27 CFR Part 53 relating to exemption certificates. The regulations are being revised to give taxpayers the option of using a preprinted document as exemption certificates and vendor(vendee) statements or designing their own certificates and statements using specified information. ATF is requesting comments on the temporary regulations before issuing the final regulations.

DATES: Written comments must be received on or before October 15, 1996.

ADDRESSES: Send written comments to: Chief, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20226–0221.

FOR FURTHER INFORMATION CONTACT: Mary Lou Blake, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW, Washington, DC 20226; (202–927–8210).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities or impose or otherwise cause an increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities. The factual basis for such certification is that this revision does not add any new requirement for reporting or recordkeeping. This revision serves only to clarify and streamline current regulatory requirements. Pursuant to section 7805(f) of the Internal Revenue Code, this proposed regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1329, do not apply to this notice because there are no new reporting or recordkeeping requirements.

Public Participation

ATF requests comments on the proposed regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

The temporary regulations in this issue of the Federal Register amend the regulations in 27 CFR Part 53. For the text of the temporary regulations, see T.D. ATF–380 published in the Rules and Regulations section of this issue of the Federal Register.

Drafting Information

The author of this document is Mary Lou Blake, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Signed: May 30, 1996.

Bradley A. Buckles,

Acting Director.

Approved: June 10, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–17997 Filed 7–15–96; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–075–FOR]

West Virginia Permanent Regulatory Program

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

ACTION: Proposed Rule; reopening of comment period.

SUMMARY: OSM is reopening the pubic comment period on a proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the West Virginia Surface Mining Reclamation Regulations concerning topsoil substitutes. The amendment is intended to improve the effectiveness of the West Virginia program.

DATES: Written comments must be received on or before 4:00 p.m. on July 31, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. James C. Blankenship, Jr., Director, Charleston Field Office at the address listed below

Copies of the proposed amendment, the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the addresses below, during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting the OSM Charleston Field Office.

Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301 Telephone: (304) 347–7158

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515

In addition, copies of the proposed amendment are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval can be found in the January 21, 1981, Federal Register (46 FR 5915–5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

By letter dated April 2, 1996 (Administrative Record Number WV–1024), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program pursuant to 30 CFR 732.17. The amendment contains revisions to the West Virginia Surface mining Reclamation Regulations (CSR § 38–2–1 *et seq.*). The proposed amendments were announced in the April 23, 1996, Federal Register (61 FR 17859). However, a proposed amendment to § 38–2–14.3(c) concerning topsoil substitutes was inadvertently omitted from that notice. Therefore, OSM is reopening the public comment period only on the following proposed amendment.

Section 38–2–14.3(c)(2) is amended by adding the word ''reasonably'' immediately following the word ''best.'' As amended, subsection (c)(2) reads as follows: ''The resulting soil medium is the best reasonably available in the permit area to support vegetation; and.''

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendment submitted by the State of West Virginia to its permanent regulatory program. Specifically, OSM is seeking comments on the revision to the State's regulations that was submitted on April 2, 1996 (Administrative Record No. WV–1024), and is identified above. Comments should address whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

Writen Comments

Written comments should be specific, pertain only to the issue proposed in this notice and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary, and OMB regulatory review is not required.

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards

are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 8, 1996.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–17964 Filed 7–15–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AH89

VA Homeless Providers Grant and Per Diem Program Clarification of Per Diem Eligibility

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: It is proposed to amend the regulations implementing the VA Homeless Providers Grant and Per Diem Program concerning per diem assistance by: Establishing more detailed criteria for determining which entities are eligible for obtaining per diem assistance; establishing a priority for funding eligible entities; clarifying the requirements for continued receipt of per diem payments; and clarifying the maximum amount payable for per diem assistance. The proposal is designed to ensure that the appropriate entities receive the appropriate amount of per diem assistance under fair and objective procedures. This document also proposes to obtain approval of collection of information provisions concerning applicants for grants and per diem.

DATES: Comments must be received on or before September 16, 1996.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AH89.'' All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Roger Casey, VA Homeless Providers Grant and Per Diem Program, Mental Health and Behavioral Sciences Service (111C1E), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; (202) 273–8442. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: It is proposed to amend the regulations implementing VA's Homeless Providers Grant and Per Diem Program (38 CFR part 17.700) concerning per diem assistance by: (1) Establishing more detailed criteria for determining which entities are eligible for obtaining per diem assistance; (2) establishing a priority for funding eligible entities; (3) clarifying the requirements for continued receipt of per diem payments; and (4) clarifying the maximum amount payable for per diem assistance. These regulations were established pursuant to Homeless Veterans Comprehensive Services Act of 1992 (Pub. L. 102–590, as amended by Pub. L. 104–110). The regulations set forth provisions to assist public or non-profit private entities in establishing new programs to furnish supportive services and supportive housing for homeless veterans through grants. The regulations also provide for per diem payments, or in-kind assistance in lieu of per diem payments, to entities that are receiving grants or to entities eligible to receive a grant that established supportive services or a supportive housing program for homeless veterans after November 10, 1992.

Some homeless veterans service providers have informed us they understood the regulations allowed only grant recipients to apply for per diem assistance. However, neither the Act nor the regulations limit per diem assistance to grant recipients. Nevertheless, the Act does limit per diem assistance to entities that meet basic criteria applicable to grant recipients. ''Eligible entity'' under the Act means a public or nonprofit private entity that: Has the capacity to effectively administer a grant under the Act; demonstrates that adequate financial support will be available to carry out the project for which the grant is sought; and agrees to meet the applicable criteria and requirements of the grant program. Grant program criteria and requirements applicable to the receipt of per diem include: Targeting the homeless veteran population; coordinating with the community; providing the needed services; and establishing a project plan that details the goals that will be used in evaluating participants' progress as well as program successes with increasing veterans' residential stability, skill and/or income level, and self determination. It is proposed to subject per diem applicants to these criteria. It appears this would ensure that the entities awarded per diem assistance

would have the necessary standards of quality required to comply with the Act. Further, it is proposed that per diem applicants be required to score a minimum of 500 points on the per diem portions of the Grant/Per Diem application. This minimum eligibility score is proportional to the minimum 600 points required for grant eligibility. The remaining criteria and requirements of the grant program pertain to construction, property acquisition, leveraging resources, vehicle acquisition, etc., which are not applicable to per diem.

Additionally, the rule would clarify that non-grant recipients' programs that are not scored under per diem criteria, and grant recipients' programs that are not established as a result of grant funding, would not receive per diem payments.

It is also proposed to establish a priority for funding and criteria for ranking per diem applicants. Under the proposal, per diem assistance would first be awarded to supportive housing or supportive service center grant recipients that request per diem and that receive a sufficient ranking based on a cumulative score on portions of the Grant/Per Diem application pertaining to per diem assistance. It is proposed that if funding is still available, a Notice of Funding Availability (NOFA) would be published in the Federal Register and applications would be accepted from non-grant recipients. Also, the proposal provides that per diem would be awarded to those non-grant recipients who are deemed eligible entities and who receive a sufficient ranking based on the application. It appears that this method of prioritizing would help ensure success of the entities receiving grant funds for supportive housing and supportive service centers while still providing for consideration of non-grant recipients. In evaluating grant recipients and non-grant recipients, scores would be ranked from highest to lowest and funds would be allocated on the basis of rank from highest to lowest until funds are expended. Under this proposal those non-grant recipient entities that have already submitted a request for recognition of eligibility, prior to the issuance of this amendment, would need not submit a second request but would be expected to follow the proposed requirements for application. Those grant recipients that have received a grant prior to this amendment and have not received per diem payments, would be asked to submit a request for recognition of eligibility to initiate scoring of the per diem relevant portions of their grant application.

It is also proposed to clarify the requirements for continued receipt of per diem payments. To help ensure the quality of per diem recipients' programs, VA would require recipients to maintain their programs so that they would score the minimum number of points required on per diem relevant sections of the Grant/Per Diem application. Under the proposal, VA would ensure compliance by conducting inspections and would provide an opportunity to challenge a VA decision to terminate per diem payments for a recipient's failure to comply with requirements prior to the actual termination of payments.

The legislative history of the Act indicates that it was Congress' intent that per diem rates for the Homeless Providers Grant and Per Diem Program not be more generous than per diem rates under the State Home Program to avoid creating an incentive for states to participate in the Homeless Providers Grant and Per Diem Program instead of expanding and/or continuing participation in the State Home Program. Further, the Act limits per diem payments to one half the recipients' cost of providing services supported by such payments. Therefore, to better reflect the intent of Congress, it is proposed to clarify in the rule that the maximum per diem rate for supportive housing under the Homeless Providers Grant and Per Diem Program will be the prevailing State Home per diem rate for domiciliary care or one-half the cost of providing this service, whichever is less. Additionally, it is proposed to revise the rule so it is clear that this ''maximum'' amount is in fact a fixed rate and VA will not pay less than this rate unless prevented from doing so by budget constraints.

Non-substantive changes also are proposed for purposes of organization and clarity.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

This collection of information included in 38 CFR 17.710 through 17.714 and §§ 17.717 through 17.719 concerns an application for public or nonprofit private entities to establish new programs to furnish supportive services and supportive housing for homeless veterans through grants of up to 65 percent of the cost to construct, expand, remodel or alter existing buildings; to acquire facilities; or to procure vans to provide transportation for and support outreach to homeless veterans and to provide per diem payments for those veterans determined eligible for such payments by the Department of Veterans Affairs. Provisions concerning per diem are explained above in this preamble. Provisions concerning grants are already set forth in 38 CFR and are restated in the regulatory text portion of this document.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collection(s) of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and;
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collections of information contained in this document between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Title: Application for VA homeless providers grant and per diem program.

Summary of collection of information: The Department requires the applicant for grants and/or per diem to submit information that assists in the

determination of funds to be awarded. The requested information addresses the ability of the organization to effectively administer a program and requires the organization to demonstrate the quality of the project, how the homeless veteran will be targeted, the need for the proposed program, the coordination with other agencies, and the project's cost effectiveness.

Description of the need for information and proposed use of information: The Department is required to assess organizations' projects and fund those that most appropriately meet the needs of homeless veterans as determined by the rules of the program. This collection of information will be used to rank various projects and award those most likely to meet intent of the statute.

Description of likely respondents: public or non-profit private entities providing supportive services and supportive housing for homeless veterans.

Estimated total annual reporting burden for grants: *5,000* hours.

Estimated total annual reporting burden for per diem: *2,500* hours.

The estimated annual burden per respondent for grants: *50* hours.

The estimated annual burden per respondent for per diem: *50* hours.

Estimate number of respondents for grants: *100.*

Estimate number of respondents for per diem: *50.*

Estimate annual frequency of responses for grants: *1*

Estimate annual frequency of responses for per diem: *1*

Regulatory Flexibility Act

The Secretary hereby certifies that the provisions of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602. In all likelihood, only similar entities that are small entities would participate in the Homeless Providers Grant and Per Diem Program, therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

The Catalog of Federal Domestic Assistance program number is 64.024.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and record-keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: June 26, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 is revised to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

§ 17.700 [Amended]

2. In § 17.700, paragraph (a) is amended by removing ''17.715(a)'' and adding, in its place, ''17.716''.

3. Sections 17.710 through 17.719 are revised to read as follows:

§ 17.710 Application requirements.

(a) *General.* Applications for grants must be submitted in the form prescribed by VA in the application package, must meet the requirements of this part, and must be submitted within the time period established by VA in the notice of fund availability under § 17.708 of this part. The application packet includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for the project by addressing items listed in § 17.711(c) of this part;

(2) Site description, design, and cost estimates;

(3) Documentation on eligibility to receive assistance under this part;

(4) Documentation on matching funds committed to the projects;

(5) Documentation on operating budget and cost sharing;

(6) Documentation on supportive services committed to the project;

(7) Documentation on site control and appropriate zoning, and on the boundaries of the area or community proposed to be served;

(8) Applicants who are States must submit any comments or recommendations by appropriate State (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197); and

(9) Reasonable assurances with respect to receipt of assistance under this part that:

(i) The project will be used principally to furnish to veterans the level of care for which such application is made; that not more than 25 percent of participants at any one time will be non-veterans; and that such services will meet standards prescribed by VA;

(ii) Title to such site or van will vest solely in the applicant;

(iii) Each recipient will keep those records and submit those reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based; and

(iv) Adequate financial support will be available for the purchase of the van or completion of the project, and for its maintenance, repair and operation.

(b) *Pre-award expenditures.* Costs incurred for a project after the date the Department of Veterans Affairs notifies an applicant that the project is feasible for VA participation are allowable costs if the application is approved and the grant is awarded. These pre-award expenditures include architectural and engineering fees. Such notification occurs when VA requests information for the second submission portion of the application.

§ 17.711 Rating criteria for applications.

(a) *General.* Applications will be assigned a rating score and placed in ranked order, based upon the criteria listed in paragraphs (b) through (d) of this section.

(b) *Threshold review.* Applicants will undergo a threshold review prior to rating and ranking, to ensure they meet the following:

(1) *Form, time, and adequacy.* Applications must be filed in the form prescribed by VA in the application process and within the time established in the NOFA.

(2) *Application eligibility.* The applicant and project sponsor, if relevant, must be eligible to apply for the specific program.

(3) *Eligible population to be served.* The population proposed to be served must be homeless veterans and meet other eligibility requirements of the specific program.

(4) *Eligible activities.* The activities for which assistance is requested must be eligible for funding under this part (e.g., new programs or new components of existing programs).

(5) *Outstanding audit findings.* No organization that receives assistance may have an outstanding obligation to VA that is in arrears or for which a payment schedule has not been agreed to, or whose response to an audit is overdue or unsatisfactory.

(c) *Rating and ranking of first submission.* Applicants that pass the threshold review will then be rated using the eight selection criteria listed

in paragraph (c)(1) through (c)(8) of this section. Applicants must receive at least 600 points (out of a possible 1,200) and must receive points under criteria 1, 2, 3, 4, and 8. Applicants that are applying as an innovative supportive housing project must achieve points under the innovative quality of the proposal criterion.

(1) Quality of the project—300 points.

(2) Targeting to persons on streets and in shelters—150 points.

(3) Ability of the applicant to develop and operate a project—200 points.

(4) Need for the type of project proposed in the area to be served—150 points.

(5) Innovative quality of the proposal—50 points.

(6) Leveraging—50 points.

(7) Cost effectiveness—100 points.

(8) Coordination with other programs—200 points.

(d) *Selection criteria*—(1) *Quality of the project.* VA will award up to 300 points based on the extent to which the application presents a clear, well-conceived and thorough plan for assisting homeless veterans achieve residential stability, increased skills and/or income, and more influence over decisions that affect their lives. Higher ratings will be assigned to those applications that clearly describe:

(i) How program participants will achieve residential stability, including how available supportive services will help participants reach this goal;

(ii) How program participants will increase their skill level and/or income, including how available supportive services will help participants reach this goal;

(iii) How program participants will be involved in making project decisions that affect their lives, including how they will be involved in selecting supportive services, establishing individuals goals and developing plans to achieve these goals so that they achieve greater self determination;

(iv) How permanent affordable housing will be identified and made available to participants upon leaving the transitional housing, and how participants will be provided necessary follow-up services to help them achieve stability in the permanent housing;

(v) How the service needs of participants will be assessed on an ongoing basis;

(vi) How the proposed housing, if any, will be managed and operated;

(vii) How participants will be assisted in assimilating into the community through access to neighborhood facilities, activities and services;

(viii) How and when the progress of participants toward meeting their individuals goals will be monitored and evaluated;

(ix) How and when the effectiveness of the overall project in achieving its goals will be evaluated and how program modifications will be made based on those evaluations; and

(x) How the proposed project will be implemented in a timely fashion.

(2) *Targeting to persons on streets and in shelters.* VA will award up to 150 points based on:

(i) The extent to which the project will serve homeless veterans living in places not ordinarily meant for human habitation (e.g., streets, parks, abandoned buildings, automobiles, under bridges, in transportation facilities) and those who reside in emergency shelters; and

(ii) The likelihood that proposed plans for outreach and selection of participants will result in these populations being served.

(3) *Ability of applicant to develop and operate a project.* VA will award up to 200 points based on the extent to which those who will be involved in carrying out the project have experience in activities similar to those proposed in the application. Rating will be assigned based on the extent to which the application demonstrates experience in the following areas:

(i) Engaging the participation of homeless veterans living in places not ordinarily meant for human habitation and in emergency shelters;

(ii) Assessing the housing and relevant supportive service needs of homeless veterans;

(iii) Accessing housing and relevant supportive service resources;

(iv) If applicable, contracting for and/or overseeing the rehabilitation or construction of housing;

(v) If applicable, administering a rental assistance program;

(vi) Providing supportive services for homeless veterans;

(vii) Monitoring and evaluating the progress of persons toward meeting their individual goals; and

(viii) Evaluating the overall effectiveness of a program and using evaluation results to make program improvements.

(4) *Need.* VA will award up to 150 points based on the applicant's demonstrated understanding of the needs of the specific homeless veteran population proposed to be served in the specified area or community. Ratings will be made based on the extent to which applicants demonstrate:

(i) Substantial unmet needs, particularly among the target population who are living in places not ordinarily meant for human habitation (e.g., streets) and in emergency shelters, based on reliable data from surveys of homeless populations, a Comprehensive Housing Affordability Strategy (CHAS), or other reports or data gathering mechanisms that directly support claims made;

(ii) An understanding of the homeless population to be served and its unmet housing and supportive service needs.

(5) *Innovative quality of the proposal.* Applicants who have indicated in their application that they are applying under the innovative supportive housing component must receive points under this criteria to be eligible for award. VA will award up to 50 points based on the innovative quality of the proposal, when compared to other applications and projects; in terms of:

(i) Helping homeless veterans or homeless veterans with disabilities to be served to reach residential stability, increase their skill level and/or income and increase the influence they have over decisions that affect their lives; and

(ii) A clear link between the innovation(s) and its proposed effect(s); and

(iii) Its ability to be used as a model for other projects.

(6) *Leveraging.* VA will award up to 50 points based on the extent to which resources from other public and private sources, including cash and the value of third party contributions, have been committed to support the project at the time of application. Any applicant who wishes to receive points under this criterion must submit documentation of leveraged resources which meets the requirements stated in the application. This is optional; applicants who cannot, or choose not to, provide firm documentation of resources as part of the application will forego any points for leveraging.

(7) *Cost effectiveness.* VA will award up to 100 points for cost effectiveness. Projects will be rated based on the cost and number of new supportive housing beds made available or the cost, amount and types of supportive services made available, when compared to other transitional housing and supportive services projects, and when adjusted for high cost areas. Cost effectiveness may include using excess government properties (local, State, Federal), as well as demonstrating site control at the time of application.

(8) *Coordination with other programs.* VA will award up to 200 points based on the extent to which applicants demonstrate that they have coordinated with Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project. Such entities may include

shelter, transitional housing, health care, or social service providers; providers funded through Federal initiatives; local planning coalitions or provider associations; or other programs relevant to the local community. Applicants are required to demonstrate that they have coordinated with the VA medical care facility of jurisdiction and VA Regional Offices of jurisdiction in their area. Higher points will be given to those applicants that can demonstrate that:

(i) They are part of an ongoing community-wide planning process which is designed to share information on available resources and reduce duplication among programs that serve homeless veterans;

(ii) They have consulted directly with other providers regarding coordination of services for project participants. VA will award up to 50 points of the 200 points for this criterion based on the extent to which commitments to provide supportive services are available at the time of application. Applicants who wish to receive points under this optional criterion must submit documentation of supportive service resources.

§ 17.712 Selecting applications.

(a) *General.* The highest-ranked applications will be conditionally selected in accordance with their ranked order, as determined under § 17.711 of this part. Each will be requested, as necessary, to provide additional project information, as described in § 17.713 of this part, as a prerequisite to a grant from VA.

(b) *Ties between applicants.* In the event of a tie between applicants, VA will use the selection criterion in § 17.711(d)(4) of this part, need for the type of project proposed in the area to be served, to determine which application should be selected for potential funding.

(c) *Procedural error.* If an application would have been selected but for a procedural error committed by VA, VA will select that application for potential funding when sufficient funds become available if there is no material change in the information that resulted in its selection. A new application will not be required for this purpose.

§ 17.713 Obtaining additional information and awarding grants.

(a) *Additional information.* Applicants who have been conditionally selected will be requested by VA to submit additional project information, as described in the second submission of the application, which may include:

(1) Documentation to show that the project is feasible.

(2) Documentation showing the sources of funding for the project and firm financing commitments for the march described in § 17.706.

(3) Documentation showing site control, as described in § 17.731.

(4) Information necessary for VA to ensure compliance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), as described in § 17.714.

(5) A site survey performed by a licensed land surveyor. A description of the site shall be submitted noting the general characteristics of the site. This should include soil reports and specifications, easements, main roadway approaches, surrounding land uses, availability of electricity, water and sewer lines, and orientation. The description should also include a map locating the existing and/or new buildings, major roads, and public services in the geographic area. Additional site plans should show all site work including property lines, existing and new topography, building locations, utility data, and proposed grades, roads, parking areas, walks, landscaping, and site amenities.

(6) Design development (35 percent) drawings.

(i) The applicant shall provide to VA one set of sepias and two sets of prints, rolled individually per set, to expedite the review process. The drawing shall indicate the designation of all spaces, size of the areas and rooms and indicate in outline the fixed and moveable equipment and furniture. The drawings shall be drawn at ⅛″ or ¼″ scale. Bedroom and toilet layouts, showing clearances and Uniform Federal Accessibility Standards requirements, should be shown at ¼″ scale. The total floor and room areas shall be shown in the drawings. The drawings shall include:

(A) A plan of any proposed demolition work;

(B) A plan of each floor. For renovation, the existing conditions and extent of new work should be clearly delineated;

(C) Elevations;

(D) Sections and typical details;

(E) Roof plan;

(F) Fire protection plans; and

(G) Technical engineering plans, including structural, mechanical, plumbing, and electrical drawings.

(ii) If the project involves acquisition, remodeling, or renovation, the applicant should include the current as-built site plan, floor plans and building sections which show the present status of the building and a description of the building's current use and type of construction.

(7) Design development outline specifications. The applicant shall provide eight copies of outline specifications which shall include a general description of the project, site, architectural, structural, electrical and mechanical systems such as elevators, air conditioning, heating, plumbing, lighting, power, and interior finishes (floor coverings, acoustical material, and wall and ceiling finishes).

(8) Design development cost estimates. The applicant shall provide three copies of cost estimates showing the estimated cost of the buildings or structures to be acquired or constructed in the project. Cost estimates should list the cost of construction, contract contingency, fixed equipment not included in the contract, movable equipment, architect's fees and construction supervision and inspection.

(9) A design development conference. After VA reviews design development documents, a design development conference may be recommended in order to provide applicants and their architects an opportunity to learn VA procedures and requirements for the project and to discuss VA review comments.

(10) Such other documentation as specified by VA in writing to the applicant, that confirms or clarifies information provided in the application.

(b) *Receipt of additional information.* The required additional information must be received in acceptable form within the time frame established by VA in a notice of fund availability published in the Federal Register. VA reserves the right to remove any proposed project from further consideration for grant assistance if the required additional project information is not received in acceptable form by the established deadline.

(c) *Grand award.* Following receipt of the additional information in acceptable form (and, where applicable, provided that the environmental review described in § 17.714 indicates that the proposed project is environmentally acceptable to VA), to the extent funds are available VA will approve the application and send a grant agreement for execution to the applicant.

§ 17.714 Environmental review requirements.

(a) *Generally.* Project selection is subject to completion of an environmental review of the proposed site, and the project may be modified or the site rejected as a result of that review. The environmental effects must

be assessed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) (NEPA) as implemented pursuant to the Council on Environmental Quality's applicable regulations (40 CFR parts 1500–1508) and VA's applicable implementing regulations (38 CFR part 26).

(b) *Responsibility for review.* (1) VA will perform the environmental review, in accordance with part 26 of this title, for conditionally selected applications received directly from private nonprofit organizations and governmental entities with special or limited purpose powers. VA is not permitted to approve such applications prior to its completion of this review. Because of time constraints, any application subject to environmental review by VA that requires an Environmental Impact Statement (EIS) (generally, an application that VA determines would result in a major Federal action significantly affecting the quality of the human environment in accordance with the environmental assessment procedures (at 38 CFR part 26) will not be eligible for assistance under this part.

(2) Applicants that are States, metropolitan cities, urban counties, Indian tribes, or other governmental entities with general purpose powers shall include environmental documentation for the project by submitting information establishing a Categorical Exclusion (CE), a proposed Environmental Assessment (EA), or a proposed Environmental Impact Statement (EIS). The environmental documentation will require approval by VA before final award of a construction or acquisition grant under this part. (See 38 CFR 26.6 for compliance requirements.) If the proposed actions involving construction or acquisition do not individually or cumulatively have a significant effect on the human environment, the applicant shall submit a letter noting a CE. If construction outside the walls of an existing structure will involve more than 75,000 gross square feet (GSF), the application shall include an EA to determine if an EIS is necessary for compliance with section 102(2)(c) of the National Environmental Policy Act 1969. When the application submission requires an EA, the State shall briefly describe the possible beneficial and/or harmful effect which the project may have on the following impact categories:

(i) Transportation;
(ii) Air quality;
(iii) Noise;
(iv) Solid waste;
(v) Utilities;
(vi) Geology (soils/hydrology/flood plains);
(vii) Water quality;
(viii) Land use;
(ix) Vegetation, wildlife, aquatic, and ecology/wetlands;
(x) Economic activities;
(xi) Cultural resources;
(xii) Aesthetics;
(xiii) Residential population;
(xiv) Community services and facilities;
(xv) Community plans and projects; and
(xvi) Other.

(3) If an adverse environmental impact is anticipated, the action to be taken to minimize the impact should be explained in the EA. An entity covered by this section that believes that it does not have the legal capacity to carry out the responsibilities required by 38 CFR part 26 should contact the VA Homeless Providers Grant and Per Diem Program, Mental Health and Behavioral Sciences Service (111C), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

§ 17.715 Aid for supportive services and supportive housing.

(a) *Per diem payments.* Aid in the form of per diem payments may be paid to an entity meeting the requirements of the regulations of this part under the heading ''VA Homeless Providers Grant and Per Diem Program,'' including the specific criteria of § 17.716, if:

(1) VA referred the homeless veteran to a recipient of a grant under this part (or entity eligible for such a grant as described in § 17.716); or

(2) VA authorized the provision of supportive services or supportive housing for the homeless veteran.

(b) *In-kind assistance.* In lieu of per diem payments under this section, VA may, with approval of the grant recipient (or entity eligible for such a grant as described in § 17.716), provide in-kind assistance through the services of VA employees and the use of other VA resources, to a grant recipient (or entity eligible for such a grant as described in § 17.716).

(c) *Selection of per diem applicants.* In awarding per diem assistance, applications from grant recipients and non-grant recipients will be reviewed and ranked separately. Funds will first be awarded to grant recipients who request such assistance. If funds are still available for non-grant recipients, VA will announce funding through a Notice of Funding Availability (NOFA) process as described in § 17.708. VA will not award any per diem payments when doing so would decrease funding to those entities already receiving such payments. For both grant recipients and non-grant recipients, eligibility will be determined by the criteria described in § 17.716, and applications will be ranked according to scores achieved on the portions of the application described in § 17.716(b)(4). Applicants must score a minimum of 500 points on these portions to be eligible for per diem. Those applicants that meet the eligibility criteria will be conditionally selected for per diem assistance. Funds will be allocated to the highest ranked conditionally selected applicants in descending order until funds are expended. Payments will be contingent upon meeting the requirements of a site inspection conducted by VA pursuant to § 17.721.

(d) *Continued receipt of per diem assistance.* (1) Continued receipt of per diem assistance for both grant recipients and non-grant recipients will be contingent upon maintaining the program for which per diem is provided so that it would score at least the required minimum 500 points as described in § 17.716(b)(4) on the application. VA will ensure compliance by conducting inspections as described in § 17.721.

(2) Where the recipient fails to comply with paragraph (d)(1) of this section, VA will issue a notice of the Department's intent to discontinue per diem payments. The recipient will then have 30 days to submit documentation demonstrating why payments should not be terminated. After review of any such documentation, VA will issue a final decision on termination of per diem payment.

(3) Continued payment is subject to availability of funds. When necessary due to funding limitations, VA will, in proportion to the decrease in funding available, decrease the per diem payment for each authorized veteran.

(Authority: 38 U.S.C. 501, 7721, note)

§ 17.716 Eligibility to receive per diem payments.

An entity must be formally recognized by VA as eligible to receive per diem payments under this section before per diem payments can be made for the care of homeless veterans, except that per diem payments may be made on behalf of a veteran up to three days prior to this recognition.

(a) A grant recipient will be eligible if it receives the minimum score as described in paragraph (b)(4) of this section.

(b) A non-grant recipient will be eligible if it is an entity eligible to

receive a grant, which for the purposes of this section means:

(1) At least 75 percent of persons who are receiving supportive services or supportive housing from the entity are veterans who may be included in computation of the amount of aid payable from the Department of Veterans Affairs;

(2) The supportive services or supportive housing program for which per diem payments is requested was established after November 10, 1992;

(3) The entity is a public or nonprofit private entity; and

(4) The entity scores at least 500 cumulative points on the following sections of the Grant/Per Diem application: Quality (1); Targeting (2); Ability (3); Description of Need (4); and Coordination with Other Programs (8). These sections correspond to the selection criteria of § 17.711(c).

(c) For grant recipients, only those programs that provide supportive services or supportive housing (or the portions thereof) created with grant funds will be considered for per diem assistance. For non-grant recipients, only those portions of the supportive services or supportive housing described in the application will be considered for per diem assistance.

(Authority: 38 U.S.C. 501, 7721, note)

§ 17.717 Request for recognition of eligibility.

(a) Requests for recognition of eligibility may be addressed to the VA Homeless Providers Grant and Per Diem Programs; Mental Health and Behavioral Sciences Service (111C), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

(b) For non-grant recipients, the receipt of application for per diem will constitute the request for recognition of eligibility. Grant recipients seeking per diem assistance will indicate this request on the application. Grant recipients are not required to complete a separate application for per diem assistance. VA will review those portions of the grant application that pertain to per diem. Those entities already receiving a grant must submit a request for recognition to initiate the scoring of their application for per diem payments.

(Authority: 38 U.S.C. 501, 7721, note)

§ 17.718 Approval of annexes and new facilities.

Separate applications for recognition must be filed for any annex, branch, enlargement, expansion, or relocation of the site of service provision of an eligible entity's facility which is not on the same or contiguous grounds on which the parent facility is located. When an eligible entity establishes sites which have not been inspected and approved by VA, a request for separate approval of such sites must be made. The prohibitions in § 17.720 are also applicable to applications for aid on behalf of any veterans cared for in a new annex, branch or enlarged, expanded or relocated facility.

§ 17.719 Amount of aid payable.

The per diem amount payable for supportive housing is the current VA State Home Program per diem rate for domiciliary care as set forth in 38 U.S.C. 1741. The per diem amount payable for supportive services, not provided in conjunction with supportive housing, is $1.10 for each half-hour during which supportive services are provided up to $17.60 per day. These rates will be paid provided, however, the per diem amount for supportive housing or supportive services (not provided in conjunction with supportive housing) do not exceed one-half of the cost to the per diem recipient of providing the services. Also, provided further, per diem payment for supportive housing and supportive services may be lessened because of budget restrictions as described in § 17.715(d)(3). Per diem payments may not be paid for a veteran for both supportive housing and supportive services (not in conjunction with supportive housing).

(Authority: 38 U.S.C. 501, 7721, note)

§ 17.720 [Amended]

4. In § 17.720, paragraphs (a) introductory text, (a)(1), and (a)(2) are amended by removing ''17.715(a)'' and adding, in their place, ''17.716''.

[FR Doc. 96–17836 Filed 7–15–96; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA52–2–7155; FRL–5538–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; extension of the comment period.

SUMMARY: EPA is reopening the comment period for a proposed rule published on April 9, 1996 (61 FR 15744). In the April 9, 1996 proposed rule, EPA proposed to approve reasonably available control technology (RACT) requirements for 21 Pennsylvania sources of volatile organic compounds (VOC's) or nitrogen oxides (NO_X). At the request of the Pennsylvania Power Company, EPA is reopening the comment period through August 2, 1996 only as it pertains to the RACT determinations for the Pennsylvania Power-New Castle plant and International Paper-Hammermill Division. (The comment period had been previously extended through June 28, 1996 (61 FR 29508).) All comments received on or before August 2, 1996, including those received between the close of the comment period on June 28, 1996 and the publication of this document, will be entered into the public record and considered by EPA before taking final action on the proposed rule.

DATES: Comments are now due on or before August 2, 1996.

ADDRESSES: Comments may be mailed to Kathleen Henry, Acting Chief, Ozone and Mobile sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl at the EPA Region III address listed above, (215) 566–2180, or via e-mail at stahl.cynthia@epamail.epa.gov pertaining to the reopening for the comment period for the Pennsylvania Power-New Castle and International Paper-Hammermill RACT determinations.

Dated: July 3, 1996.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 96–18039 Filed 7–15–96; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090–AA29 and 1090–AA43

Natural Resource Damages Assessments—Type B Procedures

AGENCY: Department of the Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior is revising the regulations for assessing natural resource damages resulting from a release or discharge of a hazardous substance in compliance with a statutory biennial review requirement and a court remand. The regulations provide procedures that Federal, State, and Tribal natural resource trustees may use to develop plans for restoring injured natural resources and to determine appropriate compensation due from potentially responsible parties. The regulations include an administrative process for conducting assessments as well as two types of technical procedures for the actual quantification of injuries and damages. ''Type A'' procedures are standard procedures for simplified assessments requiring minimal field observation in cases of minor discharges or releases in certain environments. ''Type B'' procedures are procedures for detailed assessments in other cases. This document solicits comment on potential revisions to the administrative process and the type B procedures in light of recently promulgated natural resource damage assessment regulations for oil discharges.

DATES: Comments will be accepted through September 16, 1996.

ADDRESSES: Comments should be sent in duplicate to the Office of Environmental Policy and Compliance, ATTN: NRDA Rule—Type B, Mail Stop 2340, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mary C. Morton at (202) 208–3302.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This document solicits comment on the revision of regulations for assessing natural resource damages for releases or discharges of hazardous substances. The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*) (CERCLA) provides that certain categories of persons, known as potentially responsible parties (PRPs), are liable for natural resource damages when a release of a hazardous substance has resulted in injury to, destruction of, or loss of natural resources. 42 U.S.C. 9607(a). Natural resource damages fund restoration, replacement, or acquisition of the equivalent of the injured natural resources. 42 U.S.C. 9607(f)(1).

Only those Federal, State, and Tribal officials designated as natural resource trustees may recover natural resource damages. CERCLA defines ''State'' to include:

> The District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction. 42 U.S.C. 9601(27).

Trustees may recover damages for those natural resource injuries that are not fully remedied by response actions as well as the public interim losses from the date of the release until the injured natural resources have fully recovered or been restored. Trustees may also recover the reasonable costs of assessing natural resource damages.

CERCLA requires the President to promulgate regulations for the assessment of natural resource damages under CERCLA and the Clean Water Act (33 U.S.C. 1251 et seq.) (CWA). 42 U.S.C. 9651(c)(1). CWA provides authority for Federal and State trustees to recover natural resource damages resulting from discharges of hazardous substances into navigable waters. 33 U.S.C. 1321(f)(4) and (5).

The regulations must identify the ''best available'' procedures for assessing natural resource damages. 42 U.S.C 9651(c)(2). CERCLA requires that the natural resource damages assessment regulations include two types of assessment procedures. ''Type A'' procedures are ''standard procedures for simplified assessments requiring minimal field observation.'' 42 U.S.C. 9651(c)(2)(A). ''Type B'' procedures are ''alternative protocols for conducting assessments in individual cases.'' 42 U.S.C. 9651(c)(2)(B). If trustees and PRPs fail to reach settlement, Federal and State trustees who performed their assessments in accordance with the natural resource damage assessment regulations will receive a rebuttable presumption in litigation of their claims. 42 U.S.C. 9607(f)(2)(C). The President delegated the responsibility for promulgating the natural resource damages assessment regulations to the Department of the Interior (the Department). E.O. 12316, as amended by E.O. 12580.

Hazardous Substance Regulations

The Department has issued regulations that provide an administrative process for conducting natural resource damages assessments as well as technical type A and type B procedures for the actual quantification of injuries and damages resulting from hazardous substance releases and discharges. The Department recently published a final rule containing two type A procedures—one for minor releases and discharges in coastal and marine environments and the other for minor releases and discharges in the Great Lakes. 61 FR 20560 (May 7, 1996). In *State of Ohio* v. *United States Department of the Interior,* 880 F.2d 432 (D.C. Cir. 1989) (*Ohio* v. *Interior*), the U.S. Court of Appeals for the D.C. Circuit vacated and remanded portions of the original administrative process and the type B procedures that were issued in 1986. On March 25, 1994, the Department published a final rule in response to the *Ohio* v. *Interior* remand. 59 FR 14261. This final rule is currently being challenged in *Kennecott Utah Copper Corp.* v. *United States Department of the Interior,* No. 93–1700 and consolidated cases (D.C. Cir.).

The March 25, 1994, rule addressed all but one issue in the *Ohio* v. *Interior* remand—the calculation of damages for interim lost nonuse values. The Department's regulations currently provide that trustees can recover from PRPs the cost of implementing a publicly reviewed plan for restoring, rehabilitating, replacing, and/or acquiring the equivalent of the natural resources injured by a hazardous substance release or discharge. The regulations also authorize trustees to recover the economic values lost by the public pending restoration or recovery of the injured resources. These values are known as ''compensable values'' and may include ''use'' and ''nonuse'' values, if they can be reliably calculated. Trustees must eventually determine how to spend damages recovered for compensable values on restoration actions but only after the assessment has been completed and the funds have been recovered.

On May 4, 1994, the Department published a notice of proposed rulemaking concerning the reliability of calculating nonuse values using the contingent valuation methodology. 59 FR 23097. The Department then published an advance notice of proposed rulemaking announcing the start of an overall review of the administrative process and the type B procedures. 59 FR 52749 (Oct. 19, 1994). The Department must review the

hazardous substance natural resource damages assessment regulations, and revise them as appropriate, every two years. 42 U.S.C. 9651(c)(3).

The Department now intends to develop a proposed rule that will address both the biennial review and the remaining aspect of the *Ohio* v. *Interior* remand and that will supersede the May 4, 1994, proposed rule. This document solicits comment on inclusion in this upcoming proposed rule of the concepts of the recently promulgated oil natural resource damages assessment regulations.

New Oil Regulations

On January 5, 1996, the National Oceanic and Atmospheric Administration (NOAA) published a final rule under the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) for assessing natural resource damages caused by oil spills. 61 FR 439. The oil regulations adopt a new approach to several aspects of natural resource damages assessment. One particularly significant and promising feature of the oil regulations is the adoption of a new method of measuring damages based on unified restoration planning. The oil regulations extend the hazardous substance regulations' emphasis on restoration to all elements of a natural resource damages claim, including compensation for interim loss of injured natural resources and resource services.

Under the oil regulations, a natural resource damages claim is based on a unified restoration plan developed during the assessment that incorporates both ''primary'' restoration actions to return injured resources and services to the condition that would have existed if the discharge had not occurred and ''compensatory'' restoration actions to compensate the public for interim loss of resource services.

The oil regulations fundamentally change the role of economic valuation in developing claims for interim loss of injured natural resources and resource services. Unlike the current hazardous substance regulations, the new oil regulations require trustees to determine compensation for interim losses based on the cost of appropriately scaled compensatory restoration actions, rather than economic values per se.

The Department has indicated that during the biennial review it will work to ensure the maximum consistency appropriate between the hazardous substance regulations and the oil regulations. 59 FR 52752. The Department believes that the unified restoration planning approach in the oil regulations is one appropriate option for biennial reforms to the hazardous substance regulations designed to expedite restoration, reduce litigation, and encourage cooperative efforts among trustees and PRPs.

The Department also believes that resolution of the *Ohio* v. *Interior* remand concerning the calculation of nonuse values should be considered within the same context as the overall biennial review of the hazardous substance regulations. As NOAA has stated in connection with its new method of measuring damages, ''[t]he possible use of contingent valuation (CV) and other stated-preference methods of valuation to determine what scale of compensatory restoration provides an equivalent value to the lost services avoids many problems identified by commenters regarding the use of CV to calculate a dollar value for the damages.'' 61 FR 442.

Issues for Comment

To assist in the development of a proposed rule, the Department is soliciting comment on how the hazardous substance regulations should be revised to ensure maximum appropriate consistency with the oil regulations and comply with *Ohio* v. *Interior.* The Department is particularly interested in comments on revising the hazardous substance regulations to incorporate the new method for measuring damages in the oil regulations. The Department also solicits comment on revising the hazardous substance regulations to reflect the more streamlined approach to injury assessment contained in the oil regulations. Whereas the current hazardous substance regulations contain relatively detailed standards and procedures for all aspects of injury determination and quantification, the oil regulations provide a general framework of decision criteria within which trustees determine on a case-by-case basis how best to assess injury. The Department solicits comment on the suitability of the new approaches in the oil regulations for the hazardous substance regulations, in light of the differences between oil spills and hazardous waste sites.

Dated: July 10, 1996.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 96–17960 Filed 7–15–96; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF AGRICULTURE

48 CFR Parts 401 Through 453

RIN 0599–AA00

Agriculture Acquisition Regulation; Revision

AGENCY: Procurement and Property Management, Department of Agriculture.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed amendment to the Agriculture Acquisition Regulation (AGAR). We are revising the AGAR to reflect changes in acquisition law and regulations since the AGAR's last major revision in 1988, to update organizational references throughout the AGAR, and to streamline the AGAR as part of the President's Regulatory Reform Initiative.

DATES: Comments must be submitted on or before September 16, 1996.

ADDRESSES: Requests for a copy of the proposed rule should be sent to U.S. Department of Agriculture. Procurement and Property Management, Procurement Policy Division, STOP 9303, 1400 Independence Avenue SW., Washington, DC 20250–9303. The Procurement Policy Division has also posted a copy of the proposed rule on the Internet for review at WWW.USDA.GOV/DA/PROCURE/AGAR.HTM. Submit written comments to the Procurement Policy Division at the mailing address listed above, through the Internet at 00.00–POST.JDARAGAN@SIES.WSC.AG.GOV (alternate: JDARAGAN@USDA.GOV), or via fax at (202) 720–8972.

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, U.S. Department of Agriculture, Procurement and Property Management, STOP 9303, 1400 Independence Avenue SW., Washington, DC 20250–9303, (202) 720–5729.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order 12866.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.
III. Public Comments

I. Background

The AGAR implements the Federal Acquisition Regulation (FAR), where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. The AGAR is being revised as part of the National Performance Review (NPR) program to eliminate necessary

regulations and improve those that remain in force.

As an initial step in the NPR regulatory review initiative, the Department of Agriculture (USDA) identified parts of the AGAR which required updating or streamlining. USDA's review indicated that almost all parts required revision. Accordingly, USDA has reviewed and made revisions to substantially all parts of the AGAR. In an Advance Notice of Proposed Rulemaking (61 FR 7456, February 28, 1996). USDA sought comments and suggestions from the public concerning what changes should be made to the AGAR. One comment was received from a USDA field office. The commenter suggested a change to AGAR part 416; this comment has been implemented.

The principal effects of the proposed rule are as follows:

(a) References to the Director, Office of Operations, in the AGAR are revised to refer to the Senior Procurement Executive (SPE) to reflect the reorganization of USDA's Departmental Administration.

(b) To the extent permitted by the FAR, responsibilities have been delegated to the lowest appropriate organizational level.

(c) Section 401.103–70 is redesignated section 401.370 and revised to allow promulgation of interim policies and procedures outside the AGAR, subject to the policies of FAR subpart 1.3.

(d) Section 401.371 is added to establish AGAR Advisories to communicate guidance on acquisition issues to establish internal acquisition policies and procedures on an interim basis.

(e) Subpart 403.1 is added to address standards of conduct and procurement integrity issues.

(f) Subpart 405.3 is added to establish procedures for announcement of contract awards over $1 million.

(g) Subpart 405.5 is revised to clarify procedures for publication of paid advertisements.

(h) Subpart 406.2 is added to designate the SPE as the individual authorized to make the FAR 6.202 determination.

(i) Section 407.305 and the accompanying clauses at 452.207–70 and 452.207–71 are removed since existing FAR coverage is deemed adequate.

(j) Subpart 407.5 is added to implement FAR subpart 7.5, Inherently Governmental Functions.

(k) 408.7 is added to create an advocacy program for the acquisition of products and services from the non-profit agencies employing people who are blind or severely disabled.

(l) Subpart 408.11 is added to establish a preference for recovered materials in the leasing vehicles.

(m) Section 409.504 and the accompanying clause at 452.209–70 are removed as superfluous.

(n) Part 410 is redesignated as part 411 and is revised to eliminate unnecessary text and to authorize the Head of the Contracting Activity (HCA) to make market acceptance determinations in accordance with FAR 11.103(a).

(o) Subpart 412.1 is redesignated subpart 411.4 and is amended to remove prescriptions for clauses at 452.212–70 and 452.212–71. The corresponding clauses at 452.212–70 and 452.212–71 are also removed.

(p) Part 412 is revised to provide coverage for the acquisition of commercial items. Subpart 412.3 is added to designate the HCA as the individual authorized to approve requests to tailor clauses and terms and conditions for commercial items in accordance with FAR 12.302(c).

(q) Section 413.501 is added to permit issuance of purchase orders on other than a fixed price basis if authorized by contracting activity written procedures.

(r) Section 413.505–3 is added to state that use of Standard Form 44 is not authorized within USDA, and section 413.505–70 is removed since form AD–744, Purchase Order-Invoice-Voucher, is no longer used by USDA.

(s) Section 414.407–3 is revised to delegate the authority to make mistake in bid determinations to HCA's.

(t) Section 415.407 is amended to remove prescriptions for solicitation provisions at 452.215–73, 452.215–74, and 452.215–75, and the corresponding provisions are removed, to eliminate collection of unnecessary information from offerors and to provide flexibility to tailor requests for proposal submissions.

(u) Section 415.612 is amended to remove the requirement that the HCA must be the formal source selection official for negotiated contracts over $500,000.

(v) Section 415.902 is revised to authorize use of another Federal Agency's formalized structured approach for establishing profit or fee objectives.

(w) Section 416.000 is added to allow the use of contract types described in FAR part 16 for simplified acquisitions.

(x) Subpart 416.3, section 416.403, and section 416.404–1 are removed because FAR coverage is deemed adequate.

(y) Section 416.404–2 is amended to remove material adequately covered by the FAR.

(z) Section 417.204 is added to authorize HCA's to approve option contracts exceeding 5 years in accordance with FAR 17.204(e).

(aa) Section 417.204 is amended to remove prescriptions for clauses at 452.217–74, 452.217–75, 452.217–76, 452.217–77, 452.217–78, and 452.217–79, since they have been superseded by FAR clauses 52.217–6, 52.217–7, and 52.217–9. The referenced AGAR clauses are likewise removed from part 452.

(ab) Subpart 417.4 is removed since USDA does not use the leader company contracting method.

(ac) Subpart 417.6 is removed since USDA does not have the requisite statutory authority to enter into management and operating contracts.

(ad) Section 422.302 is added to provide procedures for review of liquidated damages assessed under section 104(c) of the Contract Work Hours and Safety Standards Act.

(ae) Subpart 422.70 is added to provide guidance for compliance with E.O. 12989, *Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Naturalization Act Provisions,* February 13, 1996.

(af) Part 423 is revised to update the part and to address changes in environmental and safety law and in the FAR.

(ag) Subpart 423.4 is added to incorporate USDA's Acquisition, Recycling, and Waste Prevention Program, initiated to comply with 42 U.S.C. 6901, et seq., and with E.O. 12873, *Federal Acquisition, Recycling, and Waste Prevention*, October 20, 1993.

(ah) Subpart 430.2 is revised to update procedures for waivers of the Cost Accounting Standards and of Disclosure Statements.

(ai) Section 432.006 is added to provide procedures for reduction or suspension of contract payments upon finding of fraud.

(aj) Subparts 432.1 and 432.2 are added to supplement FAR coverage on financing for commercial and non-commercial items.

(ak) Subpart 432.6 is added to implement the FAR coverage on contract debts.

(al) Subpart 432.7 is added to address USDA specific funding issues.

(am) Part 433 is modified to provide an alternate forum for agency protests.

(an) Part 434 is amended to remove superfluous material and to identify the official(s) authorized to make the decisions under FAR 34.005–6.

(ao) Section 436.602–1 is amended to remove obsolete selection criteria.

(ap) Section 437.110 is amended to remove the prescription for the clause at

452.237–72, and the corresponding clause, since FAR 52.237–1 may be used instead of this clause.

(aq) Section 442.704 and the clause at 452.242–70 are removed, since the FAR provides identical coverage.

(ar) Section 442.1502 is added to delegate to HCA's responsibility for establishing past performance evaluation procedures and systems as required by FAR 42.1502 and 42.1503.

(at) Section 449.501 is added to delegate authority to HCA's to approve the use of special purpose termination clauses pursuant to FAR 49.501.

II. Procedural Requirements

A. Executive Order 12866

A work plan was prepared for this regulation and submitted to the Office of Management and Budget pursuant to Executive Order 12866. The proposed rule has been determined to be not significant for the purposes of Executive Order 12866. Therefore, the proposed rule has not been reviewed by the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The proposed rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601–611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. The AGAR is issued to implement or supplement the FAR, and does not materially add to the impact of the FAR regulations it implements or supplements. USDA certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared. However, comments from small entities concerning parts affected by the proposed rule will be considered. Such comments must be submitted separately and cite 5 U.S.C. 609 (AGAR Revision) in correspondence.

C. Paperwork Reduction Act

Information collection and recordkeeping required by the AGAR have been approved by the OMB. OMB control numbers 0505–0010, 0505–0011, 0505–0013, 0505–0014, 0505–0015, and 0505–0016 apply to the AGAR. No additional information collection or recordkeeping requirements are imposed on the public by this proposed rulemaking. Accordingly no OMB clearance is required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, et. seq., or OMB's implementing regulation at 5 CFR Part 1320.

III. Public Comments

Interested persons are invited to participate in this rulemaking by submitting views and comments with respect to the proposed AGAR revision set out in this notice. All written comments will be carefully assessed and fully considered prior to publication of the final rule.

List of Subjects in 48 CFR Parts 401 Through 453

Government contracts, Government procurement.

For the reasons set out in this preamble, the Department proposes to amend Chapter 4 of Title 48 of the Code of Federal Regulations. Copies of the proposed rule may be obtained from the addresses set forth above.

W.R. Ashworth,

Director, Procurement and Property Management.

[FR Doc. 96–17920 Filed 7–15–96; 8:45 am]

BILLING CODE 3410–XE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for Copperbelly Water Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that the comment period on the proposed threatened status for the copperbelly water snake (*Nerodia erythrogaster neglecta*) is reopened. This snake occupies portions of southern Michigan, northwestern Ohio and adjacent northeastern Indiana, southern Indiana, southeastern Illinois, and western Kentucky.

DATES: Comments from all interested parties must be received by September 16, 1996.

ADDRESSES: Comments and materials concerning this proposal should be sent to U.S. Fish and Wildlife Service, 620 South Walker Street, Bloomington, Indiana 47403–2121.

FOR FURTHER INFORMATION CONTACT: David Hudak, Field Supervisor, (see **ADDRESSES** section), 812/334–4261 extension 200.

SUPPLEMENTARY INFORMATION:

Background

A proposed rule to list the copperbelly water snake (sometimes referred to as the northern copperbelly water snake) as threatened was published on August 18, 1993 (58 FR 43860). A public hearing on the proposal was held in Indianapolis on April 4, 1994, and the comment period for this proposed rule was extended or reopened five times, with the last comment period closing on September 30, 1995 (60 FR 42140, August 15, 1995).

Following the December 15, 1994, to January 13, 1995, comment period the Service again began evaluating all available scientific and commercial data concerning the species' status. On April 10, 1995, Public Law 104–06 imposed a moratorium which prevented the addition of any species to the Threatened and Endangered Species List. Thus, the Service was prevented from making a final decision on the proposed threatened classification of the copperbelly water snake. The moratorium remained in effect until April 26, 1996, at which time Public Law 104–134 was enacted, providing for the termination of the listing moratorium by the President.

The Service is required to use the best available scientific and commercial data in making listing determinations under the Endangered Species Act of 1973 (Act), as amended. The Service's Final Listing Priority Guidance, published May 16, 1996, (61 FR 24722–24728) notes that the inaction forced upon the Service by the moratorium and related funding limitations may result in a need to reopen comment periods due to unresolved questions or the potential for the existence of new information. Pursuant to this Guidance, it is necessary to reopen the comment period to ensure that the Service has the best scientific and commercial information currently available to use in making a final listing determination for the copperbelly water snake.

During this comment period the Service desires to receive any scientific and commercial data that have become available since the previous comment period closed on September 30, 1995. If significant data are provided that are likely to influence the listing determination, the Service will notify the public of the data's existence and will provide copies to parties that request them. If necessary, the Service will then extend or reopen the comment period to allow sufficient time for interested parties to review and comment on the new data.

The Service expects to receive a report on the biological status of the northern population (southern Michigan and the adjacent portions of Indiana and Ohio) of the copperbelly water snake during this comment period. Parties wishing to receive a copy of the northern population report or other significant data received during this comment period are invited to furnish their address to the Service.

Therefore, by this notice the Service is reopening the comment period to solicit and receive additional data and comments on the proposal and to receive addresses from parties who want to receive a copy of the northern population report. The Service is especially interested in receiving data that have become available since the September 30, 1995, close of the previous comment period.

Data and comments which have been previously submitted do not need to be resubmitted. When the Service makes its final determination whether to list the copperbelly water snake as a threatened species all previously received materials will be considered along with newly submitted material. Data and comments received during this and earlier comment periods may lead to final regulations that differ from the proposal of August 18, 1993.

Author

The primary author of this notice is Ronald L. Refsnider, U.S. Fish and Wildlife Service, Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056 (612–725–3536).

Authority

Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

Dated: July 10, 1996.

William F. Hartwig,

Regional Director, Region 3, Fort Snelling, MN.

[FR Doc. 96–17985 Filed 7–15–96; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 950605147–6189–04; I.D. 040996D]

RIN 0648–AH33

Proposed List of Fisheries for 1997

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes changes for 1997 to the List of Fisheries (LOF) required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 1997 reflects new information on commercial fisheries, marine mammals, and interactions between commercial fisheries and marine mammals. Under the MMPA, a commercial fishery is to be placed on the LOF in one of three categories based upon the level of serious injuries and mortalities that occur to marine mammals incidental to that fishery. The LOF informs the public of the level of interactions with marine mammals in various U.S. commercial fisheries and which fisheries are subject to certain provisions of the Marine Mammal Protection Act (MMPA) such as the requirement to register for Authorization Certificates. This action also proposes to revise the process for registering for such a certificate, under certain circumstances, to allow greater flexibility and to reduce associated paperwork and other burdens.

DATES: Comments on the proposed rule must be received by October 15, 1996.

ADDRESSES: Send comments to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding the burden-hour estimates or any other aspect of the collection of information requirements contained in this proposed rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, OMB, Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robyn Angliss, Office of Protected Resources, 301–713–2322; Douglas Beach, Northeast Region, 508–281–9254; Charles Oravetz, Southeast Region, 813–570–5301; James Lecky, Southwest Region, 310–980–4015; Brent Norberg, Northwest Region, 206–526–6140; Steven Zimmerman, Alaska Region, 907–586–7235.

SUPPLEMENTARY INFORMATION:

Background

History of the List of Fisheries

The annual publication of a LOF placing all U.S. commercial fisheries into one of three categories based on the levels of incidental serious injury and mortality of marine mammals in the fishery is required by section 118 of the Marine Mammal Protection Act, as amended in 1994. Proposed and final regulations implementing section 118 of the MMPA were published in 1995 (60 FR 31666, June 17, 1995, and 60 FR 45086, August 30, 1995, respectively). These regulations replaced those published to implement old section 114, and establish the procedures NMFS now uses to manage incidental interactions between marine mammals and U.S. commercial fisheries.

Definitions of the fishery classification criteria for Category I, II, and III fisheries are found in the implementing regulations for section 118 (50 CFR part 229). Because classification of fisheries in the LOF depends on the definitions of the criteria, the following explanation of the criteria is provided. Although this information is available in the preambles to final rule implementing section 118 and to the LOF for 1996, it is repeated here because of the importance of this information to understanding how fisheries are classified.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on the rate, in numbers of animals per year, of serious injuries and mortalities due to commercial fishing relative to the Potential Biological Removal (PBR) level for the each marine mammal stock.

Tier 1. If the total annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR level of such a stock, then all fisheries interacting with this stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier to determine their classification.

Tier 2—Category I. Annual mortality and serious injury of a stock in a given

fishery is greater than or equal to 50 percent of the PBR level.

Tier 2—Category II. Annual mortality and serious injury in a given fishery is greater than 1 percent and less than 50 percent of the PBR level.

Tier 2—Category III. Annual mortality and serious injury in a given fishery is less than or equal to 1 percent of the PBR level.

Tier 1, therefore, considers the cumulative fishery mortality and serious injury for a particular stock, while Tier 2 considers fishery-specific mortality for a particular stock. Additional details regarding how threshold percentages between the categories were determined are provided in the preamble to the final rule implementing section 118.

Requirements for Vessels Participating in Category I and II Fisheries

The primary functions of the LOF are to inform the public of the levels of interactions with marine mammals in various commercial fisheries and to identify fisheries for which efforts to reduce these interactions may be necessary. In addition, the LOF informs the fishing industry of which fisheries are subject to certain provisions of the MMPA.

Registration. Fishers participating in Category I or II fisheries must be registered under the MMPA, as required by 50 CFR 229.4. Unless the Authorization Certificate program for a fishery is integrated and coordinated with existing fishery license, registration or permit systems and related programs, fishers must obtain a registration packet from NMFS and submit the completed registration form and the required registration fee to the NMFS Regional Office in which their fishery operates. Normally, NMFS will send the fisher an Authorization Certificate, program decal, and reporting forms within 60 days of receiving the registration form and registration fee.

NMFS has successfully integrated registration under the MMPA with state fishery registration in Washington and Oregon and is actively pursuing integration with state fishery registration in Alaska. The benefits of integration with existing programs have included a reduction or elimination of fees for some commercial fishers, a reduction in paperwork that must be completed by the fisher, and a reduction in paperwork that must be completed by NMFS.

NMFS is proposing to provide additional flexibility for integrated registration systems so that, if registration information is supplied by NMFS or by a State participating in the integrated system for a fishery, individual fishers are not required to fill out forms or submit information but automatically will be issued Authorization Certificates. NMFS will continue to integrate registration with existing programs where possible.

Reporting. Vessel owners or operators, or fishers, in the case of non-vessel fisheries, in Category I, II, or III fisheries must comply with 50 CFR 229.6 and report all incidental mortality and injury of marine mammals during the course of commercial fishing operations to NMFS Headquarters or appropriate NMFS Regional Office. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing or perforating any part of the body is considered injured and must be reported. Instructions for submission of reports are found at 50 CFR 229.6(a).

Observers. Finally, fishers participating in Category I and II fisheries may be required, upon request, to accommodate an observer on board their vessels. Observer requirements may be found at 50 CFR 229.7.

Timing of the Publication of the 1996 LOF

Because of other regulatory activities that occurred concurrently, such as the preparation and publication of the final implementing regulations for section 118 of the MMPA, the LOF for 1996 was published on December 28, 1995 (60 FR 67063) instead of the target date of October 1, 1995. Due to this delay, there was a very short time period between the publication of the 1996 LOF and the publication of this proposed LOF for 1997. NMFS focused its analysis for the proposed LOF for 1997 on those fisheries it committed to future review in the 1996 LOF.

NMFS hopes to have available revised estimates of incidental serious injury and mortality in U.S. commercial fisheries, and revised PBR levels for the proposed LOF for 1998.

Proposed Changes to the LOF

The following specific changes are proposed for the LOF that would take effect in 1997. Fisheries are placed into Category I, II, or III based on the classification scheme defined in the final rule implementing section 118 (60 FR 45086–45106, August 30, 1995). With the exception of these specific proposed changes, NMFS proposes to retain the fishery classifications as published in the final LOF for 1996.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

U.S. Atlantic Tuna Purse Seine Fishery

The bluefin tuna purse seine fishery, which is largely prosecuted in the Gulf of Maine, was placed in Category III in the 1994 LOF, but was inadvertently omitted from the 1996 LOF. In 1995, five bluefin tuna purse seine permit holders reported landings in August and September. Because there is also a yellowfin tuna purse seine fishery, which is largely prosecuted in the U.S. mid-Atlantic and was not previously listed in the LOF, the two target species are combined in this proposed LOF under the name ''U.S. Atlantic tuna purse seine fishery''.

NMFS has received reports of interactions between the bluefin tuna purse seine fishery and marine mammals. However, the marine mammals were released uninjured. Because incidental serious injuries and mortalities are not expected in this fishery, this fishery is proposed to be placed in Category III.

Gulf of Maine Mackerel Trawl Fishery

A combined trawl fishery for squid, mackerel, and butterfish was created in the 1996 LOF. A separate listing for a component of that fishery, the Gulf of Maine mackerel trawl fishery, is duplicative and is proposed to be deleted from the LOF. NMFS does not anticipate significant effort in the mackerel trawl fishery in the Gulf of Maine in the future.

Finfish Aquaculture Fishery

Records of harbor seal incidental mortality and serious injury have been reported for this fishery, though at a level that does not warrant a change in categories. However, NMFS proposes to add ''Harbor seal, Western North Atlantic stock'' as a marine mammal stock that incurs serious injury and mortality incidental to this fishery.

U.S. North Atlantic Coastal Gillnet Fisheries

NMFS proposes to change the names and revise the boundaries of the ''New England multispecies sink gillnet'' and the ''U.S. mid-Atlantic coastal gillnet'' fisheries to reflect a change in the Northeast Multispecies Fishery Management Plan (FMP) and to eliminate a boundary overlap.

The ''New England multispecies sink gillnet fishery (including species as defined in the Multispecies Fishery Management Plan and spiny dogfish and monkfish)'' is proposed to be changed to ''Northeast Multispecies sink gillnet fishery (including but not limited

to species as defined in the Northeast Multispecies Fishery Management Plan, dogfish, and monkfish).'' The southern boundary of the Northeast Multispecies sink gillnet fishery is proposed to be changed from 71°40′ W. long. to 72°30′ W. long.

The ''U.S. Mid-Atlantic coastal gillnet fishery'', defined in the 1992 LOF as ''mid-Atlantic coastal gillnet fishery (includes, but is not limited to, Atlantic croaker, Atlantic mackerel, Atlantic sturgeon, black drum, bluefish, herring, menhaden, scup, shad, striped bass, sturgeon, weakfish, white perch, yellow perch),'' is proposed to be changed to ''U.S. Mid-Atlantic coastal gillnet fishery (including but not limited to, Atlantic croaker, Atlantic mackerel, Atlantic sturgeon, black drum, bluefish, herring, menhaden, scup, shad, striped bass, sturgeon, weakfish, white perch, yellow perch, dogfish, and monkfish).'' The eastern boundary for the mid-Atlantic coastal gillnet fishery is proposed to be the 72°30′ W. long. line, running south from the southern Long Island shoreline; the southern boundary for this fishery is proposed to be a line drawn from the North Carolina-South Carolina border eastward to the 72°30′ line.

NMFS anticipates having additional data from observer programs and from other sources to use in re-evaluating these fisheries. In addition, studies are underway to provide NMFS with new information on the nature of these fisheries, which have traditionally been difficult to define or observe because of their highly seasonal nature.

Offshore Monkfish Bottom Gillnet Fishery

The offshore monkfish bottom gillnet fishery was a new fishery that was placed in Category III in the 1996 LOF. However, because of the location of the fishery and the type of gear typically employed, this fishery should have been considered a new component of two existing fisheries instead of a new, separate fishery. Monkfish will be added as a target species to the Northeast Multispecies sink gillnet fishery and to the U.S. mid-Atlantic coastal gillnet fishery, as defined in the above section on the U.S. North Atlantic coastal gillnet fisheries. Thus, fishers targeting monkfish using gillnets either will be in the U.S. mid-Atlantic coastal gillnet fishery, and placed with that fishery in Category II, or in the Northeast Multispecies sink gillnet fishery, and placed with that fishery in Category I. Gulf of Maine and U.S. Mid-Atlantic Lobster Fisheries.

1. *Summary*. Currently there are two lobster fisheries in the LOF, the ''Gulf of Maine, U.S. Mid-Atlantic Inshore Lobster Trap/Pot Fisheries'' and the ''Gulf of Maine, U.S. Mid-Atlantic Offshore Lobster Trap/Pot Fisheries.'' Based on a review of 1990–1994 large whale entanglement reports received by the agency and new information received about the prosecution of the lobster fishery, the inshore and offshore fisheries are proposed to be combined into a single fishery, and referred to as the ''Gulf of Maine, U.S. Mid-Atlantic Lobster Trap/Pot Fishery.'' This fishery is proposed to be placed in Category I in the 1997 LOF.

2. *Combining lobster fisheries*. The two lobster fisheries described in the 1996 LOF are proposed to be combined because there is currently no practical way to distinguish between ''inshore'' and ''offshore'' fisheries with regard to differences in marine mammal take. Definitions of ''inshore'' and ''offshore'' or a discussion of what constitutes an inshore fishery versus an offshore fishery were not presented in the previous LOFs.

Generally, as the distances from shore increase, so do the size of the pots, number of pots, and number and size of associated lines and surface gear. There is no evidence to indicate that significant changes in fishing operations occur at the boundary between state waters and the exclusive economic zone. In some cases, gear used in state waters is indistinguishable (larger pots and long strings, similar surface gear) from that used 161 km (100 miles) offshore.

Comments are specifically requested from the public on whether there is a practical operational distinction between the inshore and offshore sectors of the fishery. Comments should consider factors such as geographic location, gear characteristics, and fishing practices such as tending gear. Comments also should consider how interactions with marine mammals should be attributed if separate fisheries are recommended.

3. *Special problems*. The lobster fishery is one of the largest fisheries in the Northeast. It is estimated that there are 14,000 combined state and federal lobster trap/pot permit holders. This information is based on a fishery from Maine through New Jersey, although the fishery may extend as far south as Cape Hatteras in some years.

A confounding problem in analyzing the impacts of this fishery is that many whales are capable of dragging lobster gear some distance from the location in which it was originally set. For example, a northern right whale carried part of a lobster trawl from the Bay of Fundy for three months before it was spotted in Massachusetts waters. In addition, a 4.3–meter (14–foot) minke whale dragged a pair trap (a two-trap string) 9.2 km (5.5 miles) before it was sighted and disentangled. Thus, either of the fishers, upon returning to the location at which they had originally set the gear, would not have known whether an entanglement had occurred or whether the missing gear was dislodged by mobile gear or for other reasons.

NMFS has provided observer coverage designed to sample the lobster catch for this fishery, at least 66 days in some years, which has not identified a marine mammal bycatch problem. Due to the whale behavior described above and the size of the lobster fishery, the agency believes that traditional observer coverage will not be effective in this fishery. Alternative monitoring programs such as aerial surveys, enhanced stranding and disentanglement network reporting, and additional gear marking requirements may be considered as alternatives to traditional observer coverage.

4. *Interactions between the lobster fishery and marine mammals*. As described in the following analysis, serious injuries and/or mortalities of marine mammals are known to occur in the lobster fishery. An examination of large whale entanglement records from sources other than an observer program reveals that large whale entanglements occur in gear which is reported as ''lobster gear'', ''lobster pot warp'', ''line like lobster pot warp'', or in similar terms. Generally, these reports describe the whale's condition and provide a basic description of how the gear is entangling the animal so that a rescue can be planned. The reports often do not contain the detail necessary to assign the entanglements to a particular fishery or location. On many occasions, the whale is not re-sighted, so a close examination of the gear cannot be attempted. In some cases, additional supportive information may be available to confirm the gear type and origin, but sources of that information have not been fully investigated at this time.

For this analysis, NMFS has been conservative in attributing available records of entanglements to this fishery and has used only 18 of 42 (43 percent) of the available 1990–1994 line entanglement (as opposed to net entanglement) records. The reasons for this approach include: (1) Records have been excluded where gear was only reported as ''line'' or ''line like lobster pot warp'' since NMFS cannot confirm at this time whether lobster pot warp or line from some other fixed or mobile gear was involved; (2) records were

excluded if there was insufficient information on degree of injury or marine mammal species identification; 3) records were excluded if the whale disentangled itself; and 4) records were excluded if gear was known to be of non-U.S. origin or gear was of unknown origin but the entanglement was first sighted in non-U.S. waters. In addition, records of entanglements prior to 1990 or after 1994 were not considered in this analysis.

Tier 1 evaluation. Annual serious injury and mortality levels across all fisheries for humpback, northern right whale, and minke whale stocks interacting with this fishery exceed 10 percent of the PBR levels for all three species.

Tier 2 evaluation. One record of serious injury and/or mortality of a northern right whale, 11 records of serious injury and/or mortality of humpback whales, and 6 records of serious injury and/or mortality of minke whales were reported for this fishery from 1990–1994. These records cannot be extrapolated to a total kill estimate and therefore represent a minimum serious injury and/or mortality rate (from a 5-year average) of 0.2 per year for northern right whales, 2.2 per year for humpback whales, and 1.2 per year for minke whales. This rate is greater than 1% but less than 50 percent of the PBR level for humpback and minke whales, but equal to 50 percent of the PBR level for northern right whales. Therefore this fishery is proposed to be placed in Category I in the 1997 LOF.

In addition to the one right whale entanglement used in the above analysis, the agency has received at least one report of a right whale entanglement after 1994 as well as during the 1990–1994 period which may be attributable to the lobster fishery, including a video of a temporarily entangled right whale calf in Cape Cod Bay in 1995. Further verification is anticipated on a 1993 report of an entangled right whale sighted near Munson Canyon and one in 1994 sighted off Plum Island, Massachusetts.

5. *Registration of the lobster fishery*. Annual registration for an MMPA Authorization Certificate is required for participants in Category I and II fisheries. NMFS will consider registration options for the lobster fishery that will minimize the registration burden on lobster fishers.

The lobster fishery is currently licensed under a combination of several state and federal systems. NMFS will work with the New England and Mid-Atlantic states to integrate registration under the MMPA with state lobster fishery registration. NMFS intends to coordinate registration for the federally managed lobster fishery with the MMPA registration program.

The proposed rule would provide additional flexibility for integrated registration systems so that, for qualified programs, individual fishers would not be required to fill out forms or submit registration information but automatically would be issued registrations and Authorization Certificates. Once an alternative registration system is developed, and a reduction in administration costs is realized, NMFS will waive the registration fee for the lobster fishery.

Commercial Fisheries in the Pacific Ocean

Oregon Swordfish/Blue Shark Surface Longline Fishery

The Oregon swordfish/blue shark surface longline fishery was classified as a Category II fishery in the 1996 LOF based on analogy with other pelagic longline fisheries. NMFS proposes to separate this fishery into two fisheries based upon the target species to reflect the current licensing practices of the Developmental Fisheries Program in the State of Oregon. The two fisheries would be the: ''Oregon swordfish floating longline fishery'' and ''Oregon blue shark floating longline fishery.'' There are 20 participants and 10 participants in these fisheries, respectively. Both fisheries would remain in Category II in 1997.

California Squid Purse Seine Fishery

The California squid purse seine fishery was classified as a Category III fishery in the 1996 LOF. However, the Pacific Scientific Review Group, established under section 117 of the MMPA, recommended that the squid purse seine fishery be monitored with an observer program because of lack of information about marine mammal mortalities and historical interactions between this fishery and short-finned pilot whales.

Incidental mortality of pilot whales has occurred historically in the California squid purse seine fishery. Twelve pilot whales were observed and reported entangled in this manner during the 1980 season (Miller et al. 1983). Miller et al. (1983) also reported that pilot whales were occasionally shot in the squid purse fishery when lethal deterrence was legal. Heyning and Woodhouse (1994) analyzed stranding data between 1975-90 and found 14 short-finned pilot whales stranded or floating dead (most during the late 1970's). They believe that these pilot whales were incidentally killed in the squid purse seine fishery. All animals that were examined had stomachs full of market squid; none that were stranded had evidence of bullet holes, and commercial squid boats were reported to have been working those areas at the time.

Short-finned pilot whales were once common off Southern California, especially near Santa Catalina Island (Barlow et al. 1995). Dohl et al. (1980) estimated that a resident population of 400 short-finned pilot whales occurred in California, with a seasonal increase of up to 2,000 individuals. Short-finned pilot whales disappeared from the area after the strong 1982-83 El Nino event, and few sightings were made between 1984-92 (Barlow et al. 1995). Because the 1991-92 aerial and shipboard cetacean surveys only sighted one short-finned pilot whale, there is no estimate of population size available at this time. However, six sightings of short-finned pilot whales were made during another ship survey off California in 1993, and a population estimate will be available in the near future. In addition, short-finned pilot whales are also incidentally killed in the offshore drift gillnet fishery for thresher shark and swordfish. Thirteen short-finned pilot whales were observed incidentally killed between 1990-94 in this fishery. Thus, short-finned pilot are rare, but present in the area (Forney 1994).

Currently, purse seine vessels that fish for mackerel, tuna, and anchovies (a Category II fishery) use the same gear to fish for squid in the winter off southern California. The number of vessels has remained relatively stable in southern California, with approximately 65 squid purse seine vessels in operation. Over the last few years, squid purse seine effort and landings have increased. In the absence of reliable information indicating the frequency of interaction, NMFS must determine whether a fishery is a Category II fishery by evaluating other factors (60 FR 45086, August 30, 1995). Because of historical evidence and possible significant interactions with the short-finned pilot whale, NMFS is proposing to re-categorize the squid purse seine fishery from Category III to Category II.

NMFS is concerned about the lack of recent data on which to base this proposed fishery classification and about the apparent change in distribution of the short-finned pilot whale in California waters. NMFS specifically requests comments on these two aspects of this proposed reclassification.

Re-evaluation of Other Fisheries

Gulf of Maine, U.S. Mid-Atlantic Tuna, Shark, and Swordfish Hook and Line/Harpoon Fisheries

An examination of entanglement records from sources other than observer data reveals that large whale entanglements occur in gear reported as ''tuna gear'', ''tuna dart'', ''line with tuna ball'', etc. Generally, these reports describe the whale's condition and provide a general description of how the gear is entangling the animal so that a rescue can be planned. The reports often do not contain the detail necessary to definitively identify the responsible fishery or the location where the entanglement occurred. On many occasions, the whale is not resighted, so a close examination of the gear cannot be attempted. In some cases, additional supportive information may be available to confirm the gear type and origin, but sources of that information have not been fully investigated at this time. NMFS will continue to monitor these entanglements and will verify the origin of the gear if possible. Until the data can be verified and additional information is obtained on the hook and line/harpoon fisheries for tuna, shark and swordfish, NMFS proposes to retain the large pelagics hook-and-line/harpoon fisheries in Category III in the LOF.

Other Fisheries

In the 1996 LOF, NMFS indicated that the annual incidental serious injury and mortality levels of marine mammals in several fisheries would be re-evaluated in a future LOF. New data were not yet available for adequate re-evaluations of the level of serious injury and mortality incidental to some Atlantic trap/pot fisheries, the Atlantic inshore gillnet fisheries, the North Atlantic bottom trawl fishery, and several other fisheries described in the 1996 LOF. NMFS recognizes that incidental serious injuries and mortalities may occur at some level in some of these fisheries and will continue to monitor these interactions.

Definitions of Various U.S. North Atlantic Trawl Fisheries

Since the publication of the 1996 LOF, it has come to NMFS' attention that there is confusion regarding the definitions of the trawl fisheries. NMFS is concerned that the current fishery definitions may not reflect current fishing practices. It is often difficult for a fisher to determine under which category his/her vessel falls, and therefore whether or not to register in the Marine Mammal Authorization Program and be prepared for possible observer coverage. The absence of a clear understanding of the definitions of certain fisheries may confound the classification of certain fisheries in the LOF. Thus, NMFS is specifically requesting comments from the public on appropriate definitions of the trawl fisheries.

The following are the trawl fisheries as listed in the LOF for 1996. Definitions of the fisheries are included for those fisheries not described by target species and gear type in the fishery name.

U.S. Atlantic Large Pelagics Pair Trawl Fishery

This fishery is in Category I and currently consists of seven pairs of vessels. This fishery is characterized by the use of two vessels to cooperatively haul trawl net gear.

Atlantic Mackerel, Squid, and Butterfish Trawl Fishery

This fishery is in Category II and currently consists of approximately 260 vessels/persons. This fishery consists of the ''Mid-Atlantic squid trawl'' and the ''Mid-Atlantic mackerel trawl'' fisheries as defined in the 1994 LOF. These fisheries were combined, proposed to include the butterfish trawl fishery in order to parallel the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries of the North Atlantic, and proposed to be identified as the ''Atlantic mid-water trawl fishery'' in the proposed LOF for 1996 (60 FR 31680, June 16, 1995). In response to a public comment indicating that it was incorrect to call the squid trawl fishery a mid-water trawl fishery, the name of the fishery was changed in the final LOF for 1996 to the ''Atlantic squid, mackerel, and butterfish trawl'' fishery to reflect the species targeted and to parallel the relevant FMP (60 FR 67070, December 28, 1995).

North Atlantic Bottom Trawl Fishery

This fishery was placed in Category III in the 1996 LOF and currently consists of 1,052 vessels/persons. This fishery was renamed from the ''Gulf of Maine, mid-Atlantic groundfish trawl'' fishery to include a specific list of species targeted (60 FR 31681, June 16, 1995). Although the list of species targeted was not provided in the final LOF for 1996, the proposed LOF for 1996 indicted that this fishery targets species included in, but not limited to, all species described in the Northeast Multispecies, and Summer Flounder FMPs and scup and seabass which may be included in the Summer Flounder FMP at a later date.

Gulf of Maine Mackerel Trawl Fishery

This fishery was placed in Category III in the 1996 LOF and currently consists of approximately 30 vessels. This fishery is proposed to be combined with the squid, mackerel, butterfish trawl fishery in this proposed LOF.

Mid-Atlantic Mixed Species Trawl Fishery

This fishery was placed in Category III in the 1996 LOF and currently consists of more than 1,000 vessels/persons.

Gulf of Maine and Mid-Atlantic Sea Scallop Trawl Fishery

This fishery was placed in Category III in the 1996 LOF and currently consists of 215 vessels/persons.

Gulf of Maine, Southern North Atlantic, and Gulf of Mexico Herring Trawl Fishery

This fishery was placed in Category III in the 1996 LOF and currently consists of five vessels/persons.

U.S. Atlantic Monkfish Trawl Fishery

This fishery was a new fishery that was placed in Category III in the 1996 LOF and consists of an unknown number of participants. This fishery harvests monkfish in the deep waters off the Atlantic coast. Some participants in this fishery use a modified beam trawl; most use otter trawls. In addition, some participants in the scallop dredge fishery target monkfish using dredge gear during off-days for scallops as well as targeting scallops and monkfish simultaneously.

Bluefish, Croaker, and Flounder Trawl Fishery

This fishery is in Category III and currently includes approximately 550 vessels/participants.

Other Proposed Changes

Annual registration is one of the requirements of the MMPA which would apply to participants in Category I and II fisheries. NMFS is considering registration options that will ensure compliance with the MMPA while minimizing the registration burden to fishers. As noted above, NMFS has successfully integrated registration under the MMPA with state fishery registration in Washington and Oregon under current regulations, is pursuing an integrated registration system with Alaska, and would consider integrated registration systems for other fisheries such as the Gulf of Maine, U.S. Mid-Atlantic Lobster Trap/Pot Fishery.

The proposed rule would provide additional flexibility for integrated registration systems so that, if MMPA

Authorization Certificate registration information is supplied through integration with state systems, interjurisdictional fisheries programs, and federally managed fisheries, individual fishers would not required to fill out forms or submit registration information but automatically would be issued registrations and Authorization Certificates.

The benefits of integrating MMPA registration with existing fishery registration or permit programs have included a reduction in paperwork that must be completed by the fisher, a reduction in paperwork that must be completed by NMFS, and reduced staff burdens for NMFS. NMFS will consider reducing or waiving registration fees for the fisheries where an integrated registration program can be arranged.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Under existing regulations certain fishers must register, obtain an Authorization Certificate, and pay a fee of $25. Such a certificate authorizes the taking of certain marine mammals incidental to commercial fishing operations. Currently, approximately 13,000 fishers are registered. This proposed rule, if adopted, would require the registration of additional fishers in fisheries that are classified as Category I and II, including approximately 14,000 participants in the Gulf of Maine, U.S. Mid-Atlantic Lobster Trap/Pot Fishery. NMFS will consider waiving or reducing the registration fee for fisheries where an integrated registration program can be arranged. In any case, the fee, with respect to expected revenues, is not considered significant. As a result, a regulatory flexibility analysis was not prepared. This proposed rule has been determined to be not significant for purposes of E.O. 12866.

This proposed rule does not contain new collection-of-information requirements subject to the Paperwork Reduction Act. Further, proposed regulatory changes are designed to provide additional flexibility and to reduce paperwork burdens. However, the proposed reclassification of some fisheries to Category I or II would be expected to increase the number of fishers that may be subject to collection-of-information requirements.

Although this collection has been approved previously by the Office of Management and Budget (OMB) under OMB control numbers 0648–0224 and 0648–0225, because of new collection requirements as a result of the reclassification of some fisheries to Category I and II, this proposed rule is being resubmitted to OMB for review and approval. The average reporting burden under the existing requirements is 0.25 hours for each fisher who is required to register for an Authorization Certificate and 0.17 hours for each report of marine mammal injury or mortality. Those burdens are not expected to change significantly if this proposed rule is adopted, and may actually decrease as a result of proposed changes in the registration system to reduce those burdens. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

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

The Assistant Administrator for Fisheries, NOAA, prepared an environmental assessment (1995 EA) under the National Environmental Policy Act for regulations to implement section 118 of the MMPA. The 1995 EA concluded that implementation of those regulations would not have a significant impact on the human environment and is available upon request (see **ADDRESSES**). For the proposed LOF, NMFS is constrained by the MMPA with respect to the information that may be considered; changes in the implementing regulations are minor and procedural in nature and do not change the analysis or conclusion of the 1995 EA.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Imports, Indians, Marine Mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: July 10, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.4, paragraphs (a), (b) and (e) are revised to read as follows:

§ 229.4 Requirements for Category I and II fisheries.

(a) *General.* (1) In order to lawfully incidentally take a marine mammal in the course of a commercial fishing operation in a Category I or II fishery, a valid Certificate of Authorization authorizing such a taking must be on board the vessel or, in the case of nonvessel fisheries, must be in the possession of the person in charge of the fishing operation. The owner of a vessel or nonvessel fishing gear is responsible for obtaining a Certificate of Authorization.

(2) The administration of Authorization Certificates under this part will be integrated and coordinated with existing fishery license, registration, or permit systems and related fishery management programs wherever possible. These fishery management programs may include, but are not limited to, state or interjurisdictional fisheries programs. If the administration of Authorization Certificates is integrated into a fishery management program, NMFS will publish a notice in the Federal Register announcing the integrated program and summarizing how a person may register under that program or how registration will be achieved. Additional efforts will be made to contact participants in the affected fishery via other appropriate means of notification.

(b) *Registration.* (1) The owner of a vessel, or for nonvessel gear fisheries, the owner of gear who participates in a Category I or II fishery is required to be registered for a Certificate of Authorization.

(2) Unless a notice is published in the Federal Register announcing an integrated Authorization Certificate/ fishery management program, the owner of a vessel, or for nonvessel fishery, the owner of the gear must submit the following information using the format specified by NMFS:

(i) Name, address, and phone number of owner;

(ii) Name, address, and phone number of operator, if different from owner, unless the name of the operator is not known or has not been established at the time the registration is submitted;

(iii) For a vessel fishery, vessel name, length, and U.S. Coast Guard documentation number or state vessel registration number, and if applicable, state commercial vessel license number and for a nonvessel fishery, a description of the gear and state commercial license number, if applicable.

(iv) A list of all Category I and II fisheries in which the fisher may engage during next calendar year;

(v) The approximate time, duration, and location of each such fishery operation, and the general type and nature of use of the fishing gear and techniques used; and

(vi) A certification signed and dated by the owner of an authorized representative of the owner as follows: ''I hereby certify that I am responsible for the vessel or gear described in this registration, that I have reviewed all information contained in this registration, and that the information is true and complete to the best of my knowledge.''

(3) If a notice is published in the Federal Register announcing an integrated Authorization Certificate/fishery management program, the owner of a vessel, or for nonvessel fishery, the owner of the gear may register by following the directions provided in that notice. In some cases, an integrated Authorization Certificate/fishery management program may automatically register participants in a fishery for Authorization Certificates. If a person receives a registration to which he or she is not entitled or if the registration contains incorrect, inaccurate or incomplete information, the person shall notify NMFS within 10 days following receipt. A registration must be signed and dated by the owner or an authorized representative of the owner unless it contains incorrect, inaccurate or incomplete information. If for some reason a person who expects to receive automatic registration does not receive that registration within the time specified in the notice announcing the integrated Authorization Certificate/fishery management program, the person shall notify NMFS as directed in the notice or may apply for registration by submitting the information required under paragraph (b)(1)(i) through (vi).

* * * * *

(e) *Issuance.* (1) NMFS will issue an Authorization Certificate and annual decal to an owner or a representative of the owner who submits a completed registration and the required fee, or is registered under an integrated Authorization Certificate/fishery management program and has paid any required fee, provided that the registrant has complied with the requirements of this section and §§ 229.6 and 229.7.

(2) NMFS will renew an Authorization Certificate and issue a new annual decal to an owner or a representative of the owner who submits updated registration or renewal registration which includes a statement (yes/no) whether any marine mammals were killed or injured during the current or previous calendar year and the required fee, or who is registered under an integrated Authorization Certificate/fishery management program and has paid any required fee, provided that the registrant has complied with the requirements of this section and §§ 229.6 and 229.7.

(3) If a person receives an Authorization Certificate or an annual decal to which he or she is not entitled, the person shall notify NMFS within 10 days following receipt. In order for a Authorization Certificate to be valid, the certification must be signed and dated by the owner or an authorized representative of the owner.

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[FR Doc. 96–18002 Filed 7–11–96; 11:45 am]
BILLING CODE 3510–22–F

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50 CFR Part 679

[Docket No. 960703187–6187–01; I.D. 062096B]

RIN 0648–AI96

Fisheries of the Exclusive Economic Zone off Alaska; Allow Longline Pot Gear

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to allow the use of longline pot gear in the directed sablefish fishery in the Bering Sea. Sablefish hook-and-line fishermen in the Bering Sea have faced increasing depredation of hooked sablefish by killer whales. The use of longline pot gear would effectively prevent such depredation. This action is necessary to protect Bering Sea sablefish harvests and is intended to resolve a conflict between fishermen and a species protected under the Marine Mammal Protection Act of 1972 (MMPA).

DATES: Comments must be received by August 15, 1996.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, Room 453, 709 W. 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99510–2252.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) according to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). This FMP, implemented by regulations at 50 CFR parts 600, and 679, provides for changes to gear restrictions by regulatory amendment without amendment to the FMP. The regulations pertaining to this action, at § 679.24, specify gear types that may legally be employed to harvest sablefish in the Bering Sea. Killer whales (*Orcinus orca*) are protected under the MMPA, which prohibits harassment of marine mammals and authorizes the Secretary of Commerce to consult with and assist regional fishery management councils to reduce takings of marine mammals incidental to commercial fishing operations.

In September 1995, commercial fishing industry representatives reported to the Council that the annual Bering Sea sablefish quota had been underharvested due in part to interactions with killer whales. While fishermen retrieve their hook-and-line gear when fishing for sablefish, killer whales frequently pick sablefish off the hooks. Sablefish consumed by killer whales in this manner represent undocumented fishing mortality. Even though the sablefish quota may be underharvested by fishermen, overall fishing mortality could actually be higher than the specified quota, resulting in overharvests. Although NMFS is not able to quantify the amount of killer whale-caused fishing mortality, such mortality is a conservation concern to the extent that the amount of overharvests introduces

uncertainty in management of the fishery.

Attempts to deter the whales by various non-lethal means have proven unsuccessful. Research referenced in the EA/RIR/IRFA for this action concluded that the only viable method for reducing killer whale interactions with this fishery is to harvest with longline pot gear instead of hook-and-line gear, and thus deny killer whales the opportunity to take fish being hauled to the surface.

Currently, regulations at § 679.24(b)(1)(iii) prohibit longline pot gear in the Bering Sea to prevent the pre-emption of fishing grounds by one gear-type. Gear conflicts and the pre-emption of fishing grounds by a single gear-type arise from the use of diverse gear in the same area over the same period of time. The nature of longline pot gear and strategies used in fishing longline pots deter fishermen from deploying hook-and-line and trawl gear on fishing grounds where longline pot gear is set. This effectively pre-empts common fishing grounds. For this reason, the Council chose in 1991 to prohibit the use of longline pot gear in the Bering Sea groundfish fisheries. Regulations prohibiting longline pot gear were promulgated on August 21, 1992 (57 FR 37906).

In 1995, the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries extended sablefish seasons in Federal waters off Alaska to a period of 8 months. By allowing the fleet to spread its operations over time, the IFQ Program greatly reduced the possibility of congestion and pre-emption of common fishing grounds. The reintroduction of longline pot gear into the Bering Sea fisheries would pose less of a grounds pre-emption threat now compared to 1992 when longline pots were prohibited. Authorizing the use of longline pot gear, with limitations, in the Bering Sea directed sablefish fishery would allow fishermen to use this gear and reduce interactions with killer whales.

In recommending this action, the Council expressed concern that, despite the decreased likelihood of grounds pre-emption, fishermen using traditional hook-and-line gear in relatively small boats may be pre-empted from grounds by fishermen in larger boats using longline pot gear. Therefore, this action would establish a Bering Sea closure to longline pot gear from June 1 through June 30. Lifting the prohibition on longline pot gear for sablefish fisheries would reduce interactions with killer whales, while the month-long closure would continue to provide a period for conducting other fisheries without the potential for gear conflicts with longline pot gear.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rule would reduce a restriction by allowing fishermen to use longline pot gear to harvest sablefish. At the present time, fishermen may use only hook-and-line gear, a gear subject to depredation of harvests by killer whales. While a gear switch would have direct costs, a switch would be voluntary and presumably would only be made if the fisherman judge that the costs associated with changing gear would be offset by the greater landed weight of sablefish possible in the absence of killer whale depredation.

The Director, Alaska Region, NMFS, has determined that fishing activities conducted under this rule would have no adverse impacts on marine mammals. The express purpose of this rule is to reduce the interactions with commercial fisheries in the Bering Sea and resident killer whale populations.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements

Dated: July 9, 1996.

Nancy Foster, Ph.D.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.24, paragraphs (b)(1)(iii) and (c)(4) are revised to read as follows:

§ 679.24 Gear limitations.

* * * * *

(b) * * *

(1) * * *

(iii) *Longline pot gear.* Any person using longline pot gear must treat any catch of groundfish as a prohibited species, except:

(A) In the Aleutian Islands subarea.

(B) While directed fishing for sablefish in the Bering Sea, except as provided in paragraph (c)(4)(ii) of this section.

* * * * *

(c) * * *

(4) *BSAI.* (i) Operators of vessels using gear types other than hook-and-line, pot, or trawl gear in the BSAI must treat sablefish as a prohibited species as provided by § 679.21(b).

(ii) Longline pot gear is prohibited in directed fishing for sablefish from 0001 hrs, A.l.t., on June 1 until 1200 hrs, A.l.t., on June 30.

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[FR Doc. 96–17945 Filed 7–15–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 137
Tuesday, July 16, 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 COMMERCE

Bureau of Export Administration

Offsets in Military Reports

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 16, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, N.W., Room 6877, Washington, D.C., 20230 (telephone: 202–482–0500).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Defense Production Act Amendments of 1992, Section 123 (P.L. 102–558), which amended Section 309 or the Defense Production Act of 1950, requires United States firms to furnish information regarding offset agreements and transactions exceeding $5,000,000 in value associated with sales of weapon systems or defense-related items to foreign countries. The information collected on offset agreements and transactions will be used to assess the cumulative effect of offset compensation practices on U.S. trade and competitiveness, as required by statute.

II. Method of Collection

The information is provided annually by a written report.

III. Data

OMB Number: 0694–0084.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 10 hours per response.

Estimated Total Annual Burden Hours: 1,000.

Estimated Total Annual Cost: $20,000 (Respondents will not need to purchase equipment or materials to respond to this survey).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: July 10, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–18036 Filed 7–15–96; 8:45 am]

BILLING CODE 3510–DT–P

International Trade Administration

Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke antidumping duty orders and findings nor to terminate suspended investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: July 16, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on May 2, 1996, we published in the Federal Register a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received requests for administrative review or objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the

suspended investigations. Therefore, because administrative reviews were requested or because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–357–802
Argentina
Rectangular Carbon Steel Tubing
Objection Date: May 30, 1996
Objector: Hannibal Industries, Inc.
Contact: Tom Killiam at (202) 482–2704

A–351–503
Brazil
Iron Construction Castings
Objection Date: May 7, 1996
Objector: East Jordan Iron Works, Inc.
Contact: Hermes Pinilla at (202) 482–3477

A–533–502
India
Pipes and Tubes
Review Requested By: Rajinder Pipes Limited of India on May 22, 1996, Allied Tube and Conduit Corporation, Sawhill Tubular Division of Armco Inc., Wheatland Tube Company, and Laclede Steel Company on May 24, 1996, Lloyds Metals & Engineers Ltd. on April 30, 1996
Contact: Davina Hashmi at (202) 482–0180

A–588–066
Japan
Impression Fabric
Objection Date: May 30, 1996
Objector: Bomont Industries
Contact: Lyn Johnson at (202) 482–5287

A–580–507
South Korea
Malleable Cast Iron Pipe Fittings, Other than Grooved
Objection Date: May 8, 1996
Objector: Grinnell Corporation, Ward Manufacturing, Inc., and Stockham Valves & Fittings Co., Inc.
Contact: Thomas Schauer at (202) 482–4852

A–583–008
Taiwan
Certain Welded Carbon Steel Pipe & Tubes
Review Requested By: Allied Tube and Conduit Corporation, Sawhill Tubular Division of Armco Inc., Wheatland Tube Company, and Laclede Steel Company on May 24, 1996
Contact: Michael Heaney at (202) 482–4475

A–583–507
Taiwan
Malleable Cast Iron Pipe Fittings, Other Than Grooved
Objection Date: May 8, 1996
Objector: Grinnell Corporation, Ward Manufacturing Inc., Stockham Valves & Fittings Co., Inc.
Contact: Laurel LaCivita at (202) 482–4740

Dated: July 12, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–18053 Filed 7–15–96; 8:45 am]
BILLING CODE 3510–DS–P

[A–331–602]

Certain Fresh Cut Flowers From Ecuador; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Final Results of Antidumping Duty Administrative Review.

SUMMARY: On August 2, 1995, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain fresh cut flowers from Ecuador. The review covers 12 producers and/or exporters of this merchandise to the United States and the period March 1, 1993 through February 28, 1994.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have made certain changes for the final results. The review indicates the existence of dumping margins for certain firms during the review period. Therefore, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the foreign market value (FMV).

EFFECTIVE DATE: July 16, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas E. Schauer or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4852/4477.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1987, the Department of Commerce (the Department) published in the Federal Register (52 FR 8494) the antidumping duty order on certain fresh cut flowers from Ecuador. On March 4, 1994, the Department published a notice of ''Opportunity to Request Administrative Review'' with respect to the period March 1, 1993 through February 28, 1994 (59 FR 14608). The Department received a timely request for review from the petitioner, the Floral Trade Council, on March 31, 1994, in accordance with 19 CFR 353.22(a). On August 2, 1995, we published the preliminary results of the administrative review (60 FR 39358). Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Two respondents have asked that we correct clerical errors contained in their responses. We have had a long-standing practice of correcting a respondent's clerical errors after the preliminary results only if we can assess from information already on the record that an error has been made, that the error is obvious from the record, and that the correction is accurate. *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy: Final Results of Antidumping Duty Administrative Review*, 57 FR 8295, 8297 (March 9, 1992). In light of a recent decision of the United States Court of Appeals for the Federal Circuit (CAFC), we have reevaluated our policy for correcting clerical errors of respondents. *See NTN Bearing Corp.* v. *United States*, Slip Op. 94–1186 (Fed. Cir. 1995) (*NTN*).

In *NTN*, the CAFC ruled that the Department had abused its discretion by refusing to correct certain clerical errors, which the respondent brought to the Department's attention after the preliminary results of review. Specifically, the CAFC found that the Department's application of its test for determining whether to correct clerical errors in *NTN* was unreasonable for the following reasons: 1) the requirement that the record disclose the error essentially precludes corrections of clerical errors made by a respondent; 2) draconian penalties are inappropriate for clerical errors because clerical errors are by their nature not errors in judgment but merely inadvertencies; 3) in NTN's case, a straightforward mathematical adjustment was all that was required, so correction of NTN's errors would neither have required beginning anew nor have delayed issuance of the final results of review.

As a result of the NTN decision, we are modifying our policy regarding the correction of alleged clerical errors. We will accept corrections of clerical errors under the following conditions: (1) the error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgment, or a substantive error; (2) the Department must be satisfied that the corrective documentation provided in

support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification. In the *Analysis of Comments Received* section of this notice, we have evaluated company-specific situations using the above criteria.

Scope of the Review

Imports covered by the review are shipments of certain fresh cut flowers from Ecuador (standard carnations, standard chrysanthemums, and pompom chrysanthemums). This merchandise is classifiable under Harmonized Tariff Schedule (HTS) items 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Flores La Antonia, Flores del Quinche S.A., Florisol Cia Ltda., Flores de Ibarra, Flores de Puewmbo, Flores del Ecuador, Flores Pichincha, Florestrade, Guaisa S.A., Inlandes S.A., Mundiflor, and Velvet Flores Cia S.A., which are producers and/or exporters of certain fresh cut flowers from Ecuador to the United States and the period March 1, 1993 through February 28, 1994.

Best Information Available

Because certain companies did not provide a response to our request for information, we have determined that the use of best information otherwise available (BIA) is appropriate for these firms in accordance with section 776(c) of the Tariff Act of 1930, as amended (the Tariff Act). Our regulations provide that we may take into account whether a party refuses to provide information in determining what rate to use as BIA (19 CFR 353.37(b) (1994)). Generally, whenever a company refuses to cooperate with us or otherwise significantly impedes the proceeding, we use as adverse BIA the highest rate for any company for the same class or kind of merchandise from this or any other segment of the proceeding. When a company substantially cooperates with our requests for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as cooperative BIA the higher of (1) the highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the less-than-fair-value (LTFV) investigation or a prior administrative review; or (2) the highest calculated rate in this review for any firm for the same class or kind of merchandise from the same country. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review,* 57 FR 28360, 28379–80 (July 24, 1992); *see also Allied-Signal Aerospace Co. v. United States,* 996 F.2d 1185 (Fed. Cir. 1993).

For these final results we have applied a cooperative BIA rate to sales made by Flores de Ibarra, Flores de Puewmbo, Flores del Ecuador, Flores Pichincha, Florestrade, and Mundiflor. These firms are no longer in business, and we have determined, in accordance with the standards enumerated in *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation of Order (in Part),* 59 FR 15159 (March 31, 1994) (*Colombian Flowers*), that they are incapable of responding to the Department's questionnaire. In *Colombian Flowers,* the Department treated bankrupt, or otherwise out-of-business, firms as cooperative provided that they explained their situation to the Department. In this case, the firms mentioned above submitted certifications that they are no longer in business and thus could not respond.

Therefore, in accordance with *Colombian Flowers,* we find these firms to be cooperative.

In this proceeding, the highest rate ever applicable to all of the firms to which we are applying second-tier BIA is the ''all others'' rate from the less-than-fair-value investigation. None of the rates calculated for this review exceeded the ''all others'' rate. Therefore, we have applied the ''all others'' rate, which is 5.89 percent, to Flores de Ibarra, Flores de Puewmbo, Flores del Ecuador, Flores Pichincha, Florestrade, and Mundiflor.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of counsel for Expoflores, an Ecuadorian trade association representing Ecuadorian flower producers including the respondents in this review, we held a hearing on September 26, 1995. We received case and rebuttal briefs from the Floral Trade Council (FTC), petitioner in this proceeding, and Expoflores, on behalf of respondents in this proceeding.

Issues Raised by the FTC

Comment 1: The FTC argues that the Department should deduct commissions paid to related consignees where they are at arm's length and directly related to sales, and that both commissions and indirect selling expenses should be deducted from ESP regardless of the relationship of the consignee. The FTC contends that where the statute (section 772(e)(1)) and the Department's regulations (19 CFR 353.41) direct the Department to deduct commissions from ESP, no distinction is made for commissions paid to related or unrelated consignees, nor is there any language directing the Department to deduct either commissions or indirect selling expenses, but not both. The FTC also argues that not deducting related party commissions is inconsistent with the Court of International Trade's (CIT) finding in *Timken Co.* v. *United States,* 630 F. Supp. 1327, 1341 (1986). The FTC further argues that, even assuming that the statute at section 772(e)(1) does not direct the Department to deduct commissions paid to related parties, such commissions should be deducted as a circumstance-of-sale adjustment whenever such commissions are at arm's length and directly related to sales. Finally, the FTC argues that commissions paid to related parties in the U.S. market are likely to be understated rather than overstated, and that the statute requires that, when commissions are not at arm's length, the Department is to deduct any commissions and remaining general expenses.

Expoflores claims that this issue is not relevant because none of the companies under review have related importers.

Department's Position: We agree with Expoflores. None of the companies for which we calculated margins have related importers. Therefore, this issue does not apply in this case. As for the FTC's argument that we should deduct both commissions and indirect selling expenses regardless of the relationship between the exporter and the consignee, we note that for the preliminary and these final results of review we deducted both commissions paid to unrelated consignees and indirect selling expenses incurred in the home market on U.S. sales.

Comment 2: The FTC claims that the Department did not specifically describe its treatment of FONIN export taxes in

the preliminary results of review, and asks the Department to ensure that it deducts these taxes correctly from U.S. price in the final results of review.

Department's Position: We deducted FONIN export taxes from USP, in accordance with section 772(d)(2)(B) of the Tariff Act.

Issues Raised by Respondents

Comment 3: Expoflores claims that Flores La Antonia (Antonia) made several obvious clerical errors in its questionnaire response, and that the Department should correct these errors. The clerical errors alleged by Expoflores are (1) the quantity of pompons shipped to a certain customer in a certain month is dramatically overstated; (2) box charges were inadvertantly not reported; (3) domestic inland freight expense is overstated in one month; (4) the sales values of certain flowers for a few months for one importer were shifted by one month; and (5) the quantity of subject merchandise shipped to a certain customer in a certain month is understated. Expoflores argues that these errors are of the sort normally found and corrected at verification, but, because the Department chose not to verify Antonia, these errors were not discovered until after issuance of the preliminary results. Expoflores asks that, in the interest of fairness and accuracy, the Department correct these errors so as not to unduly penalize Antonia for not having undergone verification. Expoflores claims that the accuracy of the corrections submitted on behalf of Antonia is clear from the administrative record. Expoflores further argues that the corrections should not be considered untimely on the grounds that they cannot be verified, because it was the Department's decision not to verify Antonia. Finally, Expoflores argues that because the corrections refer to original timely submitted data provided in Antonia's original response to the Department's questionnaire, they do not constitute new information.

The FTC contends that the Department should not make these corrections as submitted by Antonia, because these errors were not obvious from the record and could not have been identified by the Department without additional information. The FTC asserts that the fact that neither the Department nor Antonia identified the errors prior to issuance of the preliminary results is compelling evidence that the errors were not obvious. In addition, the FTC contends that the Department should reject the information Antonia submitted in its case brief to support its argument because it contained untimely new information.

The FTC also argues that Antonia's claim that these errors are of the sort normally found at verification has no relevance here. Because the Department did not conduct verification and did not find the errors in preparing the preliminary results, the FTC argues that the burden is on Antonia to ensure that the data submitted is correct. The FTC argues that the purpose of verification is not to discover errors so that corrections can be made, but rather to determine the accuracy of submitted data. Furthermore, the FTC states that it is not clear whether there are any other unidentified reporting errors in the response. The FTC further argues that the Department has no way of confirming the accuracy of the remaining portions of Antonia's response without verification and should consider rejecting the response entirely and assigning a margin based on best information available.

Department's Position: Because we received Antonia's request that we correct its response after publication of our preliminary results and the alleged errors were not apparent from the record, we have applied the six criteria explained in the *Background* section of this notice. First, we examined the errors, and have determined that they are clerical, and not methodological, in nature. Second, respondent submitted, with its case brief, grower's reports, as well as cites to its original response, that substantiated its claims with regard to these clerical errors. Third, no note that these errors in the original submission existed was made by any party prior to respondent's case brief. Fourth, the clerical error allegation was not made later than the due date for respondent's case brief. Fifth, we determine that, because each of the errors affected one or a few figures for individual line items for the POR, correction of these errors does not entail a substantial revision of the response. Finally, we had not previously verified the information submitted. Thus, we find that Antonia met all of the criteria for each of the errors. Therefore, we have accepted Antonia's corrections as clerical in nature and have made these changes for the final results.

Comment 4: Expoflores argues that the interest rate that the Department used in calculating interest expense for Flores del Quinche (Quinche) is incorrect. Expoflores claims that Quinche inadvertantly entered the wrong value in the spreadsheet, but noted this mistake, and reported the correct interest rate in its narrative response. Expoflores asks that the Department correct this error for the final results.

The FTC contends that because the record is inconsistent with respect to the correct interest rate, the Department should select the higher rate as best information available.

Department's Position: Since Quinche's request that we correct its response was received after publication of our preliminary results, we have applied the six criteria from our new policy which we explained in the *Background* section of this notice. We find that Quinche met all of the criteria, with the substantiating evidence having been on the record prior to the preliminary results. Therefore, we have made this change for the final results.

Final Results of the Review

As a result of our review, we determine that the following margins exist for the period March 1, 1993 through February 28, 1994:

	Margin (percent)
Manufacturer/Exporter:	
Flores la Antonia	0.51
Flores del Quinche S.A	1.17
Florisol Cia Ltda	0.06
Flores de Ibarra	5.89
Flores de Puewmbo	5.89
Flores del Ecuador	5.89
Flores Pichincha	5.89
Florestrade	5.89
Guaisa S.A	([1])
Inlandes S.A	([1])
Mundiflor	5.89
Velvet Flores Cia S.A	([1])

[1] No shipments during the period of review; since there was no prior review of this company, the ''all other'' rate from the less-than-fair-value (LTFV) investigation is applicable.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse for consumption, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates as listed above, except for Florisol Cia, Ltda., for which, because the margin is *de minimis*, we will instruct the Customs Service to require a cash deposit of zero percent; (2) for

previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the ''all other'' rate of 5.89 percent. This is the rate established during the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 8, 1996.

Robert LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–18054 Filed 7–15–96; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

Nationwide Capital Development Center

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: Funds are available to conduct a competitive solicitation in order to select an applicant to operate a nationwide Capital Development Center to assist minority business clients to access debt and equity capital. This Center, to be operated under detailed work requirements established by the Minority Business Development Agency (MBDA), will provide client services designed to enable minority business enterprises (MBEs) to implement long-term growth strategies by securing capital through both mainstream and specialized capital markets. Such services shall include analyzing an MBE's financial statements, assisting in the preparation of financial plans, introduction of the MBE to prospective investors and lenders, and assistance in transaction closings. The Center will act as a liaison between the MBE community and the capital markets, serving as a clearinghouse for available resources and opportunities, and matching qualified MBEs with potential funding sources.

The project will be national in scope, and will serve eligible minority firms throughout the fifty states, as provided by the work requirements. Firms eligible to receive client assistance shall be growth-oriented firms, in business for not less than two years, and who seek to engage in capital transactions of $500,000 or more.

Executive Order 11625, effective October 13, 1991, authorizes MBDA to provide management and technical assistance to socially and economically disadvantaged businesses and to coordinate Federal efforts to assist in the growth and expansion of the nation's minority business sector. MBDA has determined that a substantial impediment to minority business growth involves the inability to access financial capital. The primary objective of this project is to provide management and technical assistance to middle-market MBEs who are seeking to approach the capital markets to obtain financing. Areas of assistance will include: obtaining venture capital financing, the design and implementation of financial plans as vehicles for sustained growth, replacement of debt with equity capital, and financing business acquisitions and mergers.

The successful applicant will operate the Center for a three-year period, subject to agency priorities, recipient performance and the availability of funds.

DATES: The closing date for applications is August 15, 1996. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before August 15, 1996. A pre-application conference to assist all interested applicants will be held on July 30, 1996, at 1:00 p.m., at the U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Room 5045, Washington, D.C. 20230.

PROPER IDENTIFICATION IS REQUIRED FOR ENTRANCE INTO ANY FEDERAL BUILDING.

ADDRESSES: Competitive Application Packages for the Capital Development Center will be available from MBDA beginning on the date this Notice is published. To obtain a copy of the Application Package, please call via telephone (202) 482–3261, or facsimile (202) 482–6021, or send a written request with two (2) self-addressed mailing labels to Robert Hooks, Chief, Resource and Market Division, Minority Business Development Agency, Room 5092, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

Completed proposals should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Elio Muller, Associate Director for Strategic Planning and Operations, (202) 482–1015.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from October 1, 1996 to October 31, 1997, is estimated at $588,235. A 30-day start-up period will be added to the first budget period, making it a 13-month award. The application must include a minimum cost-share of $88,235 or 15% of the total project cost, through non-Federal contributions. The Federal share, to be in the amount of $500,000, includes $12,000 for an annual audit fee. Cost-sharing may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the expertise and capabilities of the firm and its staff in addressing the capital needs of businesses in general and, more specifically, of minority businesses (50 points); the resources available to the firm in assisting minority firms to raise capital (10 points); the firm's approach (techniques and methodologies) to performing the work requirements developed for this project (20 points);

and the firm's estimated cost of performing the work requirements. An application must receive at least 70% of the points assigned to each of the evaluation criteria to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The Capital Development Center operator shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the operator may charge client fees for management and technical assistance (M&TA) rendered. Any client fees charged for services rendered under this award must be charged at rates determined under an established fee policy approved by the Department of Commerce (DOC).

If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. Awards under this program shall be subject to all Federal laws, Federal and Departmental regulations, policies and procedures applicable to Federal assistance awards.

Quarterly reviews culminating in year-end evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the operator's performance, the availability of funds and Agency priorities. The anticipated processing time for this award is 90 days.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Accounts Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, or a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal whether any key individuals associated with the applicant have been convicted or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

Non-Procurement Debarment and Suspension—Prospective participants (as defined at 15 CFR, Part 26, Section 26.105) are subject to 15 CFR, Part 26, ''Non-Procurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR, Part 26, Section 26.605) are subject to 15 CFR, Part 26, Subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR, Part 28, Section 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR, Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient and should not be transmitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

Dated: July 10, 1996.

Frances B. Douglas,

Alternate, Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–17986 Filed 7–15–96; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Notice of Public Hearings in Texas on the Draft Environmental Impact Statement on the Proposed Taxes Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public hearings.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) hereby gives notice that it will hold two

public hearings in Texas on the Texas Coastal Management Program/Draft Environmental Impact Statement (P/DEIS). The P/DEIS has been prepared in conjunction with NOAA's proposed approval of the Texas Coastal Management Program (TCMP, or program) under the provisions of Section 306 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1455. The P/DEIS was filed with EPA on June 13, 1996 and the notice of availability for the DEIS was published in the Federal Register on June 21, 1996. The public comment period on the P/DEIS ends August 5, 1996. Notice of these hearings was provided to all agencies, organizations and individuals receiving copies of the P/DEIS.

Pursuant to the Coastal Zone Management Act of 1972, as amended, NOAA's Office of Ocean and Coastal Resource Management (NOAA/OCRM), in coordination with the Texas Coastal Coordination Council will hold the two public hearings at the following locations in Texas:

Wednesday, July 31, 1996—7:00 p.m.
Corpus Christi City Hall, Council Chambers, 1201 Leopard, Corpus Christi, Texas

Thursday, August 1, 1996—7:00 p.m.
Texas A&M University at Galveston, University Auditorium, Room CLB–100, 200 Seawolf Parkway, Galveston, Texas.

The purpose of the hearings is to receive comments on NOAA's preliminary determination to approve the Texas Coastal Management Program pursuant to the Coastal Zone Management Act as reflected in the P/DEIS.

The proposed Federal approval of the program would make Texas eligible for program administration and enhancement awards and require Federal actions to be consistent with the enforceable policies of the State's management program (16 U.S.C. 1455, 1456). The alternatives to approval include delaying approval of the program, or denying approval which, in this case, is the no-action alternative.

Individuals or organizations wishing to submit written comments on the range of alternatives, the underlying issues for decision, or other issues should do so by August 5, 1996. Requests for the above described documents and all comments should be made to:

National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Coastal Programs Division, Gulf/Caribbean Region, 1305 East-West Highway (N/ORM3), Silver Spring, Maryland 20910, Attention: Joe Uravitch.

FOR FURTHER INFORMATION CONTACT: Bill O'Beirne at tel. 301/713–3109 x160; fax (301) 713–4367; internet [bobeirnecoasts.nos.noaa.gov] or, Janet Fatheree of the Texas General Land Office at tel. 512/463–5385; fax 512/475–0680, or internet [jfathere@glo.state.tax.us].

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated July 9, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 96–17992 Filed 7–15–96; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0103]

Proposed Collection; Comment Request Entitled Procurement Integrity

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0103)

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Procurement Integrity. This OMB clearance currently expires on October 31, 1996.

DATES: Comment Due Date: September 16, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0103, Procurement Integrity, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Peter O'Such, Office of Federal Acquisition Policy, GSA (202) 501–1759.

SUPPLEMENTARY INFORMATION:

A. Purpose

Public Law 100–679, the Office of Federal Procurement Policy Act Amendments of 1988, as amended by section 814 of Public Law 101–189, requires that contractors certify, prior to execution of each contract, modification or extension in excess of $10,000 with respect to conduct prohibited by the Act.

The information obtained in the certification will be used by the contracting officer to ensure that prohibited conduct specified in the Act is identified and in determining the responsibility of the firm for contract award.

B.Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *5 minutes* per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *20,000;* responses per respondent, *20;* total annual responses, *400,000;* preparation hours per response, *5 minutes;* and total response burden hours, *43,333.*

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *20,000*; hours per recordkeeper, *30 minutes*; and total recordkeeping burden hours, *10,000*.

Dated: July 9, 1996.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 96–17972 Filed 7–15–96; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL95–33–000]

Louisiana Public Service Commission v. Entergy Services, Inc.; Notice of Filing

July 2, 1996.

Take notice that on May 9, 1995, the Louisiana Public Service Commission filed an amended complaint under

Sections 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d and 824e against Entergy Services, Inc. as the representative of Entergy Corporation and its operating companies, Louisiana Power & Light Co. (LP&L), Arkansas Power & Light Co. (AP&L), Mississippi Power & Light Co. (MP&L), and New Orleans Public Service, Inc. (NOPSI). The complaint seeks a revision of the Entergy System Agreement based upon allegations that the terms of that agreement, under current circumstances, are unjust and unreasonable. Specifically, the complaint alleges that the absence of any provisions in the System Agreement excluding curtailable load from the determination of a company's load responsibility under the System Agreement results in an unjust and unreasonable cost allocation to companies that do not cause these costs to be incurred, and results in cross-subsidization among the companies. Additionally, it is alleged that the absence of any provision in MSS–3 for allocating marginal energy costs to customers that purchase energy under Entergy's ''real time pricing'' rate schedules at the retail level discriminates against a company that offers real time pricing. It further alleges that the System Agreement should be amended to require use of the 4CP method to determine load.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 16, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the amended complaint shall also be due on or before July 16, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17967 Filed 7–15–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140244; FRL–5383–2]

Access to Confidential Business Information by ABT Associates, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ABT Associates (ABT), of Cambridge, Massachusetts and Bethesda, Maryland, for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than July 26, 1996.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–W6–0021 contractor ABT of 55 Wheeler St. Cambridge, MA and 4800 Montgomery Lane, Suite 600, Bethesda, MD, will assist the Office of Pollution Prevention and Toxics (OPPT) in evaluating the potential risk of new and existing chemical substances and develop a data bearing on such risks.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W6–0021, ABT will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. ABT personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the Federal Register of January 11, 1991 (56 FR 1185), ABT was authorized for access to CBI submitted to EPA under sections 4, 5, 6, 8, 9, and 21 of TSCA. EPA is issuing this notice to allow ABT access to TSCA CBI under contract number 68–W6–0021 at its Bethesda, MD facility.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide ABT access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at the contractor's Bethesda, MD facility only.

ABT will be authorized access to TSCA CBI at their facility under the EPA ''*TSCA Confidential Business Information Security Manual*.'' Before access to TSCA CBI is authorized at ABT's site, EPA will approve ABT's security certification statement, perform the required inspection of its facility, and ensure that the facility is in compliance with the manual. Upon completing review of the CBI materials, ABT will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until April 30, 2001.

ABT personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: July 10, 1996.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–18037 Filed 7–15–96; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140245; FRL–5383–3]

Access to Confidential Business Information by Eastern Research Group, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Eastern Research Group (ERG), of Lexington, Massachusetts, for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than July 26, 1996.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW.,

Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–W6–0022, contractor ERG, of 110 Hartwell Avenue, Lexington, MA, will assist the Office of Pollution Prevention and Toxics (OPPT) in evaluating the potential risk of new and existing chemical substances and develop a data bearing on such risks.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W6–0022, ERG will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. ERG personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the Federal Register of January 11, 1991 (56 FR 1185), ERG was authorized for access to CBI submitted to EPA under sections 4, 5, 6, 8, 9, and 21 of TSCA. EPA is issuing this notice to allow ERG's access to TSCA CBI under contract 68–W6–0022 at its Lexington, MA facility.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide ERG access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA facilities and ERG's Lexington, MA facility only.

ERG will be authorized access to TSCA CBI at their facility under the EPA ''*TSCA Confidential Business Information Security Manual*.'' Before access to TSCA CBI is authorized at ERG's site, EPA will approve ERG's security certification statement, perform the required inspection of its facility, and ensure that the facility is in compliance with the manual. Upon completing review of the CBI materials, ERG will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until April 30, 2001.

ERG personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: July 10, 1996.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–18038 Filed 7–15–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5538–9]

Underground Injection Control Program Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection—Chemical Waste Management, Inc., (CWMI)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition modification.

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 CWMI, for the Class I injection well located at Port Arthur, Texas. As required by 40 CFR § 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 CWMI, of the specific restricted hazardous waste identified in the exemption modification, into the Class I hazardous waste injection well at the Port Arthur, 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 17, 1996. The public comment period closed on July 1, 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 5, 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 Management 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. 96–18045 Filed 7–15–96; 8:45 am]

BILLING CODE 6565–50–P

[FRL–5538–7]

Notice of Public Meeting of National Environmental Education Advisory Council and Public Review of Council's Draft Report to Congress

Notice is hereby given that the National Environmental Education Advisory Council, established under section 9 of the National Environmental Education Act of 1990 (the Act), will hold a public meeting on August 5th and 6th, 1996. The meeting will take place at the Madison Hotel, 15th and M Streets, NW, Washington DC from 9:00 am to 5:00 pm on Monday, August 5th and from 9:00 am to 3:00 pm on Tuesday, August 6th. The purpose of this meeting is provide the Council with an opportunity to advise EPA's Environmental Education Division (EED) on its implementation of the Act. Members of the public are invited to attend the meeting and to submit written comments to EPA following the meeting.

Notice is also hereby given that EPA will release the Council's draft report to Congress to the public for review and comment prior to the Council's August meeting. This report assesses environmental education in the United States and EPA's implementation of the Act. The Council is required to prepare this report under section 9 of the Act. EPA expects the report to be available for public review and comment from July 17th through July 31st, 1996. Public comments on the report will be discussed at the Council's August meeting.

For additional information regarding the Council's upcoming meeting or to obtain a copy of the Council's draft report to Congress for review and comment, please contact Kathleen MacKinnon, Environmental Education Division (1707), Office of Communications, Education, and Public Affairs, U.S. EPA, 401 M Street, SW, Washington, DC, 20460 or call 202–260–4951.

Dated: July 9, 1996.

Kathleen MacKinnon,

Designated Federal Official, National Environmental Education Advisory Council.

[FR Doc. 96–18040 Filed 7–15–96; 8:00 am]

BILLING CODE 6560–50–P

[FRL–5534–3]

Proposed Cercla Adminstrative De Minimis Settlements—Chemical Handling Corporation Site, Jefferson County, Colorado

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice and Request for Public Comment.

SUMMARY: In accordance with the requirements of Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of two proposed administrative *de minimis* settlements under Section 122(g) of CERCLA, 42 U.S.C. 9622(g), concerning the Chemical Handling Corporation site located at 11811 Upham Street, near the City of Broomfield, in unincorporated Jefferson County, Colorado (''Site''), with the settling parties listed in the Supplementary Information portion of this notice. The settlements, embodied in proposed Administrative Orders on Consent (''AOCs''), are designed to resolve fully each private settling party's liability and each federal settling party's liability at the Site through a covenant not to sue (for private parties) or a covenant not to take administrative action (for federal parties) under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973. The proposed AOCs require the Potentially Responsible Parties (''PRPs'') listed in the Supplementary Information section below to pay an aggregate total of $1,097,244.34 to address their liability to the United States related to response actions taken at the Site.

OPPORTUNITY FOR COMMENT: For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received and may modify or withdraw its consent to either or both of the settlements if comments received disclose facts or considerations which indicate that either or both of the settlements are inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, Colorado. Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before August 15, 1996.

ADDRESSES: The proposed settlements and additional background information relating to the settlements are available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, Colorado. Comments and requests for a copy of the proposed settlements should be addressed to Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, and should reference the Chemical Handling Corporation Site, Jefferson County, Colorado and EPA Docket Nos. CERCLA VIII–96–09 (private party AOC) and CERCLA VIII–96–09A (federal party AOC).

FOR FURTHER INFORMATION CONTACT: Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 312–6970.

SUPPLEMENTARY INFORMATION: Notice of proposed administrative *de minimis* settlements under Section 122(g) of CERCLA, 42 U.S.C. 9622(g): In accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i), notice is hereby given that the terms of two Administrative Orders on Consent (''AOCs'') have been agreed to by the following settling parties, for the following amounts (where the name of a party is followed by one or more sets of '' {,'' the name contained within the '' }'' is the name that appears on the AOC signature page or is the name(s) of the party(ies) that is/are assuming liability under the AOC):

Name of party	Settlement amount
AOC CERCLA VIII–96–09A (Federal Parties)	
Air National Guard	$2,353.53
Angell C.C.C./USDA Forest Service	470.31
Commandant, U.S. Coast Guard, Env. Law Division U.S. Coast Guard Group North Bend U.S. Coast Guard Group Port Angeles	29.93
Crater Lake National Park	1,646.10
CSMS c/o USP & FO	823.05
Denali National Park	256.53
Federal Highway Admin—CFLHD	2,009.52
National Park Service (Bryce Canyon National Park)	117.58
National Park Service (Denver)	213.78
NOAA/US Department of Commerce	304.63
U.S. Army Corps of Engineers/Dalles	1,400.25
U.S. Army Corps of Engineers/Walla Walla	4,542.80
U.S. Customs Service	641.34
U.S. Department of Interior/Bureau of Mines	522.69
U.S. Department of Interior/Bureau of Rec/Montana	235.16
U.S. Department of Interior/Bureau of Rec/Utah	235.16
U.S. Department of Justice/Unicor	1,410.94
U.S. Department of Treasury/U.S. Mint	2,201.92
U.S. Postal Service (7500 E. 53rd Place)	844.43
U.S. Postal Service (Federal Way, Washington)	235.16
Unicor/Federal Prison Industries	1,581.96
Veterans Affairs, Office of Regional Counsel	5,622.38

Name of party	Settlement amount
V.A. Medical Center (Tacoma) V.A. Medical Center (Spokane) V.A. Medical Center (Seattle) V.A. Medical Center (Portland)	
Weber Basin Job Corps./U.S. Department of the Interior	470.31
Total	$28,169.46

AOC CERCLA VIII–96–09 (Private Parties)

A&K Auto Works	$641.34
A. G. Wassenaar	331.36
Wassenaar, A.G. A. G. Wassenaar	
A.C.I. (Coors) {Coors Ceramics Company}	3,880.09
ABC Auto Body	673.40
Academy Ford {Academy, Inc.}	534.45
Accurate Industries {The Service Center, Inc.}	106.89
Ackerman & Sons (Littleton)	213.78
Adams County Engineering	32.07
Adams County School Dist. #12	534.45
Adams County School District #14	117.58
Advanced Body & Paint	117.58
Aelco Corporation	705.47
Aero Metalcraft, Inc	117.58
Aero Propeller & Accessories	213.78
Aeroquip Corporation	1,038.17
Aggression Snow Boards	962.00
Ak-wa Inc	10,934.79
Albuquerque Auto Auction {ADT Automotive}	1,827.81
Alexander Films {Don Hawks}	213.78
Alexander Motor Company	235.16
All West Display {Prosser Enterprises, Inc.}	2,233.99
All Wire Inc	106.89
Alpine Body Shop	235.16
Amax Coal Company—Belle Ayr Mine {Amax Coal West, Inc.}	491.69
Amax Coal Company—Eagle Butte Mine {Amax Coal West, Inc.}	577.20
America Now {America Now, Inc.}	106.89
American Air Cargo	427.56
American Auto Body {American Auto Body, Inc.}	106.89
American Cabinet Concepts {American Cabinet Concepts, Inc.}	13,639.09
American Gear & Supply Co. {American Gear & Supply Co., Inc.}	823.05
American Web {American Web, Inc.}	5,023.80
Ameron Pipe {Ameron, Inc.}	497.04
AMI {Tenet Healthsystem}	117.58
Amigo Chevrolet-Geo	758.91
Ampad Corp	117.58
Ampex Corp—CSP (Colorado Springs)	1,175.78
Ampex Corp—CSP (Colorado Springs) Ampex Corp. (Golden)	
AMW Industries, Inc:	
{Crane Pumps and Systems, Inc.}	470.32
{AMW Industries, Inc.}	470.32
Analog Devices Inc	74.82
Analytical Development Corp	3,174.62
Analytical Technologies Inc	5,996.50
Anchor Printing & Graphic {Anchor Printing & Graphic, Inc.}	352.74
Anderson Lumber Company	117.58
Anema Auto Body (5555 E. Evans) {Anema Auto Body, Inc.}	2,244.68
Anema's Auto Body (5303 E. Pacific Place) Anema's Auto Body (5545 E. Evans) Anema Auto Body (5555 E. Evans)	
Animate Systems Inc	117.58
Anodizing Inc	14,116.88
Pacific Coatings, Inc. (Anodizing) Anodizing Inc.	
Anodyne, Incorporated	748.23
Applewood Auto Body {Applewood Auto Body, Inc.}	106.89
Arapahoe Body and Paint {Tath Corp.}	106.89
Arkansas Fuel Injections {Arkansas Fuel Injections, Inc.}	352.74
Arvada Auto Body {Arvada Auto Body, Inc.}	427.56
Ash Grove Cement Company (Portland)	1,881.25

Name of party	Settlement amount
Ash Grove Cement West	
Ash Grove Cement (Seattle)	
Asko Processing Inc	235.16
Asphalt Supply & Service:	
{Asphalt Supply & Service, Inc.}	64.13
{Conoco, Inc.}	64.14
Assaigai Analytical Laboratories {Assaigai Analytical Labs., Inc.}	352.74
Associated Pathologists	352.74
Atec Associates, Inc. (Indianapolis)	3,848.02
Atec Associates Inc. (47th Avenue)	
Fruehauf Trailers	
Attbar Plastics, Inc. {Attbar, Inc.}	352.74
Auraria Higher Education Center	587.89
Auraria Higher Education Center	
Metropolitan State College	
University of Colorado, Denver	
Auto Body Dynamics {Budco, Inc.}	1,282.67
Auto Electronical de Juarez, S.A./Acustar, Inc. {Chrysler Corp.}	13,526.21
Auto Lover Collision (& Glass—Platte) {Auto Lovers Collision East, Inc.}	876.49
Auto Lover Collision (& Glass—Fillmore)	
Auto Lover Collision (& Glass—Platte)	
Automotive Services, Inc	12,185.39
Avedon Engineering	5,237.58
Avis Rent-A-Car {Story Enterprises}	587.89
AVX Corporation {Avio Excelente, S. A. de C.V.}	16,450.28
AVX Corporation (Colorado Springs)	
AVX Corporation (El Paso)	
B&B Auto Body	1,175.78
B&E Auto Service	427.56
B.C. Rail Ltd. (Vancouver)	10,699.63
B.C. Rail Ltd. (Vancouver)	
B.C. Rail (Squamish)	
Bale Chevrolet {Bale Chevrolet Co., Inc.}	1,410.94
Balkamp Inc	705.47
Bandag Inc	6,937.12
Bandgap Technology Corporation	213.78
Bannock Center Corp	1,496.45
Barone Inc	1,282.67
Bart's Auto Body	2,458.46
Bear Creek Auto Body	106.89
Beckstrom Body Shop	470.31
Bemis Company Inc	753.57
Bernalillo County Public Works Dept	1,485.76
Betz Laboratories {Betz Laboratories, Inc.}	1,197.16
Bevtech, Inc	352.74
BHP Minerals International	13,991.82
BHP-Utah International, Inc.	
BHP-Utah San Juan Coal Company	
BHP-Utah San Juan Mine	
Black & White Auto {Black & White Auto, Inc.}	1,389.56
Blazer Industries {Blazer Industries, Inc.}	235.16
Bob Turner's Ford Country	940.63
Bob's Auto Body & Paint	1,603.34
Body Beautiful	342.05
Body Master	235.16
Body Works Unlimited	235.16
Body's by Brown {Body's by Brown, Inc.}	427.56
Boulder Bump Shop, Inc	1,924.01
Boulder Community Hospital	587.89
Boulder Valley Public Schools	641.34
Boyd Lighting {Boyd Lighting Co.}	748.23
Bradford Auto Body, Inc	1,175.78
Brigham Young University	10,039.05
Broomfield Industrial Paint {Broomfield Industrial Painting, Inc.}	213.78
Brown & Root {Brown & Root, Inc.}	1,410.94
Brownell Electric {Avnet/BE Corp.}	106.89
Brunson Instrument Co	513.07
Burlington Northern Railroad	106.89
Burns Automotive {Burns Automotive Body Shop}	427.56
Burris Co	534.45
Burt Chevrolet	4,183.99
Burt Subaru Inc	882.57
Bushman Press	

Name of party	Settlement amount
{Banta Corporation}	470.31
{SPG, Inc.}	1,998.83
C&S Drywall {C&S Drywall, Inc.}	1,496.45
C.P.R. Complete Paint and Repair {C.P.R. Complete Paint and Repair, Inc.}	647.22
Cable Technology Corporation {Quatro Corporation}	117.58
Cadet Manufacturing {Cadet Manufacturing Co.}	1,076.91
California Institute for Men	587.89
Can-am Body Shop	117.58
Canron Western {Canron Construction Corporation}	352.74
Car Crafters Paint and Body Repair	4,467.98
Car Works Auto Body {Car Works Auto Body II, Inc.}	534.45
Carelson Cadillac {Carelson Quality Body and Paint}	117.58
Carlin Dodge Inc	1,175.78
Carts of Colorado {Carts of Colorado, Inc.}	106.89
Cascade General Inc	7,760.17
Cascade Pole (Tacoma) {Cascade Pole and Lumber Co.}	3,174.62
Cascade Pole Company (Olympia)	
Cascade Pole (Tacoma)	
Cellpro, Inc	662.71
Cenco Architectural Wood	2,116.41
Center Line Machine {Center Line Machine Co.}	427.56
Center Printing & Graphics	106.89
Centex American Gypsum Company	53.44
Central City Concerns {Portland Development Commission}	100.22
Central Products {Central Products Company}	5,665.14
Century International Corp	962.00
Chamberdoor Industries {Chamberdoor Industries, Inc.}	11,939.55
Charles Grant & Company	1,132.64
Chem Rex {Chem Rex, Inc.}	8,604.60
Chemical & Geological Lab of Alaska {CTE Environmental Services}	235.16
Chen-Northern (Chen and Associates)	117.58
Cherry Creek Collision {Cherry Creek Collision, Inc.}	534.45
Cherry Creek Dodge {Cherry Creek Dodge, Inc.}	213.78
Cherry Creek School District	1,881.25
Cherry Creek Schools, Publications Department	
Smoky Hill High School—Transportation	
Cherry Creek Schools, District #5	
Overland High School	
Chesrown Chevrolet {Chesrown Chevrolet, Inc.}	1,496.45
Chevron Research and Technology Company	8,194.42
Chevron USA—East Painter Compression Station	
Chevron U.S.A., Inc. (P.O. Box 4424, Portland)	
Chevron U.S.A., Inc. (P.O. Box 4168, Portland)	
Christensen Motor Yachts Corp. {Christensen Shipyards Ltd.}	8,112.91
Christensen Motor Yachts Corp. (Columbia Way)	
Christensen Motor Yachts Corp. (Hidden Way)	
City and County of Denver	1,956.08
City & County of Denver, Dept. of Public Works	
Denver General Hospital	
Denver Police Garage	
City of Albuquerque	4,072.49
Albuquerque Fire Department	
City of Albuquerque Fleet Management	
City of Albq. General Services	
Albuquerque Police Department	
Sun Tran of Albuquerque	
City of Aurora	662.71
Aurora Maintenance Facility	
City of Casper	117.58
City of Fort Smith, Traffic Control	587.89
City of Greenwood Village	235.16
City of Kennewick	256.53
City of Lakewood	2,150.61
City of Longmont	534.45
City of Longmont (Signs & Paint Shop)	
City of Portland	1,410.94
City of Tacoma, Dept. of Public Util., Light Div.	4,371.78
City of Tacoma, Dept. of Public Utilities	
City of Tacoma	
City of Vancouver	1,143.72
City of Wheatridge	213.78
Claridge Extrusions, Inc	235.16
Claridge Products & Equipment {Claridge Products & Equipment, Inc.}	3,880.09

Name of party	Settlement amount
Classic Coach	855.12
Clearfield Conveyor {Clearfield Conveyors Corporation}	587.89
Clyde West Equipment	470.31
Clyde's Auto Body	748.23
Coast Engine & Equipment Co	705.47
Coilcraft de Mexico, S.A./Coilcraft, Inc	5,055.87
Collins Auto Renewell	427.56
Color Dynamics Inc	1,528.52
Color-rite Auto Body	106.89
Colorado Auto Body Inc	2,244.68
Colorado Barricade {Colorado Barricade Co., Inc.}	427.56
Colorado Chrysler Plymouth	855.12
Colorado Coach Auto Body, Inc	962.00
Colorado Collision {Colorado Collision Repair, Inc.}	213.78
Colorado Corrections {Colorado Department of Corrections}	441.29
Colorado Dept. of Highways	213.78
Colorado Frame Mfg. {Colorado Frame Mfg., Inc.}	320.67
Colorado Histology	277.91
Colorado Plasticard {Colorado Plasticard, Inc.}	748.23
Colorado Steel & Wire {Colorado Steel & Wire Co.}	2,244.68
Colorado Time Systems {Colorado Time Systems, Inc.}	106.89
Columbia Analytical Services {Columbia Analytical Services, Inc.}	4,115.24
Combs Gates Denver Inc	459.62
Complete Auto Body {Complete Auto Body & Paint}	320.67
Comptronics {Comptronix}	427.56
Confi-dental Products {Confidental Products Co.}	213.78
Continental Brass Co	470.31
Corvette Center	735.48
County of Spokane, State of WA	697.99
Courtesy Ford	2,244.68
CPSI	106.89
Cramers Body Shop	641.34
Crawford Chevrolet	801.67
Creative Pultrusions, Inc	2,712.32
Crete Carriers	235.16
Crown Lift Truck {Crown Equipment Corporation}	855.12
Cryenco, Inc	6,800.84
Cryogenic Energy Co.	
Cryenco, Inc	
Crystal Lite Manufacturing {Crystal Lite Manufacturing Co.}	470.31
Crystal Specialties International	
{Akzo Nobel Electronics Products, Inc.}	21.38
{Crystal Specialties, Inc.}	21.38
Cuerden Sign Co	470.31
Cummins N.W	485.42
Current, Inc {Deluxe Corporation}	8,743.55
D&H Steel {D&H Steel Supply, Inc.}	288.60
D&K Printing	534.45
D.K. Watson (Collision Repair, Auto Body)	352.74
Daisy Manufacturing Co., Inc	5,878.92
Dakota Creek Industries, Inc	4,115.24
Dal Soglio {Dal Soglio, Inc.}	117.58
Dan Bearden Body Shop	235.16
Dana Corporation	47.03
Daniels Chevrolet {Daniels Motors, Inc.}	106.89
Danlar Collision, Inc	1,250.61
Darragh Company	929.94
Dave's Auto Body	106.89
DCX, Inc	427.56
Decorative Coating Systems {Decorative Coating Systems, Inc.}	534.45
Dem-tronics {Electronic Technology Corporation}	235.16
Denver Auto Body & Paint Inc	748.23
Denver Autometrics {Svedala Industries, Inc.}	641.34
Denver Instrument Company	4,243.51
Denver Metal Finishing	823.05
Deseret Industries {Ogden Deseret Industries}	117.58
Design Convayor Systems {Designed Conveying Systems, Inc.}	320.67
Design Fabricators {Design Fabricators, Inc.}	427.56
Designer Decal, Inc	117.58
Diagonal Firestone {Bridgestone/Firestone, Inc.}	106.89
Diamond Paint & Auto Body {Diamond Paint & Auto Body, Inc.}	1,389.56
Diamond Wood Products {Diamond Wood Products, Inc.}	705.47
Dionex Lee Scientific {Dionex Corporation}	161.81

Name of party	Settlement amount
Divine Coaches	427.56
Don Juan's Paint & Body	235.16
Don Massey Cadillac, Inc	2,886.01
Dorsar Investment Company	2,939.46
Drew Paints, Inc	1,528.52
Dun-rite Deburring	106.89
Dunkin & Bush Painting {Dunkin & Bush Painting, Inc.}	1,410.94
Dutro Co	2,908.74
DVH Company {DVH Company, Inc.}	213.78
Dynatek International {Dynatek International, Inc.}	2,704.30
E-max Instruments, Inc	106.89
E.R. Carpenter Co {Carpenter Co.}	352.74
Eagle Direct	1,389.56
Earl Stoner	929.94
East Side Plating {East Side Plating, Inc.}	1,432.32
Eastman Booth, Inc	117.58
Eastwood Printing {Eastwood Printing & Publishing Company, Inc.}	534.45
Edo Western Corporation	2,939.46
Electro Coating Co	213.78
Electro Static Refinishers {Electro Static Refinishers, Inc.}	470.31
Electronic Fab Technology Corp	1,293.36
Electronic Metal Products {Electronic Metal Products, Inc.}	427.56
Elkhart Products Corporation	1,293.36
Emich Oldsmobile	962.00
Empire Air {Empire Airlines}	235.16
Empire Laboratories{Empire Laboratories, Inc.}	309.98
Energy Laboratories {Energy Laboratories, Inc.}	235.16
Engineered Data Products {Engineered Data Products, Inc.}	1,924.01
Engineering Measurement Company	171.02
Englewood Auto Repair	427.56
Environmental Air Control, Inc. {Enviro Corporation}	2,896.70
Envirotech Pump Systems	2,517.78
Rubber Engineering	
BGA International	
Erickson Air Crane	1,646.10
European Auto Body (Boulder) {European Auto Body Corp.}	106.89
European Auto Body (Denver) {European Auto Body Shop, Inc.}	106.89
Evergreen Analytical {Evergreen Analytical, Inc.}	1,485.76
Evergreen Specialty Company	320.67
Evergreen State College	160.33
EWC {Electri-Wire Corporation}	213.78
Exabyte Corporation	598.58
Facet Automotive Corp	352.74
Fashion Tech {Fashion Tech, Inc.}	587.89
Fender Menders, Inc (Broomfield)	106.89
Fender Menders, Inc (Ft. Collins)	1,068.89
First Brands Corporation	1,175.78
Fischer Imaging Corporation	320.67
Fisher Chevrolet {Fisher Chevrolet, Inc.}	491.69
Flame Spray Inc	855.12
Flow International Corp	117.58
Flying Colors {Flying Colors, Inc.}	106.89
Foamex {Foamex, L.P.}	940.63
Fogg's Porsche Audi Specialist	213.78
Foreign Car Auto Body	320.67
Fortune Lincoln Mercury, Inc	1,763.68
Foss Maritime {Foss Maritime Company}	9,278.00
Fought and Company Inc	5,291.03
Frank & Dave's T&D Auto Body	213.78
Front Range Machining {Front Range Machining, Inc.}	106.89
Furniture Refinishing, Inc	534.45
Fusion Specialties {Fushion Specialties, Inc.}	4,810.02
Galaxie Auto Body (Galaxy Auto Body)	1,517.83
Galles Chevrolet	1,742.30
Gans Ink and Supply Co., Inc	4,350.40
Gans Ink (Portland)	
Gans Ink Corporation (Salt Lake City)	
Gardner Signs, Inc	641.34
Gencorp Inc., Automotive	13,179.46
General Motors DRC	213.78
General Tire Service {Continental General Tire, Inc.}	352.74
Gold Star Auto Body	331.36
Goldberg Brothers	534.45

Name of party	Settlement amount
Goldco Industries, Inc	4,211.44
Goodman Buick	1,603.34
Goodwill Industries	320.67
Graeser's Painting {Graeser's Painting and Decorating, Inc.}	106.89
Granville-Phillips Co	705.47
Graphic Ink {Graphic Ink Company}	2,586.72
Graphics Info {Graphics Information, Inc.}	213.78
Great Western Railroad {Great Western Railroad Company of Colorado}	213.78
Greeley Dodge {Greeley Dodge, Inc.}	106.89
Grubbs, Garner & Hoskyns {Grubbs, Garner & Hoskyns, Inc.}	823.05
H.E.R. Painting	2,233.99
H.O.J. Engineering Company {Hesco Services}	235.16
Halliburton Geophysical {Halliburton Energy Services}	213.78
Halton Company	1,549.90
Hampden Auto Body	213.78
Harold Gwatney Chevrolet	1,881.25
Harold's Body Repair, Inc	684.09
Hayes Cabinets, Inc	352.74
Hazen Research, Inc	2,992.90
Heather Gardens Assoc	106.89
Heggem-Lundquist Paint Company	1,817.12
Helac Corporation	4,115.24
Heli-Support {Heli-Support, Inc.}	352.74
Hewitt Robbins	534.45
Hi Tech Body Shop	106.89
High Country Auto Body	233.02
Hilton Inn of Santa Fe {Link Properties, Inc. & Fried Hotel Company}	44.89
Histotec	64.13
Hiwasse Manufacturing Company	940.63
Hollister Dodge, Inc. {Hollister Motor Company}	320.67
Holly Sugar Corporation {Imperial Holly Corporation}	53.44
Homco {Weatherford U.S., Inc.}	1,389.56
Home Club Warehouse {Homebase}	249.33
Hotsy Corp	213.78
Howland Machine Corporation	748.23
Hoyt U.S.A	3,527.35
Huggy Bear's Cupboards {Huggy Bears's Cupboards, Inc.}	587.89
Hulett Printing, Inc	117.58
Hunter Douglas {Hunter Douglas, Inc.}	106.89
Hussmann Corporation	106.89
I-CON Industries {I-CON Industries, Inc.}	181.71
I-COS {I-COS Corporation}	168.89
I.C. Security Printers {I.C. Security Printers, Inc.}	117.58
Idaho Pole Co	1,881.25
Imperial Manufacturing Inc. {Cold Coolers, Inc.}	3,104.07
Inca Paint & Print Ltd	213.78
Independant Signs {Independent Signs Co., Inc.}	213.78
Industrial Ceramics {Industrial Ceramics, Inc.}	213.78
Industrial Glove Cleaners	7,877.75
Industrial Printers {Industrial Printers of Colorado, Inc.}	213.78
Integrated Systems {Integrated Systems Engineering}	235.16
International Composites Corp	673.40
INX / Midland Color {INX International Ink Co.}	3,532.70
Irathane Systems, Inc {ITW Irathane Systems}	106.89
Itel Rail	117.58
Itesa/Siemens Energy & Automation, Inc	2,116.41
J W Bunger & Associates {James W. Bunger & Associates, Inc.}	117.58
J&E Body Shop {J&E Body Shop, Inc.}	587.89
J.H. Baxter & Co	7,816.29
J.B. Hunt Transport Inc	1,058.21
J.E. Good Auto Body {Norman D. Steele, Inc.}	534.45
Jack T. Carter Company, Inc	705.47
Jackson Brooks {Jackson Brooks & Company}	320.67
Jan-eze Plating Company {Jan-eze Plating, Inc.}	117.58
Jefferson County	2,030.90
Jefferson County Sign Shop	
Jerry Roth Automotive Center/Jerry Roth Chevrolet	534.45
Jerry Seiner Chevrolet	823.05
Jerry's Body Shop {Jerry's Body Shop, Inc.}	213.78
Joffer Auto Body	106.89
Jones & Demille Engineering	630.65
Joy Technologies	823.05
K-mart Corporation (International Headquarters)	534.45

Name of party	Settlement amount
K-mart (Boulder)	
K-mart (Englewood)	
Kaehr Corporation	235.16
Kaiser Aluminum & Chemical Corporation	106.10
Karle Coachwork {Karle Coachwork, Inc.}	213.78
Karmen Kitchens	823.05
Karosserie Fabric Auto Body (Karosserie Fabrik)	427.56
KBP Coil Coating {KBP Coil Coating, Inc.}	5,451.36
Kemp Ford, Inc	352.74
Keyline Corp d.b.a. Keyline Graphics	320.67
King County, WA Office of the Prosecuting Attorney	4,042.56
Metro Environmental Lab	
Metro Renton Treatment Center	
Metro Transit (1555 Airport Way S.)	
Metro West Pt. Treatment Plant	
Metro Transit (11911 E. Marginal Way S., C)	
Metro Transit (12100/200 E. Marginal Way S.)	
Metro Transit (821 2nd Ave MS75)	
Metro Transit (1975—124th N.E.)	
King Soopers Meat Plant {King Soopers, Inc.}	106.89
Kiper Auto Body, Inc	213.78
Kittredge Auto Body {Kittredge Auto Rebuilders}	748.23
Knudsen Printing {Knudsen Printing Company}	1,496.45
Komfort Industries of Oregon, Inc	352.74
Lake Capital Corp./Komfort Industries of Oregon	
K/P Graphics (Salt Lake City)	235.16
KP Graphics—Denver {K/P Corporation}	320.67
KSH Decorating, Inc	406.18
L & H Auto Body	748.23
L & M Printing {L&M Printing Company}	748.23
L & M Radiator {L&M Radiator Inc.}	470.31
L.A. Gauge Company	2,698.96
L.D. Mcfarland (Cascade Pole Co.) {L.D. Mcfarland Co. Ltd.}	1,528.52
L.D.S. Motion Picture Studio	1,175.78
L.D.S. Motion Picture Studio	
Brigham Young University Motion Picture Studio	
Laguna Industries, Inc	8,219.80
Laidlaw Environmental Services (TES), Inc	1,048.33
Laidlaw Environmental Services (TES), Inc.	
Technical Environmental Systems, Inc.	
Lake Union Drydock {Lake Union Drydock Company}	9,288.69
Lamb Grays Harbor, Blain & Firman {Lamb Grays Harbor Co.}	1,175.78
Lamiglass, Inc	352.74
Lang Exploratory Drilling	352.74
Larry H. Miller Chevrolet	2,308.81
Lavalley Equipment Corp. (Construction Co. West) {Lavalley Industries, Inc.}	4,938.29
Lawton Printing, Inc	256.28
Learjet Inc	12,898.88
Lectra Products	705.47
Len Lyall Chevrolet {Len Lyall Chevrolet Geo, Inc.}	1,282.67
Les Schwab (Spanaway) {Les Schwab Tire Centers of Washington, Inc.}	470.31
Leupold & Stevens, Inc	352.74
Levolor Corporation	6,349.23
Litho Graphics Inc	587.89
Littleton Auto Body {Littleton Auto Body, Inc.}	534.45
LK Printing Service {LK Printing Service, Inc.}	213.78
Long Painting & Building Specialties	11,169.94
Lorraine Press	1,293.36
Lucas Western {Lucas Western, Inc.}	587.89
M & Q Plastic Products	323.61
M&M Auto Reconditioning (E. Colfax) {M&M Auto Reconditioning, Inc.}	2,244.68
M&M Auto Reconditioning (E. Colfax)	
M&M Auto Reconditioning (E. Batavia)	
M&S Body Shop {M&S Body Shop, Inc.}	352.74
M.D. Incorporated	235.16
Maaco Auto Body (2424 E. Colfax—Denver) {Varco, Inc.}	1,068.89
Maaco Auto Painting & Bodyworks (Arvada)	
Maaco Auto Body (2424 E. Colfax—Denver)	
Maaco Auto Body (Salt Lake City)	352.74
Maaco Auto Body (Sandy)	352.74
Maaco Auto Body Shop (Littleton)	748.23
Maaco Auto Painting & Bodywork (Colorado Springs)	534.45
Maaco Auto Painting & Bodywork (Lakewood)	320.67

Name of party	Settlement amount
Maasai, Inc	10,421.72
Prolitho	
Machine Design	235.16
Madix Inc. (Store Fixtures)	5,996.50
Magnetek {Magnetek, Inc.}	1,049.12
Malcolm Montague (Portland)	1,378.87
Malcolm Montague (Wilsonville)	
Malcolm Montague (Portland)	
Mandatory Maintenance	106.89
Mantech Environmental Tech Inc	106.89
Manufacturing Unlimited, Inc	855.12
Mapsco	470.31
Marathon Oil Company	587.89
March Press {TCM, Inc.}	320.67
Marine Environmental Testing {Marine Environmental Testing, Inc.}	3,997.66
Maritime Contractors, Inc	1,068.89
Mark Williams Enterprises {Mark Williams Enterprises, Inc.}	320.67
Martin Door Mfg	117.58
Martins Car Star (Martins Auto Works)	748.23
Matthews International {Matthews International Corporation}	4,938.29
Mattocks Brothers Auto Body {Mattocks Brothers Auto Body, Inc.}	641.34
Maxey Inc	534.45
Maxim {Maxim, Inc.}	85.51
McCoy Sales {McCoy Sales Corporation}	203.09
McWhorter, Inc. {McWhorter Technologies, Inc.}	14,932.45
Mega Corp	940.63
Melloy Dodge	470.31
Metro Machine, Inc	106.89
Meyer Skidmore & Company	106.89
Micro Metals {Micro Metals, Inc.}	1,068.89
Microcomputer Electronics Corp. {Universal Avionics Systems Corp.}	352.74
Midvale Public Works {Midvale City, Utah}	235.16
Midwest Machine Products {Midwest Machine Products, Inc.}	4,596.24
Milam Oldsmobile {Milam Oldsmobile, Inc.}	374.11
Millar Instruments	235.16
Miller Dial Corp	2,586.72
Moore Lithograph Inc	470.31
Motor Cargo	64.13
Mountain States Motors {Mountain States Motors Co., Inc.}	962.00
Mountain States Plastics {Mountain States Plastics, Inc.}	106.89
Mr. B's Auto Body {Mr. B's Auto Body, Inc.}	106.89
Multicare {Multicare Health System}	1,015.45
National Fire Hose Corp. {NFH, Inc.}	1,058.21
National Sanitary Supply Co	106.89
National Wire and Stamping {National Wire and Stamping, Inc.}	85.51
NCR Corp, Denver Repair Depot	213.78
Neoplan USA	6,520.25
NeoRx {NeoRx Corporation}	149.65
NER Data Products, Inc	1,004.76
New Castle Construction	427.56
New Mexico State Hwy. & Trans. Dept	780.29
New Mexico State Hwy. & Trans. Dept.	
New Mexico State Land Office	
Nob Hill Body Shop	320.67
Northwest Label/Design, Inc	470.31
Northwest Pipe & Casing Co	2,233.99
Nylund's Auto {Nylund's Automotive Refinishing}	320.67
Obenchain Printing {Obenchain Printing Company}	320.67
Ogden Body Shop	470.31
One Day Paint and Body Center, Inc (2101 First Street)	908.56
One Day Paint & Body (6147 Zuni Rd. S.E.)	
One Day Paint and Body Center (2101 First Street)	
Oregon Department of Environmental Quality	352.74
Oregon Department of Transportation	
Oregon Department of Environmental Quality	
Oregon Primate Center {Oregon Regional Primate Research Center}	130.41
Oregon Sandblasting {Oregon Sandblasting & Coating, Inc.}	705.47
Oxford Screen Printing, Inc	470.31
Ozzie's Body Shop	106.89
Pacific Hoe Saw & Knife	309.98
Pacific Marquis {Marquis Corporation}	117.58
Package Service Co	427.56
Packaging Corp. of America {Tenneco Packaging, Inc.}	2,030.90

Name of party	Settlement amount
Padden Creek Marine, Inc	1,646.10
Paine Corporation	331.36
Painter's Supply {Painter's Supply Co., Inc.}	534.45
Parade Packaging {Parade Packaging Materials Co., Inc.}	1,603.34
Paris Management Company, Inc	662.71
Cheyenne Aero Tech	
Colorado Aero Tech	
Park City School District	587.89
Parker Cadillac {Parker Cadillac, Inc.}	940.63
Pasar {Pasar, Inc.}	106.89
Pastimes Restoration	106.89
Patrick Industries	235.16
Payette Industries {Payette Industries, Inc.}	1,881.25
Pelsue and Co. {T.A. Pelsue Co.}	213.78
Pend Oreille County Pud #1	796.60
Pepsico, Inc	4,104.55
Perfection Auto Craft of Abq {Perfection Auto Craft, Inc.}	470.31
Perfection Auto Craft of Santa Fe {Perfection Auto Craft of Santa Fe, Inc.}	897.87
Perfection Unlimited {Perfection Unlimited, Inc.}	213.78
Pharmaceutical Basics, Inc. {Rosemont Pharmaceutical Corp.}	1,678.16
Phelps-Dodge Morenci	5,558.25
Phil Long Ford (Body Shop #1)	5,660.86
Phil Long Ford (Body Shop #1)	
Phil Long Ford (Body Shop #2)	
Physio Control Corp	117.58
Picture Woods Ltd	106.89
Pike Tool and Grinding, Inc	641.34
Pikes Peak Community College	641.34
Pine Lane Auto Body	106.89
Plastic Design Manufacturing	748.23
Plastics Inc	213.78
Polyvend Inc	13,228.63
Portco Corporation {Portco Packaging}	1,998.83
Potter & Brumfield de Mexico S.A. de C.V	1,528.52
Pratt Construction {Pratt Management Co., L.L.C.}	213.78
Precision Auto Body	534.45
Preferred Uni-body {Preferred Unibody and Frame, Inc.}	748.23
Preservative Paint	6,937.12
Print Color	106.89
Printing Impressions	117.58
Pro-coat Systems {Pro-coat Systems, Inc.}	320.67
Production Plating, Inc	705.47
Productos Marine de Mexico/Mercury Marine	13,051.20
Products for Industry	962.00
Professional Paint Supply, Inc	235.16
Property Securement {Property Securement Services}	106.89
Providence Medical Center	587.89
Pueblo Diversified Industries	470.31
Quadrant Corporation {Weyerhauser Company}	459.62
Quality Metal Products, Inc	1,507.14
Quality Paint & Body {Quality Paint & Body, Inc.}	320.67
Quality Pontiac-Cadillac	1,229.23
R & R Auto Body	213.78
R&M Colour Graphics (Edison Press)	534.45
R. Wagner Co	235.16
R.D.S. de Mexico, S.A. de C.V./Rapid Design Inc	138.96
Rainbow Cycle Craft	106.89
Red Noland Cadillac	1,282.67
Noland Cadillac	
Red Noland Cadillac	
Regent Beverly Wilshire Hotel {Beverly Wilshire Hotel Company}	470.31
Reidy Metal Services {Reidy Metal Services, Inc.}	106.89
Reliable Chevrolet/Geo	1,058.21
Reliance Electric {Rockwell International Corp.}	1,175.78
Research Industries (Midvale)	758.91
Research Industries (Salt Lake City)	
Research Industries (Midvale)	
Rice University	534.45
Richardson Ford Sales, Inc	823.05
Rick Warner Body Shop	459.62
Rick Warner Heavy Trucks	823.05
Rickenbaugh Cadillac Co	962.00
Rite-way Paint and Body Shop	235.16

Name of party	Settlement amount
Robertson Associates {Metal Packaging International}	12,185.39
Rock Springs Auto Body {Rock Springs Auto Body & Glass, Inc.}	3,099.79
Rocky Mountain Auto Refinisher {Rocky Mountain Auto Refinisher, Inc.}	320.67
Rocky Mountain Autobody Specialists, Inc	213.78
Rocky Mountain Bank Note {RMBNC, Inc.}	352.74
Rocky Mountain Instruments {Rocky Mountain Instruments Company}	438.25
Rocky Mountain Nissan {Rocky Mountain Nissan, Inc.}	855.12
Rocky Mountain Paint & Body Shop {Rocky Mountain Paint & Body Shop, Inc.}	1,175.78
Rocky Mountain Prestress {Rocky Mountain Prestress, Inc.}	320.67
Rocky Mountain Railcar {Rocky Mountain Railcar, Inc.}	641.34
Rod Jones—Chevron {Chevron}	70.55
Rodriguez Body Shop	641.34
Rogers Tool Works (Rogers)	1,881.25
Rogers Tool Works (Rogers)	
Rogers Tool Works (Bentonville)	
Ron Grob Co	213.78
Ron Howard Body Shop	117.58
Ron Jones Marine	587.89
Ron's Body Shop {Dennis D. Garner, Inc.}	352.74
Ross Auto Body, Inc	534.45
Ross Printing {Ross Printing, Inc.}	1,389.56
Rust Tractor Company	1,731.61
Ryder Truck Rental {Ryder Truck Rental, Inc.}	514.14
Salinas Disposal Service, Inc	3,527.35
Salt Lake City Corporation (Corp.)	1,752.99
Salt Lake City Printing Center	2,191.23
Salt Lake City School District	705.47
Salt Lake County Conservancy Dist	88.18
Samsonite Corporation	6,905.06
San Luis Obispo County	3,495.28
Sanchez Seamless Gutter	106.89
Sandia Peak {Sandia Peak Ski Co.}	303.57
Santa Barbara County	13,232.91
SAS Circuits {SAS Circuits, Inc.}	962.00
Schnieder Body & Paint {Schneider Auto Karosserie}	470.31
Schreiber Machine & Manufacturing, Inc. {Milltek, Inc.}	235.16
SCI Manufacturing (SCI Systems Inc.)	2,928.77
Scougal Rubber Co. {Scougal Rubber Corp.}	1,175.78
Screen Tech Graphics, Inc	641.34
Seagull Printing {Seagull Printing, Inc.}	235.16
Seattle University	470.31
Seaview East Boatyard	1,058.21
Security Life of Denver {Security Life of Denver Insurance Company}	106.89
Selzee Inc	320.67
Sergent, Hauskins & Beckwith	213.78
Serpentix	106.89
Sherwin Williams Co	213.78
Shure Brothers, Inc	2,351.57
Sonido Selectos/Shure Brothers, Inc.	
Siegel Oil {Siegel Oil Company}	962.00
Sign Systems	213.78
Signage Inc	106.89
Signs, Inc	213.78
Sill Terhar Motors, Inc	534.45
Silver State Platics Inc	534.45
Simpson Timber Company	235.16
Simpson Door (Simpson Timber Co)	
Simpson Timber—Camp One	
Sinclair {Sinclair Oil Corporation}	213.78
Sisbarro Buick-Pontiac-GMC, Inc	940.63
Skills, Inc	3,369.69
Skyline Products	1,058.21
Slicks Custom Auto Body	106.89
Sonoco Products Company	79.91
Sound Steel Service, Inc	470.31
South Seattle Community College	5,986.79
Southern Pacific Transportation Company	1,956.08
Southwest Chemical Co., Inc	865.80
Southwest Collision Craftsmen, Inc	323.61
Southwest Marine	13,874.25
Northwest Marine Iron Works	
Southwest Marine Inc.(Northwest Marine Iron Works)	
Specialty Plating Inc	438.25

Name of party	Settlement amount
Spence's Bodytec Corp. (Denver)	1,175.78
Spence's Bodytec Corp. (Littleton)	2,030.90
Spokane School District # 81	373.58
Spray Rite Inc	235.16
Sprint Denver {Sprint Denver, Inc.}	320.67
SRM Assoc. {Vintage Real Estate Services, Inc.}	213.78
St. Joseph Medical Center	117.58
St. Luke's Hospital.	
{New H PSL., Inc. (Tenet Healthcare Corporation)}	56.89
{HealthOne}	50.00
St. Michael Hospital	6,265.86
Standard Builders Supply	117.58
Stanley Aviation Corp	8,144.97
Steel Storage Systems	1,496.45
Steven's Memorial Hospital {Stevens Healthcare}	395.49
Stevens Equipment Co	235.16
Stewart Body & Frame	641.34
Stone & Webster {Stone & Webster Engineering Corporation}	106.89
Stone Container Corp	320.67
Stowe Woodward {SW Industries, Inc.}	1,293.36
Stripper, The {The Stripper, L.L.C.}	470.31
Stuttgart Auto Body {Stuttgart Auto Body Ltd.}	213.78
Sun Lithographing Co	1,998.83
Super Vacuum Mfg Co. Inc	1,924.01
Supreme Auto Body {Supreme Auto Body and Coach Rebuilders}	213.78
Suss Pontiac GMC	2,030.90
Swedish Motors, Inc	320.67
Swiss Lenox {Swiss Lenox, Inc.}	427.56
Systems Protective & Technical Coatings, Inc	38.48
Taylor Lumber & Treating, Inc	4,542.80
Teleflex Precision Casting	823.05
Terra Corporation	235.16
Tessco, Inc	705.47
Texas Aircraft Milling {Texas Aircraft Milling, Inc.}	4,703.13
The Auto Works {Snyder Autoworks}	320.67
The Body Shop {PTAKS, Inc.}	855.12
The North Face {The North Face, Inc.}	106.89
Thermo Tech	320.67
Thermometer Corp. of America	3,527.35
Thermometer Corp. of America/TCA de Juarez SA de CV	
Thompson Metal Fab, Inc. (3000 S.E. Hidden Wy)	6,466.81
Timpte Inc	213.78
Titan Labs	3,741.13
TNT Auto Warehousing {Auto Warehousing Company}	136.82
Tolin Mechanical	117.58
Tom's Body Shop, Inc	320.67
Tommy's Nob Hill Auto Body (915 1st Street)	117.58
Tony Lama Company, Inc	12,538.13
Torres Auto Body	235.16
Tracor Aerospace {Tracor Aerospace, Inc.}	823.05
Transcisco Rail Services	940.63
Translogic Corp	641.34
Treasure Chest Advertising	587.89
Tri Way Industries	1,293.36
Tumbleweed Press {Tumbleweed Corporation}	427.56
Tumwater Lumber Company	1,058.21
Twin Lakes Body Shop	235.16
U-Haul	748.23
Unicover Corporation	470.31
Union Oil Company of California d/b/a/ Unocal	897.87
Unocal 76 (Intermountain West-Tacoma/Wilsonville)	
Unocal Corporation (Portland)	
United Dominion Industries, Inc	7,995.33
Varco Pruden Buildings (Pine Bluff)	
Varco Pruden Buildings (St. Joseph)	
Varco Pruden Buildings (SPC)	
United Lithographers {United Lithographers, Inc.}	78.03
University of Puget Sound	1,175.78
University of Utah	3,356.33
Utah Scientific	117.58
Utah State Prison	652.03
Utah State University	3,314.92
U.S.U. Safety Office	
Utah Valley Community College	235.16

Name of party	Settlement amount
Valley Auto Painting & Body	231.42
Valley Enterprise Inc	459.62
Vehicle Body & Paint	320.67
Ventura Regional Sanitation District	4,467.98
Video Viewing, Inc	117.58
Vintage Auto Body {Vintage Body Tech & Collision}	106.89
Vinyard & Associates, Inc	117.58
Virginia Mason Hospital {Virginia Mason Medical Center}	823.05
Vision Ford-Lincoln Mercury	235.16
VMI	320.67
W. Ray Crabb Inc	427.56
W.R. Grace and Co	1,924.01
W.W. Apprenticeship & Training Trust	47.03
Wadsworth Control {Wadsworth Control Systems, Inc.}	106.89
Wal-mart PMDC	352.74
Wallace Chevrolet {Wallace Chevrolet, Olds, Cadillac}	117.58
Wanco	588.38
Warneke Paper {Warneke Paper Box Co., Inc.}	106.89
Washington Water Power Co	3,741.94
Watts Company, The	2,725.68
Web Southwest, Inc	235.16
Weber Auto Body	213.78
Weiser Inc	2,233.99
West Auto Body	320.67
West Wind Litho	470.31
Western Atlas International, Inc	448.94
Core Laboratories	
Western Atlas International Core Lab. Division	
Western Co {BJ Services Company, U.S.A.}	1,282.67
Western Fluid Power	769.60
Western International Aviation {Western International Aviation, Inc.}	1,646.10
Western International Truck	235.16
Western Mobile New Mexico, Inc	117.58
Western Wire Works	235.16
Westside Chrysler Plymoth Jeep Eagle	1,528.52
Ken Johns Lincoln-Mercury	
Westside Lincoln-Mercury-Jeep	
Casa Chevrolet Center	
Credit Cars	
White Sands Research Center	128.27
White Water Whirlpool Baths & Systems (Lindon)	3,527.35
White Water Whirlpool Baths & Systems (P.G.)	
White Water Whirlpool Baths & Systems (Lindon)	
Widefield School District—Maintenance	1,966.77
Wigand Corp	7,268.48
Willamette Industries {Willamette Industries, Inc.}	4,467.98
Williams Printing {CGF Industries}	833.74
Wiltec Research Company, Inc	352.74
Wiltech Corp	1,293.36
Wisdom Paint & Body	235.16
Wise Investment	668.06
Wizard Machine	147.10
Woody's Welding Service, Inc (Woodie's Welding)	427.56
Wright & McGill Co	213.78
Wright Business Forms Inc	320.67
Wyoming Medical Center	1,058.21
Xedar Corp	106.89
York International	1,389.56
Young Chevrolet Body Shop {Young Chevrolet Co.}	587.89
Zimmerman Metals	106.89
Total	1,069,074.88

By the terms of the proposed AOCs, the settling parties under both AOCs will pay a combined $1,097,244.34 to the Hazardous Substance Superfund. This payment represents approximately 43% of the $2,543,217.89 in response costs that EPA has incurred through December 31, 1995. EPA expects to incur approximately $167,000.00 in additional enforcement-related response costs in conjunction with the Site. The settling parties under both AOCs manifested 511,557.26 gallons of hazardous substances to the Site. This amount represents approximately 40% of the 1,260,589.79 gallons of hazardous substances manifested to the Site by all generators, both *de minimis* and non-*de minimis*.

In exchange for payment, EPA will provide the settling parties with a

covenant not to sue (for private parties) or a covenant not to take administrative action (for federal parties) under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and under section 7003 of the Solid Waste Disposal Act, as amended (also known as the Resource Conservation and Recovery Act), which will resolve fully each settling party's liability at the Site.

The amount that each individual PRP will pay, as shown above, was based upon the number of gallons of hazardous substances manifested to the Site. The total amount of settlement dollars owed by each party to the settlements was arrived at by multiplying the cost per gallon by the number of gallons a party manifested to the Site (''Base Amount'') and then adding to this amount a premium payment equal to 9% or 50% (see discussion below) of the Base Amount. The cost per gallon of $1.9612736353 was derived by dividing the estimated clean-up cost at the time of calculation of $2,472,361.52 by the 1,260,589.79 total gallons of hazardous substances manifested to the Site.

To be eligible for the *de minimis* settlements, each PRP must have submitted a response to EPA's Request for Information, and must have contributed no more than .7% of the total volume of hazardous substances manifested to the Site. PRPs that submitted timely responses to EPA's Request for Information were allowed to participate in the settlements at the 9% premium level. PRPs that failed to respond to EPA's First Request for Information and the Follow-up Request for Information letters when originally issued, have been allowed to participate in the de minimis settlements at the 50% premium level, provided they submitted a full response to EPA's Information Request prior to publication of this notice.

It is so agreed:

Dated: June 27, 1996.

Jack W. McGraw,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 96–18042 Filed 7–15–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1119–DR]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1119–DR), dated June 7, 1996, and related determinations.

EFFECTIVE DATE: June 7, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 7, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Alaska, resulting from wildland fires on June 2, 1996, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance and Hazard Mitigation may be designated at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

Matanuska-Susitna Borough and the City of Houston for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–18032 Filed 7–15–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1119–DR]

Alaska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska, (FEMA–1119–DR), dated June 7, 1996, and related determinations.

EFFECTIVE DATE: June 25, 1996

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alaska, is hereby amended to include Public Assistance and Hazard Mitigation in the following area determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 7, 1996:

The Matanuska-Susitna Borough for Public Assistance and Hazard Mitigation (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–18033 Filed 7–15–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1121–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–1121–DR), dated June 24, 1996, and related determinations.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa,

is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 24, 1996:

Adams, Ringgold, Taylor and Union Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–18034 Filed 7–15–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1123–DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1123–DR), dated June 25, 1996, and related determinations.

EFFECTIVE DATE: June 25, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 25, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Nebraska, resulting from a tornado and severe storms on May 8, 1996 through and including May 28, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carol Coleman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

Gage, Johnson, Nemaha and Otoe Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–18030 Filed 7–15–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1122–DR]

Ohio; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio, (FEMA–1122–DR), dated June 24, 1996, and related determinations.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Ohio, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 24, 1996:

Butler, Clermont, Lawrence and Monroe Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–18035 Filed 7–15–96; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1124–DR]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–1124–DR), dated June 27, 1996, and related determinations.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 27, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Vermont, resulting from extreme rainfall and flooding on June 12–14, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alma Armstrong of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Vermont to have been affected adversely by this declared major disaster:

Windham County for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–18031 Filed 7–15–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200992.

Title: Broward County/SeaEscape Cruises, Ltd. Terminal Agreement.

Parties:

Broward County (''Broward'')
SeaEscape (''SeaEscape'')

Synopsis: Under the proposed Agreement, Broward will provide berthing, and other terminal services to SeaEscape for its daily cruise service from Port Everglades.

Agreement No.: 224–200993.

Title: Port of Oakland/Yang Ming Transport, Corporation Terminal Agreement.

Parties:

Port of Oakland (''Port'')
Yang Ming Transport, Corporation (''Yang Ming'')

Synopsis: The proposed Agreement permits Yang Ming the non-exclusive rights to certain premises at the Port's Seventh Street Marine Container Terminal. Subject to Agreement provisions, Yang Ming will pay to the Port ninety percent of dockage tariff charges and seventy percent of wharfage tariff charges.

Agreement No.: 224–200995.

Title: Broward County/Discovery Cruises, Inc. Terminal Agreement.

Parties:

Broward County (''Broward'')
Discovery (''Discovery'')

Synopsis: Under the proposed Agreement, Broward will provide berthing, and other terminal services to Discovery for its daily cruise service from Port Everglades.

By Order of the Federal Maritime Commission.

Dated: July 10, 1996.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 96–17973 Filed 7–15–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Herman Wai Hung Ng, 5467 Mission Street, San Francisco, CA 94112, Sole Proprietor

Adelino J. Vazquez, 73–75 Ferry Street, Newark, NJ 07105, Sole Proprietor.

Dated: July 10, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–17993 Filed 7–15–96; 8:45 am]

BILLING CODE 6730–01–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 9, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mark Twain Bancshares, Inc., St. Louis, Missouri; to acquire at least 90 percent of the voting shares of Northland Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire First National Bank of Platte County, Kansas City, Missouri.

In connection with the application Mark Twain Acquisition Corp. II, St. Louis, Missouri, a subsidiary of Mark Twain Bancshares, Inc., has applied to become a bank holding company by acquiring at least 90 percent of the voting shares of Northland Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire First National Bank of Platte County, Kansas City, Missouri.

Board of Governors of the Federal Reserve System, July 10, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96-18009 Filed 7-15-96; 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 companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Kansas Bancshares, Inc., Hutchinson, Kansas; to engage *de novo* through its subsidiary, Personal Finance Corp., Hutchinson, Kansas, in a joint venture in consumer finance lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Wells Fargo & Company, San Francisco, California; to engage *de novo* through all their subsidiary banks, in expanding the geographic scope of the activities authorized by Board Order dated December 16, 1985. Specifically to engage in the issuance and sale of payment instruments as follows: (1) domestic money orders up to a maximum face value of $10,000; (2) international money orders in denominations not to exceed $10,000; and (3) official checks with no maximum limitation on the face amount, but subject to certain conditions. Wells Fargo will engage in these activities nationwide.

Board of Governors of the Federal Reserve System, July 10, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96-18008 Filed 7-15-96; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, July 22, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 12, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–18155 Filed 7–12–96; 3:23 pm]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board Meeting

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will meet on Thursday, July 25, 1996, from 9:00 A.M. to 3:00 P.M. in room 7C13 of the General Accounting Office, 441 G St., N.W., Washington, D.C.

The purpose of the meeting is to discuss and review the following projects (1) Management Discussion & Analysis (MD&A), (2) Natural Resources, and (3) Codification.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., N.E., Room 1001, Washington, D.C. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: July 11, 1996.

Ronald S. Young,

Executive Director.

[FR Doc. 96–18055 Filed 7–15–96; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

HHS Management and Budget Office; Office of Budget; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services is being amended at Chapter AM, HHS Management and Budget Office, Chapter AML, Office of Budget, as last amended at March 2, 1992. The changes are to reflect a realignment of functions within the Office of Budget.

Delete Chapter AML in its entirety and replace with the following:

Section AML.00 Mission

The Office of Budget provides advice and support to the Secretary and the

Assistant Secretary for Management and Budget on matters pertaining to: Formulation of the HHS and President's budget, presentation of budgets and reconciliation legislation to OMB and the Congress, and resolution of issues arising from the execution of final appropriations, implementation of authorizing legislation, and management of the Service and Supply Fund. In addition, the Office ensures that all Office of the Secretary employment policies and actions are in accordance with Equal Employment Opportunity (EEO) rules and regulations.

Section AML.10 Organization

The Office of Budget is headed by the Deputy Assistant Secretary for Budget who reports to the Assistant Secretary for Management and Budget and includes the following:

A. Division of Discretionary Programs (AML1)
B. Division of Health Benefits and Income Support (AML3)
C. Division of Budget Policy and Management (AML4)
D. Division of Program Integrity and Organizational Management (AML2)
E. Office of the Secretary Office of Equal Employment Opportunity (AML–1)

Section AML.20 Functions

1. Division of Discretionary Programs. The Division:

a. Provides analytical services and assistance to the Secretary, the Assistant Secretary for Management and Budget, and Department OPDIV heads in their budgetary management of the Department's principal discretionary programs including science and health services programs administered by the Public Health components; social service programs of the Administration for Children and Families and the Administration on Aging; and Departmental Management.

b. Reviews budgets and related requests for resources; and analyzes plans and proposals for new or alternative legislation.

c. Analyzes proposed regulations, reorganizations, or program initiatives to determine their policy, resource and management implications.

d. Proposes recommendations on draft regulations, proposed legislation and reorganization proposals.

e. Proposes budget options and policy initiatives as necessary to achieve program objectives established by the Secretary.

f. Assists in the development of strategies for the presentation of the budget to the Office of Management and Budget and the Congress and develops materials for key Departmental officials who testify at hearings before these bodies.

g. Provides guidance to OPDIVs and STAFFDIVs in the formulation of their budgets.

h. Conducts special reviews and analyses to examine assigned OPDIV and STAFFDIV program operations and management effectiveness.

i. Provides assistance to STAFFDIVs in the execution of appropriations, including financial plans, apportionments, allotments, and centrally-managed projects.

2. Division of Health Benefits and Income Support. The Division:

a. Provides analytical services and assistance to the Secretary, the Assistant Secretary for Management and Budget, and the Department OPDIV heads in the budgetary management of the Department's principal entitlement programs including Medicare, Medicaid, Family Support Payments and other entitlements in support of children and families.

b. Reviews budget and related requests for resources; analyzes plans and proposals for new legislation, regulations, or program initiatives to determine their resource, policy, and management implications; proposes recommendations for the Office of Budget on budget requests, draft regulations, proposed legislation, and reorganization proposals.

c. Assists the Secretary, the Assistant Secretary for Management and Budget and the OPDIV heads in evaluating programs and budgetary proposals by developing reliable cost projections for legislative and planning proposals, and ensuring that proposals are consistent with approved plans and policies.

d. Coordinates the preparation of budget estimates and forecasts of resources required to support the programs and operations of the Department.

e. Reviews reprogramming requests and recommends appropriate action to the Office of Budget.

f. Provides guidance in budget formulation for the appropriate OPDIV.

g. Conducts special management reviews and analyses, and develops management options to ensure efficient and effective program operations and to encourage management improvements.

h. Proposes budget options and policy initiatives as necessary to achieve program objectives established by the Secretary.

i. Assists in the development of strategies for presentation of the budget to the Office of Management and Budget and the Congress and develops materials for key Department officials who testify at hearings before these bodies.

3. Division of Budget Policy and Management. The Division:

a. Directs the formulation and presentation of the HHS budget by developing and promulgating to the OPDIVs and others the policies, procedures, guidance, and schedules for preparing budget submissions.

b. Coordinates the presentation of the Department's budget to Congress including preparation and submission of justifications, reports, significant items, and cross-cutting materials; preparation of the Secretary's testimony before the Appropriations Committees; and coordination of transcripts, questions for the record, and other hearing materials.

c. Provides advice and analysis to support Department-wide budget decision-making.

d. Maintains active communication with Department budget officers with regard to external budget events.

e. Manages a computerized budget information system reflecting data on an HHS-wide basis and coordinates OPDIV input into this system.

f. Provides direct staff support to the Secretary in preparation for appropriation hearings and other budget related presentations and briefings.

g. Actively communicates with the Budget and Appropriations Committees in the Congress and provides intelligence and analyses of budget decisions to senior HHS staff and the operating divisions.

h. Prepares guidelines for determining funding levels under continuing resolutions.

i. Coordinates preparation of guidelines governing reprogrammings, transfers between accounts, and other cross-cutting funding methods; provides recommendations and staff support in processing cross-cutting funding proposals.

j. Analyzes and prepares reports on HHS' performance in achieving streamlining and FTE reduction goals; provides expert advice on Departmentwide staffing policy.

4. Division of Program Integrity and Organizational Management. The Division:

a. Reviews and analyzes the budgets of the Office of Inspector General (OIG) and Office for Civil Rights (OCR). Prepares special analyses of OIG and OCR budgets for the purpose of evaluating capacity and determining if alternative approaches are feasible. These analyses would usually be for the use of the Deputy Assistant Secretary, Budget, the Assistant Secretary for

Management and Budget, and the Secretary. Monitors Congressional appropriations hearings in which the OIG and/or OCR are participants.

b. Provides staff assistance to the Secretary, the Assistant Secretary for Management and Budget, the Service and Supply Fund (SSF) Board of Directors, OPDIV Budget Officers, and STAFFDIV heads in the budgetary and financial management of the Service and Supply Fund.

c. Provides for policy management, and financial integrity of the SSF in the provision of Departmental common use administrative services.

d. Provides budget policy and technical support to the Program Support Center Director (and other activity managers) on all SSF activities.

e. Directs and provides technical guidance to SSF activity managers in preparing annual budgets. Assists in the planning and preparation of the SSF budget for presentation to the SSF Board, the Office of Management and Budget, and Congress.

f. Directs and provides technical guidance to SSF accountants in preparing annual financial statements. Assists in the planning and preparation of these statements for presentation to the SSF Board, auditors, and the Office of Management and Budget.

g. Prepares apportionment requests for the Service and Supply Fund.

h. Establishes Department policy in the management of Inspector General Reports and audits; prepares the Secretary's semi-annual report to Congress on IG report management.

i. Serves as the principal source of advice on all aspects of Department-wide organizational analysis including: (1) Planning for new organizational elements; (2) evaluating current organizational structures for effectiveness; (3) conducting the review process for reorganization proposals. Manages the reorganization process for the Office of the Secretary (OS) requiring the Assistant Secretary for Management and Budget or the Secretary's signature. Administers the Department's system for the review, approval and documentation of delegations of authority. Develops Department-wide policies and provides technical assistance on the use and application of delegations of authority. Advises senior officials within the Department on delegations of authority, coordinates review of proposed delegations requiring the Secretary's or the Assistant Secretary for Management and Budget's approval. Analyzes and makes recommendations related to legislative proposals with potential impact upon the Department's organizational structure or managerial procedures.

j. Manages, in accordance with the Paperwork Reduction Act of 1980, as amended, the OS activities related to the review and approval of all public use reports and record-keeping requirements which impose a paperwork burden on the public. Develops policies for and manages the OS Information Collection Budget and the Information Collection Budget process. Develops policies and procedures for the OS and carries out analytical and oversight activities related to the Department's paperwork burden reduction efforts.

k. Maintains the Departmental Standard Administrative Code (SAC) system, providing oversight, advice, and assistance Department-wide to assure codes are in accord with the current approved organization.

l. Provides staff assistance to the Assistant Secretary for Management and Budget and the HHS operating divisions in the implementation, management and analysis of: (1) Federal management control policies and processes of the Federal Managers Financial Integrity Act (FMFIA) and implementing regulations; (2) audit follow-up management and Semiannual Management and Inspector General Reports under the Inspector General Act Amendments of 1988 (IGAA); and (3) budget-related performance planning and annual performance plans required under the Government Performance and Results Act (GPRA).

(m) Represents the Department in government-wide activities to implement FMFIA, audit follow-up, and budget-related GPRA performance planning policies, requirements and processes.

n. Provides special management review services for selected activities.

5. The OS Office of Equal Employment Opportunity assists the ASMB in carrying out the delegated authority to establish and maintain equal employment opportunity programs within the Office of the Secretary. The Office is responsible for ensuring that all OS employment policies and actions are based on merit, without regard to race, color, religion, national origin, sex, age, or physical/mental disability. Major functions include: pre-complaint counseling; formal complaint processing; affirmative employment planning and implementation; technical guidance and policy development. The functions of the office also include program efforts which focus on the Federal Women's Program, the Hispanic Employment Program, and the Program for People with Disabilities.

Dated: July 3, 1996.

John J. Callahan,

Assistant Secretary for Management and Budget.

[FR Doc. 96–17959 Filed 7–15–96; 8:45 am]

BILLING CODE 4510–04–M

Centers for Disease Control and Prevention

Cooperative Agreements for Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects; Meeting

The National Center for HIV, STD, and TB Prevention (NCHSTP) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Consultation on draft program announcement for Cooperative Agreements for Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects—Public Meeting between CDC and national organizations serving populations at high risk for HIV infection; State and local health departments; HIV prevention community planning group co-chairs; and other interested parties.

Time and Date: 9 a.m.–4:30 p.m., July 22, 1996.

Place: Capital Hilton, 16th and K Street, NW, Washington, DC, 20036–5794, telephone 202/393–1000, fax 202/639–5784.

Status: Open to the public for participation, comment, and observation, limited only by the space available. The meeting room accommodates approximately 100 people, including invited consultants.

Purpose: In 1989, CDC began providing direct financial and technical assistance to minority and other community-based organizations working toward reducing the behaviors that lead to HIV transmission in their own communities. The partnerships which developed through these cooperative agreements between CDC and hundreds of community-based organizations have proven effective in reaching high-risk populations with HIV prevention interventions. A new, competitive program announcement is being developed to provide direct funding to minority and other community-based organizations serving high-risk populations beginning in 1997 as a three-year project.

This meeting is to discuss and comment on the draft program announcement which outlines the purpose, eligibility, available funds, required program activities, application content, and evaluation criteria.

Matters to be Discussed: Agenda items will focus on discussion of the draft program announcement, ''Cooperative Agreements for Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects Program Announcement.''

The draft program announcement will be published in the Federal Register for a period of 30 days. Written comments should

be submitted to the contact person listed below by August 16, 1996. All comments will be reviewed and, if applicable, incorporated into the final announcement to be published in the Federal Register in October.

For Further Information Contact: Mary Willingham, Division of HIV/AIDS Prevention, NCHSTP, CDC, M/S A24, 1600 Clifton Road, NE, Atlanta, Georgia 30303, telephone 404/639–0965.

Dated: July 10, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–17987 Filed 7–15–96; 8:45 am]

BILLING CODE 4163–18–M

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Program Information Report (PIR)

OMB No.: 0980–0017

Description: The Head Start Act requires that the Program Information Report (PIR) information is collected from Head Start grantees and delegate agencies. Data elements are primarily in the areas of management, class activity, health profile and home environment. Principal user of the data include local program management, ACF regional management, ACYF central office management, management of services to children with disabilities, and dissemination to other interested parties.

Respondents: Not-for-profit institutions, and State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
PIR	2,078	4	3.35	6,691

Estimated Total Annual Burden Hours: 6,691.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: July 9, 1996.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 96–17958 Filed 7–15–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96M–0239]

Arrow International; Premarket Approval of the Model 3000 Constant Flow Inplantable Pump with Bolus Safety Valve

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Arrow International, Walpole, MA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Model 3000 Constant Flow Implantable Infusion Pump with Bolus Safety Valve. After reviewing the recommendation of the General Hospital and Personal Use Device Section of the General Medical Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 11, 1996, of the approval of the application.

DATES: Petitions for administrative review by August 15, 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: Richard E. Galgon, Center for Devices and Radiological Health (HFZ–420), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1287.

SUPPLEMENTARY INFORMATION: On September 18, 1990, Arrow International, Walpole, MA 02081, submitted to CDRH an application for premarket approval of the Model 3000 Constant Flow Implantable Infusion Pump with Bolus Safety Valve. The device is an implantable infusion pump and is indicated for the continuous regional intra-arterial delivery of 2'-deoxy-5-fluorouridine (FUDR), heparinized saline, normal saline, and bacteriostatic water.

On March 5, 1991, the General Hospital and Personal Use Device Section of the General Medical Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On March 11, 1996, 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 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 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 15, 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: June 21, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–17956 Filed 7–15–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Program Announcement, Proposed Project Requirements, Review Criteria, and Funding Preference for Regional Nursing Partnerships to Provide Continuing Education in Nursing Informatics for Faculty in Medically Underserved Communities

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1996 Cooperative Agreements for Regional Nursing Partnerships to Provide Continuing Education in Nursing Informatics for Faculty in Medically Underserved Communities. These cooperative agreements will be funded for one year under the Public Health Service Act, as amended by Nurse Education and Practice Improvement Amendments of 1992, Title II, Public Law 102–408, dated October 13, 1992, Section 820 (c), Continuing Education for Nurses in Medically Underserved Communities. It is anticipated that $280,000 will be available to support up to three competitive one-year awards.

Purpose

The purpose of the cooperative agreements is to support the formation of partnerships between recognized regional nursing organizations and nursing entities qualified to provide continuing education in nursing informatics for nursing faculty in schools located in, or preparing students to serve in, medically underserved communities. Nursing informatics is defined as the integration of nursing science, computer science, and information science applied to the identification, collection, analysis, and management of data for nursing education, practice, and research. Increasing the number of nurses in the workforce who are knowledgeable about nursing informatics, especially those practicing in underserved or rural communities, will enhance clinical proficiency and improve access to and quality of health care for increasing numbers in the population. For the purpose of these cooperative agreements, regional nursing organizations are those regionally based nursing organizations whose members must include schools of nursing in institutions of higher education located within the designated region, and whose members may also include health care agencies and other health care entities.

Applicants must establish and maintain effective partnerships to implement sound continuing education programs designed to meet the identified nursing faculty needs in nursing informatics. Continuing education program curricula must be based on regional assessments of undergraduate and graduate nursing faculty proficiency in computer technology and nursing informatics.

Eligibility and Proposed Funding Preference

Eligible applicants include public and non-profit entities. A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications in a discretionary program. It is proposed that a funding preference will be given to recognized regional nursing organizations who enter partnerships with nursing entities experienced in teaching nursing informatics. These entities may include, but are not limited to, schools of nursing. The partner providing the nursing informatics expertise must be located within the recognized regional nursing organization's designated region. It is highly unlikely that any applicant not meeting the funding preference will be supported under this cooperative agreement.

Proposed Project Requirements

1. Develop a formalized partnership between the regional nursing organization and nursing entities qualified to provide continuing education in nursing informatics.

2. Establish an Advisory Board to oversee the development, administration, and evaluation of the project. The Advisory Board must include at least one non-academically based nurse practicing in a medically underserved community.

3. Utilize an existing assessment of undergraduate and graduate nursing programs within the region to determine:

(a) The availability of computer-based systems;

(b) Faculty knowledge, skills, and abilities in the use of computer-based systems; and

(c) The ability of faculty to prepare students for practice in technologically advanced practice environments.

4. Based on analysis of the assessment in #3, develop and implement four regionally-based nursing informatics continuing education programs during the 1997 academic year. Each continuing education program must be designed to:

(a) Enhance faculty knowledge, skills, and abilities in nursing informatics in the areas of computer technology;

human factors; information and database management; professional practice, trends, and issues; system analysis and design; system implementation and support; system testing and evaluation; and theoretical frameworks;

(b) Include a computer lab practicum;

(c) Be completed in a one-week, 30–36 hour session;

(d) Be provided in two or more different geographic locations to facilitate participation by faculty from distant areas within the region;

(e) Enroll a minimum of 14 nursing faculty from schools of nursing located in or experienced in preparing nurses to serve in medically underserved communities;

(f) Provide participants a syllabus and reading materials prior to the session; and

(g) Award continuing education credit in nursing informatics.

6. Project must be documented in a format to facilitate replication by other organizations.

Substantial Federal Programmatic Involvement

Personnel in the Bureau of Health Professions, Division of Nursing will have substantial programmatic involvement with the planning, development, administration, and evaluation of the Regional Nursing Partnerships to Provide Continuing Education in Nursing Informatics for Faculty in Medically Underserved Communities and their outputs by:

1. Participating in the identification and selection of an Advisory Board. This includes participation in the selection of co-chair(s), one of whom will be the Division of Nursing representative, Meribeth Reed, PhD, RN.

2. Providing guidance for obtaining an existing regional assessment on the availability of computer-based systems; faculty knowledge, skills, and abilities in the use of computer-based systems; and the ability of faculty to prepare students for practice in technologically advanced practice environments.

3. Providing technical assistance, guidance, and recommendations for project modifications.

4. Reviewing and advising on curricula content, selection of participants, methodologies, and teaching techniques.

5. Reviewing and advising on program evaluation methods.

6. Reviewing and advising on documenting project activities and experiences for dissemination and replication.

7. Providing data and information about Federal programs that may impact the project.

National Health Objectives for the year 2000

The HRSA urges applicants to submit work plans that address specific objectives of *Healthy People 2000.* Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between HRSA education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The HRSA strongly encourages all grant recipients to provide a smoke-free workplace; to promote the non-use of all tobacco products; and to promote Public Law 103–227, the Pro-Children Act of 1994, which prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Proposed Review Criteria

The review of applications will take into consideration the following criteria:

1. The need for the proposed project.

2. The potential effectiveness of the proposed project in carrying out the stated purpose.

3. The administrative and managerial capability of the applicant to carry out the proposed project.

4. The efficacy of the proposed partnership.

5. The adequacy of the facilities and resources available to the applicant to carry out the proposed project.

6. The qualifications of the project director and proposed staff.

7. The feasibility of the proposed budget in relation to the proposed project.

8. The potential of the project to continue on a self-sustaining basis after the period of Federal support.

Additional Information

Interested persons are invited to comment on the proposed project requirements; review criteria; and funding preference for recognized nursing organizations in partnership with nursing entities qualified to provide continuing education in nursing informatics. The comment period is 30 days. All comments received on or before August 15, 1996 will be considered before the final project requirements and review criteria are established. The final project requirements and review criteria will be included in the final notice published in the Federal Register. Written comments should be addressed to Marla Salmon, ScD, RN, FAAN, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m., Eastern Standard Time.

Application Availability

Application materials, including Supplemental Instructions and Training Application Form PHS 6025–1, are available on the World Wide Web at: http://www.os.dhhs.gov/hrsa/bhpr. To obtain the supplemental instructions, click on the file named ''NICE.EXE'' to download to your computer. Click on ''save to disk.'' The file will be saved as a self-extracting WordPerfect 5.1 file named NICE.EXE. Once the file is downloaded to your disk or hard drive, you may exit the web site.

The NICE.EXE file will be a compressed file. To decompress or expand the file in *DOS,* go to the DOS directory where the file has been downloaded and type in ''NICE.EXE'', then ''enter.'' The file will expand into a WordPerfect 5.1 file, now named ''NICE.''

To decompress the file in *Windows,* go to ''program manager,'' then click on ''file,'' then ''run.'' The file will expand to a Windows file now named ''NICE.'' Note that in DOS or in Windows, you will retain a file with the extension ''.EXE,'' and one without the extension, but with considerably larger disk size. The expanded file is the one you will use. To obtain the PHS 6025–1, follow the same instructions, after clicking on ''PHS 6025–1.''

Questions regarding grants policy and business management issues should be directed to Ms. Wilma Johnson, Acting Chief, Centers and Formula Grants Section (wjohnson@hrsa.ssw.dhhs.gov), Grants Management Branch, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857. Applicants are strongly encouraged to obtain application materials from the

World Wide Web via the Internet. However, if you are unable to obtain the application materials electronically, you may obtain application materials in the mail by sending a written request to the Grants Management Branch at the address above. Written requests may also be sent via FAX (301) 443–6343 or via the internet listed above. Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact Meribeth Reed, PhD, RN, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857. Dr. Reed may be reached by telephone at (301) 443–5763, by fax at (301) 443–8586, or by e-mail at: (mreed@hrsa.ssw.dhhs.gov).

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

The deadline date for receipt of applications is August 19, 1996. Applications will be considered to be ''on time'' if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant. In addition, applications which exceed the page limitation and/or do not follow format instructions will not be accepted for processing and will be returned to the applicant.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is also not subject to the Public Health System Reporting Requirements.

Dated: July 10, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–17998 Filed 7–15–96; 8:45 am]

BILLING CODE 4160–15–P

Availability of Funds for Cooperative Agreement to Create a Primary Care Resource Center

AGENCY: Health Resources and Services Administration.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications will be accepted in fiscal year (FY) 1996 to create a university-based Primary Care Resource Center. The purpose of the Center is to study the organization, financing, and delivery of primary health care services to underserved and vulnerable populations, in order to develop materials and information which will assist and benefit Community Health Centers (CHCs) in their analysis of the need for primary health services, the development of clinical practices, and the refinement of fiscal and administrative systems. Funding of this activity is authorized under Section 330(f)(1) of the Public Health Service (PHS) Act.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. HRSA programs, and CHCs in particular, are related to the objectives cited for special populations, particularly minorities, people with low income, and other types of vulnerable populations. Potential applicants may obtain a copy of *Healthy People 2000—Full Report* (Stock No. 017–001–00474–0) or *Healthy People 2000—Summary Report* (Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, day care, health care, or early childhood development services are provided to children.

DUE DATES: Applications are due August 30, 1996. Applications will be considered to have met the deadline if they are: (1) Received on or before the deadline date; or (2) postmarked on or before the established deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the announced deadline will not be considered for funding.

ADDRESSES: Application kits (Form PHS 5161–1) with revised face sheet DHHS Form 424, as approved by the Office of Management and Budget under control number 0937–0189, may be obtained from, and completed applications should be mailed to: BPHC Grants Management Officer, c/o Houston Associates, Inc., 1010 Wayne Avenue, Suite 1200, Silver Spring, MD 20910, Telephone 800/523–2192.

FOR FURTHER INFORMATION CONTACT: For information on programmatic and research issues, contact: Ms. Bonnie Lefkowitz, Associate Bureau Director, Office of Data, Evaluation, Analysis, and Research, Bureau of Primary Health Care, HRSA, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone 301/594–4280 (FAX 301/594–4986).

For information on business management issues, please contact Nancy Benson in the Office of Grants Management, Bureau of Primary Health Care, 301/594–4232.

SUPPLEMENTARY INFORMATION:

Program Requirements

HRSA's Bureau of Primary Health Care (BPHC) is seeking to enter into a cooperative agreement with a university or university-based organization for the purpose of operating a Primary Care Resource Center. The activities to be performed under this cooperative agreement are intended to assure that relevant knowledge about the health care environment and about methods of clinical and management improvement is made available to the health centers and other primary care providers; and that this knowledge is disseminated throughout those programs, and is conveyed to policymakers, program planners and administrators, care providers, and the user populations. Toward that goal, the Primary Care Resource Center will communicate effectively and regularly with these audiences through instruments it develops and disseminates.

Areas and topics for study will be determined jointly by BPHC and the Center, with emphasis on the ability to respond to changing needs of BPHC programs. The Center will be responsible for:

1. Producing short-term (e.g., 3–4 weeks turn-around) analytic reports, white papers, and monographs, for dissemination, as appropriate, to the public;

2. Conducting longer-term (e.g., 6–12 months turn-around), more comprehensive applied policy research studies;

3. Developing informational and educational materials, including monographs and summary reports, to help link policymakers and the BPHC audiences identified above with sources of information about primary care.

Subjects of such papers, studies, and reports are expected to include, for example:

- Monitoring the impact of changes in financing and delivery of health care on vulnerable populations;
- Access to care for underserved populations—status of ''safety net'' services;
- The changing role of Federal programs in health care generally, and adaptation to managed care;
- Prevention strategies for underserved and vulnerable populations (e.g., homeless and persons with HIV disease);
- Assessing quality of care and quality of service;
- Approaches to studying performance and health outcomes;
- Design of program evaluations in primary care; and
- Recruitment and retention of primary care providers.

Criteria for Evaluating Applications

Applications for cooperative agreement support will be reviewed based upon the following evaluation criteria:

a. Extent to which the applicant shows understanding of policy issues that have a significant effect on primary care for underserved populations, particularly in light of the changing health care and government environment;

b. Extent to which the applicant demonstrates flexibility to provide quick response to requests and inquiries, for example, as indicated in a management plan and personnel table, and in evidence of ongoing relationships with appropriate personnel so as to minimize start-up time;

c. Appropriateness and adequacy of qualifications and experience of the proposed project staff and consultants;

d. Extent to which the applicant demonstrates prior evidence of organizational ability to conduct high-quality policy-relevant studies and disseminate materials in an appropriate format in a timely manner, and to appropriate audiences; and

e. Reasonableness of costs in relation to the value of proposed activities, including how the proportion of the proposed budget for direct production of deliverables has been maximized.

Eligible Applicants

Any public or private university or university-based organization may apply. Less than maximum competition is necessary in order to ensure academic rigor and depth of skills, and to gain optimal access to current information, professional research, and informed opinion regarding the delivery of primary health care for minority and vulnerable populations and those with special health care needs. The experience and attributes of a university or university-based organization are essential to the timely and successful completion of the products required.

Number of Awards

It is anticipated that one award will be made. The cooperative agreement for a Primary Care Resource Center will be awarded for a three-year period, and the initial budget period will be eight months. Funding during FY 1996 will be approximately $200,000; BPHC will consider continuation funding during FY 1997 based on the availability of funds and performance in the first budget period.

Federal Responsibilities Under Cooperative Agreements

Federal responsibilities under the cooperative agreement, in addition to the usual monitoring and technical assistance, will include: (1) Participation in the development and approval of an initial workplan, in accord with changing events in government policies and in the health care environment, and modification thereof, as appropriate; (2) participation in meetings conducted under the cooperative agreement; (3) consultation to and cooperation with the grantee regarding the grantee's preparation and dissemination of materials; and (4) approval of specific studies and projects.

Other Award Information

This program is not subject to review under Executive Order 12372 or the Public Health System Reporting Requirements.

Dated: July 10, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–17999 Filed 7–15–96; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute on Drug Abuse; Notice of Cancellation of Meeting

Notice is given of the cancellation of the meeting of the AIDS Biomedical and Clinical Research Subcommittee, National Institute on Drug Abuse Initial Review Group on July 16–17, 1996 at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814 which was published in the Federal Register on June 20, 1996, Volume 61 FR 31540.

The meeting was canceled due to a scheduling conflict.

Dated: July 10, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–18100 Filed 7–12–96; 11:28 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Cancellation of Receipt Date for SAMHSA Conference Grant Applications

AGENCY: Center for Substance Abuse Prevention and Center for Substance Abuse Treatment, SAMHSA.

ACTION: Cancellation of September 10, 1996 application receipt date.

SUMMARY: As a result of a substantial reduction in appropriations in fiscal year 1996 and uncertainty concerning future funding availability, SAMHSA's Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT) are canceling the September 10, 1996, receipt date for applications for the following grant programs:

CSAP's Knowledge Dissemination Conference Grants (CFDA No. 93.174)

CSAT's Substance Abuse Treatment Conference Grants (CFDA No. 93.218)

To be placed on a mailing list for an application kit and current programmatic guidelines, potential applicants should contact: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, Maryland 20847–2345, Tele: 1–800–729–6686; TDD: 1–800–487–4889, Web Address: www.health.org.

For information regarding future receipt dates or for programmatic assistance, potential applicants should contact the following individuals:

CSAP: Ms. Luisa del Carmen Pollard, Division of Community Education, CSAP, Rockwall II Building, Suite 800, 5600 Fishers Lane, Rockville, Maryland 20857, Tele: (301) 443–8824.

CSAT: Ms. Nancy Kilpatrick, Office of Scientific Analysis and Evaluation, CSAT, Rockwall II Building, Suite 840, 5600 Fishers Lane, Rockville, Maryland 20857, Tele: (301) 443–8831.

Dated: July 10, 1996.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 96–17957 Filed 7–15–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4027–N–02]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the ''Act''). The interest rate for debentures issued under Section 221(g)(4) of the Act during the six-month period beginning July 1, 1996, is 6⅞ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1996, is 7¼ percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Financial Services Division, Department of Housing and Urban Development, 470 L'Enfant Plaza East, Room 3119, Washington, D.C. 20024. Telephone (202) 755–7450 ext. 125, or TTY (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the Federal Register.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning July 1, 1996, is 7¼ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 7¼ percent for the six-month period beginning July 1, 1996. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1996.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980
9⅞	July 1, 1980	Jan. 1, 1981
11¾	Jan. 1, 1981	July 1, 1981
12⅞	July 1, 1981	Jan. 1, 1982
12¾	Jan. 1, 1982	Jan. 1, 1983
10¼	Jan. 1, 1983	July 1, 1983
10⅜	July 1, 1983	Jan. 1, 1984
11½	Jan. 1, 1984	July 1, 1984
13⅜	July 1, 1984	Jan. 1, 1985
11⅝	Jan. 1, 1985	July 1, 1985
11⅛	July 1, 1985	Jan. 1, 1986
10¼	Jan. 1, 1986	July 1, 1986
8¼	July 1, 1986	Jan. 1, 1987
8	Jan. 1, 1987	July 1, 1987
9	July 1, 1987	Jan. 1, 1988
9⅛	Jan. 1, 1988	July 1, 1988
9⅜	July 1, 1988	Jan. 1, 1989
9¼	Jan. 1, 1989	July 1, 1989
9	July 1, 1989	Jan. 1, 1990
8⅛	Jan. 1, 1990	July 1, 1990
9	July 1, 1990	Jan. 1, 1991
8¾	Jan. 1, 1991	July 1, 1991
8½	July 1, 1991	Jan. 1, 1992
8	Jan. 1, 1992	July 1, 1992
8	July 1, 1992	Jan. 1, 1993
7¾	Jan. 1, 1993	July 1, 1993
7	July 1, 1993	Jan. 1, 1994
6⅝	Jan. 1, 1994	July 1, 1994
7¾	July 1, 1994	Jan. 1, 1995
8⅜	Jan. 1, 1995	July 1, 1995
7¼	July 1, 1995	Jan. 1, 1996
6½	Jan. 1, 1996	July 1, 1996
7¼	July 1, 1996	Jan. 1, 1997

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' of interest in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of eight- to twelve-year maturities, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the six-month period beginning July 1, 1996, is 6⅞ percent.

HUD expects to publish its next notice of change in debenture interest rates in January 1997.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: July 10, 1996.

Stephanie A. Smith,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–18027 Filed 7–15–96; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: As provided in Section 10(a)(2) of the Federal Advisory Committee Act, the Service announces a meeting designed to foster partnerships to enhance recreational fishing and boating in the United States. This meeting, sponsored by the Sport Fishing and Boating Partnership Council (Council), is open to the public and interested persons may make oral statements to the Council or may file written statements for consideration.

DATES: August 7, 1996, beginning at 1:00 p.m.

ADDRESSES: The meeting will be held in the Medical Forum Meeting Room B at the Sheraton-Civic Center Hotel, 2101 Civic Center Boulevard, Birmingham, Alabama 35203, telephone (205) 324–5000.

Summary minutes of the conference will be maintained by the Coordinator for the Council at 1033 North Fairfax Street, Suite 200, Arlington, VA 22314, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

FOR FURTHER INFORMATION CONTACT: Doug Alcorn, Council Coordinator, at 703/836–1392.

SUPPLEMENTARY INFORMATION: The Council will discuss recommendations from its Outreach/Education Committee to determine overall direction for public outreach and education on sport fishing and boating issues. The Council will hear a report from the States Organization for Boating Access on its assessment of national needs for boating access. The Council will discuss pertinent boating issues and determine future actions needed to address the priority issues. The Council will consider for adoption, the findings of its Technical Working Group on the Role and Responsibilities for Recreational Fisheries for the U.S. Fish and Wildlife Service. Minutes of prior meetings on December 20, 1995, and March 26, 1996, will be considered for approval. A future meeting site and date will be selected.

Dated: July 8, 1996.

J.L. Gerst,

Acting Deputy Director.

[FR Doc. 96–17974 Filed 7–15–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[UT–066–5440–J067; UTU–74303]

Notice of Realty Action; Non-Competitive Sale of Public Land, Carbon County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, sale of public land in Carbon County, Utah.

SUMMARY: The following described parcel of public land had been examined and found suitable for disposal by sale utilizing non-competitive sales procedures (43 CFR 2711.3–3), at no less than the fair market value. Authority for the sale is section 203 of the Federal Land Policy and Management Act of 1976 (90 stat. 2750; 43 U.S.C. 1713).

Salt Lake Meridian, Utah

T. 15 S., R. 13 E.,
Section 10, lot 3 (portions thereof)

Containing 19.878 acres more or less.

The land will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register. This land is being offered as a direct non-competitive sale to the City of East Carbon. The parcel is not required for any Federal purpose or program. Sale of the parcel is consistent with current BLM land use planning and would be in the public interest.

THE TERMS AND CONDITIONS APPLICABLE TO THE SALE ARE:

1. All valid existing rights documented on the official public land records at the time of conveyance issuance.

2. A reservation to the United States of all mineral deposits, together with the right to prospect for, mine, and remove such deposits under applicable law and such regulations as the Secretary of the Interior may prescribe.

3. A reservation to the United States for rights-of-way for ditches and canals under the Act of August 20, 1890 (26 Stat. 391; 43 U.S.C. 945).

Upon publication of this notice in the Federal Register the lands will be segregated from all forms of appropriation under the public land laws including the mining laws, except the mineral leasing laws. The segregative effect will end upon issuance of a patent or other document of conveyance, or two hundred seventy (270) days from the date of this publication, whichever occurs first.

Comments: For a period of forty-five (45) days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the proposed action, and the terms and conditions of the sale may be obtained from Mark Mackiewicz, Area Realty Specialist, Price River Resource Area, 125 South 600 West, P. O. Box 7004, Price, Utah 84501, (801) 636–3600, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood Drive, P.O. Box 970, Moab, Utah 84532, (801) 259–6111.

Dated: July 9, 1996.

Brad Palmer,

Acting District Manager.

[FR Doc. 96–18026 Filed 7–15–96; 8:45 am]

BILLING CODE 4310–DQ–P

National Park Service

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service contract with Rock Creek Park Horse Centre, Inc., to provide trail ride and horse boarding services for the public at Rock Creek Park expired by limitation of term on December 31, 1992. At the request of the Secretary, the concessioner has continued to provide services to the public. The National Park Service has prepared a Prospectus which sets forth the terms and conditions under which Rock Creek Park Horse Centre, Inc., or a successor concessioner shall provide such facilities for a period of approximately ten (10) years commencing from the date of execution.

EFFECTIVE DATE: September 16, 1996.

ADDRESSES: Interested parties should contact the Field Director, National Capital Area, 1100 Ohio Drive, SW., Room 348, Washington, D.C. 20242, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: The proposed contract requires/authorizes a construction and improvement program. An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a

major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Superintendent's office, Rock Creek Park.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1992, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, paragraph 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: July 3, 1996.

Robert Stanton,

Field Director, National Capital Area.

[FR Doc. 96–18049 Filed 7–15–96; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Request for Determination of Valid Existing Rights Within the Wayne National Forest

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

ACTION: Notice of public hearing and reopening of comment period on request for determination.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has received a request by the Buckeye Forest Council for a pubic hearing on the application by Buckingham Coal Co., Inc. (Buckingham) for a determination that the applicant has valid existing rights (VER) pursuant to section 522(e) of the Surface Mining Control and Reclamation Act of 1977 to mine coal by surface methods on 25.2 acres of Federal land within the Wayne National Forest in Perry County, Ohio. By this notice, OSM is announcing the scheduling of a public hearing and the reopening of the comment period. Interested persons are reinvited to participate in the proceeding and to submit relevant factual information on the matter.

DATES: OSM will hold the public hearing on August 8, 1996 from 7:00 PM until 11:00 PM. Requests to speak at the hearing must be received by 5:00 local time on August 1, 1996. OSM will accept written comments until 5:00 p.m. local time on August 16, 1996.

ADDRESSES: The public hearing will be held in the Ball Room of the Ohio University Inn, 331 Richland Avenue, Athens, Ohio. Written comments and requests to speak at the hearing must be mailed or hand delivered to the Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15220.

The Administrative Record is available for review at both the address above and OSM's Columbus Office, Eastland Professional Plaza, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232 during normal business hours, Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Peter Michael, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937–2867.

SUPPLEMENTARY INFORMATION: Background information on VER requirements for national forest lands and the Buckingham application for VER determination is available in the March 1, 1996 Federal Register (61 FR 8074).

Dated: July 2, 1996.

Mike Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–17963 Filed 7–15–96; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–96–15]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 26, 1996 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. Nos. TA–201–65 and NAFTA–302–1 (Remedy) (Broom Corn Brooms)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 11, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–18107 Filed 7–12–96; 11:13 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 28, 1996, Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O, Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590)	I
Lysergic acid diethylamide (7315)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470)	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II

Drug	Schedule
Noroxymorphone (9668)	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, 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 (60 days from publication).

Dated: July 3, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–18022 Filed 7–15–96; 8:45 am]

BILLING CODE 4410–01–M

Manufacturer of Controlled Substances; Notice of Registration

By notice dated September 5, 1995, and published in the Federal Register on September 13, 1995, (60 FR 47591), Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724) a basic class of controlled substance listed in Schedule II. Also, by Notice dated March 27, 1996, and published in the Federal Register on April 4, 1996 (61 FR 15120), Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Methylphenidate (1724)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine Hydrocholoride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

On July 20, 1995, and January 31, 1996, Mallinckrodt Chemicals, Inc. (Mallinckrodt) filed applications with the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate. DEA published notices of these applications in the Federal Register on September 13, 1995, and April 4, 1996, respectively. One registered manufacturer of bulk methylphenidate filed comments in response to these notices. The commentor argues that DEA failed to comply with the Administrative Procedure Act (APA) and further alleges that Mallinckrodt's registration would be contrary to the public interest pursuant to 21 U.S.C. 823(a). The commentor requested a hearing on the 1995 application and urged DEA to deny the 1996 application, or, at a minimum, issue an order to show cause proposing to deny the application.

With respect to the first notice, published September 13, 1995, the commentor alleges that it is entitled to a hearing on Mallinckrodt's application since the regulation terminating the third party hearing right (21 C.F.R. 1301.43(a)) did not take effect until the end of the day on July 20, 1995. The commentor argues that, since Mallinckrodt's application was filed during the day on July 20, 1995, the commentor is entitled to ask for and obtain a hearing. The commentor maintains that if DEA were to consider the application under the new regulation, it would be in violation of Section 553(d) of the Administrative Procedure Act (APA) which dictates that there must be thirty days between publication of a rule and its effective date.

DEA is not persuaded by the commentor's argument that the new regulation could not have become effective until the *end* of the day on July 20, 1995, i.e. after the filing of Mallinckrodt's application during the day of July 20, 1995. In any event, the commentor's contention regarding the effective date of the new regulation is, at this point, moot. Mallinckrodt did not manufacture any methylphenidate pursuant to its application published on July 20, 1995. The commentor thus was not prejudiced by the lack of a hearing. Convening a hearing regarding Mallinckrodt's July 1995 application would serve no purpose.

Furthermore, Mallinckrodt has since filed a new application, published in April 1996. There is no question that Mallinckrodt's 1996 application was filed after the effective date of the new regulation. As a result, the commentor enjoys no right to request or receive a hearing regarding Mallinckrodt's 1996 application.

The commentor next asserts that the 60 day comment period was an insufficient amount of time for the commentor to gather information regarding Mallinckrodt' application. However, in amending the regulation, DEA did not intend to encourage third parties to become, in essence, independent investigators. DEA's intent in amending 21 C.F.R. 1301.43(a) was to allow third parties to provide information already known to the third parties regarding an applicant. It is DEA's position, therefore, that 60 days are sufficient to permit third parties to share information of which they are aware regarding an applicant.

The commentor argues that the notices of Mallinckrodt's applications failed to provide third parties, including the commentor, with an opportunity for meaningful, informed comment. The commentor concludes that DEA has violated the rulemaking provisions of Section 553(b) of the APA. Contrary to the commentor's contention, for the reasons set forth below, DEA's registration of bulk manufacturers does not constitute a ''rulemaking'' proceeding. Nor did DEA voluntarily adopt notice and comment rulemaking procedures when it amended 21 C.F.R. 1301.43(a).

First, the commentor has ignored the definitions set forth in the APA and, in so doing, confuses notice and comment rulemaking with agency licensing proceedings. The commentor insists that DEA proceedings to grant or deny an application for registration as a bulk manufacturer are rulemakings. The APA, however, defines ''rule making'' to mean an ''agency process for formulating, amending, or repealing a rule.'' 5 U.S.C. 551(5). The APA defines a ''rule'' as:

> the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing.

5 U.S.C. 551(4).

Review of the APA's definitions of license and licensing reveals that the granting or denial of a manufacturer's registration is a licensing action, not a rulemaking. Courts have frequently distinguished between agency licensing actions and rulemaking proceedings. See *e.g., Gateway Transp. Co.* v. *United States,* 173 F. Supp. 822, 828 (D.C. Wis. 1959); *Underwater Exotics, Ltd.* v. *Secretary of the Interior,* 1994 U.S. Dist. LEXIS 2262 (1994). Courts have interpreted agency action relating to licensing as not falling within the APA's rulemaking provisions.

In *Underwater Exotics,* the United States District Court for the District of Columbia drew the distinction between an agency placing conditions on a license and an agency creating a rule. In that case, the plaintiff was licensed by the Fish and Wildlife Service (Service) to import and export certain aquatic species. When the Service imposed certain conditions on the plaintiff's license, plaintiff sued, arguing, *inter alia,* that the Service failed to comply with the APA's rulemaking requirements.

The court looked to the APA's definitions of ''licensing'' and ''rule'' and concluded that ''the Service's imposition of these conditions on a license did not violate the APA, because the Service's actions did not involve the creation of a rule.'' 1994 U.S. Dist. LEXIS 2262, *26. The court further stated that:

> the Service's imposition of conditions on the plaintiff's import/export license clearly fall within the definitions of ''license'' and ''licensing,'' * * * this agency action is not a ''rule making.'' Absent specific statutory direction otherwise, a court should not force an agency to employ a certain procedural format * * *.

Id.

Since the registration of bulk manufacturers is not a ''rule,'' DEA is not required to follow traditional notice and comment rulemaking procedures when granting or denying applications for such registration. In fact, the D.C. Circuit clearly supported this analysis in a 1980 decision in which the court stated that ''agency action that clearly falls outside the definition of 'rule' is also freed from rulemaking procedures.'' *Batterton* v. *Marshall,* 648 F. 2d 694, 701 n. 25 (D.C. Cir. 1980).

Furthermore, the commentor's contention that DEA voluntarily adopted notice and comment rulemaking with its amendment of 21 C.F.R. 1301.43(a) is not supported by either the notice of proposed rulemaking or the final rule. In fact, while the final rule does invite written comments form current manufacturers and applicants, nowhere in the final rule does DEA state, implicitly or explicitly, that it intended to follow notice and comment rulemaking procedures when acting upon a bulk manufacturer's application. DEA simply stated in the final rule that it would take into account such written comments when deciding whether to grant a particular registration or issue an order to show cause proposing to deny an application.

If DEA determines, based on information provided to it in written comments and its own investigation, that the registration of an applicant would not be in the public interest, an order to show cause will be issued. The decision of whether to issue an order to show cause is solely within DEA's discretion. If the applicant requests a hearing, the ensuing adjudicatory proceedings will comply with the APA. DEA's decision to address applications via individual adjudication, and not by notice and comment rulemaking, is within its discretion and in conformity with both the APA and the Controlled Substances Act (CSA). Courts have held that agencies have this discretion to determine whether to proceed by rulemaking or individual adjudication. *See PBW Stock Exchange* v. *Securities and Exchange Commission,* 485 F. 2d 718, 731 (3d Cir. 1973) *cert denied* 94 S. Ct. 1992 (1974).

Finally, the commentor's citation to *Rodway* v. *USDA,* 514 F. 2d 809 (D.C. Cir. 1975) and *Heron* v. *Heckler,* 576 F. Supp. 218 (N.D. Cal. 1983) is inappropriate. In those cases, as the commentor itself acknowledges, the agencies in question had either promulgated a regulation or adopted a policy statement specifically espousing the APA's notice and comment requirements. DEA has done neither.

DEA's action upon a bulk manufacturer's application is not a rulemaking action. DEA is therefore not required to follow notice and comment rulemaking when considering these applications. Neither the APA nor the CSA requires DEA to follow notice and comment rulemaking when acting upon bulk manufacturer applications. While DEA invites comments from competitors and applicants, such invitation does not translate into an implicit adoption of notice and comment rulemaking.

The commentor makes several allegations regarding its claim that Mallinckrodt's registration would not be consistent with the public interest pursuant to 21 U.S.C. 823(a). First, with respect to 21 U.S.C. 823(a) (1), (2), and (5), the commentor alleges that Mallinckrodt lacks effective controls to prevent diversion, noting past instances of violations of the CSA and its implementing regulations relating to recordkeeping and security. The commentor also draws attention to violations of the Food Drug and Cosmetic Act. The commentor further notes that Mallinckrodt has been cited by both federal and state authorities for violations of environmental laws and regulations.

With respect to Mallinckrodt's compliance with the CSA and its implementing regulations, Mallinckrodt is currently registered with DEA as a bulk manufacturer of other Schedule II controlled substances. It is true that DEA issued letters of admonition to Mallinckrodt in 1990 and 1991. The problems identified in these letters, however, were not significant enough to prompt DEA to seek revocation of Mallinckrodt's registration. Further, Mallinckrodt acted expeditiously to correct those problems.

Since the issuance of the letters of admonition, DEA has investigated Mallinckrodt to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. The results of these investigations have led DEA to conclude that Mallinckrodt is in compliance with the CSA and that its continued registration is consistent with the public interest.

The commentor also notes Mallinckrodt's violation of Food and Drug Administration (FDA) regulations. DEA has verified that Mallinckrodt's registration with the FDA is current and is confident that the nature of the FDA violations does not warrant the initiation of proceedings to deny Mallinckrodt's applications.

In addition, the commentor points out that Mallinckrodt has been cited by the United States Environmental Protection Agency and the State of North Carolina for violations of environmental regulations. In the absence of evidence

that these violations relate to the manufacture, distribution, or dispensing of controlled substances, DEA declines to consider them for purposes of determining whether Mallinckrodt's registration would be in the public interest.

The commentor further alleges that there currently exists an adequate and uninterrupted supply of methylphenidate under adequately competitive conditions. Consequently, the commentor claims that registration of an additional manufacturer could lead to an increased threat of diversion. In support of its position, the commentor points to a background paper published by DEA in which DEA voiced concerns about the diversion of methylphenidate. As the commentor itself noted, however, DEA's paper concluded that this diversion results from illegal sales by health care professionals, overprescribing by physicians, and illegal sales by end-users. As the commentor acknowledges, there is little evidence of diversion occurring at the bulk manufacturer level.

The commentor contends that, since currently registered manufacturers of methylphenidate produce an adequate and uninterrupted supply of the drug to meet the legitimate needs of the United States, registration of another manufacturer is not needed. The commentor argues that ''there is no evidence that the registration of Mallinckrodt * * * will have a beneficial effect upon competition.'' The CSA, however, does not demand that such a finding be made before DEA can register a bulk manufacturer. Furthermore, pursuant to 21 CFR 1301.43(b), DEA is not:

> required to limit the number of manufacturers in any basic class to a number less than that consistent with maintenance of effective controls against diversion solely because a smaller number is capable of producing an adequate and uninterrupted supply.

As is discussed above, DEA is confident that registration of Mallinckrodt will not impede DEA's statutory obligation to guard against the diversion of controlled substances.

With respect to 21 U.S.C. 823(a)(3), the commentor questions whether Mallinckrodt will promote technical advances in the art of manufacturing methylphenidate and the development of new substances. Mallinckrodt has been registered with DEA since 1971. In the past 25 years, Mallinckrodt has demonstrated its technical and manufacturing expertise with respect to other controlled substances. Based on this history, DEA is confident that Mallinckrodt will continue this practice if registered to manufacture methylphenidate.

Regarding 21 U.S.C. 823(a)(4), the commentor admits that it is unaware of any prior convictions of Mallinckrodt. DEA has verified that Mallinckrodt and its principals have not been convicted under Federal or state laws relating to the manufacture, distribution or dispensing of controlled substances.

Finally, under 21 U.S.C. 823(a)(6), the commentor again argues that Mallinckrodt's alleged lack of compliance with various FDA regulations indicates that its registration as a bulk manufacturer of methylphenidate would be inconsistent with the public interest. For the reasons set forth above, DEA does not feel that the nature of the noted violations warrants issuing an order to show cause to seek to deny Mallinckrodt's applications.

After reviewing all the evidence, including the comments filed, DEA has determined, pursuant to 21 U.S.C. 823(a), that registration of Mallinckrodt as a bulk manufacturer of methylphenidate is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator hereby orders that the 1996 application submitted by Mallinckrodt for registration as a bulk manufacturer of the listed controlled substances, including methylphenidate, is granted. The Deputy Assistant Administrator declines to take action on Mallinckrodt's 1995 application since, given that Mallinckrodt did not manufacture methylphenidate pursuant to its 1995 application and has since submitted an application for 1996, it is unnecessary to do so.

Dated: July 10, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–18024 Filed 7–15–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 26, 1996, and published in the Federal Register on March 4, 1996, (61 FR 8303), MD Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of MD Pharmaceutical, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 3, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–18023 Filed 7–15–96; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 94–77]

RX Returns, Inc.; Revocation of Registration

On August 15, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to RX Returns, Inc., (Respondent) of Palm, Pennsylvania, notifying it of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, RR0166113, and deny any pending applications for renewal of its registration as a distributor (disposer), under 21 U.S.C. 823(e), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged in relevant part that:

(1) On March 19, 1992, the Respondent entered into a Memorandum of Understanding (MOU) with DEA, where, in exchange for its receiving a DEA registration as a distributor (disposer) of controlled substances, it agreed to comply with security, inventory, and recordkeeping requirements of a DEA registrant;

(2) In July 1992, a DEA investigation of the Respondent revealed numerous recordkeeping and security violations. As a result, on September 24, 1992, DEA conducted an informal hearing in which the Respondent was given an opportunity to reply to allegations regarding violations of 17 recordkeeping and security requirements.

(3) In lieu of further administrative proceedings, on June 18, 1993, the Respondent entered into a second MOU with DEA, in which it agreed to correct the 17 alleged violations and to comply with laws and regulations relating to the handling of controlled substances.

(4) On May 5, 1994, DEA attempted to conduct an audit of seven controlled substances at the Respondent's firm. However, DEA was unable to conduct the audit based upon the Respondent's failure to maintain records of the receipt, distribution and/or disposal of controlled substances. In addition, DEA again uncovered numerous recordkeeping and security violations, most of which the Respondent had agreed to correct pursuant to the June 18, 1993, MOU.

On September 13, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Philadelphia, Pennsylvania, on June 13, 14, and 15, 1995, and continued in Allentown, Pennsylvania, on July 19 and 20, 1995, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. Both parties were given the opportunity to respond to the other side's brief, and counsel for each side submitted a reply brief. On November 14, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law and Recommendations, recommending that the Respondent's DEA registration be continued and no action be taken against it. On December 5, 1995, the Government filed Exceptions to Judge Tenney's opinion and recommendation, and on December 15, 1995, the Respondent filed a brief in support of Judge Tenney's opinion and recommendation. On December 20, 1995, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 C.F.R. 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, with noted exceptions, the Findings of Fact, Conclusions of Law, and Recommended Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the Respondent is a disposal company founded in 1989 by Mr. Jeffrey Dershem (President), a registered pharmacist. The Respondent receives pharmaceutical products, to include controlled substances, from various sources or customers, such as health care facilities, retailers, and wholesalers. The substances are accepted for either destruction or for distribution back to the original manufacturer for credit. The President testified before Judge Tenney, stating that the Respondent employed, in either a part-time, full-time, or temporary basis, approximately 60 to 65 people, with a payroll of approximately $1.5 million annually.

In the Summer of 1991, the President contacted the local DEA office concerning an application for a DEA registration to handle controlled substances. He was informed that, because of the unique nature of the Respondent's business, it did not fall under any then existing categories of DEA registrants. After negotiating with DEA personnel, the President was told to apply for registration for the Respondent as a distributor of controlled substances. A local DEA Diversion Investigator consulted with management for the Respondent throughout the pre-registration process. The Respondent's proposed processing and recordkeeping systems initially were found acceptable to the DEA, and a preliminary DEA Certificate of Registration was granted to the Respondent on September 12, 1991.

In March of 1992, the Respondent entered into an MOU with the DEA, which stated that the Respondent would (1) install storage facilities for controlled substances in substantial compliance with the provisions of 21 C.F.R. 1301.71 and 1301.72; (2) maintain complete and accurate records of all controlled substances received, distributed or destroyed as required by 21 C.F.R. Part 1304; (3) inventory all controlled substances received and intended for disposal on a DEA Form 41 or approved equivalent, and comply with the provisions of 21 C.F.R. 1307.21; and (4) advise the appropriate DEA office of security measures to be taken to prevent diversion of the controlled substances awaiting disposal. In return, the DEA agreed (1) to issue a registration for a distributor handling controlled substances in Schedules III through V, to the Respondent, when installed security had been approved by DEA; and (2) to review with the Respondent the adequacy of its proposed recordkeeping system, noting that ''necessary modifications to the system proposed by the [Respondent would] be discussed with [it].'' This MOU was entered into because there were no specific DEA regulations governing disposers of controlled substances in the Code of Federal Regulations. Although not yet finalized, on August 23, 1995, the DEA did publish proposed regulations applicable to disposers of controlled substances. *See* 60 FR 43732 (1995).

On June 22, 1992, the DEA conducted an on-site review of the Respondent's facility. Investigators discovered that the Respondent was storing controlled substances and non-controlled substances together inside the controlled substance cage, in violation of DEA regulations. By letter dated July 22, 1992, the President was reminded that on October 10, 1991, and on June 25, 1992, the DEA had informed him not to store controlled substances and non-controlled substances together, but rather to keep them segregated, as required by 21 C.F.R. 1301.72(b)(8)(ii).

On July 22, 1992, after having provided the Respondent advanced notice, the DEA conducted its first official inspection of the Respondent's facility and business operations. A DEA Diversion Investigator (Investigator) testified before Judge Tenney, stating that the DEA was unable to complete an audit of controlled substances during this inspection because of the Respondent's inaccurate or incomplete records. Further, many recordkeeping and security violations were discovered, including the continued storage of non-controlled and controlled substances together, the lack of an initial inventory of controlled substances, the lack of receiving records and distribution records, the failure to submit ARCOS reports, the failure to record the exact quantity of controlled substances received, and the improper preparation of DEA Form 41. Further, the Investigator testified about the security concerns created by this lack of documentation, stating that such a lack of tracking records created a ''greater likelihood of things being diverted just in between the customer and the firm.'' She concluded that ''[o]verall the [processing] system left a lot of loopholes that an employee could, if they (sic) so felt like it, possibly get access to any of the drugs and the firm would probably not know about it because it sometimes took months for things to be processed even into their computer for them to get an inventory.'' The DEA recorded seventeen violations identified during this inspection.

After being served with a Notice of Hearing listing all seventeen violations, the Respondent met with the DEA at an informal administrative hearing on

September 24, 1992. At this meeting, representatives from the DEA and the Respondent discussed the seventeen violations and the Respondent's proposed remedies for these violations. Specifically, the DEA representatives emphasized that the dates of receipt and shipment of controlled substances, and the maintenance of precise receiving records, were needed accountability systems given the Respondent's business.

As a result of this hearing, the Respondent and the DEA entered into a second MOU, in which the Respondent agreed to correct all seventeen cited violations and to comply with all applicable laws and regulations regarding controlled substances. For example, the MOU notes that the Respondent had (1) ''[f]ailed to properly segregate Schedule 3–5 substances from non-controlled substances, * * * within the DEA approved overnight storage cage as required by 21 CFR 1304.72(b)(8)(ii); (2) ''[f]ailed to maintain receiving records (packing slips, invoices) and DEA–41 destruction forms for at least two years from the date of such record for inspection and copying by employees of DEA, as required by 21 CFR 1304.04(a)''; (3) ''[f]ailed to maintain inventories and records of controlled substances in Schedules 3, 4, and 5 either separately from all other records of the registrant[,] or in such form that the information required is readily retrievable from the ordinary business records of the registrant, as required by 21 CFR 1304.04 ((f)(2)''; (4) (4) ''[f]ailed to maintain on a current basis a complete and accurate record of each such substance * * * received, sold, delivered, or otherwise disposed of as required by 21 CFR 1304.21 (a)''; and (5) ''[f]ailed to maintain records showing the actual quantity of controlled substances received, including the date of receipt, as required by 21 CFR 1304.21 (b) and (c).''

This MOU also memorialized the corrective action needed, to include: (1) ''Respondent will obtain receipt documents (i.e., invoices or packing slips) from its suppliers and maintain these records for at least two years from the date of each record for inspection and copying by employees of DEA as required by 21 CFR 1303.04(a)''; (2) ''Respondent will maintain on a current basis a complete and accurate record of each such substance * * * received, sold, delivered, or otherwise disposed of as required by 21 CFR 1304.21(a)''; (3) ''Respondent will maintain records showing the actual quantity (i.e. number of dosage units, volume of liquid, etc.) received, including the date of receipt, as required by 21 CFR 1304.23(b) and (c)''; and (4) ''Respondent will maintain records showing the actual quantities (i.e. number of dosage units, volume of liquid, etc.) of controlled substances distributed to other persons, including the date of distribution, and the name, address and DEA registration number of the person or firm to whom the distribution was made, as required by 21 CFR 1304.23 (b) and (e).'' The agreement also required the Respondent to notify the local DEA office of any proposed change to its current disposal site. This MOU was signed on June 18, 1993.

The DEA allowed the Respondent one-and-a-half years to correct the violations set out in this second MOU, for a second inspection was not conducted until May of 1994. Again, however, the DEA found further problems with the Respondent's processing, recordkeeping, and security systems. The investigators were unable to conduct an audit, initially because of a lack of records showing the date of distribution of the controlled substances from the Respondent's location to other destinations. Also, the DEA noted in relevant part that (1) the Respondent was accepting patient prescription medications for destruction, after having been informed by DEA representatives at the informal hearing that the Respondent was not authorized to accept such medications; (2) the Respondent had not conducted a biennial inventory of all controlled substances in the Respondent's warehouse in September 1993, the date the inventory should have been conducted as required by DEA regulations; (3) the Respondent's computer records had indicated that the Respondent had shipped out controlled substances, although the products actually were found at the Respondent's warehouse; (4) the Respondent had destroyed controlled substances at a destruction site different from the one approved by the DEA, in violation of the second MOU, which had stated that if the Respondent wished to change its disposal site, it was required to first notify the local DEA Division Office; and (5) that the Respondent had constructed a Schedule II vault without prior approval of the local DEA office, for by regulation, any vault that is to be used to store Schedule II controlled substances must first be approved by the DEA before being used for such storage.

Also, the Investigator testified before Judge Tenney, stating that Ms. Smith had informed her that patient prescriptions were not entered in the computer system, although such substance had been received at the Respondent's location. The Investigator stated that this recordkeeping practice led her to the following conclusion:

> If I had been trying to do an audit before this, this would have completely killed it because our audits are basically a record of all controlled substances that go through a company. If things are coming in that we don't know about, then we can't really tell if diversion would be occurring.

Concerning an audit attempt in May of 1994, the Investigator also stated that ''[t]heir records were so bad, I couldn't put together numbers because I had no accurate numbers on a large variety of records * * *. The May, 1994 audit was the follow up to the 1992 audit * * *. Our follow up was to say, enough's enough. We have three years here of a firm not being in compliance.''

However, the Investigator also testified that, since 1992, the Respondent had corrected a prior error by reporting to the ARCOS unit as required. Yet, due to the problems with the actual recording of shipment dates, the Investigator opined that the ARCOS reports were probably inaccurate.

As for other documentary problems, the Investigator also testified that the Respondent's personnel continued to improperly prepare the DEA Form 41, stating that the documents reviewed still failed to accurately reflect burned products and actual quantities of substances destroyed. Specifically, the Investigator recounted that ''I have a whole lot of forms that don't give me the product name, much less an accurate idea of what these numbers represent when they're in the columns saying * * * controlled substance doses [, and] controlled substance use.''

In response, Deborah Smith testified before Judge Tenney, stating that she was the Respondent's executive vice president and general manager, and that she was responsible for insuring that the Respondent's operation complied with DEA regulations and requirements. During the course of her testimony, a videotape, which has been prepared the day before the hearing, was presented. The videotape demonstrated the processes used when a product is returned by a customer to the Respondent's facility. The Investigator confirmed that this product-processing system was in place when she conducted the investigation in January of 1995.

Specifically, as to the handling of controlled substances, Ms. Smith testified that, prior to sending the Respondent pharmaceutical products, a customer had to first contact the Respondent to receive a Return Authorization Number. If controlled substances were to be shipped, the

customer would receive an authorization number ending in a ''5.'' Customers were then sent a return label preprinted with the authorization number, and the customers were instructed to place the label on the front of all boxes. The customer was also sent an information packet, which instructed the customer to conduct an inventory of all scheduled drugs and to send the inventory with any shipment containing controlled substances. Ms. Smith testified that controlled substances received without customer inventories were to be returned to the customer with a letter identifying the flaw in the shipment. The customers were also informed that the Respondent was not authorized to receive Schedule II controlled substances, and if such substances were shipped, they would be returned to the customer. Customers were further instructed to place controlled substances in a sealed pouch in the first box of any shipment. Ms. Smith stated that, when a customer's shipment containing controlled substances arrives at the Respondent's location, the employees in the receiving department note the return authorization number ending in a ''5,'' and know to immediately take the package to the security cage.

Ms. Smith also stated that, after the controlled substances arrive at the security cage, another employee authorized to handle such substances would take a count of all controlled substances. If the physical count did not match the customer's inventory, the Respondent would send the customer a letter identifying the discrepancy. After inprocessing the controlled substances, the product would then be stored in the security cage according to proposed disposition (i.e. return to manufacturer for credit or destroy) until such time as the products would be shipped from the Respondent's facility.

When controlled substance are to be shipped, the product is reinventoried and information regarding the destination of the shipment would be entered into the secured computer system. The controlled substances would then be packaged for shipment inside the cage, taken to the loading dock manager, and put on a truck leaving the facility before the close of that business day. If the products were to be destroyed, they are taken to an incinerator where one of the Respondent's officers, usually the President, would witness the burn. A signed, computer-generated DEA Form 41, would then be sent to DEA, and copies would be retained in the customer's file and at the security cage.

Ms. Smith testified that, if a product was not in its original packaging, the Respondent's personnel would use a reference book to obtain the information needed to complete the computer records as to the identity of the product. Once the information had been located, it would be entered into the computer database so that records for products not in manufacturer packaging contain the same information as records for products in manufacturer packaging. This newly developed system replaced the less precise computer entry of ''repackaged goods,'' which the DEA had found lacked the necessary processing information.

Before Judge Tenney, Ms. Smith addressed the DEA-identified discrepancies. Specifically, she testified that she had understood from discussions with the DEA that the Respondent was allowed to accept patient medications, as long as relevant records were kept separate from the main recordkeeping system. However, after the Investigator informed her that the Respondent was not allowed to accept patient prescriptions under any conditions, the Respondent ceased accepting such drugs. Ms. Smith testified that ''[i]f any of the agents that are at our facility come back and make a recommendation to me, I make a procedural change to accommodate exactly what they want me to do.'' The Respondent also implemented a procedure to return the patient-prescription substances with a reminder to customers, informing them of the Respondent's inability to process such substances.

As to the lack of a biennial inventory in September of 1993, Ms. Smith testified that she had informed the DEA that the Respondent was conducting monthly inventories, and she was under the impression that those inventories would fulfill the biennial inventory requirement. However, Ms. Smith testified, and the Investigator concurred, that after the Investigator informed her of the need for a separate biennial inventory, and after the Respondent's new computer system was in place, such an inventory was conducted in October of 1994.

Ms. Smith testified in great detail concerning the shipping and receiving documents utilized by the Respondent's company personnel. She stated that during the January 1995 inspection, the Investigator's interpretation of the shipping records continued to be misleading. The DEA investigators had failed to ask the appropriate personnel at the Respondent's firm why the shipping records, as read by the Investigator, appeared to contradict the actual existence of the substances under review inside the security cage. For example, in one instance, Ms. Smith testified that the Investigator had misread the computer record, thinking that a substance had been shipped, when in fact it was still at the Respondent's warehouse awaiting the customer's authorization to return the substances. Ms. Smith testified that the shipping records would have shown that the controlled substances in question had never left the warehouse, and, in fact, were awaiting authorization from the customer for the return shipment.

As to the violation of destroying controlled substances at a facility not previously disclosed to the DEA as required, Ms. Smith admitted that the Respondent had sent controlled substances for destruction to a new facility without first notifying the DEA. She stated that the incident had been a trial run because the Respondent needed to find a new destruction site. Due to a change in the municipality code, the prior destruction company was prohibited by law from accepting the Respondent's destruction business.

The Investigator also testified that the Respondent had violated the June 1993 MOU when it had failed to destroy controlled substances during a ten-month period. The MOU stated: ''Respondent will provide periodic monthly reports (DEA Form 41's) of controlled substance disposals to the DEA Philadelphia D.O. Respondent agrees that such disposals will occur on the last Thursday of each month * * *. Respondent does not need to notify the Philadelphia Division Office if it elects not to destroy controlled substances during any particular month.'' Although admitting that ten months had elapsed prior to destruction of controlled substances, Ms. Smith strongly denied that the accumulation of controlled substances for this ten-month period compromised the security of the Respondent's storage cage. She stated that the ten-month period was the time taken by the President to locate, to inspect, and to conduct a background check of another destruction site. Ms. Smith also testified that she had provided DEA with a verbal notification of the change in location, but had not provided written verification. Also, the Investigator had agreed that, after the initial destruction at the previously undisclosed facility, the Respondent had conducted subsequent destructions at a DEA-disclosed facility in compliance with the regulation and the MOU.

As to the problems identified by the Investigator concerning the DEA Form

41, Ms. Smith testified that the old system of handwriting the Form 41's had been changed to a computer-driven process. Specifically, the Respondent's computer system generates the form, and the current process was created and implemented just prior to the May 1994 DEA inspection. Ms. Smith testified that during that inspection, she had showed the Investigator a sample of the new DEA Form 41, and that the Investigator had told her that ''I don't have a problem with it.''

Yet during the hearing before Judge Tenney, the Government presented a DEA Form 41 dated February 28, 1995, stating that the form reflected destruction of ''Repackaged DEA control C-III'' substances. As the Investigator testified, these entries were useless; for, although DEA would know that ''1.00 item'' of a Schedule III substance was destroyed per this document, the DEA still would have no idea what the controlled substance was, what the dosage unit was, and what quantity was contained in the destroyed package. From this document, the DEA remained unable to create an accurate count of the precise controlled substance actually destroyed. Thus, the Investigator concluded that the DEA continued to have problems with the actually completed DEA Form 41's being submitted by the Respondent, despite approving, in theory, their new form.

As to the construction of a Schedule II storage vault, Ms. Smith testified that nothing was stored in that vault. She stated, ''It's not operational in any way, shape, or form.'' Further, the employee who operates the Respondent's controlled substances storage area also confirmed that nothing was stored in the Schedule II storage vault. The Government presented no evidence to the contrary.

As a result of the May 1994 inspection results, the DEA issued an Order to Show Cause, seeking to revoke the Respondent's registration. In response to this order, the Respondent invited the DEA Diversion Investigators to visit its facility for another inspection to verify that the Respondent had achieved compliance with the DEA regulations. The DEA conducted that inspection in January of 1995, and, for the third time, DEA Diversion Investigators inspected the security systems and tried to conduct an inspection of certain controlled substances.

As to the Respondent's receiving and initial customer inventory documents, the investigators found that the Respondent had revised the documents, ''and it looked like the firm was, in good faith, doing everything it could to get such documents from its customers.'' Further, as previously requested by DEA personnel, the Respondent's employees had dated the receiving documents with the actual date of receipt of controlled substances at the Respondent's facility, rather than using the date the substances were being handled and processed at the Respondent's facility. On cross-examination, the Investigator testified that ''the receiving system that the firm had is one thing that I found in January that I felt they had made advances on and that we could accept what they were proposing.''

However, the investigators reported, in significant part, a substantial number of discrepancies still noted during the January 1995 inspection. Specifically, (1) DEA personnel found that the Respondent's records were incomplete and inaccurate, failing to list drug names, correct quantities of products on-hand or shipped, with discrepancies being noted even among the Respondent's own internal tracking documents covering the same period of time. (2) DEA personnel had difficulty tracking controlled substances through the Respondent's records, because the shipping records did not show the date of shipment of controlled substances from the firm. (3) DEA personnel again found Schedule II controlled substances at the Respondent's facility and determined that those substances had been at the Respondent's location for several months. Further, Schedule II products, as well as controlled substances from Schedules III, IV, and V, were found at the Respondent's warehouse in an unsecured area. (4) DEA personnel found that the Respondent had accepted shipments of controlled substances from customers lacking active DEA registrations. Specifically, in one instance a controlled substance was shipped from a company in December of 1994, but that company's DEA registration was retired by DEA on April 1, 1991. (5) Investigators also reported that the Respondent's shipping records failed to show the actual DEA-registered name of some of the receiving registrants. As to this point, the Investigator stated ''I think there's something wrong in the computer system that is giving me a[']shipped to[']name[,] and the firm is saying, 'We don't take back controlled stuff.' ''

Further, the Investigator testified that after the January 1995 inspection, the Respondent's attorney had provided her with an update of the October 1994 biennial inventory. Specifically, she stated that the Respondent's counsel wrote that ''the biennial inventory failed to include 465 items that were on hand prior to October 10, 1994, and 79 items that came into the firm during the two-week inventory period.'' According to the Investigator, such a discrepancy ''[m]akes the inventory [in]complete and inaccurate as far as we're concerned''. The Investigator opined that missing 465 items when taking or recording a physical inventory creates a potential for diversion; for ''somebody could have walked off with all 465 items'' without detection.

However, the Respondent's employee, who had provided the Investigator with a copy of the October 1994 biennial inventory, testified before Judge Tenney, stating that the failure to list the 465 items from a single customer was a result of the Respondent's employees conducting an inventory of those products at the customer's location. Ms. Smith testified that, in this unusual case, this bankrupt customer no longer had employees to conduct the customer-prepared inventory normally required by the Respondent prior to accepting a shipment of controlled substances. Instead, the Respondent's employees had used a stand-alone computer system to enter the date from this inventory, and that data had not been integrated into the Respondent's computer network at the time of the biennial inventory. Rather, the data was maintained on the stand-alone computer system. The employee also testified that the remaining items did not appear on the October 1994 inventory because they were received while the inventory was being taken, and these products had not been counted during the taking of this inventory.

Yet the Investigator testified that the October 1994 inventory was deficient, because it failed to indicate a time certain for accountability purposes, as required by regulation. One of the Respondent's employees testified that in the future the biennial inventory would be conducted over a weekend, when no products would be processed into the Respondent's facility, and the exact time of the inventory would be noted on the report. However, the Investigator also testified that the Respondent had yet to submit a verifiable biennial inventory, as required, despite being registered with the DEA since September 12, 1991. The Investigator testified that, lacking such an inventory, the DEA remains unable to determine whether any diversion of controlled substances has taken place at the Respondent's location.

The Investigator also testified about her efforts to inspect the controlled substances on hand, to determine whether her inspection results would coincide with inspection documents provided by the Respondent. The

documents listed the controlled substances that should be on-hand in the security cage on the day selected for the inspection. However, the Respondent's inventory documents did not match the inventory results reported after DEA personnel conducted their independent physical count of the substances in the storage area.

Ms. Smith testified that on the first day of the January 1995 inspection, she had introduced herself to the DEA inspection team and had informed them that she was the Respondent's contact person during the inspection. However, she testified that the Investigator had failed to inform her of the problems DEA investigators were having in reading the Respondent's reports and collecting the data they needed to complete the controlled substances inspection. Specifically, she stated that the Investigator had reviewed the Respondent's records, noted an inability to determine the name or quantity of specific substances tracked in the records, yet had failed to inform her or any other of the Respondent's management personnel of the problems.

Ms. Smith stated that once she became aware of the specific data the DEA wanted to retrieve from the Respondent's records, she insured that the report contained such information. Specifically, the subsequent report clearly contained the identity of the controlled substance, the quantity, and other pertinent information requested by the DEA personnel. She also testified that such information was recorded in the Respondent's daily records, but that the person preparing the DEA-requested reports had failed to access the various computer fields needed to generate the statistical information sought during the inspection. Further, before Judge Tenney, Ms. Smith reviewed in detail the then current documentation used in the receiving and shipping process, noting that the substances could be tracked if the correct document fields were retrieved to create the report.

An employee of the Respondent's also testified concerning his entry of data, to include the name, strength, and dosage for every controlled substance product received in the secured storage area. He confirmed Ms. Smith's testimony concerning the extent of information recorded in the Respondent's computer system for tracking the processing of controlled substances through the Respondent's facility.

As for the Schedule II substances found by the DEA investigators, Ms. Smith testified that the Respondent's personnel had retrieved six truckloads of pharmaceutical products from a bankrupt customer. The Respondent had contracted to remove all pharmaceutical products from the customer with the exception of Schedule II controlled substances. Security guards at the hospital had informed the Respondent's employees that all Schedule II products had been collected and were stored in a vault at the customer's facility. The Respondent's personnel did not know that there were some Schedule II products intermingled with the truckload of products retrieved until two months after the products had been received and personnel were processing them. Ms. Smith testified that, when the Schedule II products were discovered, the Respondent's personnel promptly shipped them back to the customer's attorney for processing, since the Respondent's registration did not authorize the handling of Schedule II drugs.

The Respondent's personnel did not deny that other Schedule II substances were found at the warehouse in an unsecured area. However, Ms. Smith testified that the boxes containing the Schedule II substances had not been authorized for shipment to the Respondent, and that the boxes were not properly labelled as containing controlled substances. During her testimony, Ms. Smith provided evidence of the Respondent's pre-shipment contact with a customer, but here, since the pre-shipping procedures had with a customer, but here, since the pre-shipping procedures had not been followed by these customers, the Respondent's normal safeguards had failed to prevent the improper storage of the Schedule II substances. At the time of the DEA inspection, the boxes in question had not even been opened, since the Respondent had intended to return all of the unauthorized boxes to the senders. However, since the senders were in bankruptcy status, the Respondent was having difficulties determining were to send the boxes.

Further, as to the shipping of controlled substances to customers lacking active DEA registrations, Ms. Smith denied that the Respondent shipped controlled substances to such entities. She testified that the Investigator had failed to raise this concern to her, and that, if the Investigator had asked her for the shipping information, she could have pulled the shipping document from the computer, which would have reflected that the substances in question had actually been shipped to a location with an appropriate DEA registration number.

As to the receipt of controlled substances from a company lacking a DEA registration, Ms. Smith testified that the intent was always to receive controlled substances only from registered entities. However, in response to the Investigator's concerns, Ms. Smith testified that a procedure was recently adopted that required customers to send a copy of their DEA Certificate of Registration prior to being authorized to actually ship substances to the Respondent's location. The copy, which would reflect the active status of the certificate, is then placed in that customer's file.

Finally, evidence was presented, demonstrating that in October of 1991, the Respondent had hired a consultant (Consultant) to design and develop its computer database system. The Consultant testified before Judge Tenney about the various stages of development and about the on-going modifications required as the company itself developed. For example, in April of 1994, a bar code system was added. Every product processed by the Respondent was labelled with a bar code, and then, ''if the product got misplaced in the warehouse, all the personnel needed to do was pick up the product, scan it in, and the computer would be able to identify where the product belongs, who entered the product, when it was entered [,] and so forth.'' The Consultant testified that this system was implemented as a security measure and to enhance efficiency. The Consultant also stated that, because the Respondent was such a unique business, there was no existing computer software on the market that it could purchase to do its inventory, and that ''it was a very complex system to write.''

The Consultant also testified that, as of October of 1994, the computer system tracks all DEA product coming into the Respondent's facility, shipped out of the facility, or destroyed, and tracks product that remained in the Respondent's warehouse awaiting the customer's disposition orders. He opined that the records related to all of these processes were readily or easily retrievable. He also stated that he had heard the testimony concerning problems in retrieving data at the request of DEA in October of 1994, and he opined that such problems would be common when a company was in the process of making a system conversion such as the one the Respondent was making in October of 1994. In conclusion, the Consultant testified that, given the tests that had been run since the conversion, he was ''confident that DEA products are being tracked accurately from the time they enter the facility until the time they leave.''

The Respondent also presented evidence demonstrating that pre-employment criminal records checks are performed, and that limited access to controlled substances is effectuated by limiting access to the work area where controlled substances are handled and stored. Further, the Investigator testified on cross-examination that the Respondent had installed sufficient physical security equipment.

Pursuant to 21 U.S.C. 824(a)(4), the Deputy Administrator may suspend or revoke a DEA Certificate of Registration and deny any pending application for such registration, if he determines that the registrant has committed such acts as would render his continued registration inconsistent with the ''public interest.'' In this case, to determine the public interest, the following factors specified in 21 U.S.C. 823(e) are to be considered:

(1) maintenance of effective controls against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;

(2) compliance with applicable State and local laws;

(3) prior conviction record of registrant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the distribution of controlled substances; and

(5) such other factors as may be relevant to and consistent with the public health and safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

Absent evidence which raises the issues of (1) a prior conviction record, (2) compliance, or lack thereof, with State and local law, and (3) the Respondent's past experience in distributing controlled substances, the Deputy Administrator finds that only factors one and five are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. As to factor one, ''maintenance of effective controls against diversion,'' the Respondent presented extensive evidence of its current physical security measures, to include a videotape of the exterior and interior of its facility, and testimony concerning its security cage construction. Although there was evidence presented of prior physical security concerns involving the relocation of the security cage, the Investigator testified that such concerns have been remedied by the Respondent's corrective action, to include installation of additional bars over the skylights and mesh over the cage door to preclude theft of controlled substances from the security cage. Further physical security controls were also implemented, to include an extensive bar code system to assist in tracking controlled substances through the Respondent's warehousing process.

However, the Government has presented evidence of a lack of accurate and precise accounting and recordkeeping controls, resulting in the Government's inability to determine whether or not diversion had occurred. Specifically, the Respondent's first biennial inventory was inaccurate and incomplete, for it failed to account for approximately 500 controlled substances. Such a failure puts into question the Respondent's inventory practices, for if those substances were unaccounted for at the time of the inventory, then safeguards to prevent diversion were, arguably, equally ineffective, given the fact that the Respondent failed to identify the actual existence of these substances in its possession at the time of the inventory. Further, although disputed, the Investigatory testified that she was unable to reconcile the Respondent's records with substances on hand when she conducted her inspection in January of 1995. She also testified that, for the four years in which the Respondent had been a registrant, DEA had been unable to ever effectuate an accountability audit. Such a problem again calls into question the Respondent's accountability procedures for keeping an accurate count of controlled substances handled on its premises during any given timeframe. If controlled substances are on the Respondent's premises without knowledge of the Respondent's personnel, then it becomes questionable whether the Respondent's security procedures are adequate to prevent diversion of such unaccounted for controlled substances.

The Government also presented evidence that in January of 1995, Schedule II controlled substances were found on the Respondent's premises, despite the Respondent's lack of authorization to handle such substances. To further aggravate the situation, the substances were found in unopened boxes outside the secured cage, and evidence was presented to establish that they had been in an unsecured location for at least several months. Further, the substances had not been accounted for or processed through the Respondent's records, making their accountability impossible during this time. Such lack of action on the part of the Respondent resulted in a failure of the system to safeguard the substances and to prevent their diversion.

The Respondent's response to the Investigator's testimony was to present evidence that one customer's Schedule II controlled substances were received by Respondent improperly, and that, because of the customer's bankrupt status, the Respondent had had difficulty determining where to return the substances. However, in conflict with this characterization, the Respondent also presented evidence that established that the Respondent's employees had actually conducted an inventory of this customer's returned product at the customer's location prior to boxing and shipping the goods to the Respondent's warehouse. Therefore, the Respondent should have known what substances were in the boxes packed by its own employees. If not, then the unknown boxes perhaps should have been processed first to properly identify what substances the Respondent had taken possession and control of as a result of this business relationship.

The Deputy Administrator finds that the Respondent's failure to know it had Schedule II substances in its possession for several months, coupled with its cavalier storage of unknown substances outside of its security cage, results in a finding that the Respondent has failed to act consistent with the responsibilities inherent in a registrant's status. Specifically, a registrant is charged with knowing, in an expeditious manner, what controlled substances are in its possession, and with affording those substances the necessary protection required to prevent diversion. In this instance, the Respondent did not know it had Schedule II substances, did not open and identify the substances it had received for several months, and had failed to maintain effective controls over these Schedule II substances for a protracted period of time. Such conduct fails to result in ''the maintenance of effective controls against diversion.''

As to factor five, ''such other factors as may be relevant to and consistent with the public health and safety,'' the Deputy Administrator concurs with Judge Tenney's finding that the basis for measuring the success of the Respondent's past experience is rooted in the 1992 MOU, and the 1993 MOU. The Deputy Administrator acknowledges that, at the time of the first MOU, the DEA did not have

regulations in place which specifically addressed the Respondent's business. The MOU acknowledges this fact by stating that ''this registration as a DISTRIBUTOR is an interim measure until such time as the proposed administrative actions are completed. At that time, the distributor registration will be converted to the new category of registration as provided under the law.'' The Deputy Administrator agrees with Judge Tenney's interpretation of this provision of the 1992 MOU, when he writes ''[i]t indicates that the Respondent's business is relatively new, and that the DEA is in the process of proposing guidelines under which to register disposers of controlled substances. Furthermore, * * * [it] suggests that the DEA and Respondent would have to work together [] so that Respondent could fulfill its obligations with respect to the recordkeeping and security obligations of a DEA registrant.''

The record provides evidence of the DEA and the Respondent working together to accomplish the goals of the 1992 MOU. In July of 1992, a DEA inspection resulted in the identification of numerous improprieties, the most significant of which was the DEA's inability to conduct an accountability audit of controlled substances due to the lack of documentation that would facilitate the DEA's need to track the receipt and disposition of controlled substances through the Respondent's facility. The Deputy Administrator agrees that such a lack of verifiable accountability creates a greater likelihood of diversion, for the Respondent, at that time, had not created an accountability system to the degree of specifically needed to maintain a continuous track record of the controlled substances flowing through its facility. Yet, in the spirit of the 1992 MOU, rather than take action to revoke the Respondent's registration, the DEA held in informal administrative hearing on September 24, 1992, resulting in the creation of a second MOU dated June 18, 1993.

The second MOU spelled out 17 problems found by the DEA during the 1992 inspection. Contrary to the testimonial evidence provided by the Respondent's witnesses, the Deputy Administrator finds that these violations are identified with a degree of specificity necessary to enable the Respondent to initiate corrective action. These discrepancies memorialize the fact that the DEA, after conducting an inspection of the Respondent's physical facility and accountability procedures, was unable to conclude that adequate security measures were in place to preclude diversion of controlled substances, because the DEA could not verify through an accountability audit, that the Respondent handled controlled substances in such a manner as to preclude diversion of the substances while in its facility. But the MOU did not stop there, for the parties also memorialized in detail the corrective action the Respondent needed to take.

In May of 1994, the DEA conducted another inspection of the Respondent's facility, and the record demonstrates that the Investigator was again unable to conduct an accountability audit. Although acknowledging the various actions found to be in violation of the 1993 MOU, the Deputy Administrator is most concerned with the inability of the DEA investigators, with the assistance of the Respondent's employees, to conduct an accountability audit. The evidence concerning the imprecise method in which the Respondent documented the controlled substances flowing through its facility during this time, as ''repackaged goods'' lacking an exact identity and count, was justifiably found to be in violation of the agreed accountability procedures defined with specificity in the 1993 MOU.

As to the issue of the construction of the Schedule II vault, the Deputy Administrator agrees with Judge Tenney. Although the relevant rule specifies that a vault must be constructed to certain specifications and approved by the DEA prior to using it to store any Schedule II drugs, the record clearly demonstrates that the Respondent has not stored any Schedule II substances in the vault. Further, Judge Tenney noted that ''21 CFR 1301.71(d) permits, but does not require, registrants to submit proposed security systems to the Special Agent in Charge in the region in which the system is located. * * *'' The Deputy Administrator agrees that ''[s]ince there is nothing in the regulations that requires a registrant to obtain DEA approval before building the vault, there has been no breach.''

The Deputy Administrator also notes that, again in the spirit of cooperation that permeated the relationship between this Respondent and the DEA, the DEA investigators, while this matter was pending before Judge Tenney, again conducted an inspection of the Respondent's facility in January of 1995. Yet against the DEA investigators were unable to complete an accountability audit, finding the Respondent's records incomplete and inaccurate. Specifically, the record contains contemporaneously produced documents for DEA's inspection which lacked quantity counts, stating instead, for example, that a ''repackaged good'' of a Schedule III substance had been destroyed. Such documentation failed to provide the investigator with the exact identity and quantity of the Schedule III substance thus destroyed, in violation of both DEA regulations and the 1993 MOU. Lacking the degree of specificity necessary to enable the DEA investigators to conduct an accountability audit, the records were found deficient. Significant is the fact that the DEA investigators could not reconcile an audit of substances on hand by using the documents presented to the DEA employees for that purpose. From the previous four years of discussions and MOUs, the DEA had clearly defined its concern over the accountability of the respondent for the receipt, processing, distribution, or destruction of controlled substances. DEA's needs were clearly defined, yet the Respondent's personnel were unable to present documents showing that it conducted its business in a manner consistent with the requirements of a DEA registrant.

However, evidence was presented by the Respondent, demonstrating that a multitude of information may have been available at the time of the January 1995 inspection, if the DEA only had requested specific data from the Respondent's employees. A significant issue in dispute in this case was whether the availability of such evidence in the Respondent's computer system equalled the ''readily retrievable'' standard established in DEA regulations for such recordkeeping. The Deputy Administrator agrees with Judge Tenney's conclusion that ''it is implicit from the definition of the term 'readily retrievable' that the DEA recognizes that records may be kept by 'automated data processing systems or other electronic or mechanized recordkeeping systems.' *See* 21 CFR 1304.02(i).'' Further, the regulations specify that ''readily retrievable'' is defined, in relevant part, as requiring certain ''records [be] kept by automatic data processing systems or other electronic or mechanized recordkeeping systems in such a manner that they can be separated out from all other records in a reasonable time.'' 21 CFR 1304.029i). However, focusing on the method of storage of data misses the problem here.

The Deputy Administrator disagrees with Judge Tenney's analysis of the application of this standard in this case. Judge Tenney wrote:

> [The Investigator] testified that because the reports did not contain all the necessary information, then that information was not readily retrievable. However, the information for the reports was in the computer and was 'readily retrievable' once it was understood

which 'fields' of information contained in the computer database must be reflected in the reports. Many of Respondent's reports have already been changed to reflect missing information and Respondent appears willing to make any future adjustments to its reports.

Such an analysis places the burden upon the DEA to inform the Respondent as to which ''fields'' of information to include misses the point of the inspection, which is to view the reports used by the Respondent during its normal business activities to track the processing of controlled substances through its facility to insure that the process is effective in preventing diversion of such substances to unauthorized recipients. During an inspection, the Respondent is not asked to create special reports for DEA's use. Rather, the Respondent is to present shipping, receiving, and destruction reports utilized on a daily basis by the Respondent to meet its accountability responsibility as a registrant. Of course such reports may be maintained in an automatic data processing system, but the method of maintenance of the report is not the issue. The issue is the content of the report and its usefulness in demonstrating the Respondent's compliance with DEA requirements in its handling of controlled substances during its daily operation. The DEA merely relies upon the Respondent's existing recordkeeping system to conduct an accountability audit.

However, here the DEA investigators have consistently been unable to use the Respondent's documentation to reconcile the Respondent's accountability records with substances found on hand in the Respondent's security cage on the date of the DEA audit. As of the January 1995 inspection, the Respondent continued to fail to meet this obligation, an accountability obligation levied against any DEA registrant thus handling controlled substances.

Thus, the Deputy Administrator finds that this failure, coupled with the unauthorized storage of unaccounted for Schedule II substances outside a security cage for an extended period of time, create a basis for the revocation of the Respondent's registration. The Respondent had failed to demonstrate that it had maintained effective controls against diversion, and such a failure has created a risk to the public interest.

In mitigation, the Deputy Administrator notes both Ms. Smith's and the President's evidence of continuous attempts to meet DEA's requirements during the course of the meetings and inspections conducted by the DEA. The Deputy Administrator also takes note of the timely and responsive manner in which Respondent's officers modified the firm's business practices to attempt to bring them into regulatory compliance. Their responsive and cooperative attitude indicates a desire and a willingness to operate this returns business in compliance with statutory and regulatory requirements. The Respondent has committed extensive personnel and fiscal resources toward developing a system to insure its operation is in compliance with DEA requirements. Also, the Respondent has initiated procedures, such as employee criminal background checks, to insure that personnel with access to controlled substances within its facility are qualified to meet the responsibilities of such a position.

Further, many of the problems identified in the 1992 MOU and the 1993 MOU have been resolved, such as (1) The Respondent's clearly communicating to its customers its inability to accept Schedule II substances and patient-prescribed substances, and the procedures implemented to return such substances to the customer; (2) fulfilling the ARCOs reporting requirements; (3) separately storing controlled substances and non-controlled substances; (4) correct the Respondent's receiving records to reflect the actual date of receipt of its customer's products; (5) adding the requirement that a customer provide to the Respondent a copy of its DEA Certificate of Registration and an inventory of controlled substances actually shipped to the Respondent; (6) providing DEA notice of its selected disposal site; and (7) modifying the way in which records for repackaged products are created.

Procedurally, Judge Tenney recommended that the Deputy Administrator take no action with respect to the Respondent's registration. After receiving his recommendation, the Government timely filed exceptions, pursuant to 21 CFR 1316.66, and the Respondent field a brief in support of Judge Tenney's recommendation.

After reviewing the parties filings, the Deputy Administrator notes that a significant issue forming the basis of the Government's exception is that Judge Tenney, after reviewing the Respondent's evidence of corrective action taken since the January 1995 inspection, had found such corrective action persuasive in remedying the violations previously identified by the Investigator. Specifically, the Government took exception to Judge Tenney's finding that the Respondent had made reasonable efforts to comply with DEA regulations, given the fact that even as late as the January 1995 inspection, the Investigator had continued to find numerous recordkeeping and security violations. The Government wrote, ''[a]s recent as the July 1995 hearing, the Respondents were still in the process of attempting to bring itself into compliance with DEA requirements * * *. In addition, [the Investigator] testified to matters that remained uncorrected at the firm as of January 1995, and to date, DEA has not been able to conduct an accountability audit at the firm because of the firm's poor record-keeping, (*sic*) nor has the firm produced an accurate and verifiable biennial inventory.'' In a related concern, the Government also took exception to Judge Tenney's finding as to the efforts taken by the Respondent's personnel to create a controlled substance tracking system. The Government wrote that ''there is practically no evidence in the record that [the] Respondent's information system has produced accurate and verifiable information to DEA.''

The Deputy Administrator agrees with Judge Tenney's finding that the Respondent has made efforts to comply with DEA's regulations, as evidenced by the extensive efforts taken to create a computer system that would assist in managing the flow of controlled substances through the Respondent's facility. However, the Deputy Administrator also agrees that the evidence supports the Government's concerns, for DEA has been unable to successfully conduct an accountability audit. The Deputy Administrator agrees that the Respondent's lack of verifiable inventory control places the public at risk from diversion of controlled substances.

The Government also took exception to Judge Tenney's conclusion that the public interest was served by continuing the Respondent's registration, in light of the Respondent's past history of non-compliance with DEA requirements. The Deputy Administrator agrees with the Government's assertion that ''[a]n agency rationally may conclude that past performance is the best predictor of future performance. *Alra* v. *Drug Enforcement Administration,* 54 F.3d 450 (7th Cir. 1995).'' However, here DEA's requirements differ from the average regulatory case, for DEA does not have regulations responsive to and governing the Respondent's business, since this Respondent does not manufacture, distribute, or dispense controlled substances. The terms of the two MOU's and the regulations incorporated into those agreements form the basis for the DEA's regulatory requirements, and both DEA and the Respondent acknowledged the need for

cooperation in applying those requirements as the Respondent's business practices were developed. Although the Deputy Administrator acknowledges that the overall regulatory goal of preventing diversion of controlled substances outside of the regulated system of distribution has applied equally to the Respondent as to any other DEA registrant, from the inception of the Respondent's operation, the mechanisms of compliance have had to be developed. The Deputy Administrator must take these facts into account when reviewing this Respondent's past history of compliance.[1]

Yet the responsibility remains the Registrant's to conduct its business in an accountable manner that does not place the public at risk of diversion of controlled substances. Therefore, in the balance, the Deputy Administrator concludes that it is in the public interest for the Respondent's DEA registration to be revoked. However, the Deputy Administrator feels that the evidence of changes made by the Respondent in response to the Government's case at the hearing before Judge Tenney, may, in operation, finally create an accountability system adequate for the Respondent to demonstrate the requisite degree of precision in handling controlled substances necessary to continue in operation as a disposer. The Deputy Administrator also finds that it is in the public interest for the Respondent to be given yet another opportunity to demonstrate that the latest alterations to the Respondent's business practices will adequately contain the risk to the public of diversion from the Respondent's operation.

Therefore, the Deputy Administrator will stay the revocation and impose a one-year probationary period to determine whether the Respondent can now fully comply with all DEA recordkeeping, reporting, and security requirements. During the one-year probationary period, DEA will conduct inspections and audits in compliance with the procedures established in 21 U.S.C. 880 and its implementing regulations. It is significant that during this period, the Respondent will be taking its second biennial inventory, which will afford the Respondent the opportunity to demonstrate its ability to conduct a meaningful inventory of controlled substances in its possession.

[1] The remaining Government exceptions, and the Respondent's reply to those exceptions, have been previously addressed in this opinion, and they require no further discussion here.

However, if the DEA's inspections or audits reveal either new or repeated violations, the Deputy Administrator will remove the stay and the DEA Certificate of Registration will be revoked immediately, and all pending applications for renewal will be summarily denied. If, however, at the end of the one-year period, the Respondent successfully demonstrates its compliance with the DEA's regulatory requirements, then the Deputy Administrator will withdraw this order and will permit the Respondent to retain its registration, and to renew it, if necessary, at that time.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders DEA Certificate of Registration RR0166113, issued to RX Returns, Inc., be, and it hereby is, revoked and any pending applications for renewal are denied. It is further ordered that this revocation order will be stayed for a period of one year from its effective date. If during the one-year probationary period, the Respondent is found to have violated any DEA reporting, recordkeeping, or security requirements, the previously imposed stay will be removed, the Respondent's DEA Certificate of Registration will be revoked, and any pending applications for renewal will be summarily denied. This final order is effective August 15, 1996.

Dated: July 5, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–18025 Filed 7–15–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs; Report of Computer Matching Program Between Department of Labor and Social Security Administration

Participating Agencies: The participating agencies in this computer matching program are the Office of Workers' Compensation Programs, Department of Labor (DOL) and the Social Security Administration (SSA). This Notice is published as required by the Computer Matching and Privacy Protection Act of 1988, as amended. A new written agreement for this longstanding computer matching program recently has been approved by both the Department of Labor and the Social Security Administration Data Integrity Boards.

Purpose of Match: DOL will conduct a computer matching program of DOL and SSA records of Black Lung benefit recipients in order to detect individuals who might improperly receive dual Black Lung benefits from SSA and DOL. When a verified match occurs, the case will be referred to the proper DOL office for development to assure the validity of the match and to make any required benefit adjustments. The SSA data will contain the date of death of SSA beneficiaries. This information will help to minimize those cases in which benefit payments are made to deceased beneficiaries, by identifying a DOL beneficiary who has died, but DOL has not been notified of the death. The SSA data also will assist DOL in properly referring inquiries and correspondence received at DOL regarding SSA-only Black Lung beneficiaries.

Authority for Conducting the Matching Program: Title IV of the Federal Mine Safety and Health Act, 30 U.S.C. 901, et seq.

Categories of Records and Individuals Covered: SSA, as the source agency, will provide DOL with its Black Lung Payment System, HHS/SSA/OSR 09–60–0045, (52 FR 9543, March 25, 1987), which will be matched with DOL's Office of Workers' Compensation Programs' Black Lung Benefit Payment records contained in DOL/ESA–30 (55 FR 7131, February 28, 1990). The individuals covered will be DOL and SSA Black Lung beneficiaries.

Inclusive Dates of the Matching Program: The Matching program will begin either 30 days after the publication date of this Notice, or 40 days (whichever is later) after a copy of the written agreement for this matching program is sent to the Chairman of the Committee on Government Affairs of the U.S. Senate, to the Chairman of the Committee on Governmental Reform and Oversight Operations of the U.S. House of Representatives and to the Office of Information and Regulatory Affairs of the Office of Management and Budget. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

Address for Receipt of Public Comment: Shelby Hallmark, Acting Director, Office of Workers' Compensation Programs, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone: (202) 219–7503.

Signed at Washington, D.C. this 11th day of July 1996.

Shelby Hallmark,

Acting Director, Office of Workers' Compensation Programs.

[FR Doc. 96–18048 Filed 7–15–96; 8:45 am]

BILLING CODE 4510–27–M

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Point of Purchase Survey.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 16, 1996.

BLS is particularly interested in comments which help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue N.E., Washington, D.C. 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this survey is to develop and maintain a timely list of retail, wholesale, and service establishments where urban consumers shop for specified items. This information is used as the sampling universe for selecting establishments at which prices of specific items are collected and monitored for use in calculating the Consumer Price Index (CPI). The survey has been ongoing since 1980 and also provides expenditure data which allows items that are priced in the CPI to be properly weighted.

II. Current Actions

Starting in 1997, the survey will be administered quarterly and entirely via a computer-assisted-telephone-interview, as opposed to the current practice of an annual personal-visit interview. This revised collection methodology is more flexible and creates the possibility of introducing new products into the Consumer Price Index in a more timely manner. Furthermore, the cost efficiency of telephone interviewing permits data collection in all sampling areas each year, rather than the current practice of collecting data in only 20 percent of all sampling areas each year. This new sample design will produce an overall CPI market basket that is more reflective of the prices faced and the establishments visited by urban consumers.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Point of Purchase Survey.

OMB Number: 1220–0044.

Affected Public: Individuals or households.

Total Respondents: 18,018.

Frequency: Quarterly.

Total Responses: 32,760.

Average Time Per Response: 12 Minutes.

Estimated Total Burden Hours: 6,552 Hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 10th day of July, 1996.

Peter T. Spolarich,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 96–18046 Filed 7–15–96; 8:45 am]

BILLING CODE 4510–24–M

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Main Fan Maintenance Record

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed new/revision/extension/reinstatement of the information collection related to the Main Fan Maintenance Record. MSHA is particularly interested in comments which:

*Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

*Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

*Enhance the quality, utility, and clarity of the information to be collected; and

*Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Submit comments on or before September 16, 1996.

ADDRESSES: Written comments shall be mailed to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Sections 303(a), and (g) of the Federal Mine Safety and Health Act of 1977 authorize the recordkeeping and reporting requirements implemented in 30 CFR 57, Subpart G–Ventilation, Section 57.8525. The main fans are the major life support system to the entire underground mining operation. The air flow provided by the fans assures fresh air to the miners at working faces, reduces the chance of the air reaching threshold limit values of airborne contaminants, and dilutes accumulations of possible explosive gases.

II. Current Actions

MSHA is seeking to continue the requirement for a regular fan maintenance schedule to assure an uninterrupted supply of air in the mine.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Main Fan Maintenance Record.

OMB Number: 1219–0012.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR 57.8525.

Total Respondents: 212.

Frequency: Weekly occasion/etc.

Total Responses: 10,600.

Average Time per Response: 0.017 hours.

Estimated Total Burden Hours: 180 hours.

Estimated Total Burden Cost: None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 10, 1996.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 96–18047 Filed 7–15–96; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–074]

Government-Owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Ames Research Center. Claims are deleted from the patent applications to avoid premature disclosure.

DATE: July 16, 1996.

FOR FURTHER INFORMATION CONTACT: Ken Warsh, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; telephone (415) 604–5104, fax (415) 604–1592.

NASA Case No. ARC–12,052–1GE: A Technique for the Areal Measurement of Surface Stress Vectors Using Liquid Crystal Coatings;

NASA Case No. ARC–12,071–1GE: Source Doubles Diagraph Model Processing Method;

NASA Case No. ARC–12,015–2GE: Image Data Compression Having Minimum Perceptual Error (Continuation in Part);

NASA Case No. ARC–12,069–1GE: Environmentally Friendly Deicing Fluid;

NASA Case No. ARC–12,011–2SB: Process to Prepare Uniform Low Density Structural Ceramic Alator System (Continuation in Part);

NASA Case No. ARC–11,992–2GE: Rotorcraft Blade Vortex International Controller (Continuation in Part);

NASA Case No. ARC–11,978–2SB: Flexible Ceramic Thermal Protection System Resistant to High Acoustic Noise (Continuation in Part);

NASA Case No. ARC–14,008–1GE: Non Linear Wind Tunnel Modeling and Analysis Technology;

NASA Case No. ARC–12,110–1LE: Wing Tip Fence for Reduction of Lift Generated Airframe Noise;

NASA Case No. ARC–12,080–1GE: Temporal Resolution Process for Enhanced Visual Displays;

NASA Case No. ARC–12,097–1LE: Hierarchical Network Management System;

NASA Case No. ARC–12,072–1SB: Contactless Magnetic Slip Ring;

NASA Case No. ARC–14,027–1GE: Hybrid Flexible and Rigid Ceramic Insulation;

NASA Case No. ARC–14,057–1GE: Photonic Switching Device Using Light Bullets;

NASA Case No. ARC–14,029–1SB: Surface Modification for Efficient Waterproofing;

NASA Case No. ARC–14,063–1GE: Method and Apparatus for Monitoring of Daily Activity in Terms of Ground Reaction Forces;

NASA Case No. ARC–11,890–2GE: Far Infrared Diffuses Refractor (Continuation in Part);

NASA Case No. ARC–14,048–1GE: Autogenic Feedback Training;

NASA Case No. ARC–14,030–1GE: Nose Cap Heat Shield;

NASA Case No. ARC–14,031–1GE: Leading Edge Heat Shield Configuration for Vehicles During Atmospheric Entry at Hypersonic Speed;

NASA Case No. ARC–14,043–1GE: Virtual Window for Vehicle Displays;

NASA Case No. ARC–14,061–1GE: Viscoelastic Dovetail Damper for Rotor Blades;

NASA Case No. ARC–12,092–1SB: Fiber Optic Lock;

NASA Case No. ARC–12,099–1GE: Noise Reducing Screens for in Flow Pressure Sensors or Microphones;

NASA Case No. ARC–12,069–2GE: Environmentally Friendly Anti Icing and Deicing Fluid (Continuation in Part);

NASA Case No. ARC–069–3GE: Environmentally Friendly Anti Icing and Deicing Fluid (Foreign Filed Patent);

NASA Case No. ARC–12,087–1SB: Ziconium Hafnaum Ceramic Composites for Enhanced Ablation Resistance;

NASA Case No. ARC–12,081–1CU: Durable Advanced Flexible Reuseable Surface Insulation;

NASA Case No. ARC–14,054–1GE: An Algorithum for Treating Systematic Errors in Data from Imaging Interferometers;

NASA Case No. ARC–14,060–1LE: Blind Pointer;

NASA Case No. ARC–14,051–1SB: Molded Structural Thermal Protection;

NASA Case No. ARC–14,052–1SB: Integrated System Advanced Attachment Concept for Thermal Protection;

NASA Case No. ARC–14,053–1LE: System and Method for Finite Element Simulation and Helicopter Turbulence.

Dated: July 8, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–17969 Filed 7–15–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–073]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Solar System Exploration Advisory Subcommittee.

DATES: Monday, August 19, 1996, 8:30 a.m. to 5:00 p.m.; and Tuesday, August 20, 1996, 8:30 a.m. to 4:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, MIC Room 7H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Jurgen Rahe, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Office of Space Science Activities
—Board of Directors Overview
—Research Program Management Overview
—Advanced Technology and Mission Studies Overview
—Mission and Payload Development, Overview
—Roadmap to the Solar System
—Future Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 9, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–17968 Filed 7–15–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals to Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the Federal Register. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1994 and ending September 30, 1995.

Name and Title

Richard L. Ahearn—Regional Director, Region 9
Frank V. Battle—Deputy Director of Administration
B. Allan Benson—Acting Associate General Counsel, Operations—Management
Mary Joyce Carlson—Deputy General Counsel
Harold J. Datz—Chief Counsel to Board Member
Robert A. Giannasi—Chief Administrative Law Judge
Wayne R. Gold—Acting Director, Office of Representation Appeals
Peter B. Hoffman—Regional Director, Region 34
Susan Holik—Chief Counsel to Board Member
Gloria Joseph—Director of Administration
Barry J. Kearney—Associate General Counsel, Advice
Linda R. Sher—Associate General Counsel, Enforcement Litigation
William R. Stewart—Chief Counsel to the Chairman
Elinor H. Stillman—Chief Counsel to Board Member
John J. Toner—Executive Secretary
Dennis P. Walsh—Chief Counsel to Board Member
Jeffrey D. Wedekind—Acting Solicitor

Dated: Washington, D.C., July 10, 1996.

By Direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 96–18028 Filed 7–15–96; 8:45 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions''.

2. Current OMB approval number: 3150–0021.

3. How often the collection is required: On occasion. Upon submittal of an application for a construction permit, operating license, operating license renewal, early site review, design certification review, decommissioning or termination review, manufacturing license, materials license, or upon submittal of a petition for rulemaking.

4. Who is required or asked to report: Licensees and applicants requesting approvals for actions proposed in accordance with the provisions of 10 CFR Parts 30, 32, 33, 34, 35, 36, 39, 40, 50, 52, 54, 60, 61, 70 and 72.

5. The number of annual respondents: 24.

6. The number of hours needed annually to complete the requirement or request: 38,410.

7. Abstract: 10 CFR Part 51 of the NRC's regulations specifies information and data to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

Submit, by September 16, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 9th day of July, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford, Designated Senior,

Official for Information Resources Management.

[FR Doc. 96–18005 Filed 7–15–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–390 (10 CFR 2.206)]

Tennessee Valley Authority (TVA) (Watts Bar Nuclear Plant); Final Director's Decision Under 10 CFR 2.206

I. Introduction

On February 14, 1996, Ms. Faith Young (Petitioner) of Dixon Springs, Tennessee, submitted a letter requesting that the U.S. Nuclear Regulatory Commission (NRC), among other things, rescind the operating license of Watts Bar Nuclear Plant (WBNP). The Petitioner's concern, as stated in her February 14 letter, is as follows:

> Watts Bar lake water which cools Watts Bar nuclear plant's radioactive core holds sediment contaminated by radioactive material. Over a lifetime of Watts Bar nuclear plant operation uncontrolled access to this lake will disturb its sediment, in turn contaminating water drawn into the nuclear cooling system. This heightened radioactive contamination of nuclear plant emission has not been previously addressed. No action is being considered to restrict lake use or to remove radioactive material. This ''record of decision'' by Department of Energy, Environmental Protection Agency, U. S. Army Corps of Engineers, state of Tennessee and Tennessee Valley Authority appears in an interagency document dated September, 1995.

Since the document referred to by Ms. Young (''Record of Decision for the Lower Watts Bar Reservoir,'' DOE/OR/02–1373&D3, dated September 1995, hereinafter, the ''Department of Energy (DOE) report'') clearly addresses Lower Watts Bar Reservoir (LWBR), the staff has assumed, for purposes of this Decision, that the ''Watts Bar lake'' in Ms. Young's letter refers to the Lower Watts Bar Reservoir. On March 27, 1996, the staff formally notified Ms. Young that her Petition was being evaluated pursuant to 10 CFR 2.206.

II. Discussion

The DOE report presents the selected remedial action being used to address the contamination of the LWBR ''Operable Unit (OU).'' The report attributes LWBR contamination to past activities at the DOE's Oak Ridge Reservation (ORR) and other non-DOE sources. The boundaries of the LWBR, as defined in the DOE report, extend from the Watts Bar Dam at Tennessee River Mile (TRM) 529.9 on the Tennessee River, upstream to TRM 567.5 at the confluence of the Clinch and Tennessee Rivers. The DOE report, on page 2–2, discusses the selection of the Watts Bar Dam as the downstream boundary as follows:

> The downstream boundary of the ORR was placed at Watts Bar Dam because earlier studies had shown that the vast majority of sediment-associated contaminants released from ORR had collected in lower Watts Bar Reservoir. Consequently, concentrations of sediment-associated contaminants released from ORR are much lower in reservoirs downstream of Watts Bar Dam. The level of Oak Ridge-derived contaminants detected in past studies in the Tennessee River system below the Watts Bar Dam were well below the concentrations determined to be of human health concerns by the baseline risk assessment within the Watts Bar Reservoir.

WBNP is located approximately 1.9 river miles downstream from the Watts Bar Dam on the west bank of the Chickamauga Lake. Chickamauga Lake is the next lake downstream from the LWBR and is bounded by the Chickamauga Dam approximately 57 miles downstream from WBNP. The intake and discharge for cooling water to WBNP are located 1.9 or more river miles downstream from the Watts Bar Dam. Accordingly, it must be noted that WBNP is located outside and below the boundary of the area considered by the DOE report. Therefore, since WBNP does not draw cooling water from within the boundary of the LWBR and does not discharge cooling water into the boundary of the LWBR, the operation of WBNP will have no effect on the sediment in the LWBR and, accordingly, will not cause contaminated sediment to be drawn into WBNP.

The Petitioner's understanding that the LWBR holds sediment contaminated by radioactive material is consistent with the DOE report (see page 2–2) and with information in the NRC staff's ''Final Environmental Statement Related to the Operation of Watts Bar Nuclear Plant, Units 1 and 2,'' (FES) NUREG–0498, Supplement 1, Section 2.5, April 1995. The NRC staff stated therein that ''Operations at the Oak Ridge Reservation have historically resulted in the release of radionuclides to the aquatic environment * * *. Most of the releases occurred during the 1950s and have declined since.'' The NRC staff concluded in the FES, Supplement 1, that there are no significant changes in environmental impacts as a result of changes in plant design, procedures or proposed methods of plant operation, or changes in the environment.

By contrast, the Petitioner's claim that ''no action is being considered to restrict lake use or to remove radioactive material'' is not consistent with the DOE report. The DOE report's ''Statement of Basis and Purpose'' (page 2–2) states that the report ''presents the selected remedial action for the LWBR OU.'' The ''Description of Selected Remedy'' (page 2–2) and ''The Selected Remedy'' (page 2–10) describe the selected remedy as

the ''continuance of existing controls and advisories regarding LWBR activities'' and the ''Monitoring Plan.'' The DOE report (page 2–9) also notes that ''The state of Tennessee and other federal agencies are already implementing the main components of the preferred alternative.'' With respect to the removal of radioactive sediments, the DOE report (page 2–9) states that ''The cost of the preferred alternative is much lower and a more effective use of funds when compared to active remediation of sediments.'' In other words, a remedy has been developed for the contamination in the LWBR and the purpose of the DOE report is to present that remedy.

Notwithstanding the conclusion that operation of WBNP will not disturb the sediment in the upstream LWBR, the WBNP Technical Specifications (TS) and the associated Offsite Dose Calculation Manual require programs and controls for the control of radioactive effluents from the plant itself. Such controls include limitations on the concentrations of radioactive material released in liquid effluents from the plant. The staff evaluated control of radioactive effluents by WBNP in Section 11 of NUREG–0847, ''Safety Evaluation Report related to the operation of Watts Bar Nuclear Plant, Units 1 and 2.'' The staff concluded therein that WBNP meets applicable regulations (10 CFR 20.1302; 10 CFR Part 50, Appendix A, General Design Criteria 60, 63, and 64) and other guidance documents and is therefore acceptable for operation.

The NRC staff's review did not substantiate the Petitioner's assertions. The Petitioner did not offer information that indicated any need to revisit the staff's previous evaluations.

III. Conclusion

For the reasons given above, Petitioner's request to rescind the operating license of the WBNP is denied. As explained above, the NRC staff concludes that the Petitioner has not raised any substantial health and safety issues as the staff believes that there is no appreciable threat to the public health and safety presented by WBNP's effluent water. Accordingly, the Petitioner's request for action pursuant to 10 CFR 2.206, as specifically stated in the letter of February 14, 1996, is denied.

A copy of this Final Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). This Decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 9th day of July 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–18004 Filed 7–15–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 15, 22, 29, and August 5, 1996.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 15

There are no meetings scheduled for the Week of July 15.

Week of July 22—Tentative

There are no meetings scheduled for the Week of July 22.

Week of July 29—Tentative

Monday, July 29

10:00 a.m.
Briefing on Uranium Recovery Program (Public Meeting)
(Contact: Joe Holonich, 301–415–6643)

Tuesday, July 30

10:00 a.m.
Briefing by Nuclear Waste Technical Review Board (Public Meeting)
2:00 p.m.
Briefing on Status of Staff Actions on Industry Restructuring and Deregulation (Public Meeting)
(Contact: Dave Mathews, 301–415–1282)

Wednesday, July 31

2:00 p.m.
Briefing on EEO Program (Public Meeting)
(Contact: Ed Tucker, 301–415–7382)

Thursday, August 1

10:00 a.m.
Briefing on Spent Fuel Pool Cooling Issues (Public Meeting)
(Contact: George Hubbard, 301–415–2870)
11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of August 5—Tentative

There are no meetings scheduled for the Week of August 5.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)-301 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: July 12, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–18149 Filed 7–12–96; 2:24 pm]

BILLING CODE 7590–01–M

[Docket No. 50–390]

Tennessee Valley Authority, Watts Bar Nuclear Plant; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation (NRR), has taken action on a Petition of February 14, 1996 (Petition), for action under Section 2.206 of Title 10 of the CODE OF FEDERAL REGULATIONS (10 CFR 2.206) filed by Ms. Faith Young (Petitioner) of Dixon Springs, Tennessee. The Petitioner asks that the NRC rescind Watts Bar's license to operate until the alleged issue of increased radioactive contamination of the plant's emission is resolved.

Petitioner believes that the lake containing the water used to cool Watts Bar's core contains sediment previously contaminated by radioactive material. Over the lifetime of Watts Bar's operation, according to Petitioner, uncontrolled access to the lake will disturb this sediment, which will in turn contaminate water drawn into the plant's cooling system. Petitioner believes that the issue of heightened radioactive contamination of nuclear power plant emissions has not been previously addressed. The Notice of Receipt of Petition Under 10 CFR 2.206 was published in the Federal Register on April 4, 1996 (61 FR 15151).

The Director of NRR determined that the Petition should be denied for the reasons explained in the ''Director's

Decision under 10 CFR 2.206'' (DD–96–10), the complete text of which follows this notice and is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, D. C., and at the Local Public Document Room for the Watts Bar Nuclear Plant at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee.

A copy of this Director' Decision will be filed with the Secretary of the Commission for the Commission's to review in accordance with 10 CFR 2.206(c). As provided by this regulation, this Decision will constitute the final action of the Commission 25 days after the date of issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 9th day of July 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–18003 Filed 7–15–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request; Review of an Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a final request for clearance of an information collection, the voluntary commercial garnishment application form. The Application For Federal Employee Commercial Garnishment is intended to be completed by creditors in order to facilitate the Federal Government's compliance with commercial garnishment orders as mandated by section 9 of the Hatch Act Reform Amendments of 1993, Public Law 103–94, by providing information about each commercial garnishment order in a uniform manner that would otherwise not be available due to the wide variety of commercial garnishment orders issued by various state and local jurisdictions.

We estimate that approximately 100 forms will be completed annually for OPM employees, each requiring an estimated ten minutes to complete, for a total public burden of approximately 17 hours. OPM anticipates, of course, that many other federal agencies will also be suggesting that creditors complete the form. OPM is unable to predict the total annual public burden as a result of the completion of this form.

On September 18, 1995, an initial notice of OPM's clearance request was published in the Federal Register (60 FR 48176). In response to the initial notice, OPM received written comments from four federal agencies, the National Association of Retail Collection Attorneys, the National Association of Federal Credit Unions, the Commercial Law League of America, and one individual. A fifth federal agency provided oral comments and a fourth organization, Nationwide Credit Corporation, did not comment directly, but forwarded comments from two law firms.

While not in response to any suggestion, OPM renumbered the items on the form and replaced the word ''Applicant'' with ''Authorized Payee'' in Parts C and D.

Two federal agencies recommended that the form be mandatory. OPM disagrees with making the use of this form mandatory since it would be unnecessary interference with the operation of state courts. Further, regardless of whether or not use of the form is mandatory, it is expected that the form will be in widespread use.

One organization noted that in the collection industry the word ''commercial'' is interchangeable with the word ''business'' and that it would be better to simply delete the word ''commercial'' from the form. However, OPM has opted not to delete the word ''commercial'' from the form, lest the form be associated by some as being intended to be completed in conjunction with the garnishment of child support indebtednesses which has no ''commercial'' implication. OPM has been advised that the Department of Health and Human Services is currently conducting a pilot program that utilizes a wholly different form in connection with child support garnishment. It is OPM's intent to avoid any inconsistency or confusion with the child support form.

One agency suggested that number 3 of the ''Instructions'' on the form be rewritten to explain that agencies are not required to respond until 30 days after receipt by the designated agent. OPM has, however, retained the proposed instruction that more closely follows the language of the statute which provides for agency responses ''within thirty days.''

Another agency suggested that the use of certified mail be encouraged. In order to make the form as clear and concise as possible, OPM has opted to have the form include only the statutory mailing provisions.

While one agency suggested that specific identifying information concerning the employee-obligor be made mandatory when completing Part A of the form, such a requirement would conflict with the statutory authority for commercial garnishment which only requires that sufficient identifying information be provided so as to enable the employing agency to identify the employee-obligor. See the Hatch Act Reform Amendments of 1993, Public Law 103–94, section 9, codified at 5 U.S.C. 5520a.

One of the creditor associations expressed concern that incomplete forms might be rejected and noted that creditors typically do not obtain an employee-obligor's date of birth or social security number. The instructions in Part A of the proposed form reflect the statutory identification requirements. It should be emphasized that where sufficient information has been provided for the employing agency to identify the employee-obligor, a garnishment order must not be rejected as being incomplete.

One agency recommended that the form ask the creditor to identify the employee-obligor's payroll office. OPM has not adopted this suggestion. It is doubtful that many creditors would know or could easily obtain the employee-obligor's payroll office. However, individual agencies could include such a request in the ''For Agency Use'' block at A.6 of the form.

A second agency suggested that block B.7 (now block B.1) identify the court as well as the case number. OPM has adopted this suggestion.

Two creditor organizations suggested that block B.8 (now block B.2) be revised to request the garnishment amount rather than the judgment amount. OPM has adopted this suggestion in order to clarify that the amount to be garnished is the amount listed on the garnishment order, i.e., what is not referred to in block B.2 as the ''Garnishment Amount,'' rather than what might have been mistaken as being the amount of the underlying judgment.

One federal agency also suggested that block B.10 (now B.4) be revised. The agency opined that as written, the block could be misinterpreted to mean that there were instances when the Consumer Credit Protection Act was inapplicable. As rewritten, the form

now avoids the word ''inapplicable'' and focuses on the need for information in instances where the percentage limitation provided in the Consumer Credit Protection Act is replaced by a lower limitation in accordance with state or local law.

OPM emphasizes that the purpose of the form is to elicit as much helpful information as possible from the garnishor so as to facilitate the processing of the garnishment order by agencies of the Federal Government. OPM emphasizes this point in response to one organization's comment that the form should be changed to place the burden of providing applicable law on the garnishee.

While OPM reaches no conclusion concerning what is ''common practice'' in the collection industry, it is reasonable to assume that the party that brought the garnishment action will be best able to provide the legal basis for the garnishment. OPM would, however, also explain that a failure to cite the correct legal provision in block B.10 (now B.4) should not, by itself, serve as a basis for an agency to refuse to comply with the garnishment order.

One organization suggested that creditors not be asked to provide copies of relevant statutory provisions. While OPM appreciates the organization's concern, OPM believes that it will be helpful for this information to be provided.

One agency recommended that information concerning bankruptcy filings be included. It is OPM's belief that most creditors will comply with the automatic stay provision of the Bankruptcy Code and not attempt to garnish if they have knowledge that a bankruptcy petition has been filed by the employee-obligor.

One of the law firms commented that the form will not solve all of the problems relating to the Federal Government's processing of commercial garnishment orders. OPM does not disagree, but OPM remains hopeful that usage of the form will facilitate the processing of commercial garnishments by the Federal Government.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov.

DATES: Comments on this proposed form should be received on or before August 15, 1996.

ADDRESSES: Send or deliver comments to:

Lorraine Lewis, General Counsel, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Senior Attorney, Office of the General Counsel, (202) 606–1701.

U.S. Office of Personnel Management

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–18019 Filed 7–15–96; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

Sunshine Act Meeting

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: 10:00 a.m. on July 23, 1996.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

STATUS: Open.

MATTERS TO BE CONSIDERED: Discuss and vote on the Postal Rate Commission Budget for FY 1997.

CONTACT PERSON FOR MORE INFORMATION: Margaret P. Crenshaw, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, Telephone (202) 789–6840.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 96–18154 Filed 7–12–96; 3:22 pm]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22062; 813–142]

FMR Corp. and Fidelity Waterway Limited Partnership; Notice of Application

July 10, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICATIONS: FMR Corp. (''FMR'') and Fidelity Waterway Limited Partnership (the ''Initial Partnership'').

RELEVANT ACT SECTIONS: Order under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, certain provisions of sections 17 and 30, sections 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit the Initial Partnership, and future partnerships or investment vehicles that may be offered to the same class of investors (the ''Subsequent Partnerships'') (together with the Initial Partnership, the ''Partnerships''), to engage in certain affiliated and joint transactions. Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

FILING DATES: The application was filed on May 12, 1995 and amended on December 21, 1995 and June 19, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: 82 Devonshire Street, F5H, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. FMR and its subsidiaries provide investment advisory, management, and shareholder services for the ''FMR Funds,'' [1] for individual and institutional investors, as well as for pension trusts. FMR and its subsidiaries also offer discount brokerage services to

[1] ''FMR Funds'' means an investment fund or account organized for the benefit of investors who are not affiliated with the FMR Group (as defined below) and over which an entity within the FMR Group exercises investment discretion. An entity which is either within the FMR Group or an FMR Fund is referred to as an ''FMR Affiliate.''

retail and institutional clients, manage and develop real estate properties, operate a credit card business, offer variable annuity and life insurance products, and operate and invest in emerging businesses.

2. The Partnerships will be organized by FMR and its affiliates (as defined in rule 12b–2 promulgated under the Securities Exchange Act of 1934 (the ''Exchange Act''), excluding the FMR Funds (FMR, together with such included affiliates, the ''FMR Group''). The Partnerships are intended to benefit certain current employees, officers, directors, and persons on retainer of the FMR Group (the ''Eligible Employees'') who, except as described below, are also ''accredited investors'' meeting the income requirements set forth in rule 501(a)(6) of regulation D under the Securities Act of 1933 (the ''Securities Act''),[2] and to be a means of rewarding and retaining those individuals. An entity with the FMR Group will, as a general partner or other manager of each Partnership (a ''General Partner''), participate in each Partnership. The Partnerships will enable such personnel to participate in a wide variety of investment opportunities that would not be offered to them as individual investors.

3. The Partnerships will operate as non-diversified, closed-end management investment companies. The Partnerships generally will seek to achieve a high rate of return through long-term capital appreciation by providing expansion capital to a variety of emerging growth companies and by making investments in real estate assets through a venture capital portfolio (the ''FMR Investments'').

4. Participation in the Partnerships will be limited to Eligible Employees, individuals, and entities that fall within the following categories: (a) Trusts of which the trustees, grantors and/or beneficiaries are Eligible Employees; (b) partnerships, corporations, or other entities all of the voting power of which is controlled by Eligible Employees; and (c) spouses, parents, children, spouses of children, brothers, sisters, and grandchildren (''Eligible Family Members'') of Eligible Employees, and trusts established for the benefit of Eligible Family Members ((a), (b), and (c), collectively, ''Qualified Participants''). Eligible Employees and their Qualified Participants are referred to as ''Eligible Participants.''

5. The purpose of the Initial Partnership is to enable Eligible Employees and persons or entities related to Eligible Employees to receive the benefit of certain FMR Investments. In order to achieve this result, the Eligible Participants have acquired their limited partnership interests in the Initial Partnership without payment therefor by way of a dividend on their stock interests in FMR. Similarly, in the case of any Subsequent Partnership in which the investors will acquire their limited partnership interests without payment therefor by way of a dividend or compensation award from an entity within the FMR Group, the interests will be granted only to those persons and entities that are Eligible Participants. The amount and timing of distribution of limited partnership interests in a Partnership to Eligible Participants will be determined solely by FMR. Because the recipients of a distribution of limited partnership interests will not have discretion over whether or not they receive such distribution of interests, it is possible that certain Eligible Employees who receive such interests may not meet the income requirements set forth in rule 501(a)(6) under regulation D under the Securities Act and, similarly, certain Qualified Participants may not qualify as ''accredited investors'' under regulation D.[3] FMR Group will endeavor to ensure that no more than 35 Eligible Participants who are not ''accredited investors'' will receive partnership interests in the Initial Partnership which is distributed by way of a dividend on FMR stock.[4]

6. To date, FMR has acquired limited partnership interests in the Initial Partnership in exchange for capital contributions of real estate interests and securities representing all or a portion of FMR's interest in certain FMR Investments. FMR has transferred, by way of a dividend on its capital stock, substantially all of its limited partnership interests in the Initial Partnership to Eligible Participants. Those Eligible Participants who acquire limited partnership interests in a Partnership are referred to as ''Limited Partners.'' FMR stockholders who were not Eligible Participants (*i.e.*, charitable organizations) and certain individual stockholders who do not participate for tax reasons (collectively with the charitable organizations, ''Excluded Stockholders'') received cash in lieu of limited partnership interests in the Initial Partnership. If interests in Subsequent Partnerships are acquired by means of a dividend, Excluded Stockholders will receive cash and all other shareholders will receive partnership interests.[5]

7. Currently, the Initial Partnership is not structured to enable Participants to invest their own funds but may be amended to permit such transactions. Subsequent Partnerships will be identical to the Initial Partnership except that they may provide for participants to invest their own funds.

8. The management and control of each Partnership, including all investment decisions, will be vested exclusively in the General Partner. The General Partner will be under the common control of FMR. Thus, the business and affairs of each Partnership will be managed by or under the direction of the board of directors or other committee serving similar functions (the ''Board'') of an entity that is under common control with FMR. Each Board will be comprised exclusively of directors and/or officers of the FMR Group, each of whom is expected to qualify as an Eligible Employee.

9. In the case of a Partnership that makes investments with funds provided by the Limited Partners, the General Partner will be responsible primarily for identifying, investigating, and structuring the investments. The General Partner initially will not receive any fees or other compensation for serving as the General Partner of the Initial Partnership. However, Subsequent Partnerships may provide, and the Initial Partnership may be amended to provide, for the General

[2] An Eligible Employee may be determined to be an ''accredited investor'' under rule 501(a)(6) of regulation D under the Securities Act by reference to income from sources other than from the FMR Group.

[3] Each such employee who is not an ''accredited investor'' will have received minimum total compensation, (including any profit shares, whether paid as dividend or other investment income, and bonus) of at least $150,000 in the year prior to the year in which the interest in the Initial Partnership is distributed to such employee and will have a reasonable expectation of at least the same level of minimum total compensation in each of the two immediately succeeding years. All such employees will have received undergraduate degrees, will have been employed with the FMR Group for at least two years, and will occupy middle to senior level positions. In addition, each such employee will have such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment or FMR will have a reasonable belief immediately prior to such employee becoming a limited partner of a Partnership that such employee falls within the foregoing description.

[4] In the event the number of non-accredited investors would exceed 35 if all stockholders received the partnership interests as a dividend, an appropriate number of non-accredited investors will receive cash instead of partnership interests.

[5] Until receipt of the requested exemptive order, FMR Corp. may effect transactions similar to that described above with respect to FMR Corp.'s interest in certain FMR Investments, provided that at all times the Initial Partnership will continue to qualify for the exclusion provided in section 3(c)(50(C) of the Act.

Partner to receive a management or performance-based fee, or ''carried interest'' based on the gains and losses arising from a Partnership's investments.[6] Any such fee would not exceed those customarily charged for such investment advisory services.

10. Applicants anticipate that a Partnership may own an investment in an entity in which an FMR Affiliate is also invested and the Partnership's investment may be in the same or different securities as the entity's investment. A Partnership's investment may be acquired by the Partnership as a capital contribution from an entity within the FMR Group while the entity continues to hold an investment in the same or different securities of the portfolio company. In the case of a Partnership that makes investments with funds provided by the Limited Partners, an investment in a portfolio company may be purchased by a Partnership: (a) From an entity within the FMR Group while the entity continues to hold an investment in the same or different securities of the portfolio company; (b) concurrently with an investment made in the same or different securities by an entity within the FMR Group; or (c) at a different point in time from an investment held by an entity within the FMR Group in the same or different securities of the portfolio company. All such purchases will meet the requirements of condition 1 below.

11. If a Partnership makes its investment concurrently with an investment in the same securities by an entity within the FMR Group, the economic terms applicable to the Partnership's investment generally will be substantially the same as those applicable to the corresponding investment by the FMR Group entity. It is possible, however, that the FMR Group entity's investment may have more favorable non-economic terms (*e.g.*, the right to representation on the board of directors of the portfolio company) in light of differences in legal structure or regulatory, tax, or other considerations.

12. In addition, a Partnership may co-invest in a portfolio company alongside an FMR Fund.[7] Although the terms applicable to the investment by the FMR Fund may differ from the terms of the relevant investment held by the Partnership, and the limitations and conditions contained in the application that are applicable to entities within the FMR Group will not apply to the FMR Fund, the entities within the FMR Group will continue to be subject to all of the limitations and conditions contained in the application with respect to the making and disposition of investments by the Partnership.

13. The Partnership will, except as permitted under condition 3 below, be required to be given the opportunity to sell or otherwise dispose of its investments prior to or concurrently with, and on the same terms as, sales or other dispositions of the side-by-side investment of an entity within the FMR Group in the same investment securities.[8]

14. The General Partner and the Limited Partners (collectively, the ''Partners'') of the Initial Partnership will share in the profits and losses arising from the Initial Partnership's investment activities in proportion to the size of their respective interests in the Initial Partnership. When distributing cash and securities to the Partners, the General Partner will be required to distribute the cash and securities to all Partners in the same proportion, however, the General Partner will have the right to make non-ratable distributions.[9]

15. The Initial Partnership may, in the future, either through the Initial Partnership or a subsidiary partnership established by the Initial Partnership (a ''Subpartnership''), acquire additional FMR Investments through: (a) The proceeds of a loan from an entity within the FMR Group made to the Initial Partnership or such Subpartnership; (b) cash generated by Partnership investments or; (c) capital contributions provided by an entity within the FMR Group. A Subpartnership might be utilized to allow an FMR Group entity and the Initial Partnership to invest together. In the event that the Initial Partnership incurs indebtedness from an entity within the FMR Group to finance such investments, such indebtedness will bear interest on terms no less favorable to the Partnership than would be obtained on an arm's-length basis from an unaffiliated third party.

16. The Partnerships also may, in the future, make loans to FMR. The loans will be on terms no more favorable than would be obtainable by FMR from an unaffiliated third party on an arm's length basis. Such unsecured loans will be fully disclosed to an Eligible Employee prior to the acquisition of limited partnership interests.

17. In addition, the Initial Partnership or a Subpartnership may, in the future, enter into a joint venture or other arrangement with an FMR Group entity (a ''Joint Venture''). Such Joint Ventures will be fully disclosed to an Eligible Employee prior to the acquisition of limited partnership interests. Such Joint Ventures will acquire additional FMR Investments or capital contributions provided by such FMR entity and/or the Initial Partnership or Subpartnership. Any entity with the FMR Group that participates with the Initial Partnership in a Joint Venture will be subject to the requirements applicable to a ''Co-Investor'' under condition 3.

18. During the existence of the Initial Partnership, full and faithful books and accounts will be kept, in which the General Partner will enter, or cause to be entered, all business transacted by the Initial Partnership and all monies received, advanced, paid out, or delivered on behalf of the Initial Partnership, the results of the Initial Partnership's operations, and each Partner's capital. Such books will at all times be accessible to all Partners. In addition, the General Partner will supply to the Limited Partners all information it deems necessary to enable the Limited Partners to prepare their Federal income tax returns.

19. The General Partner will cause a firm of independent certified public accountants to make a determination of the net asset value of the Initial Partnership as of the end of each fiscal year of the Initial Partnership and at any time such value will affect or determine the price at which a specified percentage of interests in the Initial Partnership will be redeemed, sold, or otherwise transferred by any Partner,

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[6] A ''carried interest'' is an allocation to the General Partner of net gains in addition to the amount allocable to the General Partner that is in proportion to its capital contributions. If a ''carried interest'' is payable to the General Partner, it will be structured to comply with the requirements of rule 205–3 under the Advisers Act.

[7] With respect to any FMR Fund that is an investment company registered under the Act, applicant acknowledges and agrees that, for purposes of the application, no exemption from any provision of the Act that may apply to any Partnership's dealings with such investment company is being sought, and each Partnership will continue to be subject to, and to comply with, all of the provisions of the Act that may apply to any such dealings with any such investment company.

[8] ''Non-lockstep'' dispositions generally would be confined to instances where tax or other regulatory concerns made different disposition strategies advisable. For example, FMR may donate appreciated securities to charity to minimize capital gains taxation. Holders of partnership interests, on the other hand, would pay tax on dispositions by the Partnership. Thus, holders of Partnership interests might prefer to sell the securities in a later negotiated sale or that the securities be distributed in order to choose the timing of recognition of capital gains.

[9] The General Partner's right to make such non-ratable distributions would be confined to the instances in which it is desirable for an individual partner to receive certain types of distributions due to regulatory, tax, or other legal considerations. No non-ratable distribution will be made to any Partner to the extent that such distribution, while beneficial to such Partner, is substantially likely to have a material adverse effect on another Partner.

unless such requirement is waived by the parties to the applicable transaction.

20. Subsequent Partnerships may be structured in a manner substantially identical to that of the Initial Partnership described above. However, it is possible that a Subsequent Partnership may have different terms for the purpose of enabling Eligible Participants to invest their own funds through the Partnership in investments that come to the attention of the FMR Group from time to time.

Applicants' Legal Analysis

1. Applicants request an exemption under sections 6(b) and 6(e) of the Act from all provisions of the Act, except section 9, sections 17 and 30 (except as described below), sections 36 through 53, and the rules and regulations thereunder that would permit the Partnerships to engage in certain affiliated and joint transactions. Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

2. Section 2(a)(13) defines an employees' security company, among other things, as any investment company all of the outstanding securities of which are beneficially owned by the employees or persons on retainer of a single employer; or by members of the immediate family of such employees, persons on retainer, or former employees. Section 6(b) provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 6(e) provides that in connection with any order exempting an investment company from section 7, certain specified provisions of the Act shall be applicable to such company, and to other persons in their transactions and relations with such company, as though such company were registered under the Act, if the SEC deems it necessary or appropriate in the public interest or for the protection of investors.

3. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, acting as principal, to sell any security or other property to such registered investment company or to purchase from such registered investment company any security or other such property. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act.

4. Applicants request an exemption from section 17(a) of the Act to the extent necessary to: (a) Permit an entity within the FMR Group, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by such Partnership; and (b) permit any Partnership to invest in or engage in any transaction with any entity, acting as principal, (i) in which such Partnership, any company controlled by such Partnership or any FMR Affiliate has invested in or will invest, or (ii) with which such partnership, any company controlled by such Partnership or any FMR Affiliate is or will become otherwise affiliated. The transactions to which any Partnership is a party will be effected only after a determination by the Board that the requirements of condition 1 below have been satisfied.

5. The principal reason for the requested exemption is to ensure that each Partnership will be able to hold investments in companies: (a) In which an FMR Affiliate or its individual employees, officers, or directors may make or have already made an investment, or (b) with which an FMR Affiliate or its individual employees, officers, or directors may engage in transactions.

6. The Partners of each Partnership will have been fully informed of the possible extent of such Partnership's dealings with an FMR Affiliate and, as professionals employed in the securities business, will be able to understand and evaluate the attendant risks. Applicants believe that the community of interest among the Partners of each Partnership, on the one hand, and the FMR Group, on the other hand, is the best safeguard against any risk of abuse.

7. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which such company, or a company controlled by such company, is a joint or joint and several participant in contravention of SEC rules. Rule 17d-1 provides that the SEC may approve a transaction subject to section 17(d) after considering whether the participation of such registered company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

8. Applicants request an order in accordance with section 17(d) and rule 17d-1 to the extent necessary to permit affiliated persons of each Partnership (including without limitation on the General Partner and the investment adviser of such Partnership and other FMR Affiliates), or affiliated persons of any of these persons, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which such Partnership or a company controlled by such Partnership is a participant.

9. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d-1 were designed to prevent. The concern that permitting co-investments or joint investments by an FMR Affiliate on the one hand, and a Partnership on the other, might lead to less advantageous treatment of such Partnership should be mitigated by the fact that: (a) The FMR Group will be acutely concerned with its relationship with the personnel who invest in such Partnership; and (b) senior officers and directors of the FMR Group will be investing in such Partnership.

10. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. Applicants request an exemption from section 17(f) and rule 17f–1 to the extent necessary to permit an entity within the FMR Group to act as custodian without a written contract. Applicants believe that because there is such a close association between each Partnership and the FMR Group, requiring a detailed written contract would expose such Partnership to unnecessary burden and expense. An exemption also is requested from the terms of rule 17f–1(b)(4), as applicants do not believe the expense of retaining an independent accountant to conduct periodic verifications is warranted given the community of interest of all the parties involved and the existing requirement for an independent annual audit.

11. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. Applicants request an exemption from section 17(g) and rule 17g–1 to the extent necessary to permit each Partnership to comply with rule 17g–1 without the necessity of having a majority of the members of the related Board who are not ''interested persons'' take such actions and make such approvals as are set forth in rule 17g–

1. Applicants state that since all the members of the related Board will be affiliated persons, without the requested relief, a Partnership could not comply with rule 17g–1.

12. Section 17(j) and rule 17j–1 make it unlawful for certain persons to engage in fraudulent, deceitful, or manipulative practices in connection with the purchase or sale of a security held or to be acquired by an investment company. Rule 17j–1 also requires every registered investment company, its adviser, and its principal underwriter to adopt a written code of ethics with provisions reasonably designed to prevent fraudulent activities, and to institute procedures to prevent violations of the code. Applicants request an exemption from section 17(j) and rule 17j–1 (except rule 17j–1(a)). Applicants believe that requiring such Partnership to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time consuming and expensive, and would serve little purpose in light of, among other things, the community of interest among the Partners of such Partnership by virtue of their common association in the FMR Group, and the substantial and largely overlapping protection afforded by the conditions with which such Partnerships have agreed to comply.

13. Sections 30(a), 30(b), and 30(d), and the rules under those sections, generally require that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants believe that the forms prescribed by the SEC for periodic reports have little relevance to a Partnership and would entail administrative and legal costs that outweigh any benefit to the Limited Partners of such Partnership. An exemption is requested to the extent necessary to permit a Partnership to report annually to its Partners in the manner described above.

14. Section 30(f) requires that every officer, director, and member of an advisory board of a closed-end investment company be subject to the same duties and liabilities as those imposed upon similar classes of persons under section 16(a) of the Exchange Act. An exemption also is requested from section 30(f) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed members of an advisory board of such Partnership, such as members of the related Board, from filing Forms 3, 4, and 5 under section 16 of the Exchange Act with respect to their ownership of interests in such Partnership. Applicants argue that the purpose intended to be served by section 30(f) is not apparent because there would be no trading market and the transfers of interests are severely restricted.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is a party (the ''Section 17 Transactions'') will be effected only if the Board, through the General Partner of such Partnership, determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners of such Partnership and do not involve overreaching of such Partnership or its Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners of such Partnership, such Partnership's organizational documents and such Partnership's reports to its Partners. In addition, the General Partners of each Partnership will record and preserve a description of such affiliated transactions, the Board's findings, the information or materials upon which the Board's findings are based. All such records will be maintained for the life of such Partnership and at least two years thereafter and will be subject to examination by the SEC and its staff.[10]

2. In connection with Section 17 Transactions, the Board, through the General Partner of each Partnership, will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Partnership, or any affiliated person of such a person, promoter, or principal underwriter.

3. The General Partner of each Partnership will not invest funds in any investment in which a ''Co-Investor'', as defined below, has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which such Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives such General Partner sufficient, but not less than one day's notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless such Partnership has the opportunity to dispose of such Partnership's investment prior to or concurrently with, and on the same terms as, and *pro rata* with the Co-Investor. The term ''Co-Investor,'' with respect to any Partnership, is defined as any person who is: (a) An ''affiliated person'' (as such term is defined in the Act) of such Partnership (other than an FMR Fund); (b) an entity within the FMR Group; (c) an officer or director of an entity within the FMR Group; or (d) a company in which the General Partner of such Partnership acts as a general partner or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''Parent'') of which such Co-Investor is a direct or indirect wholly-owned subsidiary of its Parent; (b) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; or (e) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a United States national securities exchange or a United States national market system for securities.

4. Each Partnership and the General Partner of such Partnership will maintain and preserve, for the life of such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Partners of such Partnership, and each annual report of such Partnership required to be sent to such Partners, and agree that all such

[10] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

records will be subject to examination by the SEC and its staff.[11]

5. The General Partner of each Partnership will send to each Partner of such Partnership who had an interest in any capital account of such Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by such partnership's independent accountants. At the end of each fiscal year, the General Partner of such Partnership will make a valuation or have a valuation made of all of the assets of such partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 90 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of such Partnership will send a report to each person who was a partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the partner of his or its federal and state income tax returns and a report of the investment activities of such Partnership during such year.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with such Partnership by reason of a 5% or more investment in such entity by an FMR Group director, officer, or employee, such individual will not participate in such Partnership's determination of whether or not to effect such purchase or sale.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18050 Filed 7–15–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22060; 812–10082]

Sherry Lane Growth Fund, Inc., et al.; Notice of Application

July 10, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: Sherry Lane Growth Fund, Inc. (''Fund'') and Sherry Lane Capital Advisors, Inc. (''Adviser'').

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 57(i) and rule 17d–1 thereunder permitting certain joint transactions otherwise prohibited by section 57(a)(4).

SUMMARY OF APPLICATION: Applicants request an order to permit the Fund and Davis Venture Partners II, L.P. (''DVP II'') to co-invest in the same portfolio securities.

FILING DATES: The application was filed on April 10, 1996, and amended on 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Fund and Adviser, 320 South Boston, Suite 1000, Tulsa, Oklahoma 74103–3703.

FOR FURTHER INFORMATION CONTACT: Mercer E. Bullard, Staff Attorney, (202) 942–0565, or Elizabeth G. Osterman, Assistant Director, (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. The Fund, a Delaware corporation, is a non-diversified closed-end investment company that has elected to be regulated as a business development company (''BDC'') under the Act. The Fund filed a registration statement on Form N–2 that became effective May 29, 1996.

2. The Adviser is a registered investment adviser under the Investment Advisers Act of 1940 and is the investment adviser to the Fund. The Adviser is also responsible, subject to the oversight of the Fund's board of directors, for administering the Fund's business affairs. The chief executive officer and president of the Adviser also serve as directors and chief executive officer and president of the Fund, and as general partners of the general partner of DVP II, a venture capital partnership. Applicants state that DVP II is not registered as an investment company in reliance on the exclusion from the definition of investment company in section 3(c)(1) of the Act.

3. The Fund's investment objective will be to achieve long-term capital appreciation. The Fund also will structure its investments to provide an element of current income through interest, dividends, and fees whenever feasible in light of market conditions and the cash flow characteristics of the portfolio companies. The Fund intends to invest in between 10 and 20 private investment opportunities that typically will require a substantial financial commitment.

4. The principals of the Adviser intend to select investments for the Fund and DVP II separately considering in each case only the investment objectives, investment position, available funds, and other pertinent factors of the particular fund, including applicable investment restrictions and regulatory requirements. Applicants state that the Fund and DVP II have similar investment objectives and expect that they frequently may invest in the same portfolio securities.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons from participating in a joint transaction with a BDC in contravention of rules as prescribed by the SEC. Under section 57(b)(1) of the Act, persons who are affiliated persons of the directors or officers of a BDC within the meaning of section 2(a)(3)(C) of the Act are subject to section 57(a)(4). Under section 2(a)(3)(C), an affiliated person of another person includes any person directly or indirectly controlled by such other person. DVP II may be deemed to be controlled by certain directors and officers of the Fund because they are also general partners of the general partner of DVP II. DVP II therefore may be deemed to be subject to section 57(a)(4) with respect to co-investments with the Fund.

2. Section 57(i) of the Act provides that, until the SEC prescribes rules under section 57(a)(4), the SEC's rules under sections 17(a) and 17(d) of the Act applicable to closed-end investment companies shall be deemed to apply to sections 57(a) and 57(d). Because the SEC has not adopted any rules under section 57(a)(4), rule 17d–1 applies.

3. Rule 17d–1, promulgated under section 17(d) of the Act, prohibits

[11] Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

affiliated persons of an investment company from participating in joint transactions with the company unless the SEC has granted an order permitting such transactions. In passing on applications under rule 17d–1, the SEC considers whether the company's participation in the joint transactions is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

4. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act 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.

5. Because DVP II may be deemed to be subject to section 57(a)(4), investments in a portfolio company by the Fund in which DVP II also invests may be subject to section 57(a)(4).

6. Applicants believe that co-investing will enable the Fund to compete more effectively with entities and individuals who have greater resources, and that co-investing will increase the Fund's ability to achieve greater diversification and accordingly qualify for treatment as a regulated investment company for federal income tax purposes.

7. Applicants contend that the obligations imposed on the Fund's directors who are not ''interested persons'' as defined under section 2(a)(19) of the Act (''Independent Directors'') provide significant protection to investors against possible conflicts of interest in co-investments by the Fund and DVP II. Applicants also believe that the conditions relating to the terms on which co-investments may be made as set forth in the application are consistent with the policies underlying the Act. Applicants therefore believe that requested relief is consistent with the standards enumerated in section 6(c).

Applicants' Conditions

Applicants agree that the order shall be subject to the following conditions:

1. (a) To the extent that the Fund is considering new investments, the Adviser will review investment opportunities on behalf of the Fund, including investments being considered on behalf of DVP II. The Adviser will determine whether an investment being considered on behalf of DVP II (''DVP II Investment'') is eligible for investment by the Fund.

(b) If the Adviser deems a DVP II Investment eligible for the Fund (''co-investment opportunity''), the Adviser will determine what it considers to be an appropriate amount that the Fund should invest. When the aggregate amount recommended for the Fund and that sought by DVP II exceeds the amount of the co-investment opportunity, the amount invested by the Fund shall be based on the ratio of the net assets of the Fund to the aggregate net assets of the Fund and DVP II.

(c) Following the making of the determinations referred to in (a) and (b), the Adviser will distribute written information concerning all co-investment opportunities to the Fund's Independent Directors. Such information will include the amount DVP II proposes to invest.

(d) Information regarding the Adviser's preliminary determinations will be reviewed by the Fund's Independent Directors. The Fund will co-invest with DVP II only if a required majority (as defined in section 57(o) of the Act) (''Required Majority'') of the Fund's Independent Directors conclude, prior to the acquisition of the investment, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the shareholders of the Fund and do not involve overreaching of the Fund or such shareholders on the part of any person concerned:

(ii) The transaction is consistent with the interests of the shareholders of the Fund and is consistent with the Fund's investment objectives and policies as recited in filings made by the Fund under the Securities Act of 1933, as amended, its registration statement and reports filed under the Securities Exchange Act of 1934, as amended, and its reports to shareholders;

(iii) The investment by DVP II would not disadvantage the Fund, and that participation by the Fund would not be on a basis different from or less advantageous than that of DVP II; and

(iv) The proposed investment by the Fund will not benefit the Adviser or any affiliated entity thereof, other than DVP II, except to the extent permitted pursuant to sections 17(e) and 57(k) of the Act.

(e) The Fund has the right to decline to participate in the co-investment opportunity or purchase less than its full allocation.

2. The Fund will not make an investment for its portfolio if DVP II, the Adviser, or a person controlling, controlled by, or under common control with the Adviser is an existing investor in such issuer, with the exception of a follow-on investment that complies with condition number 5.

3. For any purchase of securities by the Fund in which DVP II is a joint participant, the terms, conditions, price, class of securities, settlement date, and registration rights shall be the same for the Fund and DVP II.

4. If DVP II elects to sell, exchange, or otherwise dispose of an interest in a security that is also held by the Fund, the Adviser will notify the Fund of the proposed disposition at the earliest practical time and the Fund will be given the opportunity to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to DVP II. The Adviser will formulate a recommendation as to participation by the Fund in such a disposition, and provide a written recommendation to the Fund's Independent Directors. The Fund will participate in such disposition to the extent that a Required Majority of its Independent Directors determines that it is in the Fund's best interest. Each of the Fund and DVP II will bear its own expenses associated with any disposition of a portfolio security.

5. If DVP II desires to make a ''follow-on'' investment (*i.e.*, an additional investment in the same entity) in a portfolio company whose securities are held by the Fund or to exercise warrants or other rights to purchase securities of such an issuer, the Adviser will notify the Fund of the proposed transaction at the earliest practical time. The Adviser will formulate a recommendation as to the proposed participation by the Fund in a follow-on investment and provide the recommendation to the Fund's Independent Directors along with notice of the total amount of the follow-on investment. The Fund's Independent Directors will make their own determination with respect to follow-on investments. To the extent that the amount of a follow-on investment opportunity is not based on the amount of the Fund's and DVP II's initial investments, the relative amount of investment by DVP II and the Fund will be based on the ratio of the Fund's remaining funds available for investment to the aggregate of the Fund's and DVP II's remaining funds available for investment. The Fund will participate in such investment to the extent that a Required Majority of its Independent Directors determine that it is in the Fund's best interest. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

6. The Fund's Independent Directors will review quarterly all information concerning co-investment opportunities during the preceding quarter to determine whether the conditions set forth in the application were compiled with.

7. The Fund will maintain the records required by section 57(f)(3) of the Act as if each of the investments permitted under these conditions were approved by the Fund's Independent Directors under section 57(f).

8. No Independent Director of the Fund will be a director or general partner of DVP II.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–18052 Filed 7–15–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 07/77–0097]

Gateway Partners, L.P.; Notice of Request for Exemption

On June 11, 1996, Gateway Partners, L.P. (''Gateway''), a limited partnership SBIC located in St. Louis, Missouri, filed a request for an exemption to Section 107.730(d) of the Regulations governing small business investment companies (13 CFR (1996)) to allow Gateway to invest in TALX Corporation (TALX) of St. Louis, Missouri. The request for a conflict of interest exemption arises because: (1) Gateway and Gateway Venture Associates II (Gateway II) have common Managing General Partners, and (2) Gateway II owns an 18% equity interest in TALX, a small concern Gateway wishes to finance. Mr. Richard Ford, one of the managing general partners, is also a director of TALX.

TALX is currently in need of additional working capital, and Gateway proposes to participate in a $4 million financing negotiated by an unaffiliated lead investor.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on this exemption request to the Associate Administrator for Investment, Small Business Administration, 409 Third Street SW, Washington D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in St. Louis, Missouri.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 9, 1996

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–17981 Filed 7–15–96; 8:45 am]

BILLING CODE 8025–01–P

[License # 09/14–0037]

San Joaquin Capital Corporation; Notice of License Surrender

Notice is hereby given that San Joaquin Capital Corporation (''SJCC'') surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (''the Act''). SJCC was licensed by the Small Business Administration on January 20, 1978.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 30, 1996, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

Dated: July 3, 1996.

Donald A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–17980 Filed 7–15–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics; Agency Information Collection; Activity Under OMB Review; Reporting Required for International Civil Aviation Organization (ICAO)

ACTION: Notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need and usefulness of BTS collecting supplemental data for the International Civil Aviation Organization (ICAO). Comments are requested concerning whether (a) the supplemental reports are needed by BTS to fulfill the U.S. treaty obligation of furnishing financial and traffic reports to ICAO; (b) BTS accurately estimated the reporting burden; (c) there are other ways to enhance the quality, utility and clarity of the information collected; and (d) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by September 16, 1996.

ADDRESSES: Comments should be directed to the Docket Clerk, Docket OST–96–1509, room PL 401, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington DC 20590–0001 from 10 a.m. to 5 p.m. ET, Monday through Friday, except Federal Holidays.

Comments: Comments should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket OST–96–1509. The postcard will be dated/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC. 20590, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0039.

Title: Reporting Required for International Civil Aviation Organization (ICAO) .

Form No.: BTS Form EF.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 40.

Estimated Time Per Response: 20 minutes

Total Annual Burden: 26 hours.

Needs and Uses: As a party to the Convention on International Civil Aviation (Treaty), the United States is obligated to provide ICAO with financial and statistical data on operations of U.S. air carriers. Over 99 percent of the data filed with ICAO is extracted from the air carriers' Form 41 submissions to DOT. BTS Form EF is the means by which BTS supplies the remaining one percent of the air carrier data to ICAO.

Timothy E. Carmody,

Acting Director, Office of Airline Information,Bureau of Transportation Statistics.

[FR Doc. 96–17823 Filed 7–15–96; 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 July 5, 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–96–1503.

*Date filed:*July 5, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 2, 1996.

Description: Application of American Trans Air, Inc. pursuant to 49 U.S.C. 41101 and Subpart Q for a certificate of public convenience and necessity authorizing American Trans Air, Inc. to engage in the scheduled foreign air transportation of persons, property, and mail between Orlando, Florida, and Grand Cayman, Cayman Islands.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–18014 Filed 7–15–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–96–33]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 5, 1996.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 10, 1996.

Michael E. Chase,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28575
Petitioner: Business Express Airlines, Inc.
Sections of the FAR Affected: 14 CFR 91.207(a)
Description of Relief Sought: To permit Business Express Airlines, Inc., to operate Saab SF340 aircraft under part 121 and Beech 1900C aircraft under part 135 with the emergency locator transmitter permanently removed.

Docket No.: 28578
Petitioner: Northern Air Cargo, Inc.
Sections of the FAR Affected: 14 CFR 121.380(a)(2)(ii)
Description of Relief Sought: To permit Northern Air Cargo, Inc., to operate its 14 Douglas DC–6 cargo aircraft without maintaining records of the total time in service of each engine and propeller.

Docket No.: 28593
Petitioner: Empresa de Aerotaxi e Manutencao Pampulha, Ltda.
Sections of the FAR Affected: 14 CFR 145.47(b)
Description of Relief Sought: To permit Empresa de Aerotaxi e Manutenção Pampulha, Ltda., an FAA-certificated foreign repair station located in Belo Horizonte, Brazil, (FAA Certificate No. XT7Y718J) to substitute the calibration standards of the Brazilian National Standard Laboratory, Instituto Nacional de Metrologia, Mormalização e Qualidade Industrial, for the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection and test equipment.

Docket No.: 28598
Petitioner: Boeing Commercial
Sections of the FAR Affected: 14 CFR 25.1435(b)(1)
Description of Relief Sought: To permit Boeing Commercial to (1) use the Model 777–200 airplane hydraulic system proof pressure test results to show compliance for the longer fuselage Model 777–300 airplane hydraulic system by conducting a similarity analysis; and (2) for the newly added tail skid system on the 777–300, conduct a proof pressure test at 3400+/−100 psig in lieu of the static proof pressure test at 1.5 times the design operating pressure, as required by the FAR.

Dispositions of Petitions

Docket No.: 25286
Petitioner: United States Parachute Association
Sections of the FAR Affected: 14 CFR 91.307(a)(2), 91.607, and 105.43(a)
Description of Relief Sought/ Disposition: To extend Exemption No. 4946, as amended, which permits the United States Parachute Association (USPA) to allow parachutists who are foreign nationals to participate in U.S. National Skydiving Championship events sponsored by the USPA without meeting the parachute equipment and packing requirements of § 105.43(a). In addition, the exemption allows the carriage of up to 40 parachutists in DC–3/C–47 aircraft during sport parachuting activities sponsored by the USPA.
Grant, May 31, 1996, Exemption No. 4946E

Docket No.: 26223
Petitioner: Airbus Service Company, Inc.
Sections of the FAR Affected: 14 CFR 121.411(a) (2) and (3) and (b)(2); 121.413 (b) and (c); and appendix H to part 121
Description of Relief Sought/ Disposition: To permit Airbus Service

Company, Inc., (Airbus) to use the instructors listed in its original exemption who do not meet all of the applicable training requirements of part 121, subpart N, or the employment requirements of part 121, appendix H, to train employees of part 121 certificate holders in FAA-approved simulators and in turbo jet-powered airplanes manufactured by Airbus.

Grant, June 3, 1996, Exemption No. 5302C

Docket No.: 26721
Petitioner: Regional Airline Association
Sections of the FAR Affected: 14 CFR 135.63(a)(4) and subparts E, G, and H of part 135
Description of Relief Sought/ Disposition: To extend Exemption No. 5450, as amended, which permits Regional Airline Association member airlines and other similarly situated air carriers to train, check, and qualify flight crewmembers in accordance with §§ 121.681 and 121.683; subparts N and O of part 121; and appendices E, F, and H to part 121.
Grant, June 3, 1996, Exemption No. 5450B

Docket No.: 28167
Petitioner: Mr. Reid W. Dennis
Sections of the FAR Affected: 14 CFR 91.313(d)
Description of Relief Sought/ Disposition: To permit Mr. Dennis, to the extent necessary, to carry passengers not for compensation or hire in his Grumman HU–16C (Registration No. N44RD) restricted category civil aircraft without those passengers performing any of the function described in § 91.313(d).
Denial, May 24, 1996, Exemption No. 6441

Docket No.: 28278
Petitioner: United Airlines Contract Training
Sections of the FAR Affected: 14 CFR 121.411(a) (2) and (3) and (b)(2); 121.413 (b), (c), and (d); and appendix H to part 121
Description of Relief Sought/ Disposition: To permit certain pilot and flight engineer (FE) instructors employed by United Airlines Contract Training (UACT) and listed in a part 121 certificate holder's approved training program to act a simulator instructors for that ground and flight training in accordance with that certificate holder's training program approved under subpart N of part 121. This exemption also permits simulator instructors employed by UACT and listed in a certificate holder's approved training program to serve in advanced simulators without being employed by the certificate holder for 1 year, provided the instructors receive applicable training in accordance with the provisions of this exemption.
Partial Grant, May 31, 1996, Exemption No. 6447

Docket No.: 28307
Petitioner: Bombardier Aerospace Training Center
Sections of the FAR Affected: 14 CFR appendix H to part 121; 135.337(a) (2) and (3) and (b)(2); and 135.339 (b) and (c)
Description of Relief Sought/ Disposition: To permit certain instructors employed by the Bombardier Aerospace Training Center (Bombardier) and listed in a part 135 certificate holder's approved training program to act as simulator instructors for that certificate holder under part 135 without those instructors having received ground and flight training in accordance with that certificate holder's training program approved under subpart H of part 135. This exemption also permits simulator instructors employed by Bombardier and listed in a certificate holder's approved training program to serve in advance simulators without being employed by the certificate holder for 1 year, provided the instructors receive applicable training in accordance with the provisions of this exemption.
Partial Grant, May 31, 1996, Exemption No. 6446

Docket No.: 28318
Petitioner: Ogden-Hinckley Airport
Sections of the FAR Affected: 14 CFR 91.215(b)(2)
Description of Relief Sought/ Disposition: To permit operations at Ogden-Hinckley Airport to be conducted in aircraft that are not equipped with transponders that have automatic pressure altitude reporting capability.
Denial, May 31, 1996, Exemption No. 6450

Docket No.: 28367
Petitioner: Mr. Stephen R. Raklovits
Sections of the FAR Affected: 14 CFR 103.11
Description of Relief Sought/ Disposition: To permit Mr. Raklovits to operate a powered parachute-type ultralight at night conducting demonstrations, training, and special use operations, including search, rescue, and surveillance, for local, State, and Federal law enforcement agencies.
Denial, May 21, 1996, Exemption No. 6440

Docket No.: 28381
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121.613
Description of Relief Sought/ Disposition: To permit part 121 certificate holders to dispatch or release aircraft to any destination airport under instrument flight rules (IFR) or over-the-top, when weather reports or forecasts, or any combination thereof, indicate that the weather conditions at the estimated time of arrival (ETA) at the destination airport may be below meteorological visibility minimums.
Denial, June 4, 1996, Exemption No. 6458

Docket No. 28406
Petitioner: TEMSCO Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To permit appropriately trained pilots employed by TEMSCO Helicopters, Inc., (TEMSCO) to remove and reinstall the passenger seats in its aircraft that are type certificated for nine or fewer passenger seats and use in operations conducted by TEMSCO under part 135.
Grant, April 16, 1996, Exemption No. 6426

Docket No.: 28481
Petitioner: Wings, Inc.
Sections of the FAR Affected: 14 CFR 141.65
Description of Relief Sought/ Disposition: To permit Wings, Inc., to recommend graduates of its approved certification courses for flight instructor certificates and airline transport pilot (ATP) certificates without those graduates taking the FAA written tests.
Grant, June 3, 1996, Exemption No. 6455

Docket No.: 28496
Petitioner: Bohlke International Airways
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Bohlke International Airways to operate its Turbo Commander 681 aircraft (Registration No. N113CT, Serial No. 6006) without a TSO-C112 (Mode S) transponder installed.
Grant, June 3, 1996, Exemption No. 6454

Docket No.: 28504
Petitioner: Renown Aviation, Inc.
Sections of the FAR Affected: 14 CFR 121.356(a)
Description of Relief Sought/ Disposition: To permit Renown Aviation, Inc., to operate one Convair

340 non-turbine-powered aircraft (Registration No. N3HH, Serial No. 173), and two Convair 440 non-turbine-powered aircraft (Registration Nos. N202RA and N204RA; Serial Nos. 497 and 504, respectively) without traffic alert and collision avoidance system (TCAS) II equipment installed.

Denial, May 31, 1996, Exemption No. 6445

[FR Doc. 96–18062 Filed 7–15–96; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 96–071; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1991 Jaguar XJS Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 Jaguar XJS passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1991 Jaguar XJS that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 15, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''Wallace'') (Registered Importer 90–005) has petitioned NHTSA to decide whether 1991 Jaguar XJS passenger cars are eligible for importation into the United States. The vehicle which Wallace believes is substantially similar is the 1991 Jaguar XJS that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991 Jaguar XJS to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1991 Jaguar XJS, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1991 Jaguar XJS is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 Hood Latch Systems, 116 *Brake Fluid,* 118 *Power Operated Window Systems,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity, and* 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with one calibrated in kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.—model headlight assemblies; (b) installation of U.S.—model turn signal lenses; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement on the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer module; (b) installation of a U.S.—model steering wheel, and driver's side air bag and knee bolster. The petitioner states that the vehicle is equipped with Type 2 seat belts in both designated seating positions.

Additionally, the petitioner states that bumper shocks, an armature, and miscellaneous attachments must be added to the non-U.S. certified 1991 Jaguar XJS to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 10, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–18018 Filed 7–15–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–070; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1986 Honda CP 450 SC Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1986 Honda CP 450 SC motorcycles are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1986 Honda CP 450 SC that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is August 15, 1996.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1986 Honda CP 450 SC motorcycles are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1986 Honda CB 450 SC that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Honda Motor Company, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non- U.S. certified 1986 Honda CP 450 SC to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1986 Honda CP 450 SC, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1986 Honda CP 450 SC is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 115 *Vehicle Identification Number,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 120 *Tire Selection and Rims for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamp assemblies.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 10, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–18017 Filed 7–15–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–082; Notice 01]

General Motors Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

The Buick Division of the General Motors Corporation (GM), of Warren, Michigan, has determined that certain 1996 Buick Skylark cars fail to conform to the requirements of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) 108, ''Lamps, Reflective Devices and Associated Equipment,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118(d) and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

In FMVSS No. 108, Paragraph S5.1.1.5 states that ''the turn signal operating unit on each passenger car, . . . shall be self-canceling by steering wheel rotation and capable of cancellation by a manually operated control.''

Certain 1996 model year Buick Skylark cars were assembled with a defective multi-function switch, which causes the turn signal self-cancel feature to work intermittently after left turns. As a result, the turn signal does not meet the requirements of S5.1.1.5. GM stated that while all of the subject vehicles meet the latter requirement, some may intermittently fail to meet the self cancel requirement.

GM first became aware of this condition during a railhead audit in August of 1995. Once the condition was discovered, multiple inspections for suspect switches were immediately implemented, both at the assembly plant and by the supplier, and breakpoints were established. A total of 1,969 vehicles were built with suspect switches.

GM supported its application for inconsequential noncompliance with the following:

- No more than 5.5 percent of the 1.969 vehicles, or 108 vehicles, are predicted to have a defective switch. This prediction is based on a sort of 400 switches, of which 22 were determined to possibly be suspect. This projection may overstate the field condition since the sort was very conservative; many of the suspect 22 switches may function properly in vehicles. In addition, the projection is based on a sort of the latest shipments of switches before the supplier corrected its manufacturing problem. Since the condition was caused by tooling dimensions drifting out of specification, the actual rate of defective switches for the entire production run may well be less than the projected rate.
- The self-cancel feature will operate properly for a majority of turn signal activations even on vehicles with a defective switch. The self-canceling feature works correctly when signaling for all right turns, as well as for some left turns. The switch is sensitive to the rate of turn signal lever actuation and position of the steering wheel, and will not cancel only intermittently, for some left hand turns. On one of the vehicles discovered with this condition, it took about 20 turn signal cycles to recreate the failure.
- All 1996 Skylarks have a turn signal reminder chime that will signal the driver if the turn signal indicator is still on after 1/2 mile of driving. Therefore, even in those instances when the self-cancel feature fails, the driver will get an additional cue that the turn signal is on and deactivate it.
- GM is not aware of any accidents, injuries, owner complaints or field reports associated with this condition.

Interested persons are invited to submit written data, views, and arguments on the application of GM, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, D.C., 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials and all comments received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the Federal Register pursuant to the authority indicated below. Comment closing date: August 15, 1996.

(49 U.S.C. 30118, 30120; delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: July 11, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–18016 Filed 7–15–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board [1]

[STB Finance Docket No. 32993]

Norfolk Southern Railway Company—Corporate Family Transaction Exemption—The Atlanta and Charlotte Air-Line Railway Company

Norfolk Southern Railway Company (NSR), a Class I railroad, and The Atlanta and Charlotte Air-Line Railway Company (A&CAL), a Class III railroad, have jointly filed a verified notice of exemption. The exempt transaction is a merger of A&CAL with and into NSR.[2]

The transaction is expected to be consummated on or after August 1, 1996.

The proposed merger will eliminate A&CAL as a separate corporate entity, thereby simplifying the corporate structure of NSR and the NSR system, and eliminating costs associated with separate accounting, tax, bookkeeping and reporting functions.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels or significant operational changes.

As a condition to this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32993, must be filed with

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

[2] A&CAL is a wholly owned, direct subsidiary of NSR with authorized capital stock consisting of 17,000 shares of Common Stock, 16,999 of which are issued and outstanding and owned by NSR. NSR has controlled A&CAL through stock ownership, and has leased and operated the properties of A&CAL since approximately 1881. The proposed Agreement and Plan of Merger provides that all shares of A&CAL's capital stock will be canceled and retired, and no consideration will be paid in respect of such shares. NSR is controlled through stock ownership by Norfolk Southern Corporation, a noncarrier holding company.

the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on James A. Squires, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Decided: July 10, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–18010 Filed 7–15–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–36; OTS No. 02230]

Foundation Savings Bank, Cincinnati, Ohio; Approval of Conversion Application

Notice is hereby given that on July 8, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Foundation Savings Bank, Cincinnati, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606–4360.

Dated: July 10, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–17965 Filed 7–15–96; 8:45 am]

BILLING CODE 7620–01–M

[AC–35; OTS No. 0805]

Park Federal Savings Bank, Chicago, Illinois; Approval of Conversion Application

Notice is hereby given that on June 21, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Park Federal Savings Bank, Chicago, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606–4360.

Dated: July 10, 1996.

By the Office of Thrift Supervision,

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–17966 Filed 7–15–96; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before September 16, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0381.

Title and Form Number: Notice for Election to Convey and/or Invoice for Transfer of Property, VA Form 26–8903.

Type of Review: Extension of a currently approved collection.

Need and Uses: VA Form 26–8903 serves four purposes: holder's election to convey; invoice for the purchase price of the property; VA's voucher for authorizing payment to the holder; and establishment of the VA's property records. The form provides the holder, who has elected to convey a property to the VA, with a convenient and uniform means of notification to the proper VA regional office. This form simplifies processing for lenders/holders who, in most instances, operate branch offices statewide and nationwide.

Current Actions: Section 3732 of Title 38, U.S.C., and 38 CFR 36.4320(a)(1), provide that if a minimum amount for credit to the borrower's indebtedness has been specified by VA in relation to the sale of the real property and the holder is the successful bidder at the sale for no more than the amount specified by the Secretary, the holder will credit the indebtedness with that amount. The holder may then retain the property, or not later than 15 days after the date of sale, advise the Secretary of its election to convey and transfer the property to the Secretary.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 5,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: July 2, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–17978 Filed 7–15–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the

Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before September 16, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0251.

Title and Form Number: Request to Lender for Status of Loan Account—LCS, VA Form 26–8778.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to collect information from the servicer and it serves as a code sheet to input data in the automated Liquidation and Claims System (LCS). The form is computer-generated and sent directly to the servicer of the loan. The servicer completes its portion and sends the form to the VA regional officer having responsibility for the loan. Upon receipt of the form, the VBA takes whatever action is necessary to properly service the loan.

Current Actions: After the VA receives notification of a loan default, the servicer is contacted to obtain pertinent data about the status of the account. The VA must obtain this information in order to assure that necessary action is taken to cure the default.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 29,167 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 175,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: July 2, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–17979 Filed 7–15–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0242.

Title and Form Number: Water-Plumbing Systems Inspection Report (Manufactured Home), VA Form 26–8731a.

Type of Review: Extension of a currently approved collection.

Need and Uses: Inspections are ordered by lending institutions and performed by experienced plumbers or manufactured home service personnel. VA Form 26–8731a will be completed by the inspector after the tests described on the form have been made. The lender submits the report form to the applicable VA regional office with its report of loan closing. If the report is satisfactory, and the loan is otherwise proper, the regional office then issues a certificate of guaranty covering the loan. Without proof of satisfactory water and plumbing systems, VA would be guaranteeing loans on used manufactured homes which could be unsafe and which would not be acceptable security on which to base an increase in the government's contingent liability.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 400.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: July 2, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–17975 Filed 7–15–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: None Assigned.

Title and Form Number: Army Chemical Corps Vietnam Veterans Health Study, VA Form 10–20998(NR).

Type of Review: New collection.

Need and Uses: VA researchers will use the proposed study data to determine whether there are indications that veterans of the Army Chemical Corps and their families suffer from illnesses at higher or unusual rates than non-Vietnam era Army Chemical Corps veterans and their families. The relationship between health outcomes and possible exposure to herbicides will also be evaluated. If the information for the study is not collected, the VA will not be able to do the study and will have failed to comply with the intent of Congress when Public Law 102–4, the ''Agent Orange Act of 1991'', was enacted. In addition, the results of the study will be valuable to VA in formulating compensation and medical

benefits policies for veterans of the Vietnam War.

Affected Public: Individuals and households.

Estimated Annual Burden: 325 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 650.

ADDRESSES: Copies of these submissions may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer on or before August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 28, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–17976 Filed 7–15–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0032.

Title and Form Number: Veterans's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

Type of Review: Extension of a currently approved collection.

Need and Uses: The information requested is necessary for the VBA to determine if it is economically feasible for a veteran to reside in specially adapted housing and to compute the proper grant amount.

Affected Public: Individuals or households; required to obtain or retain benefits.

Estimated Annual Burden: 115 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 460.

ADDRESSES: Copies of these submissions may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer on August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 28, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–17977 Filed 7–15–96; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 61, No. 137
Tuesday, July 16, 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 THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; NDM 83168]

Public Land Order No. 7206; Withdrawal of Public Lands for Waterfowl Production Areas; North Dakota

Correction

In notice document 96–17341 appearing on page 36079 in the issue of Tuesday, July 9, 1996, make the following corection:

On page 36079, in the second column, under Fifth Principal Meridian, T. 142 N., R. 75 W., the second line should read: ''Sec. 14, S½SW¼ and E½SE¼;''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96-031]

Agency Information Collection Activities Under OMB Review

Correction

In notice document 96–16895, beginning on page 34920, in the issue of Wednesday, July 3, 1996, make the following correction:

On page 34920, in the third column, ''OMB No. 2115-007'' should read ''OMB No. 2115-0077''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 96-ACE-6]

Amendment to Class E Airspace, Boone, IA

Correction

In rule document 96–14762 beginning on page 29472 in the issue of Tuesday, June 11, 1996 make the following correction:

§71.1 [Corrected]

On page 29473, in the third column, in §71.1, in the fifth line from the bottom ''lat. 42°02′16″N'' should read ''lat. 42°02′58″N''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-ANM-012]

Proposed Establishment of Class E Airspace; Grants Pass, Oregon

Correction

In proposed rule document 96–14877 beginning on page 29699 in the issue of Wednesday, June 12, 1996 make the following correction:

§71.1 [Corrected]

On page 29700, in the first column, in §71.1, under *Paragraph 6005* ''ANM OR E5 Grants, OR'' should read ''ANM OR E5 Grants Pass, OR''.

BILLING CODE 1505–01–D

Federal Register

Tuesday
July 16, 1996

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3710

Use and Occupancy Under the Mining Laws; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3710

[WO–320–4130–02–24 1A]

RIN 1004–AC39

Use and Occupancy Under the Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is adopting regulations addressing the unlawful use and occupancy of unpatented mining claims for non-mining purposes. This rule sets forth the restrictions on use and occupancy of public lands open to the operation of the mining laws that BLM administers in order to limit use and occupancy to those involving prospecting or exploration, mining, or processing operations and reasonably incidental uses. The rule establishes procedures for beginning occupancy, standards for reasonably incidental use or occupancy, prohibited acts, procedures for inspection and enforcement, and procedures for managing existing uses and occupancies. It also provides for penalties and appeals procedures. This rule is necessary to prevent unnecessary or undue degradation of the public lands from uses and occupancies not reasonably incident to mining. The rule does not adversely affect bona fide mining operations or alter BLM's regulations in 43 CFR Part 3800 pertaining to them. Terms used in this preamble have the meaning given to them in the rule.

EFFECTIVE DATE: August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Deery, (202) 452–0353.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of Final Rule and Response to Comments.
III. Procedural Matters.

I. Background

The mining industry has played a key role in both the settlement and development of the American West. The problem of occupancy of mining claims on public lands by those who have no intention of conducting legitimate hardrock mineral prospecting, exploration or extraction activities has long been recognized. These occupancies waste valuable resources by hampering and discouraging the activities of those who are engaged in the legitimate development of our mineral resources or other legitimate uses of the public lands. This rule establishes a framework for distinguishing between bona fide uses and occupancies and those that represent abuse of the mining laws. The purpose of this rule is to strengthen BLM's use of its enforcement authority to combat abuse of the Mining Law of 1872 for non-mining pursuits.

The Mining Law of 1872

The Mining Law of 1872 is the Act of May 10, 1872 (17 Stat. 91, 30 U.S.C. 22 *et seq.*) together with its judicial interpretations. The law established the basic statutory framework governing the location of mining claims that is still in practice today.

Under the law, a person can acquire an interest in the public lands by the proper location of a mining claim. A prospector can go out on the public lands, search for minerals and, upon discovery of a valuable mineral deposit, locate a claim to the lands upon which the discovery is made. A prospector can locate a claim by staking the corners of the claim, posting a notice of the claim, and filing or recording the claim according to state and federal law.

The law did not operate without conflict and controversy. After all, the ''claim jumper'' has become as much a part of the folklore of the West as the prospector and his mule. Two noteworthy cases were decided in the early part of this century that helped define the scope of activities allowed on unpatented mining claims.

One, *Teller* v. *United States*, 113 F. 273 (8th Cir. 1901), involved the cutting of timber on an unpatented mining claim. The court found that the owner of the claim had the right to work the claim for its minerals, but had no right to cut timber or engage in other surface activities unless the activities were reasonably necessary to the mining operation. The second case, *United States* v. *Rizzinelli*, 182 F. 675 (D. Idaho 1910), involved the establishment of saloons on unpatented mining claims. This case stands for the principle that surface uses of a claim can only be for purposes ''connected with or incident to'' exploration for, and recovery of, minerals.

Surface Resources Act of 1955

In spite of all good intentions, by the 1950's it had become clear that widespread abuse of the general mining law was taking place. People were locating mining claims who either had no intention of mining or who never got around to it. Some of the uses taking place on unpatented claims included permanent residences, summer homes, townsites, orchards, farms, a nudist colony, restaurants, a rock museum, a real estate office, hunting and fishing lodges, filling stations, curio shops and tourist camps. To deal with this, Congress passed the Surface Resources Act of 1955 (69 Stat. 367, 30 U.S.C. 601–615), which included a provision that any unpatented mining claim may not be used for purposes other than prospecting, mining or processing operations and reasonably incident uses.

Federal Land Policy and Management Act of 1976

The Federal Land Policy and Management Act of 1976 (90 Stat. 2743, 43 U.S.C. 1701 *et seq.*), also known as FLPMA, directed the Secretary of the Interior to take any action necessary to prevent unnecessary or undue degradation of the public lands. FLPMA established a federal mining claim recording system, which requires an annual filing of an affidavit of assessment work or a notice of intention to hold a mining claim. It also strengthened the Secretary's enforcement authorities by authorizing the Secretary to issue regulations necessary to implement FLPMA, the violation of which are punishable by civil and criminal penalties. In 1980, BLM adopted regulations outlining procedures and standards designed to prevent hardrock mining operations from causing unnecessary or undue degradation of the public lands.

BLM's 1980 Regulations

The 1980 regulations, found at 43 CFR part 3800, address the management of surface impacts from exploration and mining operations, treating mining operations differently depending on the level of mining activity the operator proposes. At the lowest level of activity, called ''casual use,'' prospectors or part-time miners who cause only negligible surface disturbance need not contact BLM. An operator who exceeds this negligible level of surface activity, but keeps the amount of surface disturbance below five acres per year, is required only to file a notice with BLM 15 days before commencing operations. The operator does not have to obtain BLM's approval of the notice, nor obtain bonding, except in special circumstances. Operators proposing mining operations causing more than five acres of surface disturbance per year are required to file a plan of operations which sets out the details of those operations. The operator must also file a plan of operations if special categories of land are involved, even if

less than five acres per year will be disturbed. BLM must approve the plan before the operator may commence operations.

Development of Proposed Regulations

In August 1990, the General Accounting Office issued a report that found some holders of unpatented mining claims were using their claims for unauthorized residences, non-mining commercial operations, illegal activities, or speculative activities not related to legitimate mining. See *Unauthorized Activities on Hardrock Claims,* GAO/RCED–90–111. These unauthorized activities result in a variety of problems, including blocked access to public land; safety hazards, including threats of violence; environmental contamination; investment scams; and increased costs to reclaim the land. The report recommended that BLM revise its regulations to clearly state that residency and nonmining commercial activities are normally not authorized, thereby shifting the burden of proof to the claim holder to show that an activity is incidental to mining. At a follow-up hearing before the Subcommittee on Mining and Natural Resources, House Interior and Insular Affairs Committee, in September 1990, the Director of BLM and the Subcommittee agreed that while occupancy reasonably incident to prospecting, mining, and production is legitimate, BLM field staff need a satisfactory process for administering and enforcing legal requirements.

After the September 1990 hearing, BLM established a task force of headquarters and field staff to strengthen BLM's ability to prevent unauthorized uses and occupancies on the public lands under the mining laws. The task force drafted a proposal in late 1990 and discussed it in meetings with miners and environmentalists in Washington, D.C.; Denver, Colorado; Spokane, Washington; and Sacramento, California. Following these discussions, a proposed rule adding a new subpart 3715 to the regulations at 43 CFR part 3710 was published in the Federal Register on September 11, 1992 (57 FR 41846). Refer to the Federal Register notice cited above for a full discussion of the proposal. The 60-day comment period closed on November 10, 1992. BLM received 44 comments concerning the proposal: 16 from individuals, 4 from mining businesses, 7 from associations, 16 from offices of federal agencies, and 1 from a state government citizens' advisory commission. As discussed in the next portion of the preamble to this final rule, BLM gave full consideration to all comments received. Any changes in the final rule from the proposed rules are identified in the following detailed discussion of the final rule.

Regulatory Reform

In February 1995, the President outlined his regulatory reform initiative, which is intended to reduce unnecessary regulatory burden and overlap, create regulations with clearly stated goals and objectives and stimulate partnerships with regulated parties. BLM undertook a page-by-page review of its rules and identified about 1,000 pages in the Code of Federal Regulations that would be eliminated, streamlined or rewritten in ''plain English.'' Plain English is a specific writing technique that communicates the information and legal requirements of regulations more effectively through the use of question-and-answer headings, active voice, short sentences, and tables, among other things.

Because the proposed rule was issued before the regulatory reform initiative, it was not written in plain English. Readers of the final rule will quickly note differences in the language and format of the final rule as compared to the proposal. Readers will also note that final § 3715.4 addresses existing occupancies. In the proposed rule, these provisions were generally located in § 3715.7. BLM changed the location of the existing occupancy provisions and renumbered the intervening sections accordingly as part of a reorganization of the final rule. The conversion to plain English does not affect the substantive content of the rule. These changes are intended to increase the clarity and understandability of the rule. Any substantive changes that BLM has made in the final rule are fully described in the following discussion.

To assist the reader in understanding the difference between the proposed rule and the final rule adopted today, BLM has prepared the following table:

COMPARISON OF PROPOSED RULE AND ''PLAIN ENGLISH'' FINAL RULE

Proposed Rule	''Plain English'' Final Rule
§ 3715.0–1	§ 3715.0–1
§ 3715.0–2	§ 3715.0–1
§ 3715.0–3	§ 3715.0–3
§ 3715.0–5	§ 3715.0–5
§ 3715.0–6	§ 3715.0–1
§ 3715.0–7	§ 3715.0–1
None	§ 3715.0–9
§ 3715.1	§ 3715.1
§ 3715.2 (a) and (b)	§ 3715.2
§ 3715.2(c)	§ 3715.2–1
§ 3715.2(d)	§ 3715.2–2
§ 3715.3 (a)–(e)	§ 3715.3
§ 3715.3(f)	§ 3715.3–2
§ 3715.3(g)	§ 3715.3–2 and § 3715.3–3
§ 3715.3(h)	§ 3715.3–4
§ 3715.3(h)(1)	§ 3715.3–5(a) and § 3715.7–1(a)
§ 3715.3 (h)(2) and (i)	§ 3715.3–5(b)
§ 3715.3(j)	§ 3715.3–6
§ 3715.3(k)	§ 3715.1
§ 3715.4(a)	§ 3715.5(a)
§ 3715.4(b)	§ 3715.3–1(b)
§ 3715.4 (c)–(e)	§ 3715.5 (b)–(e)
§ 3715.4(f)	§ 3715.5–1(a)
§ 3715.4(f)(1)	§ 3715.5–1(b)
§ 3715.4(f)(2)	§ 3715.5–2
§ 3715.5	§ 3715.6
§ 3715.6(a)	§ 3715.7 (a) and (b)
§ 3715.6(b)	§ 3715.7–1(a)
§ 3715.6(c)	§ 3715.4–3(c)
§ 3715.6(d)	§ 3715.7–1(c)
§ 3715.6(e)	§ 3715.7–1(d)
§ 3715.6(f)	§ 3715.7–2
§ 3715.7(a)	§ 3715.4(b)
§ 3715.7(b)	§ 3715.4–1
§ 3715.7(c)	§ 3715.4–2
§ 3715.7(d)	§ 3715.4(a)
§ 3715.7(e)	§ 3715.4–3
§ 3715.8(a)	§ 3715.8(a)
§ 3715.8(b)	§ 3715.8–1
§ 3715.9(a)	§ 3715.9
§ 3715.9(b)	§ 3715.9
§ 3715.9(c)	Deleted
§ 3715.9(d)	Deleted
§ 3715.9(e)	Deleted
3715.9(f)	§ 3715.9–1
§ 3715.9(g)	Deleted

II. Discussion of Final Rule and Response to Comments

Legal Basis and Purpose of the Final Rule

These regulations carry out the statutory requirements of section 4 of the Surface Resources Act of 1955, which states that mining claims are not to be used for any purposes other than prospecting, mining, or processing operations, and uses reasonably incident thereto (30 U.S.C. 612). Even before 1955, the courts had long held that the Mining Law of 1872 itself entitled the mining claimant to use the surface only for reasonably incident purposes. See, for example, *United States* v. *Rizzinelli,* 182 F. 675 (D. Id. 1910) and *Bruce W. Crawford,* 92 I.D. 208, 216 (1985).

Uses that are not reasonably incident are not authorized by the mining laws and should not be occurring on public lands, unless they are authorized under other authorities. Because illegal uses should never occur on public lands, the mere existence of an illegal use

inherently constitutes ''unnecessary or undue degradation'' of the public lands. Consequently, these regulations clarify that unauthorized uses and occupancies on public lands constitute ''unnecessary or undue degradation'' of the public lands.

Section 302(b) of the Federal Land Policy and Management Act gives the Secretary of the Interior the duty to take *any action necessary* to prevent unnecessary or undue degradation of the public lands. This duty arises in section 302(b) in the context of the Secretary's obligation to manage the public lands by regulating the use, occupancy, and development of the public lands. Accordingly, as applied to this rule, ''unnecessary or undue degradation'' includes those uses that are not authorized by law, specifically those activities which are not reasonably incident and are not authorized under any other applicable law or regulation.

To the extent that uses are reasonably incident and do not involve occupancy, the surface management requirements of 43 CFR part 3800 govern the conduct of those uses.

The purposes of the regulations in this subpart are to—

(a) Distinguish between the allowable and prohibited uses and occupancies under the Mining Law of 1872 (30 U.S.C. 21 *et seq.*), section 4(a) of the Surface Resources Act, (30 U.S.C. 612), the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*), and other applicable law, to ensure that mining claims and millsites are not used, prior to issuance of patent therefor, for any purposes other than prospecting or exploration, mining, or processing operations, and uses reasonably incident thereto;

(b) Inform persons operating under the mining laws of their basic rights and responsibilities relative to use and occupancy of public lands;

(c) Identify mining laws and regulations applicable to use and occupancy of public lands;

(d) Enumerate instances where use and occupancy of public lands are authorized under the mining laws, and to set standards for such use or occupancy;

(e) Enumerate prohibited acts relating to use and occupancy of public lands under the mining laws; and

(f) Provide for administrative remedies and appropriate penalties for cases of non-compliance with the regulations in this subpart.

The rule does not adversely affect bona fide mining operations or alter BLM's regulations in 43 CFR Part 3800 pertaining to them.

General Comments

Several comments from individuals objected to the proposed rule as an undue infringement on their use of a mining claim. The rule does not, however, infringe on lawful uses of the public lands. Bona fide mining operations will not be adversely affected by the rule. The rule is necessary to carry out the statutory responsibility to manage the public lands and to enforce the statutory restrictions on the use and occupancy of the public lands for reasonably incident activities. Enforcement authority is found in sections 302(c), 303(a), and 303(g) of the Federal Land Policy and Management Act of 1976 (FLPMA), the Unlawful Occupancy and Inclosures of Public Lands Act (43 U.S.C. 1201), and 18 U.S.C. 1001.

Section 3715.0–1 What are the Purpose and Scope of This Subpart?

Final § 3715.0–1(a) describes the purpose of subpart 3715. The purpose is to manage the use of the public lands for the development of locatable mineral deposits by limiting use and occupancy to that which is reasonably incident.

One comment suggested a change in the policy provision, proposed § 3715.0–6, to provide added protection for valid uses of mining claims. Another comment suggested a wording change in the policy provision, pointing out that some older unpatented mining claims may lie on lands that are withdrawn or otherwise not now open to the operation of the mining laws. However, these claims are still subject to regulation under the mining laws. BLM adopted these comments in the final rule, with language added to final § 3715.0–1 specifically to provide for protection of valid uses of valid claims, regardless of when created.

Final paragraph (b) states that the subpart applies to public lands BLM administers.

Final paragraph (c) states that these regulations do not impair the right of any person to engage in recreational activities or any other authorized activity on public lands BLM administers. This paragraph was added in response to concerns from commenters that legitimate recreational activities would be affected by the regulations.

BLM formed this section of the final rule from proposed §§ 3715.0–2, 3715.0–6, and 3715.0–7.

Section 3715.0–3 What are the Legal Authorities for This Subpart?

This section enumerates the statutory authority for the promulgation of these regulations. The primary authorities include the Mining Law of 1872, the Surface Resources Act of 1955, the Federal Land Policy and Management Act, and the Unlawful Occupancy and Inclosures of Public Lands Act.

Section 1 of the Mining Law of 1872 (30 U.S.C. 22) provides that, except as otherwise provided by law, all valuable mineral deposits in lands belonging to the United States must be free and open to exploration and purchase. It also provides that the lands containing these deposits must be open to occupation and purchase under regulations prescribed by law and the local customs or mining district rules that are not inconsistent with the laws of the United States.

Section 15 of the Mining Law of 1872, as amended (30 U.S.C. 42), provides that a patent application for a lode claim may include nonmineral land not contiguous to the vein or lode only if it is used or occupied for mining or milling purposes. It also provides that a patent application for a placer claim may include nonmineral land only if it is needed, used and occupied by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with that claim.

Section 4 of the Surface Resources Act (30 U.S.C. 612) states that any mining claim located after July 23, 1955, under the mining laws of the United States must not be used, prior to issuance of patent, for any purposes other than prospecting, mining, or processing operations, and reasonably incident uses. Any such mining claim is also subject, prior to issuance of patent, to the right of the United States, its permittees, and licensees, to use so much of the surface as may be necessary for management and disposition of vegetative surface resources and management of other surface resources, or for access to adjacent land.

Several comments argued that pre-1955 claims should be exempt from the provisions of the rule. This position is not adopted in the final rule. Such claims are subject to the portions of the regulations establishing whether a use or occupancy is reasonably incident to prospecting, mining, milling, and so forth. While Section 4(a) of the Act of July 23, 1955 (30 U.S.C. 601 *et seq.*) (the 1955 Act), provides that claims located after that date are not to be used before patenting for any purpose other than prospecting, mining, or processing operations, or uses reasonably incident thereto, this provision merely restated the law as it existed prior to its enactment. (*Bruce Crawford,* 86 IBLA 325, 92 I.D. 208, 216, 221, n. 15). Cases

cited in *Crawford* held that, as long ago as 1910, uses of mining claims were required to be reasonably incident to mining. See *United States* v. *Rizzinelli,* 182 F. 675 (D. Id. 1910). The legislative history of the 1955 Act shows clearly that existing law prohibited uses of the Mining Law for non-mineral-related occupancies, and that a purpose of the 1955 Act was only to strengthen existing tools for dealing with these situations. See S. Rep. No. 554, 84th Cong., 1st Session (1955). The Mining Law of 1872 itself states that ''all valuable mineral deposits in lands belonging to the United States . . . shall be free and open . . . to occupation . . . under regulations prescribed by law. . . .'' 30 U.S.C. 22. The patenting authority for millsites also defines valid millsites as those used for mining, milling, processing, beneficiation, or other operations. 30 U.S.C. 42. The citation to that authority for millsites has been added to the rule. However, BLM concurrence that a use or occupancy on a millsite is authorized under this rule does not necessarily mean that the millsite is valid for purposes of complying with 30 U.S.C. 42. A validity determination for patenting or for establishing the underlying validity of a millsite is separate from a BLM concurrence in a proposed use or occupancy on a millsite under this subpart.

Section 302(b) of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1732(b)) directs the Secretary to take all necessary actions to prevent unnecessary or undue degradation in managing the public lands to regulate use, occupancy, and development of the public lands.

Section 302(c) of FLPMA (43 U.S.C. 1732(c)) directs the Secretary to include in all land use instruments a provision authorizing revocation or suspension, after notice and hearing, of such instrument upon a final administrative finding of a violation of any term or condition of the instrument. This section also provides that the Secretary may order an immediate temporary suspension of use, occupancy, or development prior to a hearing or final administrative finding if such a suspension is necessary to protect health, safety, or the environment.

Section 303(a) of FLPMA (43 U.S.C. 1733(a)) states that the Secretary must issue regulations necessary to implement the provisions of FLPMA with respect to the public lands, and sets forth basic penalties for violation of such regulations.

Section 303(g) of FLPMA (43 U.S.C. 1733(g)) states that the use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued under any such regulation, is unlawful and prohibited.

Section 1 of the Unlawful Occupancy and Inclosures of Public Lands Act (43 U.S.C. 1061 *et seq.*) prohibits inclosures and exclusive use and occupancy of the public lands, without claim or color of title as described in the Act. The same Act states, in summary, that no person, by force, threats, intimidation, or by any fencing or any other unlawful means, may prevent or obstruct peaceful entry, free passage or transit over or through the public lands by another person.

43 U.S.C. 1201 states that the Secretary of the Interior, or such officer as the Secretary may designate, is authorized to enforce and to execute, by appropriate regulations, every part of the provisions related to the public lands not otherwise specially provided for.

43 U.S.C. 1457 charges the Secretary with the supervision of public business relating to the public lands, including mines.

18 U.S.C. 1001 states that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writings or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, will be fined not more than $10,000 or imprisoned not more than 5 years, or both.

The Sentencing Reform Act of 1984 (18 U.S.C. 3571 *et seq.*) authorizes fines for Class A misdemeanors of up to $100,000 for individuals and $200,000 for organizations.

Section 3715.0–5 How are Certain Terms in This Subpart Defined?

This section contains definitions of terms significant to this rule. These terms include ''mining laws,'' ''mining operations,'' ''occupancy,'' ''permanent structure,'' ''public lands,'' ''prospecting or exploration,'' ''reasonably incident,'' ''substantially regular work,'' and ''unnecessary or undue degradation.'' BLM has not adopted the proposed definition of ''authorized officer.'' To simplify the rule, BLM uses the term ''BLM'' instead of ''authorized officer'' in the final rule.

BLM has added a definition of ''mining laws'' to the final rule in order to make it clear that this term refers to all laws that apply to hardrock mining on public lands and which make public lands available for hardrock mineral development.

BLM has added a definition of ''public lands'' to the final rule in order to eliminate possible confusion or misinterpretation regarding the lands to which this rule applies. The definition also eliminates repetitious language included throughout the proposed rule regarding the rule's applicability to public lands, including mining claims and millsites. In the context of this rule, ''public lands'' are defined as BLM-administered lands open to the operation of the mining laws. These lands specifically include mining claims and millsites on which most mining activities occur. However, to the extent that mining-related activities may occur to a certain extent on the public lands before a proper mining claim or millsite is located, this rule also applies to those public lands. In addition, to the extent that unauthorized uses are occurring on public lands without the proper location of a mining claim or millsite under the guise of a mining operation or mining-related activity, this rule applies. Finally, to the extent unauthorized uses are occurring or may occur on mining claims or millsites located on public lands, this rule also applies.

One comment found the definition of ''occupancy'' overly broad and confusing, stating that it blurred the distinction between activities that justify occupancy and those that comprise occupancy. BLM does not agree, but did modify the wording of the definition for clarity.

One comment pointed out that other multiple uses of the public lands, such as recreation, are allowed as short-term temporary encampments, usually 14 days or less, while conducting that use. The comment suggested that mining-related activities should not be treated differently. BLM has adopted this comment in the final rule and will not treat temporary occupancies up to 14 days as occupancies required to conform to the standards contained in the final rule. As discussed below, §§ 3715.1 and 3715.2 of the final rule provide that this subpart is applicable only to occupancy for more than 14 calendar days in any 90-day period within a 25-mile radius of the initially occupied site.

One comment stated that tents and lean-tos should be excepted from the definition of ''permanent structure,'' so that they can be used for temporary encampments for assessment work or prospecting. Although, as another comment pointed out, temporary encampments may be subject to abuse through conversion or expansion to semi-permanent structures, BLM has

adopted the comment in the final rule, which specifically excludes tents and lean-tos from the definition of ''permanent structure.'' BLM will rely on monitoring to prevent abuse of this provision.

One comment suggested that the use of the ''reasonably incident'' standard should not be read to discourage the continued development of new technology, exploration techniques, or mining methods. It is not the intent of the rule that the standard be limiting in this way. The rule defines the uses of the public land authorized under the general mining law in terms of the prudent miner and appropriate methods, structures, and equipment, and is not designed to discourage the development of new technology, exploration techniques, or mining methods intended to discover, delineate, recover, or process locatable minerals. Such new technologies may be more efficient, cost effective, or environmentally sensitive. BLM will consider them to be reasonably incident if the activity is a good faith effort to improve the methods of prospecting or exploration, mining, or processing locatable minerals.

Several comments stated that the use of the phrase ''substantially regular and steady work'' in proposed § 3715.2 could be construed to prohibit occupancies associated with weekend or intermittent mining activities that would otherwise be legitimate under the general mining law. BLM has changed the phrase ''substantially regular and steady work'' to ''substantially regular work'' and included a definition in this section of the final rule. ''Substantially regular work'' means work on, or that substantially and directly benefits, a mineral property, including nearby properties under the control of the operator. The work must be associated with the search for and development of mineral deposits or the processing of ores. It includes active and continuing exploration, mining, and beneficiation or processing of ores. It also includes assembly or maintenance of equipment, work on physical improvements, and procurement of supplies, incidental to activities meeting the conditions of this subpart. It may also include off-site trips associated with these activities. The term encompasses a seasonal, but recurring, work program. This provision does not prohibit weekend or intermittent mining activities. Such activities, if carried out in good faith, may warrant occupancy under certain circumstances. This requirement is not intended to preclude activities that are reasonably undertaken to carry out the justified occupancy.

One comment raised a concern that the rule was not adequately based on the ''unnecessary or undue degradation'' standard and raised a question about the ease of interpretation and enforcement of the ''unnecessary or undue degradation'' standard as applied to occupancy. BLM's regulations at 43 CFR parts 3802 and 3809 define ''unnecessary and undue degradation'' to mean, among other things, ''surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character.'' The purpose of the 43 CFR parts 3802 and 3809 regulations is to establish procedures to prevent unnecessary or undue degradation of public lands by mining operations. 43 CFR 3802.0–1 and 3809.0–1. However, the purpose of this rule is to distinguish between those uses that are authorized by the mining laws and those that are not and to prohibit those that are not authorized. Because this rule covers regulation of those uses that are not authorized, BLM has added a definition of ''unnecessary or undue degradation'' to these rules to address unauthorized uses that are not covered by the 43 CFR parts 3802 and 3809 definitions of ''unnecessary or undue degradation.''

Section 3715.0–9 Information Collection

Final § 3715.0–9 explains that BLM has submitted to the Office of Management and Budget (OMB) the information collection requirements contained in this subpart under 44 U.S.C. 3507 and the Paperwork Reduction Act of 1995. BLM collects the information so that it may manage use and occupancy of the public lands by prohibiting unauthorized uses and occupancies. A response is mandatory and required to obtain the benefit of occupying the public lands for reasonably incident activities.

BLM inadvertently omitted this section from the proposal, but is including it in the final rule because the Paperwork Reduction Act requires it. This section is technical in nature and imposes no requirements in addition to subpart 3715.

Section 3715.1 Do the Regulations in This Subpart Apply to My Use or Occupancy?

Final § 3715.1 consists of a table that provides information to enable persons to determine if this subpart governs their activities. This section of the final rule corresponds to § 3715.1 of the proposed rule, but has been reformatted for clarity. No comments were received on this portion of the proposal.

Proposed § 3715.3(k) exempted authorized occupancies from the time limits of 43 CFR 8365.1–2. BLM has made some minor editorial changes to that provision and moved it to the table in final § 3715.1.

Section 3715.2 What Activities Do I Have To Be Engaged in to Allow Me To Occupy the Public Lands?

Final § 3715.2 describes the circumstances warranting occupancy of the public lands under this subpart.

In response to a comment on the definition of ''occupancy'' suggesting a need to treat uses and occupancies of less than 14-day duration in a consistent manner, the final rule indicates that subpart 3715 governs uses and occupancies lasting for more than 14 calendar days. In addition, the table in § 3715.1 states that this subpart does not apply to occupancy of 14 days or less in any 90-day period on the same site or within a 25-mile radius of that site. This section of the final rule is intended to prevent abusers of the mining laws from circumventing its requirements by moving illegal occupancies (for example, recreational vehicles) from one site to another nearby.

Section 3715.2–1 What Additional Characteristic(s) Must my Occupancy Have?

Final § 3715.2–1 provides that in addition to the requirements specified in § 3715.2, occupancies must involve at least one of five qualifying activities in order to warrant an occupancy.

One comment suggested that equipment that requires protection from theft or loss or that would constitute a danger to the public should warrant occupancy of a mining claim if the equipment is not otherwise readily portable, and if the equipment cannot reasonably be protected through means other than site occupancy, or if the hazard could not be prevented by reasonable means other than occupancy. BLM has adopted this comment in the final rule and has revised § 3715.2–1(b) accordingly. A certain minimum amount of appropriate, operable equipment is necessary to warrant an occupancy. This minimum amount may vary among operations. The equipment you assert to justify an occupancy should be in regular use and required for the operation. Equipment used only infrequently should normally be stored at an off-site equipment yard. Appropriate and operable equipment of such size and type that may be easily placed in a three-quarter ton pickup truck and/or towed utility trailer and

hauled away at the end of a work day will not by itself normally justify an occupancy. Larger amounts of equipment may also be removable at the end of a work day, depending on the situation. On the other hand, nothing in this provision prevents the storage and use of portable equipment and personnel for prospecting and exploration for 14 days or less. Unused or infrequently used equipment cannot be stored on site or added to on-site equipment to justify an occupancy.

Final § 3715.2–1(e) has been revised editorially to make it clear that the work expected on an occupied site is that which is usual and customary, which is ordinarily not less than 8 hours but not necessarily an unbroken 8-hour shift or a rigid 8-hour shift every day. For example, the first and last days of an occupancy may be short for travel purposes, or shifts may be split overnight between two days.

Section 3715.2–2 How Do I Justify Occupancy by a Caretaker or Watchman?

Final § 3715.2–2 provides the conditions you must meet in order to justify a caretaker or watchman. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.2–3 Under What Circumstances Will BLM Allow Me To Temporarily Occupy a Site for More Than 14 Days?

Final § 3715.2–3 describes the circumstances under which BLM will allow you to remain on a site temporarily beyond 14 days without first having met all of the requirements in this subpart for beginning occupancy. This provision was not part of the proposed rule, but BLM added it to the final rule in response to a commenter's concern about site security.

Section 3715.3 Must I Consult With BLM Before Occupancy?

This section of the final rule is organized as a table that lists the requirements you must follow to consult with BLM regarding a proposed occupancy before occupancy may begin in connection with a plan of operations, notice-level activities, or casual use activities. The table also notes that in some cases you may propose both to occupy the public lands and to conduct notice-level or casual use activities that do not involve occupancy. In those cases, any notice-level or casual use activities that do not involve occupancy may proceed in accordance with authorizing regulations without consulting BLM. For example, you may propose both to build a cabin on a mining claim and to dig a small pit subject to the notice provisions of 43 CFR part 3800, subpart 3809. Under the final rule, you could dig the pit after giving notice to BLM under subpart 3809, but would have to consult with BLM before building the cabin.

One comment stated that, whereas the proposed rule is often directed toward new operations, the rule should also address modifications of plans of operations that are often necessitated by changed conditions or operations. BLM adopted this comment and added language to final § 3715.3 making it applicable to plan modifications as well as new plans. Plan modifications may call for new, additional, or enhanced occupancy.

Several comments suggested that certain activities that are incidental to justified occupancies, but are not themselves actually reasonably incident, should be allowed if they do not cause unnecessary or undue degradation. The activities of concern in this connection are recreational in nature, done after regular work on the mining claim during periods of occupancy. The rule is not intended to preclude such activities where they are reasonably undertaken together with the justified occupancy.

Section 3715.3–1 At What Point May I Begin Occupancy?

Final § 3715.3–1 describes the requirements you must meet before you may begin occupancy. This provision consolidates two proposed provisions related to restrictions on initiating occupancy, proposed §§ 3715.3(b) and 3715.4(b).

One comment stated that it was unreasonable for proposed § 3715.4(b) to require operators to obtain all necessary state permits before beginning use or occupancy of a claim. The comment pointed out that this would require that all permits conceivably necessary during the life of the mining operation be obtained in advance rather than as needed. BLM accepted this comment and changed final § 3715.3–1(b) to require only those permits necessary for the particular use or reasonably incident use justifying the occupancy. Requiring compliance with building codes is not a matter of technicalities; rather, it is important in protecting public health and safety. A 1982 report of the General Accounting Office (GAO), for example, described cases in which buildings on mining claims that did not meet local building codes burned and caused death and injury. See GAO, *Illegal and Unauthorized Activities on Public Lands—A Problem with Serious Implications,* No. RCED–8248 (1982), pp. 30–32.

Section 3715.3–2 What Information Must I Provide to BLM About My Proposed Occupancy?

Final § 3715.3–2 describes the kinds of information that you must provide to BLM regarding your proposed occupancy, including maps and written descriptions of your occupancy. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.3–3 How Does BLM Process the Information I Submit About My Proposed Occupancy?

Final § 3715.3–3 provides that BLM must review all proposed occupancies, enclosures, fences, gates, or signs intended to exclude the general public in order to make a concurrence or non-concurrence determination. This section also describes the timing of BLM's review, including any action that BLM must take to comply with the National Environmental Policy Act (NEPA), the National Historic Preservation Act, Section 7 of the Endangered Species Act, and/or other applicable statutes. For example, under NEPA, BLM will analyze the environmental impact of your proposed occupancy and document in writing its analysis and findings. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.3–4 How Will BLM Notify Me of the Outcome of Its Review Process?

Final § 3715.3–4 describes the written determination of concurrence or non-concurrence you will receive from BLM after its review is complete. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.3–5 What Will BLM's Notification Include?

Final § 3715.3–5 describes what information BLM's written determination of concurrence or non-concurrence will contain. BLM found that the second sentence of proposed § 3715.3(h)(1), which identified the circumstances under which BLM would order an immediate, temporary suspension of occupancy, to be redundant with the immediate, temporary suspension provision in final § 3715.7–1(a) and removed it from proposed § 3715.3. Also, BLM moved

the provision describing when BLM will assume that a risk to health, safety, and the environment exists to final § 3715.7–1(a).

Several comments suggested that proposed § 3715.3(h)(2) should be amended to state that BLM will allow a proposed occupancy to be amended if the original proposal results in a non-concurrence. BLM adopted this suggestion in § 3715.3–5(b) of the final rule. It is in the public interest to permit appropriate activity under the general mining law if this activity can be planned through cooperation between you and BLM, avoiding costly administrative appeals, if possible, in cases where the initial proposal is not accepted.

Section 3715.3–6 May I Begin Occupancy if I Have Not Received Concurrence From BLM?

Final § 3715.3–6 prohibits beginning occupancy until a concurrence from BLM is received. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.4 What if I have an Existing Use or Occupancy?

Final § 3715.4 describes how this subpart applies to existing uses and occupancies. This section of the final rule combines proposed §§ 3715.7 (a) and (d). BLM revised this section to make it clear that existing use or occupancy that is not reasonably incident may be subject to an immediate, temporary suspension, if necessary to protect health, safety, or the environment. BLM received no comments on this part of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.4–1 What Happens After I Give BLM Written Notification of My Existing Occupancy?

Final § 3715.4–1 describes the actions BLM will take after it receives a written notification of your existing occupancy. Paragraph (a) of this section, which provides that BLM will visit your site during the normal course of inspection to obtain the information required under § 3715.3–2, did not exist in the proposed rule. However, BLM added it to the final rule in an effort to reduce the paperwork burden on operators with existing occupancies. Final § 3715.4–1(b) was proposed as § 3715.7(b) and is adopted with minor editorial changes.

Taken together, §§ 3715.4 and 4–1 allow your existing occupancy a one-year grace period from compliance with this final rule if you timely notify BLM of the occupancy, with the expectation that BLM will visit your site within that one-year period to gather additional information. If the year passes and BLM has not yet visited your site, this final rule does not require you to take any further action with regard to obtaining BLM's concurrence in your occupancy. At that point, the ball would be in BLM's court.

Section 3715.4–2 What if I Do Not Notify BLM of My Existing Occupancy?

Final § 3715.4–2 (proposed § 3715.7(c)) states that you are subject to the penalty and enforcement provisions of this subpart if you do not file the written notice required in § 3715.4. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.4–3 What if BLM Does Not Concur in My Existing Use or Occupancy?

Final § 3715.4–3 describes the actions BLM may take after inspection if it determines that your use or occupancy, or portion thereof, is not reasonably incident. Final § 3715.4–3 consolidates provisions proposed at §§ 3715.6 (b) and (c) as they apply to existing operations. BLM moved proposed § 3715.6(c) to final § 3715.4–3(b) because it deals with existing use and occupancy. BLM received no comments on this part of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.4–4 What if There is a Dispute Over the Fee Simple Title to the Lands on Which My Existing Occupancy is Located?

Final § 3715.4–4 describes BLM's discretion in deferring a determination regarding the status of your occupancy if the lands on which the occupancy occurs are involved in a title dispute with the United States regarding the underlying fee simple title to the land. This provision was not part of the proposal, but BLM added it to the final rule to make it clear that BLM has discretion to defer the point at which it deals with occupancy on lands over which a title dispute exists.

Section 3715.5 What Standards Apply to My Use or Occupancy?

Final § 3715.5 describes the laws and standards which you must comply with while engaging in any use or occupancy of the public lands. Paragraph (b) of this section refers to the federal and state standards that apply to uses of public lands under the mining laws. Paragraph (c) refers to the standards applicable to occupancies. The paragraphs are identical, except that occupancies are subject to the standards of this final rule, while uses are not.

These provisions were included in the proposal as §§ 3715.4 (a), (c), (d), and (e) respectively. One comment addressed proposed § 3715.4(e), pointing out that, normally, residential structures need only be in compliance with building and other codes in effect at the time of construction, rather than, as the proposed rule implied, with current codes. The final rule has been changed to require structures to conform with ''applicable'' state or local codes. If, in some areas, structures need only be in compliance with codes in effect at the time of construction, those codes will be the only ones applicable.

Several comments objected to BLM's adoption of state and local building codes rather than promulgation of its own regulatory requirements. BLM does not agree and did not adopt these comments in the final rule. State and local building codes are a function of the police powers held by state and local governments. In addition, the building codes already exist and are tried and tested.

One comment pointed out that it may be a burden for state or local officials to visit remote claims to inspect for code compliance, and another suggested that the rule allow BLM to waive compliance with such codes in truly remote areas. BLM does not agree and did not adopt these comments in the final rule. If state or local agencies wish to waive code compliance, BLM will recognize that waiver, but BLM has no authority to independently allow you to ignore code requirements.

One comment called on the BLM to adopt a standard that combines the reasonably incident standard with a ''required'' standard, that is, to disallow use and occupancy that is not required in order to conduct mining activities. The comment argued that *United States* v. *Richardson,* 599 F.2d 290 (9th Cir.), *cert. denied,* 444 U.S. 1014 (1980), serves as a precedent for using this combined standard. BLM chooses to adopt the standard of ''reasonably incident to'' rather than ''required for'' prospecting, mining, or processing operations. The statutory language quoted in the comment is in section 4(c) of the 1955 Act and relates to the severance and use of vegetative and other surface resources. Such use must be required for mining, prospecting, or processing operations and uses reasonably incident thereto. However, the general standard applied in this rule is found in section 4(a) of the 1955 Act, which prohibits the use of the claim itself for any purposes other than

prospecting, mining or processing operations and uses reasonably incident thereto. Under section 4(c) of the 1955 Act, surface resources may be used only if ''required'' for uses ''reasonably incident'' to mining. The tighter standard for removal and use of trees and other surface resources in section 4(c) is built upon the standard in section 4(a). The applicable standard for activities on the claims is the basic ''reasonably incident'' standard rather than the ''required'' standard that is applicable only to removal and use of trees and other surface resources. The burden of proving that activities are reasonably incident to mining will remain on you, as it is under existing law, and occupancies that are not reasonably incident will not be allowed.

Section 3715.5–1 What Standards Apply to Ending My Use or Occupancy?

Final § 3715.5–1 describes what you must do with structures, material, equipment or other personal property placed on the public lands during your use or occupancy when your use or occupancy ends.

These provisions were included in the proposal as §§ 3715.4 (f) and (f)(1) respectively. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.5–2 What Happens to Property I Leave Behind?

Final § 3715.5–2 describes what BLM will do with property you leave on the public lands after your use or occupancy ends. This provision was included in the proposal as § 3715.4(f)(2). BLM received no comments on this part of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.6 What Things Does BLM Prohibit Under This Subpart?

Final § 3715.6 (proposed § 3715.5) describes those activities, uses, or occupancies that are prohibited under this subpart.

Two comments pointed out drafting errors in proposed § 3715.5. Paragraph (a), as proposed, would have required a violation of both the conditions of occupancy under proposed § 3715.2 and one or more of the standards of occupancy under proposed § 3715.4. The intent of the rule is that uses or occupancies are not permitted that violate any provision of § 3715.2, § 3715.2–1 *or* § 3715.5. Also, paragraph (b) as proposed could have been read to imply that occupancy might be initiated after rejection of a plan of operation. Paragraphs (a) and (b) of § 3715.6 in the final rule have been revised to correct these errors.

Some comments argued that claimants with claims located before 1955 are not barred from blocking access to or through the claims. The *Crawford* case, *supra*, at pages 216–217, stated that section 4(b) of the 1955 Act substantially changed the mining law with regard to access. Actions by owners of such claims to block reasonable access by the public will, however, prompt a determination of surface rights under section 5 of the 1955 Act and 43 CFR part 3710, subpart 3712, and/or a validity examination.

One comment stated that proposed § 3715.5(f) would not allow an operator to exclude the public from hazardous areas or areas that need to be secure for proprietary reasons. BLM has corrected this provision at § 3715.6(f) of the final rule to allow operators to take reasonable security measures. Mining claimants have the right to exclude the public from use of the land within the operation in order to prevent material interference with the operation or to comply with relevant state or federal law or regulations.

One comment noted that proposed § 3715.5(i) should be amended to prohibit non-mining related animal maintenance or pasturage. BLM has adopted this comment, but has also revised § 3715.6(i) of the final rule to make it clear that the acts listed are prohibited unless they are allowable under other applicable law or regulation. For example, a non-mining activity on a mining claim could be authorized under 43 CFR part 2920 under appropriate circumstances.

Section 3715.7 How Will BLM Inspect My Use or Occupancy and Enforce This Subpart?

Final § 3715.7 provides that BLM field staff is authorized to physically inspect all structures, equipment, workings and uses located on public lands and will not inspect the inside of structures used solely as residences without permission from the occupant or a proper court.

BLM included these provisions in the proposal at § 3715.6(a). One comment suggested that proposed § 3715.6(a) should be amended to provide BLM with discretion to inspect all occupancies on public lands rather than obligate BLM to inspect all such occupancies. The proposed rule language was not intended to obligate BLM to conduct inspections within a certain timeframe. The language is merely to establish BLM's authority to conduct inspections of all structures, equipment, workings and uses located on public lands. Final § 3715.6(a) has been amended to make it clear that there is no time limitation placed on BLM for inspections.

Section 3715.7–1 What Types of Enforcement Action Can BLM Take if I Do Not Meet the Requirements of This Subpart?

Final § 3715.7–1 discusses the four types of orders that BLM can issue to you, depending on the circumstances, for not complying with the provisions of this subpart.

Final paragraph (a) describes the circumstance under which BLM can order an immediate, temporary suspension of use or occupancy prior to a hearing if you are not in compliance with §§ 3715.2, 3715.2–1, 3715.3–1(b), 3715.5 or 3715.5–1, if necessary to protect health, safety or the environment. If you fail at any time to meet any of the standards in paragraphs §§ 3715.3–1(b) and 3715.5 (b), (c) and (d), BLM will presume that a risk to health, safety or the environment exists. BLM's assumption that breach of those sections creates a risk to health, safety, or the environment is based on the nature of those requirements. Readers should note that an appeal of an order issued under this paragraph does not stay the effect of the order. This means that if BLM orders you under this paragraph to immediately suspend your occupancy, you must comply even if you file an appeal. Your activity must remain suspended until the appeal has been decided.

Section 3715.3–1(b) requires you to be in possession of all requisite federal, state and local mining, reclamation, and waste disposal permits, approvals, or other authorizations before beginning an occupancy. Sections 3715.5 (b) and (c) require your use or occupancy to conform to all applicable federal, state and local environmental standards and have all requisite permits and authorizations. In addition, § 3715.5(e) requires your buildings and structures to comply with state and local building, fire and electrical codes and occupational safety and health and mine safety standards. To the extent that you do not possess the proper mining, reclamation, waste disposal, building, fire, electrical or occupational safety or mine safety permits or have not met related standards, BLM may reasonably assume that you are creating a risk to health, safety or the environment. This provision was included in the proposal at §§ 3715.3(h)(1) and 3715.6(b). The final rule has been revised editorially at § 3715.7–1(a)(3) to make clear the corrective actions BLM may require you to take to correct the noncompliance in

addition to suspension of the use or occupancy.

Final paragraph (b) was not included in the proposal, but BLM added it to the final rule because, while the final rule provides for immediate, temporary suspensions, no provision specifically provided for cessation of unlawful use or occupancy, subject to normal appeal procedures or for failure to comply with BLM notices of noncompliance.

Final paragraph (c) describes the circumstances under which BLM can issue notices of noncompliance. BLM included paragraph (c) of the final rule in the proposal at § 3715.6(d). BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Final paragraph (d) describes the circumstances under which BLM can order you to apply within 30 days for authorization under the regulations of 43 CFR Group 2900 or 8300, or, as to sites in Alaska, 43 CFR part 2560.

Section 3715.7–2 What Happens if I Do Not Comply With a BLM Order?

Final § 3715.7–2 describes the legal remedies the Interior Department may seek if you do not comply with a BLM order. This relief may be in addition to the penalties described in § 3715.8. BLM included this paragraph in the proposal at § 3715.6(f). BLM received no comments on this part of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.8 What Penalties Are Available to BLM for Violations of This Subpart?

Final § 3715.8 describes the penalties BLM may seek against individuals or corporations for knowingly and willfully violating requirements of this subpart.

One comment suggested that the penalty provisions in proposed § 3715.8 be amended to incorporate the maximum penalties provided for in the Sentencing Reform Act of 1984, as amended (18 U.S.C. 3571 *et seq.*). BLM adopted this comment and made the penalties described in the final rule consistent with the penalties that a court could otherwise impose under the Sentencing Reform Act. Penalty provisions such as those in both FLPMA and the Unlawful Occupancy and Inclosures of Public Lands Act, which provide for up to a year in jail or a fine of $1,000 for violations, are classified as Class A misdemeanors under 18 U.S.C. 3559. The Sentencing Reform Act authorizes fines for Class A misdemeanors of up to $100,000 for individuals and $200,000 for organizations.

Section 3715.8–1 What Happens if I Make False Statements to BLM?

Final § 3715.8–1 describes possible legal consequences if you make false statements to BLM. BLM included this paragraph in the proposal at § 3715.8(b). BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.9 What Appeal Rights Do I Have?

Final § 3715.9 describes the way in which you may appeal BLM decisions, orders or determinations made under this subpart.

BLM has removed provisions included in the proposal which allowed for appeals to the State Director. This change is made to make the appeals provisions in this rule consistent with BLM's other appeals provisions. In addition, because appeals from a BLM non-concurrence or a cessation order may require a hearing, an appellant's rights are best preserved by providing an opportunity for a hearing before an administrative law judge or an administrative appeals board.

Section 3715.9–1 Does an Appeal to IBLA Suspend a BLM Decision?

Final § 3715.9–1 describes the conditions under which a BLM decision may be suspended while IBLA considers an appeal of that decision.

BLM included these paragraphs in the proposal at §§ 3715.9 (b) and (f). BLM received no comments on this portion of the proposal and adopts it with minor editorial changes into the final rule. BLM did not include proposed § 3715.9(g) in the final rule because it is subsumed in the right to appeal a BLM decision to IBLA.

III. Procedural Matters

National Environmental Policy Act

BLM has determined that this final rule does not constitute a major federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not meet any of the 10 criteria for exceptions to categorical exclusion listed in 516 DM 2, Appendix 2. This categorical exclusion includes rules that are of a financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis. Under the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a categories of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Executive Order 12866 and Regulatory Flexibility Act

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. No discernible economic impacts on operations involving occupancy are expected from this final rule. All operations involving occupancy are expected to occur under notices or plans covered by 43 CFR part 3800, subparts 3802 or 3809. The BLM is unaware of any specific casual use occupancies. The cost of complying with the requirements of the final rule is indistinguishable from the requirements imposed by the existing surface management regulations found in 43 CFR part 3800, because the requirements of the final rule limit uses and occupancies to those that are governed by 43 CFR part 3800. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The effect of the rule will be to curtail occupancy activities by those whose occupancy of the public lands is not reasonably incident to mining, prospecting or exploration, or processing operations. Such activities are already, and have long been, prohibited by law. Therefore, the only activities that would be curtailed are those that are already unlawful.

Federal Paperwork Reduction Act

Under 44 U.S.C. 3507 and the Paperwork Reduction Act of 1995, the Office of Management and Budget (OMB) has approved the information collection requirements contained in this subpart. OMB has assigned clearance number 1004–0169. BLM

collects the information so that it may manage use and occupancy of the public lands under the mining laws. A response is mandatory and required to obtain the benefit of occupying the public lands for reasonably incidental activities.

BLM estimates the public reporting burden for this information to average two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (DW–110), Bureau of Land Management, Building 50, Denver Federal Center, Denver, Colorado 80225–0047, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0169, Washington, DC 20503.

Executive Order 12630

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule will not adversely affect lawful occupancies. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

Unfunded Mandates Reform Act

BLM has determined that this regulation is not significant under the Unfunded Mandates Reform Act of 1995, because it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Further, this rule will not significantly or uniquely affect small governments.

Authors

The principal author of this final rule is Richard E. Deery, Solid Minerals Group, BLM. Patrick W. Boyd, Regulatory Management Team, BLM, prepared the plain English version. Staff of the Division of Mineral Resources, Office of the Solicitor, Department of the Interior, provided assistance.

List of Subjects in 43 CFR Part 3710

Administrative practice and procedure, Mines, Public lands-mineral resources.

Dated: May 20, 1996.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

Under the authorities cited below, and for the reasons stated in the preamble, part 3710, group 3700, subchapter C, chapter II, subtitle B, title 43 of the Code of Federal Regulations is amended by adding a new subpart 3715 to read as follows:

PART 3710—PUBLIC LAW 167; ACT OF JULY 23, 1955

Subpart 3715—Use and Occupancy Under the Mining Laws

Sec.

3715.0–1 What are the purpose and the scope of this subpart?
3715.0–3 What are the legal authorities for this subpart?
3715.0–5 How are certain terms in this subpart defined?
3715.0–9 Information collection.
3715.1 Do the regulations in this subpart apply to my use or occupancy?
3715.2 What activities do I have to be engaged in to allow me to occupy the public lands?
3715.2–1 What additional characteristic(s) must my occupancy have?
3715.2–2 How do I justify occupancy by a caretaker or watchman?
3715.2–3 Under what circumstances will BLM allow me to temporarily occupy a site for more than 14 days?
3715.3 Must I consult with BLM before occupancy?
3715.3–1 At what point may I begin occupancy?
3715.3–2 What information must I provide to BLM about my proposed occupancy?
3715.3–3 How does BLM process the information I submit about my proposed occupancy?
3715.3–4 How will BLM notify me of the outcome of its review process?
3715.3–5 What will BLM's notification include?
3715.3–6 May I begin occupancy if I have not received concurrence from BLM?
3715.4 What if I have an existing use or occupancy?
3715.4–1 What happens after I give BLM written notification of my existing occupancy?
3715.4–2 What if I do not notify BLM of my existing occupancy?
3715.4–3 What if BLM does not concur in my existing use or occupancy?
3715.4–4 What if there is a dispute over the fee simple title to the lands on which my existing occupancy is located?
3715.5 What standards apply to my use or occupancy?
3715.5–1 What standards apply to ending my use or occupancy?
3715.5–2 What happens to property I leave behind?
3715.6 What things does BLM prohibit under this subpart?
3715.7 How will BLM inspect my occupancy and enforce this subpart?
3517.7–1 What types of enforcement action can BLM take if I do not meet the requirements of this subpart?
3715.7–2 What happens if I do not comply with a BLM order?
3715.8 What penalties are available to BLM for violations of this subpart?
3715.8–1 What happens if I make false statements to BLM?
3715.9 What appeal rights do I have?
3715.9–1 Does an appeal to IBLA suspend a BLM decision?

Subpart 3715—Use and Occupancy Under the Mining Laws

Authority: 18 U.S.C. 1001, 3571 *et seq.*; 30 U.S.C. 22, 42, 612; 43 U.S.C. 1061 *et seq.*, 1201, 1457, 1732 (b) and (c), 1733 (a) and (g).

§ 3715.0–1 What are the purpose and the scope of this subpart?

(a) *Purpose.* The purpose of this subpart is to manage the use and occupancy of the public lands for the development of locatable mineral deposits by limiting such use or occupancy to that which is reasonably incident. The Bureau of Land Management (BLM) will prevent abuse of the public lands while recognizing valid rights and uses under the Mining Law of 1872 (30 U.S.C. 22 *et seq.*) and related laws governing the public lands, regardless of when those rights were created. BLM will take appropriate action to eliminate invalid uses, including unauthorized residential occupancy of the public lands.

(b) *Scope.* This subpart applies to public lands BLM administers. They do not apply to state or private lands in which the mineral estate has been reserved to the United States. They do not apply to Federal lands administered by other Federal agencies, even though those lands may be subject to the operation of the mining laws.

(c) This subpart does not impair the right of any person to engage in recreational activities or any other authorized activity on public lands BLM administers.

§ 3715.0–3 What are the legal authorities for this subpart?

The authorities for this subpart are 18 U.S.C. 1001, 3571 *et seq.*; 30 U.S.C. 22, 42, 612; 43 U.S.C. 1061 *et seq.*, 1201, 1457, 1732 (b) and (c), 1733 (a) and (g).

§ 3715.0–5 How are certain terms in this subpart defined?

As used in this subpart the term:

Mining laws means all laws that apply to hardrock mining on public lands and which make public lands available for hardrock mineral development. This includes, but is not limited to, the general authorities relating to hardrock mining or to the public lands on which

this rule is based and case law which interprets those authorities.

Mining operations means all functions, work, facilities, and activities reasonably incident to mining or processing of mineral deposits. It includes building roads and other means of access to a mining claim or millsite on public lands.

Occupancy means full or part-time residence on the public lands. It also means activities that involve residence; the construction, presence, or maintenance of temporary or permanent structures that may be used for such purposes; or the use of a watchman or caretaker for the purpose of monitoring activities. Residence or structures include, but are not limited to, barriers to access, fences, tents, motor homes, trailers, cabins, houses, buildings, and storage of equipment or supplies.

Permanent structure means a structure fixed to the ground by any of the various types of foundations, slabs, piers, poles, or other means allowed by building codes. The term also includes a structure placed on the ground that lacks foundations, slabs, piers, or poles, and that can only be moved through disassembly into its component parts or by techniques commonly used in house moving. The term does not apply to tents or lean-tos.

Public lands means lands open to the operation of the mining laws which BLM administers, including lands covered by unpatented mining claims or millsites.

Prospecting or exploration means the search for mineral deposits by geological, geophysical, geochemical, or other techniques. It also includes, but is not limited to, sampling, drilling, or developing surface or underground workings to evaluate the type, extent, quantity, or quality of mineral values present.

Reasonably incident means the statutory standard ''prospecting, mining, or processing operations and uses reasonably incident thereto'' (30 U.S.C. 612). It is a shortened version of the statutory standard. It includes those actions or expenditures of labor and resources by a person of ordinary prudence to prospect, explore, define, develop, mine, or beneficiate a valuable mineral deposit, using methods, structures, and equipment appropriate to the geological terrain, mineral deposit, and stage of development and reasonably related activities.

Substantially regular work means work on, or that substantially and directly benefits, a mineral property, including nearby properties under your control. The work must be associated with the search for and development of mineral deposits or the processing of ores. It includes active and continuing exploration, mining, and beneficiation or processing of ores. It may also include assembly or maintenance of equipment, work on physical improvements, and procurement of supplies, incidental to activities meeting the conditions of §§ 3715.2 and 3715.2–1. It may also include off-site trips associated with these activities. The term also includes a seasonal, but recurring, work program.

Unnecessary or undue degradation, as applied to unauthorized uses, means those activities that are not reasonably incident and are not authorized under any other applicable law or regulation. As applied to authorized uses, the term is used as defined in 43 CFR 3802.0–5 and 3809.0–5.

§ 3715.0–9 Information collection.

(a) BLM has submitted to the Office of Management and Budget the information collection requirements contained in this subpart under 44 U.S.C. 3507 and the Paperwork Reduction Act of 1995 and assigned clearance number 1004–0169. BLM collects the information so that it may manage use and occupancy of public lands under the mining laws by prohibiting unauthorized uses and occupancies. A response to BLM is mandatory and required to obtain the benefit of occupying the public lands for reasonably incident activities.

(b) BLM estimates the public reporting burden for this information to average two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (DW–110), Bureau of Land Management, Building 50, Denver Federal Center, Denver, Colorado 80225–0047, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0169, Washington, DC 20503.

§ 3715.1 Do the regulations in this subpart apply to my use or occupancy?

To determine if the regulations in this subpart apply to your activities, refer to Table 1 in this section.

TABLE 1

Applicability of this subpart	
If your proposed use of the public lands—	Then—
Includes occupancy and is ''reasonably incident'' as defined by this subpart.	The provisions of this subpart apply to you. You must seek concurrence from BLM before beginning this use and comply with all provisions of this subpart.
Involves the placement, construction, or maintenance of enclosures, gates, fences, or signs.	The provisions of this subpart apply to you. You must seek concurrence from BLM before beginning this use and comply with all provisions of this subpart.
Is reasonably incident, but does not involve occupancy	The provisions of this subpart do not apply to you, except for §§ 3715.4, 3715.5 and 3715.7. You are subject to the applicable regulations in 43 CFR part 3800.
Is *not* reasonably incident (involving rights-of-way, for example), but may be allowed under the public land laws.	The occupancy consultation provisions of this subpart do not apply to you. Your use is not allowed under this subpart. You must seek authorization under 43 CFR Group 2900.
Is not allowed under the public land laws, the mining laws, the mineral leasing laws, or other applicable laws.	Your use is prohibited. You must not begin or continue unauthorized uses.
Involves occupancy of a site, or any subsequent site within a 25-mile radius of the initially occupied site, for 14 days or less in any 90-day period.	The provisions of this subpart do not apply to you. Refer to the applicable regulations in 43 CFR part 8360 and pertinent State Director supplementary rules. 43 CFR part 8360 will not otherwise apply to a reasonably incident use or occupancy that this subpart allows.

§ 3715.2 What activities do I have to be engaged in to allow me to occupy the public lands?

In order to occupy the public lands under the mining laws for more than 14 calendar days in any 90-day period within a 25-mile radius of the initially occupied site, you must be engaged in certain activities. Those activities that are the reason for your occupancy must:

(a) Be reasonably incident;

(b) Constitute substantially regular work;

(c) Be reasonably calculated to lead to the extraction and beneficiation of minerals;

(d) Involve observable on-the-ground activity that BLM may verify under § 3715.7; and

(e) Use appropriate equipment that is presently operable, subject to the need for reasonable assembly, maintenance, repair or fabrication of replacement parts.

§ 3715.2–1 What additional characteristic(s) must my occupancy have?

In addition to the requirements specified in § 3715.2, your occupancy must involve one or more of the following:

(a) Protecting exposed, concentrated or otherwise accessible valuable minerals from theft or loss;

(b) Protecting from theft or loss appropriate, operable equipment which is regularly used, is not readily portable, and cannot be protected by means other than occupancy;

(c) Protecting the public from appropriate, operable equipment which is regularly used, is not readily portable, and if left unattended, creates a hazard to public safety;

(d) Protecting the public from surface uses, workings, or improvements which, if left unattended, create a hazard to public safety; or

(e) Being located in an area so isolated or lacking in physical access as to require the mining claimant, operator, or workers to remain on site in order to work a full shift of a usual and customary length. A full shift is ordinarily 8 hours and does not include travel time to the site from a community or area in which housing may be obtained.

§ 3715.2–2 How do I justify occupancy by a caretaker or watchman?

If you assert the need for a watchman or caretaker to occupy the public lands to protect valuable or hazardous property, equipment, or workings, you must show that the need for the occupancy is both reasonably incident and continual. You must show that a watchman or caretaker is required to be present either whenever the operation is not active or whenever you or your workers are not present on the site.

§ 3715.2–3 Under what circumstances will BLM allow me to temporarily occupy a site for more than 14 days?

BLM may allow temporary occupancy at a single site to extend beyond the 14-day period described in § 3715.1 if you need to secure the site beyond 14 days through the use of a watchman as allowed by § 3715.2–2, and you have begun consultation with BLM under § 3715.3. If BLM decides not to concur in the occupancy, the temporary occupancy must stop.

§ 3715.3 Must I consult with BLM before occupancy?

Before beginning occupancy, you must consult with BLM about the requirements of this subpart. See Table 2 in this section.

TABLE 2

Consultation requirements	
If you are proposing a use that would involve occupancy	Then.
Under a plan of operations or a modification submitted under 43 CFR part 3800, subpart 3802 or subpart 3809.	You must include in the proposed plan of operations the materials required by § 3715.3–2 describing any proposed occupancy for BLM review concurrently with review of the plan of operation. BLM will determine whether you have complied with the requirements of this subpart together with its decision approving or modifying the plan.
Under the notice provisions of 43 CFR part 3800, subpart 3809.	You must submit the materials required by § 3715.3–2 together with the materials submitted under 43 CFR 3809.1–3 for BLM review concurrently with its review of the proposed activity. Any activities in the notice that do not involve occupancy and are reasonably incident may proceed in accordance with 43 CFR part 3800, subpart 3809.
And is a ''casual use'' under 43 CFR 3809.1–2 or does not require a plan of operations under 43 CFR 3802.1–2 and 3809.1–4 or a notice under 43 CFR 3809.1–3.	You are subject to the consultation provisions of this subpart and must submit the materials required by § 3715.3–2 to BLM. Any casual use activities that do not involve occupancy and are reasonably incident may proceed in accordance with 43 CFR part 3800, subpart 3809.
Or enclosures, fences, gates, or signs intended to exclude the general public.	You are subject to the consultation provisions of this subpart and must submit the materials required by § 3715.3–2 to BLM.

§ 3715.3–1 At what point may I begin occupancy?

You must not begin occupancy until—

(a) You have complied with either 43 CFR part 3800, subpart 3802 or 3809 and this subpart, and BLM has completed its review and made the required determinations under the applicable subparts, and

(b) You have obtained all federal, state and local mining, reclamation, and waste disposal permits, approvals, or other authorizations for the particular use or occupancy as required under this subpart.

§ 3715.3–2 What information must I provide to BLM about my proposed occupancy?

You must give BLM a detailed map that identifies the site and the placement of the items specified in paragraphs (c), (d), and (e) of this section, and a written description of the proposed occupancy that describes in detail:

(a) How the proposed occupancy is reasonably incident;

(b) How the proposed occupancy meets the conditions specified in § 3715.2 and § 3715.2–1;

(c) Where you will place temporary or permanent structures for occupancy;

(d) The location of and reason you need enclosures, fences, gates, and signs intended to exclude the general public;

(e) The location of reasonable public passage or access routes through or around the area to adjacent public lands; and

(f) The estimated period of use of the structures, enclosures, fences, gates, and signs, as well as the schedule for removal and reclamation when operations end.

§ 3715.3–3 How does BLM process the information I submit about my proposed occupancy?

BLM will review all proposed occupancies and all proposed enclosures, fences, gates, or signs intended to exclude the general public to determine if your proposed occupancy or use will conform to the provisions of §§ 3715.2, 3715.2–1 and 3715.5. BLM will complete its review of a proposed occupancy not involving a plan of operations within 30 business days of receipt of the materials, unless it concludes that the determination cannot be made until:

(a) 30 business days after it prepares necessary environmental documents, and

(b) 30 business days after it has complied with section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act, and/or other applicable statutes, if applicable.

§ 3715.3–4 How will BLM notify me of the outcome of its review process?

At the conclusion of the review, BLM will make a written determination of concurrence or non-concurrence, and will send it to you. For operations conducted under a plan of operations, BLM will include this written determination in the decision that approves, modifies, or rejects the plan.

§ 3715.3–5 What will BLM's notification include?

(a) BLM will include in each determination of concurrence a statement requiring you to continue to comply with §§ 3715.2, 3715.2–1 and 3715.5.

(b) BLM will specify in each determination of non-concurrence how the proposed occupancy fails to meet the conditions of § 3715.2, § 3715.2–1 or § 3715.5, and will provide you an opportunity to modify the proposed occupancy or appeal the determination under § 3715.9.

§ 3715.3–6 May I begin occupancy if I have not received concurrence from BLM?

If you have not received concurrence from BLM, you must not begin occupancy even though you have submitted, or plan to submit, an amended occupancy proposal or an appeal.

§ 3715.4 What if I have an existing use or occupancy?

(a) By August 18, 1997, all existing uses and occupancies must meet the applicable requirements of this subpart. If not, BLM will either issue you a notice of noncompliance or order any existing use or occupancy failing to meet the requirements of this subpart to suspend or cease under § 3715.7–1. BLM will also order you to reclaim the land under 43 CFR part 3800, subpart 3802 or 3809 to BLM's satisfaction within a specified, reasonable time, unless otherwise expressly authorized.

(b) If you are occupying the public lands under the mining laws on August 15, 1996, you may continue your occupancy for one year after that date, without being subject to the procedures this subpart imposes, if:

(1) You notify BLM by October 15, 1996 of the existence of the occupancy using a format specified by BLM; and

(2) BLM has no pending trespass action against you concerning your occupancy.

(c) The one-year grace period provided in paragraph (b) of this section will not apply if at any time BLM determines that your use or occupancy is not reasonably incident and the continued presence of the use or occupancy is a threat to health, safety or the environment. In this situation, BLM will order an immediate temporary suspension of activities under § 3715.7–1(a).

(d) If you have no existing occupancies, but are engaged in uses of the public lands under the mining law, you are subject to the standards in § 3715.5. BLM will determine if your existing uses comply with those standards during normal inspection visits to the area and during BLM review of notices and plans of operations filed under 43 CFR part 3800.

§ 3715.4–1 What happens after I give BLM written notification of my existing occupancy?

(a) BLM will visit your site during the normal course of inspection to obtain the information described in § 3715.3–2. After the visit, BLM will make a determination of concurrence or non-concurrence.

(b) You must provide the information described in § 3715.3–2 to BLM. You may provide it either in writing or verbally during a site visit by BLM field staff.

§ 3715.4–2 What if I do not notify BLM of my existing occupancy?

If you do not provide the written notice required in § 3715.4, you will be subject to the enforcement actions of § 3715.7–1, the civil remedies of § 3715.7–2, and the criminal penalties of § 3715.8.

§ 3715.4–3 What if BLM does not concur in my existing use or occupancy?

If BLM determines that all or any part of your existing use or occupancy is not reasonably incident:

(a) BLM may order a suspension or cessation of all or part of the use or occupancy under § 3715.7–1;

(b) BLM may order the land to be reclaimed to its satisfaction and specify a reasonable time for completion of reclamation under 43 CFR part 3800; and

(c) BLM may order you to apply within 30 days after the date of notice from BLM for appropriate authorization under the regulations in 43 CFR Group 2900.

§ 3715.4–4 What if there is a dispute over the fee simple title to the lands on which my existing occupancy is located?

BLM may defer a determination of concurrence or non-concurrence with your occupancy until the underlying fee simple title to the land has been finally determined by the Department of the Interior. During this time, your existing occupancy may continue, subject to § 3715.5(a).

§ 3715.5 What standards apply to my use or occupancy?

(a) Your use or occupancy must be reasonably incident. In all uses and occupancies, you must prevent or avoid ''unnecessary or undue degradation'' of the public lands and resources.

(b) Your uses must conform to all applicable federal and state environmental standards and you must have obtained all required permits before beginning, as required under 43 CFR part 3800. This means getting permits and authorizations and meeting standards required by state and federal law, including, but not limited to, the Clean Water Act (33 U.S.C. 1251 *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), and the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), as required under 43 CFR part 3800.

(c) Your occupancies must conform to all applicable federal and state environmental standards and you must have obtained all required permits before beginning, as required under this subpart and 43 CFR part 3800. This means getting permits and authorizations and meeting standards required by state and federal law, including, but not limited to, the Clean Water Act (33 U.S.C. 1251 *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), and the Resource Conservation and Recovery

Act (42 U.S.C. 6901 *et seq.*), as required under this subpart and 43 CFR part 3800.

(d) If your prospecting or exploration activities involve only surface activities, you must not place permanent structures on the public lands. Any temporary structures you place on the public lands during prospecting or exploration will be allowed only for the duration of the activities, unless BLM expressly and in writing allows them to remain longer. If your prospecting or exploration activities involve subsurface activities, you may place permanent structures on the public lands, if BLM concurs.

(e) All permanent and temporary structures you place on the public lands must conform with the applicable state or local building, fire, and electrical codes, and occupational safety and health and mine safety standards. If state or local codes require, you must obtain a certificate of occupancy or its equivalent before you begin use or occupancy involving permanent structures. If state or local law requires, you must also acquire appropriate sewerage and sanitation permits before the occupancy or use of a permanent structure placed on the public lands.

§ 3715.5–1 What standards apply to ending my use or occupancy?

Unless BLM expressly allows them in writing to remain on the public lands, you must remove all permanent structures, temporary structures, material, equipment, or other personal property placed on the public lands during authorized use or occupancy under this subpart. You have 90 days after your operations end to remove these items. If BLM concurs in writing, this provision will not apply to seasonal operations that are temporarily suspended for less than one year and expected to continue during the next operating season or to operations that are suspended for no longer than one year due to market or labor conditions.

§ 3715.5–2 What happens to property I leave behind?

Any property you leave on the public lands beyond the 90-day period described in § 3715.5–1 becomes property of the United States and is subject to removal and disposition at BLM's discretion consistent with applicable laws and regulations. You are liable for the costs BLM incurs in removing and disposing of the property.

§ 3715.6 What things does BLM prohibit under this subpart?

Except where other applicable laws or regulations allow, BLM prohibits the following:

(a) Placing, constructing, maintaining or using residences or structures for occupancy not meeting:

(1) The conditions of occupancy under §§ 3715.2 or 3715.2–1; or

(2) Any of the standards of occupancy under § 3715.5;

(b) Beginning occupancy before the filing, review, and approval or modification of a plan of operation as required under 43 CFR part 3800, subparts 3802 or 3809;

(c) Beginning occupancy before consultation with BLM as required by § 3715.3 for activities that do not require a plan of operations under 43 CFR part 3800, subpart 3802 or that are defined as casual use or notice activities under 43 CFR part 3800, subpart 3809;

(d) Beginning occupancy without receiving a determination of concurrence because the proposed occupancy or fencing will not conform to the provisions of § 3715.2, § 3715.2–1 or § 3715.5;

(e) Not complying with any order issued under this subpart within the time frames the order provides;

(f) Preventing or obstructing free passage or transit over or through the public lands by force, threats, or intimidation; provided, however, that reasonable security and safety measures in accordance with this subpart are allowed;

(g) Placing, constructing, or maintaining enclosures, gates, or fences, or signs intended to exclude the general public, without BLM's concurrence;

(h) Causing a fire or safety hazard or creating a public nuisance;

(i) Not complying with the notification and other requirements under § 3715.4 relating to an existing occupancy; and

(j) Conducting activities on the public lands that are not reasonably incident, including, but not limited to: non-mining related habitation, cultivation, animal maintenance or pasturage, and development of small trade or manufacturing concerns; storage, treatment, processing, or disposal of non-mineral, hazardous or toxic materials or waste that are generated elsewhere and brought onto the public lands; recycling or reprocessing of manufactured material such as scrap electronic parts, appliances, photographic film, and chemicals; searching for buried treasure, treasure trove or archaeological specimens; operating hobby and curio shops; cafes; tourist stands; and hunting and fishing camps.

§ 3715.7 How will BLM inspect my use or occupancy and enforce this subpart?

(a) BLM field staff is authorized to physically inspect all structures, equipment, workings, and uses located on the public lands. The inspection may include verification of the nature of your use and occupancy to ensure that your use or occupancy is, or continues to be, reasonably incident and in compliance with §§ 3715.2, 3715.2–1, 3715.4–1 and 3715.5.

(b) BLM will not inspect the inside of structures used solely for residential purposes, unless an occupant or a court of competent jurisdiction gives permission.

§ 3715.7–1 What types of enforcement action can BLM take if I do not meet the requirements of this subpart?

BLM has four types of orders that it can issue depending on the circumstances:

(a) *Immediate suspension.*

(1) BLM may order an immediate, temporary suspension of all or any part of your use or occupancy if:

(i) All or part of your use or occupancy is not reasonably incident or is not in compliance with §§ 3715.2, 3715.2–1, 3715.3–1(b), 3715.5 or 3715.5–1, and

(ii) an immediate, temporary suspension is necessary to protect health, safety or the environment.

(2) BLM will presume that health, safety or the environment are at risk and will order your use or occupancy to be immediately and temporarily suspended if:

(i) You are conducting an occupancy under a determination of concurrence under this section; and

(ii) You fail at any time to meet any of the standards in paragraphs § 3715.3–1(b) or § 3715.5 (b), (c) or (d).

(3) The suspension order will describe—

(i) How you are failing or have failed to comply with the requirements of this subpart; and

(ii) The actions, in addition to suspension of the use or occupancy, that you must take to correct the noncompliance and the time by which you must suspend the use or occupancy. It will also describe the time, not to exceed 30 days, within which you must complete corrective action.

(4) The suspension order will not be stayed by an appeal.

(b) *Cessation order.*

(1) BLM may order a temporary or permanent cessation of all or any part of your use or occupancy if:

(i) All or any part of your use or occupancy is not reasonably incident but does not endanger health, safety or the environment, to the extent it is not reasonably incident;

(ii) You fail to timely comply with a notice of noncompliance issued under paragraph (c) of this section;

(iii) You fail to timely comply with an order issued under paragraph (d) of this section; or

(iv) You fail to take corrective action during a temporary suspension ordered under paragraph (a) of this section.

(2) The cessation order will describe—

(i) The ways in which your use or occupancy is not reasonably incident; is in violation of a notice of noncompliance issued under paragraph (c) of this section; or is in violation of an order issued under paragraphs (a) or (d) of this section, as appropriate;

(ii) The actions, in addition to cessation of the use or occupancy, that you must take to correct the noncompliance;

(iii) The time by which you must cease the use or occupancy, not to exceed 30 days from the date the Interior Board of Land Appeals affirms BLM's order; and

(iv) The length of the cessation.

(c) *Notice of noncompliance.*

(1) If your use or occupancy is not in compliance with any requirements of this subpart, and BLM has not invoked paragraph (a) of this section, BLM will issue an order that describes—

(i) How you are failing or have failed to comply with the requirements of this subpart;

(ii) The actions that you must take to correct the noncompliance and the time, not to exceed 30 days, within which you must start corrective action; and

(iii) The time within which you must complete corrective action.

(2) If you do not start and complete corrective action within the time allowed, BLM may order an immediate suspension under paragraph (a) of this section, if necessary, or cessation of the use or occupancy under paragraph (b) of this section.

(d) *Other.* If you are conducting an activity that is not reasonably incident but may be authorized under 43 CFR Group 2900 or 8300, or, as to sites in Alaska, 43 CFR part 2560, BLM may order you to apply within 30 days from the date you receive the order for authorization under the listed regulations.

§ 3715.7–2 What happens if I do not comply with a BLM order?

If you do not comply with a BLM order issued under § 3715.7–1, the Department of the Interior may request the United States Attorney to institute a civil action in United States District Court for an injunction or order to prevent you from using or occupying the public lands in violation of the regulations of this subpart. This relief may be in addition to the enforcement actions described in § 3715.7–1 and the penalties described in § 3715.8.

§ 3715.8 What penalties are available to BLM for violations of this subpart?

The penalties for individuals and organizations are as follows:

(a) *Individuals.* If you knowingly and willfully violate the requirements of this subpart, you may be subject to arrest and trial under section 303(a) of FLPMA (43 U.S.C. 1733(a)) and/or section 4 of the Unlawful Occupancy and Inclosures of Public Lands Act (43 U.S.C. 1064). If you are convicted, you will be subject to a fine of not more than $100,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment not to exceed 12 months, or both, for each offense.

(b) *Organizations.* If an organization or corporation knowingly or willfully violates the requirements of this subpart, it is subject to trial and, if convicted, will be subject to a fine of not more than $200,000, or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571.

§ 3715.8–1 What happens if I make false statements to BLM?

You are subject to arrest and trial before a United States District Court if, in any matter under this subpart, you knowingly and willfully falsify, conceal or cover up by any trick, scheme or device a material fact, or make any false, fictitious or fraudulent statements or representations, or make or use any false writings or document knowing the same to contain any false, fictitious or fraudulent statement or entry. If you are convicted, you will be fined not more than $250,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisoned not more than 5 years, or both.

§ 3715.9 What appeal rights do I have?

If you are adversely affected by a BLM decision, order or determination made under this subpart, you may appeal the decision, order or determination to the Interior Board of Land Appeals (IBLA) under the provisions of 43 CFR part 4.

§ 3715.9–1 Does an appeal to IBLA suspend a BLM decision?

(a) An appeal to IBLA does not suspend an order requiring an immediate, temporary suspension of occupancy issued under § 3715.7–1(a) before the appeal or while it is pending. In this case, the provisions of 43 CFR 4.21(a) do not apply.

(b) The provisions of 43 CFR 4.21(a) apply to all other BLM decisions, orders or determinations under this subpart.

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Part III

Department of Housing and Urban Development

Funding Availability and Program Guidelines for the Economic Development Initiative; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4065–N–01]

Office of the Assistant Secretary for Community Planning and Development; Notice of Funding Availability (NOFA) and Program Guidelines for the Economic Development Initiative (EDI)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD

SUMMARY: This NOFA announces the availability of funds for grants under section 108(q) of the Housing and Community Development Act of 1974, as amended. HUD reserves the right to award grants under this NOFA up to the maximum amount authorized by law. As of the date of this NOFA and subject to funding availability, HUD intends to award up to $50 million in EDI grant funds.

In addition to soliciting proposals that undertake traditional economic development projects, HUD is also soliciting proposals to undertake large-scale projects that would create Homeownership Zones—proposals designed to reclaim hard-pressed neighborhoods by creating homeownership opportunities for hardworking low- and moderate-income families and serving as a catalyst for private investment, business creation and neighborhood revitalization. See the separate discussion on Homeownership Zones in section I.(D) below.

Communities that are authorized to obtain Section 108 loan guarantee commitments to carry out qualifying projects are eligible under this NOFA to receive EDI grants. EDI grants are used to enhance the security of the Section 108 guaranteed loan or to improve the feasibility of proposed projects through techniques such as interest rate subsidies, loan loss reserves, etc. This NOFA sets out program guidelines that will govern the application, application review, and award process for this round of EDI grants.

DATES: Applications are due in HUD Headquarters at the address stated below under ''Addresses'' by September 17, 1996. HUD will not accept applications that are submitted to HUD via facsimile (FAX) transmission. Applications that are mailed prior to September 17, 1996, and received within ten (10) days after that date will be deemed to have been received by that date if postmarked by the United States Postal Service by no later than September 16, 1996. Overnight delivery items received within ten (10) days after September 17, 1996, will be deemed to have been received by that date upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than September 16, 1996.

ADDRESSES: On or prior to September 17, 1996, completed applications will be accepted at the following address: Processing and Control Unit, Room 7255, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, Attention: EDI Grant. At close of business on the deadline date, completed applications will also be received in the south lobby of the Department of Housing and Urban Development at the above address (inquire at the security guard desk). However, any application received by the Office of Community Planning and Development in Headquarters, Washington, DC, by September 17, 1996 will be accepted.

FOR FURTHER INFORMATION CONTACT: Paul Webster, Director, Financial Management Division, Office of Block Grant Assistance, Room 7178, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1871.

With respect to proposals for Homeownership Zones contact: Gordon McKay, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Room 7164, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–2685. (These are not toll-free numbers.)

Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The OMB control number, when assigned, will be announced by separate notice in the Federal Register. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Purpose and Substantive Description

(A) *Authority.* Title I, Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301–5320) (the ''Act''); 24 CFR part 570.

(B) *Definitions. CDBG funds* means, in addition to those funds specified at § 570.3, grant funds received pursuant to Section 108(q). CDBG funds received pursuant to section 108(q) must be used for activities eligible under section 108(a) of the Act. This does not include *all* CDBG-eligible activities, but only those listed in 24 CFR 570.703. In addition, funds received pursuant to section 108(q) must be used only in conjunction with projects and activities assisted with section 108 loan guarantee proceeds. Finally, funds received pursuant to section 108(q) may not be disbursed until the section 108 obligations financing the related assisted projects and activities are actually guaranteed under section 108.

Community and Individual Investment Corporation (CIIC) means a for-profit corporation capitalized in part by EDI and Section 108 funds which invests in economic development activities (otherwise eligible for EDI and Section 108 Loan Guarantee assistance under this NOFA) in an identified service area where at least 51 percent of the residents are low and moderate income people and which offers residents of the service area opportunities to purchase and own shares in the Corporation. Note that the CIIC must provide financial and other services to a qualifying low and moderate income area meeting the CDBG program national objective for area benefit activities at 24 CFR 570.208(a)(1). It is important to emphasize that there is a fundamental difference between a CIIC and a Community Development Financial Institution (CDFI). CDFIs are private and community initiated financial institutions which may apply for part of their capitalization to the Federal Government (the CDFI Fund which is part of the Department of the Treasury). By contrast, in the case of CIICs, the process of formation is initiated by a public entity as part of its community development strategy.

Designated Empowerment Zone or Enterprise Community means an urban area designated as an Empowerment Zone or an Enterprise Community by the Secretary of HUD on December 21, 1994.

Economic Development Initiative (EDI) means the provision of economic development grant assistance under Section 108(q) of the Act, as authorized by Section 232 of the Multifamily

Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233; approved April 11, 1994) (the ''1994 Act'').

Economic development project means an activity or activities (including mixed use projects with housing components) that are eligible under the Act and under 24 CFR 570.703, and that increase economic opportunity for persons of low- and moderate-income, or that stimulate or retain businesses or jobs, or that otherwise lead to economic revitalization.

Empowerment Zone Strategic Plan means a strategy developed and agreed to by the nominating local government(s) and State(s) and submitted in partial fulfillment of the application requirements for designation as an Empowerment Zone or Enterprise Community pursuant to 24 CFR part 597.

HOME funds means funds made available under title II of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625; approved November 28, 1990).

Homeownership Zone means a continuous, geographically defined neighborhood that is primarily residential in character and in which the Homeownership Zone activities together with other physical and economic development activities can make a measurable, visible improvement to the area.

National Homeownership Strategy is a five-year blueprint containing 100 actions, developed and implemented by a partnership involving HUD and more than 50 other national organizations. The goal of the Strategy is to achieve an all-time high level of homeownership by the end of the year 2000.

Neighborhood Revitalization Strategy means a strategy submitted as part of a CDBG grantee's Consolidated Plan, or an amendment, for reinvestment of human and economic capital in a distressed neighborhood. The strategy must meet the guidelines of Notice CPD–96–01, issued January 16, 1996, and must be approved by HUD. Any Empowerment Zone Strategic Plan prepared for a Federally-designated Empowerment Zone or Enterprise Community will be presumed to be approved by HUD and meet HUD's guidelines for a Neighborhood Revitalization Strategy.

Qualifying Empowerment Zone or Enterprise Community area means an urban area designated as an Empowerment Zone or Enterprise Community pursuant to 24 CFR part 597 or nominated by one or more local governments and the State or States in which it is located for consideration of designation as an Empowerment Zone or Enterprise Community pursuant to 24 CFR part 597. The area need not have been designated an Empowerment Zone or Enterprise Community by the Secretary to be a qualifying Empowerment Zone or Enterprise Community area, but if it was not so designated it must meet the eligibility requirements for a nominated area pursuant to 24 CFR part 597, subpart B.

Unless otherwise defined herein, terms defined in 24 CFR part 570 and used in this NOFA shall have the respective meanings given thereto in that part.

(C) *Background.* EDI is intended to complement and enhance the Section 108 Loan Guarantee program (see 24 CFR 570.700–710 for regulations governing the Section 108 program). This provision of the Community Development Block Grant (CDBG) program provides communities with a source of financing for economic development (including capitalization of CIICs), housing rehabilitation, and large scale physical development projects. HUD is authorized pursuant to section 108 to guarantee notes issued by CDBG entitlement communities and nonentitlement units of general local government eligible to receive funds under the State CDBG program. Regulations governing the Section 108 program are found at 24 CFR part 570, subpart M.

The Section 108 Loan Guarantee program is authorized at $1.5 billion in loan guarantee authority in Fiscal Year 1996. Under this program, communities (and States on behalf of a State's non-entitlement community) pledge future years' CDBG allocations as security for loans guaranteed by HUD. The full faith and credit of the United States is pledged to the payment of all guarantees made under Section 108. The Section 108 program, however, does not require CDBG funds to be escrowed for loan repayment. This means that a community or State may continue to spend its existing allocation for other CDBG purposes, unless needed for loan repayment. One purpose of EDI grant funds is to further minimize the risk of Section 108 borrowing and potential loss of future CDBG allocations:

(1) By strengthening the economic feasibility of the projects financed with Section 108 funds (and thereby increasing the probability that the project will generate enough cash to repay the guaranteed loan),

(2) By directly enhancing the security of the guaranteed loan, or

(3) Through a combination of these or other risk mitigation techniques.

Through this NOFA, in addition to soliciting proposals for the typical economic development projects previously funded under the EDI grant program, HUD is particularly soliciting Homeownership Zone proposals.

(D) *Proposals to implement a Homeownership Zone.* Homeownership is a key component of the American dream and the Administration's National Homeownership Strategy. It is also one of the most important vehicles to create opportunities throughout the country and to support economic development in our neighborhoods. Increasing homeownership can serve as the engine that produces visible change and drives economic growth in distressed neighborhoods.

Homeownership Zones will build on the successes of Empowerment Zones in several key ways:

- Empowerment: Homeownership is one of the best ways to empower community residents. It provides them with a stake in their community, increases the bonds among residents, and helps low- and moderate-income residents achieve a key component of the American Dream.
- Public/private cooperation: Competitive Homeownership Zone proposals would include close collaboration between the public and private sectors, significant leveraging of private dollars, and a coordinated approach that uses homeownership as part of a larger community and economic development strategy.
- National Homeownership Strategy: Homeownership Zones will also increase homeownership levels and build stronger communities, in furtherance of the National Homeownership Strategy. The Strategy is a five-year blueprint of cooperative actions identified by 56 private and public organizations that is to achieve an all-time high level of homeownership in America by the end of the year 2000. The National Homeownership Strategy, ''Partners in the American Dream,'' was prepared by the Department and its Partners in response to a request from President Clinton in 1995.
- Streamlined processes: Homeownership Zone proposals would indicate, where appropriate, how local processes and building and development regulations would be streamlined or modified to result in prompt and cost-effective construction.
- Emphasis on performance: Homeownership Zones will have clear performance measures and benchmarks. In addition, they will build on proven performance in Empowerment Zones and Enterprise Communities.
- Visible change: Homeownership Zones must plan to provide tangible and visible evidence of neighborhood revitalization. Proposals should involve

large tracts of previously vacant or blighted areas that would be transformed into vital and vibrant neighborhoods which can spur further community revitalization.

Homeownership Zones are intended to make a major impact in distressed neighborhoods by converting vacant, abandoned land and buildings into thriving, vibrant neighborhoods by using single-family homeownership as a catalyst for revitalization. Offering these homeownership opportunities to low- and moderate-income residents in designated neighborhoods will provide the foundation for needed commercial and economic development.

(1) A Homeownership Zone proposal must provide for significant new homeownership opportunities that will make a visible difference in a concentrated area. An application that includes at least 300 new single-family homes will be presumed to meet this standard. If the application proposes fewer than 300 such homes, the applicant must demonstrate how the strategy will make a visible difference and impact within the Homeownership Zone. It is anticipated that most newly constructed housing will be single-family housing (one to four units, including rowhouses); however, condominium and cooperative developments which contain up to four units per structure may also be included.

(2) Construction should be ready to proceed promptly. Particular attention will be paid to applications that can begin significant construction activities within 60 days of the award of the EDI grant. Therefore, it is expected as a practical matter that the most successful programs will develop land already vacant, available for development, and reasonably clear of environmental hazards and other problems. However, the program need not be limited to vacant areas and may include infill housing and rehabilitation of existing housing if the overall project meets the goal of visible and meaningful change in a concentrated area.

(3) Homeownership Zone proposals should provide for a mix of incomes in a distressed and readily identifiable neighborhood. In all likelihood, in order to achieve this income mix, it will be necessary to use other sources of funds, including housing developed through the applicant's CDBG or HOME programs, a State mortgage revenue bond program, private financing, or other sources. However, any program that uses different sources of funds will need to ensure that all applicable program regulations and guidelines are met.

Note that in order to achieve a mix of incomes within the Homeownership Zone assisted units and to also meet the CDBG national objective criterion of benefitting low- and moderate-income persons, applicants may wish to focus proposals on approved Neighborhood Revitalization Strategy areas. If an applicant has an approved Neighborhood Revitalization Strategy, all housing activities in the area, pursuant to the strategy, may, during the year in which EDI and Section 108 assistance is obligated, be considered to be a single structure for purposes of meeting the low- and moderate-income provisions. This means that 51 percent or more of the assisted units, in the aggregate, would need to be occupied by low- and moderate-income households (see 24 CFR 570.208(d)(5)(ii)) instead of 100 percent if a Neighborhood Strategy Area were not in place. Also note, that any Empowerment Zone Strategic Plan prepared for a Federally-designated Empowerment Zone Supplemental Empowerment Zone or Enterprise Community or Enhanced Enterprise Community will be presumed to be approved by HUD and meet HUD's guidelines for a Neighborhood Revitalization Strategy.

(4) It is anticipated that the developer or developers will take advantage of the most recent advances in urban housing design to create a sense of neighborhood and community through the overall plan for the area, including linkages with transit, innovative architectural design, and development of structures on a scale that encourages interaction among residents and fosters a sense of community.

(5) The essence of Homeownership Zone proposals is that the Federal EDI grant serves as a challenge to other public, private, and nonprofit partners to participate in the Homeownership Zone development. Thus, it is expected that applicants will donate land, commit to construct site improvements and public facilities, waive fees, expedite approvals of permits and plans, and otherwise act to remove impediments to the development of affordable housing. Consistent with the National Homeownership Strategy, it is further expected that the applicant will establish extensive partnerships with the private and nonprofit sectors, such as businesses, lending institutions, real estate professionals, builders, educational institutions, nonprofit organizations, religious entities, and other city-wide and community-based organizations. The extent to which the Homeownership Zone proposal serves to broaden participation by residents and leverage other resources will be important factors in the award of points in the competition.

(6) Homeownership Zones are expected to include development of housing opportunities as part of a comprehensive approach and overall revitalization of the neighborhood.

(7) Homeownership Zones must incorporate clear performance measures and benchmarks. The EDI grant contract will be conditioned upon the benchmarks submitted with the application, or subsequent amendments, such that subsequent draw downs of EDI grant funds and/or related Section 108 Loan Guarantee amounts will be dependent upon accomplishment of the applicant's established benchmarks.

(8) It is anticipated that the developers and local governments will utilize, to the greatest extent possible, innovations in construction techniques and land use planning that can reduce the cost of housing construction; and, will also reform building, planning and zoning regulations so as to minimize regulatory barriers to prompt and cost-effective construction.

(9) Homeownership Zones should strive to incorporate several of the basic principles of the New Urbanism. Neighborhoods that have been designed according to these principles have typically had a finite size, defined by a comfortable walking distance from their center, and have included, for example, such characteristics as: a mix of compatible uses such as housing, shops, workplaces, parks, civic and cultural institutions; a mix of housing types to accommodate a range of incomes, ages and lifestyles; buildings with architectural variety; at the center, a public gathering space such as a square or green, one or several public buildings such as a library, community center or daycare center, and a connection to transit; edges defined by boulevards, greenbelts or other natural features; and a network of pedestrian-friendly streets, alleys, and blocks that encourage connection with adjacent neighborhoods.

Eligible Homeownership activities. With respect to the types of housing development activities that are eligible to be carried out using EDI grant and Section 108 Loan funds, a recipient or a qualified subrecipient may use such funds to:

(1) Acquire improved or unimproved real property;

(2) Undertake site preparation, including construction, reconstruction, or installation of public and other site improvements, utilities, or facilities;

(3) Undertake housing rehabilitation eligible under 24 CFR 570.202;

(4) Assist qualified Community-Based Development Organizations to carry out a community economic development project containing a mixed-use business and housing development project consistent with 24 CFR 570.204(a)(2); and

(5) Carry out other activities eligible under 24 CFR 570.703.

Examples of Homeownership Zone housing projects using EDI grants and Section 108 Guaranteed Loan funds.

HUD provides the following examples to give applicants an idea of how they may use EDI grants and Section 108 Loan Guarantee funds to assist housing development activities. While for clarity these examples do not show the use of other Federal, State, local, and private financing, it is anticipated that comprehensive housing development strategies will maximize the use of such other sources in order to make housing development projects more financially feasible.

• *Acquisition of land for a project site.* A community may use EDI grant funds in conjunction with Section 108 Loan Guarantee funds to write-down the cost of land acquisition and thus reduce the overall development cost of the project. For example, a proposal to develop 300 units of new construction housing with a design density of 10 dwelling units per acre would require approximately 30 acres. In most urban areas, a single parcel so large does not exist and can only be created by purchasing a number of smaller parcels, often at greater expense than a single parcel of the same size would cost. This increased cost without any additional economic value generally makes redevelopment of such land economically infeasible. In this example, the cost of acquiring such sites could be as much as $200,000 per acre or $6,000,000 total. This would result in a $20,000 land acquisition cost per housing unit built. Using $3,000,000 in EDI grant funds to write-down the acquisition cost, the land acquisition cost per housing unit is reduced by $10,000.

By reducing the total project costs, EDI grant funds, when used in conjunction with the Section 108 guaranteed loans, enhance the financial security of the Section 108 guaranteed loan and improve the viability of the project.

• *Infrastructure improvements.* A community may use EDI grant funds and Section 108 Loan Guarantee funds to write-down the cost of infrastructure improvements or finance such improvements over time with loan funds guaranteed under Section 108.

• *Substantial or ''gut'' rehabilitation.* If some portion of the housing development project involves the substantial rehabilitation of housing units, a community may use the EDI grant funds to write-down the cost of rehabilitation with some or all of the remainder of the rehabilitation costs financed with Section 108 Loan Guarantee funds.

For example, a community's proposal to provide 300 single-family homeowner units may include substantially rehabilitating 50 structurally sound vacant units located in the Homeownership Zone. A typical per-unit cost might include an acquisition cost of $20,000 per unit with an additional $40,000 in substantial rehabilitation for a total redevelopment cost of $60,000 per unit. EDI grant funds and Section 108 Loan Guarantee funds could be used to subsidize the acquisition and/or a portion of the rehabilitation costs.

The community may sell the home for $45,000 (an amount affordable to a low- or moderate-income family). The sales proceeds are used to repay the Section 108 guaranteed loan and the development subsidy of $15,000 is financed with the EDI grant.

Range of Proposals. In addition to requesting proposals for Homeownership Zones, HUD is also soliciting proposals for a range of economic development project proposals submitted for EDI grant and Section 108 Loan Guarantee funding.

Typical financing structures for typical economic development projects and economic development revolving loan funds.

HUD envisions that the following project structures (though not limited to them) could be typical:

Funding reserves—The cash flow generated by an economic development project may be expected to be relatively ''thin'' in the early stages of the project. The EDI grant can make it possible for debt service or operating reserves to be established in a way that does not jeopardize the economic feasibility of the project.

An example is a supermarket or neighborhood shopping center that is designed to provide basic services and jobs for residents in a distressed neighborhood. The public entity must be prepared to make the Section 108 loan repayments that are required to be made during the period after completion of construction and during the lease-up phase when the shopping center is not fully leased and thus is not likely to generate sufficient revenues to support the Section 108 loan repayments. It may therefore require the developer to establish with a trustee a reserve account (or accounts) that would be available to cover operating expenses and/or debt service during this lease-up period. While such reserves are commonplace, their cost may be so high as to make an already risky neighborhood shopping center project economically infeasible. The increased cost resulting from establishing such reserves may be defrayed by the EDI grant. As with the letter of credit example below, such reserves protect the CDBG program against the risk that CDBG funds will have to be used to cover shortfalls in the intended source for repayment of the Section 108 loan.

Over-collateralizing the Section 108 loan—The use of EDI grant funds may be structured, in appropriate cases, so as to improve the chances that cash flow will be sufficient to cover debt service on the Section 108 loan and directly to enhance the guaranteed loan. One technique for accomplishing this approach is over-collateralization of the Section 108 loan.

An example is the creation of a loan pool made up of Section 108 and EDI grant funds. The community would make loans to various businesses at an interest rate equal to or greater than the rate on the Section 108 loan. The total loan portfolio would be pledged to the repayment of the Section 108 loan. If the total loan repayments from the loan fund were twice the amount of the debt service on the Section 108 loan, the community could accumulate a loan loss reserve that would mitigate virtually any risk to future CDBG funds.

Direct enhancement of the security of the Section 108 loan—The EDI grant can be used to cover the cost of providing enhanced security. An example of how the EDI grant can be used for this purpose is by using the grant funds to cover the cost of a standby letter of credit, issued in favor of HUD. This letter of credit will be available to fund amounts due on the Section 108 loan if other sources fail to materialize and will, thus, serve to protect the public entity's future CDBG funds.

Provision of financing to for-profit businesses at a below market interest rate—While the rates on loans guaranteed under Section 108 are only slightly above the rates on comparable U.S. Treasury obligations, they may nonetheless be higher than can be afforded by businesses in severely economically distressed neighborhoods. The EDI grant can be used to make Section 108 financing affordable.

For example, a community's strategic plan to stabilize the economic viability of a severely distressed neighborhood may include providing loan assistance

to both new and existing businesses at very low interest rates for some period of time until each business has reached a stabilized and profitable level of operation. EDI grant funds could serve to ''buy down'' the interest rate up front, or make full or partial interest payments, allowing the businesses to be financially viable in the early start-up period not otherwise possible with Section 108 alone. This strategy would be particularly useful where a community was undertaking a large commercial/retail project in a distressed neighborhood to act as a catalyst for other development in the area. The use of EDI/Section 108 funds for financing the commercial/retail project along with providing financial assistance to neighboring new or existing businesses within the target area would create complementary economic activity and enhance the financial viability of all assisted activities.

(E) *Timing of Grant Awards.* To the extent a full Section 108 application is submitted with the EDI grant application, the Section 108 application will be evaluated concurrently with the request for EDI grant funds. Note that EDI grant assistance cannot be used to support a Section 108 Loan Guarantee approved prior to the date of the publication of this NOFA. (See II.B. of this NOFA.) However, the EDI grant may be awarded prior to HUD approval of the Section 108 Loan Guarantee commitment if HUD determines that such award will further the purposes of the Act. HUD notification to the grantee of the amount and conditions (if any) of EDI funds awarded based upon review of the EDI application shall constitute an obligation of grant funds, subject to compliance with the conditions of award and execution of a grant agreement.

Notwithstanding HUD's approval and announcement of an EDI grant award, HUD cannot actually disburse EDI grant funds for approved activities until after the execution of a grant agreement and after HUD guarantees the notes evidencing the related Section 108 loans. It is anticipated that final EDI Grant Agreements and final Section 108 note guarantee documents will be executed concurrently.

(F) *Limitations on the Ratio of EDI grant funds to Section 108 Loan Guarantee funds.* HUD reserves the right to determine a minimum or a maximum amount of any EDI grant award or Section 108 Loan Guarantee award per applicant, application, or project and to modify requests accordingly.

HUD expects to approve EDI grant amounts for approvable applications at a range of ratios of EDI grant funds awarded to new Section 108 loan guarantee commitments. For example, an applicant could request an EDI grant of $1 million and propose to leverage only $1 million in new Section 108 loan guarantee commitments and another applicant could request an EDI grant of $1 million and propose to leverage $5 million in new Section 108 loan guarantee commitments. However, in no event will HUD make an award in which the amount of EDI funds awarded exceeds the amount of new Section 108 commitments. Of course, even in the first example above, applicants remain free to propose a greater leverage ratio of new Section 108 to EDI grant funds, for example $5 million of new Section 108 to $1 million of EDI grant funds. All applicants should discuss why their project requires the particular level of EDI grant assistance to Section 108 loan guarantee funds in their response to the Selection Criterion—''Extent of need for EDI assistance to financially support the Section 108 loan and the project''—in section II.(C)(2) described below. It is understood that certain activities such as housing-related activities for Homeownership Zones or capitalization of a CIICs may not be able to support Section 108 guaranteed loans without equivalent amounts of EDI grant funds.

EDI grant funds may not be used to substitute for the Section 108 financed activity, or to immediately repay the Section 108 loan. For example, a recipient of an EDI grant may not undertake land assemblage for an economic development project with a loan guaranteed by Section 108 and upon completion of all acquisition repay the Section 108 guaranteed loan with the EDI grant. A recipient may, however, acquire land with a combination of an EDI grant and Section 108 guaranteed loan funds.

In the case of an applicant that has received a prior EDI grant award, the Department reserves the right to consider the amount of the previous EDI award and the grant amount requested in response to this NOFA and to adjust the amount of an EDI award under this NOFA, including, if appropriate, not making an award.

In the event the applicant is awarded an EDI grant that has been reduced below the original request, the applicant will be required to modify its project plans and application to conform to the terms of HUD approval before execution of a grant agreement and/or a Section 108 Loan Guarantee commitment. HUD reserves the right to reduce or de-obligate the EDI grant award if an approvable Section 108 loan guarantee application is not submitted by the grantee in the required amounts on a timely basis. After approval of the EDI grant, any requested modifications must be within the scope of the original EDI application or upon re-ranking must score at or above the lowest score obtained by the lowest ranked application that was funded.

In the case of requested amendments to an approved Section 108 loan guarantee commitment (as further discussed in paragraph II.B.), the EDI assistance approved will be based on the increased amount of Section 108 loan guarantee assistance.

(G) *Eligibility to apply for grant assistance.* Any public entity eligible to apply for Section 108 loan guarantee assistance pursuant to § 570.702 may apply for grant assistance under Section 108(q) and this NOFA. ELIGIBLE APPLICANTS ARE CDBG ENTITLEMENT UNITS OF GENERAL LOCAL GOVERNMENT AND NON-ENTITLEMENT UNITS OF GENERAL LOCAL GOVERNMENT ELIGIBLE TO RECEIVE LOAN GUARANTEES UNDER § 570.702. Note that effective January 25, 1995, nonentitlement communities in the States of New York and Hawaii were authorized to apply to HUD for Section 108 loans. Thus nonentitlement communities in all 50 States and Puerto Rico are now eligible to participate in the Section 108 and EDI programs.

(H) *Eligible activities.* EDI grant funds may be used for:

(1) Activities listed at § 570.703, provided such activities are carried out as part of an economic development project, including a Homeownership Zone proposal. If the applicant is awarded points for activities and projects under selection criterion II.(C)(6)(b) (Proposals Addressing Special Need), the applicant is required to continue to use any funds awarded for such activities and projects under this NOFA and Program Guidelines to benefit the Qualifying Empowerment Zone or Enterprise Community area.

(2) Payment of costs of private financial guaranty insurance policies, letters of credit, or other credit enhancements for the notes or other obligations guaranteed by HUD pursuant to Section 108, provided such notes or obligations are used to finance an economic development project. Such enhancements shall be specified in the contract required by § 570.705(b)(1), and shall be satisfactory in form and substance to HUD for security purposes.

(3) The payment of principal or interest due (including such servicing, underwriting, or other costs as may be authorized by HUD) on the notes or other obligations guaranteed pursuant to the Section 108 loan guarantee program.

(4) Capitalization of Community and Individual Investment Corporations (CIICs) serving low- and moderate-income areas. A Community and Individual Investment Corporation is a type of economic development revolving loan fund designed to stimulate asset building among low- and moderate-income persons and return these assets to the community in the form of investments in economic development activities. Section 108 funds and EDI grant funds are used to capitalize the for-profit Community and Individual Investment Corporation. The CIIC provides financial services to residents and businesses in a low- and moderate-income area. Section 108 and EDI grant funds may be provided as permanent capital to the Corporation. The Section 108 funds may be provided to the Corporation in various ways such as a loan, as equity, or as other creative mechanisms with appropriate terms to allow for the repayment of the Section 108 guaranteed loan. The EDI grant funds, when provided as part of the Corporation's permanent capital act as the ultimate security for the repayment of the Section 108 guaranteed loan in the event that there are losses in the Corporation's overall operations. If the Corporation is chartered so that its service area is limited to a qualifying low- and moderate-income area, and the Corporation provides economic development financial assistance and services (eligible pursuant to 24 CFR 570.203) to the residents and businesses of the low- and moderate-income area, then the Corporation as a whole can meet the CDBG national objectives of benefitting a low- and moderate-income area. It is important to emphasize that there is a fundamental difference between a CIIC and a Community Development Financial Institution (CDFI). CDFIs are private and community initiated financial institutions which may apply for part of their capitalization to the federal government (the CDFI Fund which is part of the Department of the Treasury). By contrast, in the case of CIICs, the process of formation is initiated by a public entity as part of its community development strategy. (A complete description of the CIIC model is available in a CIIC guide that may be requested from HUD. Please call Community Connections at 1–800–998–9999 to request a copy of the guide.)

(5) EDI grants *shall not be used* as a resource to immediately repay a loan guaranteed by Section 108. For example, Section 108 guaranteed loan proceeds cannot be used to acquire land for an economic development project and immediately upon the purchase of the land use EDI grant funds to repay the Section 108 guaranteed loan. However, it would be acceptable to use EDI grant funds in combination with loan funds guaranteed by Section 108 to acquire land.

(I) *Neighborhood Revitalization Strategies.* If an applicant has not been designated an Empowerment Zone or Enterprise Community and has not previously submitted a Neighborhood Revitalization Strategy for HUD approval, an applicant may submit such a strategy with its EDI grant application. If HUD has not approved the Neighborhood Revitalization Strategy by the time that HUD announces awards under this NOFA, and if the applicant has ranked high enough to receive an EDI grant, HUD may condition such award upon approval of the applicant's Neighborhood Revitalization Strategy. If after a reasonable period of time, but not less than 60 days after the award, unless an exception is granted by HUD for good cause, HUD is not able to approve the applicant's Neighborhood Revitalization Strategy, HUD may ask the applicant to amend or modify its program or if that's not possible HUD may cancel the EDI grant award proceed to fund additional grant(s) in rank order, beginning with the first applicant just below the original cut-off line for funding.

(J) *Catalogue of Federal Domestic Assistance (CFDA).* The EDI program CFDA number is ''14.246.'' Please insert this number on the SF 424 as appropriate.

(K) *Section 3.* Additionally, assistance provided under this NOFA is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, and the implementing regulations in 24 CFR part 135, as amended by an interim rule published on June 30, 1994 (59 FR 33866). Section 3 requires that to the greatest extent feasible, and consistent with Federal, State, and local laws and regulations, job training, employment and other contracting opportunities generated from certain HUD financial assistance be directed to low- and very-low income persons. The eligible activities for which funding is provided under this NOFA are consistent with the objectives of section 3. Public entities awarded funds under this NOFA and that intend to use the funds for housing rehabilitation, housing construction, or other public construction must comply with the applicable requirements of the interim regulations published on June 30, 1994.

II. The Application Process

Public entities seeking EDI assistance must apply in accordance with this NOFA. The EDI application shall be accompanied by a request for a Section 108 loan guarantee commitment, as further described in Section II.B. of this NOFA below. Application requirements for the Section 108 program are found at § 570.704.

(A) *Timing of submission.* Applications for EDI assistance shall be received at HUD Headquarters in the manner described under ''Dates'' and ''Addresses'' above.

(B) *Submission requirements.* (1) The EDI application (an original plus two copies) shall be accompanied by a request for loan guarantee assistance under Section 108. The request for Section 108 loan guarantee can be either one or more of the following:

(a) A formal application for Section 108 loan guarantee(s), including the documents listed at § 570.704(b);

(b) A brief description of a Section 108 loan guarantee application(s) to be submitted within 60 days (with HUD reserving the right to extend such period for good cause on a case-by-case basis) of a notice of EDI selection (EDI awards will be conditioned on approval of actual Section 108 loan commitments). This description must be sufficient to support the basic eligibility of the proposed project or activities for Section 108 assistance;

(c) If applicable, a copy of a Section 108 loan guarantee approval document with grant number and date of approval (which was approved *after* the date of this NOFA, except in conjunction with a previous EDI award); or

(d) A request for a Section 108 loan guarantee amendment [analogous to subparagraph (a) or (b) above] that proposes to increase the amount of a previously approved application.

(e) However, any amount of Section 108 loan guarantee authority approved *before* the date of this NOFA is not eligible to be used in conjunction with an EDI grant under this NOFA. Further, a Section 108 loan guarantee amount that is required to be used in conjunction with a prior EDI grant award, whether or not the Section 108 loan guarantee has been approved as of the date of this NOFA, is not eligible for an EDI award under this NOFA. For example, if a community has a previously approved Section 108 loan guarantee commitment of $12 million, even if none of the funds have been utilized, or if the community had previously been awarded an EDI grant of $1 million and had certified that it would submit a Section 108 loan application for $10 million in support of that EDI grant, the community's application under this NOFA must propose to increase the amount of its

total Section 108 loan guarantee commitments beyond those amounts (the $12 million or $10 million in this example) to which it has previously agreed.

(f) Applicants should note that an application for a Section 108 Loan Guarantee commitment requires that the applicant certify that it has made efforts to obtain financing without the use of the Section 108 Loan Guarantee and that it cannot complete such financing consistent with the timely execution of the program plans without the Section 108 Loan Guarantee.

(2) In addition, an application for EDI grant funds shall include the following:

(a) SF 424, Application for Federal Assistance.

(b) The certification regarding lobbying required under 24 CFR part 87 (Appendix A). The applicant may use the lobbying certification published with this NOFA.

(c) A narrative statement providing a description of the activities that will be carried out with the EDI grant funds and explaining how the use of EDI grant funds meets the criteria in paragraph II.(C) below. The narrative statement shall clearly state whether the proposal is for (i) a Homeownership Zone, (ii) a CIIC, or (iii) another economic development project.

In addition to the above, HUD encourages applicants to submit maps and related information generated by the community's Consolidated Plan computer software with their applications.

The Homeownership Zone description shall:

- Identify and describe the boundaries, the approximate size, and population size of the Zone;
- Include a map of the neighborhood (Note that the Office of Community Planning and Development's Consolidated Plan computer software is available for applicants to use in defining their zone area, planning and coordinating revitalization activities, and illustrating how zone activities will produce visible change. HUD encourages applicants to submit maps and other data generated with this software with their applications.); and
- Describe the activities to be carried out with the EDI grant, how they will create visible change and are part of a larger comprehensive revitalization effort, and how they meet the selection criteria, including performance measures and benchmarks for these activities.

Where appropriate, the Homeownership Zone proposal should also indicate how local processes and building development regulations have been or would be streamlined or modified to ensure prompt and cost-effective construction or rehabilitation. Identify who or which agency will carry out each activity, the estimated cost and funding sources, and the timetable for completion.

The Community and Individual Investment Corporation (CIIC) description shall

- Identify and describe the service area.
- Include a draft business plan with financial projections for not less than a five year period.
- Describe a plan for marketing shares of the CIIC to residents of the service area.

(d) The narrative statement and the response to all of the selection criteria in II.(C) below should preferably not exceed thirty (30) 8.5'' by 11'' pages.

(3) Where relevant, applications shall be deemed to include a copy of the strategic plan for community revitalization previously submitted to HUD as part of a Federal Empowerment Zone or Enterprise Community application pursuant to a Notice inviting applications, published on January 18, 1994 at 59 FR 2711, or any approved Neighborhood Revitalization Strategy covering the approved Homeownership Zone.

(C) *Selection Criteria.* All applications will be considered for selection based on the following criteria. As described in section II.(B)(2)(d) above, each applicant's response to the narrative statement and all of the selection criteria should preferably not exceed thirty (30) 8.5'' by 11'' typewritten pages. Each application will receive only one score. Applicants should not mix more than one type of proposal in a single application, but may submit a separate application for each project type.

(1) Distress—(up to 20 points). In evaluating this criterion, HUD will consider the level of distress in the immediate community/neighborhood to be served by the project and the jurisdiction applying for assistance. Note that in previous EDI competitions, poverty rates for the community/neighborhood area served by the project were often considered the best indicator of distress levels, although the applicant may demonstrate the level of distress with other factors indicative of distress such as income, unemployment, drug use, homelessness and other indicators of distress. Also, in previous competitions, all other factors being equal, an indicator of distress in the immediate community/neighborhood area to be served by the project that was greater than the general level of distress in the applicant's overall jurisdiction as a whole had a greater impact on the score under this criterion.

(2) Extent of need for EDI assistance to financially support the Section 108 loan and the project—(up to 10 points).

(a) HUD will use the following information to evaluate this criterion. In addition to the information listed below, HUD will also consider the information in (b) below for proposals for Homeownership Zones. In utilizing the information in this subparagraph (a), HUD will consider the extent to which the applicant's response demonstrates the financial need for the EDI grant to financially support the loan guaranteed by the Section 108 Loan Guarantee commitment and enhance the viability of the project. Additionally, the score may be increased within this criterion to the extent other funds (non-Federal public or private) are leveraged. Note that if the applicant proposes a generic loan fund to assist a certain category of project or businesses, the applicant should demonstrate why the use of Section 108 loans to assist such businesses would not be financially feasible without EDI grant assistance. Relevant information may include:

(i) Project costs and financial requirements;

(ii) The amount of any debt service or operating reserve accounts to be established in connection with the economic development project;

(iii) The reasonableness of the costs of any credit enhancement paid with EDI grant funds.

(iv) The amount of program income (if any) to be received each year during the repayment period for the guaranteed loan;

(v) Interest rates on those loans to third parties (other than subrecipients) (either as an absolute rate or as a plus/minus spread to the Section 108 rate);

(vi) Underwriting guidelines used (or expected to be used) in determining project feasibility;

(vii) The extent to which federal funds provided as a result of the Federal Empowerment Zone/Enterprise Community designation process may be utilized for the proposed EDI project; and

(viii) Other relevant information.

(b) In addition to the information in (a) above, HUD will consider the use of the following to evaluate Homeownership Zone proposals:

(i) The leveraging of other non-Federal public and private resources for housing and;

(ii) The extent to which the EDI and Section 108 financial assistance achieves affordability and marketability for lower-income households while

ensuring the financial viability of the Section 108 Guaranteed loan.

(3) The extent to which the proposal, compared to other proposals for similar types of activities, e.g. Homeownership Zones or other traditional economic development proposal, leverages other non-Federal public and private resources, in addition to loan funds guaranteed under the Section 108 Loan Guarantee program (up to 15 points). For Homeownership Zone Proposals: Leveraged funds include State and local public funding and private financing. Leveraged funds may also include donations of land, nonprofit organizations' commitments of financing and volunteer labor, and waivers of local fees or taxes.

(4) Quality of the plan—(up to 60 points). HUD will consider the quality of the applicant's plan for the use of EDI funds and Section 108 loans, including the extent to which the applicant's proposed plan for the effective use of EDI grant/Section 108 loan guarantee will address its described need in the applicant's immediate community and/or its jurisdiction, and the extent to which the plan is logically, feasibly, and substantially likely to achieve its stated purpose. HUD will also consider the extent to which the proposal includes public/private partnerships, i.e. the involvement of groups such as non-profit organizations, builders/developers and others. In addition to the above, HUD will use the criteria in (a) below to evaluate this factor for Homeownership Zones:

(a) Proposals for Homeownership Zones: The extent to which the plan demonstrates a logical, feasible, and efficient approach to addressing the Zone's problems; a high likelihood of success; and the ability to begin implementation and construction almost immediately after grant approval. HUD will also consider the following:

(i) the number of new homeownership opportunities;

(ii) how quickly construction can begin, and how quickly results will be achieved;

(iii) the mix of incomes;

(iv) the use of recent advances in urban housing design to create a sense of neighborhood and community;

(v) the degree to which the applicant provides for a comprehensive approach to neighborhood revitalization;

(vi) the clarity and feasibility of performance measures, including interim benchmarks, timeliness for construction, and other clear deliverables;

(vii) the level of involvement of the community in the preparation of revitalization plans, whether there is an ongoing role for the community residents in implementing the plan, and a clear strategy for ensuring that residents will benefit from the new homeownership opportunities. Evidence of such benefits to residents may include marketing the new housing to existing residents of the neighborhood, training of neighborhood residents in construction skills, and assistance in establishing and expanding neighborhood-owned businesses.

(b) Due to an order of the U.S. District Court for the Northern District of Texas, Dallas Division, with respect to any application submitted by the City of Dallas, Texas, HUD's consideration of the quality of the plan will consider the extent to which the applicant's plan for the use of EDI funds and Section 108 loans will be used to eradicate the vestiges of racial segregation in the Dallas Housing Authority's programs consistent with the Court's order.

(5) The capacity or potential capacity of the public entity to successfully carry out the plan—(up to 15 points). This may include factors such as the applicant's performance in the administration of its CDBG, HOME or other programs, including, for Homeownership Zone proposals, whether the applicant has been recognized by the National Partners in Homeownership as having formed, and is effectively implementing a Local Partnership consistent with the National Homeownership Strategy; its previous experience, if any, in administering a section 108 loan guarantee; its performance and capacity in carrying out economic development projects; its ability to conduct prudent underwriting; its capacity to manage and service loans made with the guaranteed loan funds or EDI grant funds; its capacity to carry out its projects and programs in a timely manner; and, if applicable, its capacity to manage projects under this NOFA along with any federal funds awarded as a result of a federal urban Empowerment Zone/Enterprise Community designation.

The capacity of subrecipients, nonprofit organizations and other entities that have a role in implementing the proposed program will be included in this review. HUD may rely on information from performance reports, financial status information, monitoring reports, audit reports and other information available to HUD, in making its determination under this criterion.

(6) Applicants will be rated on both criteria (a) and (b) (if applicable) below, but will receive points for only the higher rated criterion of the two, but not both.

(a) The extent to which the proposed plan follows a comprehensive and coordinated approach in addressing the community and economic development needs of the public entity and furthers neighborhood revitalization—(up to 20 points).

(b) Proposals Addressing Special Need—(Applicants to which this criterion does not apply need not respond thereto.) (up to 20 points). Of the 20 points under this factor, one point will be awarded to applicants that received a federal urban Empowerment Zone or Enterprise Community designation and up to 19 additional points will be awarded to applicants that propose EDI and Section 108 loan assisted activities that will benefit the applicant's Qualifying Empowerment Zone or Enterprise Community area and are consistent with the applicant's Strategic Plan; and

(7) Innovation and creativity—(up to 20 points). The extent to which the applicant incorporated innovation and/or creativity in the design and proposed implementation of the proposed activities carried out with Section 108/EDI funds. In addition to the above, HUD will use the criteria below to evaluate this factor for Homeownership Zones:

Proposals for Homeownership Zones. The extent to which the applicant proposes a unique approach to increasing homeownership or expanding economic opportunity, or incorporates innovation and/or creativity in the design and implementation of the proposed activities carried out with the EDI grant and Section 108 funds, including community planning, urban design, housing architecture, and construction methods and materials.

(D) Selection Process—Once all proposals are scored under the selection criteria above, applications for Homeownership Zones and CIICs will each have 10 additional points added to its total score. Then, all applications will be ranked in order of points assigned, with the applications receiving more points ranking above those receiving fewer points. Applications will be funded in rank order, however, HUD, in its sole discretion, may choose to award EDI assistance to a lower rated approvable application over a higher rated application in order to increase the level of geographic diversity of grants approved under this part. The parameters of any diversity factors used in the selection process will be described in writing by the panel and/

or selecting official, and consistently applied in the final selections. However, no application will be funded for geographic diversity that does not have a selection score of at least 80 points.

As discussed in paragraph I.(F) above, HUD reserves the right to determine a minimum and a maximum amount of any EDI award or Section 108 commitment per applicant, application or project and to modify requests accordingly. In addition, if HUD determines that an application rated, ranked and fundable could be funded at a lesser EDI grant amount than requested consistent with feasibility of the funded project or activities and the purposes of the Act, HUD reserves the right to reduce the amount of the EDI award and/or increase the Section 108 loan guarantee commitment, if necessary, in accordance with such determination.

HUD may decide not to award the full amount of EDI grant funds available under this NOFA and may make any remaining amounts available under a future NOFA.

To review and rate applications, the Department may establish panels including persons not currently employed by HUD to obtain certain expertise and outside points of view, including views from other Federal agencies.

(E) Timing of grant awards—To the extent full Section 108 applications are submitted concurrently with the EDI grant application, HUD's approval of the related Section 108 loan guarantee commitment will in most cases be granted contemporaneously with EDI grant approval. However, the EDI grant may be awarded prior to HUD approval of the Section 108 commitment if HUD determines that such award will further the purposes of the Act. EDI funds shall not be disbursed to the public entity before the issuance of the related Section 108 guaranteed obligations.

III. Technical Assistance

To the extent permitted by law, HUD may advise applicants of technical deficiencies in the EDI applications after submission and permit them to be corrected. Technical deficiencies relate only to items, such as a failure to submit or sign a required certification, that would not improve the substantive quality of the application relative to the selection criteria. Applicants will have 14 calendar days from the date HUD notifies the applicant of any such technical deficiency to submit the appropriate information in writing to HUD. At any time during the selection process, which began with preparation of this NOFA, HUD staff are limited in the assistance they are permitted to provide regarding applications for EDI grants, due to the requirements of the HUD Reform Act. The assistance and advice that can be provided includes such activities as explaining and responding to questions about program regulations or generally discussing strengths and weaknesses observed in applications during previous competitions, the dates by which decisions will be made and the procedures that are required to be performed to process an application. The term ''technical assistance'' however, does not include advising the applicant how to make substantive improvements in its application that will affect ratings.

In addition, any information published in the Federal Register and in this NOFA, and any information that has been made public through a means other than the Federal Register or NOFA, may be discussed.

HUD staff will be available throughout the EDI application period to provide extensive advice and assistance, as is currently provided, to develop 108 loan applications since the 108 program is not subject to the HUD Reform Act. Staff providing such assistance may provide technical advice to the EDI selection panel but *in no case* will such staff participate in the panel's voting process for EDI awards under this NOFA.

IV. Other Matters

Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410.

Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA offers financial assistance to units of general local government, none of its provisions will have an effect on the relationship between the Federal Government and the States, or the States' political subdivisions.

Family. The General Counsel, as the Designated Official for Executive Order 12606, *The Family,* has determined that the policies announced in this NOFA would not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. No significant change in existing HUD policies and programs will result from issuance of this NOFA, as those policies and programs relate to family concerns.

Section 102 of the HUD Reform Act. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its Federal Register notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

Section 103 of the HUD Reform Act. HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989,

codified as 24 CFR part 4, apply to this funding competition. The requirements of the regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel or Headquarters counsel for the program to which the question pertains.

Prohibition Against Lobbying Activities. The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Dated: July 11, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed: _____

(Print name and title)

Date: _____

24 CFR Part 87, Appendix A1

[FR Doc. 96–18012 Filed 7–15–96; 11:55 am]

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Federal Register

Tuesday
July 16, 1996

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, 129, and 135

Revisions to Digital Flight Data Recorder Rules; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 129, and 135

[Docket No. 28109; Notice No. 96–7]

RIN 2120–AF–76

Revisions to Digital Flight Data Recorder Rules

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise and update the Federal Aviation Regulations to require certain operators to record additional digital flight data recorder (DFDR) parameters. These revisions follow a series of safety recommendations issued by the National Transportation Safety Board (NTSB) and the Federal Aviation Administration's (FAA) decision that the DFDR rules should be revised to upgrade recorder capabilities in most transport airplanes. These revisions would allow additional information to be collected to ensure more thorough accident or incident investigation and to enable industry to predict certain trends and make necessary modifications before an accident or incident occurs.

DATES: Comments on the proposed revisions to parts 121, 125, and 135 must be received by August 15, 1996. Comments on the proposed revisions to part 129 must be received by November 13, 1996.

ADDRESSES: Comments on this notice should be mailed, in triplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28109, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 28109. Comments may also be submitted electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. Comments may be examined in Room 915G weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Frank Rock, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9567.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental energy, federalism, or economic impact that might result from adopting the proposal in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28109.'' The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Federal Register's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

Statement of the Problem

The NTSB has submitted recommendations to the FAA to require the recordation of additional parameters on certain flight data recorders. These recommendations were submitted in response to accidents involving two Boeing 737 aircraft that were operated by two different air carriers. Both airplanes were equipped with flight data recorders (FDR's), but in neither case did the FDR provide sufficient information about airplane motion and flight control surface positions during the accident sequence to enable the NTSB to determine a probable cause in either accident.

The history of aircraft accidents and the lack of information that has inhibited proper investigation of their causes is much broader than recent experience with the Boeing 737. Historical records of airplane incidents suggest that additional, reliable data for the entire fleet of transport category airplanes is necessary to identify causes of these incidents before accidents occur. This proposed rule seeks to expand the data collection requirements to include all parameters that can cost-effectively be collected.

History of FDR Regulations

Since the original development of foil flight recorders, both the FAA and the NTSB have relied heavily on the data retrieved from them to aid in accident and incident investigation. The limited capability of the 6-parameter foil recorder made it virtually impossible to fully identify the probable cause of certain accidents, such as those related to windshear. Until the advent of more sophisticated flight data recorders, many accidents were assumed to be caused by pilot error since no other viable alternative could be identified. The high failure rate of those recorders and their limited recording capabilities led Congress to require the use of improved recorders.

On March 25, 1987, the FAA promulgated a final rule that required operators, by May 26, 1995, to install improved (11-parameter digital) flight data recorders [DFDR's] on all airplanes type certificated on or before September 30, 1969, and operated under part 121 of the Federal Aviation Regulations (52 FR 9622). The final rule, adopted as 14 CFR 121.343(c), was issued in response to a recommendation from the NTSB that was based on accident/incident files for January 1983 to February 1986

that revealed a high failure rate for metal foil flight recorders. The data revealed that 37 recorders (48 percent) had one or more malfunctioning parameters preceding the accident or incident, preventing the recording or readout of pertinent data.

On July 11, 1988, the FAA promulgated a final rule that required the recording of additional parameters for certain newer airplanes. Airplanes manufactured after May 26, 1989, and certain other airplanes were required to have a DFDR that would record 17 or more parameters.

In August 1991, the Air Transport Association (ATA) petitioned the FAA for an exemption from § 121.343(c). The ATA stated that the 1994 compliance date for the DFDR retrofit was inappropriate when considering the schedule for either retrofitting airplanes with nose abatement equipment or retiring airplanes in order to comply with the Stage 3 transition mandated in September 1991 (56 FR 48628, September 25, 1991). The FAA denied the ATA exemption request, stating that the Stage 3 transition rule did not mandate the retirement of any Stage 2 airplanes. The FAA pointed out that noise abatement equipment was expected to be available for virtually the entire active fleet.

In June 1992, the ATA again requested that the FAA extend the May 26, 1994, DFDR compliance date for its members and similarly situated operators. In the alternative, the ATA requested that the FAA establish a delayed DFDR retrofit schedule that coincided with the Stage 3 transition interim compliance dates to avoid having to install new DFDR's on airplanes that were scheduled to be retired. The ATA asserted that the compliance deadline would require its members to install DFDR's on Stage 2 airplanes that would be retired within 5½ years of the May 1994 compliance date to remain in compliance with the part 91 noise operating rule. The ATA asserted that this DFDR retrofit requirement for State 2 airplanes would impose substantial costs on them with little perceived benefit.

On January 29, 1993, the FAA granted an exemption to ATA members to operate certain Stage 2 airplanes equipped with DFDR's that have 6 rather than 11 operational parameters until the aircraft are retired, but no later than December 31, 1998.

On November 17, 1993, the ATA submitted a petition for rulemaking to amend § 121.343. The ATA stated that the exemption granted did not provide the scope of relief necessary for its members and similarly situated air carriers, and that a change to the rule was necessary. As justification for this proposed change, the ATA stated in its petition that there would be significant compliance costs and that there were problems with the technical requirements of DFDR installation.

In January 1994, to further support its petition, the ATA presented updated information indicating that conditions in the industry had changed further, and that meeting the May 26, 1994, compliance date would be impossible for a significant number of Stage 2 airplanes because of changes in fleet plans, and equipment availability and certification difficulties.

Although the FAA was unable to support the ATA position, the agency stated that some relief was needed from the combined impact of the Stage 3 transition and DFDR retrofit rules and the then-current equipment availability problems, at least as far as Stage 2 airplanes were concerned. Accordingly, in May 1994, the FAA amended § 121.343(c) to provide to part 121 operators up to one year of relief for the retrofit of Stage 2 airplanes that were subject to the noise transition requirements of 14 CFR part 91. The extension of the compliance date for 11-parameter DFDR's on Stage 2 airplanes to May 1995 was intended to allow operators to retire some of the affected airplanes as of the December 31, 1994, noise compliance deadline, and to acquire the necessary equipment for the remaining Stage 2 airplanes. No problems with meeting the 1995 compliance date were reported.

NTSB Recommendations

On February 22, 1995, the NTSB submitted recommendations A–95–25, A–95–26, and A–95–27, which recommended that the FAA require upgrades of the flight data recorders installed on certain airplanes to record certain additional parameters not required by the current regulations. As justification for these recommendations, the NTSB submitted background information. The full recommendation has been placed in the docket for this rulemaking and is summarized below.

On September 8, 1994, a USAir Boeing 737–300, flight 427, was on a scheduled passenger flight from Chicago, Illinois, to Pittsburgh, Pennsylvania. During the approach to Pittsburgh, the airplane suddenly rolled to the left and pitched down until it reached a nearly vertical attitude and struck the ground near Aliquippa, Pennsylvania. The airplane was destroyed; none of the 5 crewmembers or 127 passengers survived. The NTSB's investigation of this accident is continuing, and no probable cause has yet been determined.

On March 3, 1991, a United Airlines Boeing 737–291, flight 585, was on a scheduled passenger flight from Denver to Colorado Springs, Colorado. As the airplane was completing the turn to final approach, it rolled rapidly to the right and pitched down, reaching a nearly vertical attitude before it struck the ground. The airplane was destroyed; none of the five crewmembers or 20 passengers survived. In its report, the NTSB was unable to make a determination of probable cause of the accident.

Both airplanes were equipped with flight data recorders. In neither case did the recorder provide information about airplane motion and flight control surface positions during the accident sequence that the NTSB has stated would be important in determining a probable cause of the accident.

In the Colorado Springs accident, five flight data parameters—altitude, airspeed, heading, vertical acceleration, and microphone keying—were recorded by the FDR in accordance with § 121.343 for airplanes of its age. The FDR of the airplane involved in the Colorado Springs accident was not required to record other parameters that the NTSB has cited as critical to its accident investigation, including airplane pitch and roll attitude, engine thrust values, lateral and longitudinal acceleration, control wheel position, rudder pedal position, and the position of control surfaces such as the rudder, aileron, and spoiler.

The Aliquippa accident also involved a Boeing 737, but that airplane's FDR system had been retrofitted with six additional parameters in anticipation of the 1995 deadline for these enhancements. However, the additional parameters did not include information on the positions of cockpit controls, flight control surface position, lateral acceleration, or autopilot status parameters that the NTSB has stated hampered its continuing accident investigation. In a public hearing on the accident, conducted by the NTSB in Pittsburgh, Pennsylvania, on January 23–27, 1995, witnesses from the FAA, aircraft manufacturers, and airlines agreed that additional FDR parameters would have assisted the NTSB in determining the probable cause of this accident.

Had the airplanes involved in the Colorado Springs and Aliquippa accidents been equipped with enhanced FDR's, the NTSB stated that the information from the additional parameters would have allowed it to quickly identify any abnormal control

surface movements, configuration changes, or autopilot status changes that may have been involved in the loss of airplane control. This information from the additional parameters might also have allowed the NTSB to rule out certain factors, if warranted, and to focus its investigations on other areas.

The NTSB has stated that the additional data parameters recorded on some FDR's substantially aided its investigation of two regional airline accidents that occurred during 1994. The first accident occurred on October 31, 1994, while an American Eagle ATR–72–210, flight 4184, was on a scheduled flight from Indianapolis, Indiana, to Chicago, Illinois. The flight had been placed in a holding pattern over Roselawn, Indiana, because of weather delays at O'Hare Airport. The flight was cleared to remain in the holding pattern and to descend from 10,000 to 8,000 feet. The airplane rolled to the right, entered a steep descent, and struck the ground. None of the 64 passengers or 4 crewmembers survived. The NTSB's continuing investigation has not yet determined the probable cause of the accident; however, information from the enhanced FDR enabled the NTSB to identify, within hours after receiving the recorder in its laboratories, the key events leading to the airplane's departure from controlled flight and the events during its final descent.

The ATR–72 was equipped with an FDR that recorded 98 parameters, including vane angle of attack (VAOA), aileron bellcrank position, flap position, aileron trim position, and autopilot engagement status. The FDR data showed that, as the airplane was descending through 9,400 feet, the wing flaps began to retract and the airplane's VAOA increased. As the VAOA reached 5 degrees, the autopilot disengaged, and within ¼ second the ailerons deflected to near maximum travel in the right-wing-down direction. The FDR data also showed that the rolling moment was reversed when the VAOA was reduced to below 5 degrees and the ailerons deflected in the left-wing-down direction. The right rolling moment recurred as the VAOA again increased to 5 degrees and the ailerons deflected in the right-wing-down direction. Control of the airplane was not restored in time to prevent impact with the ground.

The data available from the ATR–72 FDR indicated to investigators that the airplane rolled as expected in response to aileron control surface movements, and that the aileron movements were correlated with increases in the airplane's angle of attack. As a result, the NTSB was able to focus its efforts on possible explanations for the aileron control surface movements and, within days of the accident, the NTSB issued safety recommendations to minimize the likelihood of similar occurrences in the future. As part of its continuing investigation, the NTSB is also examining readouts from FDR's with expanded parameters from seven other ATR airplanes that have reportedly encountered flight control anomalies, three of which have shown similarities to those recorded before the accident.

In the second accident, on February 1, 1994, an American Eagle Saab 340B, flight 3641, was approaching Baton Rouge, Louisiana, on a scheduled passenger flight from Dallas/Fort Worth, Texas. As the airplane descended through 9,000 feet, both engines failed. The flightcrew executed a forced landing at False River Air Park in New Roads, Louisiana, during which the airplane sustained substantial damage. A flight attendant received minor injuries during the emergency evacuation. The 2 pilots and 23 passengers aboard were not injured.

The FDR installed on the Saab 340B recorded 128 parameters. Data from the FDR showed that as the airplane descended through 9,040 feet, there was a rapid rise of both propellers' rotational speed to well above the maximum allowable revolutions per minute. Because the FDR was equipped to capture the positions of the engine power levers as well as the engine RPM's, the NTSB was able to determine that at the same time the propeller speed increased, the power levers moved from the flight idle gate position to aft of the ground idle detents. The airplane's approved flight manual prohibits such power lever movements while in flight. This flightcrew action explained the propeller overspeed, which resulted in dual engine failure. With the expanded FDR data, the NTSB was able to rule out alternative explanations for the propeller overspeed, including propeller system failures that previously had affected similar propellers installed in another turboprop regional airliner.

The importance of FDR data is not limited to investigations of catastrophic accidents. Flight recorder data from incidents, which are less serious but more common, can provide information to help prevent accidents involving similar circumstances. Following the Colorado Springs and Aliquippa accidents, the NTSB investigated 28 Boeing 737 incidents (U.S. operators) involving anomalous rudder activity or uncommanded roll oscillations. The FDR's aboard these incident airplanes, however, were not equipped to record flight control surface positions, flight control inputs, or lateral acceleration. Like 79 percent of all U.S.-registered Boeing 737's, the airplanes involved in the incidents were manufactured prior to May 26, 1989; consequently, they were required to record only the five basic FDR parameters. As a result, certain objective data were not available from the FDR's, and investigators had little more than the flightcrews' subjective recollections of these incidents to aid in determining cause.

In contrast to the investigations of 28 Boeing 737 incidents, for which important FDR data were not available, investigations of other incidents have been greatly aided by the availability of enhanced recorded information. These incidents involved airplanes equipped with a digital data bus that transmits information from many sensors to the onboard recording devices.

In 1993, a British Airways Boeing 747–436 experienced a nose-down pitching moment immediately after departure from London Heathrow Airport. The captain avoided ground contact by exerting substantial back pressure on his control column. The incident was investigated by the United Kingdom's Air Accidents Investigation Branch (AAIB). Use of information recorded by a Quick Access Recorder (QAR) was useful in the AAIB's investigation, and led to a recommendation that the FAA require modifications of Boeing 747 hydraulic systems and elevator power control units.

Between June and August 1993, an Air France Boeing 737–300 airplane experienced three rudder deflection anomalies. For each incident, approximately 206 flight data parameters were available to the French accident investigation authority. The data were recorded on QAR's, and available parameters included control surface positions, flight path data, acceleration in three axes, yaw damper, and autopilot modes. The NTSB is evaluating the data from these incidents for possible applicability to the Aliquippa and Colorado Springs accidents.

The data parameters currently required to be recorded on FDR's are based on the NTSB's accident investigation experience and the capacity of the recording devices. Historically, many accidents investigated by the NTSB focused on wind shear, takeoff overruns, and instances of controlled flight into terrain; fewer accidents may have involved the inflight loss of lateral or directional control. In response, FDR

parameter requirements focused on airplane performance (such as airspeed, altitude, and longitudinal acceleration) rather than on flight controls (such as rudder position and trim settings). However, recent accidents and incidents have persuaded the NTSB that more information about flight controls should be recorded by FDR's.

Among the additional flight control parameters cited as important by the NTSB are those that pertain to the positions of flight control inputs and control surface positions. Under current rules. Airplanes fitted with conventional flight controls are permitted to record either the cockpit control input (such as control wheel position) or the control surface position (such as the direction and amount of aileron deflection), if one can be derived from the other. However, in its investigations of the recent Boeing 737 accidents, the NTSB found that in some failure modes, flight control surfaces could move independently of cockpit flight control inputs. Also, under some conditions, additional information is needed by investigators to determine whether the controls on the flight deck caused the control surfaces to move, or vice versa. Consequently, the NTSB strongly recommends that FDR's should record both the control inputs and control surface positions.

Flight control trim information, including the positions of trim controls for roll and yaw, also has been found to be essential during recent accident investigations. For example, the aileron and rudder trim parameters provided answers to critical questions early in the investigation of the Roselawn accident. The airplane involved had previously experienced trim anomalies; the FDR revealed none on the accident flight.

Recent technological changes have made feasible the acquisition and storage of large amounts of data on FDR's. Today, even for older airplanes, many FDR systems are capable of recording additional parameters because of unused capacity in the flight recording system. In terms of flight recording systems, there are two general categories of airplanes in the current air carrier fleet: those that operate predominately with analog systems, and those that operate predominately with digital systems.

On an airplane that operates with an analog system, information from remotely located data sensors (for example, a rudder position sensor located in the tail section) is transmitted in an analog format to the FDR via dedicated wires. The information is then converted to digital format in the FDR or the flight data acquisition unit (FDAU).

On an airplane equipped with a digital data bus, information is transmitted in digital format from a multitude of sensors, along a single, high-capacity communications pathway (data bus). Information transmitted on the bus is provided to a number of systems, including flight management computers. cockpit displays, QAR's, and FDR's. Additional data can be fed from the bus to the FDR, based on information that is already on the bus for other purposes or added to the bus by new sensors.

During the public hearing on the Aliquippa accident, a major U.S. air carrier expressed concern about the costs of upgrading FDR's on the carrier's fleet. The NTSB recognized that enhanced FDR capability needs to be weighed against the costs. However, the Board also believes that the costs should be balanced against the remaining useful life and revenue-earning potential of an airplane.

The NTSB believes that transport category airplanes of a type that is still in production and operated under 14 CFR Parts 121, 125, or 135 should be retroffitted with the sensors and FDAU needed to record the parameters listed in its recommendation. Further, certain airplanes that are out of production but continue to be heavily used in U.S. airline fleets should also be retrofitted to record the parameters listed in its recommendation.

The NTSB recommended that the FAA complete its rulemaking on FDR enhancements by December 31, 1995, and that upgrades be completed by January 1, 1998. Further, since Boeing 737 airplanes account for about 23 percent of the U.S. air carrier fleet, the NTSB recommends that FDR enhancement be accomplished sooner for these airplanes. The NTSB recommended that the FAA require all Boeing 737 airplanes operated under 14 CFR Parts 121 and 125 be equipped by December 31, 1995, with FDR's that record the parameters required by current regulations plus lateral acceleration, flight control inputs for pitch, roll, and yaw, and primary flight control surface positions for pitch, roll, and yaw.

The following recommendations were submitted by the NTSB to the Federal Aviation Administration:

I. Require that each Boeing 737 airplane operated under 14 CFR Part 121 or 125 be equipped, by December 31, 1995, with a flight data recorder system that records, as a minimum, the parameters required by current regulations applicable plus the following parameters: lateral acceleration, flight control inputs for pitch, roll, and yaw, and primary flight control surface positions for pitch, roll, and yaw. (Classified as Class I, Urgent Action) (Recommendation No. A–95–25)

II. Amend, by December 31, 1995, 14 CFR §§ 121.343, 125.225, and 135.152 to require that Boeing 727 airplanes, Lockheed L–1011 airplanes, and all transport category airplanes operated under 14 CFR Parts 121, 125, or 135 whose type certificates apply to airplanes still in production, be equipped to record on a flight data recorder system, as a minimum, the parameters listed in ''Proposed Minimum FDR Parameter Requirements for Airplanes in Service'' plus any other parameters required by current regulations applicable to each individual airplane. Specify that the airplanes be so equipped by January 1, 1998, or by the later date when they meet Stage 3 noise requirements but, regardless of Stage 3 compliance status, no later than December 31, 1999. (Classified as Class II, Priority Action) (Recommendation No. A–95–26)

III. Amend, by December 31, 1995, 14 CFR 121.343, 125.225, and 135.152 to require that all airplanes operated under 14 CFR Parts 121, 125, or 135, having 10 or more seats, and for which an original airworthiness certificate is received after December 31, 1996, record the parameters listed in ''Proposed FDR Enhancements for Newly Manufactured Airplanes'' on a flight data recorder having at least a 25-hour recording capacity. (Classified as Class II, Priority Action) (Recommendation No. A–95–27)

FAA Response to the NTSB Recommendation

The FAA responded to the above NTSB recommendations in a letter dated May 16, 1995, which is summarized below.

In response to Safety Recommendation A–95–25, the FAA stated that it agrees that Boeing 737 airplanes that operate under 14 CFR Part 121 or 125 should be equipped with flight data recorders that include, as a minimum, the parameters referenced in this safety recommendation. The proposed rule would require all Boeing 737 airplanes as well as certain other airplanes operated under 14 CFR Parts 121, 125, or 135 having 10 or more seats to be equipped to record the parameters that were specified by the NTSB.

The FAA received enough valid information from the public to determine that the schedule for retrofit completion by December 31, 1995,

could not be met. The proposed date would have imposed an extremely aggressive retrofit schedule that, if it were physically possible, would have resulted in substantial airplane groundings and very high associated costs. Furthermore, if operators had been required to retrofit all Boeing 737 airplanes before the end of 1995, each of these airplanes might have had to undergo a second retrofit to meet the expanded requirements that are being proposed in response to NTSB Recommendations A–95–26 and –27.

In response to NTSB recommendation A–95–26, the FAA agrees that airplanes still in production should be required to be equipped with DFDR's that record, as a minimum, the parameters listed in the NTSB recommendation.

In response to NTSB recommendation A–95–27, the FAA agrees that airplanes operated under parts 121, 125, or 135 having 10 or more seats for which an original airworthiness certificate is received after December 31, 1996, should record the parameters listed in ''proposed FDR Enhancements for Newly Manufactured Airplanes'' on a flight data recorder having at least a 25 -hour recording capacity.

On March 14, 1995, the FAA published in the Federal Register a notice of a public hearing, and solicited public comment pursuant to the NTSB recommendations. On April 20, 1995, the public hearing was held in Washington, DC. Eight speakers from the aviation community gave presentations. Copies of the presentations have been placed in the docket for this rulemaking.

After reviewing the comments submitted and listening to the presentations, the FAA determined that it would be beneficial to have aviation industry personnel assist in any related rulemaking efforts. On June 27, 1995, the FAA published a notice in the Federal Register that the Aviation Rulemaking Advisory Committee (ARAC) established the Flight Data Recorder Working Group (60 FR 33247), which included members representing the Air Transport Association, Aerospace Industries Association of America. General Aviation Manufacturers Association, Regional Airline Association, Air Line Pilots Association, and the FAA. The NTSB was invited to participate in working group efforts in an advisory capacity. The working group's task was to recommend to ARAC rulemaking proposals or other alternatives that would satisfactorily address the NTSB recommendations. The ARAC could then make one or more recommendations to the FAA, and the FAA would determine whether to issue a proposal based on the ARAC recommendation.

The ARAC DFDR working group first met in June 1995 in Washington, DC. Work continued on a draft proposed rulemaking until November, with members communicating by electronic mail, fax, telephone conference calls, and in person at subsequent working group meetings.

Several elements of the proposed rule were discussed many times, including the characteristics that would define various classes of aircraft (e.g., date of certification, date of manufacture, current FDR equipment installations and configurations, equipment availability), the inclusion of certain airplane types in the applicability of a new rule, the compliance times attached to each category of airplane described.

Despite numerous meetings and proposals, no consensus was reached as to the requirements that would be acceptable to the FAA, NTSB, airplane operators and airplane manufacturers. On November 15, 1995, the working group presented to the ARAC Executive Committee a summary of the work undertaken by the working group. The presentation highlighted the areas where consensus had not been reached, including some of the actual parameters that would be included in the final list of requirements and the differences between the proposed list and those required under the European Joint Aviation Requirements for Operations (JAR-Ops), whether airplanes with 10-19 passenger seats should be covered since they were not specifically mentioned in the NTSB recommendation, whether expected but not currently existing technology could be mandated in future requirements for new airplanes, and several issues concerning the cost figures used in the draft regulatory evaluation. The ARAC Executive Committee decided that each committee member would review the two versions of the proposed rulemaking document that were presented and make individual comments to be submitted to the FAA by December 1.

Comments from several ARAC Executive Committee members were forwarded to the FAA on December 4. The ARAC Executive Committee made no formal recommendation to the FAA concerning the proposed rule documents reviewed and discussed at the November 15 meeting. Of the comments received on December 4, the general comments are addressed here; specific comments as to the inclusion or exclusion of certain provisions from the proposed rule are included in the explanation of the proposed rule provisions below.

General Comments From the ARAC Executive Committee Members

Several members stated that the decision to propose to require up to 88 parameters for airplanes manufactured five years after the final rule is effective will create a disharmony with the European JAR-Ops and will create a disparity in the configuration of U.S. and European airplanes, limiting their exchange.

The FAA acknowledges that the proposed requirement to record 88 paramenters exceeds the 57 parameters being required by JAR-Ops, but no disharmony is created. The first 57 parameters (and their values in proposed Appendix M to part 121) were arranged so as to be the same as those rquired by JAR-Ops, at the suggestion and request of the working group members, including two U.S. manufacturers, they are considered harmonized. The fact that the U.S. requirement would exceed the European requirement is not disharmony, since there is no further JAR requirement with which the proposed rule could disagree. The 88 paramenters came from the NTSB recommendation already discussed, which served as a basis for implementing a rule change. The FAA never represented that the proposed rule would be limited to JAR-Ops, since the agency understood that this would not satisfy the NTSB recommendation. In fact, the original NSTB recommendation included more than 88 parameters. The number was reduced slightly through certain parameter combinations and their rearrangement to coincide with JAR-Ops.

The NTSB has also indicated to the FAA that at least some of the European manufacturers are already equipping their airplanes to record 88 or more parameters and that it does not anticipate a problem with the proposed requirement. Further, the NTSB is proposing through ICAO that the 88 parameters become the international standard; it is using the list and Appendix values developed for this proposed rule as its proposal to ICAO.

Some members commented that it is difficult to visualize the proposed DFDR upgrade scheme by reading the rule language alone, and proposed that a flow chart be included to assist with a rule overview. The FAA agrees and is including a chart in the form of a matrix, but cautions that the chart is a summary and should not be regarded as a substitute for the actual rule language. The chart can be found in this

document, immediately following the general discussion of the proposed rule.

At least one member recommends that a phased compliance schedule be adopted for upgraded DFDR installation, rather than the proposed 4-year compliance time to provide more flexibility to operators.

The FAA does not understand why a mandatory schedule of compliance (with a suggested 35% of an operator's fleet requiring the upgrade within 2 years) is considered more flexible than a simple final compliance date in four years—an operator may comply as early as it likes within the proposed 4 years. The FAA's experience with compliance schedules has not always been positive, and several other operator compliance schedules already exist for other requirements. Adding yet another schedule for DFDR equipment modifications could lead to several schedule conflicts and result in numerous requests for exemptions and extensions compromising the intent of each rule involved. Accordingly, the FAA does not consider an additional compliance schedule to be advisable.

Another comment suggesting that a 6-year compliance schedule be considered rather than 4 years is not addressed in this document because it was never proposed at the working group level, nor has any data been submitted as to the comparative costs of compliance. The FAA notes that longer compliance schedules almost always result in reduced costs. However, the proposed rule already exceeds the NTSB time recommendation for implementation of the upgrades, and the safety considerations of upgraded DFDR equipment are too serious to consider lengthening the proposed 4-year compliance time. The proposed compliance is the product of significant working group discussion and elimination of a 2-year alternative that was predicted to be nearly impossible because of equipment approval, availability and airplane down time. Without similar cost data from the commenter, a 6-year compliance time cannot be evaluated properly.

The comments concerning the proposed compliance time imply some disagreement with the provision that upgrades must be installed beginning at the next heavy maintenance check that occurs two years after the effective date of the final rule (but in any case within four years). That provision was added to prevent operators from waiting until the last minute to install upgrades, causing a logjam in scheduling and equipment availability; a similar provision was shown to have worked well when the last amendment to the DFDR rules was done in 1994. Further, at the working group meetings, this provision was not only acknowledged as necessary, the language was discussed and changed several times at the request of the member operators. Accordingly, the language that defines a heavy maintenance check as any time an airplane is scheduled to be out of service for 4 or more days and is scheduled to include access to major structural components is included in the proposed rule as a result of working group discussions and general agreement. No proposed phased compliance schedule or problem with the included provision was raised at the working group meetings.

Similarly, operators of small airplanes comment that the same heavy maintenance check provision is inappropriate for their operations. The FAA has changed the proposed rule to include the words ''or equivalent'' in the provision that relates to smaller airplanes, and specifically requests that if operators of these airplanes have a more appropriate way of describing their maintenance practices so as to achieve a similar result, they should submit that language as a comment to the proposed rule. This issue was not raised at the working group level during drafting of the proposed rule.

Several commenters stated that they felt that the proposed requirement to record lateral acceleration is unnecessary if both rudder pedal and rudder position are also recorded. The NTSB disagrees that lateral acceleration is redundant since it may show the effect of outside forces on an airplane that are separate from the effect of rudder movement. The NTSB cautions that the concern over lateral acceleration and rudder pedal and position is not limited to the accidents and incidents reported on the Boeing 737; the proposed requirement to record those parameters takes into account all airplane types and the critical nature of the information that such recordation may uncover. The NTSB also notes that the upgrade from dual to triaxial accelerometers may not necessarily be costly, as one commenter states, since at least one manufacturer has a ''trade-in'' program for that equipment. Manufacturers of this equipment are urged to supply the FAA with further data concerning the cost and availability of this equipment.

Commenters also expressed some confusion over the effect of the proposed rule on airplanes currently covered by exemption No. 5593, Stage 2 airplanes that are scheduled to be retired and are allowed to operate with 6-parameter recorders through 1998. The terms of the exemption were clear when granted—it was only to be used for airplanes that were scheduled to be retired by the end of 1998; it was not an exemption that could be used to delay the upgrade to an 11-parameter recorder that was due in 1995. Accordingly, since any airplane covered by the exemption should be retired before the proposed compliance date, this proposed rule should have no effect on the exempted airplanes.

As the FAA has stated previously, any airplane covered by the exemption that is not retired but is instead retrofitted to meet the Stage 3 noise requirements must also upgrade to an 11-parameter recorder before it is allowed to operate. If a decision to noise retrofit causes an airplane to have to undergo two DFDR retrofits—to an 11-parameter recorder to operate past 1998 and then to the requirement of this proposed rule—it is a decision of an individual operator, and will only result from a failure to effectively plan its fleet composition or by an abuse of the previous DFDR upgrade requirement and exemption No. 5593. The FAA does not intend to lengthen the term of the exemption for any operator.

Finally, more than one commenter objected to the change that would require the recordation of both pilot inputs and actual control surface positions. The current requirements call for one or the other to be recorded. Discussion of this issue consumed an appreciable amount of time in the working group, and covered the perceived need for the data and the cost and capability of recording both parameters (input and output). Although consensus was not reached, the FAA is including this provision in the proposed rule because the NTSB considers it among the most critical of the recommended parameters. As stated previously, NTSB investigations have shown that in some failure modes, flight control surfaces can move independent of cockpit flight controls. Under some conditions, additional information is necessary to determine whether flight deck controls caused the control surfaces to move, or if the movement of the control surface caused the cockpit controls to move. The FAA accepts the NTSB recommendation since the current practice of allowing one input to be recorded to demonstrate the movement of both the control surfaces and cockpit controls has been shown to be insufficient.

General Discussion of the Proposal

The FAA stresses that the ARAC working group provided valuable input to the proposed rule, and that many

issues were brought forth and the position of the members explained, even if consensus could not be reached on each issue. For example, there was basic agreement among the working group members as to the framework of the proposed rule, including the categories of airplanes to be upgraded in various phases. As described below, consensus could not be reached on the description of future-manufactured airplanes or the number of parameters that they would be required to record. Similarly, because of the considerable amount of time required to complete the economic analysis, the efforts of the working group were often well ahead of supporting economic data analysis, which included data that were supplied by the working group member organizations.

As noted previously, the ARAC did not formally recommend either version of the draft proposed rules it received from the working group. Accordingly, the FAA is promulgating this NPRM based on the recommendations of the NTSB and the results of the significant working group efforts that it can support.

If adopted, this proposed rule would amend the DFDR rules, and associated appendices, as they apply to airplanes operating under parts 121, 125, 129, and 135. The current regulations, depending on the age of the airplanes, require as a minimum that either 11 or 17 parameters be recorded in every airplane; in some cases, more parameters must be recorded. Proposed requirements for part 125 closely parallel part 121 requirements, except for minor differences in the age and configuration of affected airplanes. Part 129 does not currently have a DFDR requirement; however, the FAA is now proposing a DFDR requirement in part 129 for U.S.-registered airplanes. Proposed requirements for part 135 would apply only to newly manufactured airplanes that will be used in schedules service; there are not retrofit requirements proposed for on-demand, nonschedules airplanes.

The FAA recognizes that the program envisioned by the proposed rule would require a substantial financial undertaking by the airline industry. Accordingly, commenters are expressly invited to recommend alternative approaches that could reduce the cost burden. For example, are there certain airplanes or certain models of airplanes not discussed in this document that should be excluded from this proposed rule, and if so, what is the rationale for excluding these airplanes? Recognizing that a change in the proposed number of required parameters or the elimination of certain proposed parameters could significantly alter the costs involved, are there other, less costly means to obtain the information needed for accident and incident investigations? The FAA recognizes that cost could be reduced by further extending the compliance schedule; at the same time, NTSB needs critical information in a timely manner to complete its investigations effectively. If the compliance schedule is extended further, are there incentives that would encourage operators to comply earlier?

Commenters advocating a different regulatory approach are strongly encouraged to set forth specific recommendations and explain both the costs and benefits involved in the changes recommended. The FAA will weigh any recommendations with particular care, and it can do so only if meaningful cost and safety data are provided.

Part 121

The FAA proposes to amend § 121.344 and add a new § 121.344a. Current § 121.343 is not being revised because it is necessary to retain the current regulations for airplanes that are excluded from compliance with these proposed amendments. Airplanes specifically excluded from the proposed FDR upgrade include State 2 airplanes that are subject to the phased compliance rules of § 91.801(c). Following considerable analysis, the FAA has determined that, if they remain Stage 2, these airplanes do not have enough remaining useful life to justify the cost of FDR retrofit proposed by this document. The FAA has also proposed that certain other aircraft types that are no longer in production and are in limited use in air carrier operations be excluded because the cost associated with retrofitting these airplanes with new DFDR's would cause undue economic burden and would yield little safety return.

The proposed amendments to § 121.344 would require that all turbine-engine powered transport category airplanes—including airplanes having a seating capacity of 20–30 that were formerly operated under part 135—record at least 18 specified parameters, except for airplanes with more than two engines. In some cases, compliance would require a retrofit of a flight data recorder and/or the addition of sensors and wiring capable of recording the specified parameters, or a reprogramming of the current recorder to accommodate the specified parameters. Requirements for DFDR's on newer airplanes and newly manufactured airplanes are also being revised to require the recordation of additional parameters.

On December 20, 1995, the FAA published a final rule ''Commuter Operations and General Certification and Operations Requirements'' (60 FR 65832, FAA Docket No. 28154), which requires airplanes having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats to be operated under part 121. That rule did not address FDR's because this rulemaking project was in process. Proposed new § 121.344a would apply to those airplanes formerly operated under part 135.

Proposed § 121.344 would require Boeing 737 airplanes to be equipped with the expanded flight data recorder systems recommended by the NTSB as part of the retrofit of the overall active fleet. The FAA determined that compliance with the NTSB recommendation to retrofit these airplanes by December 31, 1995, would have resulted in substantial airplane groundings and very high associated costs. Furthermore, if operators had been required to retrofit all Boeing 737 airplanes before the end of 1995, each of these airplanes might have had to undergo a second retrofit to meet the expanded requirements depending on what is adopted as a result of NTSB Safety Recommendation A–95–26 and-27, discussed earlier in this document.

Accordingly, this proposed rule reflects the FAA's adoption of the ARAC working group suggestion that NTSB recommendations A–95–25 and A–95–26 be consolidated for rulemaking purposes.

Requirements for Transport Category Airplanes

Proposed § 121.344(a): This paragraph lists the operating parameters that would be required to be recorded by DFDR's required by this section. The list is consistent with both European standards and the parameters recommended by the NTSB in its ''Proposed FDR enhancements for newly manufactured airplanes.'' The ARAC working group used the European standards and the NTSB proposal as a basis for this list of parameters and made minor revisions to it that would apply to both new and in-service airplanes.

The parameters listed in this paragraph are presented in order of their priority. Where the rule requires the recording of additional parameters based on the capability of installed equipment, the additional parameters should be selected in the order given in this paragraph. In some instances, individual parameters need only be

recorded if the equipment needed is already installed in the airplane. For example, angle of attack, § 121.344(a)(32) need only be recorded if the sensor for that parameter is already installed. These parameters are designated ''when an information source is installed.'' In any instance, if a sensor is installed, the data must be made available to the FDR, unless it would compromise a critical function. Individual members of the ARAC working group suggested that something other than a ''critical function'' be used as a basis. After further consideration, the FAA has determined that the term critical function is well understood by aircraft manufacturers in terms of FDR functions, and no new terms will be introduced.

The introductory text to paragraph (a) also explains that when the phrase ''when an information source is installed'' is used, it indicates that no change in equipment was intended in requiring this parameter to be recorded. Although the parameters are listed in priority order in this paragraph, the ARAC considered that some of the parameters that carry the designated text should be required only when the recording system on the airplane is sufficient to record these parameters. Where recording one of the parameters that includes the noted phrase would require new equipment such as a DFDAU or recorder, that parameter is not required to be recorded.

Airplanes Manufactured on or Before October 11, 1991

Proposed § 121.344(b): Except for certain older airplanes (identified below), this paragraph establishes a final compliance date of [insert date 4 years from the effective date of the final rule], for all turbine-engine powered transport category airplanes manufactured on or before October 11, 1991. By that date, all affected airplanes must be equipped with a DFDR that is capable of recording the first 17 (or 18) parameters listed in § 121.344(a).

Proposed § 121.344(b)(1) would apply to airplanes that were not equipped with a flight data acquisition unit on [insert date of publication of NPRM], and currently record 11 parameters of flight data. The recordation of lateral acceleration, paragraph (a)(18), would be required for certain airplanes with more than two engines only if the capacity to record this parameter is available on the FDR. Information obtained during the rulemaking process indicated that for airplanes that were manufactured on or before October 11, 1991 that have more than two engines, the recording of lateral acceleration could exceed the capacity of installed recorders and would require an expensive equipment retrofit for the sake of one parameter.

These non-FDAU airplanes would be required to record these parameters within the ranges, accuracies, and intervals specified in current Appendix B to part 121. Although this rule would create a new Appendix M, these older airplanes would continue to use the values in Appendix B that are currently in effect in order to stay within the capacity of installed recorders and other data acquisition equipment.

Proposed § 121.344(b)(2) would apply to airplanes that were equipped with a FDAU on [insert date of publication of NPRM] and currently are required under § 121.343 to record 17 parameters of flight data. These airplanes would be required to record the parameters listed in paragraphs (a)(1) through (a)(22) by [insert date 4 years from publication of the NPRM]. This installation would be required at the next heavy maintenance check that occurs after 2 years from the effective date of the final rule, but no later than [insert date 4 years after date of final rule]. Airplanes with FDAU's would be required to record the parameters within the ranges, accuracies, resolutions and recording intervals specified in proposed Appendix M to part 121. Proposed new Appendix M provides the ranges, accuracies, resolutions, and recording intervals for all parameters listed in paragraphs (a)(1) through (a)(88). In some instances, the values for certain parameters have been increased over those in current Appendix B.

For all airplanes covered by proposed § 121.344(b), the parameters listed in paragraphs (a)(12) through (a)(17) may be recorded from a single source.

Proposed § 121.344(c)(1) would require that as of [insert date 4 years after effective date of final rule], all turbine-engine powered transport category airplanes that were manufactured on or before October 11, 1991, and that were equipped with a digital data bus and an ARINC 717 digital flight data acquisition unit (DFDAU) or its equivalent on [insert publication date of NPRM], record the parameters listed in paragraphs (a)(1) through (a)(22). Paragraph (c)(1) would also require that the parameters be recorded in accordance with the specifications in proposed Appendix M. This paragraph would also permit the parameters described in paragraphs (a)(12) through (a)(14) to be recorded from a single source.

Proposed § 121.344(c)(2) introduces the term ''recording system'' which includes the DFDAU or equivalent and the DFDR. This paragraph would require that, based on the capacity of the recording system, all additional parameters (beyond those required by (c)(1)) for which there is capacity on the recorder system must be recorded in the order given in paragraph (a) and in accordance with the values listed in Appendix M.

The term ''recording system'' was adopted to identify the components in question so as not to require upgraded equipment on airplanes retrofitted to meet the proposed requirements. Thus, additional parameters need only be recorded when such parameters are within the capacity of the flight data recordation system installed on any airplane. That term is used again later in the regulation.

Proposed § 121.344(c)(3) would require airplanes that were subject to § 121.343(e) to continue to meet the requirements of that section until compliance with paragraph (c)(1) is accomplished.

Paragraph (c) brings forward and upgrades the requirements of current § 121.343(e). That section was originally adopted to require airplanes that were capable of recording more than the minimum required parameters to do so. At the time it was adopted, § 121.343(e) referenced the ARINC 717 DFDAU because it was the ''state of the art,'' and the capability of recording additional parameters existed. The adoption of § 121.343(e) reflected the FAA's growing awareness that the information gained by recording additional FDR parameters was important. Accordingly, § 121.344(c) of the proposed rule requires that airplanes subject to that section continue to record those parameters that they are capable of recording, whether they are equipped with an ARINC 717 or an equivalent DFDAU. When these airplanes comply with proposed paragraph (c)(1), they would be recording the parameters listed in (a)(1) through (a)(22), plus all additional parameters they are capable of recording, and all of these must be recorded in accordance with proposed new Appendix M. These provisions are proposed to prevent a possible decrease in the number of parameters already being recorded before the compliance date of the proposed regulation.

Airplanes Manufactured After October 11, 1991

A significant portion of the work of the ARAC working group was focused on the requirements for airplanes not yet built. Airplanes for which no type certificate yet exists were seen as less of a problem. To that end, discussions focused on the ability of manufacturers

to re-engineer airplanes that are already type certificated, and the time needed to accomplish that engineering, get FAA approval of the change in type design, and incorporate it into airplanes on the production line. Significant discussion also occurred on the best way to describe the airplanes that were to be covered by future requirements. For example, a newer ''model'' of an airplane recently type certificated might already be in the works, with a significant investment in the engineering. Further, there is no standard industry terminology for what the ''next version'' of an already certificated airplane might be called. Finally, the number of parameters to be recorded by these future airplanes was also part of the discussion, and included consideration of flight data recorder requirements that will be included in the operating rules of the Joint Aviation Authorities of Europe (JAR-Ops).

The proposed regulation places airplanes manufactured after October 11, 1991, into three groups, with DFDR requirements increasing as age decreases. These airplane groups and the requirements that apply to each were the subject of considerable discussion within the ARAC working group.

Because there was little agreement on the terminology to be used or the time necessary to incorporate upgrades into future aircraft models at the least cost, the requirements that would apply to future production airplanes remained one of the most contentious issues in the working group.

The FAA began discussions with the recommendations of the NTSB that would require an upgrade to 88 parameters of recorded data for all airplanes manufactured after 1998, regardless of the date of type certification of models then in production. Representatives of airplane manufacturers on the working group indicated that this was unrealistic given the time needed to re-engineer airplanes in production, get FAA approval of the design changes, and incorporate the modifications into airplanes on the assembly line that had been on order, in some instances, years before the requirements were written. The ARAC industry members thus suggested an alternative requirement that would apply to airplanes that receive a new or amended type certificate beginning one year after the final rule becomes effective. This alternative would mean that airplanes produced under a type certificate that existed before that date might never be required to upgrade to 88 parameters, even if manufactured 10 years after the rule went into effect, if the type design were not amended. The NTSB considers this unacceptable, and describes it as a parallel to the current circumstances where technological development and capability have far outpaced current regulations. Further, the NTSF notes that a letter requirement will in the future place the FAA and the industry in the same circumstances that exist today in attempting to catch up with available technology.

There was also considerable debate within the working group over the recording equipment that might be necessary to record the 88 parameters of information proposed. Little hard data was available concerning whether the current 128-word recorders would be able to handle the 88-parameter requirement. Several members indicated that a 256-word recorder would likely be needed, and that since no such recorder was currently available or approved for use, no regulation that would require its use could be promulgated. Similarly, data were available to indicate that while there was no 256-word recorder currently available, the reason was that there was no current market for it. Informal inquiries by the NTSB to equipment manufacturers indicated that a 256-word recorder is well within the bounds of currently available technology, and may well already exist.

Taking into account the NTSB concern that all new airplanes be able to record the maximum number of parameters, balanced against the knowledge that airplanes in production cannot be re-engineered without sufficient lead time, the FAA has determined that FDR requirements for future airplane production will be based on the date of manufacture, but that the dates suggested by the NTSB cannot realistically be met without incurring overwhelming costs and unacceptable delays in production. Accordingly, the proposed rule would place the following requirements on newly manufactured airplanes.

The first group of airplanes, addressed in proposed § 121.344(d)(1), are those manufactured after October 11, 1991, but on or before [insert date three years from effective date, i.e. 2000] to record the parameters listed in paragraphs (a)(1) through (a)(34), and do so in accordance with Appendix M. Similar to the requirements for older airplanes, the parameters listed in paragraphs (a)(12) through (a)(14) could be recorded from a single source. Proposed § 121.344(d)(2) carries forward the requirements that all additional parameters that are within the capacity of the recording system must also be installed to take advantage of the latest advancements in technology and the capabilities of individual airplanes. Because this requirement will apply to airplanes recently produced, it is a retrofit requirement, but the effect of the retrofit is softened by limiting the requirement to the first 34 parameters.

The second group of airplanes, addressed in proposed § 121.344(e)(1), are those that will be manufactured after [insert date three years from effective date, i.e. 1999], but on or before [insert date five years from effective date, or 2001]. These airplanes would be required to record the parameters listed in paragraphs (a)(1) through (a)(57), and to do so in accordance with Appendix M. Proposed § 121.344(e)(2) carries forward the requirements that all additional parameters that are within the capacity of the recording system must also be installed to take advantage of the latest advancements in technology and the capabilities of individual airplanes.

This group of airplanes is considered to include the already engineered versions of currently certificated airplanes, and any airplane getting a new type certificate during this time period. The three year time period was considered by several members of the working group as sufficient lead time to incorporate the upgrades required. The number of parameters was chosen based on the recommendations of the NTSB and the 57 parameters that will be required to be recorded under JAR-Ops, which will become effective in 1998.

The third group of airplanes, addressed in proposed § 121.344(f), are those that would be manufactured after [insert date five years from effective date]. These airplanes would be required to record the parameters listed in paragraphs (a)(1) through (a)(88), and to do so in accordance with Appendix M.

As indicated in the previous discussion, this requirement would apply to all airplanes manufactured five years after the effective date of the rule. The FAA agrees with the NTSB that it is not acceptable to adopt a requirement that could allow airplanes with 57 parameters to be produced indefinitely. The concept of ''manufactured after'' was established in the FDR requirements of § 121.343 and is being used in other sections of this proposed rule. The ''manufactured after'' standard is viewed as being the most straightforward for the agency to administer and for the industry to comply with. Further, during the meetings of the ARAC working group, a lead time of five years was consistently mentioned as the working standard for new airplane design.

The FAA did raise another alternative that would require all 88 parameters to be recorded on any airplane for which a new, amended, or supplemental type certificate is applied for one year after the effective date of the final rule. That proposal would have included, by necessity, significant deviation authority for any changes to airplanes that did not affect the operational or performance characteristics of airplanes, or that did not provide sufficient opportunity to accomplish the necessary modifications. That proposal was made after considerable discussion regarding the lack of consistent terminology regarding new airplane models. In designing the proposal, the FAA looked to its experience in similar equipment upgrade requirements and concluded that it would be necessary for the agency to retain exclusive discretion as to what constituted enough of a change to an airplane design (by amended or supplemental type certificate) to cause the FDR upgrade requirements to apply, or for a deviation to be granted.

The FAA determined that, while that proposal had a sound regulatory foundation and would be triggered by well-established events that would not be the source of semantic debate, it would be unwieldy in practice and would lead to considerable extra work and expenditures for the agency and every future applicant for an amended or supplemental type certificate.

The proposed requirement to record 88 parameters may require the installation of the 256-word recorder described previously. The FAA is unable to accept the argument that simply because a 256-word recorder is not currently marketed or approved for installation in aircraft, it would not be available by the time the proposed requirement would take effect, five years after the effective date of a final rule. The FAA has experience in proposing requirements for new technology. For example, the technology for TCAS systems existed at the time the FAA promulgated a requirement for the equipment, but it was not commercially available in the format into which it eventually evolved. In a similar sense, air carriers strongly urged the FAA to authorize the use of predictive windshear technology in lieu of current reactive technology despite the fact that the technology was only expected to be available at some unspecified future date.

In this case, information available to the FAA and the NTSB suggests that the 256-word recorder that may be needed to record 88 parameters is close to being a reality, since the technology already exists. The FAA and NTSB expect the 256-word recorder to be commercially available as soon as some commercial demand exists. Neither the FAA nor NTSB can accept the argument of current unavailability as a basis for not imposing a more stringent requirement on future-production airplanes, and the FAA has received no evidence indicating that this position is not realistic. The FAA specifically requests comment on this issue concerning the probable availability of such equipment.

Except for paragraphs (j) and (l), the balance of proposed § 121.344 carries forward the rest of the requirements of § 121.343.

Proposed § 121.344(g) would duplicate current § 121.343(g), which requires an FDR's continuous operation from the time of an airplane's takeoff roll to its landing roll, except for a minor, nonsubstantive editorial change.

Proposed § 121.344(h) would duplicate § 121.343(h), which addresses the number of hours of recorded data that needs to be kept, and erasures of that data, except for minor, nonsubstantive editorial changes.

Proposed § 121.344(i) would duplicate current § 121.343(i), which addresses requirements pursuant to flight data in the event of an accident or occurrence that requires immediate notification of the NTSB, except for minor, nonsubstantive editorial changes.

Proposed § 121.344(j) addresses the equipment installation and correlation requirements of 14 CFR part 25 for transport category airplanes. This paragraph was rewritten to reflect current technology and the need for correlation data retention. No significant change in the duty of air carriers to retain this data is intended by this update of this regulation.

Proposed § 121.344(k) would duplicate current § 121.343(k), which requires an approved device to locate a flight data recorder under water, except for minor, nonsubstantive editorial changes.

Proposed § 121.344(l) would identify those airplanes to which these proposals would not apply.

Paragraph (l)(1) addresses Stage 2 airplanes that are scheduled to be retired under the noise transition regulations of Part 91. These airplanes would not have to be retrofitted with upgraded DFDR's prior to December 31, 1999. However, no Stage 2 airplane would be allowed to be operated after December 31, 1999, unless it meets the upgraded FDR requirements. Although the noise transition regulations allow for the possibility that some Stage 2 airplanes would be allowed to operate under certain limited waivers, the intent behind the noise operating rules differs significantly from the intent behind the FDR requirements. Accordingly, the FAA is not willing to allow the continued operation of these airplanes with 11-parameter recorders beyond the final noise compliance date regardless of an airplane's noise operating status, and the agency will not put itself in a position of having to forgo the safety considerations behind FDR upgrades as an economic matter if a change in circumstances causes a change in the noise operating rules whether by waiver or a change in the regulations. Noise waivers are not a certainty, and operators have been warned not to presume that they will be granted as a matter of course and to plan for full compliance. No such waiver is included in these proposed FDR requirements; the FAA views the grant of any such FDR waiver as encouraging operators to gamble on the availability of noise waivers as an excuse not to install upgraded flight data recorders, undermining the intent of both the noise transition and FDR upgrade rules.

Paragraph (l)(2) lists those airplanes that are out of production. After considering analysis of data presented by aircraft operators and manufacturers, the ARAC working group determined that the remaining economic life of these airplanes is insufficient to justify the cost associated with extensive DFDR retrofit. Further, the number of these airplanes in operation is sufficiently small and is declining, such that any safety return from expanded FDR's would be minimal. The FAA agrees in the selection of the aircraft types listed. The FAA also specifically requests that commenters submit other aircraft types, if any, that should be included in this list. Submissions for inclusion should include a detailed explanation of the reasons why these aircraft should be included on the list, and the number of aircraft that would be affected.

Specific Comments Concerning Proposed § 121.344

A significant comment was submitted through the ARAC Executive Committee from Trans World Airlines (TWA), which did not have a separate representative on the working group. In general, TWA expressed difficulty with the proposed requirements for certain of its older airplanes, the Lockheed L–1011 and the Boeing 747–100. TWA indicates that, to meet the requirements of the proposed rule, it would have to replace recording equipment in more than a third of its airplanes, and one of the premises of the working group was that significant equipment replacement would not be required for older

airplanes. To that end, TWA recommended several specific changes to the proposed rule language and Appendix values that would allow its Loral F800 flight data recorders to continue to be used.

The existence of older recording systems, including the Loral F800, was the subject of considerable discussion at the working group meetings. In an attempt to accommodate some of this older equipment, for example, § 121.344(b)(1)(i) was added to *not* require the recordation of lateral acceleration on airplanes with more than two engines unless recording that parameter could be accommodated on installed equipment. That provision was added to accommodate the Loral F800 recorder installed on the L–1011. The FAA is concerned that broader changes to the proposed rule—including revisions to the values in current Appendix B and a new category of aircraft that would change the established manufacturing-date groups—would weaken the intent of the rule by allowing loopholes and exceptions that would be almost impossible to track, and would result in an unmanageable number of different recording capabilities within the part 121 fleet. The FAA will not promulgate rules to accommodate one or two older pieces of equipment, especially when the intent of the rule is to upgrade equipment in airplanes that remain viable portions of the fleet.

However, the FAA is willing to make what accommodations are within the spirit of the rulemaking, as in the example cited above, where such accommodation does not change the effect of the rule in general on the rest of the fleet. Accordingly, while the agency will not consider changes to existing rules that are a step back from current requirements, TWA, and other operators that may find themselves in unique circumstances because of equipment configurations, are urged to comment specifically on provisions that they feel they will not be able to meet without undue burden, and to suggest limited provisions such as the one cited that may alleviate some of that burden.

A U.S. aircraft manufacturer commented through the ARAC Executive Committee that to record parameters (a)(58) through (a)(88) would ''require the installation of sensors [that have] a poor reliability history.'' The NTSB agrees that there is a question as to the reliability of control force sensors over the full range of forces, but it is this very unreliability of the current generation of sensors for control forces that has caused the NTSB to recomment that 88 parameters be recorded. The FAA requests comment from manufacturers and operators as to the current reliability rates for control force sensors, and what plans may exist for increasing their reliability before they would be required in five years.

Airplanes With 10–19 Passenger Seats

The February 1995 recommendations of the NTSB did not specifically address airplanes that carry 10–19 passengers. However, the adoption of new operating rules for certain airplanes formerly operated under part 135 has led to a need for the FAA to address FDR requirements for these airplanes. Since these airplanes will, in scheduled service, be operated under part 121, the FAA has determined that the FDR requirements that would apply to these airplanes are best provided in a separate section. Accordingly, the FAA is proposing the adoption of a new § 121.344a, to separate these requirements from those applicable to transport category airplanes and prevent confusion as to applicability and compliance times.

Proposed § 121.344a(a) would require all turbine-engine powered airplanes having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats that were brought onto the U.S. register after October 11, 1991, to be equipped with a DFDR that is capable of recording, at a minimum, the parameters required in § 135.152. This provision would carry over the current requirements of part 135 until the upgraded standard in the proposed rule is met.

By [4 years from the effective date of the final rule], those airplanes would be required to be equipped with a DFDR that is capable of recording the parameters listed in § 121.344 (a)(1) through (a)(11). In addition, these airplanes must record either three additional parameters of control input or control surface position. If capable of being recorded, these airplanes must also record the parameters described in § 121.344 (a)(19) through (a)(22).

As stated in the proposed rule language, parameter (a)(18) would not be required for airplanes with more than two engines, unless sufficient capacity is available on the existing recorder. Further, the parameters listed in paragraphs (a)(12) through (a)(17) would be permitted to be recorded from a single source. All of the parameters would be required to be recorded in accordance with the values listed in Appendix B to part 135, the standard in the current rule, unless the parameter to be recorded has no value indicated in that appendix. In that case, the values in Appendix B to part 121 would be used.

Consistent with current regulation, airplanes with 10 to 19 passenger seats that were brought onto the U.S. register on or before October 11, 1991, would not be required to comply with this regulation. The FAA has determined that the cost of retrofitting this fleet of airplanes would be substantial.

However, the FAA is concerned that all airplanes used in air carrier operations be equipped with FDR equipment. Accordingly, the FAA has determined that the already established date for installation of FDR equipment—airplanes brought onto the U.S. register after October 11, 1991—will remain the standard for FDR installation if these airplanes are operated under part 121.

Further, the FAA emphasizes that, consistent with current regulation, airplanes that may have been on the register on or before October 11, 1991, but were removed from the U.S. register, and brought back onto the U.S. register after October 11, 1991, would be required under this proposed rule to have a DFDR capable of recording the required 18 to 22 parameters. There has been at least one previous policy determination made concerning airplanes that have been removed from the U.S. register after 1991 and then brought back; that policy stated that compliance with the FDR rules of part 135 is not necessary because the airplane was on the register before October 11, 1991. After further consideration, however, the FAA has determined that this policy is inconsistent with the language of the regulation itself and with the intent of the recently adopted rules bringing part 135 scheduled commuters under part 121. Airplanes that have been operated without FDR's based on this policy determination will have to be retrofitted with the FDR equipment required under § 121.344a(a) by the compliance date proposed in that paragraph, as they would have if they remained under part 135.

Although the basic requirements for 10–19 seat airplanes are not identical to those for transport category airplanes in § 121.344, it was determined that some differences could exist without compromising safety. These airplanes currently are required to record 17 parameters of information under part 135.152; the 18 parameters to be recorded under the proposed rule differ slightly and will require that some FDR's be reprogrammed. The FAA found, however, that requiring an increase to the first 23 parameters would result in substantial costs. Since the NTSB recommendations do not

address these airplanes or any specific upgrade for their flight data recorders, a determination has been made that recordation of the first 18 parameters—or 22 where capable—is sufficient for this class of airplanes.

The ARAC Executive Committee submitted a comment from a member indicating that the applicability of proposed § 121.344a(a) should be changed to airplanes that were manufactured after October 11, 1991, rather than airplanes brought onto the U.S. register after that date. The FAA disagrees. This distinction by date of registration was maintained as established in part 135, and the use of the registration date has resulted in a specific set of airplanes to which these rules apply. A change in the applicability of the regulation now could cause airplanes that were previously required to have DFDR's to no longer need them, with the consequences of recorders being removed from in-service airplanes. A change in applicability under part 121 would also have the confusing effect of establishing different applicability provisions for the same airplanes, depending on the part under which they are operated. The FAA will not introduce such complication into the regulations nor promulgate a rule that would reduce the number of airplanes required to have DFDR's.

Another comment stated that the FAA is proposing to cover 10–19 seat airplanes operated under part 121 ''with no technical support * * * for their inclusion.'' The commenter suggests that the FAA ''abide by the NTSB recommendation and remove these'' airplanes from the proposed rule.

As stated previously, the NTSB recommendation was considered the starting point for this rulemaking action. The NTSB recommendation did not include consideration of the FAA's proposal to bring smaller aircraft operated in scheduled service under part 135 into part 121, so no recommendation for DFDR requirements on those airplanes could have been included. However, as part of the FAA's goal of regulating all scheduled operators under a single part, it would be inconsistent *not* to propose that all airplanes operated in part 121 service be covered by the same or comparable requirements. It is up to the FAA to determine the proper scope and consistency of its regulations, and the agency cannot be constrained by a recommendation of the NTSB that did not consider other ongoing agency actions and initiatives. The NTSB did not state that these airplanes *not* be covered—it simply never addressed them. Further, it is not clear what the commenter means as to the existence of ''technical support'' for a proposal that is but one part of an overall agency safety initiative.

Proposed § 121.344a(b) would require recorders on all turbine-engine powered airplanes having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats, that are manufactured after [insert date 3 yrs after effective date of final rule], to record the parameters listed in § 121.344 (a)(1) through (a)(57), as well as all additional parameters that are within the capacity of the recording system within the ranges, accuracies, resolutions, and recording intervals specified in Appendix M to part 121.

Proposed § 121.344a(c) would require recorders on all turbine-engine powered airplanes having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats, that are manufactured after [insert date 5 yrs after effective date of final rule], to record the parameters listed in § 121.344 (a)(1) through (a)(88), within the ranges, accuracies, resolutions, and recording intervals specified in Appendix M to part 121. This is the same requirement that would apply to transport category airplanes as proposed in § 121.344, and the same reasons for its adoption applies.

Proposed § 121.344a(d) would bring forward the appropriate references in current § 135.152(f), pursuant to airplanes only, which includes requirements for installation of flight recorders and correlation of flight data. Rotorcraft requirements would remain in § 135.152(f); they are not being addressed in this rulemaking.

Proposed § 121.344a(e) would require all airplanes subject to this section to also comply with paragraphs (g)–(k) of § 121.344.

Proposed § 121.344a(f) would identify those airplanes to which these proposals would not apply. Included are airplanes that are no longer in production. After considering analysis of data presented by aircraft operators and manufacturers, the ARAC working group determined that the remaining economic life of these airplanes is insufficient to justify the cost associated with extensive DFDR retrofit. Further, the number of these airplanes in operation is sufficiently small that any safety return from expanded FDR's would be minimal. The FAA agrees in the selection of the aircraft types listed. The FAA also specifically requests that commenters submit other aircraft types, if any, that should be included in this list. Submissions for inclusion should include a detailed explanation of the reasons why these aircraft should be included on the list, and the number of aircraft that would be affected.

New Appendix

Proposed Appendix M: This new appendix would correspond directly to the parameter list set forth in § 121.344(a), and would present the ranges, accuracies, resolutions, and recording intervals for each parameter. Values for these items were determined based on the capacity of current equipment and take into consideration the European standards. Where possible, the standards in Appendix M are the same as those in the European requirements.

Specific Comments Concerning Proposed Appendix M

Several specific changes to Appendix M were submitted in the comments from the ARAC Executive Committee. The addition of TSO C51a to the Accuracy column of the Pressure Altitude parameter was reviewed and accepted. One comment stated that the Heading parameter, which would require a true/mag discrete is unclear and that the two should be separated. A significant amount of time was expended in working group discussions on this topic, and the designation as it appears in the proposed Appendix was agreed to by working group members. A comment concerning Manual radio transmitter keying states that existing installations should only require a single discrete. That is all that is required, and only for air traffic communications. A further comment that language should be added to exclude digital voice and data transmissions is not being addressed because there is no requirement that digital data link transmissions be included as part of this parameter.

Part 125

The FAA proposes to add a new § 125.226 to require the existing airplane fleet operated under part 125 to be retrofitted with FDR's that record additional parameters. Requirements for DFDR's on newer airplanes and newly manufactured airplanes would also be revised to require that additional parameters be recorded. The preceding discussion for the proposed amendments to part 121 also applies to aircraft operated under part 125. The text in § 125.225 would remain unchanged because airplanes excluded from these proposed amendments would be required to continue to comply with that section.

Proposed Appendix E: This new appendix to part 125 would be identical

to the proposed Appendix M to part 121 above.

Part 129

The FAA proposes to add a new § 129.20, Digital Flight Data Recorders, to address flight data recorder regulations for U.S.-registered airplanes operated outside the United States. Although the NTSB recommendations did not apply to part 129 operators, the FAA has determined that U.S.-registered airplanes, regardless of where they are operated, should be required to comply with the same FDR requirements as though they were operated domestically. Accordingly, the proposed rule indicates that, depending on the airplane type, airplanes that are U.S.-registered but operated outside the United States must comply with the applicable flight data recorder regulations of part 121, 125, or 135. Descriptions of these requirements can be found above in the sections describing the proposed amendments to those parts. Consequently, the FAA proposes to revise the applicability of § 129.1(b) to include reference to the proposed § 129.20.

The period for public comment to the proposed part 129 amendment is no longer than that provided for the other proposals in this NPRM to allow sufficient time for international entities to comment. Therefore, the comment period for revisions to part 129 will be 120 days from the date of publication of the NPRM, and the final rule for any revisions to part 129 will be issued separately, although the compliance time adopted may be the same as that proposed for parts 121, 125, and 135.

Part 135

These proposed flight data recorder amendments would apply to turbine-engine-powered airplanes having a passenger seating configuration, excluding any required crewmember seat, of 10 to 30 seats, that are manufactured after [insert date 3 years after effective date of final rule] and operated under part 135. These requirements are being proposed to parallel the requirements for the same airplanes operated under part 121. These amendments would not apply to any airplane type certificated to be configured with nine or fewer passenger seats or any rotorcraft.

Proposed § 135.152(f)(1) would retain the requirement from current § 135.152(f). A new § 135.152(f)(2) is proposed that would update the correlation data requirements for newly manufactured airplanes.

Proposed new § 135.152(h) would list the parameters that apply to newly manufactured airplanes. This list is identical to the parameter list proposed in § 121.344.

Proposed § 135.152(i) would require all turbine-engine powered airplanes that are manufactured after [insert date three years after effective date of final rule] to record the parameters listed in paragraphs (h)(1) through (h)(57) of this part, as well as any additional parameters capable of being recorded on the installed FDR equipment, in accordance with proposed Appendix F to part 135.

Proposed § 135.152(j) would require all turbine-engine powered airplanes that are manufactured after [insert date 5 yrs after effective date of final rule], to record the parameters listed in paragraph (h)(1) through (88) of this section within the ranges, accuracies, resolutions, and recording intervals specified in Appendix F. This provision is identical as proposed in § 121.344a(c), since it would apply to the same airplanes, and the same reasons for its adoption applies.

Proposed Appendix F: This new appendix would correspond directly to the parameter list set forth in § 135.152(h), and would present the ranges, accuracies, resolutions, and recording intervals for each parameter. This proposed appendix is identical to proposed Appendix M to part 121.

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FLIGHT DATA RECORDER UPGRADE REQUIREMENTS

	Category 1 No FDAU*, mfd on or before 10/11/91	**Category 2** FDAU, mfd on or before 10/11/91	**Category 3** FDAU, mfd after 10/11/91	**Category 4** FDAU, mfd 3 (or 5) years after final rule
Current Parameters	11 parameters	17 parameters	Up to 29 parameters	29 parameters
Proposed parameters	17/18 parameters.	17 - 22 parameters	34 parameters	57 parameters (3 years) 88 parameters (5 years)
Airplanes	1929 airplanes over 30 seats; 727, 737, L-1011, DC-8, DC-9, F-28	1360 airplanes over 30 seats 704 turboprops A-320, 737, 747, 757, 767, DC-10, F-28, MD-80, ATR-42, EMB-120, SAAB 340, DHC-8	1036 airplanes over 30 seats 673 airplanes 10-19 seats 277 airplanes 20-30 seats 737, 747, 757, 767, 777, F-100, MD-11, MD-80, MD-88, MD-90, ATR-72	All newly manufactured airplanes Existing derivatives and any new type certificates

*FDAU = Flight Data Acquisition Unit

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization regulations and Joint Aviation Authority regulations, where they exist. Any differences between those documents and these regulations are of a minor, technical nature, and are deemed insignificant. They would not adversely affect harmonization.

Paperwork Reduction Act

No information collection is required by this proposed rule.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. A regulatory evaluation of the proposal is in the docket.

Costs

To obtain representative and comprehensive information from which to develop the industry costs of this proposed rule, the FAA relied on the responses of ATA and RAA members to an air carrier cost survey developed by the ARAC working group. (The FAA augmented this information with adjusted costs analysis from the recently approved commuter rule.) The principle aggregate cost detailed in the cost survey were (1) equipment and inventory/spares; (2) engineering, installation, and other costs, inclusive of recurrent maintenance costs; and (3) aircraft out-of-service costs which reflect revenue losses resulting from unscheduled aircraft downtime.

The total turbojet fleet costs for air carriers operating under part 121 for the projected retrofits are $472.0 million ($420.4 million, discounted) if required to be done within a 2-year compliance time frame. For a 4-year compliance time frame, the FAA estimates the costs would be $308.9 million ($259.1 million, discounted). The equivalent total turboprop fleet costs for air carriers operating under part 121 are $39.0 million ($35.2 million, discounted) for the 2-year compliance time frame, and $30.4 million ($25.8 million, discounted) for the 4-year compliance time frame. The total 4-year compliance time frame costs for part 135, 10–19 seat aircraft required to now operate under part 121 are estimated to be $26.4 million ($22.3 million, discounted) and for part 135, 20–30 seat aircraft, $10.9 million ($9.2 million, discounted), or $37.3 million ($31.5 million, discounted) total part 135 costs. Thus, the total 4-year compliance time frame discounted costs for the proposed retrofits required under this proposed rule are $316.3 million.

With regard to the total turbojet fleet costs for air carriers operating under part 121, nearly one-half the total cost for the 2-year alternative represents the out-of-service costs or lost revenues that would be imposed by the shorter compliance time requirement. The other one-half of the total cost represents the basic costs which include capital investment and expenses. In the 4-year time frame, just over 20 percent of the total cost represents the out-of-service costs or lost revenues that would be imposed by this compliance time requirement. No similar assessment can be made for either the turboprop fleet or part 135 carriers that will now be required to operate under part 121. However, because the total turbojet fleet costs represent over 80 percent of the air carrier industry cost analyzed for this proposed rule, the two year time frame suggests itself to clearly be a more costly option than the four year time frame. The FAA's estimates of out of service costs by aircraft type are summarized in the appendix to the full Regulatory Evaluation. That document is available for review in the regulatory docket.

Benefits

DFDR's do not in and of themselves prevent accidents; they are used as an investigative tool when accidents or incidents occur. From the DFDR information, a greater understanding of the dynamics and probable causes of accidents and incidents can be obtained. With this knowledge, a ''fix'' can be made to reduce the chance of a similar occurrence in the future.

Due to the very nature of the DFDR requirements (i.e., that we currently do not know how or why certain accidents occur), the FAA is not able to quantify the likely benefits that will ultimately result from this proposal. Nevertheless, the FAA has determined, particularly in light of the NTSB recommendations, that information concerning enhanced parameters can be collected cost-effectively. The FAA will be able to use incident information to reduce accidents of the nature that are currently of undetermined cause.

Benefit Cost Comparison

The FAA cautions that the cost analysis detailed in the preceding sections is not necessarily exhaustive. The purpose of this rulemaking is to require the installation of DFDR's that provide more flight information about aviation accidents or incidents. This in turn, would allow industry to predict certain trends in order to make the necessary modifications prior to future accidents or incidents. Thus, it is assumed that as a result of this rulemaking the quantity and quality of information is increased about those accidents for which the NTSB currently cannot determine the probable cause. To the extent that this occurs, then the FAA would take appropriate additional action to prevent a recurrence of those kinds of accidents.

Future FAA actions could take the form of Advisory Circulars, Airworthiness Directives, or possibly, additional rulemakings. The costs of these follow-on FAA actions could vary from negligible costs to considerable costs of some unknown amount. The costs of such future follow-on actions by the FAA should be taken into consideration as part of the costs of this rulemaking. However, the costs of potential future actions have not been included because the costs of such follow-on actions cannot be estimated. It should be understood, therefore, that, to the extent that the cost of the follow-on actions are more than negligible, the current costs estimates would tend to underestimate the total cost of this rulemaking.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires regulatory agencies to review rules which may have ''a significant economic impact on a substantial number of small entities.'' For this proposed rulemaking, a ''small entity'' is an operator of aircraft for hire owning, but not necessarily operating, nine (9) aircraft or less. A ''substantial number of small entities'', as defined in FAA order 2100.14A-Regulatory Flexibility Criteria and Guidance, is a number (in this instance, the number of operators) which is not less than eleven and is more then one-third of the small entities subject to a proposed or existing rule.

A ''significant economic impact'' or cost threshold, is defined as an annualized net compliance cost level

that exceeds 1) $119,900 (1994 dollars) in the case of scheduled operators of aircraft for hire whose entire fleet has a seating capacity in excess of 60 seats; 2) $67,000 (1994 dollars) in the case of scheduled operators of aircraft for hire for which the entire fleet has a seating capacity less than or equal to 60 seats; and 3) $4,800 (1994 dollars) in the case of unscheduled operators of aircraft for hire.

The FAA has determined the annualized costs (20 years) for scheduled operators of large aircraft to be $9,128 per aircraft for the 2-year time frame and $5,611 per aircraft for the 4-year time frame. Multiplying each of these estimates by 9, (the upper bound of the small entity criteria) yields results of $82,155 and $50,501 for the 2-year and 4-year time frames, respectively. Each of these estimates is significantly below the minimum compliance cost criteria of $119,900 for scheduled operators of large aircraft.

The FAA has also determined the annualized costs (20 years) for scheduled operators of small aircraft to be $4,378 per aircraft for the 2-year time frame and $3,067 per aircraft for the 4-year time frame. The upper bound costs for consideration within the small entity (9 aircraft) criteria are $39,398 for the 2-year time frame and $27,603 for the 4-year time frame, respectively. Both are well below the minimum compliance cost of $67,000.

International Trade Impact Assessment

The FAA has determined that revisions to digital flight data recorder rules could have a significant impact on international trade. The FAA is of the opinion that while the proposed rule will not effect non-U.S. operators of foreign aircraft operating outside the United States, it could have a significant impact on the suppliers of materials required for retrofitting the affected aircraft in the domestic fleet. Domestic sources of the required retrofit products may not be able to meet the increased demand of the domestic air carriers for DFDR's as these air carriers increased orders to meet the tight compliance time-frame imposed by this proposed rule. Foreign producers may benefit by supplying the unfilled orders. The FAA welcomes comments on this issue from manufacturers and suppliers of the proposed retrofit materials as well as other interested parties.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation would be a significant regulatory action under Executive Order 12866, and is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects

14 CFR Part 121

Air carriers, Aviation safety, Reporting and recordkeeping requirements, Transportation

14 CFR Part 125

Aviation safety, Reporting and recordkeeping requirements

14 CFR Part 129

Air carriers, Aviation safety, Reporting and recordkeeping requirements

14 CFR Part 135

Aviation safety, Reporting and recordkeeping requirements

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR parts 121, 125, 129, and 135 of the Federal Aviation Regulations as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Section 121.344 is revised to read as follows:

§ 121.344 Digital flight data recorders for transport category airplanes.

(a) Except as provided in paragraph (l) of this section, no person may operate under this part a turbine-engine-powered transport category airplane unless it is equipped with one or more approved flight recorders that use a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The operational parameters required to be recorded by digital flight data recorders required by this section are as follows; the phrase ''when an information source is installed'' following a parameter indicates that recording of that parameter is not intended to require a change in installed equipment:

(1) Time;

(2) Pressure altitude;

(3) Indicated airspeed;

(4) Heading—primary flight crew reference (if selectable, record discrete, true or magnetic);

(5) Normal acceleration (Vertical);

(6) Pitch attitude;

(7) Roll attitude;

(8) Manual radio transmitter keying, or CVR/DFDR synchronization reference;

(9) Thrust/power of each engine—primary flight crew reference;

(10) Autopilot engagement status;

(11) Longitudinal acceleration;

(12) Pitch control input;

(13) Lateral control input;

(14) Rudder pedal input;

(15) Primary pitch control surface position;

(16) Primary lateral control surface position;

(17) Primary yaw control surface position;

(18) Lateral acceleration;

(19) Pitch trim surface position or the parameters of paragraph (a)(82) of this section, if currently recorded;

(20) Trailing edge flap or cockpit flap control selection (except when the parameters of paragraph (a)(85) of this section apply);

(21) Leading edge flap or cockpit flap control selection (except when the parameters of paragraph (a)(86) of this section apply);

(22) Each Thrust reverser position (or equivalent for propeller airplane);

(23) Ground spoiler position or speed brake selection (except when the parameters of paragraph (a)(87) of this section apply);

(24) Outside or total air temperature;

(25) Automatic Flight Control System (AFCS) modes and engagement status, including autothrottle;

(26) Radio altitude (when an information source is installed);

(27) Localizer deviation, MLS Azimuth;

(28) Glideslope deviation, MLS Elevation;

(29) Marker beacon passage;

(30) Master warning;

(31) Air/ground sensor (primary airplane system reference nose or main gear);

(32) Angle of attack (when information source is installed);

(33) Hydraulic pressure low (each system);

(34) Ground speed (when an information source is installed);

(35) Ground proximity warning system;

(36) Landing gear position or landing gear cockpit control selection;

(37) Drift angle (when an information source is installed);

(38) Wind speed and direction (when an information source is installed);

(39) Latitude and longitude (when an information source is installed);
(40) Stick shaker/pusher (when an information source is installed);
(41) Windshear (when an information source is installed);
(42) Throttle/power lever position;
(43) Additional engine parameters (as designated in appendix M of this part);
(44) Traffic alert and collision avoidance system;
(45) DME 1 and 2 distances;
(46) Nav 1 and 2 selected frequency;
(47) Selected barometric setting (when an information source is installed);
(48) Selected altitude (when an information source is installed);
(49) Selected speed (when an information source is installed);
(50) Selected mach (when an information source is installed);
(51) Selected vertical speed (when an information source is installed);
(52) Selected heading (when an information source is installed);
(53) Selected flight path (when an information source is installed);
(54) Selected decision height (when an information source is installed);
(55) EFIS display format;
(56) Multi-function/engine/alerts display format;
(57) Thrust command (when an information source is installed);
(58) Thrust target (when an information source is installed);
(59) Fuel quantity in CG trim tank (when an information source is installed);
(60) Primary Navigation System Reference;
(61) Icing (when an information source is installed);
(62) Engine warning each engine vibration (when an information source is installed);
(63) Engine warning each engine over temp. (when an information source is installed);
(64) Engine warning each engine oil pressure low (when an information source is installed);
(65) Engine warning each engine over speed (when an information source is installed);
(66) Yaw trim surface position;
(67) Roll trim surface position;
(68) Brake pressure (selected system);
(69) Brake pedal application (left and right);
(70) Yaw or sideslip angle (when an information source is installed);
(71) Engine bleed value position (when an information source is installed);
(72) De-icing or anti-icing system selected (when an information source is installed);
(73) Computed center of gravity (when an information source is installed);
(74) AC electrical bus status;
(75) DC electrical bus status;
(76) APU bleed valve position (when an information source is installed);
(77) Hydraulic pressure (each system);
(78) Loss of cabin pressure;
(79) Computer failure;
(80) Heads-up display (when an information source is installed);
(81) Para-visual display (when an information source is installed);
(82) Cockpit trim control input position—pitch;
(83) Cockpit trim control input position—roll;
(84) Cockpit trim control input position—yaw;
(85) Trailing edge flap and cockpit flap control position;
(86) Leading edge flap and cockpit flap control position;
(87) Ground spoiler position and speed brake selection; and
(88) All cockpit flight control input forces (control wheel, control column, rudder pedal).

(b) For all turbine-engine powered transport category airplanes manufactured on or before October 11, 1991, by [four years from effective date of final rule]—

(1) For airplanes not equipped as of July 15, 1996 with a flight data acquisition unit (FDAU), the parameters listed in paragraphs (a)(1) through (a)(18) of this section must be recorded within the ranges and accuracies specified in Appendix B of this part, and—

(i) For airplanes with more than two engines, the parameter described in paragraph (a)(18) is not required unless sufficient capacity is available on the existing recorder to record that parameter;

(ii) Parameters listed in paragraphs (a)(12) through (a)(17) each may be recorded from a single source.

(2) For airplanes that were equipped as July 16, 1996 with a flight data acquisition unit (FDAU), the parameters listed in paragraphs (a)(1) through (a)(22) of this section must be recorded within the ranges, accuracies, and recording intervals specified in appendix M of this part. Parameters listed in paragraphs (a)(12) through (a)(17) each may be recorded from a single source.

(3) The approved flight recorder required by this section must be installed at the earliest time practicable, but no later than the next heavy maintenance check after [two years after effective date of final rule], and no later than [four years after the effective date of the final rule]. A heavy maintenance check is considered to be any time an airplane is scheduled to be out of service for 4 or more days and is scheduled to include access to major structural components.

(c) For all turbine-engine powered transport category airplanes manufactured on or before October 11, 1991—

(1) That were equipped as of July 16, 1996 with one or more digital data bus(es) and an ARINC 717 digital flight data acquisition unit (DFDAU) or equivalent, the parameters specified in paragraphs (a)(1) through (a)(22) of this section must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix M of this part by [4 years after effective date of the final rule]. Parameters listed in paragraphs (a)(12) through (a)(14) each may be recorded from a single source.

(2) Commensurate with the capacity of the recording system (DFDAU or equivalent and the DFDR), all additional parameters for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix M of this part by [4 years after effective date of the final rule].

(3) That were subject to § 121.343(e) of this part, all conditions of § 121.343(e) must continue to be met until compliance with paragraph (c)(1) of this section is accomplished.

(d) For all turbine-engine-powered transport category airplanes that were manufactured after October 11, 1991,—

(1) The parameters listed in paragraph (a)(1) through (a)(34) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix M of this part by [4 years after the effective date of the final rule]. Parameters listed in paragraphs (a)(12) through (a)(14) each may be recorded from a single source.

(2) Commensurate with the capacity of the recording system, all additional parameters for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix M of this part by [4 years after effective date of the final rule].

(e) For all turbine-engine-powered transport category airplanes that are manufactured after [3 years after effective date of final rule]—

(1) The parameters listed in paragraph (a)(1) through (57) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix M of this part.

(2) Commensurate with the capacity of the recording system, all additional parameters for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix M of this part.

(f) For all turbine-engine-powered transport category airplanes that are manufactured after [5 years after effective date of final rule], the parameters listed in paragraph (a)(1) through (a)(88) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix M of this part.

(g) Whenever a flight data recorder required by this section is installed, it must be operated continuously from the instant the airplane begins its takeoff roll until it has completed its landing roll.

(h) Except as provided in paragraph (i) of this section, and except for recorded data erased as authorized in this paragraph, each certificate holder shall keep the recorded data prescribed by this section, as appropriate, until the airplane has been operated for at least 25 hours of the operating time specified in § 121.359(a) of this part. A total of 1 hour of recorded data may be erased for the purpose of testing the flight recorder or the flight recorder system. Any erasure made in accordance with this paragraph must be of the oldest recorded data accumulated at the time of testing. Except as provided in paragraph (i) of this section, no record need be kept more than 60 days.

(i) In the event of an accident or occurrence that requires immediate notification of the National Transportation Safety Board under 49 CFR part 830 of its regulations and the results in termination of the flight, the certificate holder shall remove the recorder from the airplane and keep the recorder data prescribed by this section, as appropriate, for at least 60 days or for a longer period upon the request of the Board or the Administrator.

(j) Each flight data recorder system required by this section must be installed in accordance with the requirements of § 25.1459 (a), (b), (d), and (e) of this chapter. A correlation must be established between the values recorded by the flight data recorder and the corresponding values being measured. The correlation must contain a sufficient number of correlation points to accurately establish the conversion from the recorded values to engineering units or discrete state over the full operating range of the parameter. Except for airplanes having separate altitude and airspeed sensors that are an integral part of the flight data recorder system, a single correlation may be established for any group of airplanes—

(1) That are of the same type;

(2) On which the flight recorder system and its installation are the same; and

(3) On which there is no difference in the type design with respect to the installation of those sensors associated with the flight data recorder system. Documentation sufficient to convert recorded data into the engineering units and discrete values specified in the applicable appendix must be maintained by the certificate holder.

(k) Each flight data recorder required by this section must have an approved device to assist in locating that recorder under water.

(l) The following airplanes need not comply with this section, but must continue to comply with applicable paragraphs of § 121.343 of this chapter, as appropriate:

(1) Airplanes that meet the Stage 2 noise levels of part 36 of this chapter and are subject to § 91.801(c) of this chapter, until January 1, 2000. On and after January 1, 2000, any Stage 2 airplane otherwise allowed to be operated under part 91 of this chapter must comply with the applicable flight data recorder requirements of this section for that airplane.

(2) General Dynamics Convair 580, General Dynamics Convair 600, General Dynamics Convair 640, de Havilland Aircraft Company Ltd. DHC–7, Fairchild Aircraft, Inc., FH 227, Fokker F–27 (except Mark 50), F–28 Mark 1000 and Mark 4000, Gulfstream Aerospace G–159, Lockheed Aircraft Corporation Electra 10–A, Lockheed Aircraft Corporation Electra 10–B, Lockheed Aircraft Corporation Electra 10–E, Maryland Air Industries, Inc. F27, Mitsubishi Heavy Industries, Ltd. YS–11, Short Bros. Limited SD3–30, Short Bros. Limited SD3–60.

3. Section 121.344a is added to read as follows:

§ 121.344a Digital flight data recorders for 10–19 seat airplanes.

(a) No person may operate a turbine-engine-powered airplane having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats, that was brought onto the U.S. register after October 11, 1991, unless it is equipped with one or more approved flight recorders that use a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. On or before [4 years after the effective data of the final rule], airplanes brought onto the U.S. register after October 11, 1991, must comply with either the requirements in this section or the applicable paragraphs in § 135.152 of this chapter. In addition, by [4 years after the effective date of the final rule]—

(1) The parameters listed in §§ 121.344(a)(1) through 121.344(a)(11) must be recorded within the ranges, accuracies, and resolutions specified in appendix B of part 135 of this chapter, except that—

(i) Either the parameter listed in § 121.344(a)(12) or (a)(15) must be recorded; either the parameter listed in § 121.344(a)(13) or (a)(16) must be recorded; and either the parameter listed in § 121.344(a)(14) or (a)(17) must be recorded.

(ii) For airplanes with more than two engines, the parameter described in § 121.344(a)(18) must also be recorded if sufficient capacity is available on the existing recorder to record that parameter;

(iii) Parameters listed in §§ 121.344(a)(12) through 121.344(a)(17) each may be recorded from a single source;

(iv) Any parameter for which no value is contained in appendix B of part 135 of this chapter must be recorded within the ranges, accuracies, and resolutions specified in appendix B of this part.

(2) Commensurate with the capacity of the recording system (FDAU or equivalent and the DFDR), the parameters listed in sections 121.344(a)(19) through 121.344(a)(22) also must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix B of part 135 of this chapter.

(3) The approved flight recorder by this section must be installed as soon as practicable, but no later than the next heavy maintenance check or equivalent after [two years after effective date of final rule]. A heavy maintenance check is considered to be any time an airplane is scheduled to be out of service for 4 or more days and is scheduled to include access to major structural components.

(b) For all turbine-engine-powered airplanes having a passenger seating configuration, excluding any required crewmember seat of 10 to 19 seats, that are manufactured after [three years from effective date of final rule]—

(1) The parameters listed in sections 121.344(a)(1) through 121.344(a)(57) must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix M of this part.

(2) Commensurate with the capacity of the recording system, all additional

parameters listed in section 121.344(a) for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix M of this part by [4 years after effective date of the final rule].

(c) For all turbine-engine-powered airplanes having a passenger seating configuration, excluding any required crewmember seats, of 10 to 19 seats, that are manufactured after [5 years after effective date of final rule], the parameters listed in section 121.344(a)(1) through (a)(88) must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix M of this part.

(d) Each flight data recorder system required by this section must be installed in accordance with the requirements of section 23.1459 (a), (b), (d), and (e) of this chapter. A correlation must be established between the values recorded by the flight data recorder and the corresponding values being measured. The correlation must contain a sufficient number of correlation points to accurately establish the conversion from the recorded values to engineering units or discrete state over the full operating range of the parameter. A single correlation may be established for any group of airplanes—

(1) That are of the same type;

(2) On which the flight recorder system and its installation are the same; and

(3) On which there is no difference in the type design with respect to the installation of those sensors associated with the flight data recorder system. Correlation documentation must be maintained by the certificate holder.

(e) All airplanes subject to this section are also subject to the requirements and exceptions stated in sections 121.344(g) through 121.344(k).

(f) The following airplane types need not comply with this section, but must continue to comply with applicable paragraphs of section 135.152 of this chapter, as appropriate: Beech Aircraft—99 Series, Beech Aircraft 1300, Beech Aircraft 1900C, Construcciones Aeronauticas, S.A. (CASA) C–212, deHaviland DHC–6, Dornier 228, HS–748, Embraer EMB 110, Jetstream 3101, Jetstream 3201, Fairchild Aircraft SA–226.

4. Appendix M to part 121 is added to read as follows:

APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATION

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling Interval	Resolution	Remarks
1. Time or Relative Time counts.	24 Hrs, 0 to 4095	+/−0.125% Per Hour.	4	1 sec	UTC time preferred when available. Counter increments each 4 seconds of system operation.
2. Pressure Altitude	−1000 ft to max certificated altitude of aircraft. +5000 ft.	+/−100 to +/−700 ft (see table, TSO C124a or TSO C51a).	1	5′ to 35′	Data should be obtained from the air data computer when practicable.
3. Indicated airspeed or Calibrated airspeed.	50 KIAS or minimum value to Max V_{so}, and V_{so} to 1.2 $V_{.D}$.	+/−5% and +/−3%	1	1 kt	Data should be obtained from the air data computer when practicable.
4. Heading (Primary flight crew reference).	0−360° and Discrete ''true'' or ''mag''.	+/−2°	1	0.5°	When true or magnetic heading can be selected as the primary heading reference, a discrete indicating selection must be recorded.
5. Normal Acceleration (Vertical).	−3g to +6g	+/−1% of max range excluding datum error of +/−5%.	0.125	0.01g.	
6. Pitch Altitude	+/−75°	+/−2°	1 or 0.25 for airplanes operated under §121.344(f).	0.5°	A sampling rate of 0.25 is recommended.
7. Roll Altitude	+/−180°	+/−2°	1 or 0.5 for airplanes operated under §121.344(f).	0.5°	A sampling rate of 0.5 is recommended.
8. Manual Radio Transmitter Keying or CVR/DFDR synchronization reference.	On-Off (Discrete)		1		Preferably each crew member but one discrete acceptable for all transmission provided the CVR/FDR system complies with TSO C124a CVR synchronization requirements (paragraph 4.2.1 ED–55).
9. Thrust/Power on Each Engine—primary flight crew reference.	Full Range Forward	+/−2%	1 (per engine)	0.2% of full range.	Sufficient parameters (e.g. EPR, N1 or Torque, NP) as appropriate to the particular engine be recorded to determine power in forward and reverse thrust, including potential overspeed conditions.
10. Autopilot Engagement.	Discrete ''on'' or ''off''.		1.		

APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling Interval	Resolution	Remarks
11. Longitudinal Acceleration.	+/−1g	+/−1.5% max. range excluding datum error of +/−5%.	0.25	0.01g.	
12a. Pitch Control(s) position (non-fly-by-wire systems.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
12b. Pitch Control(s) position (fly-by-wire systems).	Full Range	+/−2° Unless Higher Accuracy, Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	
13a. Lateral Control position(s) (non-fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
13b. Lateral Control positions(s) (fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	
14a. Yaw Control positions(s) (fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5.
14b. Yaw Control positions(s) (fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	
15. Pitch Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f)	0.2% of full range.	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
16. Lateral Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f)	0.2% of full range.	A suitable combination of surface position sensors is acceptble in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
17. Yaw Control Surface(s).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	For airplanes with multiple or split surfaces, a suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5.
18. Lateral Acceleration.	+/−1g	+/−1.5% max. range excluding datum error of +/−5%.	0.25	0.01g.	
19. Pitch Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	1	0.3% of full range.	

APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling Interval	Resolution	Remarks
20. Trailing Edge Flap or Cockpit Control Selection.	Full Range or Each Position (discrete).	+/−3° or as Pilot's indicator.	2	0.5% of full range.	Flap positin and cockpit control may each be sampled alternately at 4 second intervals, to give a data point every 2 seconds.
21. Leading Edge Flap or Cockpit Control Selection.	Full Range or Each Discrete Position.	+/−3° or as Pilot's indicator and sufficient to determine each discrete position..	2	0.5% of full range.	Left and right sides, or flap position and cockpit control may each be sampled at 4 second intervals, so as to give a data point every 2 seconds.
22. Each Thurst Reverser Position (or equivalent for propeller airplane).	Stowed, In Transit, and Reverse (Discrete).	.....	1 (per engine).	.....	Turbo-jet—2 discretes enable the 3 states to be determined, Turbo—prop—1 discrete.
23. Ground Spoiler Position or Speed Brake Selection.	Full Range or Each Position (discrete).	+/−2° Unless Higher Accuracy Uniquely Required.	1 0.5 for airplanes operated under §121.344(f).	0.2% of full range.	
24. Outside Air Temperature or Total Air Temperature.	−50°C to +90°C	+/−2°C	2	0.3°C.	
25. Autopilot/ Autothrottle/AFCS Mode and Engagement Status.	A suitable combination of discretes.	.....	1	.....	Discretes should show which systems are engaged and which primary modes are controlling the flight path and speed of the aircraft.
26. Radio Altitude	−20 ft to 2,500 ft	+/−2 ft or +/−3% Whichever is Greater Below 500 ft and +/−5% Above 500 ft.	1	1 ft + 5% above 500 ft.	For autoland/category 3 operations each radio altimeter should be recorded, but arranged so that at least one is recorded each second.
27. Localizer Deviation or MLS Azimuth.	+/−400 Microamps or available sensor range as installed, +/−62°.	As installed +/−3% recommended.	1	0.3% of full range.	For autoland/category 3 operations each system should be recorded but arranged so that at least one is recorded each second. It is not necessary to record ILS and MLS at the same time, only the approach aid in use need be recorded.
28. Glideslope Deviation or MLS Elevation.	+/−400 Microamps or available sensor range as installed, 0.9 to + 30°.	As installed +/−3% recommended.	1	0.3% of full range.	For autoland/category 3 operations each system should be recorded but arranged so that at least one is recorded each second. It is not necessary to record ILS and MLS at the same time, only the approach aid in use need be recorded.
29. Marker Beacon Passage.	Discrete ''on'' or ''off''.	.....	1	.....	A single discrete is acceptable for all makers.
30. Master Warning	Discrete	.....	1	.....	Record the master warning and record each 'red' warning that cannot be determined from other parameters or from the cockpit voice recorder.
31. Air/ground sensor (primary airplane system reference nose or main gear).	Discrete ''air'' or ''ground''.	.....	1 (0.25 recommended).		
32. Angle of Attack (If measured directly).	As installed	As Installed	2 or 0.5 for airplanes operated under §121.344(f).	0.3% of full range.	If left and right sensors are available, each may be recorded at 4 second intervals so as to give a data point each half second.
33. Hydraulic Pressure Low, Each System.	Discrete or available sensor range, ''low''or ''normal''.	+/−5%	2	0.5% of full range.	
34. Groundspeed	As Installed	Most Accurate Systems Installed.	1	0.2% of full range.	

APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling Interval	Resolution	Remarks
35. GPWS (ground proximity warning system).	Discrete ''warning'' or ''off''.	.....	1	.....	A suitable combination of discretes unless recorder capacity is limited in which case a single discrete for all modes is acceptable.
36. Landing Gear Position or Landing gear cockpit control selection.	Discrete	.....	4	.....	A suitable combination of discretes should be recorded.
37. Drift Angle	As installed	As installed	4	0.1°.	
38. Wind Speed and Direction.	As installed	As installed	4	1 knot, and 1.0°.	
39. Latitude and Longitude.	As installed	As installed	4	0.002°	Provided by the Primary Navigation System Reference. Where capacity permits Latitude/longitude resolution should be 0.0002°.
40. Stick shaker and pusher activation.	Discrete(s) ''on'' or ''off''.	.....	1	.....	A suitable combination of discretes to determine activation.
4l. Windshear Detection.	Discrete ''warning'' or ''off''.	.....	1		
42. Throttle/power lever position.	Full Range	+/−2%	1 for each lever	2% of full range	For airplanes with non-mechanically linked cockpit engine controls.
43. Additional Engine Parameters.	As installed	As installed	Each engine each second.	2% of full range	Where capacity permits, the preferred priority is indicated vibration level, N2, EGT, Fuel Flow, Fuel Cut-off lever position and N3, unless engine manufacturer recommends otherwise.
44. Traffic Alert and Collision Avoidance System (TCAS).	Discretes	As installed	1	.....	A suitable combination of discretes should be recorded to determine the status of—Combined Control, Vertical Control, Up Advisory, and Down Advisory. (ref. ARINC Characteristic 735 Attachment 6E, TCAS VERTICAL RA DATA OUTPUT WORD.)
45. DME 1 and 2 Distance.	0–200 NM	As installed	4	1 NM	1 mile.
46. Nav 1 and 2 Selected Frequency.	Full range	As installed	4	.....	Sufficient to determine selected frequency.
47. Selected barometric setting.	Full Range	+/−5%	(1 per 64 sec.)	0.2% of full range.	
48. Selected Altitude	Full Range	+/−5%	1	100 ft.	
49. Selected speed	Full Range	+/−5%	1	1 knot.	
50. Selected Mach ...	Full Range	+/−5%	1	.01.	
51. Selected vertical speed.	Full Range	+/−5%	1	100 ft/min.	
52. Selected heading	Full Range	+/−5%	1	1°.	
53. Selected flight path.	Full Range	+/−5%	1	1°.	
54. Selected decision height.	Full Range	+/−5%	64	1 ft.	
55. EFIS display format.	Discrete(s)	.....	4		Discretes should show the display system status (e.g., off, normal, fail, composite, sector, plan, nav aids, weather radar, range, copy.
56. Multi-function/Engine Alerts Display format.	Discrete(s)	.....	4	.....	Discretes should show the display system status (e.g., off, normal, fail, and the identity of display pages for emergency procedures, need not be recorded.
57. Thrust command	Full Range	+/−2%	2	2% of full range.	
58. Thrust target	Full Range	+/−2%	4	2% of full range.	
59. Fuel quantity in CG trim tank.	Full Range	+/−5%	(1 per 64 sec.)	1% of full range.	

APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling Interval	Resolution	Remarks
60. Primary Navigation System Reference.	Discrete GPS, INS, VOR/DME, MLS, Loran C, Omega, Localizer Glideslope.	.....	4	.....	A suitable combination of discretes to determine the Primary Navigation System reference.
61. Ice Detection	Discrete ''ice'' or ''no ice''.	.....	4.		
62. Engine warning each engine vibration.	Discrete	.....	1.		
63. Engine warning each engine over temp.	Discrete	.....	1.		
64. Engine warning each engine oil pressure low.	Discrete	.....	1.		
65. Engine warning each engine over speed.	Discrete	.....	1.		
66. Yaw Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	2	0.3% of full range.	
67. Roll Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	2	0.3% of full range.	
68. Brake Pressure (left and right).	As installed	+/−5%	1	.....	To determine braking effort applied by pilots or by autobrakes.
69. Brake Pedal Application (left and right).	Discrete or Analog ''applied'' or ''off''.	+/−5% (Analog)	1	.....	To determine braking applied by pilots.
70. Yaw or sideslip angle.	Full Range	+/−5%	1	0.5°.	
71. Engine bleed valve position.	Discrete ''open'' or ''closed''.	.....	4.		
72. De-icing or anti-icing system selection.	Discrete ''on'' or ''off''.	.....	4.		
73. Computed center of gravity.	Full Range	+/−5%	(1 per 64 sec.)	1% of full range.	
74. AC electrical bus status.	Discrete ''power'' or ''off''.	.....	4	.....	Each bus.
75. DC electrical bus status.	Discrete ''power'' or ''off''.	.....	4	.....	Each bus.
76. APU bleed valve position.	Discrete ''open'' or ''closed''.	.....	4.		
77. Hydraulic Pressure (each system).	Full range	+/−5%	2	100 psi.	
78. Loss of cabin pressure.	Discrete ''loss'' or ''normal''.	.....	1.		
79. Computer failure (critical flight and engine control systems).	Discrete ''fail'' or ''normal''.	.....	4.		
80. Heads-up display (when an information source is installed).	Discrete(s) ''on'' or ''off''.	.....	4.		
81. Para-visual display (when an information source is installed).	Discrete(s) ''on'' or ''off''.	.....	1.		
82. Cockpit trim control input position—pitch.	Full Range	+/−5%	1	0.2% of full range.	

APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling Interval	Resolution	Remarks
83. Cockpit trim control input position—roll.	Full Range	+/−5%	1	0.2% of full range.	
84. Cockpit trim control input position—yaw.	Full Range	+/−5%	1	0.2% of full range.	
85. Trailing edge flap and cockpit flap control position.	Full Range	+/−5%	2	0.5% of full range.	Trailing edge flaps and cockpit flap control position may each be sampled alternately at 4 second intervals to provide a sample each 0.5 second.
86. Leading edge flap and cockpit flap control position.	Full Range or Discrete.	+/−5%	1	0.5% of full range.	
87. Ground spoiler position and speed brake selection.	Full Range or Discrete.	+/−5%	0.5	0.2% of full range.	
88. All cockpit flight control input forces (control wheel, control column, rudder pedal).	Full Range Control wheel Control Column Rudder pedal	+/−5% +/−70 lbs. +/−85 lbs +/−165 lbs.	1	0.2% of full range.	For fly-by-wire flight control systems, where flight control surface position is a function of the displacement of the control input device only, it is not necessary to record this parameter.

PART 125 CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

5. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

6. Section 125.226 is added to read as follows:

§ 125.226 Digital flight recorders.

(a) Except as provided in paragraph (l) of this section, no person may operate under this part a turbine-engine-powered transport category airplane unless it is equipped with one or more approved flight recorders that use a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The operational parameters required to be recorded by digital flights data recorders required by this section are as follows; the phrase ''when an information source is installed'' following a parameter indicates that recording of that parameters is not intended to require a change in installed equipment:

(1) Time;

(2) Pressure altitude;

(3) Indicated airspeed;

(4) Heading—primary flight crew reference (if selectable, record discrete, true or magnetic);

(5) Normal acceleration (Vertical);

(6) Pitch attitude;

(7) Roll attitude;

(8) Manual radio transmitter keying, or CVR/DFDR synchorinization reference;

(9) Thrust/power of each engine—primary flight crew reference;

(10) Autopilot engagement status:

(11) Longitudinal acceleration;

(12) Pitch control input;

(13) Lateral control input;

(14) Rudder pedal input;

(15) Primary pitch control surface position;

(16) Primary lateral control surface position;

(17) Primary yaw control surface position;

(18) Lateral acceleration;

(19) Pitch trim surface position or the parameters of paragraph (a)(82) of this section, if currently recorded;

(20) Trailing edge flap or cockpit flap control selection (except when the parameters of paragraph (a)(85) of this section apply);

(21) Leading edge flap or cockpit flap control selection (except when the parameters of paragraph (a)(86) of this section apply);

(22) Each Thrust reverser position (or equivalent for propeller airplane);

(23) Ground spoiler position or speed brake selection (except when the parameters of paragraph (a)(87) of this section apply);

(24) Outside or total air temperature;

(25) Automatic Flight Control System (AFCS) modes and engagement status, including autothrottle;

(26) Radio altitude (when an information source is installed);

(27) Localizer deviation, MLS Azimuth;

(28) Glideslope deviation, MLS Elevation;

(29) Maker beacon passage;

(30) Master warning;

(31) Air/ground sensor (primary airplane system reference nose or main gear);

(32) Angle of attack (when information source is installed);

(33) Hydraulic pressure low (each system);

(34) Ground speed (when an information source is installed);

(35) Ground proximity warning system;

(36) Landing gear position or landing gear cockpit control selection;

(37) Drift angle (when an information source is installed);

(38) Wind speed and direction (when an information source is installed);

(39) Latitude and longitude (when an information source is installed);

(40) Stick shaker/pusher (when an information source is installed);

(41) Windshear (when an information source is installed);

(42) Throttle/power lever position;

(43) Additional engine parameters (as designated in appendix E of this part);

(44) Traffic alert and collision avoidance system;

(45) DME 1 and 2 distances;
(46) Nav 1 and 2 selected frequency;
(47) Selected barometric setting (when an information source is installed);
(48) Selected altitude (when an information source is installed);
(49) Selected speed (when an information source is installed);
(50) Selected mach (when an information source is installed);
(51) Selected vertical speed (when an information source is installed);
(52) Selected heading (when an information source is installed);
(53) Selected flight path (when an information source is installed);
(54) Selected decision height (when an information source is installed);
(55) EFIS display format;
(56) Multi-function/engine/alerts display format;
(57) Thrust command (when an information source is installed);
(58) Thrust target (when an information source is installed);
(59) Fuel quantity in CG trim tank (when an information source is installed);
(60) Primary Navigation System Reference;
(61) Icing (when an information source is installed);
(62) Engine warning each engine vibration (when an information source is installed);
(63) Engine warning each engine over temp. (when an information source is installed);
(64) Engine warning each engine oil pressure low (when an information source is installed);
(65) Engine warning each engine over speed (when an information source is installed);
(66) Yaw trim surface position;
(67) Roll trim surface position;
(68) Brake pressure (selected system);
(69) Brake pedal application (left and right);
(70) Yaw or sideslip angle (when an information source is installed);
(71) Engine bleed valve position (when an information source is installed);
(72) De-icing or anti-icing system selection (when an information source is installed);
(73) Computed center of gravity (when an information source is installed);
(74) AC electrical bus status;
(75) DC electrical bus status;
(76) APU bleed valve position (when an information source is installed);
(77) Hydraulic pressure (each system);
(78) Loss of cabin pressure;
(79) Computer failure;
(80) Heads-up display (when an information source is installed);
(81) Para-visual display (when an information source is installed);
(82) Cockpit trim control input position—pitch;
(83) Cockpit trim control input position—roll;
(84) Cockpit trim control input position—yaw;
(85) Trailing edge flap and cockpit flap control position;
(86) Leading edge flap and cockpit flap control position;
(87) Ground spoiler position and speed brake selection; and
(88) All cockpit flight control input forces (control wheel, control column, rudder pedal).

(b) For all turbine-engine powered transport category airplanes manufactured on or before October 11, 1991, by [four years from effective date of final rule]—

(1) For airplanes not equipped as of July 15, 1996 with a flight data acquisition unit (FDAU), the parameters listed in paragraphs (a)(1) through (a)(18) of this section must be recorded within the ranges and accuracies specified in appendix D of this part, and—

(i) For airplanes with more than two engines, the parameter described in paragraph (a)(18) is not required unless sufficient capacity is available on the existing recorder to record that parameter;

(ii) Parameters listed in paragraphs (a)(12) through (a)(17) each may be recorded from a single source.

(2) For airlines that were equipped as of July 15, 1996 with a flight data acquisition unit (FDAU), the parameters listed in paragraphs (a)(1) through (a)(22) of this section must be recorded within the ranges, accuracies, and recording intervals specified in appendix E of this part. Parameters listed in paragraphs (a)(12) through (a)(17) each may be recorded from a single source.

(3) The approved flight recorder required by this section must be installed at the earliest time practicable, but no later than the next heavy maintenance check after [two years after effective date of final rule], and no later than [four years after the effective date of the final rule]. A heavy maintenance check is considered to be any time an airplane is scheduled to be out of service for 4 or more days and is scheduled to include access to major structural components.

(c) For all turbine-engine powered transport category airplanes manufactured on or before October 11, 1991—

(1) That were equipped as of July 15, 1996 with one or more digital data bus(es) and an ARINC 717 digital flight data acquisition unit (DFDAU) or equivalent, the parameters specified in paragraphs (a)(1) through (a)(22) of this section must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix E of this part by [4 years after effective date of the final rule]. Parameters listed in paragraphs (a)(12) through (a)(14) each may be recorded from a single source.

(2) Commensurate with the capacity of the recording system (DFDAU or equivalent and the DFDR), all additional parameters for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix E of this part by [4 years after effective date of the final rule].

(3) That were subject to § 125.225(e) of this part, all conditions of § 125.225(c) must continue to be met until compliance with paragraph (c)(1) of this section is accomplished.

(d) For all turbine-engine-powered transport category airplanes that were manufactured after October 11, 1991,—

(1) The parameters listed in paragraph (a)(1) through (a)(34) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix E of this part by [4 years after effective date of the final rule]. Parameters listed in paragraphs (a)(12) through (a)(14) each may be recorded from a single source.

(2) Commensurate with the capacity of the recording system, all additional parameters for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix E of this part by [4 years after effective date of the final rule].

(e) For all turbine-engine-powered transport category airplanes that are manufactured after [3 years after effective date of the final rule]—

(1) The parameters listed in paragraph (a)(1) through (57) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix E of this part.

(2) Commensurate with the capacity of the recording system, all additional parameters for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix E of this part.

(f) For all turbine-engine-powered transport category airplanes that are manufactured after [5 years after effective date of final rule], the parameters listed in paragraphs (a)(1) through (a)(88) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix E of this part.

(g) Whenever a flight data recorder required by this section is installed, it must be operated continuously from the instant the airplane begins its takeoff roll until it has completed its landing roll.

(h) Except as provided in paragraph (i) of this section, and except for recorded data erased as authorized in this paragraph, each certificate holder shall keep the recorded data prescribed by this section, as appropriate, until the airplane has been operated for at least 25 hours of the operating time specified in § 121.359(a) of this part. A total of 1 hour of recorded data may be erased for the purpose of testing the flight recorder or the flight recorder system. Any erasure made in accordance with this paragraph must be of the oldest recorded data accumulated at the time of testing. Except as provided in paragraph (i) of this section, no record need be kept more than 60 days.

(i) In the event of an accident or occurence that requires immediate notification of the National Transportation Safety Board under 49 CFR part 830 of its regulations and that results in termination of the flight, the certificate holder shall remove the recorder from the airplane and keep the recorder data prescribed by this section, as appropriate, for at least 60 days or for a longer period upon the request of the Board or the Administrator.

(j) Each flight data recorder system required by this section must be installed in accordance with the requirements of § 25.1459 (a), (b), (d), and (e) of this chapter. A correlation must be established between the values recorded by the flight data recorder and the corresponding values being measured. The correlation must contain a sufficient number of correlation points to accurately establish the conversion from the recorded values to engineering units or discrete state over the full operating range of the parameter. Except for airplanes having separate altitude and airspeed sensors that are an integral part of the flight data recorder system, a single correlation may be established for any group of airplanes—

(1) That are of the same type;

(2) On which the flight recorder system and its installation are the same; and

(3) On which there is no difference in the type design with respect to the installation of those sensors associated with the flight data recorder system. Documentation sufficient to convert recorded data into the engineering units and discrete values specified in the applicable appendix must be maintained by the certificate holder.

(k) Each flight data recorder required by this section must have an approved device to assist in locating that recorder under water.

(l) The following airplanes need not comply with this section, but must continue to comply with applicable paragraphs of § 125.225 of this chapter, as appropriate:

(1) Airplanes that meet the Stage 2 noise levels of part 36 of this chapter and are subject to § 91.801(c) of this chapter, until January 1, 2000. On and after January 1, 2000, any Stage 2 airplane otherwise allowed to be operated under part 91 of this chapter must comply with the applicable flight data recorder requirements of this section for that airplane.

(2) General Dynamics Convair 580, General Dynamics Convair 600, General Dynamics Convair 640, de Havilland Aircraft Company Ltd. DHC–7, Fairchild Aircraft, Inc., FH 227, Fokker F–27 (except Mark 50), F–28 Mark 1000 and Mark 4000, Gulfstream Aerospace G–159, Lockheed Aircraft Corporation Electra 10–A, Lockheed Aircraft Corporation Electra 10–B, Lockheed Aircraft Corporation Electra 10–E, Maryland Air Industries, Inc. F27, Mitsubishi Heavy Industries, Ltd. YS–11, Short Bros. Limited SD3–30, Short Bros. Limited SD3–60.

7. Appendix E to part 125 is added to read as follows:

APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATION

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per Sampling Interval	Resolution	Remarks
1. Time or Relative Time Courts.	24 Hrs 0 to 4095 ...	+/−0.125% Per Hour.	4	1 sec	UTC time preferred when available. Counter increments each 4 seconds of system operation.
2. Pressure Altitude	−1000 ft to max certificated altitude of aircraft.+5000 ft.	1/−100 to +/−700 ft (see table, TSO C124a or TSO C51A).	1	5′ to 35′	Data should be obtained from the air data computer when practicable.
3. Indicated airspeed or Calibrated airspeed.	50 KIAS or minimum value to Max V_{SO}, and V_{SO} to 1.2 $V._{D}$.	+/−5% and/−3%+	1	1 kt	Data should be obtained from the air data computer when practicable.
4. Heading (Primary flight crew reference.	0−360° and Discrete ‘‘true’’or ‘‘mag’’.	+/−2°	1	0.5°	When true or magnetic heading can be selected as the primary heading reference, a discrete indicating selection must be recorded.
5. Normal Acceleration (Vertical).	−3g to +6g	+/−1% of max range excluding datum error of +/−5%.	0.125	0.01g.	

APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per Sampling Interval	Resolution	Remarks
6. Pitch Attitude	+/−75°	+/−2°	1 or 0.25 for airplanes operated under §121.344(f).	0.5°	A sampling rate of 0.25 is recommended.
7. Roll Attitude	+/−180°	+/−2°	1 or 0.5 for airplanes operated under §121.344(f).	0.5°	A sampling rate of 0.5 is recommended.
8. Manual Radio Transmitter Keying or CVR/DFDR synchronization reference.	On-Off (Discrete) none.		1		Preferably each crew member but one discrete acceptable for all transmission provided the CVR/FDR system complies with TSO C124a CVR synchronization requirements (paragraph 4.2.1 ED–55).
9. Thrust/Power on Each Engine—Primary flight crew reference.	Full Range Forward	+/−2%	1 (per engine)	0.2% of full range.	Sufficient parameters (e.g. EPR, N1 or Torque, NP) as appropriate to the particular engine be recorded to determine power in forward and reverse thrust, including potential overspeed conditions.
10. Autopilot Engagement.	Discrete ''on'' or ''off''.		1.		
11. Longitudinal Acceleration.	+/−1g	+/−1.5% max. range excluding datum error of +/−5%.	0.25	0.01g	
12a. Pitch Control(s) position (non-fly-by-wire systems.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
12b. Pitch Control(s) position (fly-by-wire systems).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	
13a. Lateral Control position(s) (non-fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
13b. Lateral Control position(s) (fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	
14a. Yaw Control position(s) (non-fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5.
14b. Yaw Control position(s) (fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	

APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per Sampling Interval	Resolution	Remarks
15. Pitch Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
16. Lateral Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	A suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
17. Yaw Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	For airplanes with multiple or split surfaces, a suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5.
18. Lateral Acceleration.	+/−1g	+/−1.5% max. range excluding datum error of +/−5%.	0.25	0.01g.	
19. Pitch Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required..	1	0.3% of full range.	
20. Trailing Edge Flap or Cockpit Control Selection.	Full Range or Each Position (discrete)..	+/−3° or as Pilot's indicator.	2	0.5% of full range.	Flap position and cockpit control may each be sampled alternately at 4 second intervals, to give a data point every 2 seconds.
21. Leading Edge Flap or Cockpit Control Selection.	Full Range or Each Discrete Position.	+/−3° or as Pilot's indicator and sufficient to determine each discrete position.	2	0.5% of full range.	Left and right sides, or flap position and cockpit control may each be sampled at 4 second intervals, so as to give a data point every 2 seconds.
22. Each Thrust Reverser Position (or equivalent for propeller airplane).	Stowed, In Transit, and Reverse (Discrete)..	.....	1 (per engine).	.....	Turbo-jet 2 discretes enable the 3 states to be determined, Turbo—prop—1 discrete.
23. Ground Spoiler Position or Speed Brake Selection.	Full Range or Each Position (discrete)..	+/−2° Unless Higher Accuracy Uniquely Required.	1, 0.5 for airplanes operated under §121.344(f).	0.2% of full range.	
24. Outside Air Temperature or Total Air Temperature.	−50°C to +90°C	+/−2° C	2	0.3° C.	
25. Autopilot/Autothrottle/AFCS Mode and Engagement Status.	A suitable combination of discretes.	.....	1	.....	Discretes should show which systems are engaged and which primary modes are controlling the flight path and speed of the aircraft.
26. Radio Altitude	−20 ft to 2,500 ft	+/−2 ft or +/−3% Whichever is Greater Below 500 ft and +/−5% Above 500 ft..	1	1 ft +5% above 500 ft.	For autoland/category 3 operations. each radio altimeter should be recorded, but arranged so that at least one is recorded each second.
27. Localizer Deviation or MLS Azimuth.	+/−400 Microamps or available sensor range as installed +/−62°.	As installed +/−3% recommended.	1	0.3% of full range.	For autoland/category 3 operations. each system should be recorded but arranged so that at least one is recorded each second. It is not necessary to record ILS and MLS at the same time, only the approach aid in use need be recorded.

APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per Sampling Interval	Resolution	Remarks
28. Glideslope Deviation or MLS Elevation.	+/−400 Microamps or available sensor range as installed. 0.9 to +30°.	As installed +/−3% recommended.	1	0.3% of full range.	For autoland/category 3 operations. each system should be recorded but arranged so that at least one is recorded each second. It is not necessary to record ILS and MlS at the same time, only the approach aid in use need be recorded.
29. Marker Beacon Passage.	Discrete ''on'' or ''off''.		1		A single discrete is acceptable for all markers.
30. Master Warning	Discrete		1		Record the master warning and record each ''red'' warning that cannot be determined from other parameters or from the cockpit voice recorder.
31. Air/ground sensor (primary airplane system reference nose or main gear).	Discrete ''air'' or ''ground''.		1 (0.25 recommended).		
32. Angle of Attack (If measured directly).	As installed	As Installed	2 or 0.5 for airplanes operated under §121.344(f).	0.3% of full range.	If left and right sensors are available, each may be recorded at 4 second intervals so as to give a data point each half second.
33. Hydraulic Pressure Low, Each System.	Discrete or available sensor range, ''low'' or ''normal''.	+/−5%	2	0.5% of full range.	
34. Groundspeed	As Installed	Most Accurate Systems Installed.	1	0.2% of full range.	
35. GPWS (ground proximity warning system).	Discrete ''warning'' or ''off''.		1		A suitable combination of discretes unless recorder capacity is limited in which case a singel discrete for all modes is acceptable.
36. Landing Gear Position or Landing gear cockpit control selection.	Discrete		4		A suitable combination of discretes should be recorded.
37. Drift Angle	As installed	As installed	4	0.1%.	
38. Wind Speed and Direction.	As installed	As installed	4	1 knot, and 1.0.	
39. Latitude and Longitude.	As installed	As installed	4	0.002°	Provided by the Primary Navigation System Reference. Where capacity permits Latitude/longitude resolution should be 0.0002°.
40. Stick shaker and pusher activation.	Discrete(s) ''on'' or ''off''.		1		A suitable combination of discretes to determine activation.
41. Windshear Detection.	Discrete ''warning'' or ''off''.		1.		
42. Throttle/power lever position.	Full Range	+/−2%	1 for each lever	2% of full range	For airplanes with non-mechanically linked cockpit engine controls.
43. Additional Engine Parameters.	As installed	As installed	Each engine each second.	2% of full range	Where capacity permits, the preferred priority is indicated vibration level, N2, EGT, Fuel Flow, Fuel Cut-off lever position and N3, unless engine manufacturer recommends otherwise.
44. Traffic Alert and Collision Avoidance System (TCAS).	Discretes	As installed	1		A suitable combination of discretes should be recorded to determine the status of—Combined Control, Vertical Control, Up Advisory, and Down Advisory. (ref. ARINC Characteristic 735 Attachment 6E, TCAS VERTICAL RA DATA OUTPUT WORD.)
45. DME 1 and 2 Distance.	0–200 NM;	As installed	4	1 NM	1 mile.
46. Nav 1 and 2 Selected Frequency.	Full range	As installed	4		Sufficient to determine selected frequency.
47. Selected barometric setting.	Full Range	+/−5%	(1 per 64 sec.)	0.2% of full range.	

APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per Sampling Interval	Resolution	Remarks
48. Selected Altitude	Full Range	+/−5%	1	100 ft.	
49. Selected speed	Full Range	+/−5%	1	1 knot.	
50. Selected Mach	Full Range	+/−5%	1	.01.	
51. Selected vertical speed.	Full Range	+/−5%	1	100 ft/min.	
52. Selected heading	Full Range	+/−5%	1	1°.	
53. Selected flight path.	Full Range	+/−5%	1	1°.	
54. Selected decision height.	Full Range	+/−5%	64	1 ft.	
55. EFIS display format.	Discrete(s)		4		Discretes should show the display system status (e.g., off, normal, fail, composite, sector, plan, nav aids, weather radar, range, copy.
56. Multi-function/Engine Alerts Display format.	Discrete(s)		4		Discretes should show the display system status (e.g., off, normal, fail, and the identity of display pages for emergency procedures, need not be recorded.
57. Thrust command	Full Range	+/−2%	2	2% of full range.	
58. Thrust target	Full Range	+/−2%	4	2% of full range.	
59. Fuel quantity in CG trim tank.	Full Range	+/−5%	(1 per 64 sec.)	1% of full range.	
60. Primary Navigation System Reference.	Discrete GPS, INS, VOR/DME, MLS, Loran C, Omega, Localizer Glideslope.		4		A suitable combination of Discretes to determine the Primary Navigation System reference.
61. Ice Detection	Discrete ''ice'' or ''no ice''.		4.		
62. Engine warning each engine vibration.	Discrete		1.		
63. Engine warning each engine over temp..	Discrete		1.		
64. Engine warning each engine oil pressure low.	Discrete		1.		
65. Engine warning each engine over speed.	Discrete		1.		
66. Yaw Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	2	0.3% of full range.	
67. Roll Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	2	0.3% of full range.	
68. Brake Pressure (left and right).	As installed	+/−5%	1		To determine braking effort applied by pilots or by autobrakes.
69. Brake Pedal Application (left and right).	Discrete or Analog ''applied'' or ''off''.	+/−5% (Analog)	1		To determine braking applied by pilots.
70. Yaw or sideslip angle.	Full Range	+/−5%	1	0.5°	
71. Engine bleed valve position.	Discrete ''open'' or ''closed''.		4.		
72. De-icing or anti-icing system selection.	Discrete ''on'' or ''off''.		4.		
73. Computed center of gravity.	Full Range	+/−5%	(1 per 64 sec.)	1% of full range..	
74. AC electrical bus status.	Discrete ''power'' or ''off''.		4		Each bus.

APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per Sampling Interval	Resolution	Remarks
75. DC electric bus status.	Discrete ''power'' or ''off''.	.....	4	.....	Each bus.
76. APU bleed valve position.	Discrete ''open'' or ''closed''.	.....	4.		
77. Hydraulic Pressure (each system).	Full Range	+/−5%	2	100 psi.	
78. Loss of cabin pressure.	Discrete ''loss'' or ''normal''.	.....	1.		
79. Computer failure (critical flight and engine control systems).	Discrete ''fail'' or ''normal''.	.....	4.		
80. Heads-up display (when an information source is installed).	Discrete(s) ''on'' or ''off''.	.....	4.		
81. Para-visual display (when an information source is installed).	Discrete(s) ''on'' or ''off''.	.....	1.		
82. Cockpit trim control input position—pitch.	Full Range	+/−5%	1	0.2% of full range.	
83. Cockpit trim control input position—roll.	Full Range	+/−5%	1	0.2% of full range.	
84. Cockpit trim control input position—yaw.	Full Range	+/−5%	1	0.2% of full range.	
85. Trailing edge flap and cockpit flap control position.	Full Range	+/−5%	2	0.5% of full range.	Trailing edge flaps and cockpit flap control position may each be sampled alternately at 4 second intervals to provide a sample each 0.5 second.
86. Leading edge flap and cockpit flap control position.	Full Range or Discrete.	+/−5%	1	0.5% of full range.	
87. Ground spoiler position and speed brake selection.	Full Range or discrete.	+/−5%	0.5	0.2% of full range..	
88. All cockpit flight control input forces (control wheel, control column, rudder pedal).	Full Range ..... Control wheel ..... Control Column ..... Rudder pedal	+/−5% ..... +/−70 lbs. ..... +/−85 lbs. ..... +/−165 lbs.	1	0.2% of full range.	For fly-by-wire flight control systems, where flight control surface position is a function of the displacement of the control input device only, it is not necessary to record this parameter.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

8. The authority citation for part 129 continues to read as follows:

Authority: 49 USC 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44096.

9. In § 129.1, the first sentence of paragraph (b) is revised to read as follows:

§ 129.1 Applicability.

* * * * *

(b) Sections 129.14 and 129.20 also apply to U.S.-registered aircraft operated in common carriage by a foreign person or foreign air carrier solely outside the United States. * * *

10. Section 129.20 is added to read as follows:

§ 129.20 Digital flight data recorders.

No person may operate an aircraft under this part that is registered in the United States unless it is equipped with one or more approved flight recorders that use a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The flight data recorder must record the parameters that would be required to be recorded if the aircraft were operated under parts 121 or 135 of this chapter, and must be installed by the compliance times required by those parts, as applicable to the aircraft.

PART 135 AIR—TAXI OPERATORS AND COMMERCIAL OPERATORS

11. The authority citation for part 135 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

12. Section 135.152 is revised to read as follows:

§ 135.152 Flight recorders.

* * * * *

(f) (1) For airplanes manufactured on or before [3 years after effective date of final rule], and all other aircraft, each flight recorder required by this section must be installed in accordance with the requirements of § 23.1459, 25.1459, 27.1459, or 29.1459, as appropriate, of this chapter. The correlation required by paragraph (c) of §§ 23.1459, 25.1459, 27.1459, or 29.1459, as appropriate, of this chapter need be established only on one aircraft of a group of aircraft:

(i) That are of the same type;

(ii) On which the flight recorder models and their installations are the same; and

(iii) On which there are no differences in the type design with respect to the installation of the first pilot's instruments associated with the flight recorder. The most recent instrument calibration, including the recording medium from which this calibration is derived, and the recorder correlation must be retained by the certificate holder.

(f) (2) For airplanes manufactured after [3 years after effective date of final rule], each flight data recorder system required by this section must be installed in accordance with the requirements of § 23.1459 (a), (b), (d), and (e) of this chapter, or § 25.1459 (a), (b), (d), and (e) of this chapter. A correlation must be established between the values recorded by the flight data recorder and the corresponding values being measured. The correlation must contain a sufficient number of correlation points to accurately establish the conversion from the recorded values to engineering units or discrete state over the full operating range of the parameter. Except for airplanes having separate altitude and airspeed sensors that are an integral part of the flight data recorder system, a single correlation may be established for any group of airplanes—

(i) That are of the same type;

(ii) On which the flight recorder system and its installation are the same; and

(iii) On which there is no difference in the type design with respect to the installation of those sensors associated with the flight data recorder system. Documentation sufficient to convert recorded data into the engineering units and discrete values specified in the applicable appendix must be maintained by the certificate holder.

* * * * *

13. In § 135.152, new paragraphs (h), (i), and (j) are added to read as follows:

* * * * *

(h) The operational parameters required to be recorded by digital flight data recorders required by paragraphs (i) and (j) of this section are as follows; the phrase ''when an information source is installed'' following a parameter indicates that recording of that parameter is not intended to require a change in installed equipment:

(1) Time;

(2) Pressure altitude;

(3) Indicated airspeed;

(4) Heading—primary flight crew reference (if selectable, record discrete, true or magnetic);

(5) Normal acceleration (Vertical);

(6) Pitch attitude;

(7) Roll attitude;

(8) Manual radio transmitter keying, or CVR/DFDR synchronization reference;

(9) Thrust/power of each engine—primary flight crew reference;

(10) Autopilot engagement status;

(11) Longitudinal acceleration;

(12) Pitch control input;

(13) Lateral control input;

(14) Rudder pedal input;

(15) Primary pitch control surface position;

(16) Primary lateral control surface position;

(17) Primary yaw control surface position;

(18) Lateral acceleration;

(19) Pitch trim surface position or the parameters of paragraph (h)(82) of this section, if currently recorded;

(20) Trailing edge flap or cockpit flap control selection (except when the parameters of paragraph (h)(85) of this section apply);

(21) Leading edge flap or cockpit flap control selection (except when the parameters of paragraph (h)(86) of this section apply);

(22) Each Thrust reverser position (or equivalent for propeller airplane);

(23) Ground spoiler position or speed brake selection (except when the parameters of paragraph (h)(87) of this section apply);

(24) Outside or total air temperature;

(25) Automatic Flight Control system (AFCS) modes and engagement status, including autothrottle;

(26) Radio altitude (when an information source is installed);

(27) Localizer deviation, MLS Azimuth;

(28) Glideslope deviation, MLS Elevation;

(29) Market beacon passage;

(30) Master warning;

(31) Air/ground sensor (primary airplane system reference nose or main gear);

(32) Angle of attack (when information source is installed);

(33) Hydraulic pressure low (each system);

(34) Ground speed (when an information source is installed);

(35) Ground proximity warning system;

(36) Landing gear position or landing gear cockpit control selection;

(37) Drift angle (when an information source is installed);

(38) Wind speed and direction (when an information source is installed);

(39) Latitude and longitude (when an information source is installed);

(40) Stick shaker/pusher (when an information source is installed);

(41) Windshear (when an information source is installed);

(42) Throttle/power lever position;

(43) Additional engine parameters (as designated in appendix F of this part);

(44) Traffic alert and collision avoidance system;

(45) DME 1 and 2 distances;

(46) Nav 1 and 2 selected frequency;

(47) Selected barometric setting (when an information source is installed);

(48) Selected altitude (when an information source is installed);

(49) Selected speed (when an information source is installed);

(50) Selected mach (when an information source is installed);

(51) Selected vertical speed (when an information source is installed);

(52) Selected heading (when an information source is installed);

(53) Selected flight path (when an information source is installed);

(54) Selected decision height (when an information source is installed);

(55) EFIS display format;

(56) Multi-function/engine/alerts display format;

(57) Thrust command (when an information source is installed);

(58) Thrust target (when an information source is installed);

(59) Fuel quantity in CG trim tank (when an information source is installed);

(60) Primary Navigation System Reference;

(61) Icing (when an information source is installed);

(62) Engine warning each engine vibration (when an information source is installed);

(63) Engine warning each engine over temp. (when an information source is installed);

(64) Engine warning each engine oil pressure low (when an information source is installed);

(65) Engine warning each engine over speed (when an information source is installed);

(66) Yaw trim surface position;

(67) Roll trim surface position;

(68) Brake pressure (selected system);
(69) Brake pedal application (left and right);
(70) Yaw or sideslip angle (when an information source is installed);
(71) Engine bleed valve position (when an information source is installed);
(72) De-icing or anti-icing system selection (when an information source is installed);
(73) Computed center of gravity (when an information source is installed);
(74) AC electrical bus status;
(75) DC electrical bus status;
(76) APU bleed valve position (when an information source is installed);
(77) Hydraulic pressure (each system);
(78) Loss of cabin pressure;
(79) Computer failure;
(80) Heads-up display (when an information source is installed);
(81) Para-visual display (when an information source is installed);
(82) Cockpit trim control input position—pitch;
(83) Cockpit trim control input position—roll;
(84) Cockpit trim control input position—yaw;
(85) Trailing edge flap and cockpit flap control position;
(86) Leading edge flap and cockpit flap control position;
(87) Ground spoiler position and speed brake selection; and
(88) All cockpit flight control input forces (control wheel, control column, rudder pedal).

(i) For all turbine-engine-powered airplanes with a seating configuration, excluding any required crewmember seat, of 10 to 30 passenger seats, manufactured after [3 years after effective date of the final rule]—

(1) The parameters listed in paragraphs (h)(1) through (h)(57) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix F of this part.

(2) Commensurate with the capacity of the recording system, all additional parameters for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix F of this part.

(j) For all turbine-engine-powered airplanes with a seating configuration, excluding any required crewmember seat, of 10 to 30 passenger seats, that are manufactured after [5 years after effective date of final rule], the parameters listed in paragraph (a)(1) through (a)(88) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix F of this part.

14. Appendix F to part 135 is added to read as follows:

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATION

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling Interval	Resolution	Remarks
1. Time or Relative Time Counts.	24 Hrs 0 to 4095 ...	+/−0.125 Per Hour	4	1 sec	UTC time preferred when available. Counter increments each 4 seconds of system operation.
2. Pressure Altitude	−1000 ft to max certificated altitude of aircraft.+5000 ft.	+/−100 to +/−700 ft (see table, TSO C124a or TSO C51a).	1	5′ to 35′	Data should be obtained from the air data computer when practicable.
3. Indicated airspeed or Calibrated airspeed.	50 KIAS or minimum value to Max V_{so} and V_{so} to 1.2 V_D.	+/−5% and +/−3%	1	1 kt.	Data should be obtained from the air data computer when practicable.
4. Heading (Primary flight crew reference).	0−360° and Discrete ''true'' or ''mag''.	+/−2°	1	0.5°	When true or magnetic heading can be selected as the primary heading reference, a discrete indicating selection must be recorded.
5. Normal Acceleration (Vertical).	−3g to +6g	+/−−1% of max range excluding datum error of +/−5%.	0.125	0.01g	
6. Pitch Attitude	+/−75°	+/−2°	1 or 0.25 for airplanes operated under §121.344(f).	0.5°	A sampling rate of 0.25 is recommended.
7. Roll Attitude	+/−180°	+/−2°	1 or 0.5 for airplanes operated under §121.344(f).	0.5°	A sampling rate of 0.5 is recommended.
8. Manual Radio Transmitter Keying or CVR/DFDR synchronization reference.	On-Off (Discrete) ...	.....	1	.....	Preferably each crew member but one discrete acceptable for all transmission provided the CVR/FDR system complies with TSO C124a CVR synchronization requirements (paragraph 4.2.1 ED–55).
9. Thrust/Power on Each Engine—primary flight crew reference.	Full Range Forward	+/−2%	1 (per engine)	0.2% of full range.	Sufficient parameters (e.g. EPR, N1 or Torque, NP) as appropriate to the particular engine be recorded to determine power in forward and reverse thrust, including potential overspeed conditions.

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling Interval	Resolution	Remarks
10. Autopilot Engagement.	Discrete ''on'' or ''off''.	.....	1.		
11. Longitudinal Acceleration.	+/−1g	+/−1.5% max. range excluding datum error of +/−5%.	0.25	0.01g	
12a. Pitch Control(s) position (non-fly-wire systems.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
12b. Pitch Control(s) position (fly-by-wire systems).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	
13a. Lateral Control position(s) (non-fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
13b. Lateral Control position(s) (fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	
14a. Yaw Control Position(s) (non-fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5.
14b. Yaw Control Position(s) (fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	
15. Pitch Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
16. Lateral Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	A suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
17. Yaw Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	For airplanes with multiple or split surfaces, a suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5
18. Lateral Acceleration.	+/−1g	+/−1.5% max. range excluding datum error of +/−5%.	0.25	0.01g.	

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling Interval	Resolution	Remarks
19. Pitch Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	1	0.3% of full range.	
20. Trailing Edge Flap or Cockpit Control Selection.	Full Range or Each Position (discrete).	+/−3° or as Pilot's indicator.	2	0.5% of full range.	Flap position and cockpit control may each be sampled alternately at 4 second intervals, to give a data point every 2 seconds.
21. Leading Edge Flap or Cockpit Control Selection.	Full Range or Each Discrete Position.	+/−3° or as Pilot's indicator and sufficient to determine each discrete position.	2	0.5% of full range.	Left and right sides, or flap position and cockpit control may each be sampled at 4 second intervals, so as to give a data point every 2 seconds.
22. Each Thrust Reverser Position (or equivalent for propeller airplane).	Stowed, In Transit, and Reverse (Discrete)..	.....	1 (per engine)	.....	Turbo-jet—2 discretes enable the 3 states to be determined Turbo-prop-1 discrete.
23. Ground Spoiler Position or Speed Brake Selection.	Full Range or Each Position (discrete).	+/−2° Unless Higher Accuracy Uniquely Required.	1 or 0.5 for airplanes operated under §121.344(f).	0.2% of full range.	
24. Outside Air Temperature or Total Air Temperature.	−50°C to +90°C	+/−2° C	2	0.3° C.	
25. Autopilot/ Autothrottle/AFCS Mode and Engagement Status.	A suitable combination of discretes.	.....	1	.....	Discretes should show which systems are engaged and which primary modes are controlling the flight path and speed of the aircraft.
26. Radio Altitude	−20 ft to 2,500 ft	+/−2 ft or +/−3% Whichever is Greater Below 500 ft and +/−5% Above 500 ft.	1	1 ft 5% above 500 ft of full range.	For autoland/category 3 operations, each radio altimeter should be recorded, but arranged so that at least one is recorded each second.
27. Localizer Deviation or MLS Azimuth.	+/−400 Microamps or available sensor range as installed +/−62°.	As installed +/−3% recommended.	1	0.3% of full range.	For autoland/category 3 operations, each system should be recorded but arranged so that at least one is recorded each second. It is not necessary to record ILS and MLS at the same time, only the approach aid in use need to be recorded.
28. Glideslope Deviation or MLS Elevation.	+/−400 Microamps or available sensor range as installed. 0.9 to + 30°.	As installed +/−3% recommended.	1	0.3% of full range.	For autoland/category 3 operations, each system should be recorded but arranged so that at least one is recorded each second. It is not necessary to record ILS and MLS at the same time, only the approach aid in use need to be recorded.
29. Marker Beacon Passage.	Discrete ''on'' or ''off''.	.....	1	.....	A single discrete is acceptable for all markers.
30. Master Warning	Discrete	.....	1	.....	Record the master warning and record each 'red' warning that cannot be determined from other parameters or from the cockpit voice recorder.
31. Air/ground sensor (primary airplane system reference nose or main gear).	Discrete ''air'' or ''ground''.	.....	1 (0.25 recommended).		
32. Angle of Attack (If measured directly).	As installed	As Installed	2 or 0.5 for airplanes operated under §121.344(f).	0.3% of full range.	If left and right sensors are available, each may be recorded at 4 second intervals so as to give a data point each half second.
33. Hydraulic Pressure Low, Each System.	Discrete or available sensor range, ''low'' or ''normal''.	+/− 5%	2	0.5% of full range.	

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling Interval	Resolution	Remarks
34. Groundspeed	As Installed	Most Accurate Systems Installed.	1	0.2% of full range.	
35. GPWS (ground proximity warning system).	Discrete ''warning'' or ''off''.	.....	1	.....	A suitable combination of discretes unless recorder capacity is limited in which case a single discrete for all modes is acceptable.
36. Landing Gear Position or Landing gear cockpit control selection.	Discrete	.....	4	.....	A suitable combination of discretes should be recorded.
37. Drift Angle	As installed	As installed	4	0.1°.	
38. Wind Speed and Direction.	As installed	As installed	4	1 knot, and 1.0°.	
39. Latitude and Longitude.	As installed	As installed	4	0.002°	Provided by the Primary Navigation System Reference. Where capacity permits Latitude/longitude resolution should be 0.0002°.
40. Stick shaker and pusher activation.	Discrete(s) ''on'' or ''off''.	.....	1	.....	A suitable combination of discretes to determine activation.
41. Windshear Detection.	Discrete ''warning'' or ''off''.	.....	1.		
42. Throttle/power lever position.	Full Range	+/− 2%	1 for each lever	2% of full range	For airplanes with non-mechanically linked cockpit engine controls.
43. Additional Engine Parameters.	As installed	As installed	Each engine each second.	2% of full range	Where capacity permits, the preferred priority is indicated vibration level, N2, EGT, Fuel Flow, Fuel Cut-off lever position and N3, unless engine manufacturer recommends otherwise.
44. Traffic Alert and Collision Avoidance System (TCAS).	Discretes	As installed	1	.....	A suitable combination of discretes should be recorded to determine the status of—Combined Control, Vertical Control, Up Advisory, and Down Advisory. (ref. ARINC Characteristic 735 Attachment 6E, TCAS VERTICAL RA DATA OUTPUT WORD.)
45. DME 1 and 2 Distance.	0–200 NM;	As installed	4	1 NM	1 mile.
46. Nav 1 and 2 Selected Frequency.	Full range	As installed	4	.....	Sufficient to determine selected frequency.
47. Selected barometric setting.	Full Range	+/− 5%	(1 per 64 sec.)	0.2% of full range.	
48. Selected Altitude	Full Range	+/− 5%	1	100 ft.	
49. Selected speed	Full Range	+/− 5%	1	1 knot.	
50. Selected Mach ...	Full Range	+/− 5%	1	.01.	
51. Selected vertical speed.	Full Range	+/− 5%	1	100 ft/min.	
52. Selected heading	Full Range	+/− 5%	1	1°..	
53. Selected flight path.	Full Range	+/−5%	1	1°.	
54. Selected decision height.	Full Range	+/− 5%	64	1 ft.	
55. EFIS display format.	Discrete(s)	.....	4	.....	Discretes should show the display system status (e.g., off, normal, fail, composite, sector, plan, nav aids, weather radar, range, copy.
56. Multi-function/Engine Alerts Display format.	Discrete(s)	.....	4	.....	Discretes should show the display system status (e.g., off, normal, fail, and the identity of display pages for emergency procedures, need not be recorded.
57. Thrust command	Full Range	+/− 2%	2	2% of full range.	
58. Thrust target	Full Range	+/−2%	4	2% of full range.	
59. Fuel quantity in CG trim tank.	Full Range	+/−5%	(1 per 64 sec.)	1% of full range.	

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling Interval	Resolution	Remarks
60. Primary Navigation System Reference.	Discrete GPS, INS, VOR/DME, MLS, Loran C, Omega, Localizer Glideslope.	.....	4	.....	A suitable combination of discretes to determine the Primary Navigation System Reference.
61. Ice Detection	Discrete ''ice'' or ''no ice''.	.....	4.		
62. Engine warning each engine vibration.	Discrete	.....	1.		
63. Engine warning each engine over temp.	Discrete	.....	1.		
64. Engine warning each engine oil pressure low.	Discrete	.....	1.		
65. Engine warning each engine over speed.	Discrete	.....	1.		
66. Yaw Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	2	0.3% of full range.	
67. Roll Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	2	0.3% of full range.	
68. Brake Pressure (left and right).	As installed	+/−5%	1	.....	To determine braking effort applied by pilots or by autobrakes.
69. Brake Pedal Application (left and right).	Discrete or Analog ''applied'' or ''off''.	+/−5% (Analog)	4	.....	To determine braking applied by pilots.
70. Yaw or sideslip angle.	Full Range	+/−5%	1	0.5°.	
71. Engine bleed valve position.	Discrete ''open'' or ''closed''.	.....	4.		
72. Deicing or anti-icing system selection.	Discrete ''on'' or ''off''.	.....	4.		
73. Computed center of gravity.	Full Range	+/−5%	(1 per 64 sec.)	1% of full range.	
74. AC electrical bus status.	Discrete ''power'' or ''off''.	.....	4	.....	Each bus.
75. DC electrical bus status.	Discrete ''power'' or ''off''.	.....	4	.....	Each bus.
76. APU bleed valve position.	Discrete ''open'' or ''closed''.	.....	4.		
77. Hydraulic Pressure (each system).	Full range	+/−5%	2	100 psi.	
78. Loss of cabin pressure.	Discrete ''loss'' or ''normal''.	.....	1.		
79. Computer failure (critical flight and engine control systems).	Discrete ''fail'' or ''normal''.	.....	4		
80. Heads-up display (when an information source is installed).	Discrete(s) ''on'' or ''off''.	.....	4.		
81. Para-visual display (when an information source is installed).	Discrete(s) ''on'' or ''off''.	.....	1.		
82. Cockpit trim control input position—pitch.	Full Range	+/−5%	1	0.2% of full range.	

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling Interval	Resolution	Remarks
83. Cockpit trim control input position—roll.	Full Range	+/−5%	1	0.2% of full range.	
84. Cockpit trim control input position—yaw.	Full Range	+/−5%	1	0.2% of full range.	
85. Trailing edge flap and cockpit flap control position.	Full Range	+/−5%	2	0.5% of full range.	Trailing edge flaps and cockpit flap control position may each be sampled alternately at 4 second intervals to provide a sample each 0.5 second.
86. Leading edge flap and cockpit flap control position.	Full Range or Discrete.	+/−5%	1	0.5% of full range.	
87. Ground spoiler position and speed brake selection.	Full Range or discrete.	+/−5%	0.5	0.2% of full range.	
88. All cockpit flight control input forces (control wheel, control column, rudder pedal).	Full Range ..... Control wheel ..... Control Column ..... Rudder pedal	+/−5% ..... +/−70 lbs. +/−85 lbs. +/−165 lbs.	1	0.2% of full range.	For fly-by-wire flight control systems, where flight control surface position is a function of the displacement of the control input device only, it is not necessary to record this parameter.

Issued in Washington, DC, on July 9, 1996.

Ava L. Robinson,

Special Assistant to the Director, Aircraft Certification Service.

[FR Doc. 96–17824 Filed 7–10–96; 3:17 pm]

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Federal Register

Tuesday
July 16, 1996

Part V

Department of Education

34 CFR Part 75, et al.
Direct Grant Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 206, 231, 235, 369, 371, 373, 375, 376, 378, 380, 381, 385, 386, 387, 388, 389, 390, 396, 610, 612, 630, 637, 658, 660, 661, 669

RIN 1880–AA74

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Education Department General Administrative Regulations (EDGAR) that govern discretionary grant programs. These proposed amendments would reduce the need for specific regulations governing individual programs while ensuring that proposed projects meet the highest standards of professional excellence. These proposed amendments would establish new general selection criteria; allow programs with one or more selection criteria in program regulations to use the criteria in combination with general EDGAR criteria and criteria based on statutory provisions; allow programs to assign weights to criteria; provide for using the new general selection criteria in considering unsolicited applications; and remove a number of regulations made unnecessary by the amendments.

DATES: Comments must be received on or before August 30, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Margo Anderson, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208–5530. Comments also may be sent through the Internet to ''EDGAR____criteria@ed.gov''.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Margo Anderson, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208–5530. Telephone: (202) 219–2005. 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:

Background

In January of 1995 the Department developed its ''Principles for Regulating'' (Principles) premised on the tenet that the Department will regulate only when absolutely necessary. The Principles were developed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. The President, on March 4, 1995, announced a Regulatory Reinvention Initiative (Initiative) to reform the Federal regulatory system. The Initiative required all Federal agencies to review their regulations page-by-page. Regulators were asked to eliminate obsolete regulations, revise regulations to reward results instead of rewarding process, and streamline regulations to achieve agency goals in the most efficient and least intrusive way possible. Since March of 1995, the Department has been reviewing thoroughly all of its regulations consistent with the Initiative and the Principles.

Through this process, the Department determined that a number of program regulations resulted from a program's need for tailored selection criteria for evaluating grant applications. Most Department programs require applicants applying for a grant to address numerous selection criteria that are detailed and specific to the particular program. In response to the Principles, some programs, in an effort to eliminate regulations or because the program office determined that general selection criteria were sufficient, used the general EDGAR selection criteria in § 75.210. A number of programs, however, continue to maintain selection criteria designed to evaluate particular elements of a project to ensure that grants will be given only to high quality applicants that meet specific program objectives.

The selection criteria in § 75.210 are necessarily very general and thus, for many programs, inadequate for reviewers to evaluate the quality of an application. The Secretary proposes these amendments to establish a menu of improved selection criteria that can be selected as appropriate to fit the needs of individual programs and eliminate the need for many program-specific selection criteria. With a more uniform approach to selection criteria, applicants will be better able to anticipate the type of information that they may be required to provide in applying for grants. Moreover, application reviewers should have a better understanding of the standards on which the Department evaluates many of its programs. These amendments will create more consistency and predictability for grant applicants.

The Secretary has already taken several steps toward increased flexibility and consistency in establishing selection criteria. On September 14, 1995 the Department published in the Federal Register (60 FR 47808) final regulations that contained the Standards for the Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement (OERI Standards). The OERI Standards established evaluation criteria to be used in evaluating grant applications and contract proposals for a variety of educational research, development, and dissemination activities.

The Secretary bases this proposed menu of selection criteria for § 75.210 on the OERI Standards' evaluation criteria, the current EDGAR regulations, and other changes needed to cover the broad spectrum of Department programs that will be affected.

In addition to the OERI Standards, the Department published final regulations in the Federal Register on December 12, 1995 (60 FR 63873) that created a new § 75.209 of EDGAR that authorizes the Secretary to establish selection criteria based on statutory provisions that apply to the program, without notice and comment on the specific criteria established.

These proposed amendments to § 75.210 and § 75.209 would authorize the Secretary to evaluate applications by applying the general selection criteria (§ 75.210), selection criteria based on the statutory provisions that apply to the program (§ 75.209), or any combination of general selection criteria, criteria based on the statute, or criteria in program-specific regulations. The amendments would also allow the Secretary the flexibility to weigh the criteria according to the needs of each individual program.

Proposed Selection Criteria (§ 75.210)

These proposed amendments would establish a menu of selection criteria. For each competition, the Secretary would select from the menu one or more criteria that best enable the Department to identify the highest quality applications consistent with the program purpose, statutory requirements, and any priorities established. Within each criterion, the Secretary could further define the criterion by selecting one or more specific factors.

Two criteria, however, contain factors that would always be considered if the criterion is selected. Under the ''quality of project services'' criterion, the Secretary would always evaluate the quality and sufficiency of strategies for

ensuring equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented. Under the ''quality of project personnel'' criterion, the Secretary would always evaluate the extent to which an applicant encourages applications for employment from persons who are members of groups that have been traditionally underrepresented. The Department's consideration of these factors, which first appeared in EDGAR in 1980, continues to reflect the Department's mission to ensure equal access to educational opportunities as embodied in the Department of Education Organization Act and recently reaffirmed by Congress in section 427 of the General Education Provisions Act.

Under this menu approach, in addition to selecting criteria, the Secretary would establish the number of points or the weight to be given to each criterion or factor. The applicable selection criteria and the assigned points or weights would be announced in the application package or in a notice published in the Federal Register. The Secretary would not solicit further public comment on the choice or weighting of the criteria. The public would have some opportunity to comment on criteria through the Paperwork Reduction Act of 1995, which requires an opportunity for public comment on application packages.

The Secretary would select criteria and factors appropriate to the nature and purposes of the grant program. For example, in the case of a national research center competition, the Secretary could select the criterion ''Significance'' (§ 75.210(b)(2)) and then further select factor (C), ''the potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies,'' and factor (D), ''the potential contribution of the proposed project to the development and advancement of theory and knowledge in the field of study.'' In the case of a competition for demonstration activities, the Secretary could choose other factors under the ''Significance'' criterion; for example: (E), ''the potential for generalizing from the findings or results of the proposed project,'' and (F) ''the extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.'' In the case of a competition for training activities, the Secretary could select the criterion ''Need for project'' (§ 75.210(b)(1)) and could choose factor (A), ''the magnitude or severity of the problem to be addressed by the proposed project,'' and factor (D), ''the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.''

The Secretary could determine that, for some competitions, it is not necessary to further define a criterion by selecting specific factors. If no factors are chosen, the application reviewer would apply the criterion in the context of a particular competition. The reviewer would not have to consider any of the factors.

Advantages and Discussion of Proposed Amendments

The proposed amendments provide an opportunity to improve significantly the grant application review process. This menu of selection criteria would provide the Department the flexibility to choose, from among the criteria and factors established in the regulations, a set of criteria tailored to a given competition. In selecting from the menu a set of criteria and factors for a particular competition, the Secretary would not solicit formal public comment but expects to draw on input from grantees and program beneficiaries; feedback from peer reviewers and program evaluators; discussions among Department employees, grantees, and program beneficiaries; and meetings, conferences, visits to grantees, and other forms of outreach and exchange with the relevant communities.

Also, the menu approach would obviate the need to create specific selection criteria through individual program regulations. Because no time will be spent developing program-specific regulations, the Secretary will be able to make grants earlier or give applicants more time to prepare their applications, or both. The Secretary expects these amendments to allow the Department to conduct grant competitions at a time that would best address grantees' planning and implementation cycles, such as announcing during the spring for programs involving school districts. The Secretary believes applicants would find that criteria selected from the menu for specific competitions would provide them with adequate guidance about review standards, and also with flexibility to design and propose the projects that they believe best serve their needs.

The Secretary is particularly interested in comments from potential grant applicants and intended program beneficiaries on this proposed approach. The value of this approach lies in expediting the grantmaking process by reducing separate program regulations and in minimizing potentially confusing variety in selection criteria on the same subject. Do applicants or program beneficiaries support this approach? For example, do applicants and program beneficiaries agree that the anticipated advantages, such as increased consistency in phrasing of selection criteria across programs and earlier grant awards, are valuable? Are there any revisions that would improve this proposed rule? For example, would it be preferable to limit the number or percentage of points that could be assigned to any particular criterion or factor? Are there any costs associated with shifting from using selection criteria tailored to individual programs to using a flexible menu of general selection criteria? If yes, what are those costs and does the benefit of the added flexibility of the proposed approach justify the costs? Would these proposed amendments have other effects?

Other CFR Parts and Sections Affected by These Amendments

These proposed amendments would also revise § 75.201 to inform applicants that programs may assign weights to criteria in evaluating applications and would create a new § 75.211 regarding selection criteria for unsolicited applications. Also, these amendments would revise §§ 75.200 and 75.209 to allow programs with one or more selection criteria in program regulations to use the criteria in combination with general EDGAR criteria and criteria based on statutory provisions.

Only those programs that currently have no program regulations, have no selection criteria in their program regulations, are new, or are listed in either chart below would be able to use the menu approach when the amendments became effective. Before any other programs could use this approach, the Department would need to amend the program regulations through notice and comment rulemaking procedures. When these amendments to part 75 are published as final regulations, the Department intends in that same document to repeal certain regulations of programs that will use these selection criteria. The Department would repeal all of the regulations governing the following programs:

Name of program	34 CFR part
Drug-free Schools and Communities—General Provisions	231
Drug-free Schools and Communities—Federal Activities Grants Program	235
Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Disabilities	373
Vocational Rehabilitation Service Projects Program for Migratory Agricultural Workers and Seasonal Farmworkers with Disabilities	375
Projects for Initiating Recreational Programs for Individuals with Disabilities	378
School, College, and University Partnerships	610
Drug Prevention Programs in Higher Education	612
Fund for the Improvement of Postsecondary Education	630

The Department would remove selection criteria from the following program regulations and make technical amendments to the following other sections of the regulations to reflect the use of the general EDGAR selection criteria (program regulations affecting matters other than selection criteria would remain in effect):

Name of program	34 CFR sections
Special Educational Programs for Students Whose Families Are Engaged in Migrant and Other Seasonal Farmwork—High School Equivalency Program and College Assistance Migrant Program.	206.30 and 206.31.
Vocational Rehabilitation Service Projects	369.1, 369.2, 369.21, 369.30, 369.31, 369.32, and 369.42.
Vocational Rehabilitation Service Projects for American Indians with Disabilities	371.30.
Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youth with Disabilities.	376.31.
Special Projects and Demonstrations for Providing Supported Employment Services to Individual With the Most Severe Disabilities and Technical Assistance Projects.	380.10, 380.11, 380.12, 380.13, and 380.14.
Protection and Advocacy of Individual Rights	381.20 and 381.21.
Rehabilitation Training	385.31, 385.32, and 385.33.
Rehabilitation Training: Rehabilitation Long-Term Training	386.20.
Experimental and Innovative Training	387.30
State Vocational Rehabilitation Unit In-Service Training	388.20.
Rehabilitation Continuing Education Programs	389.30.
Rehabilitation Short-Term Training	390.30
Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind	396.30, 396.31, and 396.32.
Minority Science Improvement Program	637.31 and 637.32.
Undergraduate International Studies and Foreign Language Program	658.30, 658.31, 658.32, 658.33, and 658.34.
The International Research and Studies Program	660.30, 660.31, 660.32, and 660.33.
Business and International Education Program	661.30 and 661.31.
Language Resource Centers Program	669.20, 669.21, and 669.22.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of the regulatory action.

The benefits of these proposed regulations would include improving the Department's ability to make grants more quickly, eliminating unnecessary regulations, and creating a single overall approach for evaluating applications for a number of programs. These proposed regulations would result in better access to Department regulations that apply to many programs and would better inform applicants and application reviewers of project qualities that the Department values across programs.

The potential costs associated with the proposed regulations are those determined by the Secretary as necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

The potential costs and benefits of these proposed regulations are discussed elsewhere in this preamble under the following topic heading: Proposed Selection Criteria.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example,

§ 75.210 *General selection criteria.*) (4) Is the description of the regulations in the ''Supplementary Information'' section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Ave., SW., Room 5121, FB10, Washington, DC 20202–2110.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These regulations could affect States, State agencies, and individuals. States, State agencies, and individuals, however, are not defined as ''small entities'' in the Regulatory Flexibility Act.

The small entities that could be affected by these regulations are institutions of higher education, local educational agencies, private schools, community-based organizations, and nonprofit organizations receiving Federal funds under a direct grant program. The proposed regulations, however, would not have a significant economic impact on these entities, if affected, because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed regulations would impose minimal requirements for the Secretary to select grantees.

Paperwork Reduction Act of 1995

Section 75.210 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Direct Grant Programs—General Selection Criteria.

These regulations would affect the following types of entities eligible to apply for grants and cooperative agreements: State, local, or tribal governments or agencies, businesses or other for-profit organizations, nonprofit institutions, individuals, and any combinations of these types of entities. The Department needs and uses the information to evaluate applications for funding.

The total annual public reporting and recordkeeping burden for this collection of information is one hour for one respondent. For programs that may use the EDGAR selection criteria, the annual public reporting and recordkeeping burden is estimated to range from 15 hours for each of approximately 750 applications for a field-initiated research study to 150 hours for ten or fewer applications for a research center. The total annual reporting and recordkeeping burden for each program using the EDGAR selection criteria will be determined by the number of applicants that respond to an application notice and the type of project to be supported in the particular competition. The actual burden and total annual reporting and recordkeeping burden for each program will be assigned as an application package is cleared by OMB under the procedures in the Paperwork Reduction Act of 1995. For example, if a program using the EDGAR selection criteria had a public reporting and recordkeeping burden of 90 hours for each respondent and received 300 applications, the total annual reporting and recordkeeping burden for that program would be 27,000 hours. For some programs using the menu approach, the reporting and recordkeeping burden will be less than under the prior process.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Wendy Taylor, Desk Officer for the U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

Some of the programs that would be affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 600, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 75

Administrative practice and procedure, Continuation funding, Education, Grant programs—education, Grants administration, Incorporation by reference, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

34 CFR Part 206

Administrative practice and procedure, Colleges and universities,

Educational study programs, Grants program—education, Migrant labor, Students, Vocational education.

34 CFR Part 231

Drug abuse, Elementary and secondary education, Grants program—education.

34 CFR Part 235

Drug abuse, Elementary and secondary education, Grants program—education.

34 CFR Part 369

American Indians, Disabled, Grants program—education, Vocational rehabilitation.

34 CFR Part 371

American Indians, Disabled, Employment, Grants program—education, Vocational rehabilitation.

34 CFR Part 373

Blind, Deaf, Disabled, Grants program—education, Vocational rehabilitation.

34 CFR Part 375

Disabled, Grants program—education, Migrant labor, Vocational rehabilitation.

34 CFR Part 376

Disabled, Grants program—education, Vocational rehabilitation, Youth.

34 CFR Part 378

Arts and crafts, Disabled, Grants program—education, Hobbies, Recreation and recreation areas, Vocational rehabilitation.

34 CFR Part 380

Disabled, Grants program—education, Vocational rehabilitation.

34 CFR Part 381

Advocacy, Disabled, Grants program—education.

34 CFR Part 385

Disabled, Grants program—education, Occupational training, Training programs, Vocational rehabilitation.

34 CFR Part 386

Disabled, Grants program—education, Occupational training, Training programs, Vocational education, Vocational rehabilitation.

34 CFR Part 387

Disabled, Grants program—education, Occupational training, Training programs, Vocational education, Vocational rehabilitation.

34 CFR Part 388

Disabled, Grants program—education, Occupational training, Training programs, Vocational education, Vocational rehabilitation.

34 CFR Part 390

Disabled, Grants program—education, Occupational training, Training programs, Vocational education, Vocational rehabilitation.

34 CFR Part 396

Blind, Deaf, Disabled, Grants program—education, Occupational training, Training programs, Vocational education.

34 CFR Part 610

Colleges and universities, Elementary and secondary education, Education of disadvantaged, Education of students with disabilities, Grant programs—education.

34 CFR Part 612

Colleges and universities, Drug abuse, Grant programs—education.

34 CFR Part 630

Colleges and universities, Grant programs—education.

34 CFR Part 637

Colleges and universities, Grant programs—education, Minority groups, Science and technology, Women.

34 CFR Part 658

Colleges and universities, Educational study program, Foreign relations, Grant programs—education, Teachers.

34 CFR Part 660

Colleges and universities, Educational research, Foreign relations, Grant programs—education.

34 CFR Part 661

Business and industry, Colleges and universities, Exports, Foreign relations, Foreign trade, Grant programs—education.

34 CFR Part 669

Colleges and universities, Educational research, Foreign relations, Grant programs—education, Teachers.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: June 13, 1996.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend parts 75, 206, 231, 235, 369, 371, 373, 375, 376, 378, 380, 381, 385, 386, 387, 388, 389, 390, 396, 610, 612, 630, 637, 658, 660, 661, and 669 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221–3 and 3474, unless otherwise noted.

2. Section 75.200(b)(3)(iii) is revised to read as follows:

§ 75.200 How applications for new grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.

* * * * *

(b) * * *

(3) Unless the regulations for a program state otherwise, the Secretary uses one of the following to evaluate applications for new grants under the program:

* * * * *

(iii) Any combination of selection criteria established under § 75.209, selection criteria in § 75.210, and selection criteria in the program's regulations.

* * * * *

3. Section 75.201 is revised to read as follows:

§ 75.201 How the selection criteria will be used.

(a) If points or weights are assigned to the selection criteria, the Secretary informs applicants in the application package or a notice published in the Federal Register of—

(1) The total possible score for all of the criteria for a program; and

(2) The assigned weight or the maximum possible score for each criterion or factor under that criterion.

(b) If no points or weights are assigned to the selection criteria and selected factors, the Secretary evaluates each criterion equally and, within each criterion, each factor equally.

(Authority: 20 U.S.C. 1221e–3 and 3474)

§ 75.209 [Amended]

4. Section 75.209(a) is amended by removing ''If a discretionary grant program does not have implementing regulations or has implementing regulations that do not include selection criteria,'' and capitalizing the word ''the''.

5. Section 75.210 is revised to read as follows:

§ 75.210 General selection criteria.

(a) In addition to the selection criteria established in paragraph (b) of this section, the Secretary may use criteria established under § 75.209 or selection criteria in program specific regulations.

(b) In determining the selection criteria to be used in each grant

competition, the Secretary may select one or more of the following criteria and may select from among the specific factors listed under each criterion:

(1) *Need for project.* (i) The Secretary considers the need for the proposed project.

(ii) In determining the need for the proposed project, the Secretary considers one or more of the following factors:

(A) The magnitude or severity of the problem to be addressed by the proposed project.

(B) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(C) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure.

(D) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals.

(E) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(F) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated.

(2) *Significance.* (i) The Secretary considers the significance of the proposed project.

(ii) In determining the significance of the proposed project, the Secretary considers one or more of the following factors:

(A) The national significance of the proposed project.

(B) The significance of the problem or issue to be addressed by the proposed project.

(C) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(D) The potential contribution of the proposed project to increased knowledge or understanding of rehabilitation problems, issues, or effective strategies.

(E) The likelihood that the proposed project will result in system change or improvement.

(F) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study.

(G) The potential for generalizing from the findings or results of the proposed project.

(H) The extent to which the proposed project is likely to yield findings that may be utilized by other appropriate agencies and organizations.

(I) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(J) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(K) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(L) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(M) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(N) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(O) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in employment and independent living services.

(P) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(3) *Quality of the project design.* (i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers one or more of the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(B) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(C) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(D) The extent to which the proposed activities constitute a coherent, sustained program of research and development in the field, including, as appropriate, a substantial addition to an ongoing line of inquiry.

(E) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(F) The extent to which the proposed project is based upon a specific research design, and the quality and appropriateness of that design, including the scientific rigor of the studies involved.

(G) The extent to which the proposed research design includes a thorough, high-quality review of the relevant literature, a high-quality plan for research activities, and the use of appropriate theoretical and methodological tools, including those of a variety of disciplines, where appropriate.

(H) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(I) The quality of the proposed demonstration design and procedures for documenting project activities and results.

(J) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(K) The extent to which the proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products.

(L) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(M) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(N) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements.

(O) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

(P) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(Q) The extent to which the proposed project will establish linkages with other appropriate agencies and

organizations providing services to the target population.

(R) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(S) The extent to which the proposed project encourages parental involvement.

(T) The extent to which the proposed project encourages consumer involvement.

(U) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(V) The quality of the methodology to be employed in the proposed project.

(W) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(4) *Quality of project services.* (i) The Secretary considers the quality of the services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers one or more of the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which entities that are to be served by the proposed technical assistance project demonstrate support for the project.

(C) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(D) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(E) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(F) The extent to which the training or professional development services to be provided by the proposed project are likely to alleviate the personnel shortages that have been identified or are the focus of the proposed project.

(G) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(H) The likelihood that the services to be provided by the proposed project will lead to improvements in the skills necessary to gain employment or build capacity for independent living.

(I) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(J) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(K) The extent to which the services to be provided by the proposed project are focused on those with greatest needs.

(L) The quality of plans for providing an opportunity for participation in the proposed project of students enrolled in private schools.

(5) *Quality of project personnel.* (i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers one or more of the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(C) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(6) *Adequacy of resources.* (i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers one or more of the following factors:

(A) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(B) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(C) The extent to which the budget is adequate to support the proposed project.

(D) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(E) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(F) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(G) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(7) *Quality of the management plan.* (i) The Secretary considers the quality of the management plan for the proposed project.

(ii) In determining the quality of the management plan for the proposed project, the Secretary considers one or more of the following factors:

(A) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(B) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(C) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(D) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(E) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(8) *Quality of the project evaluation.* (i) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(ii) In determining the quality of the evaluation, the Secretary considers one or more of the following factors:

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(B) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

(C) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(D) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(E) The extent to which the methods of evaluation will provide timely guidance for quality assurance.

(F) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(G) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(Authority: 20 U.S.C. 1221e–3 and 3474)

6. A new section 75.211 is added to read as follows:

§ 75.211 Selection criteria for unsolicited applications.

(a) If the Secretary considers an unsolicited application under 34 CFR 75.222(a)(2)(ii), the Secretary uses the selection criteria and factors, if any, used for the competition under which the application could have been funded.

(b) If the Secretary considers an unsolicited application under 34 CFR 75.222(a)(2)(iii), the Secretary selects from among the criteria in 75.210(b), and may select from among the specific factors listed under each criterion, the criteria that are most appropriate to evaluate the activities proposed in the application.

(Authority: 20 U.S.C. 1221e–3 and 3474)

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY PROGRAM AND COLLEGE ASSISTANCE MIGRANT PROGRAM

7. The authority citation for part 206 continues to read as follows:

Authority: 20 U.S.C. 1070d-2, unless otherwise noted.

8. Section 206.30 is revised to read as follows:

§ 206.30 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR part 75.

(Authority: 20 U.S.C. 1070d-2(a) and (e))

§ 206.31 [Removed]

9. Section 206.31 is removed.

PART 231—DRUG-FREE SCHOOLS AND COMMUNITIES—GENERAL PROVISIONS [REMOVED]

10. Part 231 is removed.

PART 235—DRUG-FREE SCHOOLS AND COMMUNITIES—FEDERAL ACTIVITIES GRANTS PROGRAM [REMOVED]

11. Part 235 is removed.

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

12. The authority citation for part 369 is removed to read as follows:

Authority: 29 U.S.C. 711(c), 732, 750, 777(a)(1), 777b, 777f and 795g, unless otherwise noted.

§ 369.1 [Amended]

13. Section 369.1 is amended by removing paragraphs (b)(2) and (b)(4), by removing in paragraph (b)(3) ''(34 CFR part 373)'', in paragraph (b)(5) ''(34 CFR part 375)'', and in paragraph (b)(7) ''(34 CFR part 378)'', and by redesignating paragraphs (b)(3), (b)(5), (b)(6), (b)(7), and (b)(8) as paragraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) respectively.

§ 369.2 [Amended]

14. Section 369.2 is amended by removing paragraphs (b) and (d) and by redesignating paragraphs (c), (e), (f), (g), and (h) as paragraphs (b), (c), (d), (e), and (f) respectively.

§ 369.21 [Amended]

15. Section 369.21 is amended by removing ''under 34 CFR parts 372, 373, 374, 375, 376, 378, or 379'', and adding, in its place, ''covered by this part''.

16. Section 369.30 is revised to read as follows:

§ 369.30 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR Part 75.

(Authority: 29 U.S.C. 711(c))

§ 369.31 [Removed]

17. Section 369.31 is removed.

§ 369.32 [Amended]

18. Section 369.32 is amended by removing ''listed in § 369.31 and 34 CFR parts 371, 372, 373, 374, 375, 376, 378, and 379'', in the introductory text and adding, in its place, ''used in accordance with the procedures in 34 CFR part 75''.

§ 369.42 [Amended]

19. Section 369.42 paragraph (b) is amended by removing ''34 CFR parts 371, 372, 373, 374, 375, 376, 378, or 379'', and adding, in its place, ''a program covered by this part''.

PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH DISABILITIES

20. The authority citation for part 371 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 750, unless otherwise noted.

§ 371.30 [Removed]

21. Section 371.30 is removed.

PART 373—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO INDIVIDUALS WITH DISABILITIES [REMOVED]

22. Part 373 is removed.

PART 375—VOCATIONAL REHABILITATION SERVICE PROJECTS PROGRAM FOR MIGRATORY AGRICULTURAL WORKERS AND SEASONAL FARMWORKERS WITH DISABILITIES [REMOVED]

23. Part 375 is removed.

PART 376—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING TRANSITIONAL REHABILITATION SERVICES TO YOUTH WITH DISABILITIES

24. The authority citation for part 376 continues to read as follows:

Authority: 29 U.S.C. 777a(b), unless otherwise noted.

§ 376.31 [Removed]

25. Section 376.31 is removed.

PART 378—PROJECTS FOR INITIATING RECREATIONAL PROGRAMS FOR INDIVIDUALS WITH DISABILITIES [REMOVED]

26. Part 378 is removed.

PART 380—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING SUPPORTED EMPLOYMENT SERVICES TO INDIVIDUALS WITH THE MOST SEVERE DISABILITIES AND TECHNICAL ASSISTANCE PROJECTS

27. The authority citation for part 380 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 777a(c), unless otherwise noted.

28. Section 380.10 is revised to read as follows:

§ 380.10 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR Part 75.

(Authority: 29 U.S.C. 777a(c))

§§ 380.11, 380.12, and 380.13 [Removed]

29. Sections 380.11, 380.12, and 380.13 are removed.

30. Section 380.14 is revised to read as follows:

§ 380.14 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria used in accordance with the procedures in 34 CFR part 75, the Secretary, in making awards under this part, considers the geographical distribution of projects in each program category throughout the country.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(c))

PART 381—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

31. The authority citation for part 381 continues to read as follows:

Authority: 29 U.S.C. 794e, unless otherwise noted.

32. Section 381.20 is revised to read as follows:

§ 381.20 How does the Secretary evaluate an application?

In any fiscal year in which the amount appropriated for the PAIR program is less than $5,500,000, the Secretary evaluates applications under the procedures in 34 CFR part 75.

(Authority: 29 U.S.C. 711(c) and 794e (b) and (f))

§ 380.21 [Removed]

33. Section 381.21 is removed.

PART 385—REHABILITATION TRAINING

34. The authority citation for part 385 continues to read as follows:

Authority: 29 U.S.C. 711(c), 772, and 774, unless otherwise noted.

35. Section 385.31 is revised to read as follows:

§ 385.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates applications under the procedures in 34 CFR part 75.

(b) The Secretary evaluates each application using selection criteria identified in parts 386, 387, 388, 389 and 390, as appropriate.

(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using-

(1) Selection criteria in 34 CFR 75.210;

(2) Selection criteria established under 34 CFR 75.209; or

(3) A combination of selection criteria established under 34 CFR 75.209 and selection criteria in 34 CFR 75.210.

(Authority: 29 U.S.C. 711(c))

§ 385.32 [Removed]

36. Section 385.32 is removed.

§ 385.33 [Amended]

37. Section 385.33 is revised by removing the number ''385.32'' in the introductory text and adding in its place the number ''75.210''.

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

38. The authority citation for part 386 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

39. Section 386.20 is revised to read as follows:

§ 386.20 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of individuals with physical or mental disabilities through degree or certificate granting programs; or

(ii) To improve the skills and quality of professional personnel in the rehabilitation field in which the training is to be provided through the granting of a degree or certificate.

(b) *Nature and scope of curriculum.* (1) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that ensure student involvement in the provision of vocational rehabilitation, supported employment, or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities;

(iv) The coursework includes student exposure to vocational rehabilitation, supported employment, or independent living rehabilitation processes, concepts, programs, and services; and

(v) If applicable, there is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Authority: 29 U.S.C. 711(c) and 771a)

PART 387—EXPERIMENTAL AND INNOVATIVE TRAINING

40. The authority citation for part 387 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

41. Section 387.30 is revised to read as follows:

§ 387.30 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to public and private agencies involved in the

rehabilitation of individuals with disabilities; or

(ii) To maintain and improve the skills and quality of rehabilitation workers.

(b) *Nature and scope of curriculum.* (1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed curriculum.

(2) The Secretary looks for information that shows that—

(i) The scope and nature of the training content can be expected to enable the achievement of the established project objectives of the training project;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practicum or other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities; and

(iv) The didactic coursework includes student exposure to vocational rehabilitation or independent living rehabilitation processes, concepts, programs, and services.

(Authority: 29 U.S.C. 711(c) and 774)

PART 388—STATE VOCATIONAL REHABILITATION UNIT IN-SERVICE TRAINING

42. The authority citation for Part 388 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

43. Section 388.20 is revised to read as follows:

§ 388.20 What additional selection criteria are used under this program?

In addition to the selection criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Evidence of need.* (1) The Secretary reviews each application for information that shows that the need for the in-service training has been adequately justified.

(2) The Secretary looks for information that shows—

(i) How the proposed project relates to the mission of the State-Federal rehabilitation service program and can be expected to improve the competence of all State vocational rehabilitation personnel in providing vocational rehabilitation services to individuals with disabilities that will result in employment outcomes or otherwise contribute to more effective management of the State unit program;

(ii) That the State unit in-service training plan responds to needs identified in their training needs assessment and the proposed training relates to the unit's State plan, particularly the requirements in section 101(a)(7) of the Rehabilitation Act for each designated State unit to develop a comprehensive system of personnel development;

(iii) The need for training methods and materials that will be useful in determining how in-service training improves the impact and effectiveness of services to individuals with disabilities assisted under the Rehabilitation Act to ensure employment outcomes; and

(iv) The State has conducted a needs assessment of the in-service training needs for all of the State unit employees.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

PART 389—REHABILITATION CONTINUING EDUCATION PROGRAMS

44. The authority citation for Part 389 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

45. Section 389.30 is revised to read as follows:

§ 389.30 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service programs.

(2) The Secretary reviews each application for information that shows that the proposed project includes an assessment of the potential of existing programs within the geographical area (including State vocational rehabilitation unit in-service training) to meet the needs for which support is sought.

(3) The Secretary looks for information that shows that the proposed project can be expected to improve the competence of professional and other personnel in the rehabilitation agencies serving individuals with severe disabilities.

(Authority: 29 U.S.C. 711(c))

PART 390—REHABILITATION SHORT-TERM TRAINING

46. The authority citation for Part 390 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

47. Section 390.30 is revised to read as follows:

§ 390.30 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service programs.

(2) The Secretary looks for information that shows that the proposed project can be expected to improve the skills and competence of—

(i) Personnel engaged in the administration or delivery of rehabilitation services; and

(ii) Others with an interest in the delivery of rehabilitation services.

(Authority: 29 U.S.C. 711(c) and 774)

PART 396—TRAINING OF INTERPRETERS FOR INDIVIDUALS WHO ARE DEAF AND INDIVIDUALS WHO ARE DEAF-BLIND

48. The authority citation for Part 396 continues to read as follows:

Authority: 29 U.S.C. 771a(f), unless otherwise noted.

49. Section 396.30 is revised to read as follows:

§ 396.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates applications under the procedures in 34 CFR part 75.

(b) The Secretary evaluates each application using selection criteria in § 396.31.

(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using—

(1) Selection criteria in 34 CFR 75.210;

(2) Selection criteria established under 34 CFR 75.209; or

(3) A combination of selection criteria established under 34 CFR 75.209 and selection criteria in 34 CFR 75.210.

(Authority: 29 U.S.C. 771a(f))

50. Section 396.31 is revised to read as follows:

§ 396.31 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 396.30(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Demonstrated relationships with service providers and consumers.* The Secretary reviews each application to determine the extent to which—

(1) The proposed interpreter training project was developed in consultation with service providers;

(2) The training is appropriate to the needs of both individuals who are deaf and individuals who are deaf-blind and to the needs of public and private agencies that provide services to either individuals who are deaf or individuals who are deaf-blind in the geographical area to be served by the training project;

(3) There is a working relationship between the interpreter training project and service providers; and

(4) There are opportunities for individuals who are deaf and individuals who are deaf-blind to be involved in the training project.

(Authority: 29 U.S.C. 771a(f))

§ 396.32 [Amended]

51. Section 396.32 is amended by adding after the number ''396.31'' the cross-reference ''and 34 CFR 75.210''.

PART 610—SCHOOL, COLLEGE, AND UNIVERSITY PARTNERSHIPS [REMOVED]

52. Part 610 is removed.

PART 612—DRUG PREVENTION PROGRAMS IN HIGHER EDUCATION [REMOVED]

53. Part 612 is removed.

PART 630—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION [REMOVED]

54. Part 630 is removed.

PART 637—MINORITY SCIENCE IMPROVEMENT PROGRAM

55. The authority citation for part 637 continues to read as follows:

Authority: 20 U.S.C. 1135b–1135b–3, 1135d–1135d–3, 1135d–5, and 1135d–6, unless otherwise noted.

56. Section 637.31 is revised to read as follows:

§ 637.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application under the procedures in 34 CFR Part 75 and using selection criteria established under the procedures in 34 CFR Part 75.

(b) The Secretary gives priority to applicants that have not previously received funding from the program and to previous grantees with a proven record of success, as well as to applications that contribute to achieving balance among funded projects with respect to—

(1) Geographic region;

(2) Academic discipline; and

(3) Project type.

(Authority: 20 U.S.C. 1135b–1 and 1135d–3)

§ 637.32 [Removed]

57. Section 637.32 is removed.

PART 658—UNDERGRADUATE INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAM

58. The authority citation for part 658 continues to read as follows:

Authority: 20 U.S.C. 1124, unless otherwise noted.

59. Section 658.30 is revised to read as follows:

§ 658.30 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR part 75 and using selection criteria established under the procedures in 34 CFR part 75.

(Authority: 20 U.S.C. 1124)

§§ 658.31, 658.32, and 658.33 [Removed]

60. Sections 658.31, 658.32, and 658.33 are removed.

§ 658.34 [Amended]

61. Section 658.34 is amended by removing the comma after the word ''in'' and by removing the words and numbers ''as appropriate §§ 658.31, 658.32, and 658.33,'' and adding in their place the number ''§ 75.210''.

PART 660—THE INTERNATIONAL RESEARCH AND STUDIES PROGRAM

62. The authority citation for Part 660 continues to read as follows:

Authority: 20 U.S.C. 1125, unless otherwise noted.

63. Section 660.30 is revised to read as follows:

§ 660.30 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR part 75 and using selection criteria established under the procedures in 34 CFR part 75.

(Authority: 20 U.S.C. 1125)

§§ 660.31, 660.32, and 660.33 [Removed]

64. Sections 660.31, 660.32 and 660.33 are removed.

PART 661—BUSINESS AND INTERNATIONAL EDUCATION PROGRAM

65. The authority citation for part 661 continues to read as follows:

Authority: 20 U.S.C. 1130–1130b, unless otherwise noted.

66. Section 661.30 is revised to read as follows:

§ 661.30 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR part 75 and using selection criteria established under the procedures in 34 CFR part 75.

(Authority: 20 U.S.C. 1130a)

§ 661.31 [Removed]

67. Section 661.31 is removed.

PART 669—LANGUAGE RESOURCE CENTERS PROGRAM

68. The authority citation for part 669 continues to read as follows:

Authority: 20 U.S.C. 1123, unless otherwise noted.

69. Section 669.20 is revised to read as follows:

§ 669.20 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR part 75 and using the selection criteria established under the procedures in 34 CFR part 75.

(Authority: 20 U.S.C. 1123)

§ 669.21 [Removed]

70. Section 669.21 is removed.

71. Section 669.22 is amended by adding a new paragraph (c) to read as follows:

§ 669.22 What priorities may the Secretary establish?

* * * * *

(c) If the Secretary establishes one or more priorities under this section, the Secretary may award an applicant up to an additional 20 possible points for meeting the priority.

[FR Doc. 96–17916 Filed 7–15–96; 8:45 am]

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Tuesday
July 16, 1996

Part VI

Department of the Treasury

Fiscal Service

31 CFR Part 321

Regulations Governing Payments by Banks and Other Financial Institutions of United States Savings Bonds and United States Savings Notes (Freedom Shares); Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 321

[Department of the Treasury Circular, Public Debt Series No. 750]

Regulations Governing Payments by Banks and Other Financial Institutions of United States Savings Bonds and United States Savings Notes (Freedom Shares)

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury hereby publishes this final rule amending the regulations to update procedures used by the Bureau of the Public Debt for collecting debts owed by paying agents of United States Savings Bonds and Savings Notes (collectively referred to herein as savings bonds or bonds). These collection procedures are used when a paying agent cannot be relieved of liability for a savings bond transaction and the paying agent fails to reimburse Public Debt in a timely manner.

Accounts designated or utilized by paying agents at Federal Reserve Banks for receiving settlements for savings bond redemptions are immediately credited upon the receipt of paid bonds with cash letters by Federal Reserve Banks or Branches through the EZ CLEAR system. These immediate settlements occur with the understanding that adjustments to correct errors may later be necessary. This system has expedited the process of crediting the accounts paying agents have designated or utilized for receiving savings bond transaction settlements. However, the system has also made it more cumbersome for Public Debt to collect monies from paying agents, not relieved of liability, that fail to reimburse Public Debt in a timely manner.

This amendment corrects this problem by providing that paying agents are deemed to have authorized the debit of any overdue amount, interest, administrative cost, and penalty assessed, directly from the agents' Reserve, correspondent, or clearing accounts designated or utilized at Federal Reserve Banks or Branches for settlement of redeemed savings bonds.

EFFECTIVE DATE: July 16, 1996.

FOR FURTHER INFORMATION CONTACT: Wallace L. Earnest, Division Director, Division of Staff Services (304) 480–6319, or Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel (304) 480–5192.

SUPPLEMENTARY INFORMATION:

I. Background

The final rule will update the debt collection process used by the Bureau of the Public Debt. This update is necessitated by the automated processing of redeemed savings bonds through EZ CLEAR.

Paying agents receive settlements for the value of savings bonds redeemed via credits to Reserve, correspondent, and clearing accounts with Federal Reserve Banks, or their Branches.

When a depository financial institution qualifies as a savings bond paying agent, it agrees in writing to be bound by all of the provisions set out in 31 CFR part 321 and the Appendix thereto, as revised and amended, including any instructions promulgated by Treasury and its fiscal agents.

Relief of a paying agent from liability for a loss related to the redemption of a savings bond is a determination made under authority of 31 U.S.C. 3126(a).

The collection procedures will apply when a paying agent cannot be relieved of liability under 31 U.S.C. 3126(a) for a loss resulting from a payment of a savings bond pursuant to 31 CFR part 321. No change is being made in the procedure for assessing liability under 31 U.S.C. 3126(a), or in the regulations with respect to such liability determinations.

II. Summary of Amendments

Section 321.21 refers to collection procedures outlined in Paragraph 21 of the appendix to this part.

Paragraph 21 of the appendix to this part provides a detailed explanation of the consequences of a paying agent's failure to make reimbursement within 30 days of Public Debt's mailing the first demand letter, provided the paying agent cannot be relieved of liability under 31 U.S.C. 3126(a) for an erroneous payment.

A paying agent receiving settlement for the redemption value of redeemed savings bonds via credits to a Reserve, correspondent, or clearing account is deemed to have authorized the Federal Reserve Bank or Branch to debit the amount due from that account. Such debits shall be made if the paying agent fails to make timely reimbursement or submit new evidence sufficient for Public Debt to change a determination of liability within 120 days of the mailing of the first demand letter. The amount due from the redemption of a security for which the paying agent is not relieved of liability, under 31 U.S.C. 3126(a), shall include the amount of the final loss resulting from the erroneous payment, interest, administrative costs, and penalty charges.

A financial institution designated by a paying agent to receive settlement for redeemed savings bonds on behalf of that paying agent via a credit to a Reserve, correspondent, or clearing account with a Federal Reserve Bank or Branch is deemed to have authorized a debit from such account to collect an amount due from the paying agent. The consequences of a paying agent's failure to make timely reimbursement include the paying agent's being required to pay:

(a) Interest charges accruing from the date the first demand letter is mailed to the date of reimbursement, at the current value of funds rate published by the Secretary of the Treasury annually or quarterly in the Federal Register;

(b) Administrative costs (currently processing costs of $6.00) will be assessed, if reimbursement is not made within 30 days of the date the first demand letter is mailed;

(c) Penalty charges in accordance with 31 U.S.C. 3717(e), if reimbursement is not made within 120 days of the date the first demand letter is mailed. When assessed, the penalty charge will accrue and be calculated from 30 days after the date the first demand letter is mailed to the date of reimbursement.

Procedural Requirements

It has been determined that this final rule is not a ''significant regulatory action'' pursuant to Executive Order 12866.

Although this rule was published in the Federal Register as a proposed rule on April 1, 1996, to secure the benefit of public comment, the rule relates to matters of public contract, as well as the borrowing power and fiscal authority of the United States. The notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no collections of information required by this final rule, therefore, the Paperwork Reduction Act does not apply.

Comments

No comments were received on the proposed rule published April 1, 1996, with a 30 day comment period.

List of Subjects in 31 CFR Part 321

Banks, Banking, Bonds, Government securities.

Dated: July 3, 1996.

John Kilcoyne,

Deputy Fiscal Assistant Secretary.

For the reasons set forth in the preamble, part 321 of title 31 of the Code of Federal Regulations is amended to read as follows:

PART 321—PAYMENTS BY BANKS AND OTHER FINANCIAL INSTITUTIONS OF UNITED STATES SAVINGS BONDS AND UNITED STATES SAVINGS NOTES (FREEDOM SHARES)

1. The authority citation for part 321 is revised as follows:

Authority: 2 U.S.C. 901, 5 U.S.C. 301, 12 U.S.C. 391, 31 U.S.C. 3105, 31 U.S.C. 3126.

2. Section 321.21 is revised to read as follows:

§ 321.21 Replacement and recovery of losses.

(a) If a final loss results from the redemption of a security, and the paying agent redeeming the security is not relieved of liability for such loss under 31 U.S.C. 3126(a), the Bureau of the Public Debt will demand that the paying agent promptly reimburse the United States in the amount of the final loss and will take such other action as may be necessary to collect such amount as set out in the procedure described in Paragraph 21 of the appendix to this part.

(b) If a final loss has resulted from the redemption of a security, and no reimbursement has been or will be made, the loss shall be subject to replacement out of the fund established by the Government Losses in Shipment Act, as amended.

3. Subpart E, paragraph 21 of the appendix to this part is revised as follows:

21. *Determination of liability.* (Sec. 321.18 and Sec. 321.21)

(a) Upon completing the investigation, the Bureau of the Public Debt will examine the available information and determine whether a paying agent may be relieved of liability for any loss that may have resulted. If the paying agent cannot be relieved of liability, demand will be made upon the paying agent to reimburse the Treasury promptly. Any amount not paid within 30 days following the mailing of the first demand letter is subject to the following charges.

(1) Interest shall accrue from the date the first demand letter is mailed to the date reimbursement is made. The rate of interest to be used will be the current value of funds rate published annually or quarterly in the Federal Register and in effect during the entire period in which the remittance is late.

(2) Administrative costs shall be assessed as set out in the first demand letter, if reimbursement is not made within 30 days of the date the first demand letter is mailed.

(3) Penalty charges shall be assessed, in accordance with 31 U.S.C. 3717(e), if reimbursement is not made within 120 days of the date the first demand letter is mailed. The penalty charge will accrue and be calculated from 30 days after the date the first demand letter is mailed to the date of reimbursement.

(b) When a paying agent fails, within 120 days of the date the first demand letter is mailed, to make such reimbursement or to submit new evidence sufficient for Public Debt to change the determination of liability, by virtue of the paying agent's acceptance of settlement via credits to a Reserve, correspondent, or clearing account with a Federal Reserve Bank or Branch, the agent is deemed to have authorized the Federal Reserve Bank to debit the amount due from that account designated or utilized by the agent at the Federal Reserve Bank or Branch. An institution, designated by a paying agent to receive settlement on its behalf, in authorizing such paying agent to utilize its Reserve, correspondent, or clearing account on the books at the Federal Reserve Bank shall similarly be deemed to authorize such debits from that account.

(c) Reconsideration of a determination of liability will be made in any case when a paying agent so requests and presents additional evidence and information regarding the transaction.

* * * * *

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General Information, indexes and other finding aids **202–523–5227**

Laws

Public Laws Update Services (numbers, dates, etc.) **523–6641**

For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

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FEDERAL REGISTER PAGES AND DATES, JULY

33825–34366 1
34367–34712 2
34713–35082 3
35083–35588 5
35589–35914 8
35915–36276 9
36277–36492 10
36493–36608 11
36609–36808 12
36809–36988 15
36989–37198 16

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6907 35083
6908 35587

Administrative Orders:

Presidential Determinations:
No. 96–34 of June 26, 1996 36493
No. 96–35 of June 26, 1996 36495
No. 96–36 of June 28, 1996 35075
No. 96–37 of June 29, 1996 36989
No. 96–38 of June 29, 1996 36991

4 CFR

28 36809
29 36809

5 CFR

Ch. XXIII 35085
Ch. XXXV 36993
Ch. LXV 36246
530 34713
531 34713
532 36609
534 34713
550 34713
575 34713
581 34713
582 34713
630 34713
734 35088
1001 36993
1660 36610
2634 35589
3201 35915

Proposed Rules:
890 35973

7 CFR

58 35589
301 ..... 35102, 35107, 36811, 36812
400 34367
729 36997
868 34714
946 35109
948 36813
958 35592
989 36814
997 35594
998 35594
1106 35596
1230 35597
1493 33825
1910 35916
1924 35916
1941 35916
1943 35916
1945 35916
1951 35916
1955 35916
1962 35916
1965 35916
1980 35916

Proposed Rules:
210 35152
220 35152
225 35152
226 35152
300 34379
301 38018
319 34379
868 35687
956 36827
1240 34385
1280 35982

8 CFR

103 35597
212 36610
214 35934
217 35598
301 35111

Proposed Rules:
207 35984
208 35984

9 CFR

92 36816
112 33840
113 33840
201 ..... 36277, 36279

Proposed Rules:
1 34386
3 ..... 34386, 34389
11 34747
92 36520
93 36520
94 ..... 35987, 36520
95 36520
96 36520
98 36520
301 35990
304 35990
308 35990
318 35992
319 35157
320 35990
381 ..... 35157, 35990
391 34747

10 CFR

53 35935
110 35600
205 3511
420 35890
430 36974
450 35890
463 35114
784 36611
1003 35112

1010.....35085
1021.....36222
Proposed Rules:
34.....37019
1021.....35990

12 CFR

324.....33842
367.....35115
1750.....35607
Proposed Rules:
207.....33874
218.....34749
220.....33874
221.....33874
250.....34749
327.....34751
745.....36663

14 CFR

1.....34508
25.....34716
29.....33963, 36965
39 .....33874, 34368, 34718, 35122, 35126, 35127, 35936, 35938, 35940, 35942, 35944, 35946, 36620, 36622, 36817
61.....34508
71 .....33843 33844, 33845, 34720, 34721, 34722, 34723, 35307, 36283, 36284, 36285, 36286, 36820, 37001, 37113
73.....35623
91.....34508, 36286
97 .....35623, 35624, 35626
119.....35628
121 .....34508, 34927, 35628
125.....34508
135 .....34508, 34927, 35628
141.....34508
142.....34508
211.....34724
213.....34724
Proposed Rules:
25.....35056
39 .....34767, 35691, 35693, 35695, 36307, 36308, 36310, 36664, 36667, 36669, 37019
71 .....34391, 34393, 34394, 34395, 34396, 34397, 34398, 34769, 35991, 36311, 36312, 36313, 36314, 36315, 36316, 36317, 36520, 37113
121.....37144
125.....37144
129.....37144
135.....37144

15 CFR

902 .....34570, 34930, 34966, 35145, 35548
923.....36965
Proposed Rules:
30.....36318
922.....33876

16 CFR

Proposed Rules:
303.....35992

17 CFR

Proposed Rules:
240.....36521

19 CFR

10.....33845
12.....33845
102.....33845
134.....33845

21 CFR

14.....36624
177.....34370
178.....33846
184.....36287
452.....34726
510.....35949
520.....34727
522 .....34727, 35129, 36290
529.....34727
558 .....34727, 35949, 36291
Proposed Rules:
106.....36154
107.....36154

22 CFR

41.....35628
126.....36625
514.....37002
608.....36820

23 CFR

630.....35629

24 CFR

0.....36246
60.....36462
200.....36260
201.....36260
202.....36260, 36452
203 .....35024, 36260, 36452
206.....35014, 36260
221.....36260, 36452
233.....36260
234.....36260, 36452
280.....36260
291.....36260
570.....36456
901.....35633
941.....35958

25 CFR

10.....34371
211.....35634
212.....35634
700.....35666
Proposed Rules:
5.....36671
11.....35158
12.....35163
21.....33876
45.....34399
152.....34400
171.....35167
256.....36829
290.....37022

26 CFR

Proposed Rules:
1.....35696, 36320
31.....36320

27 CFR

18.....37002
30.....37002
53.....37005
275.....37005
Proposed Rules:
53.....37022

28 CFR

42.....34729
Proposed Rules:
17.....36679
31.....34770

29 CFR

Ch. XXVI.....34002, 36626
Ch. XL 34002, 36626
1952.....36824
2509.....33847
2520.....33847
2550.....33847
4044.....36968
Proposed Rules:
Ch. XIV 34405
101.....35172
102.....35172

30 CFR

56.....36790
57.....36790
256.....34730
Proposed Rules:
948.....37023

31 CFR

321.....37196
356.....37007
575.....36627

32 CFR

706 .....35958, 36291, 36497

33 CFR

100.....36292
110.....36786
116.....36786
117.....36786
127.....36629
157.....36786
158.....36629
164.....35064
165.....35130, 35132
179.....36629
181.....36786
183.....36629
334.....34732
Proposed Rules:
117.....35702
154.....34775
155.....34775
167.....35703

34 CFR

Proposed Rules:
75.....37184
206.....37184
231.....37184
235.....27184
369.....27184
371.....27184
373.....27184
375.....27184
376.....27184
378.....27184
380.....27184
381.....27184
385.....27184
386.....27184
387.....27184
388.....27184
389.....27184
390.....27184
396.....27184
610.....27184
612.....27184
630.....27184
637.....27184
658.....27184
660.....27184
661.....27184
669.....27184

35 CFR

61.....36497
123.....36497

36 CFR

1.....35133
13.....35133
222.....35959
223.....35960
Proposed Rules:
1190.....36688
1191.....36688

37 CFR

2.....36825

38 CFR

1.....33850
21.....36629
Proposed Rules:
1.....33878
17.....37024

39 CFR

5.....36498
7.....36498
10.....36498
20.....36500

40 CFR

9.....33851, 34202
52 .....36292, 36501, 36502
55.....34202
63.....34140, 36295
70.....34733
71.....34202
79.....36506
80 .....35310, 35673, 35960
180 .....34739, 34741, 36298, 36299
257.....34253
261.....34252
271.....34252
300.....35137, 35962
425.....35680
Proposed Rules:
51.....35994, 36112
52 .....35998, 36004, 36320, 36534, 37030
55.....36012
61.....36326
63.....36326, 36835
79.....36535
80.....34775
81.....33879, 36004
90.....34778
93.....35994, 36112
136.....36328
180 .....36329, 36331, 36689
260.....33881
261.....33881
262.....33881
264.....33881
268.....33881
269.....33881
271.....33881
300.....36858
425.....35705

430.....36835

41 CFR

201.....35685

42 CFR

405.....35307
413.....37011
417.....35307
431.....35307
473.....35307
498.....35307
Proposed Rules:
410.....34614
415.....34614

43 CFR

3710.....37116
Proposed Rules:
11.....37031
4700.....36333

44 CFR

62.....36513
64.....36514
65.....33852, 33854
67.....33856
Proposed Rules:
67.....33882

46 CFR

42.....35963
76.....35138
108.....36786
110.....36786
111 .....35927, 36608, 36786
112.....36786
113.....36786
161.....36786
167.....35138
514.....35685
Proposed Rules:
10.....36543, 36608
15.....36543, 36608

47 CFR

Ch. I.....35964
1.....36629
20.....33859
22.....34375
24.....33850
36.....34375
61.....36515, 36653
64.....36629, 36653
66.....36654
73 .....34368, 34743, 34744, 35139, 36302
90.....34375
Proposed Rules:
Ch. I.....34405
73 .....34406, 34407, 34784, 34785, 35705
76.....34408, 34409

48 CFR

231.....36305
Proposed Rules:
401.....37032
453.....37032

49 CFR

1.....34745
40.....37015
192.....35139, 36825
193.....36825
195.....36825
233.....33871
235.....33871
236.....33871
571 .....33891, 36516, 36655
575.....36655
1150.....36965
1300.....35139
1305.....35141
Proposed Rules:
1.....33886
8.....33886
192.....34410, 34413
195.....34410, 34413
393.....36691
397.....36016
571.....36334, 36698

50 CFR

Ch. III.....35548
246.....35548
280.....35548
281.....35548
282.....35548
298.....35548
299.....35548
622.....34930
625.....34966
630.....34746, 35971
638.....34930
641.....34930
642.....34785
645.....34930
646.....34930
647.....34930
648.....34966, 35142
650.....34966
651.....34966
652.....34966
653.....34930
655.....34966
657.....34966
658.....34930
659.....34930
660 .....34570, 35143, 35144, 36662
661.....34570
663.....34570
669.....34930
670.....34930
679.....34377, 36306
680.....34570
681.....34570, 35145
683.....34570
685.....34570
695.....35548
697.....34746
Proposed Rules:
17 .....36020, 36021, 36346, 37034
229.....37035
642.....34785
679 .....35174, 36702, 37041

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

FARM CREDIT ADMINISTRATION

Farm credit system:
- Loan policies and operations--
  - Funding and discount relationship between FCS banks and other financing institutions; published 5-17-96

PERSONNEL MANAGEMENT OFFICE

Conflict of Interest; published 7-16-96

TRANSPORTATION DEPARTMENT

Omnibus Transportation Employee Testing Act of 1991:
- Drug and alcohol testing requirements for foreign-based drivers operating in U.S.; participation by Canadian and Mexican laboratories; published 7-16-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Fokker; published 6-11-96
- New Piper Aircraft, Inc.; published 6-6-96

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Firearms:
- Firearms and ammunition; manufacturers excise taxes; published 7-16-96

Technical amendments; published 7-16-96

TREASURY DEPARTMENT

Fiscal Service

Bonds and notes, U.S. Treasury:
- Payments by banks and other financial institutions of United States savings bonds and notes (Freedom Shares); published 7-16-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:
- Arizona-California citrus; comments due by 7-22-96; published 6-20-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Sea turtle conservation; shrimp trawling requirements--
  - Additional turtle excluder device requirements within statistical zones; comments due by 7-24-96; published 6-27-96

Fishery conservation and management:
- Limited access management of Federal fisheries in and off of Alaska; comments due by 7-22-96; published 6-25-96

ENVIRONMENTAL PROTECTION AGENCY

Acquisition regulations:
- Source selection process; comments due by 7-22-96; published 5-21-96

Air pollutants, hazardous; national emission standards:
- Radon emissions from phosphogypsum stacks; comment period reopening; comments due by 7-26-96; published 7-10-96

Air programs:
- Gasoline retailers and wholesale purchaser-consumer fuel dispensing rate requirements
  - Implementation date delayed; comments due by 7-26-96; published 6-26-96

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 7-24-96; published 6-24-96
- New Mexico; comments due by 7-24-96; published 6-24-96
- Puerto Rico; comments due by 7-22-96; published 6-21-96

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Tennessee; comments due by 7-24-96; published 6-24-96

Clean Air Act:
- State operating permits programs--
  - Michigan; comments due by 7-24-96; published 6-24-96

Hazardous waste program authorizations:
- Nebraska; comments due by 7-25-96; published 6-25-96
- Nevada; comments due by 7-24-96; published 6-24-96

Pesticide programs:
- Registration modifications; notification procedures; comments due by 7-26-96; published 6-26-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Copper 8-quinolinolate; comments due by 7-26-96; published 6-26-96

Water programs:
- Pollutants analysis test procedures; guidelines--
  - Oil and grease and total petroleum hydrocarbons; comment period reopening; comments due by 7-23-96; published 5-24-96

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Telecommunications Act of 1996; implementation--
  - Market entry barriers for small businesses; identification and elimination; comments due by 7-24-96; published 6-26-96

Radio broadcasting:
- Grandfathered short-spaced FM stations; comments due by 7-22-96; published 6-27-96

Television broadcasting:
- Cable television systems--
  - Major television markets; list; comments due by 7-22-96; published 6-10-96

GENERAL SERVICES ADMINISTRATION

Acquisition regulations:
- Contract Appeals Board; procedure rules--
  - Automatic data processing equipment and services procurements; Board's jurisdiction eliminated; comments due by 7-24-96; published 6-24-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Biological products:
- Placental/umbilical cord blood stem cell products intended for transplantation, etc.; draft document; comments due by 7-26-96; published 5-28-96

Human drugs:
- Orally ingested drug products containing calcium, magnesium, and potassium (OTC)--
  - Labeling provisions; comments due by 7-22-96; published 4-22-96
- Sodium content (OTC); labeling provisions; comments due by 7-22-96; published 4-22-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Barton Springs salamander; comments due by 7-24-96; published 6-24-96
- Fat three-ridge, etc. (seven freshwater mussels); comments due by 7-26-96; published 7-9-96

Hunting and fishing:
- Open areas list additions; comments due by 7-22-96; published 6-21-96
- Refuge-specific regulations; comments due by 7-24-96; published 6-24-96

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:
- Federal leases; natural gas valuation regulations; amendments; comments due by 7-22-96; published 5-21-96

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Ohio; comments due by 7-24-96; published 6-24-96

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

Fellowship program requirements; comments due by 7-22-96; published 5-22-96

LABOR DEPARTMENT

Federal Contract Compliance Programs Office

Government contractors, affirmative action requirementas; EO 11246 implementation; comments due by 7-22-96; published 5-21-96

MEXICO AND UNITED STATES, INTERNATIONAL BOUNDARY AND WATER COMMISSION

International Boundary and Water Commission, United States and Mexico

Freedom of Information Act; implementation:

Fee schedule; comments due by 7-22-96; published 6-20-96

NUCLEAR REGULATORY COMMISSION

Nuclear power reactors, standard design certifications; and combined licenses; early site permits:

Boiling water reactors--

System 80+ standard designs; certification approval; comments due by 7-23-96; published 5-30-96

PERSONNEL MANAGEMENT OFFICE

Acquisition regulations:

Health benefits, Federal employees; Truth in Negotiations Act; amendments; comments due by 7-24-96; published 6-24-96

POSTAL SERVICE

Domestic Mail Manual:

Mail classification reform; implementation standards; comments due by 7-24-96; published 6-24-96

TRANSPORTATION DEPARTMENT

Coast Guard

International Conventions on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 78):

Licensing, documentation, and manning; comments due by 7-24-96; published 3-26-96

International Conventions on Standards of Training, Certification and Watchkeeping for Seafarers

Meetings; comments due by 7-24-96; published 4-8-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operation:

Radar beacon system and Mode S transponder requirements in national airspace system; comments due by 7-22-96; published 5-23-96

Correction; comments due by 7-22-96; published 6-17-96

Airworthiness directives:

Airbus; comments due by 7-22-96; published 6-13-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Warning devices--

Fusees or flares placed on roadway behind disabled buses and trucks; comments due by 7-25-96; published 6-10-96

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:

Hazardous materials transportation--

Oxygen generators as cargo in passenger aircraft; temporary prohibition; comments due by 7-23-96; published 5-24-96

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes, etc.:

Tax withholding on certain U.S. source income paid to foreign persons and related collection, refunds, and credits, etc.; comments due by 7-22-96; published 4-22-96

VETERANS AFFAIRS DEPARTMENT

Medical benefits:

Alcohol and drug dependence disorders; contract program; eligibility criteria; comments due by 7-22-96; published 5-21-96