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Friday
August 16, 1996

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Contents

Federal Register
Vol. 61, No. 160
Friday, August 16, 1996

Agency for Health Care Policy and Research
NOTICES
Health plans, consumer assessments; questionnaires availability for review, 42619

Agricultural Marketing Service
RULES
Marketing orders; expenses and assessment rates, 42529–42530

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration

Animal and Plant Health Inspection Service
PROPOSED RULES
Plant-related quarantine, foreign:
Fruits and vegetables; importation, 42565
NOTICES
Environmental statements; availability, etc.:
Nonregulated status determinations—
AgrEvo USA Co.; genetically engineered soybeans, 42581–42582

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Jacor Communications, Inc., et al., 42652–42661

Army Department
See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus (HIV)—
Community-based prevention projects, 42619–42628
Vaccine information materials; polio vaccine materials revision, 42770–42771

Children and Families Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 42628
Medicaid:
Welfare reform and combined welfare reform/Medicaid demonstration projects—
July, 42628–42635

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 42583–42585

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
El Salvador, 42673–42674
Oman, 42674

Comptroller of the Currency
PROPOSED RULES
Risk-based capital:
Collateralized transactions, 42565–42570

Congressional Budget Office
NOTICES
Balanced Budget and Emergency Deficit Control Reaffirmation Act (Gramm-Rudman-Hollings):
Sequestration update report for 1997 FY transmittal to Congress and OMB, 42593

Defense Department
See Engineers Corps

Education Department
NOTICES
Sexual harassment guidance: peer sexual harassment; document availability, 42728

Employment Standards Administration
See Wage and Hour Division
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 42662–42663

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Coastal Gas Marketing Co. et al., 42603–42604

Engineers Corps
NOTICES
Wetland functions; hydrogeomorphic assessment procedures; national action plan, 42593–42603

Environmental Protection Agency
NOTICES
Air pollution control; new motor vehicles and engines:
Urban buses (1993 and earlier model years) retrofit/rebuild requirements; equipment certification, 42764–42767
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 42607–42608
Weekly receipts, 42608–42609
Meetings:
Effluent Guidelines Task Force, 42609

U.S. Government Representative to North American Commission on Environmental Cooperation—
Governmental Advisory Committee, 42609
National Advisory Committee, 42610
Reports; availability, etc.:
Biological criteria: technical guidance for streams and small rivers, 42610
Oxyfuels information needs, 42611
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 42611

Equal Employment Opportunity Commission
RULES
Employment discrimination in programs or activities receiving Federal financial assistance; complaint procedures, 42556–42557
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 42612

Federal Aviation Administration
RULES
Airworthiness directives:
Lockheed; correction, 42549–42550
Restricted areas, 42550–42551
Standard instrument approach procedures, 42551–42556
PROPOSED RULES
Airworthiness standards:
Special conditions—
LET Aeronautical Works model L610G airplane, 42577–42579
NOTICES
Passenger facility charges; applications, etc.:
Tri-State Airport, WV, 42675–42676

Federal Communications Commission
RULES
Common carrier services:
Geographic rate averaging and integration, 42558–42564
Communications equipment:
Radio frequency devices—
Vehicle-mounted radar system transmitters; frequency bands above 40 GHz made available for use; correction, 42558

Federal Deposit Insurance Corporation
PROPOSED RULES
Risk-based capital:
Collateralized transactions, 42565–42570

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Pennsylvania, 42612
Wisconsin, 42612–42613

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Duquesne Light Co. et al., 42604–42605
Hydroelectric applications, 42604
Natural gas certificate filings:
Colorado Interstate Gas Co. et al., 42605–42607

Federal Housing Finance Board
RULES
Federal home loan bank system:
Membership approval; statutory eligibility requirements, 42531–42549
PROPOSED RULES
Federal home loan bank system:
Employees selection and compensation and Finance Office Director selection; Federal regulatory review, 42570–42577

Federal Maritime Commission
NOTICES
Agreements filed, etc., 42613
Casualty and nonperformance certificates:
Alaska Sightseeing/Cruise West, 42613

Federal Reserve System
PROPOSED RULES
Risk-based capital:
Collateralized transactions, 42565–42570
NOTICES
Banks and bank holding companies:
Change in bank control, 42613–42614
Formations, acquisitions, and mergers, 42614
Permissible nonbanking activities, 42614–42616

Federal Trade Commission
NOTICES
Prohibited trade practices:
RBR Productions, Inc., et al., 42616–42619

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting:
Federal Indian reservations and ceded lands, 42730–42740
NOTICES
Meetings:
Aquatic Nuisance Species Task Force, 42649

Food and Drug Administration
RULES
Food for human consumption:
Food labeling—
Raw fruits, vegetables, and fish; voluntary nutrition labeling guidelines, 42742–42762
NOTICES
Food additive petitions:
Lonza, Inc.; withdrawn, 42635
Human drugs:
New drug applications—
Mycolog Ointment and Cream, etc.; approval withdrawn, 42635–42636
Medical devices:
Medical device denominator data; estimation methods; public workshop, 42636–42637

Forest Service
NOTICES
Meetings:
California Coast Province Advisory Committee, 42582

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency designation actions:
Texas, 42582–42583

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
NOTICES
Medicaid:
Demonstration project proposals, new and pending—
June, 42637–42638

Housing and Urban Development Department
PROPOSED RULES
Rulemaking policies and procedures, 42722–42725
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 42641–42649

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service

International Trade Administration
NOTICES
Antidumping:
Fresh kiwifruit from—
New Zealand, 42585
Sodium azide from—
Japan, 42585–42589
Applications, hearings, determinations, etc.:
Argonne National Laboratory-West, 42589–42590
University of—
Illinois at Urbana-Champaign et al., 42590
Wisconsin et al., 42590–42591

International Trade Commission
NOTICES
Import investigations:
Fresh tomatoes and bell peppers, 42652

Justice Department
See Antitrust Division
RULES
Employment discrimination in programs or activities receiving Federal financial assistance; complaint procedures, 42556–42557

Labor Department
See Employment Standards Administration
See Labor Statistics Bureau
See Wage and Hour Division
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 42661–42662

Labor Statistics Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 42663–42664

Land Management Bureau
PROPOSED RULES
Patent preparation and issuance, 42579–42580
NOTICES
Closure of public lands:
Nevada, 42649–42650
Meetings:
Resource advisory councils—
Northeastern Great Basin, 42650
Realty actions; sales, leases, etc.:
California, 42650–42651

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
Alaska OCS—
Lease sales, 42682–42712
Leasing systems, 42651
Western Gulf of Mexico—
Lease sales, 42714–42720
Leasing systems, 42651–42652

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 42639–42640
Meetings:
National Heart, Lung, and Blood Institute, 42638–42639
National Institute of Mental Health, 42639

National Oceanic and Atmospheric Administration
NOTICES
Fishery conservation and management:
Fisheries of Exclusive Economic Zone off Alaska—
Salmon donation program; authorized distributor selection, 42591–42592
Permits:
Endangered and threatened species, 42592
Marine mammals, 42592–42593

National Science Foundation
NOTICES
Meetings:
Biological Sciences Advisory Committee, 42664
Design, Manufacture, and Industrial Innovation Special Emphasis Panel, 42664–42665

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Shieldalloy Metallurgical Corp.; meeting, 42666
U.S. Energy Corp., 42665–42666

Postal Service
RULES
Inspection Service/Inspector General authority:
Commercial espionage by foreign sources; activity for which national security mail covers may be authorized, 42557–42558

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

Railroad Retirement Board
NOTICES
Privacy Act:
Computer matching programs, 42666–42667

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 42667–42669
Boston Stock Exchange Clearing Corp., 42669–42670
Boston Stock Exchange, Inc., 42670–42671
Philadelphia Stock Exchange, Inc., 42671–42673
Applications, hearings, determinations, etc.:
Champion Healthcare Corp., 42671

Small Business Administration
NOTICES
Disaster loan areas:
North Carolina, 42673
Tennessee et al., 42673
West Virginia, 42673

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 42640–42641

Surface Transportation Board
NOTICES
Agreements under sections 5a and 5b; applications for approval, etc.:
Degussa Corp. et al., 42676–42677
Motor carriers:
Service pooling agreements—
Adirondack Transit Lines, Inc., 42677–42678
Railroad operation, acquisition, construction, etc.:
Elk River Railroad, Inc., 42679
Railroad services abandonment:
Georgia Great Southern Division, South Carolina Central Railroad Co., Inc., 42679

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
PROPOSED RULES
Risk-based capital:
Collateralized transactions, 42565–42570
NOTICES
Receiver appointments:
Union Federal Bank, A FSB, 42680
Applications, hearings, determinations, etc.:
First Federal Savings & Loan Association of Allen Parish, 42679–42680
Midwest Savings Bank, 42680

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 42674–42675
Aviation proceedings:
Agreements filed; weekly receipts, 42675
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 42675

Treasury Department
See Comptroller of the Currency
See Thrift Supervision Office

Wage and Hour Division
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 42662–42663

Separate Parts In This Issue

Part II
Department of the Interior, Minerals Management Service, 42682–42712

Part III
Department of the Interior, Minerals Management Service, 42714–42720

Part IV
Department of Housing and Urban Development, 42722–42725

Part V
Department of Education, 42728

Part VI
Department of the Interior, Fish and Wildlife Service, 42730–42740

Part VII
Department of Health and Human Services, Food and Drug Administration, 42742–42762

Part VIII
Environmental Protection Agency, 42764–42767

Part IX
Department of Health and Human Services, Centers for Disease Control and Prevention, 42770–42771

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.

7 CFR
927.....42529
931.....42529
Proposed Rules:
300.....42565
319.....42565
12 CFR
933.....42531
Proposed Rules:
3.....42565
208.....42565
225.....42565
325.....42565
567.....42565
932.....42570
941.....42570
14 CFR
39.....42549
73.....42550
97 (3 documents) 42551, 42552, 42554
Proposed Rules:
25.....42577
21 CFR
101.....42742
24 CFR
Proposed Rules:
10.....42722
28 CFR
42.....42556
29 CFR
1691.....42556
39 CFR
233.....42557
43 CFR
Proposed Rules:
1862.....42579
47 CFR
15.....42558
64.....42558
50 CFR
Proposed Rules:
20.....42730

Rules and Regulations

Federal Register
Vol. 61, No. 160
Friday, August 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 927 and 931

[Docket No. FV96–927–2 IFR]

Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes assessment rates for Marketing Order Nos. 927 and 931 for the 1996–97 and subsequent fiscal periods. The Winter Pear Control Committee and the Northwest Fresh Bartlett Marketing Committee (Committees) are responsible for local administration of the marketing orders which regulate the handling of winter pears grown in Oregon, Washington, and California and fresh Bartlett pears grown in Oregon and Washington. Authorization to assess winter pear and fresh Bartlett pear handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs.

DATES: Effective on July 1, 1996. Comments received by September 16, 1996, will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Tershirra Yeager, Marketing Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2522–S, Washington, DC 20090–6456, telephone (202) 720–5127, FAX (202) 720–5698, or Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204, telephone (503) 326–2724, FAX (503) 326–7440. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 720–2491, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 927 [7 CFR part 927], regulating the handling of winter pears in Oregon, Washington, and California; and Marketing Order No. 931 [7 CFR part 931] regulating the handling of fresh Bartlett pears in Oregon and Washington, hereinafter referred to as the ''orders.'' The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, handlers in designated areas are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable winter pears and fresh Bartlett pears beginning July 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 90 handlers of winter pears and 65 handlers of fresh Bartlett pears subject to regulation under the marketing orders. In addition, there are about 1,800 winter pear and fresh Bartlett pear producers in the respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of winter pear and fresh Bartlett pear producers and handlers may be classified as small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The orders provide authority for the Committees, with the approval of the Department, to formulate annual budgets of expenses and collect assessments from handlers to administer the programs. The members of the

Committees are producers and handlers of Oregon, Washington, and California pears. They are familiar with the Committees' needs and with the pears costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The Winter Pear Control Committee met on May 31, 1996, and unanimously recommended 1996–97 expenditures of $5,887,084 and an assessment rate of $0.405 per standard box. In comparison, last year's budgeted expenditures were $7,384,440, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of winter pears grown in Oregon, Washington, and California. Winter pear shipments for the year are estimated at 12,465,800 standard boxes which should provide $4,674,675 for paid advertising. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Major expenditures recommended by the Winter Pear Control Committee for the 1996–97 year include $154,387 for salaries, $16,893 for health insurance, and $23,392 for office rent. Budgeted expenses for these items in 1995–96 were $147,152, $16,634, and $17,357, respectively.

The Northwest Fresh Bartlett Marketing Committee met on May 30, 1996, and unanimously recommended 1996–97 expenditures of $89,774 and an assessment rate of $0.0375 per western standard pear box. In comparison, last year's budgeted expenditures were $92,254, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears grown in Oregon and Washington. Shipments for the year are estimated at 1,842,000 packed boxes which should provide $69,075 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Major expenditures recommended by the Northwest Fresh Bartlett Marketing Committee for the 1996–97 year include $46,306 for salaries, $4,991 for health insurance, and $7,016 for office rent. Budgeted expenses for these items in 1995–96 were $44,135, $4,989 and $5,206, respectively.

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

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

Although these assessment rates are effective for an indefinite period, the Committees will continue to meet prior to or during each fiscal period to consider recommendations for modification of the assessment rates. The dates and times of Committee meetings are available from the Committees or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rates are needed. Further rulemaking will be undertaken as necessary. The Committees' 1996–97 budgets and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal periods began on July 1, 1996, and the marketing orders require that the rates of assessment for each fiscal period apply to all assessable winter pears and fresh Bartlett pears handled during such fiscal period; (3) handlers are aware of the actions which were recommended by the Committees at public meetings and are similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 927

Winter Pears, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 931

Fresh Bartlett Pears, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 927 and 931 are amended as follows:

1. The authority citation for 7 CFR parts 927 and 931 continue to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These sections will appear in the Code of Federal Regulations.

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

2. A new center heading—Assessment Rate consisting of a new § 927.236 is added to read as follows:

Assessment Rate

§ 927.236 Assessment Rate.

On and after July 1, 1996, an assessment rate of $0.405 per standard box is established for the Winter Pear Control Committee.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

3. A new center heading—Assessment Rate consisting of a new § 931.231 is added to read as follows:

Assessment Rate

§ 931.231 Assessment Rate.

On and after July 1, 1996, an assessment rate of $.0375 per western standard pear box is established for the Northwest Fresh Bartlett Marketing Committee.

Dated: August 9, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–20789 Filed 8–15–96; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 933

[No. 96–43]

Membership Approval

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation on membership in the Federal Home Loan Banks (Banks). The final rule authorizes the 12 Banks, rather than the Finance Board, to approve or deny all applications for Bank membership, subject to certain criteria for determining compliance with the statutory eligibility requirements for Bank membership currently used by the Finance Board in approving applications. The final rule also provides for streamlined application processing for certain types of membership applications. The final rule is part of an effort by the Finance Board and the Banks to transfer as many governance functions as possible from the Finance Board to the Banks. The devolution of authority to the Banks and streamlining of membership application requirements in the final rule are consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

EFFECTIVE DATE: September 16, 1996.

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SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

In its role as primary regulator of the savings association industry and as overseer of the Banks, the Finance Board's predecessor agency, the former Federal Home Loan Bank Board (FHLBB), reviewed and approved all applications for Bank membership from federally chartered savings associations, and from state chartered savings associations seeking federal deposit insurance, institutions for which Bank membership was required. The FHLBB delegated the authority to approve membership applications from insurance companies and state chartered savings banks insured by the Federal Deposit Insurance Corporation (FDIC), for which Bank membership was voluntary, to the Principal Supervisory Agents of the FHLBB, which generally were the Bank presidents. *See* 12 U.S.C. 1437(a) (1989), *repealed by* Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101–73, 103 Stat. 183 (Aug. 9, 1989) (FIRREA); 12 CFR 523.3–3, 541.18 (1989).

FIRREA amended the Federal Home Loan Bank Act, 12 U.S.C. §§ 1421–1449 (Bank Act), by creating the Finance Board and transferring from the FHLBB to the Finance Board the responsibility for the supervision and regulation of the 12 Banks. *See* 12 U.S.C. 1422a(a). The FHLBB's authority to charter federal savings associations was transferred to the Office of Thrift Supervision (OTS), and the FHLBB's authority to administer deposit insurance for savings associations was transferred to the FDIC.

FIRREA also made significant changes to the membership eligibility criteria in section 4 of the Bank Act. *See* 12 U.S.C. 1424. First, FIRREA permitted commercial banks and credit unions to become Bank members for the first time. *Id.* § 1424(a). Second, FIRREA added the requirement that an insured depository institution have at least 10 percent of its total assets in residential mortgage loans in order to be eligible to become a Bank member. *Id.* § 1424(a)(2)(A).

From the enactment of FIRREA in 1989 until July 1993, all Bank membership applications were reviewed and approved by the Board of Directors of the Finance Board. In July 1993, the Managing Director of the Finance Board was delegated the authority to approve all applications for Bank membership from institutions that met all of the statutory eligibility criteria and received a composite rating of ''1,'' ''2'' or ''3'' under the regulatory examination rating system known as the Uniform Financial Institutions Rating System. *See* Chairman's Order No. 93–05 (July 19, 1993); Finance Board Res. No. 90–143 (Dec. 18, 1990). The Board of Directors of the Finance Board has not itself considered or acted upon any membership applications since such authority was delegated to the Managing Director.

In August 1993, the Finance Board amended its membership regulation in response to the changes made by FIRREA to the Bank Act. The revised membership regulation established membership application procedures, general eligibility requirements, criteria for determining the appropriate Bank district for membership, stock requirements for membership, requirements and procedures in connection with termination of membership, and procedures concerning transfer of Bank stock in consolidations involving member and nonmember institutions. Other than defining certain terms, the membership regulation did not establish specific standards for compliance with the statutory membership eligibility criteria. *See* 58 FR 43522, 43542 (Aug. 17, 1993), *codified at* 12 CFR part 933. Section 933.3(a) of the membership regulation authorized the Banks' boards of directors to approve only applications that met all criteria set forth in the Bank Act, the membership regulation, and policy guidelines established by the Finance Board. *See* 12 CFR 933.3(a).

In November 1993, the Finance Board adopted policy guidelines to assist Finance Board staff in processing applications for Bank membership. *See* Federal Home Loan Bank System Membership Application Guidelines, Finance Board Res. No. 93–88 (Nov. 17, 1993) (Guidelines). The purpose of the Guidelines was to require certain documentation review requirements, and to clarify and amplify the more subjective membership eligibility criteria in the Bank Act, such as the financial condition, character of management, and home financing policy requirements. *See* 12 U.S.C. 1424(a)(2)(B), (C). The Guidelines also set forth the specific criteria that must be satisfied in order for the Banks to have the authority to approve membership applications, as provided under § 933.3(a) of the membership regulation. *See also* 59 FR 13485 (March 22, 1994).

The Guidelines contain specific, primarily financial, criteria that must be met in order for an applicant to be deemed in compliance with the statutory eligibility criteria. However, the Guidelines established neither a minimum level of financial performance nor standards for evaluating applicants that do not meet the requirements in the Guidelines. So, for instance, an application from an institution with a composite regulatory examination rating that did not satisfy the criteria for approval by the Banks had to be evaluated by Finance Board staff and approved by the Managing Director. Since December 1993, the Banks have approved approximately 1,000 membership applications, and the Finance Board's Managing Director has approved approximately 1,100 membership applications.

The Finance Board and the Banks have been considering ways to transfer a variety of governance responsibilities from the Finance Board to the Banks since the completion of studies required by the Housing and Community Development Act of 1992, Pub. L. No. 102–550, 106 Stat. 3672 (Oct. 28, 1992),

including the Finance Board's own study completed in April 1993. *See* Report on the Structure and Role of the Federal Home Loan Bank System, at 153 (Apr. 28, 1993). Finance Board staff and Bank staff have consistently identified membership application approval as one of the governance responsibilities that should be devolved from the Finance Board to the Banks, because the Banks should be allowed broad discretion to manage their affairs as long as the Banks comply with the Bank Act and Finance Board regulations. This final rule transfers authority to approve or deny *all* Bank membership applications from the Finance Board to the Banks. The final rule codifies in large part the criteria for determining compliance with the statutory eligibility requirements contained in the Finance Board's Guidelines, which shall be deemed rescinded upon effectiveness of the final rule.

II. Proposed Rulemaking

In October 1995, the Finance Board published for public comment a notice of proposed rulemaking, which proposed transferring the authority to approve or deny membership applications from the Finance Board to the Banks, subject to certain criteria for determining compliance with the statutory eligibility requirements for Bank membership (proposed rule) (60 FR 54958) (Oct. 27, 1995). The proposed rule provided for a 60-day comment period.

The Finance Board received letters from a total of 14 commenters, including all 12 Banks, one bank trade association, and one insurance company trade association. The commenters generally supported transfer of membership approval authority from the Finance Board to the Banks. Various comments were received on the proposed application procedures, and the specific criteria that should be applied in determining membership eligibility. A discussion of relevant comments is included in the Analysis of the Final Rule. Where no comments were received on a particular regulatory provision, or a provision was not controversial, and the Finance Board has determined to adopt the provision as proposed, the provision generally is not discussed in this preamble.

A few comments also were received on provisions of the current membership regulation that were not the focus of this rulemaking, such as the definition of ''state,'' and ''convenience'' applications for membership in adjoining Bank districts. *See* 12 CFR 933.1(s), 933.5(a)(2). These comments are not discussed in this final rule, but will be examined in connection with any future rulemaking on other provisions of the membership regulation not addressed in this rulemaking.

III. Analysis of the Final Rule

A. Membership Application Process—§§ 933.2 to 933.5

1. Requirements—§ 933.2

Section 933.2 of the final rule sets forth the procedures for submission and review of membership applications. Section 933.2(a) requires an applicant to submit an application which satisfies the requirements of part 933, and to provide a written resolution or certification duly adopted by the applicant's board of directors, or by an individual authorized to act on behalf of the board of directors of the applicant, stating that the applicant satisfies the requirements set forth in § 933.2(a). The proposed rule required that the application include a written certification by a majority of the applicant's directors. A commenter pointed out that state corporate laws may impose different requirements for a corporate board to take valid action and, therefore, that the requirement should be a resolution or certification duly adopted by the applicant's board, rather than majority action of the board. The final rule adopts this recommendation.

Section 933.2(b) of the final rule requires the Bank to prepare a written digest for each applicant stating whether the applicant meets each of the eligibility requirements, the Bank's findings, and the reasons therefor.

Section 933.2(c) requires the Bank to maintain a membership file for each applicant for at least three years, containing certain documents as specified therein.

Section 933.2(d) of the proposed rule required the Bank to use regulatory financial reports and other sources independent of the applicant to evaluate and analyze all conclusions offered by the applicant regarding its membership eligibility. This requirement is not adopted in the final rule, as it is redundant with § 933.11(a) of the final rule, which also requires the use of regulatory financial reports and other documents derived independently of the applicant. Proposed § 933.2(d) also required the Bank to make determinations on membership eligibility independent of any representations made by the applicant. The Finance Board intended this provision to ensure that the Banks evaluate membership applications without relying unduly on simple representations of compliance made by the applicants. However, as several commenters pointed out, the rule requires reliance, in part, on an applicant's representations by requiring that the Bank's membership determinations be based on review of all available information in the file, which includes information from the applicant. Accordingly, the independent evaluation requirement is not adopted in the final rule.

2. Decision on Application—§ 933.3

Section 933.3(a) of the final rule authorizes the Banks to approve or deny all membership applications, subject to the requirements of the final rule, including the appeal procedure in § 933.5. Eleven commenters expressly supported transfer of membership approval authority to the Banks.

Section 933.3(a) also permits a Bank to delegate the authority to approve applications only to a committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development. One commenter recommended that the Bank's board of directors be permitted to delegate the authority to deny membership applications. However, because of the consequences of membership denial, the Finance Board believes that such decisions should be made only by the Bank's board of directors.

Section 933.3(b) requires the Bank to prepare for each applicant a written decision resolution duly adopted by the Bank's board of directors, or by a committee of the board of directors or officer with delegated authority to approve membership applications. The proposed rule required that the decision resolution be signed by a majority of the directors, or by an officer with delegated authority. A commenter pointed out that state corporate laws impose different requirements for a corporate board to take valid action and, therefore, that the requirement should be a resolution duly adopted by the Bank's board or committee of the board, rather than majority action of the board or committee of the board. The final rule adopts this recommendation.

Section 933.3(c) of the final rule requires the Bank to act on an application within 60 calendar days of the date the Bank deems the application to be complete. Section 933.3(c) is intended to ensure expeditious action on membership applications. A number of commenters expressed concern that this timeframe may be too restrictive where there is a need to obtain additional information about the applicant in order to make a

membership determination. The final rule clarifies that an application is ''complete'' when the Bank has obtained all the information required by this part, and any other information the Bank deems necessary, to process the application.

Thus, the 60-day clock will not start running until the Bank has obtained all information necessary to process the application. The final rule also provides that if a ''complete'' application subsequently becomes ''incomplete'' because the Bank determines, during the review process, that additional information is necessary to process the application, the Bank may stop the 60-day clock until the application again is deemed complete, and then resume the clock where it left off. The final rule requires the Bank to notify an applicant when its application is deemed to be complete. The Bank also is required to notify an applicant if the 60-day clock is stopped, and when the clock is resumed.

3. Automatic Membership—§ 933.4

Section 933.4 provides for automatic Bank membership for institutions seeking Bank membership under certain circumstances. Such institutions need not file an application for membership.

Section 933.4(a) provides for automatic Bank membership for institutions required by law to be Bank members.

Section 933.4(b) provides for automatic Bank membership for insured depository institution members that convert from one charter type to another, provided that the converting institution continues to be an insured depository institution and the assets of the institution immediately before and immediately after the conversion are not materially different. In response to a commenter's suggestion, the final rule modifies the requirement in the proposed rule that the assets immediately before and after the charter conversion must be identical, since there may be insignificant changes in asset composition after a conversion in order to comply with new charter requirements.

Section 933.4(c) of the final rule provides for automatic membership in the Bank to which a member's membership is transferred pursuant to § 933.18(d).

4. Appeals—§ 933.5

Section 933.5 establishes a process by which applicants may appeal Bank membership denials to the Finance Board. The appeal procedure is intended to ensure that membership standards are applied fairly by the Banks, and that similarly situated applicants are treated in a consistent manner.

Section 933.5 (a), (b) and (c) establishes the procedures and requirements for appeals by an applicant to the Finance Board.

The current membership regulation does not include the provision in the proposed rule that would allow a Bank to appeal another Bank's determination of the appropriate district for membership made pursuant to § 933.5, but permits applicants or members to appeal such determinations to the Finance Board. *See* 12 CFR 933.5. Since the applicant or member has the option under § 933.18 of the final rule to appeal the Bank's decision, an appeal by the other Bank is unnecessary. Moreover, like the current membership regulation, § 933.18 sets forth specific, objective criteria for determining an applicant's or member's appropriate district of membership, which should obviate such conflicts in the application process. Accordingly, this proposed amendment has not been adopted in the final rule.

B. Membership Eligibility Requirements—§§ 933.6 to 933.18

1. Setting Membership Standards

Like the Guidelines, the final rule establishes objective standards for approving applications for Bank membership. For the objective statutory eligibility criteria, failure to comply with the standards established by the final rule will render an applicant ineligible for membership. For the subjective statutory eligibility criteria, including the requirement that an applicant's financial condition be such that advances may be safely made, *see* 12 U.S.C. 1424(a)(2)(B), and that the character of an applicant's management and its home financing policy be consistent with sound and economical home financing, *see id.* § 1424(a)(2)(C), the final rule, like the Guidelines, establishes objective, yet flexible, standards.

Under § 933.17(a) of the final rule, an applicant that complies with the regulatory requirements is presumed to satisfy the statutory eligibility criteria, but the Bank may rebut the presumption of compliance, and deny membership to the applicant, if the Bank obtains substantial evidence to overcome the presumption. Conversely, under § 933.17 (b) to (f), an applicant that does not comply with the regulatory requirements is presumed not to satisfy the statutory eligibility criteria, but, as under the Guidelines, the applicant may rebut the presumption of noncompliance as provided in § 933.17 (b) to (f), and be deemed to meet the regulatory requirements.

The Finance Board considered establishing rigid, ''bright-line'' eligibility standards, but believes that the results—*i.e.*, that an applicant not meeting every standard would be ineligible for membership, regardless of any other evidence the applicant could have presented to demonstrate its compliance with the statutory eligibility criteria—would be too harsh. Six commenters expressly supported a presumption framework, rather than ''bright-line'' tests, for a similar reason.

2. Section 4(a)(1) Criteria In General

Section 4(a)(1) of the Bank Act defines the types of financial institutions eligible to become Bank members as any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution. *See* 12 U.S.C. 1424(a)(1). The definition of ''insured depository institution'' in the Bank Act includes commercial banks and credit unions. *See id.* § 1422(12).

The eligibility criteria set forth in section 4(a)(1) of the Bank Act apply to all applicants for Bank membership, including insurance companies (section 4(a)(1) criteria). Under section 4(a)(1) of the Bank Act, an institution is eligible for Bank membership if the institution:

(A) is duly organized under the laws of any State or of the United States;

(B) is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States; and

(C) makes such home mortgage loans as, in the judgment of the [Finance] Board, are long-term loans * * *.

See id. § 1424(a)(1) (A) to (C). Sections 933.7 to 933.9 of the final rule apply the section 4(a)(1) criteria to all applicants for membership.

3.''Duly Organized'' Requirement—§ 933.7

Section 4(a)(1)(A) of the Bank Act requires that, in order to be eligible for Bank membership, an applicant must be duly organized under the laws of any State or of the United States. 12 U.S.C. 1424(a)(1)(A). This general eligibility requirement is implemented by §§ 933.6(a)(1) and 933.7 of the final rule. Noncompliance by an applicant with the ''duly organized'' requirement is not a rebuttable presumption under § 933.17.

4.''Subject to Inspection and Regulation'' Requirement—§ 933.8

Section 4(a)(1)(B) of the Bank Act requires that, in order to be eligible for

Bank membership, an applicant must be subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States. 12 U.S.C. 1424(a)(1)(B). This general eligibility requirement is implemented by §§ 933.6(a)(2) and 933.8 of the final rule. Noncompliance by an applicant with the ''subject to inspection and regulation'' requirement is not a rebuttable presumption under § 933.17 except for insurance company applicants, as further discussed under § 933.17(c).

5. ''Makes Long-Term Home Mortgage Loans'' Requirement—§ 933.9

Section 4(a)(1)(C) of the Bank Act requires that, in order to be eligible for Bank membership, an applicant must make long-term home mortgage loans. This general eligibility requirement is implemented by §§ 933.6(a)(3) and 933.9 of the final rule.

a. *Definitions of ''long-term'' and ''home mortgage loan.''*

Section 933.1(n) of the final rule lists the specific types of assets that qualify as ''home mortgage loans'' for purposes of the ''makes long-term home mortgage loans'' requirement. Section 933.1(n), as well as the definition of ''long-term'' in § 933.1(q), do not include the Finance Board's current regulatory discretion to determine that other types of loans not specifically listed in the definitions of ''home mortgage loan'' and ''long-term'' meet these definitions. *See* 12 CFR 933.1(i), (l).

One commenter noted that this discretionary authority would enable a Bank first to seek an interpretation from the Finance Board on whether a particular asset meets the definitions, which may be more efficient than requiring the Bank to deny an application and the applicant to appeal to the Finance Board before the Finance Board may exercise its interpretive discretion. In the event of an appeal of a Bank membership decision to the Finance Board, this approach would enable the Finance Board to exercise its interpretive discretion on a case-by-case basis without having to amend the regulation. However, the Finance Board believes that the list of assets permitted under § 933.1(n) is comprehensive, and there is little likelihood that an applicant will need a non-qualifying asset in order to meet the ''makes long-term home mortgage loans'' requirement. Should questions arise regarding particular assets, they could be resolved through amendment of the regulation, rather than through Finance Board determinations on a case-by-case basis. Accordingly, the commenter's recommendation is not adopted in the final rule.

b. *Noncompliance not rebuttable.*

Noncompliance by an applicant with the ''makes long-term home mortgage loans'' requirement is not a rebuttable presumption under § 933.17.

6. Section 4(a)(2) Criteria In General

Section 4(a)(2) of the Bank Act establishes the following membership eligibility criteria for insured depository institutions that were not Bank members on January 1, 1989 (section 4(a)(2) criteria):

(A) the institution has at least 10 percent of its total assets in residential mortgage loans;

(B) the institution's financial condition is such that advances may be safely made to such institution; and

(C) the character of the institution's management and its home-financing policy are consistent with sound and economical home financing.

See 12 U.S.C. 1424(a)(2)(A) to (C). Although the section 4(a)(2) criteria apply to ''insured depository institutions,'' § 933.6(a)(4) to (6) of the final rule applies the section 4(a)(2)(B) (financial condition) and (C) (character of management and home financing policy) criteria to insurance companies as well as insured depository institutions. This is consistent with current membership regulatory requirements. *See* 12 CFR 933.4(a)(4), (5). In addition, prior to the enactment of FIRREA in 1989, the financial condition, character of management and home financing policy criteria were applicable to insurance companies. *See* 47 Stat. 726 (July 22, 1932).

The final rule does not apply the 10 percent requirement in section 4(a)(2)(A) to applicants that are not insured depository institutions, such as insurance companies. The reasons for this approach are discussed more fully below under the 10 Percent Requirement.

7. 10 Percent Requirement—§ 933.10

a. *Insured depository institution applicants.*

Section 4(a)(2)(A) of the Bank Act requires that, in order to be eligible for Bank membership, an insured depository institution must have at least 10 percent of its total assets in residential mortgage loans. *See* 12 U.S.C. 1424(a)(2)(A). This general eligibility requirement is implemented by § 933.6(b) of the final rule. Under § 933.10 of the final rule, an insured depository institution applicant is deemed to comply with the 10 percent requirement in section 4(a)(2)(A) of the Bank Act if, based on the applicant's most recent regulatory financial report, the applicant has at least 10 percent of its total assets in ''residential mortgage loans,'' as defined in § 933.1(bb) of the final rule, except that any assets used to secure mortgage debt securities as described in § 933.1(bb)(6) may not be used to meet this requirement.

b. *Applicants that are not insured depository institutions.*

The Finance Board's practice has been not to apply the 10 percent requirement to applicants that are not insured depository institutions, such as insurance companies. *See* 12 CFR 933.4(b)(1). Section 933.6(c) of the final rule continues the current regulatory requirement that such applicants must meet an alternative requirement that they have mortgage-related assets reflecting a commitment to housing finance, with such determination made by the Bank in its discretion, rather than by the Finance Board. *See* 12 CFR 933.4(c). Several commenters specifically supported application of this alternative test to applicants that are not insured depository institutions.

In the notice of proposed rulemaking, the Finance Board specifically requested comment on whether the 10 percent requirement should apply to insurance company applicants, or whether a different test, or asset test that would achieve the same objectives as the 10 percent requirement, should be applied to insurance company applicants. The Finance Board questioned whether membership eligibility standards should be applied consistently to all applicants, in order to ensure that all Bank members demonstrate a quantifiable minimum commitment to residential housing finance before they are admitted to membership. *See* 60 FR 54958, 54962 (Oct. 27, 1995).

Two commenters supported applying the 10 percent requirement to insurance company applicants on the basis that all applicants for membership should be treated equally. A majority of the commenters opposed applying the 10 percent requirement to insurance company applicants for a number of reasons, including: (1) inconsistency with section 4(a)(2)(A) of the Bank Act which, on its face, is applicable only to insured depository institutions; (2) insurance companies that are active in mortgage lending or have significant investments in housing-related assets may not be able to meet the 10 percent requirement because of their asset size; and (3) insurance companies are required by state law, regulators, and prudent investment standards to invest in a wide variety of assets.

The Finance Board agrees that these are valid reasons for not applying the 10

percent requirement to insurance company applicants, consistent with current practice. Accordingly, the final rule applies the alternative mortgage-related assets test, rather than the 10 percent requirement, to institutions that are not insured depository institutions, including insurance company applicants.

c. *Definition of ''residential mortgage loans.''*

The term ''residential mortgage loans'' is not defined in the Bank Act. The definition of ''residential mortgage loans'' in the proposed rule included the current definition, *see* 12 CFR 933.1(r), as well as qualified private activity exempt facility bonds where 95 percent or more of the net proceeds are used for qualified residential rental projects, as defined in 26 U.S.C. 142(a)(7)(d). Under the current membership regulation, the Finance Board has interpreted ''residential mortgage loans'' to include such bonds.

Several commenters supported inclusion of such bonds in the definition of ''residential mortgage loans.'' The Finance Board has determined that such bonds are consistent with other assets that are treated as ''residential mortgage loans.'' Further, treating such bonds as ''residential mortgage loans'' is consistent with the purpose of the 10 percent requirement to ensure that new members hold at least 10 percent of their total assets in assets that facilitate home mortgage lending. The Finance Board does not expect the Bank to verify the actual usage of the bond proceeds for the qualified residential rental projects. The Finance Board also recognizes that there may be other similar types of bonds that should be permissible as ''residential mortgage loans.'' Accordingly, the addition of the word ''substantially'' in the definition of ''residential mortgage loan'' in § 933.1(bb)(6)(i) of the final rule provides for the inclusion of such bonds and other similar types of bonds that meet the definition.

In the proposed rule, the Finance Board specifically requested comment on whether shares of open-end management companies, also known as ''mutual funds,'' where the assets in the open-end management company's portfolio are comprised solely of assets that are ''residential mortgage loans,'' should be included as ''residential mortgage loans.'' Ownership of mutual fund shares could be considered the functional equivalent of ownership of the mutual fund's underlying assets. Several commenters specifically supported inclusion of shares of such mutual funds within the definition of ''residential mortgage loans.'' One commenter suggested that mutual fund shares be allowed where the mutual fund has a small percentage of its capital in cash or liquid assets. However, the Finance Board has not previously interpreted ''residential mortgage loans'' to include mutual fund shares, and is not seeking to expand the types of assets that may qualify as ''residential mortgage loans'' at this time. Accordingly, the definition of ''residential mortgage loans'' in the final rule does not include mutual fund shares.

The current membership regulation and proposed rule required that ''residential mortgage loans'' be domestic loans. *See* 12 CFR 933.1(r). However, the line items in regulatory financial reports corresponding to such loans may include foreign as well as domestic loans. In order to ease applicants' ability to rely on such line items for purposes of determining their ''residential mortgage loans'' for the 10 percent requirement, under the final rule, applicants may include foreign residential mortgage loans.

For the same reasons discussed under part III.B.5.a. above, § 933.1(bb) of the final rule does not include the Finance Board's current regulatory discretion to determine that other loans not specifically listed in the definition of ''residential mortgage loan'' meet the definition. *See* 12 CFR 933.1(r)(8).

d. *Definition of ''total assets.''*

Section 4(a)(2)(A) of the Bank Act and § 933.10 of the final rule provide that, in order to be eligible for Bank membership, an applicant must have at least 10 percent of its ''total assets'' in residential mortgage loans. *See* 12 U.S.C. 1424(a)(2)(A). The proposed rule listed the specific assets included in the definition of ''total assets.'' Since the applicant will be relying on the total assets reported on its regulatory financial report, the definition in § 933.1(dd) of the final rule is revised to mean total assets as reported on the applicant's regulatory financial report.

The total assets line item in regulatory financial reports may include foreign as well as domestic assets. In order to ease applicants' ability to rely on such line item for purposes of determining their ''total assets'' for the 10 percent requirement, under the final rule, applicants may include foreign assets as part of total assets.

e. *Noncompliance not rebuttable.*

Noncompliance by an applicant with the 10 percent requirement is not a rebuttable presumption under § 933.17.

8. Financial Condition Requirement for Applicants Other Than Insurance Companies—§ 933.11

Section 4(a)(2)(B) of the Bank Act requires that, in order to be eligible for Bank membership, an insured depository institution's financial condition must be such that advances may be safely made to it. 12 U.S.C. 1424(a)(2)(B). Section 933.6(a)(4) of the final rule applies this general requirement to all applicants for membership, including applicants that are not insured depository institutions such as insurance companies. Section 933.11 implements this requirement by establishing specific financial condition standards applicable to applicants other than insurance companies, and is modeled on the Guidelines. As discussed below, § 933.16 implements this requirement by establishing specific financial condition standards applicable to insurance companies that recognize the specialized nature of the insurance business.

a. *Review requirement.*

Section 933.11(a) describes the documents pertaining to financial condition that must be reviewed for each applicant. Under § 933.11(a)(1), the Bank must obtain and review the applicant's regulatory financial reports for at least the last six calendar quarters and three year-ends. In response to a commenter's suggestion, the definition of ''regulatory financial report'' in § 933.1(aa) of the final rule is revised to include a regulatory financial report maintained by the primary regulator on a computer on-line database.

Section 933.11(a)(2) lists, in order of preference, the financial statement that a Bank must obtain and review in evaluating the applicant's financial condition. This provision has been revised from the proposed rule to make it consistent with the financial statement requirement in the Guidelines.

Under § 933.11(a)(3) of the final rule, the Bank must obtain and review the applicant's most recent available regulatory examination report prepared by its primary regulator, as defined in § 933.1(y), or appropriate state regulator, as defined in § 933.1(f), and prepare a summary of the applicant's strengths and weaknesses as cited in the regulatory examination report. The Bank or the applicant also must prepare a summary of actions taken by the applicant to respond to examination weaknesses.

Under § 933.11(a)(4), the Bank also must obtain and review a description of any outstanding enforcement actions against the applicant, responses by the

applicant, reports as required by the enforcement action, and verbal or written indications, if available, from the primary regulator or appropriate state regulator, whichever is applicable, of how the applicant is complying with the terms of the enforcement action. In response to two comments, ''enforcement action'' is defined in § 933.1(l) of the final rule to exclude board of directors' resolutions adopted by applicants in response to examination weaknesses identified by the regulator.

Under § 933.11(a)(5), the Bank also must obtain and review any other relevant document or information concerning the applicant that comes to the Bank's attention in reviewing the applicant's financial condition. The proposed rule required that a Bank also consider other relevant information that reasonably should come to the Bank's attention in reviewing the applicant's financial condition. This was intended to impose a measure of due diligence on the Bank as a part of the membership approval process. Several commenters opposed this requirement because: (1) it imposes an undefined or unreasonably high standard that could be prohibitively costly (*e.g.*, on-line database searches); (2) the most valuable information comes from the applicant and its regulator; and (3) the Banks could be exposed to liability for reliance on inaccurate or insufficient information. For the reasons cited by the commenters, the final rule does not incorporate this ''due diligence'' requirement.

b. *Standards of adequate ''financial condition.''*

The Bank Act does not define the term ''financial condition'' for purposes of membership eligibility, except to say that financial condition must be ''such that advances may be safely made.'' 12 U.S.C. 1424(a)(2)(B). The Finance Board believes that specific, uniform and quantifiable standards for evaluating financial condition are necessary to ensure that Bank advances may be extended in a safe and sound manner.

Under § 933.11(b)(1), in order to be presumed to be in adequate financial condition for purposes of section 4(a)(2)(B) of the Bank Act and § 933.6(a)(4) of the final rule, an applicant must have received a composite regulatory examination rating from its primary regulator or appropriate state regulator within two years preceding the date the Bank receives the application. The Finance Board requires that the applicant have been examined within this two-year period in order to ensure the accuracy of critical information used for financial condition eligibility determinations. Section 933.11(b)(3) establishes the minimum performance standard the applicant must satisfy, based on the applicant's most recent composite regulatory examination rating from its primary regulator or appropriate state regulator.

The proposed rule required that the applicant have received such a rating from its primary regulator. Several commenters supported allowing the Banks to accept composite regulatory examination ratings from state or federal regulators because: (1) state regulatory examination reports containing ratings may be obtainable and just as reliable as federal regulatory examination reports in reviewing an applicant's financial condition; and (2) state and federal regulators may alternate examination cycles or may conduct joint examinations for some state chartered, federally insured institutions, and they typically examine regulated entities at least every two years. In response to these comments, the final rule allows use of the most recent state or federal regulatory examination report containing a composite regulatory examination rating.

Section 933.11(b)(2) of the final rule requires an applicant to meet all of its minimum statutory and regulatory capital requirements in order to satisfy the financial condition requirement.

Under § 933.11(b)(3)(i), in order to be presumed to be in adequate financial condition, the applicant's most recent composite regulatory examination rating from its primary regulator or appropriate state regulator within the past two years must be ''1;'' or must be ''2'' or ''3'' and the applicant also must satisfy certain performance trend criteria.

The term ''composite regulatory examination rating'' is defined in § 933.1(j) of the final rule as a composite rating assigned to an institution following the guidelines of the Uniform Financial Institutions Rating System (UFIRS), including a CAMEL rating, a MACRO rating or other similar rating, contained in a written regulatory examination report. The composite regulatory examination rating for an insured depository institution is determined according to the UFIRS, commonly referred to as the CAMEL rating system. The UFIRS is an internal supervisory rating system used by Federal regulatory agencies for evaluating the soundness of financial institutions on a uniform basis and for identifying those institutions requiring special supervisory attention or concern. Under the UFIRS, each institution is assigned a composite rating based on an evaluation and rating of five essential components—capital, assets, management, earnings, and liquidity—of an institution's financial condition and operations. The composite rating reflects, in a comprehensive fashion, an institution's overall financial condition, compliance with banking statutes and regulations, and management capability. A composite rating of ''1'' is the highest possible rating on a 5-point scale, indicating the strongest performance and management practices. A composite rating of ''5'' indicates the weakest performance and management practices and, therefore, the highest degree of supervisory concern. The Federal Financial Institutions Examination Council recently proposed changes to the UFIRS, including adding a sixth rating component addressing sensitivity to market risks. *See* 61 FR 37472 (July 18, 1996). The language in § 933.1(j) and (z) of the final rule incorporates this proposed change by referring generally to the UFIRS and removing specific references to the five rating components.

The importance of the composite regulatory examination rating in the membership approval process may be illustrated in the breakdown of the ratings assigned to applicants approved by the Finance Board since the enactment of FIRREA—all but one institution approved for membership have been rated ''1,'' ''2'' or ''3''; the single ''4''-rated institution approved for membership has since been upgraded. No ''5''-rated institutions have been approved for membership.

Using the UFIRS to evaluate membership applicants reduces the documentation requirements for applicants, limits the potential for the Banks to be perceived by applicants as another layer in the financial regulatory structure, adds considerable efficiency to the application process, and provides an independent assessment by those responsible for the soundness of the entity.

Under § 933.11(b)(3)(i) of the final rule, a composite regulatory examination rating of ''2'' or ''3'' may be an acceptable financial condition performance standard if the applicant also meets certain additional performance trend criteria. These criteria are designed to identify trends in the institution's key performance areas by reviewing the six most recent calendar quarters of financial data. The performance trend criteria are: (1) positive adjusted net income in 4 of the 6 most recent calendar quarters; (2) nonperforming loans, leases and securities plus foreclosed and repossessed real estate not exceeding 10

percent of performing loans, leases and securities plus foreclosed and repossessed real estate, in the most recent calendar quarter; and (3) a ratio of the allowance for loan and lease losses to nonperforming loans, leases and securities of 60 percent or greater during 4 of the 6 most recent calendar quarters. These performance trend criteria are derived from the criteria contained in the Guidelines.

The terms used in the ratios are more specifically defined in § 933.1(b), (d), (u), and (x) of the final rule, modeled after the Guidelines, to aid applicants and the Banks in determining the appropriate line items to use from the regulatory financial reports. In some cases, the terminology is clarified to reflect that used in the regulatory financial reports.

In the proposed rule, the denominator for the nonperforming assets ratio was incorrectly identified as ''total assets.'' The Finance Board intended to continue requiring use of a denominator consistent with that used in the Guidelines, *i.e.*, performing assets plus foreclosed and repossessed real estate. This is corrected in the final rule.

In the proposed rulemaking, the Finance Board specifically requested comment on whether the nonperforming assets ratio should be 8 percent, instead of the proposed 10 percent. Two commenters supported a 10 percent requirement, in order to provide maximum flexibility in membership decisions and to prevent ''undue hardship'' in cases of mergers and acquisitions. One commenter stated that the 10 percent requirement was too liberal. The final rule adopts the 10 percent requirement which, to date, has served as an adequate performance trend indicator.

Two additional performance trend ratios included in the Guidelines for applications reviewed by the Banks under the delegation criteria are not included in the final rule. The Finance Board has determined that the three ratios discussed above are adequate to determine applicants' performance trends and that no additional criteria are necessary for this purpose.

Various other comments were received recommending changes to some of the performance trend criteria. The final rule does not adopt these changes, as the Finance Board believes that the three ratios as specified are sufficient for determining an institution's performance trends.

A number of commenters stated that the financial condition requirement in § 933.11 is too stringent, arguing that such in-depth financial review for membership decisions exceeds, and should not be confused with, that which should be required for lending decisions. However, the Bank Act requires that an institution have a ''financial condition * * * such that advances may be safely made.'' 12 U.S.C. 1424(a)(2)(B). The argument was made that the Bank Act should be interpreted to presume that any applicant with ''eligible collateral'' would meet the financial condition requirement of section 4(a)(2)(B) of the Bank Act. However, in order to minimize the possibility of the Banks becoming a liquidity source for weak or failing institutions, the Finance Board has determined that a minimum level of financial analysis should be required for all applicants as a prerequisite to membership. Section 933.11(c) of the final rule states that the availability of sufficient eligible collateral to secure advances to the applicant is presumed and shall not be considered in determining whether an applicant is in the financial condition required by section 4(a)(2)(B) of the Bank Act and § 933.6(a)(4) of the final rule. One commenter expressly supported this provision in the rule.

c. *Noncompliance is rebuttable.*

As further discussed below under § 933.17(d)(1), noncompliance by an applicant with the financial condition requirement is a rebuttable presumption.

9. Character of Management Requirement—§ 933.12

Section 4(a)(2)(C) of the Bank Act requires that the ''character of [an applicant's] management'' be ''consistent with sound and economical home financing.'' 12 U.S.C. 1424(a)(2)(C). Section 933.6(a)(5) of the final rule applies this general requirement to all applicants, including insurance companies. Section 933.12 implements this requirement by establishing specific character of management standards applicable to such applicants, modeled after the Guidelines.

a. *Standards of adequate ''character of management.''*

Section 933.12 has been simplified from the proposed rule by removing the proposed review requirements and allowing the Bank to rely solely on an unqualified written certification from the applicant that it meets all of the specified standards.

Under § 933.12(a), neither the applicant nor any of its directors or senior officers may be subject to, or operating under, any enforcement action instituted by its primary regulator or appropriate state regulator. One commenter suggested that demonstrated full compliance by an applicant with an enforcement action should be sufficient to meet the standard. Section 933.17(e)(1) of the final rule provides, instead, that an applicant may rebut the presumption of noncompliance by showing substantial compliance with all aspects of the enforcement action.

Under § 933.12(b), neither the applicant nor any of its directors or senior officers shall have been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude, since the most recent regulatory examination report.

Under § 933.12(c), there must be no known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers, since the most recent regulatory examination report, that are significant to the applicant's operations. This provision was revised in response to comments that the proposed requirement was too burdensome unless it applied only to such liabilities, lawsuits or judgments that are significant to an applicant's operations.

The proposed rule required that the written certification be provided by a majority of the applicant's board of directors, or by an individual with authority to act on behalf of the board. A commenter pointed out that state corporate laws impose different requirements for a corporate board to take valid action and, therefore, that the requirement should be a certification duly adopted by the applicant, rather than majority action. The final rule adopts this recommendation. The Finance Board has found the written certification to be the best way to surface any character of management issues, and to get an explanation of those issues because the burden of disclosure is placed on the applicant.

b. *Noncompliance is rebuttable.*

As further discussed below under § 933.17(e), noncompliance by an applicant with the character of management requirement is a rebuttable presumption.

10. Home Financing Policy Requirement—§ 933.13

Section 4(a)(2)(C) of the Bank Act requires that an applicant's ''home-financing policy'' be ''consistent with sound and economical home financing.'' 12 U.S.C. 1424(a)(2)(C). Section 933.6(a)(6) of the final rule applies this general requirement to all applicants, including insurance companies. Section 933.13 implements this requirement by

establishing specific home financing policy standards applicable to such applicants, modeled after the Guidelines.

a. *Standards of adequate ''home-financing policy.''*

Under § 933.13(a), an applicant that has received a Community Reinvestment Act (CRA) rating of ''Satisfactory'' or better on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation is deemed to meet the home financing policy requirement. The proposed rule required an applicant to have a CRA performance evaluation within four years from the date of application. The Guidelines did not contain this requirement, and it is expected that all applicants will have received such evaluations within the four-year timeframe. Accordingly, this four-year requirement is not adopted in the final rule. If a formal CRA performance evaluation is unavailable, an informal or preliminary CRA performance evaluation from the regulator should be permissible as an indicator of the applicant's recent CRA performance. Allowing informal or preliminary evaluations makes this requirement the same for other applicants as well as de novo applicants, which were allowed to provide such evaluations under the Guidelines.

Section 933.13(b) requires an applicant that is not subject to the CRA, such as an insurance company, to demonstrate how and why its home financing policy is consistent with the Bank System's housing finance mission. The home financing policy requirements for de novo insured depository institution applicants and recent merger or acquisition applicants are discussed below under §§ 933.14 (a)(4) and (b)(3), and 933.15(b).

Several commenters supported use of CRA performance evaluations to determine compliance with the home financing policy requirement. The Finance Board acknowledges that CRA performance evaluations are not a perfect method for evaluating whether an institution's home financing policy is ''consistent with sound and economical home financing.'' CRA performance evaluations are based on whether a financial institution meets the credit needs of its assessment area through a variety of lending activities, rather than solely on its mortgage lending activity. *See, e.g.*, 60 FR 22180 (May 4, 1995), 12 CFR 25.22. Further, CRA performance evaluations do not consider whether a financial institution's home financing policy is ''sound and economical.'' *Id.* However, use of CRA performance evaluations as a proxy for the home financing policy requirement appears to be the best method at the present time for determining whether an applicant's home financing policy meets this requirement.

Since neither the Congress nor the Finance Board have yet specifically defined the Bank System's housing finance mission, the Finance Board also acknowledges limitations in requesting a written justification demonstrating how and why an applicant's home financing policy is consistent with the Bank System's housing finance mission.

b. *Noncompliance is rebuttable.*

As further discussed below under § 933.17(f), noncompliance by an applicant with the home financing policy requirement is a rebuttable presumption.

11. De Novo Insured Depository Institution Applicants—§ 933.14

Section 933.14 of the final rule establishes the membership eligibility requirements for de novo, *i.e.*, newly chartered, insured depository institution applicants that have not yet commenced operations or that have recently commenced operations.

a. *Newly chartered applicants that have not yet commenced operations.*

(1) *Streamlined requirements.*

Section 933.14(a) includes a new provision not included in the proposed rule, which provides for a streamlined application process for newly chartered, insured depository institution applicants that have not yet commenced operations. Since either or both the regulatory agency that chartered the institution and the agency insuring the deposits of an insured depository institution will have determined that the institution's financial condition and character of management are acceptable, or will have made their approval contingent on the institution satisfying these and other requirements, the Banks should be able to rely on the agency's determination without having to do a duplicative review of these eligibility requirements. Accordingly, § 933.14(a)(1) provides that such institutions are deemed to meet the requirements of §§ 933.11 (financial condition) and 933.12 (character of management), as well as §§ 933.7 (duly organized) and 933.8 (subject to inspection and regulation).

(2) *''Makes long-term home mortgage loans'' requirement.*

Since the agency's charter or insurance approval is not contingent on the institution agreeing to make long-term home mortgage loans, as required by section 4(a)(1)(C) of the Bank Act and § 933.9, § 933.14(a)(2) requires the applicant to file as part of its application a written justification acceptable to the Bank of how its home financing credit policy and lending practices will include originating or purchasing long-term home mortgage loans. *See* 12 U.S.C. 1424(a)(1)(C).

(3) *10 percent requirement.*

Section 933.14(a)(3) implements section 4(a)(2) of the Bank Act by providing that the applicant shall have until one year after commencing its initial business operations to meet the 10 percent requirement of § 933.10. *See* 12 U.S.C. 1424(a)(2).

(4) *Home financing policy requirement.*

Since the agency's charter or insurance approval is not contingent upon the institution having an adequate home financing policy, as required by section 4(a)(2)(C) of the Bank Act and § 933.6(a)(6), § 933.14(a)(4)(i) requires the applicant to file as part of its application a written justification acceptable to the Bank of how and why its home financing credit policy and lending practices will meet the credit needs of its community. *See* 12 U.S.C. 1424(a)(2)(C). However, the final rule makes the Bank's approval conditional upon the applicant receiving a ''Satisfactory'' or better Community Reinvestment Act (CRA) rating on its first formal, or if unavailable, informal or preliminary, CRA performance evaluation. Noncompliance with this requirement is a rebuttable presumption under § 933.17(f). An applicant that is conditionally approved for membership is subject to the stock purchase requirements of § 933.20, and is eligible to receive advances, in the Bank's discretion, pursuant to 12 CFR part 935. Under § 933.14(a)(4)(iii), if the applicant's first CRA rating is ''Needs to Improve'' or ''Substantial Non-Compliance,'' and the applicant is unable to rebut the presumption of noncompliance, the applicant's conditional membership approval shall be deemed null and void. In such event, § 933.14(a)(4)(iv) provides that the liquidation of any outstanding indebtedness owed by the applicant to the Bank and redemption of stock of such Bank shall be carried out in accordance with § 933.29 of this part.

b.*Newly chartered applicants that have recently commenced operations.*

Section 933.14(b) codifies certain exceptions in the Guidelines to the membership eligibility standards for newly chartered applicants that have recently commenced operations.

(1) *10 percent requirement.*

Section 933.14(b)(1) of the final rule implements section 4(a)(2) of the Bank Act by providing that the applicant shall

have until one year after commencing its initial business operations to meet the 10 percent requirement of § 933.10. *See* 12 U.S.C. 1424(a)(2).

(2) *Financial condition requirement.*

Section § 933.14(b)(2)(i) provides that, for purposes of § 933.11(a)(1), an applicant that has not yet filed regulatory financial reports for six calendar quarters and three year-ends shall provide any regulatory financial reports that it has filed with its primary regulator. As discussed earlier, ''regulatory financial report'' is defined in § 933.1(aa) to include such reports maintained by the primary regulator on a computer on-line database.

Section 933.14(b)(2)(ii) provides that, for purposes of § 933.11(b) (1) and (3), an applicant that has not yet received a composite regulatory examination rating from its primary regulator or appropriate state regulator shall provide a preliminary or informal, written composite regulatory examination rating, if available, from its primary regulator or appropriate state regulator. The final rule has been revised to take into account the availability of such rating, consistent with the Guidelines.

Under § 933.14(b)(2)(iii) of the final rule, an applicant that has not yet filed regulatory financial reports for six calendar quarters need not meet the performance trend criteria in § 933.11(b)(3)(i) (A) to (C), if: (1) the applicant has filed regulatory financial reports with its primary regulator for at least three calendar quarters of operation; and (2) the Bank determines that the applicant is in substantial compliance with the terms of its regulatory business plan. The proposed rule required that the applicant have completed regulatory financial reports for at least six calendar quarters of operation. Consistent with the Guidelines, the final rule requires three, instead of six, calendar quarters of operation. The proposed rule also required the Bank to determine such compliance either through confirmation in writing by the de novo applicant's primary regulator or based on a written analysis provided by the de novo applicant. In response to a commenter's recommendation, the final rule deletes this requirement, leaving documentation of the Bank's determination to its discretion.

(3) *Home financing policy requirement.*

Section 933.14(b)(3) provides that, for purposes of § 933.13, an applicant that has not received its first formal, or if unavailable, informal or preliminary, CRA performance evaluation, is subject to the home financing policy requirements of § 933.14(a)(4).

12. Recent Merger Applicants—§ 933.15

a.*''Pending merger applicants.''* The proposed rule, consistent with the Guidelines, set forth specific eligibility requirements for pending merger applicants. A ''pending merger applicant'' was defined as an institution applying for membership that: (1) is a party to a merger or acquisition agreement expected to be consummated within two calendar quarters of submission of the membership application (timing test); and (2) will account for 75 percent or less of the combined assets of the resulting entity at the time of the merger or acquisition (materiality test).

The proposed provisions applicable to pending merger applicants are not adopted in the final rule. Since the merger or acquisition has not yet been consummated and may never be consummated, the Finance Board has determined that applicants expecting to shortly consummate a merger or acquisition should be subject to the standard eligibility requirements set forth in §§ 933.7 to 933.13, and should not be evaluated based on each party to the transaction or the pending resulting entity.

b.*Recent merger or acquisition applicants.* The proposed rule, consistent with the Guidelines, set forth specific eligibility requirements for recent merger applicants. A ''recent merger applicant'' was defined as an institution applying for membership that: (1) merged with or acquired another institution within the six calendar quarters preceding submission of the membership application (timing test); and (2) accounted for 75 percent or less of the combined assets of the resulting entity at the time of the merger or acquisition (materiality test). The proposed rule required that, for certain of the eligibility requirements, each of the parties to the merger or acquisition had to satisfy the requirements. The timing and materiality tests for the definition of a recent merger or acquisition applicant have been eliminated in the final rule.

Section 933.15 of the final rule streamlines the application process by requiring that an applicant resulting entity must satisfy the standard eligibility requirements of §§ 933.7 to 933.13 except as provided in § 933.15. The Finance Board has determined that it is not necessary to analyze each party to the transaction to determine satisfaction of the eligibility requirements.

(1) *Financial condition requirement.*

Section 933.15(a)(i) of the final rule provides that, for purposes of § 933.11(a)(1), an applicant that, as a result of a merger or acquisition prior to the date the Bank receives its membership application, has not yet filed regulatory financial reports for the last six calendar quarters and three year-ends (recent merger or acquisition applicant), shall provide any regulatory financial reports that the applicant has filed with its primary regulator.

Section 933.15(a)(ii) provides that, for purposes of § 933.11(b)(3)(i) (A) to (C), an applicant that, as a result of a merger or acquisition, has not yet filed combined regulatory financial reports for the last six calendar quarters, shall provide pro forma combined financial statements for those calendar quarters in which actual combined regulatory financial reports are unavailable.

(2) *Home financing policy requirement.*

Section 933.13(b) provides that, for purposes of § 933.13, a recent merger or acquisition applicant has not received its first formal, or if unavailable, informal or preliminary, CRA performance evaluation, must demonstrate how and why its home financing credit policy and lending practices will meet the credit needs of its community.

A recent merger or acquisition applicant may provide evidence to rebut a presumption of noncompliance with an eligibility requirement, as provided in § 933.17 of the final rule.

13. Insurance Company Applicants—§§ 933.8, 933.12, 933.13, 933.16

As discussed in part III.B.2. above, the Bank Act requires that an insurance company applicant must meet the membership eligibility requirements set forth in section 4(a)(1) of the Bank Act. *See* 12 U.S.C. 1424(a)(1); § 933.6(a) (1), (2) and (3) of the final rule. As further discussed in part III.B.6., 7., 9., 10., and 13., the final rule applies all of the section 4(a)(2) criteria except the 10 percent requirement to insurance company applicants, even though the Bank Act, on its face, specifically applies the section 4(a)(2) criteria to insured depository institution applicants. *See* 12 U.S.C. 1424(a)(2); §§ 933.12, 933.13, 933.16 of the final rule.

a.*''Subject to inspection and regulation'' requirement—§ 933.8.*

(1) *Standard of adequate inspection and regulation.*

Insurance companies are subject to state, not federal, regulation and, therefore, the standards used to inspect and regulate insurance companies from state to state are not uniform. Every United States insurance company is subject to examination and regulation

by the state insurance department in its domiciliary state, as well as to some level of regulation by the state insurance department in each state where the insurance company applicant is licensed to do business. State insurance laws are similar to federal banking laws in that they require the appropriate state regulator to monitor whether the insurance company has complied with minimum capital and reserve, financial condition, asset valuation and various consumer-related requirements.

Forty-seven states and the District of Columbia now adhere to the financial regulation standards established by the National Association of Insurance Commissioners (NAIC) and, thus, are accredited by the NAIC. In its proposed rulemaking, the Finance Board specifically requested comment on whether the degree of inspection and regulation imposed by a particular state, *e.g.*, whether the state insurance commissioner is NAIC-accredited, should be a factor in determining whether an insurance company applicant satisfies the ''subject to inspection and regulation'' requirement of section 4(a)(1)(B) of the Bank Act. *See* 12 U.S.C. 1424(a)(1)(B). Two commenters generally opposed requiring an applicant to be subject to inspection and regulation by an NAIC-accredited state insurance commissioner, because it could discourage insurance company membership. One commenter supported establishing such a requirement as a rebuttable presumption.

Section 933.8 of the final rule requires that an applicant's appropriate state regulator be NAIC-accredited to meet the ''subject to inspection and regulation'' requirement, in order to ensure some minimum degree of inspection and regulation.

(2) *Noncompliance is rebuttable.*

As further discussed below under § 933.17(c), noncompliance by an insurance company applicant with the ''subject to inspection and regulation'' requirement is a rebuttable presumption.

b. *Financial condition requirement—§ 933.16.*

Section 933.16 establishes specific financial condition requirements applicable to insurance company applicants that differ from those applicable to other applicants under § 933.11, due to the differences between the regulatory schemes for insurance companies and depository institutions.

(1) *Capital requirements.*

Section 933.16 provides that an insurance company applicant shall be deemed to meet the financial condition requirement of section 4(a)(2)(B) of the Bank Act and § 933.6(a)(4), if the applicant meets all of its minimum statutory and regulatory capital requirements and the capital standards established by the NAIC, based on the information contained in the applicant's most recent regulatory financial report filed with its primary regulator. *See* 12 U.S.C. 1424(a)(2)(B).

Under the proposed rule, an insurance company applicant was deemed to meet the financial condition requirement if: (1) the applicant received a regulatory examination by its primary regulator within the three years preceding the date of the membership application; (2) the applicant's most recent regulatory examination indicated no major adverse findings on financial condition; (3) the applicant received a composite independent insurance company rating from one of the five principal private companies that rate insurance companies within the three years preceding the date of the membership application; (4) the applicant's most recent composite independent insurance company rating was ''strong,'' as defined therein; or alternatively, the applicant had an ''adequate rating'' and ''adequate earnings,'' as defined therein; (5) the applicant met all of its minimum statutory and regulatory capital requirements and the NAIC capital standards, based on the applicant's most recent regulatory financial report filed with its primary regulator; and (6) the applicant met eight specified minimum performance ratios during the most recent year-end or quarter-end period. Insurance company regulators do not use the UFIRS to evaluate the financial condition of insurance companies.

One commenter stated that the financial condition requirement should be based on satisfaction of the NAIC capital standards, and not on additional independent ratings and performance ratios. The commenter noted that the NAIC capital standards are relied upon by insurers, analysts and regulators to evaluate insurance companies, not all insurers want to pay for independent ratings, and most rating services do not rate life insurance companies.

The commenter also stated that the minimum performance ratios may be too stringent even for financially strong applicants, are in some cases inapplicable to life insurance companies, and where used in the NAIC Insurance Regulatory Information System (IRIS), are only intended as a screening tool to flag an insurance company for further financial evaluation and not as a measure of its financial condition. The commenter noted that the IRIS standards require regulatory action only if there is an abnormal value in four or more of the IRIS ratios, while the rule would deem an insurance company applicant ineligible for Bank membership if it fails to meet only one of the rule's eight ratios.

The Finance Board believes that these points have merit and the proposed rule may have applied overly stringent financial condition criteria to insurance companies. While not all states have yet adopted the NAIC capital standards, the Finance Board believes that these standards are a useful measure of an insurance company's financial condition. Satisfaction of these standards, as well as the applicant's minimum statutory and regulatory capital requirements, should be sufficient to deem an insurance company applicant in compliance with the financial condition requirement of § 933.6(a)(4). As discussed earlier, the applicants also will be required to be subject to inspection and regulation by an NAIC-accredited regulator, to ensure a minimum degree of inspection and regulation.

(2) *Noncompliance is rebuttable.*

As further discussed below under § 933.17(d)(2), noncompliance by an insurance company applicant with the financial condition requirement applicable to such applicants is a rebuttable presumption.

14. Rebuttable Presumptions—§ 933.17

Based on the Finance Board's general supervisory authority over the Banks, 12 U.S.C. 1422a(a)(3), 1422b(a)(1), and its authority to interpret the Bank Act's membership eligibility requirements, *id.* § 1424, the final rule establishes flexible requirements for each membership eligibility criterion required by the Bank Act and this part. An applicant that meets those requirements is presumed to be in compliance with the statutory membership eligibility criteria.

So, too, an applicant not meeting the requirements is presumed not to be in compliance with the Bank Act criteria. Section 933.17 of the final rule provides that certain presumptions may be rebutted if the applicant provides, or the Bank otherwise obtains, substantial evidence to overcome the presumption. This approach is modeled after the Guidelines. A number of commenters expressly supported this approach, rather than requiring applicants to meet rigid, ''bright line'' eligibility requirements, because it provides definite requirements while still allowing the Banks to exercise discretion in appropriate cases.

a. *Rebutting presumptive compliance.*

Under § 933.17(a), the presumption that an applicant meeting the

requirements of §§ 933.7 to 933.16 is in compliance with § 933.6 (a) and (b), may be rebutted, and the Bank may deny membership to the applicant, if the Bank obtains substantial evidence to overcome the presumption of compliance.

b. *Rebutting presumptive noncompliance.*

Under § 933.17(b), the presumption that an applicant not meeting a particular requirement of §§ 933.8, 933.11, 933.12, 933.13, or 933.16 is in noncompliance with § 933.6(a) (2), (4), (5) or (6), may be rebutted, and the applicant shall be deemed to meet such requirement, if the applicable requirements of § 933.17 are satisfied.

(1) ''Subject to inspection and regulation'' requirement.

Section 933.17(c) provides that an insurance company applicant may rebut a presumption of noncompliance with the ''subject to inspection and regulation'' requirement of § 933.8 by providing substantial evidence acceptable to the Bank that it is subject to inspection and regulation as required by § 933.6(a)(2), notwithstanding the lack of NAIC accreditation.

(2) *Financial condition requirement.*

Section 933.17(d) sets forth the requirements for rebutting a presumption of noncompliance with the financial condition requirements of §§ 933.11 and 933.16. Under § 933.17(d)(1), for applicants other than insurance companies, in the case of an applicant's lack of a composite regulatory examination rating within the required two-year period, a variance from the required rating, or a variance from a required performance trend criterion, as required under § 933.11, the applicant or the Bank shall prepare a written justification pertaining to such requirement that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 933.6(a)(4), notwithstanding the lack of rating or variance. In response to a commenter's suggestion, the final rule adopts a ''substantial,'' rather than the proposed ''compelling,'' evidence standard, which the Finance Board believes is sufficient for purposes of determining an applicant's financial condition.

Under § 933.17(d)(2) of the final rule, in the case of an insurance company applicant's variance from a capital requirement or standard of § 933.16, the applicant or the Bank shall prepare a written justification pertaining to such requirement or standard that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 933.6(a)(4), notwithstanding the variance. The proposed rule did not provide for rebuttals by insurance company applicants of a presumption of noncompliance with the financial condition requirement. Making the financial condition requirement a rebuttable presumption for insurance companies is consistent with the treatment of other applicants, and is reasonable because an insurance company applicant may otherwise be able to show that it is in adequate financial condition to be a member of the Bank System.

(3) *Character of management requirement.*

Section 933.17(e) sets forth the requirements for rebutting a presumption of noncompliance with the character of management requirement of § 933.12.

(4) *Home financing policy requirement.*

Section 933.17(f) sets forth the requirements for rebutting a presumption of noncompliance with the home financing policy requirement of §§ 933.13, 933.14(a)(4), and 933.14(b)(3), where an applicant received a ''Substantial Non-Compliance'' rating on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation, or a ''Needs to Improve'' CRA rating on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation and a CRA rating of ''Needs to Improve'' or better on any immediately preceding CRA performance evaluation. This section has been revised to incorporate meeting the credit needs of the applicant's community, since the provision is now being applied to depository institution applicants and not to insurance company applicants. An insurance company applicant or recent merger or acquisition applicant would have no need for rebuttal, since §§ 933.13(b) and 933.15(b), respectively, already require such applicants to submit written justifications regarding their home financing policies.

15. Conforming Changes to Citations

For the sake of brevity, conforming changes to the citations in subparts D through I of part 933 are set out in a table at the end of this final rule.

III. Regulatory Flexibility Act

The final rule largely implements statutory requirements binding on applicants for Bank membership, regardless of their size. The Finance Board is not at liberty to make adjustments to those statutory requirements to accommodate small entities. The final rule does not impose any additional regulatory requirements that will have a disproportionate impact on small entities. The final rule will, to some extent, reduce the criteria for determining compliance with statutory eligibility requirements that currently are used by the Finance Board in approving membership applications. Therefore, it is certified, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The information collection requirements contained in the proposed rule, as well as the information collection requirements in the sections redesignated as §§ 933.18, 933.22, 933.25, 933.26 and 933.31 of the final rule, which are not otherwise affected by this final rule, were submitted to and approved by the Office of Management and Budget (OMB) in accordance with the requirements of § 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned OMB control number 3069–0004. The title, description of need and use, and the respondent description for the information collection requirements in this final rule are discussed elsewhere in **SUPPLEMENTARY INFORMATION**. Any comments on this information collection should be sent to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503, and to the Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

The following table discloses the estimated annual reporting and recordkeeping burden:

a. Number of respondents	6,412
b. Total annual responses	6,412
Percentage of these responses collected electronically	0%
c. Total annual hours requested	59,152.1
d. Current OMB inventory	38,889.6
e. Difference	20,262.5

The estimated annual reporting and recordkeeping burden is:

a. Total annualized capital/startup costs	0
b. Total annual costs (O&M)	$1,683,923.95
c. Total annualized cost requested	1,683,923.95
d. Current OMB inventory	1,754,181.95
e. Difference	($70,258.00)

The approved information collection requirements will not otherwise be adversely affected (and may be reduced) by the requirements of the final rule.

List of Subjects in 12 CFR Part 933

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Board hereby amends title 12, chapter IX, subchapter B, part 933, of the Code of Federal Regulations as follows:

PART 933—MEMBERS OF THE BANKS

1. The heading for part 933 is revised to read as set forth above.

2. The authority citation for part 933 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1424, 1426, 1430, 1442.

3. The table of contents to part 933 is revised to read as follows:

Subpart A—Definitions

Sec.
933.1 Definitions.

Subpart B—Membership Application Process

933.2 Membership application requirements.
933.3 Decision on application.
933.4 Automatic membership.
933.5 Appeals.

Subpart C—Eligibility Requirements

933.6 General eligibility requirements.
933.7 Duly organized requirement.
933.8 Subject to inspection and regulation requirement.
933.9 Makes long-term home mortgage loans requirement.
933.10 10 percent requirement for insured depository institution applicants.
933.11 Financial condition requirement for applicants other than insurance companies.
933.12 Character of management requirement.
933.13 Home financing policy requirement.
933.14 De novo insured depository institution applicants.
933.15 Recent merger or acquisition applicants.
933.16 Financial condition requirement for insurance company applicants.
933.17 Rebuttable presumptions.
933.18 Determination of appropriate Bank district for membership.

Subpart D—Stock Requirements

933.19 Par value and price of stock.
933.20 Stock purchase.
933.21 Issuance and form of stock.
933.22 Adjustments in stock holdings.
933.23 Purchase of excess stock.

Subpart E—Consolidations Involving Members

933.24 Consolidation of members.
933.25 Consolidations involving nonmembers.

Subpart F—Withdrawal and Removal From Membership

933.26 Procedure for withdrawal.
933.27 Procedure for removal.
933.28 Automatic termination of membership for institutions placed in receivership.

Subpart G—Orderly Liquidation of Advances and Redemption of Stock

933.29 Orderly liquidation of advances and redemption of stock.

Subpart H—Reacquisition of Membership

933.30 Reacquisition of membership.

Subpart I—Bank Access to Information

933.31 Reports and examinations.

Subpart J—Membership Insignia

933.32 Official membership insignia.

Subparts C Through I of Part 933 [Redesignated as Subparts D Through J]

4. Subparts C through I of part 933 are redesignated as Subparts D through J, respectively.

§§ 933.6 through 933.19 [Redesignated as §§ 933.19 through 933.32]

5. Sections 933.6 through 933.19 are redesignated as §§ 933.19 through 933.32, respectively.

6. Subpart A of part 933 is revised to read as follows:

Subpart A—Definitions

§ 933.1 Definitions.

For purposes of this part:

(a) *Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

(b) *Adjusted net income* means net income, excluding extraordinary items such as income received from or expense incurred in sales of securities or fixed assets, reported on a regulatory financial report.

(c) *Aggregate unpaid loan principal* means the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home-purchase contracts, and similar obligations.

(d) *Allowance for loan and lease losses* means a specified balance-sheet account held to fund potential losses on loans or leases, that is reported on a regulatory financial report.

(e) *Appropriate Federal banking agency* has the same meaning as used in 12 U.S.C. 1813(q) and, for federally insured credit unions, shall mean the National Credit Union Administration.

(f) *Appropriate state regulator* means any state officer, agency, supervisor or other entity that has regulatory authority over, or is empowered to institute enforcement action against, an applicant for Bank membership.

(g) *Bank* means a Federal Home Loan Bank established under the authority of the Act.

(h) *Board* means the Federal Housing Finance Board.

(i) *Combination business or farm property* means real property for which the total appraised value is attributable to residential, and business or farm uses.

(j) *Composite regulatory examination rating* means a composite rating assigned to an institution following the guidelines of the Uniform Financial Institutions Rating System (Issued by the Federal Financial Institutions Examination Council; for availability contact the Federal Housing Finance Board, FOIA Office, 1777 F Street, NW., Washington, DC 20006.), including a CAMEL rating, a MACRO rating, or other similar rating, contained in a written regulatory examination report.

(k) *Dwelling unit* means a single room or a unified combination of rooms designed for residential use.

(l) *Enforcement action* means any written notice, directive, order or agreement initiated by an applicant for Bank membership or by its primary regulator or appropriate state regulator to address any operational, financial, managerial or other deficiencies of the applicant identified by such regulator, but does not include a board of directors resolution adopted by the applicant in response to examination weaknesses identified by such regulator.

(m) *Funded residential construction loan* means the portion of a loan secured by real property made to finance the on-site construction of dwelling units on one-to-four family property or multifamily property disbursed to the borrower.

(n) *Home mortgage loan* means:

(1) A loan, whether or not fully amortizing, or an interest in such a loan, which is secured by a mortgage, deed of trust, or other security agreement that creates a first lien on one of the following interests in property:

(i) One-to-four family property or multifamily property, in fee simple;

(ii) A leasehold on one-to-four family property or multifamily property under a lease of not less than 99 years that is renewable, or under a lease having a period of not less than 50 years to run from the date the mortgage was executed; or

(iii) Combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property; or

(2) A mortgage pass-through security that represents an undivided ownership interest in:

(i) Long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (n)(1) of this section; or

(ii) A security that represents an undivided ownership interest in long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (n)(1) of this section.

(o) *Institutions which are eligible to make application to become members* means, for purposes of 12 U.S.C. 1431(e)(2)(A), any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution, regardless of whether the institution applies for or would be approved for membership.

(p) *Insured depository institution* means an insured depository institution as defined in 12 U.S.C. 1422(12).

(q) *Long-term* means a term to maturity of five years or greater.

(r) *Manufactured housing* means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

(s) *Member* means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.20 or 933.25 of this part.

(t) *Multifamily property* means:

(1) Real property that is solely residential and includes five or more dwelling units; or

(2) Real property that includes five or more dwelling units combined with commercial units, provided that the property is primarily residential; or

(3) Nursing homes, dormitories, or homes for the elderly.

(u) *Nonperforming loans, leases and securities* means the sum of the following, reported on a regulatory financial report: loans, leases and debt securities that have been past due for 90 days (60 days in the case of credit union applicants) or longer but are still accruing; loans, leases and debt securities on a nonaccrual basis; and restructured loans and leases (not already reported as nonperforming).

(v) *Nonresidential real property* means real property that is not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institution buildings or facilities, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property.

(w) *One-to-four family property* means:

(1) Real property that is solely residential, including one-to-four family dwelling units or more than four family dwelling units if each dwelling unit is separated from the other dwelling units by dividing walls that extend from ground to roof, such as row houses, townhouses or similar types of property;

(2) Manufactured housing if applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property which includes one-to-four family dwelling units combined with commercial units, provided the property is primarily residential.

(x) *Performing loans, leases and securities* means loans, leases and debt securities, reported on a regulatory financial report, that do not meet the definition of ''nonperforming loans, leases and securities,'' as provided in paragraph (u) of this section.

(y) *Primary regulator* means the chartering authority for federally-chartered applicants, the insuring authority for federally-insured applicants that are not federally-chartered, or the appropriate state regulator for all other applicants.

(z) *Regulatory examination report* means a written report of examination prepared by the applicant's primary regulator or appropriate state regulator, containing, in the case of insured depository institution applicants, a composite rating assigned to the institution following the guidelines of the Uniform Financial Institutions Rating System, including a CAMEL rating, a MACRO rating, or other similar rating.

(aa) *Regulatory financial report* means a financial report that an applicant is required to file with its primary regulator on a specific periodic basis, including the quarterly call report for commercial banks, thrift financial report for savings associations, quarterly or semi-annual call report for credit unions, the National Association of Insurance Commissioners' annual or quarterly report for insurance companies, or other similar report, including such report maintained by the primary regulator on a computer on-line database.

(bb) *Residential mortgage loan* means any one of the following types of loans, whether or not fully amortizing:

(1) Home mortgage loans;

(2) Funded residential construction loans;

(3) Loans secured by manufactured housing whether or not defined by state law as secured by an interest in real property;

(4) Loans secured by junior liens on one-to-four family property or multifamily property;

(5) Mortgage pass-through securities representing an undivided ownership interest in:

(i) Loans that meet the requirements of paragraphs (bb) (1) through (4) of this section at the time of issuance of the security;

(ii) Securities representing an undivided ownership interest in loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraphs (bb) (1) through (4) of this section; or

(iii) Mortgage debt securities as defined in paragraph (bb)(6) of this section;

(6) Mortgage debt securities secured by:

(i) Loans, provided that, at the time of issuance of the security, substantially all of the loans meet the requirements of paragraphs (bb) (1) through (4) of this section;

(ii) Securities that meet the requirements of paragraph (bb)(5) of this section; or

(iii) Securities secured by assets, provided that, at the time of issuance of the security, all of the assets meet the requirements of paragraphs (bb) (1) through (5) of this section; or

(7) Home mortgage loans secured by a leasehold interest, as defined in paragraph (n)(1)(ii) of this section, except that the period of the lease term may be for any duration.

(cc) *State* means a State of the United States, the District of Columbia, Guam, Puerto Rico or the U.S. Virgin Islands.

(dd) *Total assets* means the total assets reported on a regulatory financial report.

7. Subpart B of part 933 is revised to read as follows:

Subpart B—Membership Application Process

§ 933.2 Membership application requirements.

(a) *Application.* An applicant for membership in a Bank shall submit to that Bank an application that satisfies the requirements of this part. The application shall include a written resolution or certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, of the following:

(1) *Applicant review.* Applicant has reviewed the requirements of this part

and, as required by this part, has provided to the best of applicant's knowledge the most recent, accurate and complete information available; and

(2) *Duty to supplement.* Applicant will promptly supplement the application with any relevant information that comes to applicant's attention prior to the Bank's decision on whether to approve or deny the application, and if the Bank's decision is appealed pursuant to § 933.5 of this part, prior to resolution of any appeal by the Board.

(b) *Digest.* The Bank shall prepare a written digest for each applicant stating whether or not the applicant meets each of the requirements in §§ 933.6 to 933.18 of this part, the Bank's findings and the reasons therefor.

(c) *File.* The Bank shall maintain a membership file for each applicant for at least three years after the Bank decides whether to approve or deny membership and the resolution of any appeal to the Board. The membership file shall contain at a minimum:

(1) *Digest.* The digest required by paragraph (b) of this section.

(2) *Required documents.* All documents required by §§ 933.6 to 933.18 of this part, including those documents required to establish or rebut a presumption under this part, shall be described in and attached to the digest. The Bank may retain in the file only the relevant portions of the regulatory financial reports required by this part. If an applicant's primary regulator or appropriate state regulator requires return or destruction of a regulatory examination report, the date that the report is returned or destroyed shall be noted in the file.

(3) *Additional documents.* Any additional document submitted by the applicant, or otherwise obtained or generated by the Bank, concerning the applicant.

(4) *Decision resolution.* The decision resolution described in § 933.3(b) of this part.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

§ 933.3 Decision on application.

(a) *Authority.* The Board authorizes the Banks to approve or deny all applications for membership, subject to the requirements of this part. The Bank may delegate the authority to approve membership applications only to a committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development.

(b) *Decision resolution.* For each applicant, the Bank shall prepare a written resolution duly adopted by the Bank's board of directors, by a committee of the board of directors, or by an officer with delegated authority to approve membership applications. The decision resolution shall state:

(1) That the statements in the digest are accurate to the best of the Bank's knowledge, and are based on a diligent and comprehensive review of all available information identified in the digest; and

(2) The Bank's decision and the reasons therefor. Decisions to approve an application should state specifically that: the applicant is authorized under the laws of the United States and the laws of the appropriate state to become a member of, purchase stock in, do business with, and maintain deposits in, the Bank to which the applicant has applied; and the applicant meets all of the membership eligibility criteria of the Act and this part.

(c) *Action on applications.* The Bank shall act on an application within 60 calendar days of the date the Bank deems the application to be complete. An application is ''complete'' when a Bank has obtained all the information required by this part, and any other information the Bank deems necessary, to process the application. If an application that was deemed complete subsequently is deemed incomplete because the Bank determines during the review process that additional information is necessary to process the application, the Bank may stop the 60-day clock until the application again is deemed complete, and then resume the clock where it left off. The Bank shall notify an applicant when its application is deemed by the Bank to be complete. The Bank also shall notify an applicant if the 60-day clock is stopped, and when the clock is resumed. Within three business days of a Bank's decision on an application, the Bank shall provide the applicant and the Board's Executive Secretary with a copy of the Bank's decision resolution.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

§ 933.4 Automatic membership.

(a) *Automatic membership for mandatory members.* Any institution required by law to become a member of a Bank automatically shall become a member of the Bank of the district in which its principal place of business is located upon the purchase of stock in that Bank pursuant to § 933.20(b)(1) of this part.

(b) *Automatic membership for certain charter conversions.* An insured depository institution member that converts from one charter type to another automatically shall become a member of the Bank of which the converting institution was a member on the effective date of such conversion, provided that the converting institution continues to be an insured depository institution and the assets of the institution immediately before and immediately after the conversion are not materially different. In such case, all relationships existing between the member and the Bank at the time of such conversion may continue.

(c) *Automatic membership for transfers.* Any member whose membership is transferred pursuant to § 933.18(d) of this part automatically shall become a member of the Bank to which it transfers.

§ 933.5 Appeals.

(a) *Appeals by applicants*—(1) *Filing procedure.* Within 90 calendar days of the date of a Bank's decision to deny an application for membership, the applicant may file a written appeal of the decision with the Board.

(2) *Documents.* The applicant's appeal shall be addressed to the Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, with a copy to the Bank, and shall include the following documents:

(i) *Bank's decision resolution.* A copy of the Bank's decision resolution; and

(ii) *Basis for appeal.* A statement of the basis for the appeal by the applicant with sufficient facts, information, analysis and explanation to rebut any applicable presumptions and otherwise support the applicant's position.

(b) *Record for appeal*—(1) *Copy of membership file.* Upon receiving a copy of an appeal, the Bank whose action has been appealed (appellee Bank) shall provide the Board with a copy of the applicant's complete membership file. Until the Board resolves the appeal, the appellee Bank shall supplement the materials provided to the Board as any new materials are received.

(2) *Additional information.* The Board may request additional information or further supporting arguments from the appellant, the appellee Bank or any other party that the Board deems appropriate.

(c) *Deciding appeals.* The Board shall consider the record for appeal described in paragraph (b) of this section and shall resolve the appeal based on the requirements of the Act and this part within 90 calendar days of the date the appeal is filed with the Board. In deciding the appeal, the Board shall

apply the presumptions in this part, unless the appellant or appellee Bank presents evidence to rebut a presumption as provided in § 933.17 of this part.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

8. Subpart C is added to part 933 to read as follows:

Subpart C—Eligibility Requirements

§ 933.6 General eligibility requirements.

(a) *Requirements.* Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or insured depository institution, upon application satisfying all of the requirements of the Act and this part, shall be eligible to become a member of a Bank if:

(1) It is duly organized under the laws of any State or of the United States;

(2) It is subject to inspection and regulation under the banking laws, or under similar laws, of any State or of the United States;

(3) It makes long-term home mortgage loans;

(4) Its financial condition is such that advances may be safely made to it;

(5) The character of its management is consistent with sound and economical home financing; and

(6) Its home financing policy is consistent with sound and economical home financing.

(b) *Additional eligibility requirement for insured depository institutions.* In order to be eligible to become a member of a Bank, an insured depository institution applicant also must have at least 10 percent of its total assets in residential mortgage loans.

(c) *Additional eligibility requirement for applicants that are not insured depository institutions.* In order to be eligible to become a member of a Bank, an applicant that is not an insured depository institution also must have mortgage-related assets that reflect a commitment to housing finance, as determined by the Bank in its discretion.

(d) *Ineligibility.* Except as otherwise provided in this part, if an applicant does not satisfy the requirements of this part, the applicant is ineligible for membership.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

§ 933.7 Duly organized requirement.

An applicant shall be deemed to be duly organized as required by section 4(a)(1)(A) of the Act and § 933.6(a)(1) of this part, if it is chartered by a state or federal agency as a building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank or insured depository institution.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

§ 933.8 Subject to inspection and regulation requirement.

An applicant shall be deemed to be subject to inspection and regulation as required by section 4(a)(1)(B) of the Act and § 933.6(a)(2) of this part, if, in the case of a depository institution applicant, it is subject to inspection and regulation by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or other appropriate state regulator, and, in the case of an insurance company applicant, it is subject to inspection and regulation by an appropriate state regulator accredited by the National Association of Insurance Commissioners.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

§ 933.9 Makes long-term home mortgage loans requirement.

An applicant shall be deemed to make long-term home mortgage loans as required by section 4(a)(1)(C) of the Act and § 933.6(a)(3) of this part, if, based on the applicant's most recent regulatory financial report filed with its primary regulator, the applicant originates or purchases long-term home mortgage loans.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

§ 933.10 10 percent requirement for insured depository institution applicants.

An insured depository institution applicant shall be deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Act and § 933.6(b) of this part, if, based on the applicant's most recent regulatory financial report filed with its primary regulator, the applicant has at least 10 percent of its total assets in residential mortgage loans, except that any assets used to secure mortgage debt securities as described in § 933.1(bb)(6) of this part shall not be used to meet this requirement.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

§ 933.11 Financial condition requirement for applicants other than insurance companies.

(a) *Review requirement.* In determining whether an applicant other than an insurance company has complied with the financial condition requirement of section 4(a)(2)(B) of the Act and § 933.6(a)(4) of this part, the Bank shall obtain as a part of the membership application and review each of the following documents:

(1) *Regulatory financial reports.* The regulatory financial reports filed by the applicant with its primary regulator for the last six calendar quarters and three year-ends preceding the date the Bank receives the application;

(2) *Financial statement.* In order of preference: the most recent independent audit of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the applicant; the most recent independent audit of the applicant's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company but not on the applicant separately; the most recent Directors' examination of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm; the most recent Directors' examination of the applicant performed by other external auditors; the most recent review of the applicant's financial statements by external auditors; the most recent Compilation of the applicant's financial statements by external auditors; or the most recent audit of other procedures of the applicant;

(3) *Regulatory examination report.* The applicant's most recent available regulatory examination report prepared by its primary regulator or appropriate state regulator, a summary prepared by the Bank of the applicant's strengths and weaknesses as cited in the regulatory examination report, and a summary prepared by the Bank or applicant of actions taken by the applicant to respond to examination weaknesses;

(4) *Enforcement actions.* A description prepared by the Bank or applicant of any outstanding enforcement actions against the applicant, responses by the applicant, reports as required by the enforcement

action, and verbal or written indications, if available, from the primary regulator or appropriate state regulator, whichever is applicable, of how the applicant is complying with the terms of the enforcement action; and

(5) *Additional information.* Any other relevant document or information concerning the applicant that comes to the Bank's attention in reviewing the applicant's financial condition.

(b) *Standards.* An applicant other than an insurance company shall be deemed to be in compliance with the financial condition requirement of section 4(a)(2)(B) of the Act and § 933.6(a)(4) of this part, if:

(1) *Recent composite regulatory examination rating.* The applicant has received a composite regulatory examination rating from its primary regulator or appropriate state regulator within two years preceding the date the Bank receives the application;

(2) *Capital requirement.* The applicant meets all of its minimum statutory and regulatory capital requirements as reported in its most recent quarter-end regulatory financial report filed with its primary regulator; and

(3) *Minimum performance standard.* (i) The applicant's most recent composite regulatory examination rating from its primary regulatory or appropriate state regulator within the past two years was ''1;'' or, was ''2'' or ''3'' and, based on the applicant's most recent regulatory financial report filed with its primary regulator, the applicant satisfied all of the following performance trend criteria:

(A) *Earnings.* The applicant's adjusted net income was positive in four of the six most recent calendar quarters;

(B) *Nonperforming assets.* The applicant's nonperforming loans, leases and securities plus foreclosed and repossessed real estate, did not exceed 10 percent of its performing loans, leases and securities plus foreclosed and repossessed real estate, in the most recent calendar quarter; and

(C) *Allowance for loan and lease losses.* The applicant's ratio of its allowance for loan and lease losses to nonperforming loans, leases and securities was 60 percent or greater during 4 of the 6 most recent calendar quarters.

(ii) For applicants that are not required to report financial data to their primary regulator on a quarterly basis, the information required in paragraph (b)(3)(i) of this section may be reported on a semiannual basis.

(c) *Eligible collateral not considered.* The availability of sufficient eligible collateral to secure advances to the applicant is presumed and shall not be considered in determining whether an applicant is in the financial condition required by section 4(a)(2)(B) of the Act and § 933.6(a)(4) of this part.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

§ 933.12 Character of management requirement.

An applicant shall be deemed to be in compliance with the character of management requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(5) of this part, if the applicant provides to the Bank an unqualified written certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, that:

(a) *Enforcement actions.* Neither the applicant nor any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its primary regulator or appropriate state regulator;

(b) *Criminal, civil or administrative proceedings.* Neither the applicant nor any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report; and

(c) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* There are no known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report, that are significant to the applicant's operations.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

§ 933.13 Home financing policy requirement.

(a) *Standard.* An applicant shall be deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(6) of this part, if the applicant has received a Community Reinvestment Act (CRA) rating of ''Satisfactory'' or better on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation.

(b) *Written justification required.* An applicant that is not subject to the CRA shall file as part of its application for membership a written justification acceptable to the Bank of how and why the applicant's home financing policy is consistent with the Bank System's housing finance mission.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

§ 933.14 De novo insured depository institution applicants.

(a) *Newly chartered applicants that have not commenced operations*—(1) *Duly organized, subject to inspection and regulation, financial condition and character of management requirements.* An insured depository institution applicant that is newly chartered and has not yet commenced operations, is deemed to meet the requirements of §§ 933.7, 933.8, 933.11 and 933.12 of this part.

(2) *Makes long-term home mortgage loans requirement.* The applicant shall be deemed to make long-term home mortgage loans as required by § 933.9 of this part, if it has filed as part of its application for membership a written justification acceptable to the Bank of how its home financing credit policy and lending practices will include originating or purchasing long-term home mortgage loans.

(3) *10 percent requirement.* The applicant shall have until one year after commencing its initial business operations to meet the 10 percent requirement of § 933.10 of this part.

(4) *Home financing policy requirement*—(i) *Conditional approval.* An applicant that has not received its first formal, or if unavailable, informal or preliminary, Community Reinvestment Act (CRA) performance evaluation, shall be conditionally deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(6) of this part, if the applicant has filed as part of its application for membership a written justification acceptable to the Bank of how and why its home financing credit policy and lending practices will meet the credit needs of its community. An applicant that receives such conditional membership approval is subject to the stock purchase requirements of § 933.20 of this part and the advances provisions of 12 CFR part 935.

(ii) *Approval.* The applicant shall be deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(6) of this part upon receipt by the Bank of evidence from the applicant that it received a CRA rating of ''Satisfactory'' or better on its first

formal, or if unavailable, informal or preliminary, CRA performance evaluation.

(iii) *Conditional approval deemed null and void.* If the applicant's first such CRA rating is ''Needs to Improve'' or ''Substantial Non-Compliance,'' the applicant shall be deemed to be in noncompliance with the home financing policy requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(6) of this part, subject to rebuttal by the applicant under § 933.17(f) of this part, and its conditional membership approval is deemed null and void.

(iv) *Treatment of outstanding advances and Bank stock.* If the applicant's conditional membership approval is deemed null and void pursuant to paragraph (a)(4)(iii) of this section, the liquidation of any outstanding indebtedness owed by the applicant to the Bank and redemption of stock of such Bank shall be carried out in accordance with § 933.29 of this part.

(b) *Newly chartered applicants that have recently commenced operations.* An insured depository institution applicant that is newly chartered and has commenced operations, is subject to the requirements of §§ 933.7 to 933.13 of this part except as provided in this paragraph (b).

(1) *10 percent requirement.* The applicant shall have until one year after commencing its initial business operations to meet the 10 percent requirement of § 933.10 of this part.

(2) *Financial condition requirement.* (i) *Regulatory financial reports.* For purposes of § 933.11(a)(1) of this part, if the applicant has not yet filed regulatory financial reports with its primary regulator for the last six calendar quarters and three year-ends preceding the date the Bank receives the application, the applicant shall provide any regulatory financial reports that it has filed with its primary regulator.

(ii) *Recent composite regulatory examination rating.* For purposes of § 933.11(b)(1) and (3) of this part, if the applicant has not yet received a composite regulatory examination rating from its primary regulator or appropriate state regulator, the applicant shall provide a preliminary or informal, written composite regulatory examination rating, if available, from its primary regulator or appropriate state regulator.

(iii) *Performance trend criteria.* If the applicant has not yet filed regulatory financial reports with its primary regulator for the last six calendar quarters preceding the date the Bank receives its application for membership, the applicant need not meet the performance trend criteria in § 933.11(b)(3)(i)(A) to (C) of this part, if:

(A) *Reports for three quarters.* The applicant has filed regulatory financial reports with its primary regulator for at least three calendar quarters of operation; and

(B) *Business plan compliance.* The Bank determines that the applicant is in substantial compliance with the terms of its regulatory business plan.

(3) *Home financing policy requirement.* For purposes of § 933.13 of this part, an applicant that has not received its first formal, or if unavailable, informal or preliminary, CRA performance evaluation, is subject to the home financing policy requirements of paragraph (a)(4) of this section.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

§ 933.15 Recent merger or acquisition applicants.

An applicant that merged with or acquired another institution prior to the date the Bank receives its application for membership is subject to the requirements of §§ 933.7 to 933.13 of this part except as provided in this section.

(a) *Financial condition requirement*—(i) *Regulatory financial reports.* For purposes of § 933.11(a)(1) of this part, an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed regulatory financial reports with its primary regulator for the last six calendar quarters and three year-ends preceding such date, shall provide any regulatory financial reports that the applicant has filed with its primary regulator.

(ii) *Performance trend criteria.* For purposes of § 933.11(b)(3)(i)(A) to (C) of this part, an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed combined regulatory financial reports with its primary regulator for the last six calendar quarters preceding such date, shall provide pro forma combined financial statements for those calendar quarters in which actual combined regulatory financial reports are unavailable.

(b) *Home financing policy requirement.* For purposes of § 933.13 of this part, an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not received its first formal, or if unavailable, informal or preliminary, Community Reinvestment Act performance evaluation, shall file as part of its application a written justification acceptable to the Bank of how and why the applicant's home financing credit policy and lending practices will meet the credit needs of its community.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

§ 933.16 Financial condition requirement for insurance company applicants.

An insurance company applicant shall be deemed to meet the financial condition requirement of section 4(a)(2)(B) of the Act and § 933.6(a)(4) of this part, if, based on the information contained in the applicant's most recent regulatory financial report filed with its primary regulator, the applicant meets all of its minimum statutory and regulatory capital requirements and the capital standards established by the National Association of Insurance Commissioners.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

§ 933.17 Rebuttable presumptions.

(a) *Rebutting presumptive compliance.* The presumption that an applicant meeting the requirements of §§ 933.7 to 933.16 of this part is in compliance with section 4(a) of the Act and § 933.6 (a) and (b) of this part, may be rebutted, and the Bank may deny membership to the applicant, if the Bank obtains substantial evidence to overcome the presumption of compliance.

(b) *Rebutting presumptive noncompliance.* The presumption that an applicant not meeting a particular requirement of §§ 933.8, 933.11, 933.12, 933.13, or 933.16 of this part is in noncompliance with section 4(a) of the Act and § 933.6(a) (2), (4), (5) or (6) of this part, may be rebutted, and the applicant shall be deemed to meet such requirement, if the applicable requirements in this section are satisfied.

(c) *Presumptive noncompliance by insurance company applicant with ''subject to inspection and regulation'' requirement of § 933.8.* If an insurance company applicant is not subject to inspection and regulation by an appropriate state regulator accredited by the National Association of Insurance Commissioners (NAIC), as required by § 933.8 of this part, the applicant or the Bank shall prepare a written justification that provides substantial evidence acceptable to the Bank that the

applicant is subject to inspection and regulation as required by § 933.6(a)(2) of this part, notwithstanding the lack of NAIC accreditation.

(d) *Presumptive noncompliance with financial condition requirements of §§ 933.11 and 933.16*—(1) *Applicants other than insurance companies.* For applicants other than insurance companies, in the case of an applicant's lack of a composite regulatory examination rating within the two-year period required by § 933.11(b)(1) of this part, a variance from the rating required by § 933.11(b)(3)(i) of this part, or a variance from a performance trend criterion required by § 933.11(b)(3)(i) of this part, the applicant or the Bank shall prepare a written justification pertaining to such requirement that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 933.6(a)(4) of this part, notwithstanding the lack of rating or variance.

(2) *Insurance company applicants.* In the case of an insurance company applicant's variance from a capital requirement or standard of § 933.16 of this part, the applicant or the Bank shall prepare a written justification pertaining to such requirement or standard that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 933.6(a)(4) of this part, notwithstanding the variance.

(e) *Presumptive noncompliance with character of management requirement of § 933.12*—(1) *Enforcement actions.* If an applicant or any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its primary regulator or appropriate state regulator, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's primary regulator or appropriate state regulator, whichever is applicable, that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action. The written analysis shall state each action the applicant or its directors or senior officers are required to take by the enforcement action, the actions actually taken by the applicant or its directors or senior officers, and whether the applicant regards this as substantial compliance with all aspects of the enforcement action.

(2) *Criminal, civil or administrative proceedings.* If an applicant or any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's primary regulator or appropriate state regulator that the proceedings will not likely result in enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the proceedings will not likely result in enforcement action. The written analysis shall state the severity of the charges, and any mitigating action taken by the applicant or its directors or senior officers.

(3) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* If there are any known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report, that are significant to the applicant's operations, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's primary regulator or appropriate state regulator that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in §§ 933.11(b)(2) and 933.16 of this part; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in §§ 933.11(b)(2) and 933.16 of this part. The written analysis shall state the likelihood of the applicant or its directors or senior officers prevailing, and the financial consequences if the applicant or its directors or senior officers do not prevail.

(f) *Presumptive noncompliance with home financing policy requirements of §§ 933.13, 933.14(a)(4), and 933.14(b)(3).* If an applicant received a ''Substantial Non-Compliance'' rating on its most recent formal, or if unavailable, informal or preliminary, Community Reinvestment Act (CRA) performance evaluation, or a ''Needs to Improve'' CRA rating on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation and a CRA rating of ''Needs to Improve'' or better on any immediately preceding CRA performance evaluation, the applicant shall provide or the Bank shall obtain:

(1) *Regulator confirmation.* Written or verbal confirmation from the applicant's primary regulator of the applicant's recent satisfactory CRA performance, including any corrective action that substantially improved upon the deficiencies cited in the most recent CRA performance evaluation(s); or

(2) *Written analysis.* A written analysis acceptable to the Bank demonstrating that the CRA rating is unrelated to home financing, and providing substantial evidence of how and why the applicant's home financing credit policy and lending practices meet the credit needs of its community.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

§ 933.18 Determination of appropriate Bank district for membership.

(a) *Eligibility.* (1) An institution eligible to become a member of a Bank under the Act and this part may become a member only of the Bank of the district in which the institution's principal place of business is located, except as provided in paragraph (a)(2) of this section.

(2) An institution eligible to become a member of a Bank under the Act and this part may become a member of the Bank of a district adjoining the district in which the institution's principal place of business is located, if demanded by convenience and then only with the approval of the Board.

(b) *Principal place of business.* Except as otherwise designated in accordance with this section, the principal place of business of an institution is the state in which the institution maintains its home office established as such in conformity with the laws under which the institution is organized.

(c) *Designation of principal place of business.* (1) A member or an applicant for membership may request in writing to the Bank in the district where the institution maintains its home office that a state other than the state in which it maintains its home office be designated as its principal place of business. Within 90 calendar days of receipt of such written request, the board of directors of the Bank in the district where the institution maintains its home office shall designate a state other than the state where the

institution maintains its home office as the institution's principal place of business, provided all of the following criteria are satisfied:

(i) At least 80 percent of the institution's accounting books, records and ledgers are maintained, located or held in such designated state;

(ii) A majority of meetings of the institution's board of directors and constituent committees are conducted in such designated state; and

(iii) A majority of the institution's five highest paid officers have their place of employment located in such designated state.

(2) Written notice of a designation made pursuant to paragraph (c)(1) of this section shall be sent to the Bank in the district containing the designated state, the Board and the institution.

(3) The notice of designation made pursuant to paragraph (c)(1) of this section shall include the state designated as the principal place of business and the resulting Bank to which membership will be transferred.

(4) If the board of directors of the Bank in the district where the institution maintains its home office fails to make the designation requested by the member or applicant pursuant to paragraph (c)(1) of this section, then the member or applicant may request in writing that the Board make the designation.

(d) *Transfer of membership.* (1) No transfer of membership from one Bank to another Bank shall take effect until the Banks involved reach agreement on a method of orderly transfer.

(2) In the event that the Banks involved fail to agree on a method of orderly transfer, the Board shall determine the conditions under which the transfer shall take place.

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes including directorial representation under section 7(c) of the Act, 12 U.S.C. 1427(c), and § 932.11 of this chapter, but shall not be subject to the provisions on termination of membership set forth in section 6 of the Act, 12 U.S.C. 1426, or §§ 933.26, 933.27 and 933.29 of this part, including the restriction on reacquiring Bank membership set forth in § 933.30 of this part.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004.)

9. In the list below, for each newly designated section indicated in the left column, remove the reference indicated in the middle column from where it appears and add the reference indicated in the right column:

Section	Remove	Add
933.20(b)(1)	§§ 933.2(c) or 933.3, § 933.2(d)	§ 933.3, § 933.4(a).
933.20(b)(2)	§ 933.2(d)	§ 933.4(a).
933.22(b)(1)	§ 933.7(a), § 933.18(d)	§ 933.20(a), § 933.31(d).
933.23	§ 933.7(a)	§ 933.20(a).
933.24(a)(2)	§ 933.7(a)	§ 933.20(a).
933.24(b)(2)	§ 933.16	§ 933.29.
933.25(c)	§ 933.2	Subpart B.
933.25(d)(2) (ii) (A) and (B), and (iii)	§ 933.7(a)	§ 933.20(a).
933.25(d)(3)	§ 933.16	§ 933.29.
933.26(c)	§ 933.16	§ 933.29.
933.27(e)	§ 933.16	§ 933.29.
933.28(b)	§ 933.16	§ 933.29.
933.29(a)(1)	§§ 933.13, 933.14 or 933.15, § 933.15, §§ 933.11(b), or 933.12(d)(3).	§§ 933.26, 933.27 or 933.28, § 933.28, §§ 933.24(b) or 933.25(d)(3).
933.30 introductory text	§ 933.13	§ 933.26.
933.30(a)	§ 933.5	§ 933.18.
933.30(b)	§ 933.2(d)	§ 933.4(a).
933.31(d)	§ 933.9(b)(1)	§ 933.22(b)(1).

Dated: August 2, 1996.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 96–20487 Filed 8–15–96; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–10–AD; Amendment 39–9663; AD 96–12–20]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model 382, 382B, 382E, 382F, and 382G Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information that appeared in airworthiness directive (AD) 96–12–20, amendment 39–9663, that was published in the Federal Register on June 10, 1996 (61 FR 29279). This AD is applicable to certain Lockheed Model 382, 382B, 382E, 382F, and 382G series airplanes. Among other things, it requires visual inspections to detect loose, missing, or deformed fasteners in the upper truss mounts of certain engines. This action corrects a reference to the outboard and inboard engines, which should have referred to the outboard and inboard truss mounts.

DATES: Effective July 15, 1996.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of July 15, 1996 (61 FR 29279, June 10, 1996).

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, ACE–116A, Flight Test Branch, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, Suite 2–160, 1701 Columbia Avenue, College Park, Georgia 30337–

2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: On June 3, 1996, the FAA issued AD 96–12–20, amendment 39–9663; (61 FR 29279, June 10, 1996), to require visual inspections to detect loose, missing, or deformed fasteners in the upper truss mounts of certain engines, inspections to detect cracking in the associated tangs, and replacement of cracked parts. That AD also requires repetitive ultrasonic inspections of the upper tang and replacement of cracked parts. Additionally, that AD provides an optional terminating action for the repetitive inspections.

As published, paragraph (d)(2) of that AD refers to ''truss mounts in the No. 1 outboard engine'' and refers to ''truss mounts of the No. 4 inboard engine.'' However, the correct references should have been to ''outboard truss mounts of the No. 1 engine'' and ''inboard truss mounts of the No. 4 engine.'' In all other respects, as well as in other references to these items in the AD, the originally-issued AD is correct.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of the AD remains July 15, 1996.

Accordingly, the final rule document (FR Doc. 96–14383), which was published on June 10, 1996, at 61 FR 29279, is corrected as follows:

Sec. 39.13 [Corrected]

On page 29282, in the first column, the text of paragraph (d)(2) of AD 96–12–20, amendment 39–9663, is corrected to read as follows:

* * * * *

(d) * * *

(1) * * *

(2) Replace the truss mount assembly with part number 360013–31 or subsequent (for the outboard truss mounts of the No. 1 engine), or part number 360017–31 or subsequent (for the inboard truss mounts of the No. 4 engine), as applicable, in accordance with SMP 583. Such replacement constitutes terminating action for the requirements of this AD.

* * * * *

Issued in Renton, Washington, on August 9, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–20872 Filed 8–15–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 73

[Airspace Docket No. 96–ASW–16]

RIN 2120–AA66

Changes to Restricted Areas R–6302A, B, C, D, and E, Fort Hood, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the internal boundary of Restricted Area 6302 (R–6302), Fort Hood, Texas (TX). Specifically, subareas R–6302C and R–6302D are realigned to better accommodate training requirements while simultaneously providing airspace for instrument approaches to Runway 15, Gray Army Air Field (AAF), TX. Additionally, the using agency for all subareas of R–6302 will be standardized to read: ''U.S. Army, Commander, III Corps, Fort Hood, TX.''

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Steve Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

In the early 1960's, R–6302 was established as a gunnery range for the U.S. Army. Since its establishment, many refinements have been made to the restricted area to reflect changing requirements as well as administrative changes. The latest refinement occurred on July 20, 1995, when the FAA published a final rule (60 FR 37331), redefining the vertical limits of R–6302B and the horizontal limits of R–6302E. These changes, effective September 14, 1995, were instituted as part of the Dallas/Fort Worth Metroplex Plan.

As a result of a recent review of R–6302 airspace, the U.S. Army requested that the FAA take action to change the boundary separating two subareas in R–6302 to enhance traffic management and increase the efficiency of the airspace contained in R–6302. Currently, participating aircraft operating within R–6302D also use R–6302C; however, only the northwest corner of R–6302C is normally used for this training. When R–6302C is active, aircraft cannot conduct instrument approaches to Runway 15 at Gray AAF because the airspace contained in R–6302C is required for the approach. This action incorporates the northwestern corner of R–6302C into R–6302D, allowing both military training in R–6302D and sufficient airspace for instrument approaches to Gray AAF to occur simultaneously. Additionally, the U.S. Army requested that the using agency for R–6302 be changed to reflect the current chain-of-command at Fort Hood, TX.

The Rule

This rule amends Title 14 of the Code of Federal Regulations part 73 (14 CFR part 73) by redefining the boundary separating R–6302C and R–6302D to enable more efficient use of airspace. Additionally, the using agency for all subareas of R–6302 will read: ''U.S. Army, Commander, III Corps, Fort Hood, TX.''

Since this action simply redefines the subdivision of an existing restricted area and amends the published using agency, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. This amendment will not change the external boundary of, or activities within, R–6302. The coordinates for this airspace docket are based on North American Datum 83. Section 73.63 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8C dated June 29, 1995.

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. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action redefines the internal boundary separating R–6302C and R–6302D to enable more efficient use of airspace, and amends the published using agency. There are no changes to air traffic control procedures or routes as a result of this action. Additionally, this action does not change the external boundary of, or the activities conducted within, the restricted airspace.

Therefore, this action is not subject to environmental assessments and procedures under FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 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.

§ 73.63 [Amended]

2. Section 73.63 is amended as follows:

R–6302A Fort Hood, TX [Amended]

By removing the current using agency and substituting the following: Using agency. U.S. Army, Commander, III Corps, Fort Hood, TX.

R–6302B Fort Hood, TX [Amended]

By removing the current using agency and substituting the following: Using agency. U.S. Army, Commander, III Corps, Fort Hood, TX.

R–6302C Fort Hood, TX [Amended]

By removing the current boundaries and using agency and substituting the following:

Boundaries. Beginning at lat. 31°09′01″N., long. 97°45′01″W.; to lat. 31°09′01″N., long. 97°55′01″W.; to lat. 31°16′01″N., long. 97°54′01″W.; to lat. 31°14′15″N., long. 97°50′33″W.; to lat. 31°10′01″N., long. 97°48′01″W.; to the point of beginning.

Using agency. U.S. Army, Commander, III Corps, Fort Hood, TX.

R–6302D, Fort Hood, TX [Amended]

By removing the current boundaries and using agency and substituting the following:

Boundaries. Beginning at lat. 31°14′15″N., long. 97°50′33″W.; to lat. 31°16′01″N., long. 97°54′01″W.; to lat. 31°19′01″N., long. 97°51′01″W.; to lat. 31°24′01″N., long. 97°48′01″W.; to lat. 31°23′01″N., long. 97°43′01″W.; to lat. 31°22′08″N., long. 97°41′56″W.; to lat. 31°22′09″N., long. 97°43′27″W.; to lat. 31°20′00″N., long. 97°45′23″W.; to lat. 31°18′23″N., long. 97°45′43″W.; to lat. 31°18′25″N., long. 97°48′48″W.; to the point of beginning.

Using agency. U.S. Army, Commander, III Corps, Fort Hood, TX.

R–6302E, Fort Hood, TX [Amended]

By removing the current using agency and substituting the following:

Using agency. U.S. Army, Commander, III Corps, Fort Hood, TX.

Issued in Washington, DC, on August 8, 1996.

Jeff Griffith,

Program Director for Air Traffic Airspace Management.

[FR Doc. 96–20970 Filed 8–15–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 97

[Docket No. 28659; Amdt. No. 1747]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by references-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the

conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on August 9, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Oct 10, 1996*

Kodiak, AK, Kodiak, VOR or TACAN or GPS–1 RWY 25, Amdt 5 Cancelled
Kodiak, AK, Kodiak, VOR or TACAN RWY 25, Amdt 5
St. Mary's, AK, St. Mary's NDB/DME or GPS RWY 16, Amdt 1A Cancelled
St. Mary's, AK, St. Mary's, NDB/DME RWY 16, Amdt 1A
St. Mary's, AK, St. Mary's, NDB or GPS RWY 34, Orig-A Cancelled
St. Mary's, AK, St. Mary's, NDB RWY 34, Orig-A
Holyoke, CO, Holyoke, NDB or GPS RWY 17, Amdt 1A Cancelled
Holyoke, CO, Holyoke, NDB RWY 17, Amdt 1A
Holyoke, CO, Holyoke, NDB or GPS RWY 35, Amdt 1A Cancelled
Holyoke, CO, Holyoke, NDB RWY 35, Amdt 1A
Dover/Cheswold, DE, Delaware Airpark, VOR or GPS RWY 27, Amdt 6 Cancelled
Dover/Cheswold, DE, Delaware Airpark, VOR RWY 27, Amdt 6
Canton, GA, Cherokee County, NDB or GPS RWY 4, Amdt 1 Cancelled
Canton, GA, Cherokee County, NDB RWY 4, Amdt 1
Erwin, NC, Harnett County, VOR/DME or GPS RWY 4, Amdt 1B Cancelled
Erwin, NC, Harnett County, VOR/DME RWY 4, Amdt 1B
Farmington, NM, Four Corners Regional, VOR or GPS RWY 25, Amdt 8A Cancelled
Farmington, NM, Four Corners Regional, VOR RWY 25, Amdt 8A
Hobbs, NM, Lea County (Hobbs), VOR or TACAN or GPS RWY 3, Amdt 20 Cancelled
Hobbs, NM, Lea County (Hobbs), VOR or TACAN RWY 3, Amdt 20
Martinsville, VA, Blue Ridge, NDB or GPS RWY 30, Amdt. 1 Cancelled
Martinsville, VA, Blue Ridge, NDB RWY 30, Amdt. 1

[FR Doc. 96–20972 Filed 08–15–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28657; Amdt. No. 1745]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service,

Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standards Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on August 9, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective September 12, 1996*

Los Angeles, CA, Los Angeles Intl, ILS RWY 25L, Amdt 4
Sandpoint, ID, Dave Wall Field, LOC/DME–A, Orig
Sioux City, IA, Sioux Gateway, NDB RWY 17, Orig
Kearney, NE, Kearney Muni, ILS RWY 36, Orig
Harlingen, TX, Rio Grande Valley Intl, VOR/DME OR TACAN RWY 31, orig
Harlingen, TX, Rio Grande Valley Intl, VOR/DME OR GPS RWY 31, Amdt 3, Cancelled
Salt Lake City, UT, Salt Lake City Intl, ILS RWY 34R, Orig
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 34R, Amdt 1B, Cancelled

** * * Effective October 10, 1996*

Dillingham, AK, Dillingham, MLS RWY 1, Orig
Brinkley, AR, Frank Federer Memorial, NDB OR GPS–A, Amdt 1
Brinkley, AR, Frank Federer Memorial, GPS RWY 20, Orig
Ontario, CA, Ontario Intl, ILS RWY 26L, Amdt 7
Kremmling, CO, Mc Elroy Airfield, GPS RWY 27, Orig
Cocoa, FL, Merritt Island, NDB–A, Orig, Cancelled
Baxley, GA, Baxley Muni, RNAV RWY 8, Amdt 3, Cancelled
Canton, GA, Cherokee County, GPS RWY 4, Orig
Independence, KS, Independence Muni, GPS RWY 17, Orig
Independence, KS, Independence Muni, GPS RWY 35, Orig
Mc Pherson, KS, Mc Pherson, GPS RWY 36, Orig
Springhill, LA, Springhill, NDB RWY 35, Orig
Springhill, LA, Springhill, NDB OR GPS RWY 17, Orig Cancelled
Plymouth, MA, Plymouth Muni, GPS RWY 6, Amdt 1
Corinth, MS, Roscoe Turner, NDB OR GPS RWY 17, Amdt 8, Cancelled
Corinth, MS, Roscoe Turner, NDB OR GPS RWY 35, Amdt 7, Cancelled
Manchester, NH, Manchester, GPS RWY 6, Orig
Readington, NJ, Solberg-Hunterdon, GPS RWY 4, Orig
Farmington, NM, Four Corners Regional, GPS RWY 25, Orig
Hobbs, NM, Lea County/Hobbs, GPS RWY 3, Orig
Hobbs, NM, Lea County/Hobbs, GPS RWY 30, Orig
Socorro, NM, Socorro Muni, GPS RWY 33, Orig
Truth or Consequences, NM, Truth or Consequences Muni, GPS RWY 31, Orig
Saratoga Springs, NY, Saratoga County, GPS RWY 5, Orig
Aguadilla, PR, Rafael Hernandez, GPS RWY 8, Orig
San Juan, PR, Luis Munoz Marin Intl, GPS RWY 8, Orig
Sturgis, SD, Sturgis Muni, GPS RWY 29, Orig
Amarillo, TX, Amarillo Intl, LDA/DME RWY 22, Orig
Bridgeport, TX, Bridgeport Muni, VOR OR GPS–A, Amdt 4 Cancelled

Bridgeport, TX, Bridgeport Muni, VOR/DME RWY 17, Orig
Dallas, TX, Addison, NDB OR GPS RWY 15, Amdt 5
Dallas, TX, Addison, ILS RWY 15, Amdt 9
Dallas, TX, Addison, ILS RWY 33, Amdt 1
Dallas, TX, Addison, VOR/DME RNAV OR GPS RWY 33, Amdt 1
Denton, TX, Denton Muni, GPS RWY 35, Amdt 1
Ennis, TX, Ennis Muni, VOR/DME–A, Orig
Ennis, TX, Ennis Muni, VOR/DME OR GPS–A, Amdt 1 Cancelled
Fort Worth, TX, Fort Worth Alliance, ILS RWY 16, Amdt 2
Fort Worth, TX, Fort Worth Alliance, ILS RWY 34, Amdt 2
Fort Worth, TX, Fort Worth Alliance, GPS RWY 16, Orig
Fort Worth, TX, Fort Worth Alliance, GPS RWY 34, Orig
Fort Worth, TX, Fort Worth Meacham Intl, NDB OR GPS RWY 16L, Amdt 4
Fort Worth, TX, Fort Worth Meacham Intl, ILS RWY 16L, Amdt 6
Fort Worth, TX, Fort Worth Spinks, ILS RWY 35L, Amdt 1
Fort Worth, TX, Fort Worth Spinks, VOR/DME RNAV OR GPS RWY 35L, Orig
Fort Worth, TX, Fort Worth Spinks, RNAV OR GPS RWY 35L, Amdt 1A, Cancelled
Gladewater, TX, Gladewater Muni, VOR/DME OR GPS RWY 13, Amdt 2
Graford, TX, Possum Kingdom, NDB OR GPS–A, Amdt 1
Graham, TX, Graham Muni, NDB OR GPS RWY 21, Amdt 2
Longview, TX, Gregg County, RADAR 1, AMDT 3, Cancelled
McKinney, TX, McKinney Muni, VOR/DME OR GPS–A, Orig
McKinney, TX, McKinney Muni, VOR/DME OR GPS–A, Amdt 3 Cancelled
McKinney, TX, McKinney Muni, ILS RWY 17, Amdt 1
Sherman/Denison, TX, Grayson County, VOR/DME–A, Orig
Sherman/Denison, TX, Grayson County, VOR/DME–A, OR GPS–A, Amdt 7 Cancelled
Sherman/Denison, TX, Grayson County, NDB OR GPS RWY 17L, Amdt 9
Sherman/Denison, TX, Grayson County, VOR/DME RNAV RWY 35R Orig
Sherman/Denison, TX, Grayson County, RNAV RWY 35R, Amdt 2 Cancelled
Stephenville, TX, Clark Field Muni, VOR/DME–A, Orig
Stephenville, TX, Clark Field Muni, VOR/DME OR GPS–A, Amdt 4 Cancelled
Sulphur Springs, TX, Sulphur Springs Muni, VOR/DME OR GPS–B, Amdt 6
Sulphur Springs, TX, Sulphur Springs Muni, NDB RWY 18, Amdt 5
Tyler, TX, Tyler Pounds Field, VOR/DME OR GPS RWY 4, Amdt 3
Tyler, TX, Tyler Pounds Field, VOR/DME OR GPS RWY 22, Amdt 3
Tyler, TX, Tyler Pounds Field, VOR OR GPS RWY 31, Amdt 1
Tyler, TX, Tyler Pounds Field, NDB OR GPS RWY 13, Amdt 17
Tyler, TX, Tyler Pounds Field, ILS RWY 13, Amdt 20
Waco, TX, TSTC Waco, NDB RWY 17L, Amdt 9
Waco, TX, TSTC Waco, NDB RWY 35R, Amdt 10
Waco, TX, TSTC Waco, ILS RWY 17L, Amdt 11
Waco, TX, TSTC Waco, GPS RWY 17L, Orig
Waco, TX, TSTC Waco, GPS RWY 35R, Orig
Waco, TX, TSTC Waco, RADAR–1, Amdt 3
Wichita Falls, TX, Kickapoo Downtown Airpark, NDB RWY 35, Amdt 3
Wichita Falls, TX, Kickapoo Downtown Airpark, RADAR–1, Amdt 3
Wichita Falls, TX, Kickapoo Downtown Airpark, VOR/DME RNAV OR GPS RWY 35, Amdt 3
Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, VOR OR GPS–D, Amdt 13
Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, LOC BC RWY 15R, Amdt 11
Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, NDB OR GPS RWY 33L, Amdt 10
Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, ILS RWY 33L, Amdt 12
Martinsville, VA, Blue Ridge, SDF RWY 30, Amdt 2
Martinsville, VA, Blue Ridge, NDB RWY 30, Amdt 2
Martinsville, VA, Blue Ridge, GPS RWY 12, Orig
Martinsville, VA, Blue Ridge, GPS RWY 30, Orig
Christiansted, VI, Alexander Hamilton, GPS RWY 9, Orig
Elkins, WV, Elkins-Randolph Co-Jennings Randolph Fld, GPS RWY 23, Orig
Menomonie, WI, Score Field, VOR/DME RWY 27, Orig

* * * *Effective December 5, 1996*

Covington, LA, Greater St Tammany, GPS RWY 17, Orig

Note: The FAA published Procedures in Docket No. 28644, Amdt No. 1743 to Part 97 of the Federal Aviation Regulations (Vol 61, FR No. 149, Page 40151, dated August 1, 1996 Section 97.23 Effective 10 Oct 96 which is hereby amended:

Change effective date to 5 Dec 1996, for the following procedure:

Hammond, LA, Hammond Muni, GPS RWY 31, Orig

Note: The FAA published a Procedure in Docket No. 28644, Amdt No. 1743 to part 97 of the Federal Aviation Regulations (Vol 61, FR No. 149, Page 40151, dated August 1, 1996 Section 97.33 Effective 15 Aug 96 which is hereby amended:

Change effective date to 12 Sep 1996, for the following procedure:

Sioux City, IA, Sioux Gateway, VOR/DME RNAV RWY 17, Orig-A Cancelled

[FR Doc. 96–20971 Filed 8–15–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28658; Amdt. No. 1746]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incoporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPS, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulation (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPS and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports;, Navigation (Air).

Issued in Washington, DC on August 9, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
06/25/96	MN	St Paul	St. Paul Downtown Holman Field	FDC 6/4148	ILS RWY 32 AMDT 3... This Corrects Notam in TL 96–15
07/24/96	CA	Los Angeles	Los Angeles Intl	FDC 6/5195	ILS RWY 7L, AMDT 3A...
07/24/96	FL	Panama City	Panama City-Bay Co. Intl	FDC 6/5203	VOR or TACAN or GPS–A, AMDT 13B...
07/24/96	NY	Rochester	Greater Rochester Intl	FDC 6/5196	VOR/DME or GPS RWY 4 AMDT 1...
07/25/96	GA	Americus	Souther Field	FDC 6/5236	NDB or GPS RWY 23, AMDT 2B...
07/25/96	GA	Americus	Souther Field	FDC 6/5237	LOC RWY 23, AMDT 2B...
07/25/96	GA	Atlanta	Peachtree City-Falcon Field	FDC 6/5239	NDB RWY 31 AMDT 1...
07/25/96	GA	Atlanta	Peachtree City-Falcon Field	FDC 6/5240	VOR/DME RNAV or GPS RWY 31 ORIG A...
07/25/96	GA	Atlanta	Peachtree City-Falcon Field	FDC 6/5241	LOC BC RWY 13, AMDT 2...
07/25/96	GA	Atlanta	Peachtree City-Falcon Field	FDC 6/5242	LOC RWY 31, AMDT 1...
07/25/96	GA	Gainesville	Lee Gilmer Memorial	FDC 6/5244	NDB or GPS RWY 4, AMDT 4...
07/25/96	GA	Gainesville	Lee Gilmer Memorial	FDC 6/5245	LOC RWY 4 AMDT 5...

FDC date	State	City	Airport	FDC No.	SIAP
07/25/96	GA	Jessup	Jessup-Wayne County	FDC 6/5234	NDB or GPS RWY 10, AMDT 1...
07/25/96	GA	Jessup	Jessup-Wayne County	FDC 6/5235	NDB or GPS RWY 28, AMDT 2...
07/25/96	NH	Lebanon	Lebanon Muni	FDC 6/5250	VOR/DME or GPS RWY 7, ORIG...
07/25/96	NH	Lebanon	Lebanon Muni	FDC 6/5251	VOR or GPS RWY 25 ORIG...
07/25/96	NH	Lebanon	Lebanon Muni	FDC 6/5252	NDB or GPS–B, AMDT 3...
07/25/96	NJ	Sussex	Sussex	FDC 6/5253	VOR or GPS–A, AMDT 5A...
07/26/96	GA	Swainsboro	Emanuel County	FDC 6/5322	LOC RWY 13, ORIG...
07/26/96	GA	Swainsboro	Emanuel County	FDC 6/5323	VOR/DME or GPS–A, AMDT 2B...
07/26/96	GA	Swainsboro	Emanuel County	FDC 6/5324	NDB or GPS RWY 13, ORIG–A...
07/26/96	GA	Waycross	Waycross-Ware County	FDC 6/5296	ILS RWY 18 ORIG...
07/26/96	GA	Waycross	Waycross-Ware County	FDC 6/5319	VOR or GPS–A AMDT 7A...
07/26/96	GA	Waycross	Waycross-Ware County	FDC 6/5320	NDB RWY 18 ORIG...
07/26/96	GA	Waycross	Waycross-Ware County	FDC 6/5321	RNAV or GPS RWY 18, AMDT 4A...
07/26/96	NH	Lebanon	Lebanon Muni	FDC 6/5297	ILS RWY 18 AMDT 3...
07/26/96	OH	Dayton	James M Cox Dayton Intl	FDC 6/5287	ILS RWY 18, AMDT 8...
07/26/96	OH	Dayton	James M Cox Dayton Intl	FDC 6/5288	ILS RWY 24L AMDT 8...
07/29/96	GA	Statesboro	Statesboro Muni	FDC 6/5387	NDB or GPS RWY 32, AMDT 4...
07/29/96	GA	Statesboro	Statesboro Muni	FDC 6/5388	LOC RWY 32, AMDT 4...
07/29/96	NH	Manchester	Manchester	FDC 6/5420	VOR RWY 35, AMDT 15...
07/29/96	NH	Manchester	Manchester	FDC 6/5421	VOR RWY 17, ORIG...
07/29/96	NH	Manchester	Manchester	FDC 6/5422	VOR/DME or GPS RWY 17, ORIG...
07/29/96	NH	Manchester	Manchester	FDC 6/5423	ILS RWY 35, AMDT 17...
07/29/96	NH	Manchester	Manchester	FDC 6/5424	NDB or GPS RWY 35, AMDT 13...
07/30/96	IA	Keokuk	Keokuk Muni	FDC 6/5439	NDB or GPS RWY 26, ORIG–A...
07/30/96	IA	Keokuk	Keokuk Muni	FDC 6/5440	NDB or GPS RWY 14, AMDT 11A...
08/02/96	MI	Kalamazoo	Battle Creek Intl	FDC 6/5571	GPS RWY 23 ORIG...
08/05/96	KY	Louisville	Louisville Intl-Standiford Field	FDC 6/5697	ILS RWY 1 AMDT 11A...

[FR Doc. 96–20973 Filed 8–15–96; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

28 CFR Part 42

RIN 1190 AA30

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1691

RIN 3046 AA51

Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance

AGENCIES: Department of Justice and Equal Employment Opportunity Commission.

ACTION: Notice of rescission of limitation on participation of the Department of Education in procedures governing referral of certain complaints of employment discrimination.

SUMMARY: This document informs the public that a limitation placed on the participation of the Department of Education (ED) in the procedures prescribed by a joint rule of the Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC) for processing complaints of employment discrimination filed against recipients of Federal financial assistance no longer applies. 28 CFR Part 42, 29 CFR Part 1691. The decision in *Women's Equity Action League* v. *Cavazos,* 906 F.2d 742 (D.C. Cir. 1990), has the effect of allowing ED to refer joint complaints alleging a pattern or practice of employment discrimination or joint complaints alleging discrimination in employment and in other practices to the EEOC, when appropriate, under the joint DOJ and EEOC rule.

FOR FURTHER INFORMATION CONTACT: Peggy R. Mastroianni, Associate Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street, N.W., 6th Floor, Washington, D.C. 20507. Telephone: (202) 663–4638 (voice), (202) 663–7026 (TDD); or Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66560, Washington, D.C. 20035–6560, (202) 307–2222 (voice), (202) 307–2678 (TDD).

SUPPLEMENTARY INFORMATION: On January 25, 1983, DOJ and the EEOC published a rule entitled ''Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Funds.'' 28 CFR Part 42, 29 CFR Part 1691 (joint rule). The joint rule generally sets forth procedures for Federal agencies that grant financial assistance to coordinate with the EEOC the processing of joint complaints involving employment discrimination covered by Title VII of the Civil Rights Act of 1964 or the Equal Pay Act, and by Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the State and Local Fiscal Assistance Act of 1972, as amended, or provisions similar to Title VI and Title IX in Federal grant statutes.

By virtue of an order of the United States District Court in *Adams* v. *Bell,* C.A. No. 3095–70, and *Women's Equity*

Action League v. *Bell,* C.A. No. 74–1720 (D.D.C., Order of December 29, 1977, as modified by D.D.C., Order of March 11, 1983) (hereinafter referred to as ''*Adams*''), ED was obliged to process complaints of discrimination within time limits specified by the court. Those time limits did not apply to the EEOC or to other agencies that grant financial assistance, nor were they required by the procedures of the joint rule. As a result, DOJ and the EEOC published a rule-related notice stating that ED was precluded by court order from referring employment discrimination complaints to the EEOC under the procedures of the joint rule. 48 FR 29686, June 28, 1983.

On January 17, 1985, the district court in *Adams* issued a modified order permitting ED ''to refer individual, as opposed to systemic, complaints of employment discrimination under Title VI and Title IX'' to the EEOC. As a result, DOJ and the EEOC published a rule-related notice stating that ED was now permitted to refer joint complaints alleging discrimination against an individual to the EEOC. However, the notice indicated that ED would continue to be precluded from referring to the EEOC joint complaints alleging a pattern or practice of employment discrimination or alleging discrimination in both employment and non-employment practices. The procedures of the joint rule permit agencies to refer these complaints to the EEOC when warranted by special circumstances. *See* 50 FR 8608, Mar. 4, 1985.

On June 26, 1990, the Court of Appeals for the District of Columbia Circuit affirmed the district court's dismissal of the entire *Adams* litigation and released ED from the prior limitations of the 1983 *Adams* order referenced above. *Women's Equity Action League* v. *Cavazos,* 906 F.2d 742 (D.C. Cir. 1990). Accordingly, ED is now allowed to follow the coordination procedures set forth in the joint rule in their entirety, including those procedures governing the processing and referral of joint complaints alleging a pattern or practice of employment discrimination or discrimination in employment and non-employment practices.

For the Department of Justice.

Dated: August 12, 1996.

Deval L. Patrick,

Assistant Attorney General, Civil Rights Division.

For the Equal Employment Opportunity Commission.

Dated: August 9, 1996.

Gilbert F. Casellas,

Chairman.

[FR Doc. 96–20958 Filed 8–15–96; 8:45 am]

BILLING CODE 4410–01–M

POSTAL SERVICE

39 CFR Part 233

Addition of Commercial Espionage to Mail Cover Regulations

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the United States Postal Service's national security mail cover regulations to add commercial espionage by foreign sources as an activity for which national security mail covers may be authorized. This change is effected by expanding the definition of ''protection of the national security'' found at 39 CFR 233.3(c)(9) to include commercial espionage.

EFFECTIVE DATE: August 16, 1996.

FOR FURTHER INFORMATION CONTACT: Henry J. Bauman, Counsel, Postal Inspection Service, (202) 268–4415.

SUPPLEMENTARY INFORMATION: On May 10, 1996, the Postal Service published in the Federal Register (61 FR 21404) a proposed rule to amend its national security mail cover regulations to add commercial espionage and a request for comments on the proposed rule. No comments were received by the closing date of June 10, 1996. The Postal Service therefore adopts the rule below as originally published.

Postal Service regulations on mail covers are published in Title 39 of the Code of Federal Regulations (CFR) at section 233. Paragraph (c)(9) of § 233.3 currently defines ''protection of the national security'' as ''actual or potential threats to the security of the United States of America by a foreign power or its agents.'' This definition is expanded to include commercial espionage.

Commercial espionage by foreign sources has become an increasing threat to the economic well-being and ability of the United States to compete in the international market. For the purposes of this revision, ''commercial espionage'' is defined as either ''economic espionage'' or ''industrial espionage.'' According to the Federal Bureau of Investigation (FBI) white paper, FBI Strategy to Address the Problem of Economic Espionage and Industrial Espionage (Washington, DC: FBI Headquarters, undated), ''economic espionage'' is ''government-directed, sponsored, or coordinated intelligence activity, which may or may not constitute violation of the law, conducted for the purpose of enhancing that country's or another country's economic competitiveness by the use of the information by the foreign government or by providing it to a foreign business entity thereby giving that entity a competitive advantage in the marketplace.'' ''Industrial espionage'' is defined by the FBI as ''individual or private business entity sponsorship or coordination of intelligence activity conducted for the purpose of enhancing a private business and its competitive advantage in the marketplace, which is a violation of law.''

Revising the Postal Service's national security mail cover regulations to include commercial espionage will enhance the ability of law enforcement to protect national security. The Postal Service has determined that this change in its regulations is a matter of internal practice and procedure that will not substantially affect the rights or obligations of private parties.

List of Subjects in 39 CFR Part 233

Administrative practice and procedures, Banks and banking, Credit, Crime, Law enforcement, Postal Service, Privacy, Seizure and forfeiture.

Accordingly, 39 CFR 233 is amended as set forth below.

PART 233—INSPECTION SERVICE/ INSPECTOR GENERAL AUTHORITY

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Inspector General Act of 1978, as amended (Pub. L. No. 95–452, as amended), 5 U.S.C. App.3.

2. Paragraph (c)(9) of § 233.3 is revised to read as follows:

§ 233.3 Mail covers.

* * * * *

(c) * * *

(9) *Protection of the national security* means to protect the United States from any of the following actual or potential threats to its security by a foreign power or its agents:

(i) An attack or other grave, hostile act;

(ii) Sabotage, or international terrorism; or

(iii) Clandestine intelligence activities, including commercial espionage.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–20865 Filed 8–15–96; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 94–124; DA 96–1157]

Unlicensed Operation Above 40 GHz; Correction

AGENCY: Federal Communications Commission.

ACTION: Correction to final rule.

SUMMARY: This Erratum contains a correction to the final rule adopted in the *First Report and Order,* which was published Tuesday, April 2, 1996, 61 FR 14500. The rule deals with unlicensed operation above 40 GHz. This correction adds an amendment to Part 15 of Title 47 of the Code of Federal Regulations that was inadvertently omitted from the Report and Order.

EFFECTIVE DATE: May 2, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 418–2455.

SUPPLEMENTARY INFORMATION:

Background

This erratum adds an amendment to Section 15.245 of the Commission's rules, 47 CFR Section 15.245, as modified in Unlicensed Operation Above 40 GHz, First Report and Order, ET Docket No. 94–124, FCC 95–499 (released December 15, 1996) 61 FR 14500, April 2, 1996, This rule which deals with unlicensed operation above 40 GHz, was published with an omission. After release of this item, the Commission noted that it had omitted the amendment to the regulations concerning the level of spurious emissions appearing above 40 GHz from unlicensed field disturbance sensors.

Need for Correction

As published, this final rule contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication on April 2, 1996, of final rules in ET Docket No. 94–124, which were the subject of FR Doc. 96–7689, is corrected as follows.

PART 15—[CORRECTED]

On page 14503, in the first column, a new amendatory instruction 5a. is added immediately preceding amendatory instruction 6. to read as follows:

5a. Section 15.245 is amended by revising paragraph (b)(1) introductory text to read as follows: § 15.245 *Operation within the bands 902–928 MHz, 2435–2465 MHz, 5785–5815 MHz, 10500–10550 MHz, and 24075–24175 MHz.*

* * * * *

(b)(1) Regardless of the limits shown in the above table, harmonic emissions in the restricted bands below 17.7 GHz, as specified in § 15.205, shall not exceed the field strength limits shown in § 15.209. Harmonic emissions in the restricted bands at and above 17.7 GHz shall not exceed the following field strength limits:

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–20906 Filed 8–15–96; 8:45 am]

BILLING CODE 6712–01–U

47 CFR Part 64

[CC Docket No. 96–61; FCC 96–331]

Implementation of Section 254(g) of the Communications Act of 1934, as Amended

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Pursuant to Section 254(g) of the Communications Act of 1934, which was added by Section 101(a) of the 1996 Telecommunications Act, the Commission adopts a geographic rate averaging rule ''to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas'' and a rate integration rule to require ''that a provider of interstate interexchange services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.'' These rules will ensure that subscribers in rural and high-cost areas will not be charged higher rates for interexchange services than subscribers in urban areas, and that interexchange carriers will offer services to all their service areas—whether rural, high-cost or urban—on the same terms.

EFFECTIVE DATE: September 16, 1996.

FOR FURTHER INFORMATION CONTACT: Sherille Ismail or Neil Fried, Competitive Pricing Division, Common Carrier Bureau, (202) 418–1530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted and released August 7, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 239), 1919 M St., N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, N.W., Washington, D.C. 20037.

Regulatory Flexibility Analysis

The Commission promulgates the rules in the Report and Order to implement Section 254(g) of the Communication Act of 1934, as amended by the Telecommunications Act of 1996. The objective of these rules is ''to incorporate the policies of geographic rate averaging and rate integration of interexchange services in order to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers.''

The Regulatory Flexibility Act defines ''small entity'' to include the definition of ''small business concern'' under the Small Business Act, 15 U.S.C. 632. Under the Small Business Act, a ''small business concern'' is one that (1) is independently owned and operated, (2) is not dominant in its field of operation, and (3) meets any additional criteria established by the Small Business Administration (SBA). Our geographic averaging and rate integration rules will apply to all providers of interexchange service. The SBA has not developed a definition of small entities specifically applicable to providers of interexchange service. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to SBA regulations, a telephone communications company other than a radiotelephone company is a small business concern if it has fewer than 1,500 employees.

The most relevant employee data available from the SBA does not enable us to make a meaningful estimate of the number of providers of interexchange service that are small entities because it is based upon a 1992 Census of Transportation, Communications, and Utilities survey from which we can only

calculate the average number of people employed by various-sized telephone entities other than radiotelephone companies. Based on a Commission staff report entitled Long Distant Market Shares: Fourth Quarter, 1995, however, we estimate that approximately 500 carriers provide interexchange service. Some of these carriers are not independently owned and operated, or have more than 1,500 employees. Consequently, we estimate that our geographic averaging and rate integration rules will apply to less than 500 ''small entities.'' We are unable on the present record to estimate with more particularity how many of these entities would be considered small for the purposes of the Regulatory Flexibility Act.

No comments specifically addressed the Commission's initial regulatory flexibility analysis. However, a number of associations that represent, at least to some extent, the interests of small telecommunications providers, generally supported the Commission's proposed rules to implement geographic averaging and rate integration. Other commenters asserted that these rules would harm small regional providers of interexchange service in high-cost areas, arguing that such providers would be unable to compete with nationwide carriers that can charge lower rates by spreading their costs over a larger customer base. A few suggested that subsidies or other support mechanisms might alleviate their concerns. The record in this proceeding does not show that small interexchange service providers will be disproportionately harmed by implementation of rate integration. The practical impact of our rules will be to require all providers of interexchange service, including those that are small entities, to set rates on a geographically averaged and rate-integrated basis.

To comply with our Report and Order, carriers must charge rural and high-cost area customers for interexchange service no more than they charge urban customers, and must charge customers for such services in one state no more than they charge customers in any other state. The Notice of Proposed Rulemaking (NPRM), 61 FR 14717, April 3, 1996, proposed requiring providers of interexchange telecommunications services to file certifications that they were complying with these requirements in the event the Commission decides to mandate permissive detariffing of interexchange services. We will consider later in this proceeding what enforcement mechanisms may be necessary to support geographic averaging and rate integration when the Commission addresses the detariffing issue. We have proposed a requirement that AT&T, Sprint, MCI, IT&E, GTE, and PCI submit preliminary plans no later than February 1, 1997, to achieve rate integration for services provided to Guam, the Northern Marianas, American Samoa, and other offshore points, and final plans no later than June 1, 1997. The preliminary plans need not include rates, but at a minimum should resolve service and rate-band issues. Final plans shall include a rate schedule. Carriers already have in place their own individualized rate schedules, which they have presumably tailored to the areas they provide service. Consequently, carriers' staff preparing the preliminary and final plans will likely need no special skills other than general familiarity with the new rate schedules that these entities are planning, or have chosen, to adopt to comply with the rate averaging and rate integration requirements.

Section 254(g) reflects a congressional determination that the country's higher-cost, lower-volume markets should share in the technological advances and increased competition characteristic of the nation's telecommunications industry as a whole, and that interexchange rates should be provided throughout the nation on a geographically averaged and rate-integrated basis. As noted above, we have decided that the statutory objectives of Section 254(g) require us to apply our rules to all providers of interexchange service, including small ones. We have chosen, however, to allow carriers to offer private line service and temporary promotions on a deaveraged basis. In so doing, we have minimized the impact our rules might otherwise have had, and enable carriers to use such devices to enter new markets.

The Commission considered and rejected several significant alternatives. We could have reduced burdens on small carriers by exempting them from compliance through forbearance. However, we do not believe that forbearing at this time would be consistent with the congressional goals that underlie Section 254(g). We could also have reduced burdens on small carriers by establishing cost-support mechanisms. However, the present record does not justify any such cost-support mechanisms. Accordingly, we decline to adopt these alternative measures for small carriers.

Paperwork Reduction Analysis

We have decided to require AT&T, Sprint, MCI, IT&E, GTE, and PCI to submit preliminary and final plans to achieve rate integration of Guam, the Northern Marianas, and American Samoa by August 1, 1997. These one-time plan requirements constitute new ''collections of information,'' within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. The public burden for these one-time collections of information is estimated as follows:

Title	Hours per response	Annual responses	Burden per carrier
Preliminary rate integration plan	30	1	30 hrs.
Final rate integration plan	40	1	40 hrs.

Total One-Time Annual Burden: 70 hrs.×6 carriers = 420 hrs.

The foregoing estimate includes the time the carriers will need to spend: (1) Reviewing the portions of our Report & Order relevant to the one-time plan requirements; (2) reviewing their current rate schedules; (3) determining what rate adjustments they will need to make to their rate schedules to comply with our rate integration rule; (4) revising their rates in the case of the final plans; and (5) completing and reviewing the collections of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Branch, Paperwork Reduction Project, Washington, D.C. 20554 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

Summary of Report and Order

1. On February 8, 1996, the ''Telecommunications Act of 1996'' (1996 Act), Public Law No. 104–104, 110 Stat. 56 (1996), became law. Section 101(a) of the 1996 Act adds Section 254(g) of the Communications Act of 1934. Section 254(g) provides that within six months of enactment of the 1996 Act the Commission shall adopt a geographic rate averaging rule ''to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers

in urban areas'' and a rate integration rule to require ''that a provider of interstate interexchange services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.'' In our March 25, 1996, NPRM, we proposed rules to implement Section 254(g). In our Report and Order we establish those rules.

I. Rate Averaging

A. General Rule

2. Although we have consistently endorsed a policy of geographic rate averaging, we have not formally issued a rule requiring carriers to geographically average rates. We adopt the rate averaging rule we proposed in the NPRM that ''the rates charged by all providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas.'' As required under the 1934 Act, as amended, our rule will apply to all providers of interexchange telecommunications services and to all interexchange ''telecommunications services,'' as defined in the 1934 Act. This definition does not create any exception for nonresidential services.

B. Contract Tariffs, Tariff 12 Offerings, Optional Calling Plans, Discounts, Promotions, and Private Line Services

3. Section 254(g) and our geographic rate averaging rule will require carriers to charge subscribers in rural and high-cost areas rates for telecommunications services that are no higher than rates offered to urban subscribers. The Commission's current policy as reflected in AT&T tariffs, however, has permitted AT&T to offer contract tariffs, Tariff 12 offerings, optional calling plans, and temporary promotions, subject to some limitations. Contract tariffs and Tariff 12 offerings generally involve discounts from basic rate schedules. Optional calling plans offer customers discounts from basic rate schedules, subject to terms and conditions specified in the optional calling plan. Temporary promotions involve discounts from basic rate schedules as well as limited sign-up periods for the promotional discount rates. As noted, we have also permitted AT&T to offer private line services at geographically deaveraged rates. AT&T rates for private line services vary from LATA (Local Access and Transport Area) to LATA, continuing pricing practices that AT&T has historically used in setting rates for private line services.

4. The legislative history of Section 254(g) states that Congress intended that section to ''incorporate'' our existing policy concerning geographic rate averaging, and ''that the Commission, where appropriate, could continue to authorize limited exceptions to the general geographic rate averaging policy using the [forbearance] authority provided by new section 10 of the Communications Act.'' Therefore, we will conduct a forbearance analysis to determine whether we should permit IXCs to depart from geographic rate averaging where we have permitted them to do so under current policy.

5. We do not believe that our current policy of allowing carriers to offer contract tariffs and Tariff 12 options conflicts with geographic averaging because we require that these offerings be available to similarly situated customers throughout the carrier's service area. The legislative history to Section 254(g), however, indicates that the conferees viewed contract tariffs and Tariff 12 offerings, at least to some extent, as permissible exceptions to geographic rate averaging that could be authorized through forbearance. Accordingly, our forbearance analysis will encompass contract tariffs and Tariff 12 offerings to ensure that our requirements implementing Section 254(g) are consistent with congressional intent.

6. Section 10 requires the Commission to forbear from applying any provision of the Act if we find that (1) enforcement of such provision unnecessary to ensure that practices in connection with the relevant telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such provision is unnecessary to protect consumers; and (3) forbearance from applying such provision is consistent with the public interest. In addition, the Commission, in making its public interest determination, must ''consider whether forbearance from enforcing the provision * * * will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.''

7. We do not believe that permitting carriers to depart from geographic rate averaging to the extent necessary to offer contract tariffs, Tariff 12 offerings, optional calling plans, temporary promotions, and private line services in accordance with our current policy will subject rural and high-cost area customers to unjust or unreasonable, or unjustly or unreasonably discriminatory, rates because: (1) We will continue to require carriers to make these services generally available under our current rules (*e.g.*, contract tariffs and Tariff 12 offerings must be available to similarly situated customers) regardless of their geographic location, and (2) the only ''geographically-specific'' discounts that carriers may offer are temporary promotions. Thus, except for temporary promotions and private line services, interexchange telecommunications service offerings will be available on the same terms throughout a carrier's service area. In addition, we do not believe based on the record that allowing geographically deaveraged private line rates will produce unjust or unreasonable or unjustly or unreasonably discriminatory rates, as it is our current practice and has not raised such concerns. Thus, we find that enforcement of the geographic rate-averaging requirement for contract tariffs, Tariff 12 offerings, optional calling plans, temporary promotions, and private line services is not necessary to ensure that charges, practices, and classifications are just and reasonable and not unjustly and unreasonably discriminatory.

8. Enforcement of the geographic rate-averaging requirement for these services is also not necessary to protect consumers because these service offerings are generally beneficial to consumers. For example, promotions, optional calling plans, and discounts facilitate introduction of new and beneficial services to consumers. Indeed, we are particularly concerned that carriers will cease to offer such service offerings, to the clear detriment of all consumers, unless carriers are permitted to offer them for a limited time on a narrower scale than throughout their entire service areas. We believe that the limited scope and nature of promotions offered on a geographically specific basis will protect consumers and that, to the extent that these service offerings promote new services, consumers will benefit, including rural customers. We also believe that it is not necessary to apply geographic averaging to private line services, contract tariffs, and Tariff 12 offerings to protect residential consumers because these services are normally provided to businesses. Business consumers benefit from these services because in many cases the services are provided at discounted rates. Thus, we conclude that enforcement of the geographic rate-averaging requirement for contract tariffs, Tariff 12 options, optional calling plans, temporary promotions, and

private line services is not necessary to protect consumers.

9. Finally, we believe that forbearance from applying the geographic rate averaging requirement to the extent permitted under our rules is consistent with the public interest. We come to this conclusion because we believe that allowing deaveraged rates, such as for temporary promotions, will ultimately benefit consumers by encouraging widespread offerings of new services. Moreover, it has been our practice to allow these exceptions to our existing policy, and we have no reason to believe this current practice is contrary to the public interest. In addition, excepting these specific types of service offerings from the geographic rate averaging requirement will continue to stimulate competition for customers among interexchange carriers. Limited departures from geographic rate averaging, such as for private line services and temporary promotions available only in some areas, are often designed to spur, or respond to, competition. For example, interexchange carriers often offer promotional discounts as a response to competition within the interexchange market. For these reasons, we conclude that limited forbearance from applying the geographic rate averaging requirement to contract tariffs, Tariff 12 offerings, temporary promotions, and private line services is consistent with the public interest.

10. Accordingly, we forbear from applying Section 254(g), consistent with the intent of Congress, to the extent necessary to permit carriers to depart from geographic rate averaging to offer contract tariffs, Tariff 12 offerings, optional calling plans, temporary promotions, and private line services in accordance with our policy as previously applied to AT&T. As with current policy, we will require carriers to offer the same basic service package to all customers in their service areas, and permit carriers to offer contract tariffs, Tariff 12 offerings, and optional calling plans provided they are available to all similarly situated customers, regardless of their geographic location. We will permit carriers to offer promotions that may be ''geographically limited,'' provided that the promotions are temporary, as discussed further below.

11. These requirements are fully consistent with the Commission's past practices. Contrary to the claims of some IXCs, we have not in the past exempted from our geographic rate averaging policy entire groups of services, such as contract tariffs, negotiated arrangements, or optional calling plans, where carriers offer discounted rates on a permanent or long-term basis. The record is clear, in fact, that we have required optional calling plans to be generally available throughout a carrier's service area and prohibited geographic restrictions in contract tariffs because a service package that is available to only one customer ''unreasonably discriminates among similarly situated customers,'' and is therefore unlawful. The only type of geographic restriction in a contract tariff that we have permitted is one that is necessary because of technical limitations imposed by a LEC's switching equipment or billing capabilities, or where the underlying basic service is limited.

12. As stated, we believe that temporary promotions benefit consumers because they facilitate the introduction of new services. We have permitted temporary promotions in the past for these reasons, and believe that Congress intended us to continue to do so. We conclude, however, that ''temporary'' promotions should, in fact, be temporary and not the basis for repeated offerings by carriers. Before AT&T was found nondominant for purposes of interexchange service, we proposed to keep promotional rates outside of price caps as long as they were offered for no longer than 90 days. Further, we find that a 90-day period in which customers may receive discounted rates as part of a promotion is sufficient time for a targeted promotional offering to attract interest in new or revised services, but not so long as to undermine our geographic rate averaging requirement. Accordingly, even though AT&T has tariffed longer promotions in the past, we believe this length of time for temporary promotions not available throughout a carrier's service area best implements the statutory mandate for geographic averaging. Further, rather than specifying a range of permissible combinations of sign-up and discount periods, we believe that specifying a single time period for promotional discounts will facilitate administration of Section 254(g) and our implementing rules.

13. We will therefore permit carriers, as part of temporary promotions not available throughout a carrier's service area, to offer discounted promotional rates for no more than 90 days. We will not at this time establish limits on the duration of sign-up periods for promotions, but we expect them to be relatively brief. We can review at a later time specific carriers' practices in this regard if necessary. We also expect that carriers' temporary promotions will not, when viewed over a number of years, reflect a pattern of undue discrimination against rural or high-cost areas. Thus, we expect that, viewed over time, temporary promotions will be offered in rural and high-cost areas, as well as to urban customers. We find it unnecessary to adopt advertising requirements concerning discounts and promotions. We believe that consumers will be protected as long as long-term discounts and promotions are available to all similarly situated customers throughout a carrier's service area.

C. Forbearance in Competitive Conditions

14. We are not persuaded that we should establish an exception to our general rate averaging rule based on the existence of competing regional carriers that may be able to offer lower rates for interexchange services because of lower access charges or other costs. To establish such an exception we would need to forbear under Section 10 of the 1934 Act. As noted previously, we must forbear from applying any provision of the 1934 Act, as amended, when (1) enforcement of that provision is unnecessary to ensure that the relevant charges and practices are just and reasonable and not unjustly or unreasonably discriminatory; (2) enforcement of that provision is unnecessary to protect consumers; and (3) forbearance from applying the provision is consistent with the public interest.

15. Commenters have failed to justify this exception under Section 10 because they have based their claims entirely on generalized assertions of the alleged need for a competitive exception to geographic averaging requirements. With respect to the first prong of the forbearance test, we believe that establishing a broad exception to Section 254(g) for low-cost regions entails a substantial risk that many subscribers in rural and high cost areas may be charged more than subscribers in other areas. Accordingly, we cannot conclude that enforcing our rate averaging requirements is unnecessary to ensure just and reasonable and nondiscriminatory charges for subscribers. We also see no basis in the record to conclude that it is unnecessary to enforce Section 254(g) to ensure protection of consumers. We are concerned that widespread deaveraged rates for interexchange services could produce unreasonably high rates for some subscribers. Further, commenters have not made a persuasive case that our geographic rate averaging requirement may compel them to abandon service in some areas. Finally,

we believe that, as part of our initial implementation of Section 254(g), it is not in the public interest to create the broad exception urged by commenters. Accordingly, we conclude that commenters have not justified forbearance to create a competitive exception to geographic rate averaging. We also will not forbear from enforcing our rate averaging policy against nondominant carriers. We note that Congress knew at the time the 1996 Act was passed that all IXCs were nondominant and we find that Congress would not have required us to adopt rules to implement geographic rate averaging if it had intended us to abandon this policy with respect to all IXCs so soon after enactment.

16. We are also not persuaded that we should forbear for smaller carriers serving high-cost areas on the grounds that they might have difficulty competing against nationwide carriers. These carriers have provided only conclusory allegations of harm and have not shown that they will be unable to compete with larger carriers in a rate-averaged environment, much less that they have satisfied all three of the requirements set forth in Section 10 for exercise of our forbearance authority. Thus, these carriers, like the nationwide carriers, have failed to justify forbearance on this record.

17. We also reject AT&T's suggestion that we delay implementing Section 254(g) until access charges are lower and more cost based. We believe that Congress was fully aware of geographic differences in access charges when it adopted Section 254(g), and intended us to require geographic rate averaging even under these conditions. Moreover, nothing in the text or legislative history of Section 254(g) suggests that the Congress intended to delay implementation of the geographic rate averaging requirement.

II. State Authority

18. We conclude that Congress intended the states to play an active role in enforcing Section 254(g) with respect to intrastate geographic rate averaging. The Senate Report states that ''States shall continue to be responsible for enforcing [intrastate geographic rate averaging], so long as the State rules are not inconsistent with'' the regulations the Commission adopts. We believe that intrastate rate structures that are based on reasonable mileage bands will meet this requirement because that is the method traditionally used by carriers to offer geographically averaged rates. We will not, however, permit states to establish special rate zones within states absent forbearance by the Commission because we believe that would result in geographically deaveraged rates in violation of Section 254(g). Section 254(g) requires that rates be no higher in any rural or high-cost area than they are in any urban area. To the extent that AT&T proposes to associate some, but not all, rural areas with certain urban areas, we presume that some rural areas will experience higher rates than some urban areas, in violation of the statute.

III. Rate Integration

A. General Rule

19. Section 254(g) also requires the Commission to promulgate a rate integration rule requiring that ''a provider of interstate interexchange services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.'' The Commission has a well-established policy of rate integration. Since 1972, the Commission has required any carrier that provides domestic interstate interexchange service between the contiguous forty-eight states and various offshore points to integrate its rates pursuant to a plan to integrate the carrier's rates and services for offshore points with its rates for similar services on the mainland. In 1976, the Commission required carriers that offered message toll, private line, and specialized services to or from Alaska, Hawaii, Puerto Rico, and the Virgin Islands to integrate their rates for those services into the rate structures and uniform mileage rate patterns applicable to the mainland. This policy required IXCs to lower their rates in the newly integrated areas to levels comparable to those prevailing in the mainland for interexchange calls of similar distance, duration, and time of day. To implement the statutory requirements of Section 254(g), we will adopt the rate integration rule we proposed in the NPRM that ''a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.'' As with geographic rate averaging, this rule will incorporate our existing policies. This rule will apply to all domestic interstate interexchange telecommunications services as defined in the 1996 Act, and all providers of such services. As with our geographic rate averaging policy, carriers may comply with this rule by establishing reasonable mileage bands for calls.

20. We are not persuaded that we must forbear from requiring carriers to comply with rate integration, either generally or in competitive conditions, for the same reasons discussed with respect to geographic rate averaging. Our rate integration policy has integrated offshore points into the domestic interstate interexchange rate structure so that the benefits of growing competition for interstate interexchange telecommunications services, as well as regulatory and other developments concerning interstate services, are available throughout our nation. Furthermore, absent forbearance, the statute requires us to incorporate our 1976 Integration of Rates and Services Order requiring geographic rate integration.

21. We are also not persuaded that we should forbear from applying rate integration to smaller carriers serving high-cost areas on the grounds that they might have difficulty competing against nationwide carriers. These carriers have provided only conclusory allegations of harm and have not shown that they will be unable to compete with larger carriers in a rate-integrated environment, much less that they have satisfied all three of the requirements for exercise of our forbearance authority. Thus, these carriers have failed to make a showing on this record justifying forbearance.

22. We believe that AMSC, despite its arguments to the contrary, is required by the plain terms of the 1996 Act to integrate the rates charged for its offshore service into the rate structure for its mainland rates. Further, as with rate averaging, we interpret Section 254(g) to extend to all providers of interexchange service the rate integration policy that previously was applied only to AT&T. AMSC's services would appear to fall within the definition of interstate interexchange telecommunications services subject to Section 254(g). A Bureau decision referred to by AMSC permitted an AMSC tariff to take effect without any finding of lawfulness; it did not establish any policy of excluding AMSC services from rate integration. Accordingly, we reject AMSC's arguments on this issue.

B. U.S. Territories and Possessions

23. In the NPRM, we noted that ''State'' is defined in the Communications Act to include U.S. territories and possessions. Thus, in making the Section 254(g) rate integration provision applicable to interstate interexchange services provided between ''states,'' as defined in the Communications Act, 47 U.S.C. 153(40), Congress made rate integration applicable to interexchange services provided to all U.S. possessions and

territories, including Guam, the Northern Marianas, and American Samoa. Further, rate integration applies to all interstate interexchange telecommunications services as defined in the Communications Act, 47 U.S.C. 153(22), 153(46). Accordingly, under our rate integration rule implementing 254(g), providers of interexchange service to these points must do so on an integrated basis with services they provide to other states.

24. We believe that the resolutions the Guam/Northern Marianas Working Group adopted July 9, 1996, regarding rate integration for Guam and the Northern Marianas provide a reasonable framework to guide carriers towards implementing rate integration. Thus, a carrier should establish rates for services provided to Guam and the Northern Marianas consistent with the rate methodology it employs for services it provides to other states. Similarly, to the extent that a provider of interexchange service offers optional calling plans, contract tariffs, discounts, promotions, and private line services to its subscribers on the mainland, it should use the same ratemaking methodology and rate structure when offering those services to its subscribers in Guam or the Northern Marianas.

25. We also agree with the Working Group that cost support and universal service issues should be addressed in the first instance by the Universal Service Joint Board. Guam has specifically raised these issues in CC Docket No. 96–45. Accordingly, we will address those issues in the context of any Joint Board recommendation. For purposes of our decision, however, we do not view establishment of cost-support mechanisms as a precondition of rate integration. Nor have they been justified on the present record. Thus, we reject requests that we establish, or further consider, any cost-support mechanisms in this docket.

26. The Working Group resolutions urge that rate integration for services provided to Guam and the Northern Marianas should take place concurrently with, or shortly after, the inclusion of Guam and the Northern Marianas into the North American Numbering Plan, the implementation of Feature Group D service, and the Guam Telephone Authority's (GTA's) revision to its access charge structure. All three events are expected to occur by July 1, 1997. We do not view these developments as preconditions for rate integration of services provided to these points. Rather, the statute requires rate integration regardless of whether these developments occur. However, we believe that these developments will facilitate rate integration. Inclusion of Guam and the Northern Marianas in the North American Numbering Plan (NANP) will help carriers integrate them into their nationwide service plans. Implementation of Feature Group D will provide subscribers with high-quality equal access to providers of interexchange service serving Guam. Revision of access charges by GTA will help providers of interexchange service set final rate schedules for service to and from Guam. Accordingly, we require providers of interexchange service to integrate services offered to subscribers in Guam and the Northern Marianas with services offered in other states no later than August 1, 1997.

27. We additionally require that carriers submit preliminary plans to achieve rate integration no later than February 1, 1997, and final plans no later than June 1, 1997. These plans will permit the Commission to review progress toward achieving rate integration, as required by the 1996 Act. The preliminary plans need not include rates, but at a minimum should resolve service and rate-band issues. Final plans shall include a rate schedule. Carriers may integrate these points by expanding mileage bands, adding mileage bands, offering postalized rates, or other means that achieve rate integration. We also require that any rate changes between the adoption date of this Report and Order and August 1, 1997, must be consistent with achieving rate integration by August 1, 1997. We also believe that it would facilitate resolution of any further regulatory issues concerning rate integration for these points if the Common Carrier Bureau addresses them in the first instance. Accordingly, we will delegate to the Chief, Common Carrier Bureau, authority to resolve any issues concerning carriers' plans for rate integration for these offshore points.

28. We reject GTE's view that Section 254(g) does not require its Micronesian Telecommunications Corp. subsidiary to integrate rates with other GTE affiliates. The statute mandates that the Commission require rate integration among all states, territories, and possessions, and this goal is best achieved by interpreting ''provider'' to include parent companies that, through affiliates, provide service in more than one state. Moreover, nothing in the record supports a finding that Congress intended to allow providers of interexchange service to avoid rate integration by establishing or using their existing subsidiaries to provide service in limited areas. Thus, we determine that GTE, for the purposes of Section 254(g), constitutes a ''provider'' of interexchange services within the meaning of that section, and that it must integrate rates across affiliates. Accordingly, we require GTE to comply with the same timetable and requirements as the other carriers serving the Northern Marianas and Guam.

29. We reject the contentions of PCI and IT&E that they are not subject to the rate-integration obligation. As noted, Section 254 applies to all providers of interexchange service. Therefore, PCI & IT&E must provide Guam and the Northern Marianas service on a rate-integrated basis. Based on the present record, however, there is insufficient evidence to evaluate whether PCI's and IT&E's rates for service originating in Guam and the Northern Marianas comply with Section 254(g). Consequently, we will also require PCI and IT&E to abide by the same timetable and requirements as the other carriers serving the Northern Marianas and Guam. They may demonstrate with more particularity that their current rates comply with rate integration when they submit their plans.

30. Although carriers serving American Samoa are required to provide service on a rate-integrated basis, American Samoa has stated that it believes that rates for services provided to American Samoa are already rate integrated. Nevertheless, we will also direct providers of interexchange service serving American Samoa to submit plans for American Samoa in order to ensure that they will comply with the statute. To the extent services are provided to other U.S. possessions and territories by carriers subject to Section 254(g), the record does not reflect what carriers serve some of these points, such as Wake Island and Midway Island, or whether service is provided in special ways, such as in cooperation with military authorities, that might affect provision of service on a rate-integrated basis to these points. Accordingly, we are directing the Common Carrier Bureau to investigate service arrangements for these points and to take such steps as are necessary to assure compliance with Section 254(g) by August 1, 1997.

31. We also believe that AT&T's concerns about termination of foreign traffic in Guam, the Northern Marianas, and American Samoa do not justify delaying rate integration. Our decision to extend rate integration to Guam is intended to benefit U.S. consumers. We do not by this decision, however, affect the classification or treatment of the underlying costs of facilities between these offshore points and other U.S.

points for purposes of interconnection arrangements with foreign carriers.

32. Our requirement that carriers implement rate integration by August 1, 1997, complies with Section 254(g). That section requires us to adopt rules requiring rate integration for Guam, the Northern Marianas and American Samoa by August 8, 1996. We do not read this provision as mandating rate integration for all points by that date. Instead, we interpret the statute to permit a reasonable transition period for the offshore points to which our rate integration policy is being applied for the first time.

IV. AT&T's Commitments

33. The rules we adopt in this proceeding will require AT&T to provide interexchange service at geographically averaged and integrated rates. We believe these requirements incorporate the Commission's existing rate averaging and rate integration policies and, thus, should supersede the commitments AT&T made in the AT&T Reclassification proceeding concerning rate averaging and rate integration. Accordingly, we release AT&T from its commitments to continue to comply with the Commission's orders regarding rate integration and to file any tariff containing a geographically deaveraged rate on five business days' notice. We do not release AT&T from its more specific commitments concerning Hawaii and Alaska. AT&T is still affirmatively bound by the rules we establish in this Report and Order, and by our prior opinions, rules, and orders on geographic rate averaging and rate integration, which the rules incorporate.

Ordering Clauses

Accordingly, it is ordered That pursuant to authority contained in sections 1, 4(i), 10, 201–205, 214(e), 215 and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160, 201–205, 214(e) and 254(g), Part 64 of the Commission's rules are amended as set forth below.

It is further ordered That the policies, rules and requirements set forth herein are adopted.

It is further ordered That the policies, rules and requirements adopted herein shall be effective September 16, 1996.

It is further ordered That with respect to interexchange services provided between any U.S. state, territory or, possession and Guam, the Northern Marianas, or American Samoa, AT&T, GTE, MCI, Sprint, PCI, and IT&E shall: (1) Submit to the Commission no later than February 1, 1997, preliminary plans to achieve rate integration by August 1, 1997, with respect to those points; and (2) submit to the Commission no later than June 1, 1997, final plans to achieve rate integration by August 1, 1997, with respect to those points.

It is further ordered That AT&T is released from the commitments it made in the AT&T Reclassification proceeding concerning rate averaging and rate integration, as described herein.

It is further ordered That the Chief, Common Carrier Bureau, is delegated authority to resolve any regulatory issues concerning implementation of rate integration for offshore points consistent with this Report and Order. The Common Carrier Bureau is directed to investigate service arrangements for offshore points and to take such steps as are necessary to ensure compliance with Section 254(g), by August 1, 1997, for such offshore points.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, unless otherwise noted.

2. Subpart R is added to Part 64 to read as follows:

Subpart R—Geographic Rate Averaging and Rate Integration

§ 64.1801 Geographic rate averaging and rate integration.

Authority: 47 U.S.C. §§ 151, 154(i), 201–205, 214(e), 215 and 254(g).

Subpart R—Geographic Rate Averaging and Rate Integration

§ 64.1801 Geographic rate averaging and rate integration.

(a) The rates charged by providers of interexchange telecommunications services to subscribers in rural and high-cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas.

(b) A provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each U.S. state at rates no higher than the rates charged to its subscribers in any other state.

[FR Doc. 96–20859 Filed 8–15–96; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 61, No. 160
Friday, August 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 Parts 300 and 319

[Docket No. 95–098–2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule that would amend the regulations regarding the importation of fruits and vegetables by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. This extension will provide interested persons with additional time in which to prepare comments on the proposed rule.

DATES: Consideration will be given only to written comments on Docket No. 95–098–1 that are received on or before September 3, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–098–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–098–1. 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: Mr. Peter Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236; (301) 734–8295.

SUPPLEMENTARY INFORMATION: On July 2, 1996, we published in the Federal Register (61 FR 34379–34385, Docket No. 95–098–1) a proposal to amend the regulations in 7 CFR parts 300 and 319 by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, would be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables would be required to undergo prescribed treatments for injurious plant pests as a condition of entry, or to meet other special conditions.

Comments on all portions of Docket No. 95–098–1 except the proposed rule's information collection and recordkeeping requirements that are subject to the Paperwork Reduction Act were required to be received on or before August 1, 1996. By that date, we received two comments requesting an extension of the comment period for the rule portion of the proposed rule. These requests were made by a representative of industry and a representative of State government.

In response to these requests, we are reopening and extending the comment period on Docket No. 95–098–1 so that comments on any portion of the proposed rule will be considered if we receive them by September 3, 1996. We believe that this action will allow the representatives requesting extension of the comment period and all other interested persons adequate opportunity to prepare and submit comments.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 12th day of August 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–20920 Filed 8–15–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 96–16]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0930]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB78

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 96–58]

RIN 1550–AA98

Risk-Based Capital Standards; Collateralized Transactions

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (Agencies) are proposing to amend their respective risk-based capital standards to make uniform the Agencies' treatments for transactions supported by qualifying collateral. The proposal would implement part of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, which requires the Agencies to work jointly to make uniform their regulations and guidelines implementing common statutory or supervisory policies. The effect of the proposal would be to allow banks, bank

holding companies, and savings associations (institutions) to hold less capital for certain transactions collateralized by cash or qualifying securities.

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

ADDRESSES: Comments should be directed to:

OCC: Comments may be submitted to Docket No. 96–16, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C., 20219. Comments will be available for inspection and photocopying at that address. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274, or by electronic mail to REG.COMMENTS@OCC.TREAS.GOV.

Board: Comments directed to the Board should refer to Docket No. R–0930 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington D.C., 20551. Comments may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FDIC: Written comments should be sent to Jerry L. Langley, Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C., 20429. Comments may be hand delivered to Room F–402, 1776 F Street N.W., Washington, D.C., 20429 on business days between 8:30 a.m. and 5 p.m. (Fax number (202) 898–3838; Internet address: comments@fdic.gov). Comments will be available for inspection and photocopying in Room 7118, 550 17th Street, N.W., Washington, D.C., 20429, between 9 a.m. and 4:30 p.m. on business days.

OTS: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C., 20552, Attention Docket No. 96–58. These submissions may be hand-delivered to 1700 G Street, N.W., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Comments will be available for inspection at 1700 G Street, N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Roger Tufts, Senior Economic Advisor (202/874–5070), Christina Benson, Capital Markets Specialist (202/874–5070), Office of the Chief National Bank Examiner, or Ronald Shimabukuro, Senior Attorney (202/874–5090), Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C., 20219.

Board: Roger Cole, Deputy Associate Director (202/452–2618), Norah Barger, Manager (202/452–2402), Barbara Bouchard, Supervisory Financial Analyst (202/452–3072), Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington D.C., 20551.

FDIC: For supervisory issues, Stephen G. Pfeifer, Examination Specialist, Accounting Section, Division of Supervision (202/898–8904); for legal issues, Gerald J. Gervino, Senior Attorney, Legal Division (202/898–3723), Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C., 20429.

OTS: John F. Connolly, Senior Program Manager for Capital Policy, (202) 906–6465, Supervision Policy; or Deborah Dakin, Assistant Chief Counsel, (202) 906–6445, Regulations and Legislative Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C., 20552.

SUPPLEMENTARY INFORMATION: Section 303(a)(2) of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160, 2215 (September 23, 1994), codified at 12 U.S.C. 4803, provides that the Agencies shall, consistent with the principles of safety and soundness, statutory law and policy, and the public interest, work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. In this regard, the Agencies have been reviewing, on an interagency basis, their capital standards to identify areas where they have substantively different capital treatments for particular transactions.

Since December 1994, the four Agencies have had three different rules for the capital treatment of transactions that are supported by qualifying collateral. These rules constitute one of the more substantive differences among the Agencies' capital standards. The FDIC's and OTS's risk-based capital standards provide that the portion of a transaction collateralized by cash on deposit in the lending institution or by the market value of central government securities of the OECD-based group of countries [1] (OECD securities) may be assigned to the 20 percent risk category.[2] The Board's general rule is similar to the FDIC's and OTS's, but there is a limited exception. Under the Board's risk-based capital guidelines, transactions fully collateralized with cash or OECD securities with a positive margin (that is, the market value of the collateral is greater than the amount of the claim) may be eligible for a zero percent risk weight. An institution must maintain a positive margin on a daily basis, fully taking into account any change in the institution's exposure to the obligor or counterparty under a claim in relation to the market value of the collateral. The OCC's rule permits the portion of a transaction that is collateralized with a positive margin by cash or OECD securities, which must be marked-to-market daily, to receive a zero percent risk weight.

The Agencies are proposing to amend their respective risk-based capital standards to achieve uniformity in the treatment of collateralized transactions. This joint proposal would permit portions of claims (including repurchase agreements) collateralized by cash on deposit with the lending institution or by securities issued or guaranteed by the U.S. Treasury, U.S. government agencies, or the central governments in other OECD countries to be eligible for a zero percent risk weight. To qualify for the zero percent risk category, the collateralized arrangement would have to specify the portion of the claim that will be continuously collateralized either in terms of an identified dollar amount or a percentage of the claim. In the case of off-balance-sheet derivative contracts, the collateralized portion could be specified in terms of an identified dollar amount or a percentage of the current or potential future exposure.

Under this joint proposal, the arrangement must also require maintenance on a daily basis of a

[1] The OECD-based group of countries comprises all full members of the Organization for Economic Cooperation and Development (OECD), as well as countries that have concluded special lending arrangements with the International Monetary Fund associated with the Fund's General Arrangements to Borrow.

[2] Portions of claims collateralized by U.S. government-sponsored agency securities are also eligible for a 20 percent risk weight. The Agencies are not proposing to change the risk weighting for these collateralized transactions.

positive margin of collateral on the specified collateralized portion, taking into account daily changes in the value of the institution's credit exposure and the market value of the collateral. The Agencies note that for certain transactions where the market value of the collateral (e.g., the redemption value of cash on deposit) is fixed and the value of the exposure seldom fluctuates, ensuring maintenance of a positive collateral margin on a daily basis may not actually entail daily mark-to-market calculations, such as in the case of a loan collateralized by a certificate of deposit. Where only a portion of a collateralized claim qualifies for the zero percent risk category, the remaining portion should be assigned to the risk category appropriate to the obligor, or if relevant, the guarantor or other collateral.

In all cases, the collateralized arrangement should ensure that institutions maintain control over the collateral. The proposal has an accommodation for instances where an institution is acting as a customer's agent involving the lending or sale of the customer's securities that is collateralized by cash delivered to the institution. In this situation, the transaction would be deemed to be collateralized by cash on deposit with the lending institution provided that (a) any indemnification provided by the institution to the customer is limited to no more than the difference between the market value of the securities lent or sold and the cash collateral received and (b) any reinvestment risk associated with that cash collateral is borne by the customer.

While the proposal would permit certain partially collateralized claims to qualify for the zero percent risk category, the Agencies reiterate their longstanding supervisory guidance and remind institutions that engaging in transactions such as securities lending or repurchase agreements on a less than fully collateralized basis may be considered an unsafe and unsound practice.

Regulatory Flexibility Act Analysis

OCC Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. The proposed rule would reduce regulatory burden by allowing banks to hold less capital for certain transactions collateralized by cash or qualifying securities. This proposed rule clarifies and makes uniform existing regulatory requirements for national banks. The economic impact of this proposed rule on banks, regardless of size, is expected to be minimal.

Board Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board does not believe this proposal would have a significant impact on a substantial number of small business entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. In addition, because the risk-based capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal would not affect such companies. The amendment concerns capital requirements for collateralized transactions which may be entered into by depository institutions of any size. While larger institutions may enter into more sophisticated transactions, the amendment would equally favor smaller institutions, even if their collateralized transactions are less complex. The effect of the proposal would be to reduce regulatory burden on depository institutions by allowing the institutions to hold less capital for certain transactions collateralized by cash or qualifying securities.

FDIC Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the proposal would not have a significant impact on a substantial number of small entities. The amendment concerns capital requirements for collateralized transactions which may be entered into by depository institutions of any size. While larger institutions may enter into more sophisticated transactions, the amendment would equally favor smaller institutions, even if their collateralized transactions are less complex. The effect of the proposal would be to reduce regulatory burden on depository institutions by allowing the institutions to hold less capital for certain transactions collateralized by cash or qualifying securities.

OTS Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The amendment concerns capital requirements for collateralized transactions which may be entered into by depository institutions of any size. While larger institutions may enter into more sophisticated transactions, the amendment would equally favor smaller institutions, even if their collateralized transactions are less complex. The effect of the proposal would be to reduce regulatory burden on depository institutions by allowing the institutions to hold less capital for certain transactions collateralized by cash or qualifying securities.

Paperwork Reduction Act

The Agencies have determined that this proposal would not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

OCC and OTS Executive Order 12866 Determination

The Comptroller of the Currency and the Director of the OTS have determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this proposed rule is limited to changing the risk weighting of transactions collateralized by cash or securities issued or unconditionally guaranteed by the U.S. Government or its agencies, or the central government of an OECD country, from the 20 percent to the zero percent risk weight category under the Agencies' risk-based capital rules. In addition, with respect to the OCC, this proposal clarifies and makes uniform existing regulatory requirements for national banks. The OCC and OTS have therefore determined that the proposed

rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

Office of the Comptroller of the Currency

12 CFR CHAPTER I

For the reasons set out in the preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 3907, and 3909.

2. In appendix A to part 3, paragraph (a)(1)(viii) and footnote 15 in paragraph (b)(1)(v) of section 3 are revised to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *

(1) * * *

(viii) That portion of claims specified as collateralized by cash on deposit with the bank or by securities issued or unconditionally guaranteed by the United States Government or its agencies, or the central governments of an OECD country, provided that: [9a]

(A) The bank specifies in the collateral agreement the collateralized portion of the claim either in terms of an identified dollar amount or a percentage of the claim (or in the case of an off-balance-sheet derivative contract, in terms of an identified dollar amount or a percentage of the current or potential future exposure); [9b] and

(B) The bank specifies in the collateral agreement that the customer is obligated to maintain on a daily basis a positive margin of collateral on the specified portion of the claim that fully takes into account daily changes in the value of the bank's credit exposure and in the market value of the collateral.

* * * * *

(b) * * *

(v) * * * [15]

* * * * *

Dated: July 26, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

For the reasons set forth in the preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix A to part 208 section III.C.1., the paragraph immediately following the heading is designated as paragraph a. and the second paragraph is designated as paragraph b. and revised to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

III. * * *

C. * * *

1. *Category 1: zero percent.* a. * * *

b. This category also includes the portions of claims (including repurchase agreements) collateralized by cash on deposit with the lending bank or by securities issued or unconditionally guaranteed by the U.S. Treasury, U.S. government agencies, or the central government in other OECD-based countries, provided that the collateralized arrangement:

(1) Specifies the collateralized portion of the claim either in terms of an identified dollar amount or a percentage of the claim (or, in the case of an off-balance-sheet derivative contract, either in terms of an identified dollar amount or a percentage of the current or potential future exposure); and

(2) Requires the maintenance on a daily basis of a positive margin of collateral on the specified portion of the claim that fully takes into account daily changes in the value of the bank's credit exposure and in the market value of the collateral.

* * * * *

3. In appendix A to part 208, the last sentence of section III.D.1.i. is revised to read as follows:

* * * * *

III. * * *

D. * * *

1. * * *

i. * * * When a bank is acting as a customer's agent in a transaction involving the loan or sale of the customer's securities that is collateralized by cash delivered to the lending bank, the transaction is deemed to be collateralized by cash on deposit with the bank for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities lent or sold and the cash collateral received, and any reinvestment risk associated with the cash collateral is borne by the customer.

* * * * *

4. In appendix A to part 208, Attachment III, category 1, paragraph 5 is revised to read as follows:

* * * * *

[9a] Claims collateralized by securities issued or guaranteed by the United States Government or its agencies, or the central government of an OECD country include securities lending transactions, repurchase agreements, collateralized letters of credit, such as reinsurance letters of credit, and other similar financial guarantees. Swaps, forwards, futures, and options transactions are also eligible, if they meet the collateral requirements.

[9b] See footnote 22 in section 3(b)(5)(iii) of this appendix A (collateral held against derivative contracts).

[15] * * * When the bank is acting as a customer's agent in a transaction involving the loan or sale of the customer's securities collateralized by cash delivered to the bank, the transaction is deemed to be collateralized by cash on deposit with the bank provided that any obligation by the bank to indemnify the customer is limited to no more than the difference between the market value of the securities lent or sold and the cash collateral received, and any reinvestment risk associated with the collateral is borne by the customer.

Attachment III—Summary of Risk Weights and Risk Categories for State Member Banks

Category 1: Zero Percent

* * * * *

5. Portions of claims (including repurchase agreements) collateralized by cash on deposit with the lending bank or by securities issued or unconditionally guaranteed by OECD central governments or U.S. government agencies, provided that the collateralization arrangement (a) specifies the collateralized portion of the claim either in terms of an identified dollar amount or a percentage of the claim (or, in the case of an off-balance-sheet derivative contract, either in terms of an identified dollar amount or a percentage of the current or potential future exposure); and (b) requires the maintenance of a positive collateral margin on a daily basis that fully takes into account daily changes in the value of the bank's credit exposure and in the market value of the collateral.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In appendix A to part 225 section III.C.1., the paragraph immediately following the heading is designated as paragraph a. and the second paragraph is designated as paragraph b. and revised to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

III. * * *

C. * * *

1. *Category 1: zero percent* a. * * *

b. This category also includes the portions of claims (including repurchase agreements) collateralized by cash on deposit with the lending banking organization or by securities issued or unconditionally guaranteed by the U.S. Treasury, U.S. government agencies, or the central government in other OECD-based countries, provided that the collateralized arrangement:

(1) Specifies the collateralized portion of the claim either in terms of an identified dollar amount or a percentage of the claim (or, in the case of an off-balance-sheet derivative contract, either in terms of an identified dollar amount or a percentage of the current or potential future exposure); and

(2) Requires the maintenance on a daily basis of a positive margin of collateral on the specified portion of the claim that fully takes into account daily changes in the value of the banking organization's credit exposure and in the market value of the collateral.

* * * * *

3. In appendix A to part 225, the last sentence in section III.D.1.i. is revised to read as follows:

* * * * *

III. * * *

D. * * *

1. * * *

i. * * * When a banking organization is acting as a customer's agent in a transaction involving the loan or sale of the customer's securities that is collateralized by cash delivered to the lending banking organization, the transaction is deemed to be collateralized by cash on deposit with the banking organization for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities lent or sold and the cash collateral received, and any reinvestment risk associated with the cash collateral is borne by the customer.

* * * * *

4. In appendix A to part 225, Attachment III, category 1, paragraph 5 is revised to read as follows:

* * * * *

Attachment III—Summary of Risk Weights and Risk Categories for Bank Holding Companies

Category 1: Zero Percent

* * * * *

5. Portions of claims (including repurchase agreements) collateralized by cash on deposit with the lending banking organization or by securities issued or unconditionally guaranteed by OECD central governments or U.S. government agencies, provided that the collateralization arrangement (a) specifies the collateralized portion of the claim either in terms of an identified dollar amount or a percentage of the claim (or, in the case of an off-balance-sheet derivative contract, either in terms of an identified dollar amount or a percentage of the current or potential future exposure); and (b) requires the maintenance of a positive collateral margin on a daily basis that fully takes into account daily changes in the value of the banking organization's credit exposure and in the market value of the collateral.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 8, 1996.

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

For the reasons set forth in the preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In appendix A to part 325, section II.C, the first two paragraphs under Category 1—*Zero Percent Risk Weight* are designated as paragraphs a. and b., respectively, and a new paragraph c. is added to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. Procedures for Computing Risk-Weighted Assets

* * * * *

C. * * *

Category 1—*Zero Percent Risk Weight.* a. * * *

b. * * *

c. This category also includes the portions of claims (including repurchase agreements) collateralized by cash on deposit with the lending bank or by securities issued or unconditionally guaranteed by the U.S. Treasury, U.S. government agencies, or the central government in other OECD countries, provided that the collateralized arrangement:

(1) Specifies the collateralized portion of the claim either in terms of an identified dollar amount or a percentage of the claim (or, in the case of an off-balance-sheet derivative contract, either in terms of an identified dollar amount or a percentage of the current or potential future exposure); and

(2) Requires the maintenance on a daily basis of a positive margin of collateral on the specified portion of the claim that fully takes into account daily changes in the value of the bank's credit exposure and in the market value of the collateral.

* * * * *

3. In appendix A to part 325, section II.C., the three paragraphs under Category 2—*20 Percent Risk Weight* are designated as paragraphs a. through c., respectively, the phrase ''portions of claims collateralized by cash held in a segregated deposit account of the lending bank;'' is removed from the newly designated paragraph a., and the first sentence of the newly designated paragraph b. is revised to read as follows:

* * * * *

II. * * *

C. * * *

* * * * *

Category 2—*20 Percent Risk Weight.* a. * * *

b. This category also includes claims on, and portions of claims guaranteed by, U.S. Government-sponsored agencies, portions of claims collateralized by securities issued or guaranteed by U.S. Government-sponsored agencies, and the portions of claims (including repurchase agreements) collateralized by cash on deposit in the lending bank or by securities issued or guaranteed by OECD central governments

that do not qualify for the zero percent risk weight category. * * *

* * * * *

4. In appendix A to part 325, section II.D.1, the eight paragraphs are designated as paragraphs a. through h., respectively, and the newly designated paragraph h. is amended by adding a sentence to the end of the paragraph to read as follows:

* * * * *

II. * * *

D. * * *

1. *Items with a 100 Percent Conversion Factor.* a. * * *

* * * * *

h. * * * When a bank is acting as a customer's agent in a transaction involving the loan or sale of the customer's securities that is collateralized by cash delivered to the lending bank, the transaction is deemed to be collateralized by cash on deposit with the bank for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities lent or sold and the cash collateral received, and any reinvestment risk associated with the cash collateral is borne by the customer.

* * * * *

5. In appendix A to part 325 under Table II—Summary of Risk Weights and Risk Categories, a period is added at the end of paragraph (6) and a new paragraph (7) is added under Category 1—Zero Percent Risk Weight to read as follows:

* * * * *

Table II—Summary of Risk Weights and Risk Categories

Category 1—Zero Percent Risk Weight

* * * * *

(7) Portions of claims (including repurchase agreements) collateralized by cash on deposit with the lending bank or by securities issued or unconditionally guaranteed by the U.S. Treasury, U.S. Government agencies, or the central government in other OECD countries, provided that the collateralization arrangement (a) specifies the collateralized portion of the claim either in terms of an identified dollar amount or a percentage of the claim (or, in the case of an off-balance-sheet derivative contract, either in terms of an identified dollar amount or a percentage of the current or potential future exposure); and (b) requires the maintenance of a positive collateral margin on a daily basis that fully takes into account daily changes in the value of the bank's credit exposure and in the market value of the collateral.

* * * * *

6. In appendix A to part 325 under Table II—Summary of Risk Weights and Risk Categories, paragraphs (6) and (7) under Category 2—20 Percent Risk Weight are revised to read as follows:

* * * * *

Table II—Summary of Risk Weights and Risk Categories

* * * * *

Category 2—20 Percent Risk Weight

* * * * *

(6) Portions of claims (including repurchase agreements) collateralized [3] by securities issued or guaranteed by the U.S. Treasury, U.S. Government agencies, or the central government in other OECD countries that do not qualify for the zero percent risk weight category, or that are collateralized by securities issued or guaranteed by U.S. Government-sponsored agencies.

(7) Portions of loans and other claims collateralized by cash on deposit in the lending bank that do not qualify for the zero percent risk weight category.

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C., this 17th day of June, 1996.

Federal Deposit Insurance Corporation

Valerie J. Best,

Assistant Executive Secretary.

Office of Thrift Supervision

12 CFR CHAPTER V

For the reasons set forth in the preamble, part 567 of chapter V of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.6 is amended by:

a. Redesignating footnotes 8, 9, 10, and 11 as footnotes 10, 11, 12, and 13, respectively.

b. Adding paragraph (a)(1)(i)(H); and

c. Adding a sentence at the end of paragraph (a)(2)(i)(E).

The additions read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(1) * * *

(i) * * *

(H) That portion of claims collateralized by cash on deposit with the lending savings association or by securities issued or unconditionally guaranteed by the United States Treasury, the United States Government or its agencies, or the central government in other OECD countries,[8] provided that the collateralized arrangement:

(*1*) Specifies the collateralized portion of the claim either in terms of an identified dollar amount or a percentage of the claim (or, in the case of an off-balance-sheet derivative contract, either in terms of an identified dollar amount or a percentage of the current or potential future exposure); [9] and

(*2*) Requires the maintenance on a daily basis of a positive margin of collateral on the specified portion of the claim that fully takes into account daily changes in the value of the savings association's credit exposure and in the market value of the collateral.

* * * * *

(2) * * *

(i) * * *

(E) * * * When the savings association is acting as a customer's agent in a transaction involving the loan or sale of the customer's securities that is collateralized by cash delivered to the lending savings association, the transaction is deemed to be collateralized by cash on deposit with the savings association for purposes of determining the appropriate risk weight category, provided that any obligation of the savings association to indemnify the customer is limited to no more than the difference between the market value of the securities lent or sold and the cash collateral received, and any reinvestment risk associated with the collateral is borne by the customer.

* * * * *

Dated: July 23, 1996.

Office of Thrift Supervision

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 96–20639 Filed 8–15–96; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

[3] Degree of collateralization is determined by current market value.

[8] Claims collateralized by securities issued or guaranteed by the United States Treasury, the United States Government or its agencies, or the central government of an OECD country include securities lending transactions, repurchase agreements, collateralized letters of credit, such as reinsurance letters of credit, and other similar financial guarantees. Swaps, forwards, futures and options transactions are also eligible, if they meet the collateral requirements.

[9] See paragraph (a)(2)(v)of this section.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 932 and 941

[No. 96–55]

Selection and Compensation of Federal Home Loan Bank Employees; Selection of the Director of the Office of Finance and Compensation of the Employees of the Office of Finance

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Board) is proposing to amend the provisions of its regulations governing the selection and compensation of employees of the Federal Home Loan Banks (Banks) in order to streamline regulatory requirements and transfer specific functions currently performed by the Board to the board of directors of each Bank, including the establishment of incentive payment measures for Bank Presidents based on each Bank's fulfillment of its mission. The Board is proposing also to amend its regulation governing the Federal Home Loan Bank System's Office of Finance (OF) to provide for the annual appointment of the Director of the OF and for the compensation of the Director and the other employees of the OF.

DATES: Comments on this proposed rule must be received in writing on or before October 15, 1996.

ADDRESSES: Mail comments to Elaine Baker, Executive Secretariat, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Barbara Fisher, Director, Office of Resource Management, (202) 408–2586; or David Guy, Associate General Counsel, (202) 408–2536, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. Selection of Employees

1. Bank Employees. Section 12(a) of the Federal Home Loan Bank Act (Bank Act) provides that each Bank may select, employ, and fix the compensation of Bank employees, subject to the approval of the Board. *See* 12 U.S.C. 1432(a). Section 932.40 of the Board's regulations, which governs the selection of Bank employees, provides that officers, legal counsel, and employees of a Bank shall be elected or appointed in accordance with the Bank's bylaws. *See* 12 CFR 932.40. Each Bank's bylaws are subject to the approval of the Board. *See* 12 U.S.C. 1432(a). Under each Bank's bylaws, the Bank elects or appoints its President subject to Board approval.

Section 932.40 also sets forth conflicts of interest prohibitions applicable to full-time officers or employees of a Bank, and to counsel retained by a Bank. *See* 12 CFR 932.40. These provisions generally prohibit a Bank employee from acting on behalf of a member or other institution insured by the former Federal Savings and Loan Insurance Corporation (FSLIC), except under specified circumstances and with the consent of the FSLIC. Existing § 932.40 extends this prohibition to counsel and attorneys of any Bank, whether employed on a salary, fee, retainer, or other basis, unless the Board consents to such representation. *See id.*

2. OF employees. The current regulation regarding OF provides only that the Director has responsibility for the overall daily management of OF, including the employment and management of personnel. *See* 12 CFR 941.6(a)(3). It also provides that the board of directors of OF shall, subject to Finance Board approval, select and employ the Director under an annual contract of employment. *See id.* § 941.9(b)(6).

B. Compensation

1. Bank Presidents and the Director of OF. Under section 12(a) of the Bank Act, the compensation of all Bank employees is subject to Board approval. *See* 12 U.S.C. 1432(a). However, under its existing regulation on Bank employee compensation, prior Board approval is required only for compensation of a Bank's President. *See* 12 CFR 932.41(a). Section 932.41 of the Board's existing compensation regulation requires the board of directors of each Bank annually to adopt and submit to the Board for its approval an appropriate resolution showing the contemplated compensation of its President. *Id.*

In setting the compensation of their Presidents, the Banks are governed by the Bank Presidents' Compensation Plan (Compensation Plan), adopted by the Board on November 19, 1991, as amended from time to time. *See* Bd. Res. No. 91–565 (as amended). The Compensation Plan establishes base salary guidelines, merit increase (to base salary) guidelines, and criteria for incentive payments for Bank Presidents. The Compensation Plan requires each Bank annually to submit for Board approval recommendations for merit increases to its President's base salary and proposed incentive payments. The Director of OF also is subject to the Compensation Plan. *See*, e.g,. Bd. Res. No. 95–33 (Oct. 5, 1995).

2. Other bank employees. Section 932.41(b) of the Board's existing compensation regulation permits a Bank to fix the compensation of officers other than the President without prior Board approval, provided that such compensation is within ranges established by the Board and the total limits for such compensation in the Bank's approved budget. *See* 12 CFR 932.41(b). Each Bank may establish the amount and form of compensation for all other employees (including legal counsel) within the limits set forth in the Bank's approved budget. *See id.* Section 932.41(b) also prohibits a Bank from paying a bonus to any director, officer, employee, or other person. *See id.*

In Resolution No. 84–390, dated July 25, 1984, the Board's predecessor agency, the Federal Home Loan Bank Board (FHLBB), established a cap on compensation of Bank employees other than the President, providing that the salary of the second-highest-paid Bank officer may not exceed 80 percent of the Bank President's salary. This resolution currently remains in effect. *See* 12 U.S.C. 1437 note.

3. OF employees. The current regulations provide no guidance on the compensation of OF employees.

4. Benefits. Existing § 932.41(b) does not specifically address benefits provided by the Banks to their employees. It has been the Board's practice to require the Banks to obtain prior Board approval for any compensation of Bank Presidents, whether direct or indirect, and whether payable in current periods or during future periods. This may include a variety of benefits plans in which Bank Presidents are participants, exclusive of other employees. It has been the Board's practice to permit the Banks to adopt non-discriminatory qualified benefits plans for their employees without Board approval.

II. Analysis of the Proposed Rule

As part of its continuing effort to transfer to the Banks those functions currently performed by the Board that are related to Bank management and governance, the Board proposes to amend §§ 932.40 and 932.41 of its regulations to clarify the scope of the Banks' discretion in selecting and fixing the compensation of Bank Presidents and other Bank employees. The Board also proposes to amend § 941.9 of its regulations to codify the Board's existing practice regarding the annual appointment and compensation of the Director of OF. In making these proposals, the Board reiterates its position that, notwithstanding the Board's broad statutory authority to approve all aspects of the selection and compensation of Bank and OF employees, the Banks' boards of directors and the board of directors of OF are ultimately responsible for the effective and prudent management of the Banks and OF, respectively, including the selection and compensation of their officers and other employees.

A. Selection of Employees

1. Bank Presidents. The Board proposes to amend § 932.40 to clarify

the rules governing the appointment of Bank Presidents. Proposed § 932.40(a)(1) restates the Banks' statutory authority to appoint their Presidents, and makes clear that such appointments are subject to prior Board approval. Proposed §§ 932.40(a)(2) and (3) codify the Board's existing practice of approving the appointments of Bank Presidents for one-year terms. Under these provisions, all appointments expire on December 31 of the year for which the President is appointed, without opportunity for holdover. To the extent that a Bank's by-laws are inconsistent with this requirement, the by-laws are superseded by § 932.40(a)(2). Furthermore, the Board intends these provisions to make clear that a Bank President appointed to fill a mid-term vacancy is appointed to serve out the remainder of the one-year term of his or her predecessor, and is not appointed for a full one-year term. Proposed § 932.40(a)(4) codifies the Board's existing procedure for approval of appointments of the Bank Presidents. By November 1 of each year, the board of directors of each Bank must adopt and submit to the Board a resolution appointing or reappointing its President for the following year. Section 932.40(a)(5) makes clear that no appointment of a Bank President is effective until approved by the Board.

2. Other bank employees. Section 932.40(b) of the proposed rule restates the Banks' statutory authority to appoint or elect officers other than the President and to hire other employees of the Bank, and makes clear that these activities do not require prior Board approval.

3. Conflicts of interests. Proposed § 932.40(c) is intended to update the conflicts of interest provisions in existing § 932.40 by eliminating references to the FSLIC, which was abolished by Congress in 1989. *See* 12 U.S.C. 1437 note. However, the Board is retaining, in substance, the existing requirement that a Bank employee shall not act in any capacity for certain specified institutions whose interests are likely to be in conflict with the interests of the Bank. Specifically, proposed § 932.40(c) prohibits a Bank employee from being employed by, or acting in any other capacity for, a Bank member or an institution eligible to make application to become a Bank member.

In addition, the Board proposes to eliminate the final sentence in existing § 932.40, which extends the conflicts of interest provision discussed above to outside counsel hired by a Bank and to other attorneys acting on behalf of a Bank who are not Bank employees, except in cases specifically approved by the Board. *See* 12 CFR 932.40. The Board believes that the determination of whether outside counsel may have a conflict of interest in a matter in which it is representing a Bank is a decision that is properly within the purview of each Bank. Further, the existing conflicts of interest provisions, as applied to outside counsel, are duplicative of applicable requirements of state codes of professional conduct and other ethics rules. Attorneys who work for a Bank as salaried employees would continue to be subject to the conflicts of interest provisions in proposed § 932.40(c), since those provisions continue to apply to all Bank employees.

4. The Director of the OF. The Board proposes to amend § 941.9(b)(6) by deleting the language regarding an annual contract of employment for the Director of the OF, and adding a requirement for the annual appointment of the Director of the OF, subject to prior approval of the Board.

B. Compensation of Bank Employees and OF Employees

The Board proposes to amend existing § 932.41 to increase the amount of discretion the Banks may exercise in fixing the compensation of their employees. The Board proposes to eliminate its Compensation Plan for the Bank Presidents and to amend existing § 932.41 to permit each Bank to approve the base salaries, incentive payments, and benefits for its President, within regulatory limitations approved by the Board. Proposed § 932.41 also clarifies the conditions under which the Banks can fix the compensation of employees other than the President, without prior Board approval.

The Board proposes to amend its regulation governing OF to permit the board of directors of OF to establish the base salary of the Director of OF under the same rules governing the base salaries of the Bank Presidents, and to make incentive payments for the Director, subject to prior Board approval. The Board also proposes to amend its regulation to provide guidance regarding the compensation of other OF employees that is consistent with the guidance for Bank employees.

The Board has not approved any change-of-control arrangements between a Bank and its President or other officers providing for payments as a result of a merger or other event qualifying as a change of control. The Board requests detailed comments on whether the Banks should be permitted to enter into change-of-control arrangements with certain senior officers. Comments should include a detailed description of the terms of any such arrangements and a supporting rationale.

1. Base salaries. Under proposed § 932.41(b)(1), each Bank shall establish the base salary of its President within the following salary ranges, which ranges may be adjusted annually by the Board. The Board shall publish a notice in the last quarter of the year preceding the year in which adjustments are to take effect setting forth the adjustments to these ranges for the next calendar year. Proposed § 932.4(b)(1)(i) codifies the 1996 salary ranges established by the Board in Bd. Res. No. 95–33 (Oct. 5, 1995), as follows: 1) a Bank with total assets as of December 31 of the prior year equal to or greater than $40 billion shall have a base salary range for its President beginning January 1, 1996, consisting of a minimum, mid-point, and maximum dollar amount of $240,000, $305,000 and $385,000, respectively; and 2) a Bank with total assets as of December 31 of the prior year less than $40 billion shall have a base salary range for its President beginning January 1, 1996, consisting of a minimum, mid-point, and maximum dollar amount of $195,000, $245,000, and $310,000, respectively. A newly appointed Bank President may not receive a base salary higher that the mid-point of the applicable base salary range.

Beginning January 1, 1997, and annually thereafter, a Bank may adjust the base salary of its President based on a merit increase rate. The maximum merit increase rate shall be determined by the Board on an annual basis. Any annual increase in a Bank President's base salary shall not exceed the merit increase rate established by the Board, nor shall such annual increase result in a Bank President's base salary exceeding the maximum dollar amount of the applicable base salary range. No other adjustment may be made to a President's base salary during the year without prior Board approval. By January 2 of each year, a Bank must report to the Board the approved base salary of its President.

The Board is proposing to amend § 941.9 of its regulations to authorize the board of directors of OF to establish the compensation of the Director according to the base salary ranges and the merit increase rate governing the salaries of the Bank Presidents, subject to prior Board approval. For purposes of determining the applicable base salary range, OF is deemed to have assets of less than $40 billion.

The Board currently determines the salary ranges for Bank Presidents using a comparability model based on the salaries of the chief operating officers of

private financial subsidiaries of similar asset size and geographic location, offset by staff size. The Board specifically requests comment on whether there is a more appropriate universe of entities that should be used in establishing the comparability of the Bank Presidents' salaries. For instance, it has been suggested that the salaries of the Bank Presidents should be comparable to the salaries of the Presidents (or their equivalent) of the Federal Reserve Banks, other segments of the financial services industry, or other federally or state-created entities with similar size, functions, and mission. Comments should include specific examples of government entities on which comparability should be based and a rationale for including such entities in the universe.

In regulating the salary levels of the Bank Presidents and other Bank employees, one of the Board's objectives is to attract and retain competent individuals to the Bank System. The Board recognizes that, in setting the salary levels for the Bank Presidents, it also is affecting the salary levels of other Bank employees.

Under proposed § 932.41(b)(2), each Bank generally may establish base salaries for Bank employees other than the President without prior Board approval, provided such salaries are reasonable and comparable with the base salaries of employees of the other Banks and other similar businesses, such as similar financial institutions, with similar duties and responsibilities. Banks must maintain documentation supporting the reasonableness and comparability of their employees' base salaries. Similar provisions regarding OF employees are contained in proposed § 941.9(c).

Upon adoption of the proposed rule in final form, the Board intends to rescind FHLBB Resolution No. 84–390, which requires the annual base salary of the highest paid Bank employee other than the Bank President to be less than or equal to 80 percent of the annual base salary of that Bank President. *See* FHLBB Res. No. 84–390 (July 25, 1984). However, a Bank would be required to report to the Board the approved salary of the highest paid employee other than the Bank President by January 2 of each year.

2. Incentive payments. Proposed § 932.41(c) governs payments made to Bank Presidents based on the quality of their on-the-job performance. Such payments are defined in § 932.41(a)(3) as ''incentive payments.'' As discussed below, § 932.41(c) is intended to preclude a Bank from making an incentive payment to a Bank President based on the President's individual performance without regard to the performance of the Bank. A Bank is prohibited from making any incentive payment to its President if the most recent examination of the Bank by the Board identified an unsafe or unsound practice or condition with regard to the Bank. The Board specifically requests comment on whether there are other events or conditions that should result in a prohibition on incentive payments to Bank Presidents.

At least 20 percent of any incentive payment for a Bank President must be based on the following criteria illustrating the Bank's emphasis on the portion of its mission involved with support for member credit activities: (1) average annual advances outstanding; and (2) average annual letters of credit outstanding and average annual notional principal outstanding in swap and option contracts with members. At least 30 percent of any incentive payment must be based on the following criteria illustrating the Bank's emphasis on additional support for housing and community development finance: (1) average annual Community Investment Program (CIP) advances outstanding, which are provided in support of new CIP lending activity, not as refinancings of existing CIP-eligible loans originated more than 30 days prior to the CIP financing request, nor for the purpose of borrower balance sheet restructuring; (2) average annual consolidated obligation principal customized for and issued to state or local government agencies, non-profits, foundations, and other entities, the proceeds of which serve unmet needs; and (3) average annual balances outstanding of investments identified as fulfilling unmet needs by the Board, where such investments are in accordance with items 11 and 12 of section IIB of the Financial Management Policy for the Federal Home Loan Bank System, and other investments approved by the Board. The Bank's board of directors must assign a weight greater than zero to each of the five above-described criteria as it deems appropriate, based upon the board's view of the importance of each of these criteria in the Bank's fulfillment of its mission.

Any portion (up to 50 percent) of the incentive payment that is not based on the above-described criteria must be based on the Bank's performance in achieving other objectives established by the Bank's board of directors.

The Bank's board of directors must establish reasonable numerical measures of performance and reasonable numerical targets for the achievement of the performance criteria discussed above. Performance targets must be set at such a level as to show an improvement in the Bank's performance over the prior year or an extraordinary achievement in attaining the designated target.

By January 1 of each year, the board of directors of each Bank that intends to make any incentive payment to its President for such year shall adopt and submit to the Board a resolution establishing the performance measures and targets on which such incentive payment will be based.

Proposed §§ 932.41(c)(8) and (9) set forth the manner in which a Bank President's incentive payment is to be calculated, based on the Bank's achievement of the performance targets set by the board of directors. Under the Compensation Plan, prior to the most recent amendment, the maximum incentive payment payable to a Bank President was 37.5 percent of base salary. The Plan was amended on July 25, 1996, by Resolution Number 96–54, to limit an incentive payment to 31.25 percent of base salary. The Board specifically requests comment on the appropriateness of and reasons for setting the maximum percentage at some point in the range between zero and 37.5 percent.

Proposed §§ 932.41(c)(10) provides that by March 1 of each year, the board of directors of each Bank making any incentive payment to its President for the prior year shall adopt and submit to the Board a resolution showing the results for the individual performance measures and the amount of the incentive payment to the Bank President. Such incentive payment shall be deemed approved by the Board and payable to a Bank President only if determined in accordance with the requirements of § 932.41(c).

The Board is proposing to authorize the board of directors of OF to make incentive payments to the Director of OF, subject to prior Board approval. Proposed § 941.9(c)(2) authorizes OF board of directors to establish the criteria, performance measures, and targets on which any such incentive payment is based. OF is prohibited from making any incentive payment to the Director if the most recent examination of OF identified an unsafe or unsound practice or condition with regard to OF.

The Board wishes to make clear that the proposed rule does not require a Bank or OF to make an incentive payment, but if a Bank or OF chooses to make such a payment, it must meet the requirements of proposed § 932.41(c) or § 941.9(c)(2), respectively.

Proposed § 932.41(d) carries forward the Board's current practice of

permitting the Banks to make incentive payments to employees other than the President without prior Board approval, and adds the requirement that such incentive payments must be reasonable and comparable with incentive payments made to employees of the other Banks and other similar businesses (including financial institutions) with similar duties and responsibilities. Banks must maintain documentation supporting the reasonableness and comparability of their employees' incentive payments. Similar provisions regarding OF employees are contained in proposed § 941.9(c).

3. Benefits. Proposed § 932.41(e) is intended to permit the Banks to establish certain kinds of benefits plans for their employees, and to provide benefits pursuant to such plans, without prior Board approval. This section provides that a Bank may make payments in the nature of benefits to its President and other Bank employees only pursuant to a ''benefit plan'' or a ''bona fide deferred compensation plan or arrangement,'' which are specifically defined in proposed §§ 932.41(a)(1) and (2). Proposed § 932.41(e) codifies the Board's current practice of permitting the Banks to adopt benefit plans without prior Board approval if such plans are open for participation by all Bank employees. However, this section changes the Board's current practice of requiring the Banks to obtain prior Board approval of plans that limit participation to a Bank's President and other selected officers. Similar provisions regarding OF employees are contained in proposed § 941.9(c).

4. Severance. Proposed § 932.41(f) is intended to permit the Banks to establish severance plans for their employees without prior Board approval. Similar provisions regarding OF employees are contained in proposed § 941.9(c).

5. General Limits on Payments. Proposed § 932.41(g)(1) is intended to clarify that the provisions of § 932.41 govern all payments, as that term is defined in § 932.41(a)(5), to Bank employees, and any payments made to a Bank employee that are not in accordance with § 932.41 are prohibited. Proposed § 932.41(g)(2) requires the total amount of base salaries, incentive payments, and benefits paid to Bank employees to be within the limit set forth in the Bank's approved budget. The board of directors of each Bank must review annually the compensation plan for its employees, including appropriate documentation, prior to approving the Bank's annual budget. Proposed § 932.40(h) carries forward the existing prohibition on the payment of bonuses to Bank employees and other persons. A bonus is defined as a payment to an employee, other than base salary, benefits and severance, that is not based on performance. Similar provisions regarding OF employees are contained in proposed § 941.9(c).

III. Regulatory Flexibility Act

The proposed rule applies only to the twelve Banks, which do not come within the meaning of ''small entities,'' as defined by the Regulatory Flexibility Act (RFA). 5 U.S.C. 601. Therefore, in accordance with the RFA, the Board hereby certifies that the proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 932

Conflict of interests, Federal home loan banks.

12 CFR Part 941

Organization and functions (Government agencies).

Accordingly, chapter IX, title 12, subchapter B, Code of Federal Regulations, is hereby proposed to be amended as follows:

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 932—ORGANIZATION OF THE BANKS

1. The authority citation for part 932 is revised to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1426, 1427, 1432; 42 U.S.C. 8101 *et seq.*

2. Section 932.40 is revised to read as follows:

§ 932.40 Selection.

(a) *Bank Presidents.* (1) Each Bank may appoint or reappoint a President, subject to prior Board approval.

(2) A President of a Bank shall be appointed initially for a term not to exceed one calendar year, expiring on December 31 of the year in which the President takes office.

(3) A President may be reappointed to succeeding one-year terms, each expiring on December 31 of the year for which the President is reappointed.

(4) By November 1 of each year, the board of directors of each Bank shall adopt and submit to the Board a resolution appointing or reappointing its President for the following year.

(5) No appointment or reappointment of a Bank President shall be effective until approved by the Board.

(b) *Bank employees other than the President.* Each Bank may appoint or elect officers other than the President and may hire other employees of the Bank without prior Board approval.

(c) *Conflicts of interest.* A Bank employee shall not also be employed by, or otherwise act in any capacity for, a member or an institution eligible to make application to become a member.

3. Section 932.41 is revised to read as follows:

§ 932.41 Compensation.

(a) *Definitions.* The following definitions apply for purposes of this section:

(1) *Benefit plan. Benefit plan* means any plan, contract, agreement, or other arrangement which is an ''employee welfare benefit plan,'' as that term is defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (as amended) (29 U.S.C. 1002(1)), or other usual and customary plans such as dependent care, tuition reimbursement, group legal services or cafeteria plans.

(2) *Bona fide deferred compensation plan or arrangement.* (i) *Bona fide deferred compensation plan or arrangement* means:

(A) Any plan, contract, agreement, or other arrangement whereby a Bank employee voluntarily elects to defer all or a portion of the base salary or incentive payment paid for services rendered which otherwise would have been paid to such employee at the time the services were rendered (including a plan that provides for the crediting of a reasonable investment return on such elective deferrals) and the Bank either:

(*1*) Recognizes compensation expense and accrues a liability for the benefit payments according to generally accepted accounting principles (GAAP); or

(*2*) Segregates or otherwise sets aside assets in a trust which may only be used to pay plan and other benefits, except that the assets of such trust may be available to satisfy claims of the Bank's creditors in the case of insolvency; or

(B) A nonqualified deferred compensation or supplemental retirement plan established by a Bank, other than an elective deferral plan described in paragraph (a)(2)(i)(A) of this section:

(*1*) Primarily for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by sections 415, 401(a)(17), 402(g) or any other applicable provision of the Internal Revenue Code of 1986 (26 U.S.C. 415, 401(a)(17), 402(g)); or

(*2*) Primarily for the purpose of providing supplemental retirement benefits or other deferred compensation for a select group of management or

highly compensated employees (excluding payments under a severance plan described in paragraph (a)(6) of this section).

(ii) The following requirements shall apply to any nonqualified deferred compensation or supplemental retirement plans as described in paragraph (a)(2)(i)(B) of this section:

(A) The plan must have been in effect at least one year prior to a payment of benefits under the plan;

(B) Any payment made pursuant to such plan must be made in accordance with the terms of the plan and any amendments to such plan made during such one year period that do not increase the benefits payable thereunder;

(C) The employee must have a vested right, as defined under the applicable plan document, at the time of termination of employment, to payments under such plan;

(D) Benefits under such plan must be accrued each period only for current or prior service rendered to the employee;

(E) The Bank must have previously recognized compensation expenses and accrued a liability for the benefit payments according to GAAP or segregated or otherwise set aside assets in a trust which may only be used to pay plan benefits, except that the assets of such trust may be available to satisfy claims of the Bank's creditors in the case of insolvency; and

(F) Payments pursuant to such plans shall not be in excess of the accrued liability computed in accordance with GAAP.

(3) *Incentive payment. Incentive payment* means a direct or indirect transfer of funds by a Bank to a Bank employee, in addition to base salary, based on the employee's on-the-job performance.

(4) *Nondiscriminatory. Nondiscriminatory* means that the plan, contract or arrangement in question applies to all employees of a Bank who meet reasonable and customary eligibility requirements applicable to all employees, such as minimum length of service requirements. A nondiscriminatory plan, contract, or arrangement may provide different benefits based only on objective criteria such as base salary, total compensation, length of service, job grade or classification, which are applied on a proportionate basis.

(5) *Payment.* Payment means:

(i) Any direct or indirect transfer of any funds or any asset;

(ii) Any forgiveness of any debt or other obligation;

(iii) The conferring of any benefit; and

(iv) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of, or arrangement for, any letter of credit or other instrument for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which such funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(A) The determination, after such date, of the liability for the payment of such amount; or

(B) The liquidation, after such date, of the amount of such payment.

(6) *Severance plan.* A nondiscriminatory pay plan or arrangement which provides for payment of severance benefits to all eligible employees upon involuntary termination other than for cause, voluntary resignation, or early retirement; provided, however, that no employee shall receive any such payment which exceeds the base compensation paid to such employee during the 12 months immediately preceding termination of employment, resignation or early retirement.

(b) *Base salary*—(1) *Bank President.* (i) Each Bank shall establish the base salary of its President within the following salary ranges, which ranges may be adjusted annually by the Board:

(A) A Bank with total assets as of December 31 of the prior year equal to or greater than $40 billion shall have a base salary range for its President beginning January 1, 1996, consisting of a minimum, mid-point, and maximum dollar amount of $240,000, $305,000 and $385,000, respectively; and

(B) A Bank with total assets as of December 31 of the prior year less than $40 billion shall have a base salary range for its President beginning January 1, 1996, consisting of a minimum, mid-point, and maximum dollar amount of $195,000, $245,000, and $310,000, respectively.

(ii) A newly appointed Bank President may not receive a base salary higher than the mid-point of the applicable base salary range.

(iii) Beginning January 1, 1997, and annually thereafter, a Bank may adjust the base salary of its President based on a merit increase rate. The maximum merit increase rate shall be determined by the Board on an annual basis. Any annual increase in a Bank President's base salary shall not exceed the merit increase rate established by the Board, nor shall such annual increase result in a Bank President's base salary exceeding the maximum dollar amount of the applicable base salary range under paragraph (b)(1)(i)(A) or (B) of this section. No other adjustment may be made to a President's base salary during the year without prior Board approval.

(iv) By January 2 of each year, a Bank must report to the Board the approved base salary of its President.

(2) *Other Bank employees.* (i) Each Bank may establish base salaries for employees other than the President without prior Board approval, provided that such base salaries are reasonable and comparable with the base salaries of employees of the other Banks and other similar businesses (including financial institutions) with similar duties and responsibilities. Banks shall maintain documentation supporting the reasonableness and comparability of their employees' base salaries.

(ii) By January 2 of each year, a Bank must report to the Board the approved salary of the highest paid employee other than the Bank President.

(c) *Incentive payments for Bank President.* (1) Any incentive payment made to a Bank President shall be based solely on the performance of the Bank during the year in which the incentive payment is earned, and shall be determined in accordance with the requirements of this paragraph (c). A Bank shall not make any incentive payment to its President if the most recent examination of the Bank by the Board identified an unsafe or unsound practice or condition with regard to the Bank.

(2) At least 20 percent of a Bank President's incentive payment shall be based on the following criteria:

(i) Average annual advances outstanding; and

(ii) Average annual letters of credit outstanding and average annual notional principal outstanding in swap and option contracts with members.

(3) At least 30 percent of a Bank President's incentive payment shall be based on the following criteria:

(i) Average annual Community Investment Program (CIP) advances outstanding, which are provided in support of new CIP lending activity, not as refinancings of existing CIP-eligible loans originated more than 30 days prior to the CIP financing request, nor for the purpose of borrower balance sheet restructuring;

(ii) Average annual consolidated obligation principal customized for and issued to state or local government agencies, non-profits, foundations, and other entities, the proceeds of which serve unmet needs; and

(iii) Average annual balances outstanding of investments identified as fulfilling unmet needs by the Board,

where such investments are in accordance with items 11 and 12 of section IIB of the Financial Management Policy for the Federal Home Loan Bank System, and other investments approved by the Board.

(4) Up to 50 percent of a Bank President's incentive payment may be based upon criteria identified by the Bank's board of directors, provided such criteria reflect the Bank's performance in achieving its mission during the year for which the incentive payment is being made.

(5) A Bank board of directors shall assign a weight greater than zero for each of the criteria in paragraphs (c)(2) and (4) of this section, as it deems appropriate based upon its view of the importance of each of these activities in enabling the FHLBank to fulfill its mission.

(6) The Bank's board of directors shall establish reasonable numerical measures of performance under the performance criteria listed in paragraphs (c) (2) and (3) of this section, as well as for any criteria identified by the Bank's board of directors pursuant to paragraph (c)(4) of this section, and shall establish reasonable numerical targets for the achievement of such criteria. Performance targets shall be set at such a level as to show an improvement in the Bank's performance over the prior year or an extraordinary achievement in attaining the designated target.

(7) By January 1 of each year, the board of directors of each Bank that intends to make any incentive payment to its President for such year shall adopt and submit to the Board a resolution establishing the performance measures and targets on which such incentive payment will be based.

(8) The amount of an incentive payment shall be based upon the extent to which a Bank achieves the performance targets. A Bank must achieve at least 100 percent of the target for a performance criterion in order for any payment to be made based upon that criterion. A Bank may increase the incentive payment to the extent that the Bank exceeds the performance targets, as set forth in the following table [The percentages in the right hand column of the table will be determined by the Board, after review of public comments on this proposed rule.]:

INCENTIVE PAYMENT LEVEL

Bank performance as a percent of target	Total incentive payment as a percent of base salary
150.0%	
149.0%	
148.0%	
147.0%	
146.0%	
145.0%	
144.0%	
143.0%	
142.0%	
141.0%	
140.0%	
139.0%	
138.0%	
137.0%	
136.0%	
135.0%	
134.0%	
133.0%	
132.0%	
131.0%	
130.0%	
129.0%	
128.0%	
127.0%	
126.0%	
125.0%	
124.0%	
123.0%	
122.0%	
121.0%	
120.0%	
119.0%	
118.0%	
117.0%	
116.0%	
115.0%	
114.0%	
113.0%	
112.0%	
111.0%	
110.0%	
109.0%	
108.0%	
107.0%	
106.0%	
105.0%	
104.0%	
103.0%	
102.0%	
101.0%	
100.0%	

(9) The total incentive payment earned by a Bank President for a given year may not exceed [A percentage of base salary, to be determined by the Board after review of public comments, from 0 to 37.5 percent.] of the President's base salary for that year.

(10) By March 1 of each year, the board of directors of each Bank making any incentive payment to its President for the prior year shall adopt and submit to the Board a resolution showing the results for the individual performance measures and the amount of the incentive payment to the Bank President. Such incentive payment shall be deemed approved by the Board and payable to a Bank President only if determined in accordance with the requirements of this paragraph (c).

(d) *Incentive payment for other bank employees.* Each Bank may make incentive payments to employees other than the President without prior Board approval, provided that such incentive payments are reasonable and comparable with incentive payments made to employees of the other Banks and other similar businesses (including financial institutions) with similar duties and responsibilities. Banks shall maintain documentation supporting the reasonableness and comparability of their employees' incentive payments.

(e) *Benefits.* A Bank may make payments in the nature of benefits to its President and to other Bank employees only pursuant to a benefit plan and a bona fide deferred compensation plan or arrangement, as defined in paragraphs (a)(1) and (2) of this section.

(f) *Severance plans.* A Bank may make payments in the nature of severance to its President and to other Bank employees only pursuant to a severance plan, as defined in paragraph (a)(6) of this section.

(g) *General limits on payments.* (1) No Bank shall make any payment to a Bank employee, except as provided in this section.

(2) The total amount of base salaries, incentive payments, and benefits paid to Bank employees shall be within the limit set forth in the Bank's approved budget. The board of directors of each Bank shall review annually the compensation plan for its employees, including appropriate documentation, prior to approving the Bank's annual budget.

(h) *Prohibition on bonuses.* A Bank shall not pay any employee or other person a bonus. For purposes of this paragraph (h), a bonus is a payment to an employee, other than base salary, benefits, and severance payments, that is not based on performance.

PART 941—OPERATIONS OF THE OFFICE OF FINANCE

4. The authority citation for Part 941 is revised to read as follows:

Authority: 12 U.S.C. 1422b, 1431.

5. Section 941.9 is amended by revising paragraph (b)(6) and by adding paragraph (c) to read as follows:

§ 941.9 Duties of the Office of Finance Board of Directors.

* * * * *

(b) * * *

(6) Select and employ the Director, subject to the following requirements:

(i) The Director shall be appointed initially for a term not to exceed one calendar year, expiring on December 31 of the year in which the Director takes office;

(ii) A Director may be reappointed to succeeding one-year terms, each expiring on December 31 of the year for which the Director is reappointed;

(iii) By November 1 of each year, the OF Board of Directors shall adopt and submit to the Finance Board a resolution appointing or reappointing its Director for the following year; and

(iv) No appointment or reappointment of a Director shall be effective until approved by the Finance Board;

* * * * *

(c) *Compensation*—(1) *Definitions.* The definitions which appear in § 932.41 of this chapter apply to this paragraph (c).

(2) *The Director.* (i) Subject to prior Finance Board approval, the OF Board of Directors shall establish and pay the base salary of the Director, including any merit increase, in accordance with the provisions of § 932.41(b) of this chapter. For purposes of § 932.41(b) of this chapter, the OF shall be deemed to have total assets of less than $40 billion. By January 2 of each year, OF must report to the Finance Board the approved base salary of its Director.

(ii) Any incentive payment made to the Director shall be based solely on the performance of the OF during the year in which the incentive payment is earned, and shall be determined in accordance with the requirements of this paragraph (c)(2)(ii), subject to prior Finance Board approval. The OF shall not make any incentive payment to the Director if the most recent examination of OF by the Finance Board identified an unsafe or unsound practice or condition with regard to OF. The Director's incentive payment shall be based upon criteria identified by OF Board of Directors, which must establish reasonable numerical measures and targets for the achievement of such criteria. Performance targets shall be set at such a level as to show an improvement in the performance of OF over the prior year or an extraordinary achievement in attaining the designated target.

(iii) By January 1 of each year, the OF Board of Directors shall adopt and submit to the Finance Board for approval a resolution establishing the performance measures and targets on which any incentive payment will be based.

(iv) The amount of an incentive payment shall be calculated in accordance with the provisions of § 932.41(c)(8) and (9) of this chapter.

(v) By March 1 of each year, the OF Board of Directors shall adopt and submit to the Finance Board a resolution showing the results for the individual performance measures and the amount of the proposed incentive payment to the Director.

(3) *Other OF Employees.* (i) The OF Board of Directors may establish base salaries for employees other than the Director without prior Finance Board approval, provided that such base salaries are reasonable and comparable with the base salaries of employees of the Banks and other similar businesses (including financial institutions) with similar duties and responsibilities. The OF Board of Directors shall maintain documentation supporting the reasonableness and comparability of OF employees' base salaries.

(ii) By January 2 of each year, the OF must report to the Finance Board the approved salary of the highest paid employee other than the Director.

(iii) The OF board of directors may make incentive payments to employees other than the Director without prior Finance Board approval, provided that such incentive payments are reasonable and comparable with incentive payments made to employees of the Banks and other similar businesses (including financial institutions) with similar duties and responsibilities. The OF Board of Directors shall maintain documentation supporting the reasonableness and comparability of their employees' incentive payments.

(4) *Benefits.* The OF may make payments in the nature of benefits to its Director and to other OF employees only pursuant to a benefit plan and a bona fide deferred compensation plan or arrangement, as defined in § 932.41(a) of this chapter.

(5) *Severance plans.* The OF may make payments in the nature of severance to its Director and to other OF employees only pursuant to a severance plan, as defined in § 932.41(a) of this chapter.

(6) *General limits on payments.* (i) The OF shall not make any payment to any OF employee, except as provided in this section.

(ii) The total amount of base salaries, incentive payments, and benefits paid to OF employees shall be within the limit set forth in the OF's approved budget. The OF Board of Directors shall review annually the compensation plan for its employees, including appropriate documentation, prior to approving the OF annual budget.

(7) *Prohibition on bonuses.* The OF shall not pay any employee or other person a bonus. For purposes of this paragraph (c)(7), a bonus is a payment to an employee, other than base salary, benefits, and severance payments, that is not based on performance.

Dated: August 6, 1996.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 96–20486 Filed 8–15–96; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–131, Notice No. SC–96–4–NM]

Special Conditions: LET Aeronautical Works L610G Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This document proposes special conditions for the LET Aeronautical Works Model L610G airplane. This airplane will have a novel or unusual design feature associated with the use of the landing gear fairing as an assist means during an emergency evacuation. This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR).

DATES: Comments must be received on or before September 30, 1996.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Rules Docket (ANM–7), Docket No. NM–131, 1601 Lind Avenue SW, Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–131. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Frank Tiangsing, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW, Renton, WA 98055–4056, (206) 227–121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action on this proposal is taken. The proposals contained in this notice may be changed in light of the 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 parties. A report summarizing each substantive public contact with FAA personnel concerning 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 self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–131.'' The postcard will be date/time stamped and returned to the commenter.

Background

On April 25, 1990, LET Aeronautical Works applied for a type certificate for the Model L610G airplane. On March 28, 1995, they applied for an extension of the original application in accordance with § 21.17(d)(2). The L610G is a twin-engine, 40 passenger, high-wing airplane with a passenger emergency exit configuration consisting of one pair of Type I exits located at the aft end of the cabin and a pair of Type III exits under the wing near the middle of the cabin.

Type III exits are typically installed over the wings of the airplane. They are allowed by part 25 of the FAR to have a 27-inch step-down from the exit sill to the wing. Additionally, if the escape route on the wing terminates at a point more than six feet above the ground, means must be provided to assist evacuees to reach the ground. If the termination point is less than six feet above the ground, then the assist means is not required.

Since this airplane is of a high-wing configuration, it is not practicable to incorporate overwing Type III exits. Part 25 of the FAR permits non-overwing, non-floor level exits when certain conditions are satisfied. Included in these conditions is the requirement for an assist means for passengers and crew to egress from the airplane to the ground when the exit sill height is more than six feet. This assist means must be an automatically erected escape slide or equivalent, and must be self-supporting on the ground. The sill of the Type III exits on the L610G will be more than six feet above the ground; therefore, an assist means will be necessary.

LET has positioned the Type III exits above the landing gear fairing such that the fairing will form a surface for evacuees to use in lieu of what would be provided by a wing. The evacuees would then slide or jump off the fairing to the ground in much the same manner as they would off a wing trailing edge.

LET's use of the landing gear fairing as an assist means results in features which are characteristic of both escape slides and overwing evacuation routes; therefore, the requirements for either configuration are insufficient by themselves to assure that minimum standards are established.

These special conditions will include requirements pertinent to both overwing and non-overwing exits, as well as additional criteria for this specific exit.

Type Certification Basis

Under the provisions of § 21.17, LET must show that the Model L610G meets the applicable provisions of part 25 as amended by Amendments 15–1 through 25–70 thereto, except as follows:

§ 25.365	Amendment 25–71
§ 25.571(e)(2)	Amendment 25–72
§ 25.729	Amendment 25–75
§ 25.905(d)	Amendment 25–72

If the administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model LET 610G because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

In addition to the applicable airworthiness regulations and special conditions, the Model L610G must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36; and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model L610G will incorporate the following novel or unusual design feature: a Type III exit will be located under each wing such that an evacuee using the exit would step out onto the main landing fairing. The evacuee would then slide or jump from the landing gear fairing to the ground.

Section 25.809(f) requires all non-overwing exits more than six feet above the ground to be equipped with an approved means to assist occupants in descending to the ground.

Special 25.809(h) similarly requires all overwing exits having an escape route which terminates at a point more than six feet above the ground to be equipped with an assist means. The exit for the Model L610G will be more than six feet from the ground; however, the landing gear fairing surface will be within 27 inches of the lower exit sill. This distance corresponds to the allowable step-down for an overwing Type III exit. The distance from the landing gear fairing to the ground is less than six feet.

Section 25.809(f) also requires that assist means be automatically erected during exit opening. Strictly speaking, the landing gear fairing does not satisfy this requirement since opening the exit is not correlated to the availability of the assist means; however, since the fairing is a fixed piece of airplane structure it is always available for use.

The regulations also require that an assist means be self-supporting on the ground. This requirement has been interpreted to mean that the assist means rests on the ground when in use such that an evacuee does not have to jump to the ground from the bottom of the assist means. In the case of an overwing exit where the terminating edge of the escape route is less than six feet from the ground, it is likely that evacuees might have to jump a short distance from the wing to the ground. The Model L610G incorporates aspects of both of these exit arrangements, which are addressed in these special conditions.

Other features of the exit arrangement which involve both overwing and non-overwing exit considerations include marking, visibility, and width of the escape route. For the purposes of these special conditions, this exit will be

treated as an overwing exit with respect to these requirements.

Other areas which are of particular concern for this unusual exit arrangement are the effectiveness of the exit in the event of landing gear collapse and the proximity of the escape route to the engines and wheel wells. Since a collapse of the landing gear could result in some from of collapse of the landing gear fairing, the exit must be demonstrated to be usable and provide for safe evacuation, considering all conditions of landing gear collapse.

Since the Type III exists are directly above the main landing gear, it is possible that a fire originating in the landing gear assembly could render such an exit unusable. Due to the design of the Model L610G, it is considered necessary to address the possibility that a fire on one side of the airplane could also render the opposite side unusable.

These special conditions are intended to provide requirements which result in an evacuation system that is as effective and safe as those envisioned by the regulations. Where appropriate, requirements have been drawn from existing regulations. In other cases, new requirements have been developed to preserve the level of safety which is inherent in the design of more conventional exit arrangements or assist means.

Conclusion

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

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these proposed special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification bases for the LET L610G airplanes.

1. The landing gear fairing must be established as an escape route in accordance with the dimensional, reflectance, and slip resistant surface requirements of § 25.803(e).

2. The step-down distance from the exit sill to the surface of the landing gear fairing, where an evacuee would make first contact, shall not exceed 27 inches (ref. § 25.807(a)(3)).

3. The assist means must provide for safe evacuation of occupants, considering all conditions of landing gear collapse. In addition, safe evacuation must be afforded via the Type III exit in the event of main landing gear non-deployment.

4. Exterior emergency lighting must be provided for the assist means and all areas of likely ground contact in accordance with § 25.812(g)(1)(i), and (ii), and § 25.812(h)(1), as amended through Amendments 25–58.

5. The assist means must be demonstrated to provide an adequate egress rate for the number of passengers requested. The passenger capacity, as permitted by § 25.807(c)(1), Table 1, may be reduced if satisfactory Type III exit performance cannot be demonstrated.

6. It must be shown that a landing gear fire occurring on one side of the airplane is unlikely to render the opposite exit unusable.

7. The assist means must be shown to be as reliable as an escape slide following exposure to the emergency landing conditions that may be encountered in service. In addition, safe evacuation from the airplane must be afforded following the crash conditions specified in § 25.561(b).

Issued in Renton, Washington, on August 8, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100

[FR Doc. 96–20968 Filed 8–15–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Subpart 1862

[WO–350–1220–00–24 1A]

RIN 1004–AC88

Patent Preparation and Issuance

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Land Management (BLM) proposes to remove in its entirety Subpart 1862 of Title 43 of the Code of Federal Regulations (CFR). This subpart is unnecessary because it has no requirements with which the public must comply. Rather, it contains internal instructions on preparing and issuing patents, which properly should be in manuals and handbooks. BLM plans to place these procedures in manuals and handbooks, as appropriate, and they will be available for public review.

DATES: Submit comments by September 16, 1996. BLM may not consider comments received or postmarked after this date in preparing the final rule.

ADDRESSES: Commenters may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW, Washington, DC, or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240. Commenters may transmit comments electronically via the Internet to: WOComment@WO0033wp.wo.blm.gov. [For Internet, please include ''Attn: AC88'', your name, and return address in your message].

Comments will be available for public review at the L Street address during regular business hours from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Holidays.

FOR FURTHER INFORMATION CONTACT: Vanessa Engle, (202) 452–7776.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Discussion of Proposed Rule
III. Procedural Matters

I. Public Comment Procedures

Written comments on the proposed rule should be specific, focus on issues pertinent to the proposed rule, and explain the reason for any recommended change. BLM may not necessarily consider or include in the Administrative Record for the final rule comments received after the close of the comment period (see **DATES**) or delivered to an address other than the one listed above (see **ADDRESSES**).

II. Discussion of Proposed Rule

The existing regulations at 43 CFR 1862 provide procedures for preparing and issuing patents. There are no requirements in this subpart with which the public must comply. The procedures are strictly internal instructions which are appropriate for manuals and handbooks. For this reason, BLM proposes to remove Subpart 1862 from 43 CFR and place the material in handbooks and manuals. This action is part of BLM's continuing effort to eliminate unnecessary and inappropriate regulations.

III. Procedural Matters

We have determined that the proposed rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact

statement under Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(2)(C)) is not required.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements that the Office of Management and Budget must approve under 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

BLM has determined that the proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act of 1995

This proposed rule does not include any Federal mandate that may result in increased expenditures of $100 million in any one year by State, local, or tribal governments, or by the private sector. Therefore, a Section 202 statement under the Unfunded Mandates Reform Act is not required.

Executive Order 12612

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

Executive Order 12630

BLM certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Taking Implication Assessment need not be prepared under Executive Order 12630, ''Government Action and Interference with Constitutionally Protected Property Rights.''

Executive Order 12866

The proposed rule does not meet the criteria for a significant rule requiring review by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review).

Author

The principal author of this rule is Vanessa Engle, Use Authorization Team, (202) 452–7776, assisted by Frances Watson, Regulatory Management Team, (202) 452–5006.

List of Subjects in 43 CFR Subpart 1862

Administrative practice and procedure, Public lands.

For the reasons stated in the preamble and under the authority of 43 U.S.C. 1740, it is proposed to remove Subpart 1862 of Title 43 of the Code of Federal Regulations.

SUBPART 1862—PATENT PREPARATION AND ISSUANCE [REMOVED]

Dated: August 7, 1996.

Sylvia V. Baca,

Deputy Asst. Secretary, Land and Minerals Management.

[FR Doc. 96–20950 Filed 8–15–96; 8:45 am]

BILLING CODE 4310–84–M

Notices

Federal Register
Vol. 61, No. 160
Friday, August 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 AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 96–019–2]

AgrEvo USA Company; Availability of Determination of Nonregulated Status for Soybeans Genetically Engineered for Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that certain soybean lines developed by AgrEvo USA Company that have been genetically engineered for glufosinate herbicide tolerance are no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by AgrEvo USA Company in its petition for a determination of nonregulated status, an analysis of other scientific data, and our review of comments received from the public in response to a previous notice announcing our receipt of the AgrEvo USA Company's petition. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: July 31, 1996.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition 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 those documents are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnology Permits, BBEP, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–7612; E-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1996, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 96–068–01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, seeking a determination that Glufosinate Resistant Soybean (GRS) Transformation Events W62, W98, A2704–12, A2704–21, and A5547–35 that have been genetically engineered for resistance, or tolerance, to the herbicide glufosinate, do not present a plant pest risk and, therefore, are not regulated articles under APHIS' regulations in 7 CFR part 340.

On April 29, 1996, APHIS published a notice in the Federal Register (61 FR 18718–18719, Docket No. 96–019–1) announcing that the AgrEvo petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject soybean lines and food products derived from them. In the notice, APHIS solicited written comments from the public as to whether these soybean lines posed a plant pest risk. The comments were to have been received by APHIS on or before June 28, 1996.

During the designated 60-day comment period, APHIS received eight comments on the subject petition from universities, cooperative extension service research centers, and a seed company. All of the comments were favorable to the petition.

Analysis

GRS Transformation Events W62 and W98 have been genetically engineered to contain the *bar* gene derived from *Streptomyces hygroscopicus* and the *gus* marker gene derived from *Escherichia coli.* The *bar* gene encodes the enzyme phosphinothricin-N-acetyltransferase (PAT), which confers tolerance to glufosinate. Expression of the added genes is controlled in part by gene sequences from the plant pathogens *Agrobacterium tumefaciens,* alfalfa mosaic virus, and cauliflower mosaic virus (CaMV). GRS Transformation Events A2704–12, A2704–21, and A5547–35 contain a synthetic version of the *pat* gene derived from *Streptomyces viridochromogenes,* which encodes the PAT enzyme and confers tolerance to glufosinate. Expression of the synthetic *pat* gene is controlled by a 35S promoter and terminator derived from CaMV. The particle acceleration method was used to transfer the added genes into the GRS parental soybean cultivars.

The subject GRS Transformation Events have been considered regulated articles under APHIS' regulations in 7 CFR part 340 because they contain gene sequences derived from plant pathogens. However, evaluation of field data reports from field tests of these lines conducted under APHIS permits or notifications indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the environmental release of the soybean lines.

Determination

Based on its analysis of the data submitted by AgrEvo and a review of other scientific data, comments received, and field tests of the subject soybean lines, APHIS has determined that GRS Transformation Events W62, W98, A2704–12, A2704–21, and A5547–35: (1) Exhibit no plant pathogenic properties; (2) are no more likely to become weeds than soybean lines developed by traditional breeding techniques; (3) are unlikely to increase the weediness potential for any other cultivated or wild species with which they can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that the subject soybean lines and any progeny derived from hybrid crosses with other nontransformed soybean varieties will be as safe to grow as soybeans in traditional breeding programs that are not subject to regulation under 7 CFR part 340.

The effect of this determination is that AgrEvo's GRS Transformation Events W62, W98, A2704–12, A2704–21, and

A5547–35 are no longer considered regulated articles under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject soybean lines or their progeny. However, importation of the subject soybean lines or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that AgrEvo's GRS Transformation Events W62, W98, A2704–12, A2704–21, and A5547–35 and lines developed from them are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 13th day of August 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–20921 Filed 8–15–96; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

California Coast Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Province Advisory Committee (PAC) will meet from 8:00 a.m. to 5:00 p.m., on September 5, 1996, at the Redwood Empire Masonic Lodge, 783 Locust St., Garberville, CA. Agenda items to be covered include: (1) PAC focus for the next year and set next meeting dates; (2) Update from Portland; (3) Report and recommendations from PAC/SCERT Subcommittee on future years' watershed restoration and joint PAC socio-economic monitoring; (4) Agency updates; (5) Recommendations from Public/Private Subcommittee; and (6) Open public forum. The PAC will also meet September 6, 1996, for a field trip beginning at 8:00 a.m. at the Garberville Masonic Lodge and concluding at 3:00 p.m. Agenda items for the field trip include: Restoration in the Mattole River watershed and King Range Road decommissioning. All California Coast Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (916) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (916) 934–3316.

Dated August 9, 1996.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 96–20866 Filed 8–15–96; 8:45 am]

BILLING CODE 3410–FK–M

Grain Inspection, Packers and Stockyards Administration

Designation of Farwell and Plainview (TX) for Part of the Former Amarillo Area in the Lubbock, Texas (TX) Region

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Farwell Grain Inspection, Inc. (Farwell), and Plainview Grain Inspection and Weighing Service, Inc. (Plainview), to provide official services under the United States Grain Standards Act, as amended (Act) in part of the former Amarillo Grain Exchange, Inc. (Amarillo), area.

EFFECTIVE DATES: September 1, 1996.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Ave. S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Amarillo asked GIPSA to remove the Lubbock region from their assigned geographic area. The Lubbock region consists of: Andrews, Borden, Cochran, Crosby, Dawson, Dickens, El Paso, Gaines, Garza, Hockley, Howard, Kent, Lubbock, Lynn, Martin, Mitchell, Scurry, Terry, and Yoakum Counties, Texas, and the parts of Hale and Lamb Counties, Texas, assigned to Amarillo. In the March 13, 1996, Federal Register (61 FR 10313), GIPSA requested comments on the need for official services and asked persons interested in providing official services in the Lubbock area assigned to Amarillo to submit an application for designation. Applications were due by April 10, 1996. There were two applicants: Farwell and Plainview, both designated official agencies. Farwell applied for the Texas Counties of Cochran, Hockley, and that part of Lamb that was previously assigned to Amarillo. Plainview applied for the Texas Counties of Andrews, Borden, Crosby, Dawson, Dickens, Gaines, Garza, Howard, Kent, Lubbock, Lynn, Martin, Mitchell, Scurry, Terry, Yoakum, and that part of Hale not currently assigned to them.

GIPSA requested comments on the applicants for the Lubbock region in the May 9, 1996, Federal Register (61 FR 21155). Comments were due by June 7, 1996. No comments were received by the deadline.

GIPSA's Administrator determined that there is sufficient need for official services in the Lubbock region, except for the Texas County of El Paso. After evaluating all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and according to Section 7(f)(1)(B), GIPSA determined that Farwell is able to provide official services in the northwestern area, as follows: the Texas Counties of Cochran, Hockley, and that part of Lamb that was previously assigned to Amarillo; and Plainview is able to provide official services in the southeastern area, as follows: the Texas Counties of Andrews, Borden, Crosby, Dawson, Dickens, Gaines, Garza, Howard, Kent, Lubbock, Lynn, Martin, Mitchell, Scurry, Terry, Yoakum, and that part of Hale not currently assigned to them.

Effective September 1, 1996 and ending January 31, 1999 (the end of their present designation), Farwell is designated in the geographic area specified above in addition to the area they are already designated to serve. Effective September 1, 1996 and ending

May 31, 1999 (the end of their present designation), Plainview is designated in the geographic area specified above in addition to the area they are already designated to serve.

Interested persons may obtain official services by contacting Farwell at 806–481–9052 and Plainview at 806–293–1364.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: August 12, 1996

Thomas E. Hearon

Acting Director, Compliance Division

[FR Doc. 96–20922 Filed 8–15–96; 8:45 am]

BILLING CODE 3410–EN–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 16, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 7, 21 and 28, 1996 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 29081, 31927 and 33711) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Strainer

M.R. 818

Cover, Ironing Board and Pad Set

M.R. 967
M.R. 968

Pastry Blender

M.R. 831

Egg Slicer

M.R. 843

Cloth, Super Wipe

M.R. 565

SPEAR Insulation Subsystem

8415–01–F01–0191 thru–0225
(Requirements for the U.S. Army Soldier Systems Command, Natick, Massachusetts)

Cloth, Super Wipe

M.R. 565

Services

Disposal Support Services
Defense Reutilization and Marketing Office
Stockton, California

Janitorial/Custodial
Elkins USARC
Beverly, West Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–20959 Filed 8–15–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 16, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agency listed:

Administrative Services
Chief of Naval Education and Training (CNET)

Pensacola, Florida
NPA: Lakeview Center, Inc., Pensacola, Florida

Beverly L. Milkman,
Executive Director.

[FR Doc. 96–20960 Filed 8–15–96; 8:45 am]
BILLING CODE 6353–01–P

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 16, 1996.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Janitorial/Custodial

U.S. Coast Guard Academy
New London, Connecticut
NPA: CW Resources, Inc., New Britain, Connecticut

Linen Management

Fleet and Industrial Supply Center
Norfolk, Virginia
NPA: Chesapeake Service Systems, Inc., Chesapeake, Virginia

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodities and services have been proposed for deletion from the Procurement List:

Commodities

Pad, Shoulder Strap
P.S. #D–1212

Kit, Deep Water Fording
2540–00–181–8109
2540–00–780–0844

Mirror and Bracket Assembly
2540–00–575–8392

DOE This Month Newsletter
7690–00–NSH–0033

VA Medical Center Newsletter
7690–00–NSH–0042

Yard News
7690–00–NSH–0046

Gloves, Men's
8440–00–160–0874
8440–00–160–0770
8440–00–160–0875

Card Set, Guide, File
7530–00–989–0694
7530–00–989–0693
7530–00–989–0695
7530–00–989–0686
7530–00–861–1275

Card, Guide, File
7530–00–988–6541
7530–00–988–6542
7530–00–988–6549
7530–00–988–6550
7530–00–988–6545
7530–00–988–6546
7530–00–988–6547
7530–00–988–6548
7530–00–989–2425

Folder-Set, File, Pressboard
7530–00–286–7080

Folder-Set, File, Pressboard
7530–00–286–7244
7530–00–286–7253

Truck, Hand
3920–00–847–1305

Shirt, Operating, Surgical
6532–00–299–9633
6532–00–299–9634
6532–00–299–9632

Pouch, Mechanic's Tool
5140–00–329–4306

Envelope, Wallet
7530–00–281–5976

Case, Flag, Internment
8345–00–782–3010

Pencil, Mechanical
7520–00–268–9915
7520–01–354–2304

Binder, Looseleaf, Printout
7510–00–965–2443

Refill, Ballpoint Pen
7510–00–754–2687
7510–00–543–6795
7510–00–754–2690

Remover, Floor Polish
7930–00–045–6923

Box, Shipping
8115–00–117–9524
8115–00–165–6599
8115–00–183–9496
8115–00–183–9499
8115–00–183–9500
8115–00–183–9504
8115–00–183–9505
8115–00–190–4863
8115–00–190–4888
8115–00–190–4921
8115–00–190–4936
8115–00–190–4968
8115–00–200–6954
8115–00–200–6961

8115–00–255–1346
8115–00–281–3877
8115–00–281–3882
8115–00–281–3886
8115–00–281–3889
8115–00–285–1116
8115–00–292–0724
8115–00–418–4660
8115–00–514–2404
8115–00–526–1617
8115–00–579–9153
8115–00–190–4864
8115–00–190–4865
8115–00–190–5053
8115–00–418–4657
8115–00–190–5011
8115–00–418–4654
8115–00–985–7312
8115–00–292–0120
8115–00–428–4145
8115–00–117–9529

Folder, File, Pressboard
7530–00–739–7723

Tape, Paper, Computing Machine
7530–00–286–9053
7530–00–222–3456

Binder, Looseleaf, (Pressboard)
7510–00–281–4311

Folder, File
7530–00–926–8977
7530–00–456–6140
7530–00–739–7723

Services

Food Service Attendant, Naval Station, Staten Island Galley, New York, New York
Elevator Operator, Wyoming Valley Veterans Building, 19 North Main Street, Wilkes-Barre, Pennsylvania
Janitorial/Custodial, U.S. Army Reserve Center, 1522–24 E. Wingohocking Street, Philadelphia, Pennsylvania
Janitorial/Custodial, U.S. Army Reserve Center, 6th & Kedron Avenue, Folsom, Pennsylvania
Janitorial/Custodial, U.S. Army Reserve Center, Boot and Chestnut Streets, Downingtown, Pennsylvania
Janitorial/Custodial, U.S. Army Reserve Center, 950 Saw Mill Boulevard, Pittsburgh, Pennsylvania
Janitorial/Custodial, Air National Guard Base, Otis, Massachusetts
Commissary Shelf Stocking and Custodial, Seneca Army Depot, Seneca, New York
Mailroom Operation, U.S. Army Research Laboratory, 405 Arsenal Street, Watertown, Massachusetts
Janitorial/Custodial, Domiciliary Buildings, VA Medical Center, Dublin, Georgia
Janitorial/Custodial, Department of the Army, Jimmy Doolittle Building, Columbia Metro Airport, West Columbia, South Carolina
Janitorial/Custodial, U.S. Army Reserve Center, 6300 West 7th Street, Texarkana, Texas
Parts Sorting, Red River Army Depot, Texarkana, Texas
Janitorial/Custodial, Buildings 928 and 1002, Kirtland Air Force Base, New Mexico
Janitorial/Custodial, Armed Forces Reserve Center, Los Alamitos, California
Grounds Maintenance, North and South Duplexes, Naval Weapons Center, China Lake, California

Beverly L. Milkman,
Executive Director.
[FR Doc. 96–20961 Filed 8–15–96; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–614–801]

Fresh Kiwifruit From New Zealand (Kiwifruit); Antidumping Duty Administrative Review; Extension of Time Limits for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final results of this antidumping duty administrative review of Kiwifruit from New Zealand. The review covers the period June 1, 1994 through May 31, 1995.

EFFECTIVE DATE: August 16, 1996.

FOR FURTHER INFORMATION CONTACT: Paul M. Stolz, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4474.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limits for the completion of the final results until August 22, 1996, in accordance with Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act. (*See* Memorandum to the file.)

This extension is in accordance with section 751(a)(3)(A)(iv) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(A)(3)(a).

Dated: August 8, 1996.
Jeffrey P. Bialos,
Principal Deputy Assistant Secretary for Import Administration.
[FR Doc. 96–20932 Filed 8–15–96; 8:45 am]
BILLING CODE 3510–DS–M

[A–588–839]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Sodium Azide from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 1996.

FOR FURTHER INFORMATION CONTACT: William Crow or Magd Zalok, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0116 or (202) 482–4162, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Preliminary Determination

We preliminarily determine that there is a reasonable basis to believe or suspect that sodium azide from Japan is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation, the following events have occurred (*Notice of Initiation of Antidumping Duty Investigations: Sodium Azide from Japan*, 61 FR 4959, (February 9, 1996) (*Initiation Notice*):

On March 8, 1996, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731–TA–740).

On March 20, 1996, we determined the appropriate recipients of the AD questionnaire (*see* the March 20, 1996 Memorandum to the file through David L. Binder) and issued the complete questionnaire to Masuda Chemical Corporation (Masuda), Nippon Carbide Industries Co. Ltd. (NCI), and Toyo

Kasei Koygo Co., Ltd. (TKK). Also, on April 1, 1996, the Department instructed respondents to report the date of sale based on the date of invoice as recorded in the responding companies' records in the ordinary course of business, according to the Department's amended date of sale practice. (*See* the April 1, 1996, letters to respondents from David L. Binder.)

We received Masuda's questionnaire responses to section A (dealing with general corporate information), as well as sections B and C (dealing with home market and U.S. market sales information), on April 19 and May 31, 1996, respectively.

On May 9, 1996, American Azide Corporation, the petitioner in this investigation, requested that the Department postpone the preliminary determination. Consequently, the Department postponed the preliminary determination until no later than August 13, 1996. (61 FR 26878 May 29, 1996). The petitioner also submitted an allegation on June 21, 1996, that Masuda had made home market sales below cost of production (COP) during the POI. On July 17, 1996, the Department initiated an investigation of home market sales below cost (*see* the July 17, 1996, memorandum from the Team to Gary Taverman), and issued a letter to Masuda instructing it to respond to section D of the March 20, 1996, questionnaire.

On August 7, 1996, Masuda requested an extension until September 16, 1996, to respond to section D. The Department granted Masuda an extension to respond to the section D questionnaire until no later than September 5, 1996. Because of the filing date of the cost allegation we will be unable to address it until the final determination.

Facts Available for TKK and NCI

A. TKK

We did not receive a response from TKK to the Department's questionnaire. Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a determination under the antidumping statute, or provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination. Because TKK failed to submit the information that the Department had specifically requested, it is necessary to use of facts otherwise available for TKK.

Section 776(b) provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information (*see* also the Statement of Administrative Action (SAA) accompanying the URAA, clarifies that the petition is secondary information). See SAA, published in H. Doc. 103–316, 103d Cong., 2d Sess. At 870. Again, TKK's failure to provide any information to the Department demonstrates that TKK has failed to cooperate in this investigation. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted. As facts otherwise available, we are assigning to TKK the highest margin in the petition, 65.80 percent.

Section 776(c) provides that when the Department relies on secondary information in using the facts otherwise available it must, to the extent practicable, corroborate that information. When analyzing the petition, the Department reviewed all of the data the petitioner had submitted and the assumptions that petitioner made in calculating estimated dumping margins. In accordance with section 776(c) of the Act, the Department attempted to corroborate the petition information by comparing the petition information on export price to U.S. Customs data. This source records prices based on the HTSUS subheading 2850.00.50.00 and confirms that the prices contained in the petition have probative value. Moreover, we compared the petitioner's estimated home market prices on which the normal value in the petition was based to home market prices available on the record of this investigation. We found that the estimated normal value in the petition has probative value. (*See* Memorandum dated August 8, 1996 from the team to Gary Taverman.)

B. NCI

On April 10, 1996, NCI responded to the Department's questionnaire by stating that it made no sales of sodium azide in the United States during the POI. NCI, however, stated that it made a shipment of sample sales of the subject merchandise during the POI. In response to our request for information on the sample sales, NCI submitted a letter on April 17, 1996, providing argument and data to support its contention that the date of sale for a sample sale which it claimed to be the only possible sale of subject merchandise, was on a date preceding the POI.

On May 31, 1996, the Department requested additional information from NCI concerning possible ''likely sales,'' as defined in 19 CFR 353.2(t), made during the POI. On June 10, 1996, NCI submitted its response that ''it clearly could not have been involved with any likely sales during the period of investigation,'' and stating that ''NCI has determined that it cannot justify incurring further costs at this time. Accordingly, NCI can no longer respond to the Department's requests for information.'' On July 11, 1996, the Department contacted NCI's counsel to request clarification on its refusal to further cooperate in this investigation. As recorded in the July 31, 1996, memorandum to the file from Jennifer Stagner, counsel for NCI declined to continue to participate in the investigation. Counsel for NCI confirmed that NCI would not permit the Department to conduct verification of its claim that there were no sales, nor likely sales, of subject merchandise to the United States during the POI.

The verification of NCI's response was material to the Department's ability to confirm that it did not need to include NCI as a respondent in this investigation. Therefore, the Department finds that, because NCI has stated that it will not respond to any additional requests for information nor permit verification, it has failed to cooperate to the best of its ability to comply with our request for information. Accordingly, for purposes of the preliminary determination the application of section 776(b) is warranted. In this case, the petition is the only information on the record which could form the basis for a dumping calculation for NCI (*see* the Facts Available for TKK section above for detail on corroborating the information in the petition). Therefore, the Department has based the margins for NCI on information in the petition. As facts otherwise available, we are assigning to NCI the highest margin in the petition, 65.80 percent. We note, however, that since NCI has responded sufficiently to the Department's questionnaires, the Department's decision as to whether adverse facts available should be used for NCI may be revisited for purposes of the final determination in the event NCI allows the Department to collect any necessary additional information and conduct verification.

Postponement of Final Determination

On August 7, 1996, Masuda requested that, pursuant to section 735(a)(2)(A) of the Act, in the event of an affirmative preliminary determination in this investigation, the Department postpone

its final determination until not later than 135 days after the publication of the affirmative preliminary determination in the Federal Register. In accordance with 19 CFR 353.20(b), inasmuch as our preliminary determination is affirmative, the respondent accounts for a significant proportion of exports of the subject merchandise, and there are no compelling reasons for denying the request, we are granting respondent's request and postponing the final determination. Suspension of liquidation will be extended accordingly. *See Preliminary Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components thereof, whether Assembled or Unassembled, from Japan*, (61 FR 8029 March 1, 1996).

Scope of Investigation

The product covered by this investigation is sodium azide (NaN_3) regardless of use, and whether or not combined with silicon oxide (SiO_2) or any other inert flow assisting agent. The merchandise under investigation is currently classifiable under item 2850.00.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is January 1, through December 31, 1995.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the *Scope of Investigation* section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In addition, in this case we found all home market merchandise to be identical to the U.S. merchandise. (*See* the March 20, 1996, Memorandum to the file through David L. Binder.)

Classification of Grinding Costs

For purposes of the preliminary determination, we have rejected Masuda's classification of grinding costs as direct selling expenses subject to a circumstance-of-sale adjustment. We have determined that grinding costs represent a production cost and should be included in the calculation of the costs associated with physical differences in merchandise. However, as explained below, the Department will consider whether to make a ''quantity adjustment'' for differences in grinding costs under 19 CFR 353.55 for the final determination.

Quantity Adjustment

The Department's regulations provide that ''the Secretary will make a reasonable allowance for any difference in quantities, to the extent that the Secretary is satisfied that the amount of any price differential is wholly or partly due to that difference in quantities.'' See 19 CFR 353.55(a). The Department's position is that ''to be eligible for a quantity based adjustment, a respondent must demonstrate a clear and direct correlation between price differences and quantities sold or costs incurred. *See* Brass Sheet and Strip from the Federal Republic of Germany, Final Results of Antidumping Duty Administrative Review, (56 FR 60087 November 27, 1991); see also *Brass Sheet and Strip from the Netherlands,* (53 FR 2341 June 22, 1988). In the case of a claim based on cost differences, the respondent must provide evidence of savings which are specifically attributable to the purchase of materials or provision of services at a discount due to the quantity purchased. In the instant case, Masuda has indicated that the cost of grinding provided by a third party are lower when larger quantities are processed. However, Masuda has not provided sufficient evidence that there is a clear and direct correlation between price differences and quantities sold or costs incurred; the grinding cost data provided by Masuda is not evidence *per se* of specific discounts due to quantities purchased. Accordingly, for this preliminary determination, we have not made a quantity adjustment. However, if Masuda provides additional, timely, and verifiable information on this claimed adjustment, we will reconsider it for the final determination.

Technical Services

Masuda reported a technical service expense as a direct selling expense, claiming that the Department has previously allowed claims for services rendered for assisting the customer in solving problems with products purchased during the POI. We believe that the information on the record does not sufficiently substantiate Masuda's claim. Therefore, for purposes of the preliminary determination, we are rejecting Masuda's classification of this cost as a direct selling expense. However, we will request additional information regarding this expense, which will be analyzed, verified, and considered for the final determination.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA accompanying the Uruguay Round Agreements Act, at 829–831, to the extent practicable, the Department will calculate normal values based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade. *See* also, *Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy* (61 FR 30326, June 14, 1996) (*Pasta from Italy*).

In accordance with section 773(a)(7)(A) of the Act, if sales at different levels of trade are compared, the Department will adjust the normal value to account for the difference in level of trade if two conditions are met. First, there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and the level of trade of the normal value sale. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which normal value is determined.

In implementing this provision, the Department's first task was to obtain information about the selling activities of the producers/exporters. Information relevant to level of trade comparisons and adjustments was requested in our supplemental questionnaire. We asked the respondent to establish any claimed levels of trade based on the selling functions provided to each proposed customer group, and to document and explain any claims for a level of trade adjustment.

Our review of these submissions shows that Masuda has identified levels of trade based on its selling activities by customer categories. In order to confirm whether separate levels of trade actually existed within or between the U.S. and home markets, we reviewed the selling functions attributable to the customer categories claimed by Masuda. Pursuant to section 773(a)(1)(B)(i) of the Act, and the SAA at 827, in identifying levels of trade for directly observed (*i.e.*, not constructed) export price and normal value sales, we considered the selling functions reflected in the starting price, before any adjustments.

We examined certain selling functions indicated in the August 8, 1996, memorandum from Jennifer Stagner to the file. In addition to the selling

functions reported by Masuda for each claimed level of trade, we considered all types of selling functions reported in all sections of the response. Where possible, we further examined whether the selling function was performed on a substantial portion of sales. In analyzing the record evidence, we examined selling functions in aggregate. (*See, Notice of Proposed Rulemaking and Request for Public Comments,* (61 FR 7307, 7348 February 27, 1996) (Proposed Regulations).

We preliminarily determined that there is one U.S. level of trade and two home market levels of trade, one of which is identical in aggregate selling functions to that found in the United States. We compared sales at the sole level of trade in the U.S. market to sales at the identical home market level of trade. We found matches for each U.S. sale at the same level of trade. Therefore, we did not need to compare sales at the next most similar level of trade and determine whether a level of trade adjustment was appropriate.

Fair Value Comparisons

To determine whether sales of sodium azide by Masuda to the United States were made at less than fair value, we compared the export price (EP) to the Normal Value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i), we calculated weighted-average EPs for comparisons to weighted-average NVs.

Export Price

We calculated EP, in accordance with subsections 772(a) and (c) of the Act, where the subject merchandise was first sold in Japan to an unaffiliated purchaser prior to importation and CEP was not otherwise warranted based on the facts of record.

We calculated EP based on prices to the unaffiliated trading companies in Japan. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight.

For all U.S. sales, Masuda reported the sale of subject merchandise to an unaffiliated trading company in Japan. Section 772(a) of the Act defines the export price as the price at which the subject merchandise is first sold (or agreed to be sold) by the producer to an unaffiliated purchaser for exportation to the United States. Where the respondent producer of the merchandise under investigation knew at the time of the sale to the trading company that the merchandise was destined for the United States, the export price would be the price between the respondent and the unaffiliated trading company. Masuda has stated that it knew or had reason to know at the time of sale that the ultimate destination of the merchandise was the United States because the manufacture and packing of sodium azide is to the exact specifications of the ultimate U.S. market end-users. Therefore, we determined that Masuda's U.S. export price is the price to the unaffiliated trading company.

We recalculated Masuda's credit expenses to account for missing data in the reported interest rate calculation. As facts available, we applied the single highest reported monthly interest rate to those months in the POI for which no rate was reported because the information on the record indicated that the highest rate was the most appropriate estimate of the missing data. We then recalculated a simple average interest rate for the entire year. Because the U.S. sales were denominated in Yen, we calculated interest expenses by applying the average yen interest rate reported by Masuda.

The Department explained its policy in selecting the interest rate applicable in calculating imputed credit expenses in the *Final Determination of Sales at LTFV: Oil Country Tubular Goods from Austria,* (60 FR 33551, 33555 June 28, 1995) (*OCTG from Austria*):

> A company selling in a given currency (such as sales denominated in dollars) is effectively lending to its purchasers in the currency in which its receivables are denominated (in this case, in dollars) for the period from shipment of its goods until the date it receives payment from its purchaser. Thus, when sales are made in, and future payments are expected in, a given currency, the measure of the company's extension of credit should be based on an interest rate tied to the currency in which its receivables are denominated. Only then does establishing a measure of imputed credit recognize both the time value of money and the effect of currency fluctuations on repatriating revenue.

Since Masuda receives payment from Japanese trading companies in Yen, its receivables are denominated in Yen, and therefore the applicable interest rate should be a Yen rate. We also added duty drawback to EP in accordance with section 772(c)(B) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Masuda's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since Masuda's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for Masuda. Therefore, we have based NV on home market sales.

Masuda requested that the Department exclude certain sales in the home market during the POI, claiming that these sales were made outside the ordinary course of trade. According to Masuda, the sales in question were made in smaller quantities than other home market sales, at substantially higher than average prices, and for testing purposes. For this preliminary determination, we have rejected Masuda's request because, generally, it is the Department's practice to include in its analysis sales for testing purposes. *See Color Picture Tubes From Korea: Final Results of Administrative Review,* (56 FR 19084 April 25, 1991); *Kerr-McGee Chemical Corp* v. *U.S.,* 739 F.S. 613 (CIT 1990). Moreover, we found that other home market sales in Masuda's database had unit prices higher than (and quantities comparable to) those of the sales which Masuda has sought to exclude from the margin calculations.

We calculated NV based on prices to unaffiliated customers. Where appropriate we made deductions from the starting price (gross price) for foreign inland freight, in accordance with section 773(a)(6)(B)(ii) of the Act. In addition, we adjusted for differences in circumstances of sale for imputed credit expenses. We recalculated Masuda's credit expenses to account for missing data in the reported interest rate calculation. As facts available, we applied the highest reported monthly interest rate to those months in the POI for which no rate was reported and then re-calculated a simple average interest rate for the entire year. (*See* the *Export Price* section for further detail on the facts available related to the interest rate).

Currency Conversion

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate

in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see, Policy Bulletin 96–1: Currency Conversions,* 61 FR 9434, March 8, 1996.). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of sodium azide from Japan, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
Masuda	29.50
NCI	65.80
TKK	65.80
All Others	29.50

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 20, 1996, and rebuttal briefs, no later than November 27, 1996. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 29, 1996, the time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the Federal Register.

This determination is published pursuant to section 733(d) of the Act.

Dated: August 9, 1996.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 96–20891 Filed 8–15–96; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 96–078. *Applicant:* Argonne National Laboratory-West, I.N.E.L., EBR–II Site, Scoville, ID 83415. *Instrument:* Electron Microscope, Model JEM–2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for examining materials primarily associated with decommissioning of a nuclear reactor and its associated waste streams; as well as characterization of high level waste forms. The primary items of interest are defect and phase identification, chemical segregation and boundary chemical and crystallographic characterization. *Application accepted by Commissioner of Customs:* July 23, 1996.

Docket Number: 96–079. *Applicant:* University of Arizona, Department of Geosciences, Gould-Simpson Building, Room 208, Tucson, AZ 85721. *Instrument:* Mass Spectrometer, Model Sector 54. *Manufacturer:* Micromass, United Kingdom. *Intended Use:* The instrument will be used for the study of U-Th-Pb, Lu-Hf, Sm-Nd and Rb-Sr isotopic systems. *Application accepted by Commissioner of Customs:* July 22, 1996.

Docket Number: 96–080. *Applicant:* Berkeley Geochronology Center, 2455 Ridge Road, Berkeley, CA 94709. *Instrument:* Mass Spectrometer, Model Sector 54. *Manufacturer:* Micromass, United Kingdom. *Intended Use:* The instrument will be used in age determinations (geochronology) of geologic and archaeologic materials, such as rocks, minerals, artifacts and fossils. These ages will be determined by analysis of the isotopic ratios of various elements, typically but not exclusively uranium, thorium, lead, strontium and neodymium. In addition, the instrument will be used for training of graduate students and post-doctoral fellows from a variety of universities as part of collaborative research. *Application accepted by Commissioner of Customs:* July 23, 1996.

Docket Number: 96–081. *Applicant:* Department of Veterans Affairs Medical Center, 423 East 23rd Street, New York, NY 10010. *Instrument:* Electron Microscope, Model JEM–1010.

Manufacturer: JEOL Ltd., Japan. *Intended Use*: The instrument will be used for ultrastructural diagnosis of patient material, and for ultrastructural research using both human and animal tissues necessary in the treatment of veterans. In addition, the instrument will be used for the training on a one-to-one basis of medical and graduate students. *Application accepted by Commissioner of Customs:* July 23, 1996.

Docket Number: 96–082. *Applicant:* Florida State University, MBB 151, Tallahassee, FL 32306–3015. *Instrument:* Electron Microscope, Model CM120. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used in research studies to examine the ultrastructure of cells and how it relates to biological function and disease processes. Experiments will involve isolation of protein and assemblies, growth of 2–D crystalline arrays of protein followed by examination in the microscope. The instruments will also be used for trial studies in structure-based drug design to demonstrate the feasibility of using electron crystallography in this area. *Application accepted by Commissioner of Customs:* July 24, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–20935 Filed 8–15–96; 8:45 am]

BILLING CODE 3510–DS–P

University of Illinois at Urbana-Champaign, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–019. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* Stopped-Flow Reaction Analyser, Model SX.17MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 61 FR 25622, May 22, 1996. *Reasons:* The foreign instrument provides simultaneous measurements across the entire white-light spectrum with high beam stability using a diode array detector.

Docket Number: 96–038. *Applicant:* Purdue University, West Lafayette, IN 47907. *Instrument:* Stopped-Flow Fluorimeter, Model SX.17MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 61 FR 28177, June 4, 1996. *Reasons:* The foreign instrument provides automated multiple mixing using a 4-syringe drive unit under computer control.

Docket Number: 96–039. *Applicant:* Columbia University, Lamont-Doherty Observatory, Palisades, NY 10964–8000. *Instrument:* Mass Spectrometer, Model VG 5400. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 61 FR 28177, June 4, 1996. *Reasons:* The foreign instrument provides (1) a low background count rate at mass 36 (less than 5×10^{-14} cc STP) and (2) a desorption rate less than 10^{-17} cc STP/min of 40Ar.

Docket Number: 96–040. *Applicant:* Washington University, St. Louis, MO 63130–4899. *Instrument:* ICP Mass Spectrometer, Model ELEMENT. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 61 FR 28177, June 4, 1996. *Reasons:* The foreign instrument provides a magnetic sector analyzer with resolution to 7500 for precise and accurate low level (sub ppb) measurements of the transition elements.

Docket Number: 96–042. *Applicant:* University of Kansas, Lawrence, KS 66045. *Instrument:* Mass Spectrometer, Model PlasmaQuad XS. *Manufacturer:* Fisons Instruments, Inc., United Kingdom. *Intended Use:* See notice at 61 FR 28177, June 4, 1996. *Reasons: The foreign instrument provides:* (1) sub ppt detection limits for Li, Cs, Pb, U and In, (2) sensitivity >20 Mcps/ppm for heavy elements and (3) UV laser ablation capability.

The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–20934 Filed 8–15–96; 8:45 am]

BILLING CODE 3510–DS–P

University of Wisconsin, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 95–085R. *Applicant:* University of Wisconsin-Eau Claire, Eau Claire, WI 54702. *Instrument:* Absorbance and Fluorescence Stopped-Flow Spectrophotometer, Model SX.17MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 60 FR 50555, September 29, 1995. *Reasons:* The foreign instrument provides a fast enough dead time for observation of rapid reactions with rate constants approaching 1500 reciprocal seconds. *Advice received from:* The National Institutes of Health, June 10, 1996.

Docket Number: 96–029. *Applicant:* University of Iowa, Iowa City, IA 52242. *Instrument:* EPR Spectrometer, Model EMX 6/1. *Manufacturer:* Bruker Instruments, Germany. *Intended Use:* See notice at 61 FR 28176, June 4, 1996. *Reasons:* The foreign instrument provides a multifrequency single-channel cavity with a continuous range of modulation frequencies from 6 kHz to 100 kHz with a resolution of 0.01 kHz. *Advice received from:* The National Institutes of Health, March 29, 1996.

Docket Number: 96–033. *Applicant:* University of Southern California, Los Angeles, CA 90089–2520. *Instrument:* Xenon Flashlamp System, Model XF–10. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 61 FR 28176, June 4, 1996. *Reasons:* The foreign instrument provides: (1) a high voltage power supply integrated and coupled to a xenon flashlamp system and (2) time resolution in the millisecond range with moderate repetition rates. *Advice received from:* The National Institutes of Health, March 29, 1996.

Docket Number: 96–045. *Applicant:* Monell Chemical Senses Center, Philadelphia, PA 19104–3308. *Instrument:* Xenon Flashlamp System,

Model SX–10. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 61 FR 28175, June 4, 1996. *Reasons:* The foreign instrument provides: (1) a high voltage power supply integrated and coupled to a xenon flashlamp, (2) UV antireflection optics and (3) flash photolysis and spectrophotometric capabilities. *Advice received from:* The National Institutes of Health, June 10, 1996.

Docket Number: 96–051. *Applicant:* Yale University School of Medicine, New Haven, CT 06520–8002. *Instrument:* Free-Flow Electrophoresis Device, Model OCTOPUS PZE. *Manufacturer:* Dr. Weber, GmbH, Germany. *Intended Use:* See notice at 61 FR 30220, June 14, 1996. *Reasons:* The foreign instrument provides: (1) high resolution focusing with short throughput times and (2) a fractionation chamber for simultaneous collection of 96 samples. *Advice received from:* The National Institutes of Health, June 11, 1996.

Docket Number: 96–057. *Applicant:* University of Iowa, Iowa City, IA 52242. *Instrument:* Mass Spectrometer, Model VG AutoSpec. *Manufacturer:* Micromass, United Kingdom. *Intended Use:* See notice at 61 FR 30221, June 14, 1996. *Reasons:* The foreign instrument provides: (1) high sensitivity and resolving power, continuously variable to 60 000 (10% valley definition) in EI mode, (2) extended mass range to 5000 Daltons at 8keV ion energy and (3) linked scanning capability. *Advice received from:* The National Institutes of Health, June 11, 1996.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–20933 Filed 8–15–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[Docket No. 960503125–6191–02; I.D. 080896D]

RIN 0648–AH03

Fisheries of the Exclusive Economic Zone Off Alaska; Salmon Donation Program

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

ACTION: Selection of an authorized distributor.

SUMMARY: NMFS announces the selection of Tuck Donnelly, Executive Director, Northwest Food Strategies (NFS), as an Authorized Distributor for purposes of distributing Pacific salmon to economically disadvantaged individuals. These salmon are caught as bycatch during directed groundfish fishing operations in the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) management areas. This action is necessary to comply with provisions of the Salmon Donation Program (SDP) and is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council).

EFFECTIVE DATE: August 16, 1996, through August 16, 1999.

ADDRESSES: Copies of the Authorized Distributor Permit may be obtained from the Director, Alaska Region, NMFS, P.O. Box 21688, Juneau, AK 99802. Copies of Amendments 26 and 29 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the amendments may be obtained from the Council, Suite 396, 605 West 4th Ave., Anchorage, AK 99510–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the BSAI and GOA management areas is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska. These fishery management plans (FMPs) were prepared by the Council under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) and are implemented at regulations governing the U.S. groundfish fisheries at subpart H of 50 CFR part 600 and 50 CFR part 679.

Amendments 26 and 29 to the BSAI and GOA FMPs, respectively, which were approved by NMFS on July 10, 1996, implement the SDP. A full description of, and background information on, the SDP may be found in the preamble to the proposed rule published in the Federal Register on May 16, 1996 (61 FR 24750) and in the EA/RIR prepared for that action.

Implementing regulations at 61 FR 38358 (July 24, 1996) authorize the distribution of Pacific salmon taken incidentally in the groundfish trawl fisheries off Alaska to economically disadvantaged individuals by tax-exempt organizations through an authorized distributor. The Director, Alaska Region, NMFS (Regional Director) may select one or more tax-exempt organizations to be authorized distributors, as defined by § 679.2, based on the information submitted by applicants under § 679.26. After review of qualified applicants, NMFS will announce the selection of authorized distributor(s) in the Federal Register. Participation in the SDP is voluntary.

On July 24, 1996, the Regional Director received an application for an Authorized Distributor Permit from Tuck Donnelly, Executive Director, NFS, 600 Erickson Avenue, Suite 395, Bainbridge Island, WA 98110. Upon receipt of the application, the Regional Director determined that it provided the information required by § 679.26(a)(1). The Regional Director has selected Mr. Donnelly as an Authorized Distributor for purposes of the SDP. As required by § 679.26(a)(2), the Regional Director based his selection on the criteria listed below. His findings for each criterion are provided.

1. *The number and qualifications of applicants for SDP permits.* As of August 16, 1996, only the application from NFS has been received. Under experimental fishing permits issued by NMFS in 1993, 1994, and 1995, NFS (formerly Terra Marine Research and Educations, Incorporated) coordinated a salmon donation program, using salmon bycatch from the trawl groundfish fisheries. NFS will operate the same type of program as an Authorized Distributor. Information contained in the application indicates that NFS has coordinated the transportation and routing of seafood products from Alaska since 1993, relying on all the major carriers serving Dutch Harbor and Kodiak as well as carriers serving southeast Alaska.

2. *The number of harvesters and the quantity of salmon that applicants can*

effectively administer. NFS currently administers four shorebased processors, 17 catcher/processors, and one mothership that are located on shore and at sea. The vessel numbers represent about 55 percent of the vessel processing capacity in the BSAI. NFS could administer 40 processors and associated catcher vessels that might deliver to them. In 1995, NFS processed 44,249 lb (20 metric tons (mt)) of salmon for distribution under a food bank program. To date in 1996, NFS has processed 42,767 lb (19.4 mt) of salmon. This amount will increase substantially during the remainder of the year. NMFS does not have information to convert accurately these weights to numbers of salmon. Nonetheless, assuming a recovery rate of 30 percent, and an average recovered weight of 8 lb (3.63 kg) per fish, the above weights could represent about 18,000 fish.

3. *The anticipated level of salmon bycatch based on salmon bycatch from previous years*. During 1995, about 45,000 salmon were caught in the BSAI management area by trawl vessels. About 51 percent of these, or 23,000 salmon, were caught from the middle of August through the end of calendar year 1995.

4. *The potential number of vessels and processors participating in the groundfish trawl fisheries*. About 10 shorebased processors, 60 trawl catcher/processors, five processing motherships, and about 50 trawl catcher vessels operate in the BSAI management area.

This Authorized Distributor Permit is in effect for a 3-year period from the date of publication of this announcement, unless suspended or revoked. It may not be transferred; however, it may be renewed following the application procedures in § 679.26.

If the authorized distributor modifies any information on participants or delivery locations on the SDP permit application submitted under § 679.26(a)(1)(xi) or (a)(1)(xiii), the authorized distributor must submit a modified list of participants or delivery locations to the Regional Director.

This permit may be suspended, modified, or revoked under 15 CFR part 904 for noncompliance with terms and conditions specified in the permit or for violation of § 679.26 or other regulations in 50 CFR part 679.

Classification

This action is taken under 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: August 12, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–20962 Filed 8–15–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 072296D]

Endangered Species; Permits

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

ACTION: Notice of receipt of application for a research permit (P618)

SUMMARY: Notice is hereby given that Thomas S. Squiers, Jr., of the Maine Department of Marine Resources (P618) has applied for a permit for scientific research on shortnose sturgeon.

DATES: Written comments or requests for a public hearing on the application must be received on or before September 16, 1996.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250).

Written comments, or requests for a public hearing on these applications should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: Application (P618) requests a permit under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). The applicant requests a five-year permit to capture, examine, and tag 500 listed shortnose sturgeon in Maine waters. Some would be tagged with radio or ultrasonic transmitters, and some would have tissue samples taken for DNA analysis. The purpose of the research is to determine migratory movements and to help identify spawning, feeding, and overwintering areas.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: August 12, 1996.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–20977 Filed 8–15–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 080896C]

Marine Mammals; Permit No. 926 (P562)

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

ACTION: Issuance of amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit No. 926 submitted by Dr. Robin Baird, Marine Mammal Research Group, Box 6244, victoria, B.C., Canada V8P 5L5, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Building 1, Seattle, WA 98115–0070 (206/526–6150).

SUPPLEMENTARY INFORMATION: On May 31, 1996, notice was published in the Federal Register (61 FR 27337) that an amendment of permit No. 926, issued June 10, 1994 (59 FR 31217), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 926 authorizes the take (i.e., harassment) of up to 300 killer whales (*Orcinus orca*) annually, up to 25 of which may be radio tagged via suction cups annually, in waters off Washington state, over a five year period. The purpose of the research is to study killer whale behavior and ecology. The Permit has been amended to authorize the harassment and suction cup radio tagging of Dall's porpoise (*Phocoenoides dalli*), in order to study that species' diving behavior. Activities will be undertaken in the waters of Juan

de Fuca Strait, Haro Strait, Boundary Pass, Georgia Strait, and the waters surrounding the San Juan Islands.

Dated: August 5, 1996.

Jeannie K. Drevenak,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–20896 Filed 8–15–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 081296B]

Marine Mammals; Scientific Research Permit (P368G)

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that James Harvey, Ph.D. and Jenifer Hurley, Ph.D., Moss Landing Laboratory, P.O. Box 450, Moss Landing, CA (95039–0450), has applied in due form for a permit to take marine mammals for purposes of scientific research.

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

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach CA 90802–4213.

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The applicant proposes to obtain up to 10 California sea lions (*Zalophus californianus*) to conduct three research projects: (1) videocamera study—sea lions will be trained to carry a videocamera attached to a backpack and will swim alongside whales allowing underwater recording of whale behaviors (e.g., diving, feeding and mating); (2) tag attachment—sea lions will be used to deliver and attach small radio and TDR tags on the backs of large whales. Annually, up to 30 each blue whales (*Balaenoptera musculus*) and fin whales (*B. physalus*), 60 humpback whales (*Megaptera novaeangliae*), 100 gray whales (*Eschrichtius robustus*), 20 each minke whales (*Balaenoptera acutorostrata*) and sperm whales (*Physeter catodon*), will be tagged, and up to 100 gray whales may be inadvertently harassed during research activities; and (3) physiological study—the trained sea lions will participate in a study of the diving physiology of this species in the open ocean.

Dated: August 12, 1996.

Jeannie Drevenak,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–20911 Filed 8–15–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 080996A]

Marine Mammals; Scientific Research Permit No. 1006 (P466C)

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that a permit for scientific research has been issued to Mr. Scott D. Kraus, Edgerton Research Laboratory, New England Aquarium, Central Wharf, Boston, Massachusetts 02110–3399.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250).

SUPPLEMENTARY INFORMATION: On May 28, 1996, notice was published in the Federal Register (61 FR 26505) that a request for a scientific research permit had been submitted by the above-named applicant. The request was to harass harbor porpoise in the Gulf of Maine during the course of underwater acoustic playback experiments. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

Dated: August 9, 1996.

William W. Windom,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–20978 Filed 8–15–96; 8:45 am]

BILLING CODE 3510–22–F

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Sequestration Update Report for Fiscal Year 1997 to Congress and the Office of Management and Budget

Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Sequestration Update Report for Fiscal Year 1997 to the House of Representatives, the Senate, and the Office of Management and Budget.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 96–20842 Filed 8–15–96; 8:45 am]

BILLING CODE 95–0702–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

National Action Plan to Develop the Hydrogeomorphic Approach for Assessing Wetland Functions

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent and request for comments.

SUMMARY: The Corps of Engineers is announcing, through the National Action Plan, the strategy the Corps and other Federal agencies will follow to develop the Hydrogeomorphic Approach for Assessing Wetland Functions (HGM Approach). The National Action Plan was developed by a National Interagency Implementation Team. Agencies represented on the Implementation Team are the Corps of

Engineers, Environmental Protection Agency, Natural Resource Conservation Service, Federal Highways Administration, and the U.S. Fish and Wildlife Service. The HGM Approach is being developed primarily for use in the context of the Clean Water Act Section 404 regulatory program where time and resources are often limited. This notice provides the National Action Plan for review and opportunity for comment. While not required by law or regulation, the Corps is publishing the National Action Plan for review and comment.

DATES: Comments on the National Action Plan must be received by September 16, 1996.

ADDRESSES: Written comments may be submitted to the U.S. Army Corps of Engineers, ATTN: CECW–OR, HGM Docket, 20 Massachusetts Avenue NW., Washington, DC 20314–1000 or faxed to (202) 761–5096.

FOR FURTHER INFORMATION CONTACT: Ms. Colleen Charles, Corps of Engineers, at (202) 761–0199; Ms. Sandra Byrd-Hughes, Natural Resource Conservation Service, at (202) 690–3501; Mr. Thomas Kelsch, Environmental Protection Agency, at (202) 260–8795; Mr. Paul Garrett, Federal Highways Administration, at (202) 366–2067; and Mr. Donald MacLean, Fish and Wildlife Service, at (703) 358–2201.

SUPPLEMENTARY INFORMATION: The Clinton Administration's Wetlands Plan addressed the need for improvement of wetlands assessment techniques to allow for better consideration of wetlands functions in permit decisions. The HGM Approach is a wetland assessment procedure that will increase the accuracy of wetland function assessments, allow for replicability, and reduce the amount of time required to conduct a wetland function assessment. The HGM Approach is based on three fundamental factors that influence how wetlands function: position in the landscape (geomorphic setting), water source (hydrology), and the flow and fluctuation of the water once in the wetland (hydrodynamics). The HGM Approach first classifies wetlands based on their differences in functioning, second it defines functions that each class of wetlands performs, and third it uses reference to establish the range of functioning of the wetland. Regional assessment models are developed based on the functional profile that describes the physical, biological, and chemical characteristics of a regional wetland subclass. The goal of the National Action Plan is to develop, over the next two years, sufficient assessment models to address 80 percent of the Section 404 permit workload requiring wetland function assessments. To achieve this goal, approximately 25–30 regional subclass models will be required to be developed. Given the magnitude of the effort, and the need for interdisciplinary expertise, development of the HGM Approach will require participation from several Federal, State, Tribal and local agencies, academia, and the private sector. This involvement will occur at all stages of model development.

Robert W. Burkhardt,

Assistant Chief, Operations, Construction, and Readiness Division, Directorate of Civil Works.

National Action Plan To Develop the Hydrogeomorphic Approach for Assessing Wetland Functions

I. Executive Summary
II. Overview of Hydrogeomorphic Approach (HGM Approach)
III. Development Strategies of the HGM Approach
A. Goals and Objectives for Development
B. Development of the HGM Approach
C. Agency Roles and Coordination
1. National Interagency Implementation Team
2. Regional Assessment Teams (A-Teams)
3. WES as Technical Support Center
4. Coordination with State, Tribal and local agencies, academia and the private sector
D. Quality Control for Model Development
E. Training and Outreach
1. Training
2. Outreach
F. Policy Statement
IV. HGM Documents
A. HGM Classification of Wetlands
B. Procedural Document
C. Guidance for Establishing Reference Wetlands
D. National Guidebooks
E. Regional Guidebooks
1. Operational Draft Guidebook
2. Final Regional Guidebook
V. Application of HGM Approach
VI. Schedule
A. Phase I—Pilot Projects in 1995
B. Phase II—Priorities for 1996 to 1998
C. Phase III—Model Development Beyond 1998
VII. Funding
References
Appendix—Definition of Terms

National Action Plan to Develop the Hydrogeomorphic Approach for Assessing Wetland Functions

I. Executive Summary

The National Action Plan to Develop the Hydrogeomorphic Approach for Assessing Wetland Functions (Action Plan) identifies the strategy the Corps and other Federal agencies will follow to develop this new wetlands function assessment methodology. The Hydrogeomorphic Approach for Assessing Wetland Functions (HGM approach) is a procedure for measuring the capacity of a wetland to perform functions. The procedure was designed to satisfy the technical and programmatic requirements of the Clean Water Act Section 404 regulatory program where time and resources are often limited. Information obtained from application of the HGM Approach can assist project proponents and regulators in assessing the level of environmental impact of a proposed project, in determining the appropriate level of regulatory review, and in assessing compensatory mitigation required for offsetting environmental impacts. The hierarchical and modular nature of the procedure make it adaptable to a variety of other regulatory, planning, management, and educational situations where information on wetland functions is needed.

The HGM Approach is different from other assessment procedures in that it first classifies wetlands based on their differences in functioning, second it defines functions that each class of wetlands performs, and third it uses ''reference'' to establish the range of functioning of the wetland. Functional classification narrows the focus of attention to the functions a particular wetland type is most likely to perform and to the ecological characteristics that control these functions. This increases the accuracy of the assessment, allows for replicability, and reduces the amount of time needed to conduct the assessment. The approach also utilizes ''reference wetlands'' as the means for establishing the scale, or index, against which other wetlands of the same type in a particular geographic area can be compared to determine their functional capacity. Reference wetlands are selected to reflect the range of conditions in a particular geographic area that a particular wetland type may exhibit, from relatively undisturbed to highly degraded.

Under the HGM Approach national guidebooks are being developed for each of the major classes of wetlands: riverine, depressional, slope, flats (mineral soil and organic soil), and fringe (estuarine and lacustrine). The national guidebooks provide standard templates upon which models for regional guidebooks are developed for specific wetland subclasses. Regional guidebooks include assessment models for each regional wetland subclass as well as subclass descriptions, functional profiles, and implementation methods. Interdisciplinary teams of wetland specialists from Federal, State, and local agencies as well as the private sector and academia, will coordinate the development of assessment models for each regional guidebook. To ensure the

technical accuracy of the effort, assessment models will be subjected to a rigorous peer review process involving wetland experts from Federal, State, Tribal and local agencies, academia and the private sector. Each regional guidebook will be published initially as an operational draft for a two year period that will provide agencies, academia, and the private sector with an opportunity to review and apply the procedure and provide comments. Issues raised as a result of application of the operational drafts will be addressed in the final publication. The final regional guidebooks will be reviewed and revised on an as needed basis not to exceed a five year period to ensure the best available science is incorporated into the assessment model.

Development of the HGM Approach is being accomplished in three phases because of the time and effort needed to develop regional guidebooks. These efforts will be prioritized so that at the end of Phase II there are a sufficient number of regional guidebooks to address 80 percent of the Section 404 permit workload requiring a functional assessment. Given limited agency resources, it is clear that such an undertaking will require the coordinated participation of other Federal, State, Tribal, and local agencies, as well as individuals from academia, and the private sector. State agencies and others who choose to initiate development of assessment models on their own will be encouraged to coordinate with the Federal agencies to ensure quality control in model development and the maximum applicability of the product by State, Federal, and local agencies.

Technical support for the development of the HGM Approach is being provided by the U.S. Army Engineer Waterways Experiment Station (WES). To facilitate development of the regional guidebooks, WES, in conjunction with other Federal and State agencies and other wetland experts, has developed, and will continue to develop, the necessary support documents, technical information and training materials. Experts from WES will oversee the development of regional guidebooks to ensure consistency and accuracy in these efforts.

To supplement development of the HGM Approach, the Federal agencies will be preparing a policy statement in the near future to clarify the application of the HGM Approach within the Section 404 regulatory program. For example, the procedure may be used to rapidly and consistently determine the level of environmental impact of a proposed project, to compare project alternatives, to identify measures that would minimize environmental impacts, to determine mitigation requirements, and to establish standards for measuring mitigation success. The policy statement will indicate the manner in which such applications can provide greater certainty and consistency within the decision making process.

II. Overview of HGM Approach

The Hydrogeomorphic Approach to Assessing Wetland Functions (HGM Approach), developed by scientists at the U.S. Army Engineer Waterways Experiment Station (WES), is a procedure for measuring the capacity of a wetland to perform functions. The procedure was designed to satisfy the technical and programmatic requirements of the Clean Water Act Section 404 (Section 404) regulatory program where time and resources are often limited. However, the hierarchical and modular nature of the procedure make it adaptable to a variety of other regulatory, planning, management, and educational situations requiring the assessment of wetland functions.

The HGM Approach is different from other assessment procedures in that it first classifies wetlands based on their differences in functioning, second it defines functions that each class of wetlands performs, and third it uses ''reference'' to establish the range of functioning of the wetland. HGM is a hierarchical classification with five major hydrogeomorphic wetland classes. These classes are: riverine, depressional, slope, flats (organic soil and mineral soil), and fringe (estuarine and lacustrine). The HGM Approach is based on three fundamental factors that influence how wetlands function: position of the wetland in the landscape (geomorphic setting), water source (hydrology), and the flow and fluctuation of the water once in the wetland (hydrodynamics). Within a specific geographic area wetland classes can be further divided into regional subclasses (e.g., vernal pools in California, prairie potholes in the northern plains states, and pine flatwoods in the southeastern U.S.). Classifying wetlands based on how they function narrows the focus of attention to a specific type or subclass of wetland, the functions that wetlands within the subclass are most likely to perform, and the landscape and ecosystem factors that are most likely to influence how wetlands in the subclass function. (See Table 1.) This increases the accuracy of the assessment, allows for replicability, and reduces the amount of time needed to conduct the assessment.

TABLE 1.—HYDROGEOMORPHIC CLASSES OF WETLANDS SHOWING ASSOCIATED DOMINANT WATER SOURCES, HYDRODYNAMICS, AND EXAMPLES OF SUBCLASSES

Hydrogeomorphic class	Dominant water source	Dominant hydrodynamics	Examples of subclass	
			Eastern USA	Western USA
Riverine	Overbank flow from channel..	Unidirectional, horizontal.	Bottomland hardwood forests	Riparian forested.
Depressional	Return flow from groundwater and interflow.	Vertical	Prairie potholes marshes	California vernal pools.
Slope	Return flow from groundwater	Unidirectional, horizontal.	Fens	Montane seeps.
Flats (mineral soil)	Precipitation	Vertical	Wet pine flatwoods	Playas.
Flats (organic soil)	Precipitation	Vertical	Peat bogs, portions of Everglades.	Peat bogs.
Fringe (Estuarine)	Overbank flow from estuary..	Bidirectional, horizontal.	Chesapeake Bay marshes	San Francisco Bay marshes.
Fringe (Lacustrine)	Overbank flow from lake	Bidirectional, horizontal.	Great Lakes marshes	Flathead Lake marshes

Source: Brinson et al., An approach for assessing wetland functions using hydrogeomorphic classification, reference wetlands, and functional indices. U.S. Army Corps of Engineers Waterways Experiment Station, Technical Report TR WRP–DE–10. Vicksburg, MS. Oct. 1995.

The HGM Approach includes a development phase and an application phase. The development phase is carried out by an interdisciplinary team of wetland experts (A-team) and begins with the classification of wetlands into regional subclasses. The A-team then develops a functional profile that describes the physical, chemical, and biological characteristics (wetland functions) of the regional subclass, identifies which functions are most likely to be performed, and discusses different ecosystem and landscape attributes that influence each function. The functional profile is based on the experience and expertise of the A-team and information from reference wetlands. Reference wetlands are selected from a reference domain (or a defined geographic area) and represent sites that exhibit a range of variation within a particular wetland type including sites that have been degraded/disturbed as well as those sites which have had little disturbance. The A-team next develops and calibrates assessment models. These models define the relationship between attributes of the wetland ecosystem and surrounding landscape and the capacity of a wetland to perform a function. The assessment model results in a functional index (0–1), which estimates the capacity of a wetland to perform a function relative to other wetlands from the same regional subclass in the reference domain. The standard of comparison used to scale functional indices are reference standards, or the conditions under which the highest, sustainable level of function is achieved across the suite of functions performed by wetlands in a regional subclass.

The application phase of the HGM Approach can be used to assess wetland functions in the context of a Section 404 permit application review as well as in the context of a planning or management project. Regulators can use this procedure to rapidly and accurately determine the level of environmental impacts of proposed projects, compare project alternatives, identify measures that would minimize environmental impacts, determine mitigation requirements, and establish criteria for measuring mitigation success. As such, the procedure will be helpful in providing greater certainty, reduced permit review times and more rapid decision making.

The HGM Approach is designed to focus on wetland functions and not to address values. Values represent the significance of wetland functions to society or individuals. The functional indices developed under this approach cannot be used to assign values to wetland functions in terms of economic or other value units as required by the public interest review process since values often reflect local priorities and may reflect policy issues beyond the scope of this method. Local priorities can also change over time and, therefore, must often be redefined at different periods of time. Information provided by the HGM Approach can serve as the basis for establishing public values, and thus aid in the shaping of national and regional management policies.

III. Development Strategies of the HGM Approach

A. Goals and Objectives for Development

The primary goal for the development of the HGM Approach is to have a standardized assessment methodology that can be applied consistently in a diversity of wetland types throughout the United States, uses the best available technical information, and maintains compatibility with the time and resource framework of the Section 404 Regulatory Program. The objective is to develop, during the next two years, sufficient assessment models to address 80 percent of the Section 404 permit work load requiring functional assessments. The Section 404 permit work load requiring functional assessments will generally be the individual and general permits requiring compensatory mitigation.

To achieve this goal the Corps and other Federal agencies have formed a National Interagency Implementation Team (Implementation Team). The Implementation Team is responsible for preparing a National Action Plan to Develop the HGM Approach for Assessing Wetland Functions (Action Plan). The Action Plan identifies the strategy the Federal agencies will follow in developing this new assessment methodology to meet the objective of addressing 80 percent of the Section 404 regulatory permit workload requiring functional assessments.

To achieve this objective the regional subclass models and regional guidebooks will:

(1) Be developed in a consistent and coordinated manner to facilitate state and federal interagency agreement on applications of the HGM approach. This will require involving experts from academia and the private sector, as well as Federal, State, Tribal and local agencies at all stages and levels of review;

(2) Utilize the best scientific information in the development of each model;

(3) Develop assessment models based on national and regional priorities for the Regulatory program;

(4) Make the most efficient use of limited agency resources; and

(5) Ensure private sector involvement at all stages and levels of development.

B. Development of the HGM Approach

Development of the HGM Approach is a multi-step procedure and will require the participation by several Federal, State, Tribal and local agencies, as well as experts from academia and the private sector. This participation will occur at all stages of the model development process starting with initial model development through model calibration, verification, and validation of the revised model.

The first step of this multi-step procedure was to identify the priority for model development of wetland subclasses through surveys of Corps district offices. The next step is to establish regional assessment teams (A-teams) from participating agency specialists that are trained in the HGM classification and approach. The A-teams will identify and prioritize regional wetland subclasses and define the reference domain.

Once the regional subclasses and reference domain have been identified, assessment models for wetland functions will be drafted based on a review of the literature and review of existing models. Model development will include identification of reference wetland sites, functions for each wetland subclass, variables for each function, and development of functional indices. The draft models will then go through an interdisciplinary peer review in a technical workshop format to provide individuals with expertise on the hydrology, soils, vegetation and wildlife use of each regional subclass an opportunity to critique the draft assessment model. The workshop participants will include wetland experts from Federal, State, Tribal, and local agencies and individuals from academia and the private sector and will be an integral part of model development. At the workshop the model will be critiqued and revised as needed to reflect recommendations from the workshop participants. After model review and revision the draft model will be calibrated with data collected by the A-team from reference wetland sites and field tested for accuracy and sensitivity of functional indices. The model will then be published as a draft operational regional wetland subclass guidebook (operational draft) for a two year period prior to final publication. The operational draft will include a

description and range of the regional wetland subclass, a functional profile, the functional assessment models, and application instructions with field data sheets. The first year following draft publication, review comments will be solicited during which time the operational draft models will be subjected to further extensive field testing by the Federal agencies. Review comments will be incorporated into a final model. The final model will undergo review and revision as needed on a periodic basis not to exceed a five year length of time to ensure that new technical data and research are incorporated into the model.

C. Agency Roles and Coordination

Given the magnitude of the effort, and the need for interdisciplinary expertise, development of the HGM Approach will require participation from several Federal, State, Tribal and local agencies, academia, private consultants and other wetlands experts. The following identifies how such involvement will be coordinated.

1. National Interagency Implementation Team (Implementation Team)

The Action Plan will be administered by a National Interagency Implementation Team chaired by a representative from the U.S. Army Corps of Engineers (Corps). Other agencies represented on the Implementation Team will be the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), USDA—Natural Resources Conservation Service (NRCS), the Federal Highway Administration (FHWA), and NOAA—National Marine Fisheries Service. Technical assistance will be provided to the Implementation Team by representatives of Waterways Experiment Station (WES), and others involved in the development of the HGM Approach.

The Implementation Team is responsible for ensuring that the Action Plan is implemented in a consistent and timely fashion, and that the concerns and priorities of each agency are considered. They will meet on an as needed basis to assess progress, ensure timely development of products, and address problems and potential inconsistencies.

2. Regional Assessment Teams (A-Teams)

Regional assessment teams (A-teams) will include scientists with expertise in wetland hydrology, biochemistry, soils, plants, and wildlife with representation from each agency on the Implementation Team, as appropriate. The representative from the Corps will serve as the A-team leader. It is the primary responsibility of the A-team to develop regional functional assessment models and guidebooks. To accomplish this each A-team is tasked with identifying reference wetlands and developing functional assessment models and guidebooks for priority regional wetland subclasses. Specific responsibilities of the A-team are listed below:

- Identify regional wetland subclasses and define reference domains.
- Identify reference wetland sites.
- Identify functions for each subclass.
- Identify variables and develop functional assessment models.
- Conduct interagency and interdisciplinary workshop to critique models.
- Collect data from reference wetland sites.
- Calibrate functional assessment models using reference wetland data.
- Verify and validate the accuracy and sensitivity of functional indices.

A-teams will solicit technical input from other wetland experts as necessary to accomplish their objectives. A-teams will meet on an as needed basis during the development and implementation of regional assessment models. It is anticipated that development of each model will take approximately one year to complete.

3. WES as Technical Support Center

WES will serve as the primary technical support center for coordination of all model development. It is anticipated that a representative from WES will provide technical support to the A-teams. WES will also maintain standards for quality control (protocols), in concert with other Federal agencies, and facilitate publication of all HGM documents. WES will also serve as the center for training and outreach activities related to the HGM Approach.

4. Coordination With State, Tribal and Local Agencies, Academia and the Private Sector

It is the intent of the Federal agencies to involve representatives from appropriate State, Tribal and local agencies, as well as local experts from academia and the private sector in the development of regional assessment models. Input will be solicited regarding the technical accuracy of the model, as well as its applicability to Federal, State, Tribal and local wetlands programs. A-teams will be responsible for identifying individuals outside of the Federal government with expertise on the hydrology, biogeochemical processes, soils, and habitat functions of the regional wetland subclass to participate in the peer review.

Concurrently, it is anticipated that many State regulatory and/or resource agencies will be interested in taking the lead in developing similar assessment methods using the HGM Approach for their own regulatory programs and other purposes. Assessment models developed by State agencies may be accepted for use within Federal programs if they satisfy Federal quality control standards. For this reason, States are encouraged to coordinate with WES at the initiation of the project to ensure consistency with Federal efforts. The Federal agencies will work to establish collaborative efforts with States in the development of regional HGM assessment models to ensure maximum efficiency of both efforts and the broadest possible application of the assessment methods.

Moreover, many States have on-going research supporting the development of monitoring programs to characterize and assess the condition of their wetland resources. The HGM Approach provides a useful framework for targeting States' data collection and research efforts. Many States have increased their efforts to monitor and document the ecological condition of their wetlands in recent years. This information is used to define more appropriate and specific wetland water quality standards, to report on the health of States' aquatic systems for Clean Water Act Section 305(b) purposes, and to set performance criteria for wetland restoration and mitigation projects. Much of the data from these activities can support the development of functional assessment models based on the HGM Approach. Federal and State agencies undertaking the development of regional assessment models are encouraged to coordinate with these State research and monitoring programs to facilitate an exchange of technical information.

Finally, there may be circumstances where a functional assessment model based on the HGM Approach is developed for a specific application (e.g., within a watershed planning effort, for a particular permit application). In such cases, entities responsible for developing the model are encouraged, to the maximum extent practicable, to follow the standard protocol for developing a regional assessment model. It is anticipated that these models may then serve as the basis for Federal or State efforts to expand the scope of applicability of the model through additional calibration and peer review.

D. Quality Control for Model Development

While the agencies recognize that the steps needed to develop each model will vary based on the unique circumstances of each effort, certain minimum requirements must be met to ensure consistency, technical accuracy and interagency support for the development of each regional guidebook. The protocol (minimum steps) to be followed in regional model guidebook development and the implementation process involve several phases. These phases, listed in Table 2, are described in detail in the draft guidance from WES, Development of Regional Wetland Subclass HGM Functional Assessment Model Guidebooks (May 1996). The Implementation Team will maintain oversight to ensure product development focuses on priority wetland types and meets agency needs. In order to satisfy Federal standards for quality and consistency, models developed by consultants or other A-teams not formed by the Federal agencies will be required to perform the steps described in Table 2 if those models are to be used within Federal programs. Entities undertaking separate efforts to develop HGM functional assessment models are encouraged to inform the Corps early on of their intent and provide timely opportunities for agency participation and review. Any model developed by an entity other than the Federal agencies must be reviewed by the agencies prior to application under Federal programs to ensure consistency with quality assurance steps outlined in this document, including agency and private sector peer review.

TABLE 2.—STEPS IN DEVELOPMENT OF MODEL GUIDEBOOKS (DRAFT)

Phase I: Organization of Regional Assessment Team:
- A. Identify A-Team members
- B. Train members in HGM classification and assessment

Phase II: Identification of Regional Wetland Assessment Needs:
- A. Identify regional wetland subclasses
- B. Prioritize regional wetland subclasses
- C. Define reference domains
- D. Initiate literature review

Phase III: Draft Model Development:
- A. Review existing models of wetland functions
- B. Identify reference wetland sites
- C. Identify functions for each subclass
- D. Identify variables and measures
- E. Develop functional indices

Phase IV: Draft Regional Wetland Model Review:
- A. Obtain peer-review of draft model
- B. Conduct interagency and interdisciplinary workshop to critique model
- C. Revise model to reflect recommendations from peer-review and workshop
- D. Obtain second peer-review of draft model

Phase V: Model Calibration:
- A. Collect data from reference wetland sites
- B. Calibrate functional indices using reference wetland data
- C. Field test accuracy and sensitivity of functional indices

Phase VI: Draft Model Guidebook Publication:
- A. Develop draft model guidebook
- B. Obtain peer-review of draft guidebook
- C. Publish as an Operational Draft of the Regional Wetland Subclass HGM Functional Assessment Guidebook to be used in the field

Phase VII: Implement Draft Model Guidebook:
- A. Identify users of HGM Functional Assessment
- B. Train users in HGM classification and evaluation
- C. Provide assistance to users

Phase VIII: Review and Revise Draft Model Guidebook

E. Training and Outreach

1. Training

Training on the HGM Approach will be necessary to ensure consistent development and application of regional assessment models. Four different training courses proposed to be offered by the Federal agencies are based on the needs of different users. These courses range from an introductory course to familiarize program administrators with the HGM Approach to technical training in regional subclass model development and the application of the HGM Approach. The proposed courses are briefly described below.

A. HGM Executive Course—This course will be designed for executive and management personnel who need to understand the basics of the HGM Approach and application, but do not need to either develop or apply functional assessment models. The course will be approximately two days in length and provide background on the HGM Approach, the conceptual basis of HGM, and how the models are developed and applied. The course will also provide program administrators with information necessary to evaluate the proper development and application of the regional subclass models.

B. HGM Application Course—A second course will be offered to those individuals directly responsible for applying HGM models in the field. The course objective will be to ensure students are as proficient as possible in applying regional subclass models and in evaluating the application of HGM models. The course will focus on the application of models under different scenarios such as project impact assessment, alternative analysis, and mitigation design/monitoring. It will require a full five days to complete with considerable emphasis on field work. This course will be offered through the Corps regulatory training curriculum.

C. HGM Model Development—This course will be designed for personnel responsible for drafting and testing new HGM models. It is anticipated that participants will have an adequate understanding of the HGM Application course. Students will be provided

information on the sequence of steps necessary to develop models and the lessons learned from prior development efforts. The course will be approximately three days long and include field exercises on identifying and collecting data from reference wetlands.

D. Train the Trainers—A fourth course will be offered to train those individuals who will be responsible for local training. The course objective will be to enable students who are proficient in the HGM Approach and model development to train others in the HGM Approach, model development, and application. This course will be two days in length with a pre-requisite of having extensive experience in the HGM Approach.

2. Outreach

In addition to this Action Plan and the training courses the Federal agencies are proposing, additional outreach efforts are planned to ensure that State, Tribal, local agencies and the general public are informed on the HGM Approach, including the direction the Federal agencies will follow in developing and implementing the HGM Approach. The following strategy identifies additional steps the agencies will take over the next few years to meet that objective.

All technical publications included under the HGM Approach (e.g., national and regional guidebooks, supporting technical documents) will be published by WES under an interagency logo. Once published, these documents may be obtained by interested parties through an appropriate Federal publications office, including the National Technical Information Service (NTIS). In addition, WES will develop a home page on the Internet dedicated to the HGM Approach to make pertinent documents available electronically. The home page will include a quarterly publication to update interested readers on the status of efforts to develop and implement the HGM Approach. Among the information included in this publication will be a current listing of completed national and regional guidebooks (including both operational and final drafts), as well as information concerning the status of other models under development.

WES will also have the primary Federal lead for keeping the scientific community informed about the HGM Approach through the presentation of information at appropriate professional meetings and within technical publications. Similarly, the Federal agencies will make information available to professional trade organizations and journals to ensure that the regulated community and others are informed on the development of the HGM Approach. EPA's Wetlands Information Hotline (1–800–832–7828) will also serve as a distribution center for HGM materials. In addition to the Federal agency training programs described above, it is anticipated that private wetland training institutes will begin to provide additional training opportunities for both the public and private sectors. In addition to these formal training programs, the agencies anticipate sponsoring short seminars on the HGM Approach to respond to local interests or needs.

F. Policy Statement

Concurrent with development of the HGM Approach, the Federal agencies will develop a policy statement clarifying how the HGM Approach can be used within the Section 404 program to improve regulatory decision making. The policy statement will address various issues, including how information on wetland functions generated by the HGM approach will be used by regulators to make timely and consistent decisions that are reflective of the relative functional capacity of different wetlands. In addition, the policy statement will discuss how other important factors, such as the relative value of wetland functions, are to be considered in the decision making process. The policy statement will be published in the Federal Register for public review and comment prior to final issuance by the Federal agencies.

IV. HGM Documents

The following documents have been or are expected to be published by WES as part of the development strategy. Published documents are available through the National Technical Information Service at (703) 487–4650.

A. HGM Classification of Wetlands (Brinson, 1993)—This document lays out an approach for classifying wetlands into similar functional types (classes and subclasses) based on their hydrogeomorphic characteristics. Wetlands are initially classified based on three major characteristics: (1) geomorphic setting, (2) water source, and (3) hydrodynamics. The five major wetland classes are depression, slope, flats, fringe, and riverine. (Brinson has since revised this to seven major classes: riverine, depression, slope, mineral soil flats, organic soil flats, estuarine fringe, and lacustrine fringe.) The classification is not intended to supersede or replace other wetland classification methods designed for purposes other than functional assessment.

B. Procedural Document (Smith, et al, 1995)—This document establishes the ''guiding rules'' for model development and application of the HGM Approach. Included is standard guidance for wetland bounding, characterization and assessment using a regional assessment model, as well as guidance for development of A-teams and assessment models.

C. Guidance for Establishing Reference Wetlands—Reference wetlands are used to establish a baseline from which individual wetlands are compared to assess their functional capacity. Data collected from reference wetlands is used to calibrate the regional functional assessment models. This document will provide guidance on how to identify and establish reference wetlands and determine the geographic range (reference domain) of the regional wetland subclass.

D. National Guidebooks—These documents will provide a template for each hydrogeomorphic wetland class from which regional guidebooks can be developed. National guidebooks will be established for the major classes of wetlands:

—Riverine Wetlands
—Depressional Wetlands
—Coastal and Lacustrine Fringe Wetlands
—Slope Wetlands
—Flats Wetlands—(mineral soil flats and organic soil flats)

Each document will provide the rationale and supporting literature for inclusion of selected wetland functions and variables. The document will lack field calibration and specifics on reference standards. National guidebooks will be published initially as operational drafts for a two year period, to allow the public to provide comments on the information contained within. Revisions will be made in response to field review and public comment and a final guidebook will be published.

E. Regional Guidebooks—Regional guidebooks are the tools which will be used in the field to conduct wetland functional assessments. These documents contain the regional wetland subclass models developed by the A-team, including data from reference wetlands and the calibration of the functional indices using the reference wetland data. The document will also contain an appendix of field forms to be used in conducting functional assessments for that specific regional subclass. The regional guidebook is first published as an operational draft for a two year period before it is published as a final regional guidebook. Each is described below.

1. Operational Draft Guidebook—Models drafted by the A-team for a particular wetland subclass, having been reviewed by an interagency panel and an interdisciplinary team of experts familiar with the wetland subclass and region, will be published by WES as an ''Operational Draft'' of the regional guidebook for that subclass. The preface in each operational draft will contain a statement and address for soliciting review comments. Each operational draft will be made available for public use for a two year period during which time comments and recommendations for revisions will be accepted. The operational draft will be revised to reflect recommended changes in the models and the revised models will be published as a Final Regional Guidebook two years from initial publication.

2. Final Regional Guidebooks—The revised operational drafts will be published as final regional guidebooks two years after initial publication. Each final regional guidebook will remain in use for a period not to exceed five years, during which time it will be reviewed by an interdisciplinary team to assess changes in the state of wetland science, including the applicability of new data and research on the particular wetland subclass, and to determine if revisions are needed to the regional models. If revisions are required, the final regional guidebooks will be revised and republished.

V. Application of HGM Approach

One of the primary benefits of the HGM Approach is that it provides project proponents and regulators with a method to rapidly and consistently assess the level of environmental impact of a proposed project. This information is particularly valuable within the review of Section 404 permit applications where the HGM Approach can assess the ability of a wetland to perform a specific function before and after the proposed discharge of dredged or fill material. As such, the evaluation can be useful in identifying the least damaging project alternative as required by the Section 404 program. Moreover, the method provides regulators with a more predictable tool to gauge the level of environmental impact and, therefore, to more consistently determine the appropriate regulatory response, i.e., ensure that the level of review is commensurate with the degree of environmental impact and based upon the best available scientific information.

NRCS in its administration of the Food Security Act of 1985 and the Federal Improvement and Reform Act of 1996 is tasked with determining ''minimal effects'' on conversion or proposed conversion of wetlands on agricultural lands. To aid them in this effort, NRCS will utilize the HGM Approach to determine the impacts on the hydrological and biological functions of the wetland due to the conversion/proposed conversion. ''Thresholds'' to determine the minimal effect will be established by NRCS. The information provided from an HGM assessment can then be compared to the threshold and provide the basis for making a minimal effects determination.

The HGM Approach also provides important information to determine the nature and level of compensatory mitigation that is needed to effectively offset impacts to wetlands. Identifying the degree to which a project may adversely affect the hydrologic, biogeochemical and habitat functions of a particular wetland, enables regulators to more accurately determine the amount and type of compensatory mitigation required to offset the adverse impacts. In addition, the indicators and variables used to establish the assessment model may provide performance standards with which mitigation projects can be monitored to determine compliance.

In addition to being utilized in the Section 404 regulatory program, the HGM Approach may also be applied to mitigation banking (the creation, restoration, or enhancement of wetlands) expressly for the purpose of providing compensatory mitigation for multiple projects. The HGM approach can be used to determine the appropriate number of credits available at a mitigation bank and also to establish performance standards to measure the success of the project in meeting stated goals.

The HGM Approach can be applied to determine the relative functional capacity of wetlands in a particular geographic area within a watershed planning effort, which typically involves the collection and distribution of data on the functions of wetlands in the area. The information gathered can be used to make management decisions on the location of future development within the watershed and the protection of its' aquatic resources. Where existing regional subclass models are not available, a watershed planning effort may provide the basis from which a regional assessment model can be developed. In such cases, the model can be tailored to meet a specific application of the planning effort.

The HGM Approach may also be used in the context of a States' wetland water quality standards program. The HGM Approach provides a useful framework for targeting States' data collection and research efforts. Many States have increased their efforts to monitor and document the ecological condition of their wetlands. This information is then used to define more appropriate and specific wetland water quality standards, to report on the health of States' aquatic systems, and to set performance standards for wetland restoration and mitigation projects. The indicators and variables identified in a regional guidebook can serve as the basis for establishing narrative or numeric criteria used to assess whether an established standard has been met.

VI. Schedule

Development of the HGM Approach is being accomplished in three phases. Phase I is a pilot phase which was initiated in 1995 and focused on developing functional assessment models and regional guidebooks for priority regional wetland subclasses identified by the Corps of Engineers. These priority regional subclasses are: (a.) South-Central Florida flats and depressions and flats of the Everglades; (b.) Western Kentucky and Tennessee riverine (low gradient, low order); (c.) Vernal pools in California; (d.) Prairie potholes of the northern plains states; (e.) Southeast Pine Flatwoods, and (f.) Coastal Fringe of the Texas Gulf Coast. Phase II, initiated in 1996, consists of an expanded nationwide effort to develop functional assessment models and regional guidebooks in approximately 15–20 additional regional wetland subclasses in order to acheive the goal of having a sufficient number of assessment models to address 80 percent of the Section 404 permit workload requiring functional assessments. (See Table 3) Under Phase III, which will be initiated during 1998, functional assessment models and regional guidebooks will be developed for all remaining regional wetland subclasses identified.

A. Phase I—Pilot Projects-1995

Phase I of the Action Plan was initiated in 1995 and is focused on developing regional guidebooks for regional wetland subclasses of national priority as identified by a survey sent to Corps Districts. National priorities were determined and pilot Corps Districts selected by surveying field offices and identifying those types of wetlands which, for example, are experiencing the most development pressure, are threatened due to scarcity, and/or are complex and difficult to assess. A-teams were established to identify reference wetlands and develop functional indices for these priority regional

wetland subclasses. The number of A-teams formed was dependent upon the availability of personnel, time, and financial resources, consistent with established national priorities. A training workshop was held for A-team members to ensure consistency in the efforts to develop regional subclass models. The A-teams initiated technical meetings to accomplish tasks such as: the identification of functions relevant to the particular wetland subclass, the review of existing assessment models, the selection of reference wetlands, the identification of variables, and the development and testing of functional indices. The objective of Phase I was to develop functional indices for priority regional wetland subclasses, and establish protocol for identifying reference wetlands and developing assessment models for additional regional subclasses during Phase II and Phase III in a consistent, systematic, and accurate manner.

TABLE 3.—SUMMARY INFORMATION ON REGIONAL GUIDEBOOKS AND OTHER PRODUCTS FOR PHASE I AND PHASE II OF THE ACTION PLAN

Component	Contributing agency(ies)	Product	Projected completion	Current status
National Documents				
National Action Plan	COE/WES	Technical Report	Dec 96	Draft Complete.
Procedural Document	COE/WES	Technical Report	Apr 96	Published.
Guidance for Establishing Reference Wetlands	EPA	Technical Report	Feb 97	To be initiated Jun 96.
Classification Report	COE/WES	Technical Report	Jun 93	Published.
National Guidebooks				
Riverine Wetlands	COE/WES	Operational Draft	May 96	Completed.
Depressional Wetlands	COE/WES/EPA	Operational Draft	Jan 97	To be initiated Jun 96.
Slope Wetlands	COE/WES	Operational Draft	Jan 97	Initiated Feb 96.
Fringe: Coastal	COE/WES	Operational Draft	Mar 97	Draft complete.
Fringe: Lacustrine	COE/WES	Operational Draft	Dec 97	To be initiated Nov 96.
Flats	COE/WES	Operational Draft	Dec 97	To be initiated Dec 96.
Regional Riverine Guidebooks				
Low gradient 2nd or 3rd order streams in Western KY and TN.	COE/EPA	Operational Draft	Mar 97	Workshop May 96.
Low gradient 2nd or 3rd order streams in the Northern Rockies—MT.	COE/EPA/ States.	Operational Draft	Apr 97	Workshop held in Apr 96.
Regional Depressional Guidebooks				
Prairie Potholes—ND	NRCS	Operational Draft	Feb 97	Draft completed.
Depressions in South and Central Florida	COE/WES	Operational Draft	Aug 97	Workshop held Feb 96.
Vernal Pools of the Central Valley of California	COE/WES	Operational Draft	Aug 97	Workshop held May 96.
Herbaceous Depressions of the Northern Rockies—MT.	COE/WES	Operational Draft	Mar 97	Workshop held Apr 96.
Regional Slope Guidebooks				
Forested Slope Wetlands of New England—MA, NH, VT.	COE/WES	Operational Draft	May 97	Workshop Jul 96.
Herbaceous Slope Wetlands of the Northern Rockies—MT, CO, UT.	COE/WES	Operational Draft	Dec 97	To begin Nov 96.
Regional Fringe: Coastal Guidebooks				
Coastal Wetlands of the Texas Gulf Coast	COE/WES	Operational Draft	Mar 98	To begin in FY 97.
Regional Fringe: Lacustrine Guidebooks				
None Ongoing or Planned in FY97				
Regional Flats Guidebooks				
Herbaceous Flats in South and Central FL	COE/WES	Operational Draft	May 97	Workshop held Feb 96.
Flats in the East Everglades of FL	COE/WES	Operational Draft	Aug 97	Workshop held Apr 96.
Pine Flatwoods of the Southeastern US	FHWA	Operational Draft	Sep 97	Initiated May 96.

Six regional guidebooks are currently under development representing depressional wetlands (prairie potholes in the northern plains states and vernal pools in the Central Valley of California), riverine wetlands (low gradient streams in western Kentucky/Tennessee), flats (pine flatwoods in North Carolina and flats in the East Everglades of Florida), and flat/depressional mosaics in Florida. Table 3 identifies their current status and anticipated dates of completion.

2. Phase II—Priorities for 1996 to 1998

Phase II, initiated during 1996, consists of an expanded nationwide effort to develop regional guidelines in approximately 15–20 additional regional wetland subclasses. Regional subclass models developed in Phase II will be developed under the same protocol as described for Phase I. As identified in Table 3, efforts currently underway as part of Phase II include the development of assessment models for riparian systems, herbaceous depressional and slope wetlands in the northern Rocky Mountains, forested slope wetlands in New England, and coastal fringe wetlands of the Gulf of Mexico. However, it should be recognized that expanded efforts in this Phase will not address all regional wetland subclasses. The number of efforts initiated is dependent upon the availability of personnel, time, and financial resources.

In addition to the development of regional guidebooks, the agencies will work together during Phase II to develop necessary guidance on how the HGM Approach may be applied in the review of Section 404 permit applications. The intent of this document is to clarify how information from an assessment can be used to determine the level of environmental impacts a proposed project may cause and the appropriate regulatory response.

3. Phase III—Development Beyond 1998

Based on the needs of the Federal agencies and work conducted to date by others, the agencies will establish a priority listing of additional models to be developed beginning in 1998.

VII. Funding

Primary funding for the Federal effort to develop the HGM Approach has been and will continue to be provided through the Corps, with additional support being provided by other federal agencies, including EPA, NRCS and FHWA. As development of the approach continues, limited Federal funds will be available for the development of each regional guidebook to support tasks such as the collection of data, training, and technical workshops. The cost for developing regional guidebooks is expected to vary depending on the scope of the effort and the level and nature of participation by Federal, State, Tribal and local agencies and the private sector. For State, Tribal and certain local efforts, EPA's State Wetlands Grant Program has made funding available for those agencies wishing to pursue an HGM Approach within their wetlands program. Interested State, Tribal and local agencies should contact the local EPA office for further information.

References

Brinson, M.M. 1993. A Hydrogeomorphic Classification for Wetlands. Wetland Research Program Technical Report WRP–DE–4. U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS.

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Davis, M.M., E.J. Clairain, Jr, W. Ainslie, M. Gilbert, M.A. Schwinn, M. Sheehan, G. Sparks, K. Trott, and M. Whited. May 1996 (Draft). Development of Regional Wetland Subclass HGM Functional Assessment Model Guidebooks.

Smith, R.D. 1993. A Conceptual Framework for Assessing the Functions of Wetlands. Wetland Research Program Technical Report WRP–DE–3?. U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS.

Smith, R.D., A. Ammann, C. Bartoldus, and M.M. Brinson. 1995. Approach for Assessing Wetland Functions Using Hydrogeomorphic Classification, Reference Wetlands, and Functional Indices. Wetland Research Program Technical Report WRP–DE–9. U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS.

Appendix A

Definition of Terms Used in the Hydrogeomorphic Approach

Assessment Model: A simple model that defines the relationship between ecosystem and landscape scale variables and functional capacity of a wetland. The model is developed and calibrated using reference wetlands from a reference domain.

Assessment Objective: The reason why an assessment of wetland functions is being conducted. Assessment objectives normally fall into one of three categories. These include: documenting existing conditions, comparing different wetlands at the same point in time (e.g. alternatives analysis), and comparing the same wetland at different points in time (e.g. impact analysis or mitigation success).

Assessment Team (A-Team): An interdisciplinary group of regional and local scientists responsible for classification of wetlands within a region, identification of reference wetlands, construction of assessment models, definition of reference standards, and calibration of assessment models.

Functional Assessment: The process by which the capacity of a wetland to perform a function is measured. This approach measures capacity using an assessment model to determine a functional capacity index.

Functional Capacity: The rate or magnitude at which a wetland ecosystem performs a function. Functional capacity is dictated by characteristics of the wetland ecosystem and the surrounding landscape, and interaction between the two.

Functional Capacity Index (FCI): An index of the capacity of a wetland to perform a function relative to other wetlands within a regional wetland subclass in a reference domain. Functional capacity indices are by definition scaled from 0.0 to 1.0. An index of 1.0 indicates the wetland performs a function at the highest sustainable functional capacity, the level equivalent to a wetland under reference standard conditions in a reference domain. An index of 0.0 indicates the wetland does not perform the function at a measurable level, and will not recover the capacity to perform the function through natural processes.

Highest Sustainable Functional Capacity: The level of functional capacity achieved across the suite of functions by a wetland under reference standard conditions in a reference domain. This approach assumes that the highest sustainable functional capacity is achieved when a wetland ecosystem and the surrounding landscape are undisturbed.

Hydrogeomorphic Wetland Class: The highest level in the hydrogeomorphic wetland classification. There are five basic hydrogeomorphic wetland classes including depressional, fringe, slope, riverine, and flat.

Project Target: The level of functioning identified for a restoration or creation project. Conditions specified for the functioning are used to judge whether a project reaches the target and is developing toward site capacity.

Project Standards: Performance criteria and/or specifications used to guide the restoration or creation activities toward the project target. Project standards should include and

specify reasonable contingency measures if the project target is not being achieved.

Red Flag Features: Features of a wetland or the surrounding landscape to which special recognition or protection is assigned on the basis of objective criteria. The recognition or protection may occur at a federal, state, regional, or local level, and may be official or unofficial.

Reference Domain: The geographic area from which reference wetlands are selected. A reference domain may or may not include the entire geographic area in which a regional wetland subclass occurs.

Reference Standard Sites: The sites within a reference wetland data set from which reference standards are developed. Among all reference wetlands, reference standard sites are judged by an interdisciplinary team to have the highest level of functioning.

Reference Standards: Conditions exhibited by a group of reference wetlands that correspond to the highest level of functioning (highest, sustainable level of functioning) across the suite of functions performed by the regional wetland subclass. The highest level of functional capacity is assigned an index score of 1.0 by definition.

Reference Wetlands: Wetland sites that encompass the variability of a regional wetland subclass in a reference domain. Reference wetlands are used to establish the range of conditions for construction and calibration of functional indices and establish reference standards.

Regional Wetland Subclass: Wetlands within a region that are similar based on hydrogeomorphic classification factors. There may be more than one regional wetland subclass identified within each hydrogeomorphic wetland class depending on the diversity of wetlands in a region, and assessment objectives.

Site Potential: The highest level of functioning possible, given local constraints of disturbance history, land use, or other factors. Site capacity may be equal to or less than levels of functioning established by reference standards for the reference domain, and it may be equal to or less than the functional capacity of a wetland ecosystem.

Wetland Functions: The normal activities or actions that occur in wetland ecosystems, or simply, the things that wetlands do. Wetland functions result directly from the characteristics of a wetland ecosystem and the surrounding landscape, and their interaction.

[FR Doc. 96–20877 Filed 8–15–96; 8:45 am]

BILLING CODE 3710–92–U

DEPARTMENT OF ENERGY

[FE Docket Nos. 96–45–NG, 96–44–NG, 96–46–NG, 96–41–NG, 96–47–NG, 96–48–NG, 96–26–NG, 96–49–NG, and 96–51–NG]

Coastal Gas Marketing Company; Northstar Energy, Inc.; Mock Energy Services, LP; Arco Products Company, Division of Atlantic Richfield Company; Producers Energy Marketing, LLC; Producers Energy Marketing, LLC; St. Lawrence Gas Company, Inc.; Coenergy Trading Company; Orders Granting Authorization To Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders authorizing various imports and/or exports of natural gas. These Orders are summarized in the attached Appendix.

These Orders are available for inspection and copying in the Office of Fuels Programs Docket Room, 3–F056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 2, 1996.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

APPENDIX—IMPORT/EXPORT AUTHORIZATIONS GRANTED

DOE/FE Authority Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1183	07/10/96	Coastal Gas Marketing Company (96–45–NG).	600 Bcf/term	150 Bcf/term	Blanket for 2 years from and to Canada and Mexico.
1184	07/12/96	Northstar Energy, Inc. (96–44–NG)	7.4 Bcf/term	.....	Blanket for 2 years to Canada.
1185	07/12/96	Mock Energy Services, LP (96–46–NG).	100 Bcf/term	100 Bcf/term	Blanket for 2 years from and to Canada.
1187	07/22/96	ARCO Products Company, Division of Atlantic Richfield Company (96–41–NG).	25 Bcf/term	.....	Blanket for 2 years from Canada.
1188	07/25/96	Producers Energy Marketing, LLC (96–47–NG).	365 Bcf/term (Combined total).	(*See* import)	Blanket for 2 years from and to Mexico.
1189	07/25/96	Producers Energy Marketing, LLC (96–48–NG).	365 Bcf/term (Combined total).	(*See* import)	Blanket for 2 years from and to Canada.
1190	07/26/96	St. Lawrence Gas Company, Inc. (96–26–NG).	20,275 Mcf/per day.	.....	Long-term for 10 years retroactive to 11/1/92.
1191	07/26/96	AEC West Ltd. (96–49–NG)	200 Bcf/term	.....	Blanket for 2 years from Canada.
1192	07/26/96	CoEnergy Trading Company (96–51–NG).	150 Bcf/term	.....	Blanket for 2 years from Canada.

[FR Doc. 96–20900 Filed 8–15–96; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

Notice of Application With the Commission

August 12, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Declaratory Order.

b. Docket No.: DI96–10–000.

c. Date Filed: July 30, 1996.

d. Applicant: Bangor Hydro-Electric Company.

e. Name of Project: Howland Project.

f. Location: Piscataquis River, Penobscot County, Howland Maine.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact:

Alan M. Spear, Environmental Analyst, Bangor Hydro Electric Company, P.O. Box 932, 33 State Street, Bangor, ME 04402, (207) 945–5621

John A. Whittaker, IV, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502, (202) 371–5766

i. FERC Contact: Hank Ecton, (202) 219–2678.

j. Comment Date: September 4, 1996.

k. Description of Project: The existing project consists of: (1) A 270-acre reservoir; (2) a 17-foot-high, 660-foot-long concrete gravity dam; (3) a 45-foot-wide, 90-foot-long forebay; (4) a powerhouse containing three generating units, with a total installed capacity of 1,875 kilowatts; and (4) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: To produce power.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20885 Filed 8–15–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. ER96–2616–000, et al.]

Duquesne Light Company, et al.; Electric Rate and Corporate Regulation Filings

August 9, 1996.

Take notice that the following filings have been made with the Commission:

1. Duquesne Light Company

[Docket No. ER96–2616–000]

Take notice that on August 2, 1996, Duquesne Light Company (DLC), filed a Service Agreement dated June 25, 1996 with Coral Power L.L.C. under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Coral Power L.L.C. as a customer under the Tariff. DLC requests an effective date of June 25, 1995 for the Service Agreement.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Duquesne Light Company

[Docket No. ER96–2617–000]

Take notice that on August 2, 1996, Duquesne Light Company (DLC), filed a Service Agreement dated July 11, 1996 with LG&E Power Marketing, Inc. under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds LG&E Power Marketing, Inc. as a customer under the Tariff. DLC requests an effective date of July 11, 1996 for the Service Agreement.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Duquesne Light Company

[Docket No. ER96–2618–000]

Take notice that on August 2, 1996, Duquesne Light Company (DLC), filed a Service Agreement dated June 19, 1996 with NorAm Energy Services, Inc. under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds NorAm Energy Services, Inc. as a customer under the Tariff. DLC requests an effective date of June 19, 1996 for the Service Agreement.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER96–2619–000]

Take notice that on August 5, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and Public Service Electric and Gas Company (PSE&G). This Service Agreement specifies that PSE&G has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and PSE&G to enter into separately scheduled transactions under which NMPC will sell to PSE&G

capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of July 22, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and PSE&G.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER96–2620–000]

Take notice that on August 5, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Rainbow Energy Marketing Corporation under Rate GSS.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company

[Docket No. ER96–2621–000]

Take notice that on August 5, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and PanEnergy Power Services under Rate GSS.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company

[Docket No. ER96–2623–000]

Take notice that on August 5, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Entergy Services, Inc. under Rate GSS.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Power & Light Company

[Docket No. ER96–2625–000]

Take notice that on August 5, 1996, Wisconsin Power & Light Company (WPL), tendered for filing an amended Wholesale Power Contract dated July 31, 1996, between the City of Plymouth and WPL. WPL states that this amended Wholesale Power Contract revises the previous agreement between the two parties dated October 31, 1989, and designated Rate Schedule Number 75 by the Commission.

The parties have amended the Wholesale Power Contract to add an additional delivery point. Service under this amended Wholesale Power Contract will be in accordance with standard WPL Rate Schedule W–3.

WPL requests that an effective date concurrent with the amendments effective date be assigned. WPL states that copies of the filing have been provided to the City of Plymouth and the Public Service Commission of Wisconsin.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas City Power & Light Company

[Docket No. ER96–2626–000]

Take notice that on August 5, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated July 15, 1996, between KCPL and VTEC Energy Inc. (VTEC). KCPL proposes an effective date of July 15, 1996, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and VTEC.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges from the compliance filing to FERC Order 888 in Docket No. ER96–1867–000.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. New Jersey Natural Energy Company

[Docket No. ER96–2627–000]

Take notice that on August 5, 1996, New Jersey Natural Energy Company (NJNE), tendered for filing, pursuant to Section 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an application requesting acceptance of its proposed FERC Electric Rate Schedule No. 1, authorizing market-based rates, granting waivers of certain Commission Regulations and granting certain blanket approvals. Consistent with these requests, NJNE seeks authority to engage in electric power marketing and to sell power at market-based rates.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Kentucky Utilities Company

[Docket No. ER96–2628–000]

Take notice that on August 5, 1996, Kentucky Utilities Company (KU), tendered for filing service agreements between KU and KOCH Power Services, Inc., Industrial Energy Applications, Inc., Western Gas Resources Power Marketing, Inc., Dayton Power & Light, AES Power, Inc., Morgan Stanley Capital Group, Inc., Delhi Energy Services, Inc., UtiliCorp United, Engelhard Power Marketing, Inc., KN Marketing, Inc., Entergy Services, Inc., Commonwealth Edison Company, Florida Power Corporation, Southern Company Services, Inc., MIDCON Power Services Corp., South Carolina Public Service Authority, Oglethorpe Power Corporation, TransCanada Power Corp., DuPont Power Marketing, Inc., Valero Power Services Company, City of Tallahassee, Aquila Power Corporation, Calpine Power Services Company, Illinova Power Marketing, Alabama Electric Cooperative, Inc. and Duke/Louis Dreyfus L.L.C. under its Power Services (PS) Tariff. KU requests an effective date of August 5, 1996.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20913 Filed 8–15–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–212–001, et al.]

Colorado Interstate Gas Company, et al.; Natural Gas Certificate Filings

August 9, 1996.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

Docket No. CP96–212–001

Take notice that on August 1, 1996, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP96–212–001 an application pursuant

to Section 7(c) of the Natural Gas Act, to amend CIG's protested prior notice request, filed on February 26, 1996 in Docket No. CP96–212–000, by deleting CIG's request for authorization to construct the Burlington Delivery Facility; and to instead seek Commission authorization to operate the constructed Burlington Delivery Facility pursuant to Section 7(c), all as more fully set forth in the application on file with the Commission and open to public inspection.

By its February 26, 1996, prior notice filing, CIG sought authorization to operate, subject to the Natural Gas Act, certain facilities placed in operation solely to effectuate transportation under Section 311 of the Natural Gas Policy Act, and to construct and operate a new delivery facility (The Town of Burlington Delivery Facility). The request was protested by Williston Basin Interstate Pipeline Company, on April 22, 1996, and the protest was not resolved, which resulted in the request being converted to a Section 7(c) filing.

CIG avers that the basis for this amendment is to update the original filing as it pertains to the request for the Town of Burlington Delivery Facility. CIG indicates that subsequent to its prior notice request being converted to a Section 7(c) filing, that Wyoming Gas Company, the local distribution company who would be served from the Burlington Delivery Facility, requested that CIG construct the Burlington Facility under CIG's Section 311 authority. CIG states that it responded to Wyoming Gas' request and further states that Section 311 transportation service to Wyoming Gas commenced on July 25, 1996.

Comment date: August 30, 1996, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. CNG Transmission Corporation

Docket No. CP96–675–000

Take notice that on July 29, 1996, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP96–675–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new measuring and regulation (M&R) station in the State of New York. CNG makes such request, under its blanket certificate issued in Docket No. CP82–537–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CNG states that it proposes to construct a new M&R station in Tompkins County, New York, to serve as an interconnection to New York State Electric & Gas Corporation (NYSEG), a local distribution company located in the vicinity. CNG estimates that 54,000 Dt per day will flow through the facility on a firm basis, stating that said volumes are within NYSEG's certificated entitlements. CNG indicates that NYSEG will use the volumes for its system supply from its Seneca Lake Storage project being constructed in Seneca County, New York.

CNG further states that in order for it to deliver NYSEG's gas, a measuring and regulation station must be constructed near Danby, New York. It is also averred that certain auxiliary installations must also be installed (a filter/separator, various valves and yard and station piping, and buildings) at points of interconnection with CNG on Lines 1 and 31.

CNG indicates that NYSEG has agreed to reimburse CNG for the cost associated with this project.

Comment date: September 23, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Iroquois Gas Transmission System, L.P.

[Docket No. CP96–687–000]

Take notice that on July 31, 1996, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, Suite 600, Shelton, Connecticut 06484, filed in Docket No. CP96–687–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing it to construct and operate a compressor station to be located near Athens, New York. Iroquois states that the compressor station is necessary to provide natural gas transportation services for two shippers in a total amount of 30,160 Mcf per day (Mcf/d). Iroquois' proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

Iroquois proposes to construct and operate a new compressor station to be located near the Town of Athens in Greene County, New York. The site of the proposed compressor station is different from a site previously proposed by Iroquois for a similar project near Athens in Docket No. CP95–637–000. The proposal in Docket No. CP95–637–000 was withdrawn by Iroquois. The currently proposed site is in an ''industrial zone'' along County Route 28 which is presently used as a private airstrip.

The proposed Athens compressor station will be the third compressor station on Iroquois' system and will consist of one turbo-compressor unit with a 9,500 horsepower rating. Iroquois says that this new compressor station will provide capacity for the 30,160 Mcf/d of requested firm service, plus about 8,300 Mcf/d of additional unsubscribed excess capacity. The estimated cost of the proposed Athens compressor station is approximately $22 million, as detailed in Exhibit K of Iroquois' application.

In its application Iroquois states that it has entered into Precedent Agreements with ProGas U.S.A., Inc. (ProGas) for new firm transportation service for 16,160 Mcf/d, and with Coastal Gas Marketing Company for new firm transportation service for 14,000 Mcf/d. Iroquois proposes to provide firm gas transportation service for these two shippers under its Part 284, Subpart G, Blanket Certificate and will be performed pursuant to Iroquois' RTS Rate Schedule and associated General Terms and Conditions of Iroquois' FERC Gas Tariff, First Revised Volume 1. Iroquois proposes to collect the return of capital for the Athens compressor station through the use of its systemwide depreciation rate.

Iroquois says that it will charge these two shippers certain discounted rates for the new service under the terms of its effective Part 284 open-access RTS rate schedule. Two letter agreements and a workpaper detailing those discounted rates were filed with the Commission on August 5, 1996, under the privileged and confidential treatment rules specified in Section 388.112 of the Commission's Regulations.

Iroquois proposes to roll-in the construction and operation costs of the new Athens compressor station with the costs of its existing system. Consistent with the Commission's policy statement in Docket No. PL94–4, Iroquois has filed a schedule which shows the anticipated annual costs of the Athens compressor station and the increased system revenues associated with the new transportation service. Iroquois says that the schedule shows that construction and installation of the Athens compressor station and a rolling in of the associated costs and revenues will have no detrimental financial impact on Iroquois' existing shippers. Iroquois anticipates that the net effect of such a rolling in will benefit existing shippers by reducing their annual costs by $1.5 million.

Comment date: August 30, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. Colorado Interstate Gas Company

[Docket No. CP96–688–000]

Take notice that on August 2, 1996, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP96–688–000 a request pursuant to Sections 157.205(b) and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and 157.212) to construct new delivery facilities pursuant to CIG's blanket certificate issued in Docket No. CP83–21–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes that the new delivery facilities would be located in Weld County, Colorado. It is stated that the proposed facilities would consist of a four-inch meter and appurtenant facilities for delivery of up to 13,500 MMBtu per day to PanEnergy Field Services, Inc. (PanEnergy). It is further stated that Thermo Cogeneration Partnership, the end user, would use the gas for cogeneration. CIG states that the new facilities have an estimated cost of approximately $50,000 which would be paid for/reimbursed by PanEnergy.

Comment date: September 23, 1996, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Eastern Transmission Corporation

[Docket No. CP96–692–000]

Take notice that on August 5, 1996, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP96–692–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to establish a new delivery point to accommodate deliveries of gas transported on an interruptible basis on behalf of Petroleum Source and Systems Group, Inc. (PSSG), a marketer of natural gas, in Yazoo County, Mississippi, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to construct and operate delivery point facilities consisting of 2 valves, a meter, a meter run and 50 feet of 2-inch pipeline, in order for PSSG to serve the Federal Correctional Institution at Yazoo City. It is stated that the facilities would be used to deliver up to 300 dt equivalent of natural gas per day under Texas Eastern's Rate Schedule IT–1. The cost of the facilities is estimated at $38,069 to Ohio Intrastate. It is asserted that the deliveries at the new delivery point would be made utilizing existing capacity on Texas Eastern's system. It is further asserted that Texas Eastern has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers. It is explained that the proposed delivery point would not have any significant impact on Texas Eastern's peak day or annual deliveries.

Comment date: September 23, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20912 Filed 8–15–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5472–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 29, 1996 through August 2, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1996 (61 FR 15251).

Draft EISs

ERP No. D-BOP-D81025–PA Rating EC2, Federal Prison Camp—Scranton, Pennsylvania, Construction, Operation and Site Selection, Jessup Borough, Lackawanna County, PA.

Summary: EPA expressed environmental concerns regarding the alternatives analysis, secondary and cumulative impacts and the lack of information on ecological characteristics. EPA requested that those issues be addressed in the final document.

ERP No. D–FHW–H40151–MO Rating LO, MO–13 Highway Improvement, Existing MO–13 to MO–10 just south of Richmond to US 24 just south of Lexington, Funding, COE Section 10 and 404 Permits and US Coast Guard Bridge Permit Issuance, Ray and Lafayette Counties, MO.

Summary: EPA had no objections to the action as proposed.

ERP No. D–FHW–H40153–MO Rating LO, MO–141 Relocation Highway Project, Improvements, South of MO–HH to 1.1 miles south of MO–100 (Job No. J6U0804) and 1.1 miles south of MO–100 to 0.8 miles North of I–44 (Job No. J6U0804B), Funding and COE Section 404 Permit, St. Louis County, MO.

Summary: EPA had no objection to the proposed action. EPA requested additional information on air quality secondary and cumulative impacts.

ERP No. D–MMS–L02025–AK Rating EC2, Beaufort Sea Planning Area Proposed 1996 Oil and Gas Lease Sale No. 144, Lease Offerings, Alaska Outer Continental Shelf (OCS), AK.

Summary: EPA expressed environmental concerns regarding the lack of a commitment to the stipulations and information to lessees, level of detail in the alternatives analysis and cumulative effects.

ERP No. D–SCS–H36107–MO Rating EC2, East Fork of the Grand River Watershed Plan, Implementation, Watershed Protection and Flood Prevention, Funding, Ringgold and Union Counties, IA and Harrison and Worth Counties, MO.

Summary: EPA expressed environmental concerns regarding potential impact to water quality and wetland. EPA requested that the final document address those issues.

ERP No. D–USN–A06179–00 Rating LO, Naval Spent Nuclear Fuel Container System Management, Loading, Handling and Dry Storage, Transportation and Storage, Handling and Transportation of certain Associated Radioactive Waste, Implementation, United States.

Summary: EPA had no objection to the action as proposed.

Final EISs

ERP No. F–AFS–K61118–CA Mt. Reba Ski Area Expansion, Stanislaus National Forest, Special Use Permit, Calaveras Ranger District, Alpine County, CA.

Summary: Review of the final EIS was not deemed necessary. No formal comment letter was sent to preparing agency.

ERP No. F–BOP–K81022–HI Honolulu, Hawaii Detention Facility, Construction and Operation, Site Selection, Fort Armstrong, Ualena Street, Lagoon Drive, Elliott Street, HI.

Summary: EPA recommended that the Record of Decision contain commitments to implement energy conservation, source reduction, recycling and water quality protection measures if such features are part of the preferred alternative.

ERP No. F–COE–G39028–TX Gulf Intracoastal Waterway (Section 216 Study), Bank Protection and a Spill Containment Feature, Implementation, Aransas National Wildlife Refuge, Galveston District, Aransas, Calhoun and Refugio Counties, TX.

Summary: EPA had no objections to the selection of the preferred alternative described in the Final EIS.

ERP No. F–FHW–H40147–NB Omaha Northwest Connector/Sorensen Parkway Improvements, Construction between 72nd Street and Blair High Road and south of I–680, Funding and COE Section 404 Permit, City of Omaha, Douglas County, NB.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. FS-SCS-H36107–MO East Fork of the Grand River Watershed Plan, Implementation, Watershed Protection and Flood Prevention, Funding, Ringgold and Union Counties, IA and Harrison and Worth Counties, MO.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

Dated: August 13, 1996.

William D. Dickerson,

Director, NEPA Compliance Office of Federal Activities.

[FR Doc. 96–20946 Filed 8–15–96; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5472–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements filed August 5, 1996 through August 9, 1996 pursuant to 40 CFR 1506.9.

EIS No. 960370, Draft EIS, COE, CA, Santa Rosa Subregional Long-Term Wastewater Project, Implementation, Reclaimed Water Disposal from the Laguna Wastewater Treatment Plant, COE Section 10 and 404 Permits, Sonoma County, CA, Due: October 07, 1996, Contact: Wade Eakle (415) 977–8438.

EIS No. 960371, Draft EIS, FHW, WI, US 141 Highway Transportation Project, Improvement between WI–22 and WI–64 (LeMere Road—6th Road), Funding and COE Section 4 Permit, Marinette and Oconto Counties, WI, Due: October 01, 1996, Contact: Peter Garcia (608) 829–7500.

EIS No. 960372, Final EIS, AFS, OR, Trail System and Off-Highway Vehicle Management and Development, Implementation, Ochoco National Forest and Crooked River National Grassland, Crook, Grant, Jefferson, Harney and Wheeler Counties, OR, Due: September 16, 1996, Contact: Sue Kocis (541) 416–6530.

EIS No. 960373, Draft EIS, BLM, NV, Ruby Hill Gold Mining Operations Project, Implementation, Battle Mountain District, Plan of Operations and COE Section 404 Permit, Eureka County, NV, Due: October 08, 1996, Contact: Christopher Stubbs (702) 635–4000.

EIS No. 960374, Draft EIS, FHW, TX, Loop 49 Southern Section Construction, TX–155 to TX–110, Funding, Tyler, Smith County, TX, Due: September 30, 1996, Contact: Gus Shanine (512) 916–5988.

EIS No. 960375, Final EIS, ICC, WV, Elk River Railroad Railline (Docket No. 31989), Construction Exemption and Operation, NPDES Permit and Approval of Permits, Clay and Kanawha Counties, WV, Due: September 16, 1996, Contact: Michael Dalton (202) 927–6197.

EIS No. 960376, Draft EIS, BLM, ID, Owyhee Resource Management Plan, Implementation, Lower Snake River District, Owyhee County, ID, Due: November 16, 1996, Contact: Fred Minckler (208) 384–3396.

EIS No. 960377, Final EIS, FHW, RI, I–195 Transportation Improvements, between the west end of the Washington Bridge and Interstate Route I–95 through Providence, Funding, COE Section 404 and US Coast Guard Bridge Permits, Providence County, RI, Due: September 23, 1996, Contact: Gordon Hoxie (401) 528–4551.

EIS No. 960378, Final EIS, NOA, NC, Black Sea Bass (Centropristis striata) Fishery Management Plan (FMP), Implementation, in the western Atlantic Ocean, from Cape Hatteras, NC northward to the US-Canadian Border, Due: September 16, 1996, Contact: Rolland A. Schmitten (301) 713–2239.

EIS No. 960379, Draft Supplement, FHW, NC, US 17, New Bern Bypass Construction, Jones-Craven County Line to NC–1438 near Vanceboro, Additional Information Concerning Three Additional Alternatives, Funding, COE Section 404 and US Coast Guard Bridge Permits Issuance, Craven County, NC, Due:

September 30, 1996, Contact: Nicholas L. Graf (919) 856–4356.

EIS No. 960380, Final EIS, UAF, AZ, Luke Air Force Base, Construction and Operation of 18-Hole Golf Course, In a Detention Basin to Prevent Flood Damage, Dysart Drain Improvement Project, Maricopa County, AZ, Due: September 16, 1996, Contact: Robert Maxwell (602) 856–3817.

Amended Notices

EIS No. 960217, Legislative Draft, AFS, CA, Tahoe National Forest and Portion of Plumas and EL Dorado National Forests, Implementation, Twenty-Two Westside Rivers for Suitability and inclusion in the National Wild and Scenic Rivers System, Wild and Scenic River Study, Placer, Nevada, Sierra, Plumas, EL Dorado and Yuba Counties, CA, Due: September 09, 1996, Contact: Phil Horning (916) 478–6210. Published FR—05–2–96—Due Date Correction.

EIS No. 960268, Draft EIS, USN, FL, VA, USS SEAWOLF Submarine Shock Testing, Implementation, located in the Offshore Mayport, FL or Norfolk, VA, Due: September 17, 1996, Contact: Will Sloger (803) 820–5797. Published FR—06–14–96—Review Period Reopened.

EIS No. 960287, Draft EIS, TVA, TN, GA, MS, VA, AL, KY, NC, Shoreline Management Initiative: An Assessment of Residential Shoreline Development Impacts in the Tennessee Valley, Mainstream Tennessee River and Tributary Reservoirs in AL, KY, NC, TN, GA, MS and VA, Due: October 15, 1996, Contact: Ronald D. Davis, Sr. (800) (800) 882–5263. Published FR 06–28–96—Review Period Extended.

Dated: August 13, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–20947 Filed 8–15–96; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5554–1]

Effluent Guidelines Task Force Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on Tuesday, September 17, 1996, from 9:00 a.m. to 5:00 p.m., and Wednesday, September 18, 1996, from 9:00 a.m. to 3:00 p.m.

ADDRESSES: The meeting will take place at the Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Beverly Randolph, Office of Water (4303), 401 M Street, SW, Washington, D.C. 20460; telephone (202) 260–5373, fax (202) 260–7185.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulation for dischargers of industrial wastewater pursuant to Title III of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices. The Task Force was created to offer advice to the Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. The Task Force generally does not discuss specific effluent guideline regulations currently under development.

The meeting will be open to the public. Limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding improvements to the Effluent Guidelines program. Comments should be sent to Beverly Randolph at the above address. Comments submitted by September 13, 1996 will be considered by the Task Force at or subsequent to the meeting.

Dated: August 6, 1996.

Beverly Randolph,

Designated Federal Official.

[FR Doc. 96–20956 Filed 8–15–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5553–8]

Governmental Advisory Committee to the U.S. Representative to the North American Commission on Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the Governmental Advisory Committee (NAC) to the U.S. Government Representative to the North American Commission on Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the CEC. The Committee is authorized under Article 18 of the North American Agreement on Environmental Cooperation, North America Free Trade Implementation Act, Public Law 103–182 and is directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation''. The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of a group of 10 representatives drawn from State, local, and tribal governments.

DATES: The Committee will meet on September 25, 1996 from 8:30 a.m. to 5 p.m. and September 26, from 8 a.m. to 2 p.m.

ADDRESSES: The Claremont Hotel, 2000 Fourth Avenue, Seattle, Washington 98121. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hardaker, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–2477.

Dated: August 10, 1996.

Robert Hardaker,

Designated Federal Officer, National Advisory Committee.

[FR Doc. 96–20952 Filed 8–15–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5553–7]

National Advisory Committee to the U.S. Representative to the North American Commission on Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (P.L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) to the U.S. Government Representative to the North American Commission on Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the CEC. The Committee is authorized under Article 17 of the North American Agreement on Environmental Cooperation, North America Free Trade Implementation Act, P.L. 103–182 and is directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation''. The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of 14 independent representatives drawn from among environmental groups, business and industry, public policy organizations and educational institutions.

DATES: The Committee will meet on September 25, 1996 from 8:30 a.m. to 5:00 p.m. and September 26, 1996 from 8:00 a.m. to 2:00 p.m.

ADDRESSES: The Claremont Hotel, 2000 Fourth Avenue, Seattle, Washington 98121. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hardaker, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–2477.

Dated: August 10, 1996.

Robert Hardaker,

Designated Federal Officer, National Advisory Committee.

[FR Doc. 96–20953 Filed 8–15–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL 5550–4]

Notice of Availability; Biological Criteria: Technical Guidance for Streams and Small Rivers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This action announces the availability of the draft document ''Biological Criteria: Technical Guidance for Streams and Small Rivers'' and the Agency's request for public comment. This document should be used in conjunction with the ''Rapid Bioassessment Protocols for Use in Streams and Rivers: Benthic Macroinvertebrates and Fish,'' 1989, EPA/440/4–89–001. The purpose of this document is to help States develop and use biocriteria for stream and small river surveys. The existing approach to water resource quality assessment will be expanded and enhanced by adding biological integrity measurements and criteria to the physical and chemical parameters now used for ambient assessments. The objective of biocriteria and the Clean Water Act is to restore and maintain the physical chemical and biological integrity of the Nation's waters. In that regard, State and Tribal assessments of stream and small river water quality will be expanded and enhanced so that better management decisions can be made. Use of the technical guidance will also provide consistency to regional databases and promote coordination among the States and Tribes.

DATES: All comments must be postmarked or delivered by hand by October 15, 1996. No facsimiles (faxes) will be accepted.

ADDRESSES: Written comments can be sent to Biological Criteria Clerk, Water Docket MC–4101; Environmental Protection Agency; 401 M Street S.W.; Washington DC. 20460. Comments should be accompanied by any references cited. It is requested that an original and 3 copies of the written comments and enclosures be submitted. A copy of the comments and supporting documents are available for review at EPA's Water Docket at the above address. For access to the Docket materials, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. for an appointment.

For information concerning electronic availability, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: George R. Gibson, Jr., Health and Ecological Criteria Division, Office of Science and Technology (Mail Code 4304), Environmental Protection Agency, 401 M Street S.W., Washington D.C. 20460 or call (202) 260–7580 or (410) 573–2618.

SUPPLEMENTARY INFORMATION: To obtain a copy of the document, contact: National Center for Environmental Publications and Information (NCEPI): Copies of this document (Biological Criteria: Technical Guidance for Streams and Small Rivers, EPA 822–B–94–001) and other related EPA publications such as the Rapid Bioassessment Protocols for Use in Streams and Rivers (EPA/440/4–89–001) are available: (513) 489–8695, FAX (513) 891–8695.

EPA Regional Office Libraries: EPA has 10 Regional Offices around the country, each with a publicly accessible library. Copies of these documents can be viewed and copied at these EPA Regional libraries.

Internet: You may view the entire Federal Register Notice that describes this notice of availability at http://www.epa.gov/EPA–WATER. Comments may also be submitted electronically through the Internet to: OW-DOCKET@epamail.epa.gov. Comments in electronic format should also be identified by this Federal Register publication date and title. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Background Information

In 1989, the Agency began expanding its water quality assessment procedures to include biological water quality criteria in addition to physical and chemical parameters. This information supplements the existing chemical and physical based measurements and water management programs. This guidance document establishes the first combined surface water survey protocol and criteria development guidance for small streams and rivers. This guidance is a prototype upon which others will be predicated, but with obvious modifications to accommodate the characteristics of each particular surface water type. Subsequent guidance documents addressing both survey techniques and criteria development will be written for lakes and reservoirs, estuarine and coastal marine waters, rivers, wetlands, and possibly coral reefs in approximately this order.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 96–20954 Filed 8–15–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5554–3]

Oxyfuels Information Needs

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a final report titled, Oxyfuels Information Needs (EPA/600/R–96/069), developed by joint effort of the U.S. Environmental Protection Agency's (EPA) Office of Research and Development (ORD), Office of Air and Radiation, and Office of Prevention, Pesticides, and Toxic Substances. The purpose of this document is to highlight the types of information needed to improve scientific understanding of the environmental risks and benefits of oxygenated gasoline and reformulated gasoline (collectively designated as ''oxyfuels'') in relation to conventional fuels.

DATES: The document was completed June 26, 1996.

ADDRESSES: Oxyfuels Information Needs is available via the Internet on the ORD Home Page (http://www.epa.gov/ORD/WebPubs/oxyfuels). Interested parties also can access the document electronically on the Agency's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) Bulletin Board System (BBS). The telephone number for the TTN BBS is (919) 541–5742. To access the bulletin board, a modem and communications software are necessary. The following parameters on the communications software are required: Data Bits—8; Parity—N; and Stop Bits—1. If assistance is needed in accessing the system, call the help desk at (919) 541–5384 in Research Triangle Park, NC.

A copy of the report is also available for public inspection at the EPA Library, EPA Headquarters, Waterside Mall, 401 M Street, SW., Washington, DC. EPA Library hours are from 10 a.m. until 2 p.m., Monday through Friday, excluding Federal holidays.

The document may be purchased from the National Technical Information Service (NTIS) by calling (703) 487–4650 or sending a facsimile to (703) 321–8547. The NTIS order number for Oxyfuels Information Needs is PB96–190665.

FOR FURTHER INFORMATION CONTACT: Dr. J. Michael Davis, National Center for Environmental Assessment (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: (919) 541–4162; facsimile: (919) 541–1818; e-mail: davis.jmichael@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Questions have been raised about the benefits and risks of oxygenated gasoline and reformulated gasoline (''oxyfuels''). This document highlights areas of information that would improve scientific understanding of the impacts of these fuels on the environment and public health. It emphasizes the importance of obtaining data to support quantitative assessments of oxyfuels in comparison to conventional fuels. In addition to providing some background information and outlining a general framework for comparative risk assessments of fuels, the document briefly summarizes currently available information and then focuses on work that is now underway or planned and on data needs that remain to be filled. It is intended that this broad statement of information needs will facilitate the identification and prioritization of research and comparative assessment efforts on oxyfuels and conventional fuels.

Dated: August 7, 1996.

Joseph K. Alexander,

Assistant Administrator for Research and Development.

[FR Doc. 96–20949 Filed 8–15–96; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–44629; FRL–5391–6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on tertiary amyl methyl ether (TAME) (CAS No. 994–05–8) and methyl isobutyl ketone (CAS No. 108–10–1). These data were submitted pursuant to enforceable testing consent agreements/orders issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director,Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW.,Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail:TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for tertiary amyl methyl ether were submitted by The American Petroleum Institute (API) on behalf of the Tertiary Amyl Methyl Ether (TAME) Consortium pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and were received by EPA on July 11, 1996. The submission includes two final reports entitled (1) ''CHO/HGPRT Mutation Assay,'' and (2) ''Chromosome Aberrations in Chinese Hamster Ovary (CHO) Cells.'' This chemical is widely seen as a possible additive in gasoline.

Test data for methyl isobutyl ketone were submitted by the Chemical Manufacturers Association Ketones Panel on behalf of the following sponsors: Eastman Chemical Company, Exxon Chemical Company, Hoechst Celanese Chemical Group, Inc., Rhone Poulenc Inc., Shell Chemical Company, and Union Carbide Corporation. Test data were submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and were received by EPA on July 11, 1996. The submission includes a final report entitled ''Methyl Isobutyl Ketone: A Thirteen-Week Schedule-Controlled Operant Behavior Study in the Rat.'' This chemical is widely used as a solvent.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (OPPTS–44629). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects:

Environmental protection, Test data.

Dated: August 9, 1996.

Frank Kover,

Acting Director, Chemical Control Division, Office of Pollution Preventionand Toxics.

[FR Doc. 96–20948 Filed 8–15–96; 8:45 am]

BILLING CODE 6560–50–F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Extension Request—No Change.

SUMMARY: In accordance with the Paperwork Reduction Act agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission. The EEOC has requested an extension of an existing collection as listed below.

ADDRESSES: The Request for Clearance (SF 83I), supporting statement, and other documents submitted to OMB for review may be obtained from: Margaret Ulmer Holmes, EEOC Clearance Officer, 1801 L Street, NW., Room 2928, Washington, DC 20507.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, NW., Room 9222, Washington, DC 20507, (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION:

Type of Review: Extension—No Change.

Collection Title: Equal Employment Opportunity Employer Information Report EEO–1 Instruction Booklet.

Form Number: Standard Form 100.

Frequency of Report: Annually.

Type of Respondent: Private employers with 100 or more employees and some federal government contractors and first-tier subcontractors with 50 or more employees.

Standard Industrial Classification (SIC) Code: Multiple.

Description of Affected Public: IND/HHID and Farms and Businesses/INST.

Responses: 126,700.

Reporting Hours: 463,700.

Number of Forms: 1.

Federal Cost: $809,000.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have or are being committed and to make reports therefrom as required by the EEOC. Pursuant to Title 29, Chapter XIV, Supart B, § 1602.7, employers in the private sector with 100 or more employees and some federal contractors with 50 or more employees are required to submit EEO–1 reports annually. The EEO–1 data collection program has existed since 1966. The individual reports are confidential.

EEO–1 data are used by the EEOC to investigate charges of employment discrimination against employers in private industry. The data are shared with the Office of Federal Contract Compliance Programs (OFCCP) in the U.S. Department of Labor, and several other federal agencies. Pursuant to Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data are also shared with 86 State and local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the annual EEO–1 survey is 45,000 private employers. The estimated number of responses per respondent is between 2 and 3 EEO–1 reports. The number of annual responses is approximately 126,700, and the total hours of annual burden is 463,700. The estimated total hours of annual burden is substantially reduced from that reported in the most previous EEO–1 OMB Clearance Package. The reduction of 64,800 annual burden hours is directly linked to the ever increasing number of employers who choose to submit computer generated reports.

Dated: August 7, 1996.

For the Commission.

Maria Borrero,

Executive Director.

[FR Doc. 96–20878 Filed 8–15–96; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1130–DR]

Pennsylvania; 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 Commonwealth of Pennsylvania (FEMA–1130–DR), dated July 26, 1996, and related determinations.

EFFECTIVE DATE: July 26, 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 July 26, 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 Commonwealth of Pennsylvania, resulting from severe storms, flooding and tornadoes on July 19, 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 Commonwealth of Pennsylvania.

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 and Hazard Mitigation in the designated areas. Public Assistance 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 and 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 Jack Schuback 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 Commonwealth of Pennsylvania to have been affected adversely by this declared major disaster:

The counties of Armstrong, Blair, Cambria, Clarion, Clearfield, Crawford, Greene, Indiana, Jefferson and Venango for Individual Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–20936 Filed 8–15–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1131–DR]

Wisconsin; 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 Wisconsin (FEMA–1131–DR), dated August 2, 1996, and related determinations.

EFFECTIVE DATE: August 2, 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 August 2, 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 Wisconsin, resulting from tornadoes, severe storms and flooding on July 17 through July 22, 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 Wisconsin.

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. Individual Assistance may be added 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 A. 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 Wisconsin to have been affected adversely by this declared major disaster:

Fond du Lac and Green Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 96–20937 Filed 8–15–96; 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.: 202–011375–025.

Title: Trans-Atlantic Conference Agreement.

Parties:

Atlantic Container Line AB
Cho Yang Shipping Co. Ltd.
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
Nedlloyd Lijnen BV
Hapag-Lloyd AG
Mediterranean Shipping Co., S.A.
DSR-Senator Lines
POL-Atlantic
Orient Overseas Container Line (UK) Ltd.
Transportacion Maritima Mexicana, S.A. C.V.
Neptune Orient Lines Ltd.
Hyundai Merchant Marine Co., Ltd.
P&O Containers Limited
Nippon Yusen Kaisha
Tecomar S.A. de C.V.
Hanjin Shipping Co., Ltd.

Synopsis: The proposed amendment extends the individual service contract authority of the Agreement for one year commencing on January 1, 1997, and terminating on December 31, 1997.

Agreement No.: 203–011550.

Title: ABC Discussion Agreement.

Parties:

Aruba Bonaire Curacao Liner Association
Evergreen Marine Corp. (Taiwan) Ltd.

Synopsis: The proposed Agreement permits the parties to meet, exchange information, discuss their separate tariffs, general rate levels, service items, rules and service contracts, charges, classifications, practices, terms, conditions and rules and regulations applicable to transportation in the trade between ports in the contiguous United States and ports in Aruba, Bonaire and Curacao, Netherlands Antilles.

By Order of the Federal Maritime Commission.

Dated: August 13, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–20909 Filed 8–15–96; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. § 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

West Travel, Inc. (d/b/a Alaska Sightseeing/Cruise West), 4th & Battery Building, Suite 700, Seattle, Washington 98121–1438

Vessel: SPIRIT OF ENDEAVOUR

Dated: August 13, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–20908 Filed 8–15–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of

Governors. Comments must be received not later than September 5, 1996.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mark Thomas Olson, Starbuck, Minnesota; to acquire an additional 27.4 percent of the voting shares of Starbuck Bancshares, Inc., Starbuck, Minnesota, and thereby indirectly acquire First National Bank of Starbuck, Starbuck, Minnesota.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105):

1. Mutual Series Fund, Inc., Short Hills, New Jersey; to acquire up to 24.9 percent of the voting shares of Monarch Bancorp, Laguna Niguel, California, and thereby indirectly acquire Monarch Bank, Laguna Niguel, California, and Western Bank, Los Angeles, California. Comments must be received not later than August 30, 1996.

Board of Governors of the Federal Reserve System, August 12, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–20905 Filed 8-15-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 9, 1996.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Keystone Financial, Inc., Harrisburg, Pennsylvania; to acquire 100 percent of the voting shares of Keystone National Bank, Lancaster, Pennsylvania.

Board of Governors of the Federal Reserve System, August 12, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–20904 Filed 8-15-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are engage in Permissible Nonbanking Activities

Barclays PLC and Barclays Bank, PLC, both of London, England (together, ''Notificants''), have applied for Board approval pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) (''BHC Act'') and section 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) to engage *de novo* through their indirect wholly-owned subsidiary, BZW Securities Inc., New York, New York (''Company''), in the following nonbanking activities:

(1) making, acquiring, servicing and arranging for the purchase and sale of loans and other extensions of credit;

(2) underwriting and dealing to a limited extent in all types of equity securities that a state member bank may not underwrite and deal in (''bank-ineligible securities''), except ownership interests in open-end investment companies;

(3) acting as agent in the private placement of all types of securities;

(4) buying and selling all types of debt and equity securities on the order of customers as ''riskless principal''; and

(5) executing and clearing, executing without clearing, clearing without executing, and providing related advisory services with respect to futures and options on futures on financial and nonfinancial commodities. Company would engage in the proposed activities on a worldwide basis.

The Board previously has determined that each of the proposed activities is closely related to banking. *See*, e.g., 12 CFR 225.25(b)(1); *J.P. Morgan & Co. Incorporated, et. al.*, 75 Federal Reserve Bulletin 192 (1989) (underwriting and dealing in all types of equity securities) (''*Morgan Order*''); *Bankers Trust New York Corp.*, 75 Federal Reserve Bulletin 829 (1989) (acting as private placement agent); *The Bank of New York Company, Inc.*, 82 Federal Reserve Bulletin — (Order dated June 10, 1996) (acting as riskless principal); *J.P. Morgan & Co. Incorporated*, 80 Federal Reserve Bulletin 151 (1994) (executing, clearing, and offering advisory services with respect to futures and options on futures on commodities). Except as noted below, Notificants would conduct these activities in accordance with Regulation Y and the Board's prior orders involving these activities.

In conjunction with the proposal, Notificants have sought relief from two of the conditions established by the Board in permitting nonbank subsidiaries of a bank holding company (''Section 20 subsidiaries'') to underwrite and deal in bank-ineligible securities and from a commitment that the Board has relied upon in authorizing bank holding companies to engage in riskless principal activities. Specifically, notificants have asked for relief from the prohibition on personnel interlocks between a Section 20 subsidiary and any of its bank or thrift affiliates (''affiliated banks'') and the restriction on cross-marketing and agency activities by affiliated banks on behalf of a Section 20 subsidiary. They also have asked to be relieved from the prohibition on bank holding companies acting as riskless principal for registered investment company securities.

In its orders authorizing bank holding companies to underwrite and deal in bank-ineligible securities (''Section 20 Orders''), the Board previously has relied upon the condition that there be no officer, director, or employee interlocks between the Section 20

subsidiary and any of its affiliated banks. In the past, the Board has granted limited exceptions to this condition to permit (a) two non-officer, directors of the Section 20 subsidiary to serve as non-officer, directors of the affiliated banks; (b) one officer of the Section 20 subsidiary to serve as an officer of an affiliated bank; and (c) limited numbers of employees of foreign subsidiaries of a bank to serve also as employees of the Section 20 subsidiary. *See. e.g., KeyCorp*, 82 Fed. Res. Bull. 359 (1996); *The Chase Manhattan Corp.*, 80 Federal Reserve Bulletin 731 (1994).

Notificants have requested that the Board allow (a) unlimited director interlocks so long as a majority of the board of Company would not be composed of persons who are directors, officers, or employees of any affiliated bank, branch, or agency; and (b) up to five officers of a branch or agency to serve as officers of Company provided that such officers would not be managers of a branch and that such officers would not be the chief executive officer of Company or, as officers of Company, be responsible for its activities as underwriter or dealer in bank-ineligible securities. Notificants contend that these interlocks would not result in any lessening of the insulation of the affiliated banks from the Section 20 subsidiary and would improve effective and efficient management of Notificants' affiliates.

The Board's Section 20 Orders also prohibit an affiliated bank from acting as agent for, or engaging in marketing activities on behalf of, a Section 20 subsidiary. *See, e.g., Morgan Order.* Notificants request that this prohibition be modified to permit Notificants' affiliated banks and U.S. branches and agencies to act as agent for and engage in marketing activities on behalf of Company to persons who would qualify as ''accredited investors'' under Securities and Exchange Commission Regulation D (17 CFR § 230.501).

Notificants maintain that the requested modification would not result in any adverse effects, such as increased customer confusion or lessening the insulation of insured banks and deposit-taking offices from the underwriting and dealing activities of the Section 20 subsidiary, because other regulatory and statutory restrictions would remain in place to prevent such effects. Notificants also contend that the cross-marketing and agency prohibition disserves customers, who are prevented from learning about products and services just because they are offered by a section 20 subsidiary. Notificants further note that the Board previously has permitted other limited cross marketing activities. *See, e.g., Letter Interpreting Section* 20 Orders, 81 Federal Reserve Bulletin 198 (1995) (permitting cross-marketing of bank-eligible securities); *BankAmerica Corporation*, 80 Federal Reserve Bulletin 1104 (1194) (permitting Regulation K subsidiaries of a domestic bank to market, subject to certain conditions, the services and securities of their Section 20 subsidiary).

Finally, in authorizing bank holding companies to engage in riskless principal activities under section 4(c)(8) of the BHC Act, the Board has relied on a commitment that the bank holding company not act as riskless principal for registered investment company securities or for any securities of investment companies that are advised by the bank holding company. Notificants seek a limited modification of this restriction to permit Company to act as riskless principal in transactions involving securities of all registered investment companies, other than investment companies advised by Notificants or any of their affiliates. The Board also has before it proposals from other bank holding companies to engage in this riskless principal activity. *See* 61 Federal Register 31,942 (1996); *id*. at 37,480.

In publishing this proposal for comment, the Board does not take a position on the issues raised by the notice. Notice of the proposal is published solely to seek the views of interested parties on the issues presented and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Notificants' proposal is available for immediate inspection at the Federal Reserve Bank of New York and the offices of the Board in Washington, D.C. Interested persons may express their views on the proposal in writing, including on whether the proposed activities ''can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' 12 U.S.C. § 1843(c)(8). Any request for a hearing on this notice must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the notice must be received not later than August 30, 1996, at the Reserve Bank indicated or to the attention of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

Board of Governors of the Federal Reserve System, August 12, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–20902 Filed 8-15-96; 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 August 30, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Chase Manhattan Corporation, New York, New York; and Mellon Bank Corporation, Pittsburgh, Pennsylvania; to acquire through their joint venture, ChaseMellon Shareholder Services, L.L.C., Ridgefield Park, New Jersey, the stock transfer business of Wells Fargo Bank, N.A., San Francisco, California, and certain affiliated banks and thereby to engage in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 12, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–20903 Filed 8-15-96; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 942–3332]

RBR Productions, Inc.; Richard Rosenberg; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Ridgefield, New Jersey-based beauty salon products supplier from making specific misrepresentations about the safety of its disinfectant products and would require the firm to have evidence to back certain other human safety and environmental benefit claims. The consent agreement settles allegations stemming from advertising and promotional materials for RBR's disinfectants, ''Let's Dance'' and ''Let's Touch,'' touted as non-toxic or non-corrosive to skin and eyes, and for its ''Let's Go'' drying spray.

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

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Lee Peeler, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, S–4002, Washington, DC 20850. (202) 326–3090. Janet Evans, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, S–4002, Washington, DC 20850. (202) 326–2125.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of RBR Productions, Inc., a corporation, and Richard Rosenberg, individually and as an officer and director of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between RBR Productions, Inc., by its duly authorized officer, and Richard Rosenberg, individually and as an officer and director of said corporation, and counsel for the Federal Trade Commission that:

1. Proposed respondent RBR Productions, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New Jersey, with its office and principal place of business located at 1010 Hoyt Avenue, Ridgefield, New Jersey 07657. From time to time, RBR Productions, Inc. does business under the name of Isabel Cristina Beauty Care Products.

Proposed respondent Richard Rosenberg is an officer and director of RBR Productions, Inc. He formulates, directs, and controls the policies, acts, and practices of said corporation and his office and principal place of business is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute

service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this Order:

1. ''Competent and reliable scientific evidence'' shall mean tests, analyses, research, studies, or other evidence based upon the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results;

2. ''Volatile organic compound'' (''VOC'') shall mean any compound of carbon which participates in atmospheric photochemical reactions as defined by the U.S. Environmental Protection Agency at 40 C.F.R. § 51.100(s), and as subsequently amended. When the final rule was promulgated, 57 Fed. Reg. 3941 (February 3, 1992), the EPA definition excluded carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate and certain listed compounds that EPA has determined are of negligible photochemical reactivity.

I

It is ordered that respondents, RBR Productions, Inc., a corporation, its successors and assigns, and its officers, and Richard Rosenberg, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Let's Dance and Let's Touch disinfectants, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that:

A. Let's Dance concentrate is non-corrosive to skin or eyes, non-toxic, or does not pose a risk of adverse health effects;

B. Let's Touch concentrate is non-toxic or does not pose a risk of adverse health effects; or

C. Let's Dance and Let's Touch use dilutions are classified as non-toxic under the Federal Hazardous Substances Act regulations.

II

It is further ordered that respondents, RBR Productions, Inc., a corporation, its successors and assigns, and its officers, and Richard Rosenberg, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device:

A. In connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Let's Dance and Let's Touch disinfectants, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

1. Let's Dance or Let's Touch use dilutions are non-toxic or do not pose a risk of adverse health effects;

2. Let's Dance or Let's Touch concentrates or use dilutions are less toxic than quaternary ammonium compound disinfectants or any other disinfectant or product;

3. Let's Dance is biodegradable;

4. Let's Dance is safe for the environment after ordinary use; and

B. In connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Let's Go spray or any other product containing any volatile organic compound, through the use of such terms as ''environmental formula,'' ''environmental formula, freon free, ozone friendly,'' ''environmental formula, will not harm the ozone, contains no freon, chlorofluorocarbons, methylene chloride, or 1,1,1-trichloroethane,'' or any other term or expression, that any such product will not harm the environment; and

C. In connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any disinfectant or aerosol product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product will offer any absolute or comparative health, safety, or environmental benefit; unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence that substantiates the representation, which when appropriate must be competent and reliable scientific evidence.

III

A. *It is further ordered* that respondents, RBR Productions, Inc., a corporation, its successors and assigns, and its officers, and Richard Rosenberg, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or package, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which:

(1) any such product or package is capable of being recycled; or,

(2) recycling collection programs for such product or package are available.

B. *Provided*, however, respondents will not be in violation of Part III.A(2) of this Order, in connection with the advertising, labeling, offering for sale, sale or distribution of any aluminum aerosol can, if it truthfully represents that such package is recyclable, provided that:

(1) respondent discloses clearly, prominently, and in close proximity to such representation:

(a) that such packaging is recyclable in the few communities with recycling collection programs for aluminum aerosol cans; or

(b) the approximate number of U.S. communities with recycling collection programs for such aluminum aerosol cans; or

(c) the approximate percentage of U.S. communities or the U.S. population to which recycling collection programs for such aluminum aerosol cans are available.

For the purposes of this Order, a disclosure elsewhere on the product package shall be deemed to be ''in close proximity'' to such representation if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous

cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the part of the package on which the representation appears.

IV

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors or assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers and complaints or inquiries from governmental organizations.

V

It is further ordered that respondent RBR Productions, Inc. shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

VI

It is further ordered that respondent RBR Productions, Inc., its successors and assigns, shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VII

It is further ordered that respondent Richard Rosenberg shall, for a period of five (5) years from the date of entry of this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, and a statement describing the nature of the business or employment and his duties and responsibilities.

VIII

It is further ordered that this Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IX

It is further ordered that respondents shall, within sixty (60) days after service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents RBR Productions, Inc., (''RBR'') a New Jersey corporation, and Richard Rosenberg, an officer of RBR.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint in this matter concerns representations for the following RBR products designed for use in beauty salons: Let's Dance, a concentrated tuberculocidal disinfectant containing o-phenylphenol, paratertiary amylphenol and phosphoric acid; and Let's Touch, a concentrated tuberculocidal disinfectant product containing o-phenylphenol. The complaint charges that respondents' advertising represented Let's Dance concentrate is non-corrosive to skin and eyes, non-toxic, and does not pose a risk of adverse health effects; that Let's Touch concentrate is non-toxic and does not pose a risk of adverse health effects; and that Let's Dance and Let's Touch, when diluted for use, are classified as non-toxic under the Federal Hazardous Substances Act regulations. The complaint alleges that these claims are false and unsubstantiated. The complaint also alleges that respondents' advertising represented without adequate substantiation that Let's Dance and Let's Touch, when diluted for use, are non-toxic and do not pose a risk of adverse health effects; that Let's Dance and Let's Touch are three to five times less toxic than quaternary aluminum compound disinfectants; that Let's Dance is safe for the environment after ordinary use; and that Let's Dance will completely break down and return to nature—*i.e.*, decompose into elements found in nature—within a reasonably short period of time after customary disposal.

Additional charges in the Commission's complaint concern Let's Go, a nail glue drying spray containing volatile organic chemicals and packaged in an aluminum aerosol can. The complaint alleges that respondents' advertising represented that Let's Go's aluminum aerosol can is recyclable. The complaint charges that this claim is false and unsubstantiated because, while the Let's Go aluminum aerosol can is capable of being recycled, only a few collection facilities accept aluminum aerosol cans for recycling. Finally, the complaint alleges that respondents' advertising represented, without adequate substantiation, that Let's Go spray does not contain any ingredients that harm or damage the environment.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts in the future. Part I of the proposed order would prohibit respondents from misrepresenting that Let's Dance

concentrate is non-corrosive to skin or eyes, non-toxic, or does not pose a risk of adverse health effects; that Let's Touch concentrate is non-toxic or does not pose a risk of adverse health effects; or that Let's Dance and Let's Touch use dilutions are classified as non-toxic under the Federal Hazardous Substances Act regulations.

Part II.A of the proposed order would require competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, for any representation that Let's Dance or Let's Touch use dilutions are non-toxic or do not pose a risk of adverse health effects; that Let's Dance or Let's Touch concentrates or use dilutions are less toxic than quaternary ammonium compound disinfectants or any other disinfectant or product; that Let's Dance is biodegradable; or, that Let's Dance is safe for the environment after ordinary use. Part II.B of the proposed order would require competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, for any representation, through the use of such terms as ''environmental formula,'' ''environmental formula, freon free, ozone friendly,'' ''environmental formula, will not harm the ozone, contains no freon, chlorofluorocarbons, methylene chloride, or 1,1,1-trichloroethane,'' or any other term of expression, that Let's Go spray or any other product containing any volatile organic compound will not harm the environment. Part II.C of the proposed order would require competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, for a representation that any disinfectant or aerosol product will offer any absolute or comparative health, safety, or environmental benefit.

Part III.A of the proposed order would prohibit misrepresentations of the extent to which any product or package is capable of being recycled; or the extent to which recycling collection programs for such product or package are available. Part III.B of the order gives examples of representations that would not violate part III.A.

Parts IV through IX are standard provisions requiring retention of certain records, distribution of the order to certain persons, notification to the Commission of changes in corporate structure or of employment of the individual respondent, termination of the order and filing of compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 96–20919 Filed 8–15–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Availability of Consumer Assessment of Health Plans Study Draft Questionnaires for Review

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of availability.

SUMMARY: The Agency for Health Care Policy and Research (AHCPR) announces, for review, the availability of draft questionnaires on consumer assessments of health plans and services, which are being developed under cooperative agreements between Research Triangle Institute, Harvard University, and the RAND Corporation in cooperation with AHCPR. The Consumer Assessment of Health Plans Study is being conducted to assist consumers in selecting high-quality health plans and appropriate services. Comments will be considered in developing the final questionnaires, but they will not be responded to individually.

DATES: Comments must be postmarked by September 13, 1996.

SUPPLEMENTARY INFORMATION: The Consumer Assessment of Health Plans Study (CAHPS) is a 5-year project designed to: (1) Develop and test survey instruments with which to obtain assessments of health plans and services from consumers, (2) produce easily understandable reports for communicating survey information to consumers, and (3) evaluate the usefulness of these reports for consumers in selecting health care plans and services. The goal of CAHPS is to help consumers identify the best health care plans and services for their needs.

Request for Draft Questionnaires

The draft questionnaires and related materials can be obtained from the AHCPR Publications Clearinghouse (at 1–800–358–9295) by requesting publication number 96–R–114. Instructions for submitting comments are included in the package of draft questionnaires and related materials.

AHCPR Contact Person

Programmatic information is available from Diane Dwyer, Center for Quality Measurement and Improvement, AHCPR, at 301–594–1349 extension 1302.

Dated: August 9, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 20967 Filed 8–15–96; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention

[Announcement No. 704]

Draft Program Announcement and Availability of Funds for Fiscal Year 1997 Cooperative Agreements for Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Request for comments.

SUMMARY: CDC is preparing to announce the availability of fiscal year (FY) 1997 funds to support HIV prevention projects for minority and other community-based organizations (CBOs). This program will assist the Nation's disease prevention efforts by providing assistance to CBOs in developing and implementing effective community-based HIV prevention programs and promoting collaboration and coordination of HIV prevention efforts among CBOs and local activities of HIV prevention service agencies, public agencies including local and State health departments (and HIV prevention community planning groups), substance abuse agencies, educational agencies, criminal justice systems, and affiliates of national and regional organizations. Because of the unique nature of this program, CDC invites comments from organizations and individuals on the draft of this announcement. Based on comments received, the final announcement is expected to be published in September 1996.

DATES: Written comments to this notice should be submitted to the Office of the Director, National Center for HIV, STD, and TB Prevention, Attention: Gary West, Centers for Disease Control and Prevention (CDC), Mailstop D–21, Altanta, GA 30333. Comments must be received on or before September 16, 1996.

FOR FURTHER INFORMATION CONTACT: Gary West, Office of the Director, National

Center for HIV, STD and TB Prevention, telephone (404) 639–0902.

SUPPLEMENTARY INFORMATION: The following is the complete text of the draft program announcement for community-based human immunodeficiency virus (HIV) prevention projects.

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 funds for cooperative agreements for HIV prevention projects for minority and other community-based organizations (CBOs) serving populations at increased risk of acquiring or transmitting HIV infection.

(A cooperative agreement is a legal agreement between CDC and the recipient in which CDC provides *financial assistance and substantial Federal programmatic involvement* with the recipient during the performance of the project.)

Preapplication technical assistance workshops to assist all prospective applicants for these projects will be held during October and November 1996. The purpose of these workshops is to assist prospective applicants in understanding CDC application requirements and program priorities. During the workshops, information will be presented on application and business management requirements, programmatic priorities, HIV prevention community planning, and how to access additional preapplication resources relevant to application development. Prospective applicants are encouraged to attend a workshop in their area. For additional information on the preapplication workshops in your area (a schedule will be included in the final announcement), please contact your State or local health department or CDC at telephone (404) 639–8317.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement relates to the priority areas of Educational and Community-Based Programs, HIV Infection, and Sexually Transmitted Diseases (STDs). It addresses the ''Healthy People 2000'' objectives by providing support for primary prevention for persons at increased risk for HIV infection and by increasing the availability and coordination of prevention and early intervention services for HIV-infected persons. A summary of the HIV-related objectives will be included in the application kit. (To order a copy of ''Healthy People 2000,'' see the section entitled ''Where to Obtain Additional Information.'')

Authority

This program is authorized under section 317(k)(2) [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, 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.

Eligible Applicants

To be eligible for funding under this announcement, applicants must be a tax-exempt, non-profit CBO whose net earnings in no part accrue to the benefit of any private shareholder or person. Tax-exempt status is determined by the Internal Revenue Service (IRS) Code, Section 501(c)(3). Tax-exempt status may be proved by either providing a copy of the pages from the IRS' most recent list of 501(c)(3) of tax-exempt organizations or a copy of the current IRS Determination Letter. Proof of tax-exempt status must be provided with the application.

Note: Organizations described in section 501(c)(4) of the Internal Revenue Code of 1986 that engage in lobbying are not eligible to receive Federal grant/cooperative agreement funds.

CBOs may apply as either (1) *minority* CBOs or (2) CBOs *serving other high-risk populations.* To apply as a *minority* CBO the applicant organization must have the following: (1) A governing board composed of more than 50% racial or ethnic minority members, (2) a significant number of minority individuals in key program positions, and (3) an established record of service to a racial or ethnic minority community or communities. In addition, if the applicant organization is a local affiliate of a larger organization with a national board, the larger organization must meet the same requirements listed above. If applying as a minority CBO, proof of minority status must be provided with the application. Affiliates of national organizations must provide proof of their national organization's eligibility and include with the application an original, signed letter from their chief executive officer assuring their understanding of the intent of this program announcement and the responsibilities of recipients.

Organizations applying as a CBO serving other high-risk populations are not required to meet the minority requirements listed above.

CDC will not accept an application without proof of tax-exempt status, minority status (if applicable), and proof of eligibility for affiliates of national organizations (if applicable).

Applications requesting funds to support only administrative and managerial functions will not be accepted.

Governmental or municipal agencies, their affiliate organizations or agencies (e.g., health departments, school boards, public hospitals), and private or public universities and colleges are not eligible for funding under this announcement.

CBOs requesting funds under this announcement will be categorized into one of two mutually exclusive groups: (1) High prevalence Metropolitan Statistical Areas (MSAs); or (2) lower prevalence geographic areas. For the purposes of this program, high prevalence MSAs are defined by (1) greater than 500 reported AIDS cases in racial or ethnic minorities (African Americans, Alaskan Natives, American Indians, Asian Americans, Latinos/Hispanics, and Pacific Islanders) in the 3-year period 1993, 1994, and 1995, or as Title I eligible metropolitan areas (EMAs) for FY 1996 under the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act. (Title I EMAs are defined as communities which as of March 31, 1995, reported a cumulative total of more than 20,000 cases of AIDS within the EMA, or that had a per capita incidence of cumulative cases of AIDS equal to or exceeding 0.0025.) Eligible high prevalence MSAs (and the corresponding OMB Federal Identification Processing (FIPS) code) are the following:

Arizona: Phoenix-Mesa (6200)
California: Los Angeles-Long Beach (4480), Oakland (5775), Orange County (5945), Riverside-San Bernardino (6780), Sacramento (6920), San Diego (7320), San Francisco (7360), San Jose (7400), Santa Rosa (7500)
Colorado: Denver (2080)
Connecticut: Hartford (3283), New Haven-Bridgeport-Stamford-Danbury-Waterbury (5483)
Delaware-Maryland: Wilmington-Newark (9160)
District of Columbia-Maryland-Virginia-West Virginia: Washington, D.C. (8840)
Florida: Ft. Lauderdale (2680), Jacksonville (3600), Miami (5000),

Orlando (5960), Tampa-St. Petersburg-Clearwater (8280), West Palm Beach-Boca Raton (8960)
Georgia: Atlanta (520)
Illinois: Chicago (1600)
Louisiana: New Orleans (5560)
Maryland: Baltimore (720)
Massachusetts-New Hampshire: Boston-Worcester-Lawrence-Lowell-Brockton (1123)
Michigan: Detroit (2160)
Minnesota-Wisconsin: Minneapolis-St. Paul (5120)
Missouri-Kansas: Kansas City (3760)
Missouri-Illinois: St. Louis (7040)
New Jersey: Newark (5640), Jersey City (3640), Bergan-Passaic (875), Middlesex-Somerset-Hunterdon (5015), Monmouth-Ocean (5190), Vineland-Millville-Bridgeton (8760)
New York: Duchess County (2281), New York City (5600), Nassau-Suffolk (5380)
North Carolina-South Carolina: Charlotte-Gastonia-Rock Hill (1520)
Ohio: Cleveland-Lorain-Elyria (1680)
Oregon-Washington: Portland-Vancouver (6440)
Pennsylvania-New Jersey: Philadelphia (6160)
Puerto Rico: Caguas (1310), Ponce (6360), San Juan-Bayamon (7440)
South Carolina: Columbia (1760)
Tennessee-Arkansas-Mississippi: Memphis (4920)
Texas: Austin-San Marcos (640), Dallas (1920), Ft. Worth-Arlington (2800), Houston (3360), San Antonio (7240)
Virginia-North Carolina: Norfolk-Virginia Beach-Newport News (5720), Richmond-Petersburg (6760)
Washington: Seattle-Bellevue-Everett (7600)

CBOs not located in the aforementioned list of high prevalence MSAs will be categorized as lower prevalence geographic areas.

Availability of Funds

In FY 1997, CDC expects a total of up to $17,000,000 to be available for funding approximately 80 CBOs (70 in high prevalence MSAs and 10 in lower prevalence geographic areas).

A. High Prevalence MSAs

Up to $16,000,000 of the total $17,000,000 will be made available to CBOs in high prevalence MSAs. The estimated awards will average $200,000 and will range from $75,000 to $300,000. In high prevalence MSAs, $12,000,000 is dedicated to supporting minority CBOs that represent and serve racial or ethnic minority persons and that meet the criteria outlined in the section entitled Eligible Applicants. The remaining $4,000,000 is dedicated to supporting CBOs serving other high-risk populations in high prevalence MSAs.

B. Lower Prevalence Geographic Areas

The remaining $1,000,000 of the total funds expected will be made available to fund CBOs in lower prevalence geographic areas. These estimated awards will average $100,000. Of the $1,000,000 available, up to $750,000 will support minority CBOs and at least $250,000 will support CBOs serving other high-risk populations.

These estimates are subject to change based on the following: the actual availability of funds; the scope and the quality of applications received; appropriateness and reasonableness of the budget request; proposed use of project funds; and the extent to which the applicant is contributing its own resources to HIV/AIDS prevention activities. However, no organization will be awarded more than $300,000 (direct and indirect costs) per year. Applications for more than $300,000 will be deemed ineligible and will not be accepted by CDC.

Funds available under this announcement must support activities directly related to primary HIV prevention. However, intervention activities which involve preventing other STDs and drug use as a means of reducing or eliminating the risk of HIV infection may be supported. No funds will be provided for direct patient medical care (including substance abuse treatment, medical prophylaxis or drugs). These funds may not be used to supplant or duplicate existing funding. Although applicants may contract with other organizations under these cooperative agreements, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services) for which funds are requested.

Awards will be made for a 12-month budget period within a 3-year project period. (Budget period is the interval of time into which the project period is divided for funding and reporting purposes. Project period is the total time for which a project has been programmatically approved.)

Noncompeting continuation awards for a new budget period within an approved project period will be made on the basis of satisfactory progress in meeting project objectives and the availability of funds. Progress will be determined by site visits by CDC representatives, progress reports, and the quality of future program plans. Proof of eligibility will be required with the noncompeting continuation application.

Background

The HIV epidemic constitutes a significant threat to the public health of the United States. There are specific high-risk behaviors that result in the transmission of HIV. HIV may also be transmitted perinatally. Some of the important means currently available to reduce the prevalence of behaviors placing individuals at risk of HIV infection or transmission include:

A. Effective education and counseling to assist persons in assessing their own high-risk behaviors and in planning behavior change; to support and sustain behavior change; and to facilitate linkages to other needed services;

B. Interpersonal skills training in negotiating and sustaining appropriate behavior change; and

C. Influencing community norms in support of safer behaviors.

Purpose

This program will provide assistance to CBOs to: (1) Develop and implement effective community-based HIV prevention programs (see the section entitled Community Planning for HIV Prevention) consistent with achieving national program goals, and the HIV prevention priorities outlined in their State/local health department's comprehensive HIV prevention plan (where available); and (2) promote collaboration and coordination of HIV prevention efforts among CBOs and the local activities of HIV prevention service agencies, public agencies including local and State health departments (and HIV prevention community planning groups), substance abuse agencies, educational agencies, criminal justice systems, and affiliates of national and regional organizations.

The national strategic goals for HIV, STD, and TB prevention are to:

A. Increase public understanding of, involvement in, and support for HIV, STD, and TB prevention.

B. Ensure completion of therapy for persons identified with active TB or TB infection.

C. Prevent or reduce behaviors or practices that place persons at risk for HIV and STD infection or, if already infected, place others at risk.

D. Increase individual knowledge of HIV serostatus and improve referral systems to appropriate prevention and treatment services.

E. Assist in building and maintaining the necessary State, local, and community support infrastructure and technical capacity to carry out prevention programs.

F. Strengthen current systems and develop new systems to accurately

monitor the HIV epidemic, STDs, and TB, as a basis for assessing and directing prevention programs.

In order to maximize the effective use of CDC funds, each applicant must conduct at least one, but no more than two, of the priority Health Education/Risk Reduction (HE/RR) interventions described below. Although activities may cross from one intervention type to another (e.g., individual or group level interventions may be a part of a community-level intervention), no more than two of the primary interventions listed below should be undertaken.

HE/RR interventions include programs and services to reach persons at increased risk of becoming HIV-infected or, if already infected, of transmitting the virus to others. The goal of HE/RR interventions is to reduce the risk of these events occurring. These interventions should be directed to persons whose behaviors or personal circumstances place them at high risk.

The following have been identified as successful HE/RR interventions for HIV prevention and will be funded within the scope of this announcement: Individual Level Interventions (including prevention case management), Group Level Interventions, Community Level Interventions, and Street and Community Outreach. The Guidelines for Health Education and Risk Reduction Activities (included in the application kit) will provide additional information on these interventions. A brief description of the priority interventions follows:

A. Individual Level Interventions provide a range of one-on-one client services that offer counseling, assist clients in assessing their own behavior and planning individual behavior change, support and sustain behavior change, and facilitate linkages to services in clinic and community settings (e.g., substance abuse treatment programs) in support of behaviors and practices that prevent the transmission of HIV. Some clients may be at very high risk of becoming HIV-infected or, if already infected, of transmitting the virus to others. Additional prevention counseling, as appropriate to the needs of these clients should be offered.

Prevention Case Management is an individual level intervention directed at persons who need highly individualized support, including substantial psychosocial, interpersonal skills training, and other support, to remain seronegative or to reduce the risk of HIV transmission to others. HIV prevention case management services are not intended as substitutes for medical case management or extended social services. Services provided under this component should concentrate on the identification, coordination, and receipt of appropriate prevention services. Prevention case management services should complement ongoing HIV prevention services such as HIV antibody counseling, testing, referral, and partner notification (CTRPN), and early medical intervention programs. Coordination with HIV counseling and testing clinics, STD clinics, TB testing sites, substance abuse treatment programs, and other health service agencies is essential to successfully recruiting or referring persons at high risk who are appropriate for this type of intervention.

B. Group Level Interventions shift the delivery of service from individual to groups of varying sizes. Group level interventions provide education and support in group settings to promote and reinforce safer behaviors and to provide interpersonal skills training in negotiating and sustaining appropriate behavior change to persons at increased risk of becoming infected or, if already infected, of transmitting the virus to others. The content of the group session should be consistent with the format, i.e., groups can meet one time or on an on-going basis. One-time sessions can provide participants an opportunity to hear and learn from one another's experiences, role play with peers, and offer and receive support. Ongoing sessions may offer stronger social influence with potential for developing emergent norms that can support risk reduction. A group level intervention can include more tailored individual level interventions with some of the group members.

C. Community Level Interventions are directed at changing community norms, rather than the individual or a group, to increase community support of the behaviors known to reduce the risk for HIV infection and transmission. While individual and group level interventions also may be taking place within the community, interventions that target the community level are unique in their purpose and are likely to lead to different strategies than other types of interventions. Community level interventions aim to reduce risky behaviors by changing attitudes, norms, and practices through health communications, social (prevention) marketing, community mobilization and organization, and community-wide events. The primary goals of these programs are to improve health status, to promote healthy behaviors, and to change factors that affect the health of community residents. The community may be defined in terms of a neighborhood, region, or some other geographic area, but only as a mechanism to capture the social networks that may be located within those boundaries. These networks may be changing and overlapping, but should represent some degree of shared communications, activities, and interests. Community level interventions are designed to impact on the social norms or shared beliefs and values held by members of the community. Specific activities include:

- Identifying and describing (through needs assessments and ongoing feedback from the community) structural, environmental, behavioral, and psychosocial facilitators and barriers to risk reduction in order to develop plans to enhance facilitators and minimize or eliminate barriers.
- Developing and implementing, with participation from the community, culturally competent, developmentally appropriate, linguistically specific, and sexual-identity-sensitive interventions to influence specific structural, environmental, behavioral, and psychosocial factors thought to promote risk reduction.
- Persuading community members who are at risk of acquiring or transmitting HIV infection to accept and use HIV prevention measures.

D. Street and Community Outreach Interventions are defined by their locus of activity and by the content of their offerings. Street and community outreach programs reach persons at high risk, individually or in small groups, on the street or in community settings, and provide them prevention messages, information materials, and other services, and assist them in obtaining other primary and secondary HIV-prevention services such as HIV-antibody counseling and testing, HIV risk-reduction counseling, STD and TB treatment, substance abuse prevention and treatment, family planning services, tuberculin testing, and HIV medical intervention. Street and Community Outreach is an activity conducted outside a more traditional, institutional health care setting for the purpose of providing direct HE/RR services or referrals. The fundamental principle of these outreach activities is that the outreach worker/specialist establishes face-to-face contact with the client in his/her own environment to provide HIV/AIDS risk reduction information, services, and referrals.

Community Planning for HIV Prevention

In 1994, the 65 State and local health departments that received CDC Federal funds for HIV prevention began an HIV

prevention community planning process. The goal of HIV Prevention Community Planning is to improve the effectiveness of HIV prevention programs by strengthening the scientific basis and targeting prevention interventions. Together, representatives of affected populations, epidemiologists, behavioral scientists, HIV/AIDS prevention service providers, health department staff, and others analyze the course of the epidemic in their jurisdiction, determine their priority prevention needs, and identify HIV prevention interventions to meet those needs. Community planning groups are responsible for developing comprehensive HIV prevention plans that are directly responsive to the epidemics in their jurisdictions. Minority and other CBOs submitting applications under this announcement must contact their State/local health departments to obtain a copy of the current comprehensive HIV prevention plan (if available). Program proposals must address high priority needs identified in this plan. More information on the HIV prevention community planning process is available from the HIV/AIDS Program in your jurisdiction's health department. A list of the names and telephone numbers of State health department points of contact to obtain a copy of the jurisdiction's comprehensive HIV prevention plan is provided with the application kit.

Program Requirements

In a cooperative agreement, there are roles and responsibilities shared between the CDC (grantor) and the recipient of Federal funds (awardee). In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A. below; the CDC shall be responsible for activities under B. below; and both the CDC and the recipient shall be responsible for the activities under C. below:

A. Recipient Activities

The following four Health Education and Risk Reduction (HE/RR) Interventions will be conducted. These include Individual Level Interventions, Group Level Interventions, Community Level Interventions, and Street and Community Outreach Interventions. Each awardee must conduct at least one, but not more than two of the priority HE/RR interventions. Recipient activities are listed below:

1. Coordinate and collaborate with other organizations and agencies involved in HIV prevention activities, especially those serving the target populations in the local area.

2. Coordinate with HIV counseling and testing clinics, STD clinics, TB testing sites, substance abuse treatment programs, and other health service agencies to recruit and refer persons of high risk who are appropriate for individual level intervention.

3. Provide education and support in group settings to promote and reinforce safer behaviors and to provide interpersonal skills training in negotiating and sustaining appropriate behavior change to persons at increased risk of becoming infected or, if already infected, of transmitting the virus to others.

4. Identify the HIV/AIDS needs assessment of the community and develop a linguistically specific and sexual-identity-sensitive intervention plan to minimize barriers and to promote risk reduction.

5. Develop a street outreach program of face-to-face contact with persons of high risk to provide HIV/AIDS risk reduction information, services and referrals.

B. CDC Activities

1. Provide consultation and technical assistance in planning, operating, and evaluating prevention activities.

2. Provide up-to-date scientific information on the risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection.

3. Assist in the evaluation of program activities and services.

4. Assist recipients in collaborating with State and local health departments and other HHS-supported HIV/AIDS recipients.

5. Facilitate the transfer of successful prevention interventions and program models to other areas through convening meetings of grantees, workshops, conferences, newsletters, and communications with project officers.

6. Monitor the recipient's performance of program activities, protection of client confidentiality, and compliance with other requirements.

7. Facilitate exchange of program information and technical assistance between community organizations, health departments, and national and regional organizations.

8. Assist prospective applicants in obtaining preapplication technical assistance and in obtaining copies of the comprehensive HIV prevention plan.

C. Recipient and CDC Responsibility Regarding Confidentiality

All personally identifying information obtained in connection with the delivery of services provided to any individual in any program supported under this announcement shall not be disclosed unless required by a law of a State or political subdivision or unless such an individual provides written, voluntary informed consent.

1. *Non-personally identifying,* unlinked information, which preserves the individual's anonymity, derived from any such program may be disclosed without consent:

a. In summary, statistical, or other similar form, or

b. For clinical or research purposes.

2. *Personally identifying information:* Recipients of CDC funds that must obtain and retain personally identifying information as part of their CDC-approved work plan must:

a. Maintain the physical security of such records and information at all times;

b. Have procedures in place and staff trained to prevent unauthorized disclosure of client-identifying information;

c. Obtain informed client consent by explaining the possible risks from disclosure and the recipient's policies and procedures for preventing unauthorized disclosure;

d. Provide written assurance to this effect including copies of relevant policies; and

e. Obtain assurances of confidentiality by agencies to which referrals are made.

An Institutional Review Board (IRB) approval or a certificate of confidentiality may be required for some projects.

Reporting Requirements

Quarterly narrative progress reports will be required 30 days after the end of each quarter. Quarterly progress reports should document services provided and problems encountered, with careful attention to answering questions and documenting accomplishments and problems encountered in meeting program objectives. Annual financial status reports are required no later than 90 days after the end of each budget period. Final financial status and performance reports are required 90 days after the end of the project period.

Application Requirements and Content

A. All applicants must develop their applications in accordance with PHS Form 5161–1, and the general instructions, information, and examples contained in the program announcement and section headings listed below. In addition, applicants should request an application kit (see section Where to Obtain Additional Information).

B. Applicants are required to show how the proposed priority HE/RR intervention(s) and the target populations for which they are intended to complement the HIV prevention priorities identified in the jurisdiction's comprehensive HIV prevention plan. The applicant should reference specific sections and pages in the comprehensive HIV prevention plan that support their proposed plan. A list of the names and telephone numbers of State health department points of contact from whom applicants may obtain a copy of the jurisdiction's comprehensive HIV prevention plan is provided with the application kit. If the jurisdiction's comprehensive HIV prevention plan is not available or does not adequately provide the necessary information, the applicant is expected to justify the need and the priority of their proposed program activities and summarize how the activities address prevention gaps and complement ongoing prevention efforts. Technical assistance is available to help with this.

C. The application for funding must include a detailed description of the first year activities and a brief description of future year activities.

D. In developing the application, CDC requires that applicants follow the instructions and format outlined below:

1. a. *Introduction* (not to exceed 2 pages): Applicants should briefly summarize the program for which funds are requested, including the target population to be served, activities to be undertaken, and services to be provided. Also, briefly describe proposed future year activities.

b. *Organizational History and Capacity:* The applicant should briefly describe as follows:

(1) A summary of programs provided in the past, both HIV prevention and general service and education programs;

(2) Organizational structure, the interests and constituencies represented, and examples of demonstrated or predicted ability to implement outreach and education programs to reduce the spread of HIV;

(3) Commitment and ability (i) to work with a variety of organizations and governmental programs including those providing HIV prevention services, and (ii) to coordinate program development with existing governmental and private educational efforts.

(4) Capacity to provide culturally competent and appropriate education and outreach which responds effectively to the cultural, environmental, social, and multilingual character of the target populations, including documentation of any history of such outreach or education.

2. *Description of the Priority Target Population* (not to exceed 2 pages): The applicant should clearly and specifically describe the priority target population(s) to be served through the proposed program, including the approximate number of individuals to be reached. Using the comprehensive HIV prevention plan as the basis, the applicant should describe the impact of the AIDS epidemic on the priority population and their community and any specific environmental, social, cultural, or multilingual characteristics of the priority populations which the applicant has considered and addressed in developing prevention strategies, such as:

a. HIV prevalence and reported AIDS cases in persons practicing risky behaviors;

b. HIV/AIDS-related baseline knowledge, attitudes, beliefs, and behavior;

c. Patterns of substance abuse and rates of STDs and tuberculosis (TB); and

d. Other relevant information.

3. *Description of the Needs Assessment (not to exceed 3 pages).* Using the State/local health department's comprehensive HIV prevention plan as the basis, applicants should describe how their proposed HE/RR interventions fill gaps or unmet needs identified in the area's comprehensive HIV prevention plan. If requesting funds to support continued implementation of an HE/RR intervention that is already in place, the applicant should describe the gap or unmet need that would result from discontinuation of services. In addition, the applicant should describe ongoing HIV prevention and risk-reduction efforts underway among the priority population(s), if any, and explain how proposed interventions complement these ongoing services. Additionally, the applicant should:

a. Explain any specific barriers to the dissemination of adequate HIV-prevention information and education which exist or have existed; and

b. Identify and describe the HIV prevention needs of the target population(s) which the proposed program directly addresses.

If the jurisdiction's comprehensive HIV prevention plan is not available or does not adequately provide the necessary information for items B. and D.3. above, the applicant is expected to justify the need and the priority of their proposed target population and program activities, and summarize how the activities address prevention gaps and complement ongoing prevention efforts. The available technical assistance for these tasks is outlined in the section on Where to Obtain Additional Information.

4. *Program Plan (not to exceed 8 pages):* The specific behaviors and practices that the interventions are designed to promote should be described, such as, increases in correct and consistent condom use, knowledge of serological status, not sharing needles, and enrollment in drug treatment and other preventive programs. The proposed plan should also describe the opportunities available for representatives of the target population to become active in planning, implementing, and evaluating activities and services. In addition, the proposed plan should describe how the proposed priority interventions and services implemented to accomplish the proposed objectives are culturally competent (i.e., program and services provided in a style and format respectful of the cultural norms, values, and traditions that are endorsed by community leaders and accepted by the target population), sensitive to issues of sexual identity, developmentally appropriate (i.e., information and services provided at a level of comprehension that is consistent with learning skills of persons to be served), linguistically-specific (i.e., information is presented in dialect and terminology consistent with the target population's traditional language and style of communication), and educationally appropriate. The program plan should describe and explain:

a. *Project objectives:* What the project will accomplish (i.e., *specific, time-phased, and measurable objectives for the project*). Approved programs must have objectives related to their jurisdiction's comprehensive HIV prevention plan (if available) and national HIV prevention goals, and should describe in realistic terms the expected outcomes of program activities on its priority population(s).

b. *Plan of Operation:* How the project will work (i.e., *what specific activities will be conducted and services provided to accomplish the objectives*). The applicant should outline the major steps or activities necessary to attain specified objectives, and note the approximate dates by which activities will be accomplished. The applicant should note all major activities which will represent necessary milestones in the attainment of objectives. The plan should describe, where possible, how the applicant will obtain participation and input into the program by State or local health departments, community planning groups, members of the target population, and other appropriate service groups or organizations; and

how collaborative relationships with other agencies and organizations will be established and maintained. Applicants must provide the following as attachments: (a) A list of major community resources and health care providers to which referrals will be made; (b) a plan for ongoing training to ensure that staff are knowledgeable about HIV and STD risks and prevention measures; (c) a plan to assess the performance of staff to ensure that they are providing information and services accurately and effectively; (d) a mechanism to initiate and verify referrals; and (e) protocols to guide and document training, activities, services, and referrals (e.g., applicants seeking funds for Street and Community Outreach Interventions must provide a description of the policies and procedures that will be followed to assure the safety of outreach staff).

5. *Plan of Evaluation (not to exceed 4 pages):* How project activities will be evaluated (i.e., *a plan which will help determine if the methods used to deliver these services are effective and the objectives are being achieved*). The applicant should clearly identify specific methods it will use to measure progress toward attaining objectives and monitoring activities during the first year of the program. The applicant should describe how information will be obtained, including a description of methods which will be implemented to gather and record data, and in what manner it will be summarized. The following are recommendations for the evaluation plan, the minimum data that should be collected, and the systems for collecting the data. Activities undertaken under the evaluation plan should be capable of the following:

a. Providing a detailed description of:

(1) Each program activity and the documented need for that activity; and

(2) Progress toward achieving each stated objective in the cooperative agreement,

b. Providing detailed information for:

(1) The specific service or intervention that was provided and how it differed from the planned services;

(2) The description and the number of persons who received the service, including demographics such as age, race and ethnicity, gender, and if appropriate and available, sexual orientation and risk exposure, and how the persons actually served differed from those the program intended to serve;

(3) When and how often the service or intervention was provided and how this differed from program plans; and,

(4) Where the service or intervention was provided (e.g., CTRPN site, STD clinic, street corner, housing project) and a comparison of these data to the expected locations of service delivery.

c. Documenting and describing program successes, unmet needs, barriers and problems encountered in planning, implementing, or providing services, or in coordinating services with other organizations and agencies serving target populations.

d. Documenting and describing the success of referral systems, including the numbers of persons referred and the number actually receiving services by site, and how well the system functions in identifying sources of services and in assisting persons in obtaining and receiving them.

e. Documenting and describing problems that affect planning or implementing program activities (e.g., recruiting, hiring, or retaining staff; training or ensuring quality staff performance; establishing or maintaining contracts with other CBOs or ensuring the quality of their performance), and

f. Describing client satisfaction with HIV prevention services. Client satisfaction should be assessed periodically via quantitative or qualitative methods (e.g., periodic focus groups with current or former clients).

Because of the additional cost and need for scientific support beyond the scope of these cooperative agreements, applicants should not conduct outcome evaluations with these funds (i.e., long-term effects of the program in terms of changes in behavior or health status, such as changes in HIV incidence after the intervention). CDC will continue to support special projects to evaluate the behavioral and other outcomes of interventions commonly used by CBOs and other organizations, and disseminate information and lessons learned from this research to CBOs, health departments, community planning groups, and other organizations and agencies involved in HIV prevention programs.

6. *Applicant Coordination of Efforts (not to exceed 4 pages):*

In this section, applicants should document and describe how proposed HE/RR priority intervention(s) and activities will be coordinated with other organizations and agencies involved in HIV prevention and education programs, especially those serving the target population in the local area. Such organizations must include State and local health departments and community planning groups, and should include, as appropriate the following:

a. Community groups and organizations, including churches and religious groups;

b. HIV/AIDS service organizations;

c. Ryan White CARE planning bodies;

d. Schools, boards of education, and other State or local education agencies;

e. State and local substance abuse agencies and drug treatment or detoxification programs;

f. Federally funded community projects, such as those funded by Center for Substance Abuse Treatment (CSAT), Center for Substance Abuse Prevention (CSAP), Health Resource Services Administration (HRSA), Office of Minority Health (OMH), and other Federal agencies;

g. Providers of services to youth in high risk situations (e.g., youth in shelters);

h. State or local departments of mental health;

i. Juvenile and adult criminal justice, correctional or parole systems and programs;

j. Family planning and women's health agencies; and

k. STD and TB clinics and programs.

Applicants should submit and include as attachments memoranda of understanding or agreement as evidence of these established or agreed-upon collaborative relationships. Evidence of continuing collaboration must be submitted each year to ensure that the collaborative relationships are still in place.

7. *Personnel:* The applicant should describe in detail each existing or proposed position for this program by job title, function, general duties, and activities. This should include the level of effort and allocation of time for each project activity by staff positions. If the identity of any key personnel who will fill a position is known, her/his name and curriculum vitae (not to exceed one page each) should be attached. Experience and training related to the proposed project should be noted.

8. *Budget Breakdown and Justification:* The applicant should provide a detailed budget for each HE/RR intervention (i.e., individual level, group level, community level, or street and community outreach) to be undertaken, with accompanying justification of all operating expenses that is consistent with the stated objectives and planned priority activities. CDC may not approve or fund all proposed activities. Applicants should be precise about the program purpose of each budget item, and should itemize calculations wherever appropriate.

For the personnel section, the job title, annual salary/rate of pay, and

percentage of time spent on this program should be indicated.

For contracts contained within the application budget, applicants should name the contractor, if known; describe the services to be performed; justify the use of a third party; and provide a breakdown of and justification for the estimated costs of the contracts; the kinds of organizations or parties to be selected; the period of performance; and the method of selection.

Attachments

The applicant must also provide the following as attachments:

A. Proof of its nonprofit status, as set forth under the Eligible Applicants section. No awards will be made without acceptable proof of nonprofit status;

B. A list of the members of its governing body and, for minority CBO applicants, their racial/ethnic backgrounds;

C. An organizational chart of existing and proposed staff, including volunteer staff (minority CBOs should include racial/ethnic backgrounds);

D. A description of any funding being received from CDC or other sources to conduct similar activities which includes:

1. A summary of funds and income received to conduct HIV/AIDS programs and other programs targeting the population proposed in the program plan. This summary must include the name of the sponsoring organization/source of income, level of funding, a description of how the funds have been used, and the budget period. In addition, identify proposed personnel devoted to this project who are supported by other funding sources and the activities they are supporting;

2. A summary of the objectives and activities of the funded program(s);

3. A description of how funds requested in this application will be used differently or in ways that will expand upon the funds already received, applied for, or being received; and

4. An assurance that the funds being requested will not duplicate or supplant funds received from any other Federal or non-Federal source.

E. Evidence of collaboration between the health department and other organizations serving the target population.

F. Independent audit statements from a certified public accountant for the previous 2 years.

G. Other information that may be required of organizations seeking support for priority HE/RR intervention(s).

H. Typing and Mailing

Applicants are required to submit an original and 2 copies of the application. Pages must be clearly numbered, and a complete index to the application and its appendices must be included. Please begin each separate section of the application on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All material must be typewritten, single spaced, with unreduced type on 8½″ by 11″ paper, with at least 1″ margins, headings and footers, and printed on one side only. Materials which should be part of the basic plan will not be accepted if placed in the appendices.

Review and Evaluation Criteria

Eligible applications will be evaluated by a two-step process. Step 1 is a review of the merits of the application against the criteria listed in A.1. below. If an exceptionally large number of applications are received, CDC may conduct a two-phased review in which all applications receive a preliminary review ((A.1.–A.3. below) and the applications with high ratings receive the second phase of the review (A.1.–A.7.). Step 2 is a predecisional site visit.

CDC-convened Special Emphasis Panels will evaluate each application by the following criteria:

A. Application

Each application will be evaluated based on the following criteria:

1. Extent of experience in providing HIV prevention services to the target population; (15 points)

2. Extent of need for the program as evidenced by the comprehensive HIV prevention plan and other needs assessment information provided by the applicant; (15 points)

3. Extent that the applicant in the program plan identifies and describes how proposed HE/RR interventions address prevention gaps related to their proposed priority population(s); (10 points)

4. Degree to which the proposed objectives are specific, measurable, time-phased, related to the proposed activities, related to prevention priorities outlined in the jurisdiction's comprehensive HIV prevention plan and national HIV prevention goals, and consistent with the applicant organization's overall mission; (20 points)

5. The quality of the applicant's plan for conducting program activities, and the potential effectiveness of the proposed activities in meeting objectives; (20 points)

6. Degree of collaboration and coordination with other organizations serving the same priority population(s). This includes *signed* work plans, agreements, or other evidence of collaboration that describe previous, current, as well as future areas of collaboration; and (10 points)

7. The potential of the evaluation plan to measure the accomplishment of program objectives. (10 points)

B. Predecisional Site Visits

Before final award decisions are made, CDC may make site visits to CBOs whose applications are highly ranked. The purpose of these site visits will be to assess the organizational and financial capability of the applicant to implement the proposed program.

A fiscal Recipient Capability Audit may be required of some applicants prior to the award of funds.

Funding Priorities

In making awards, priority will be given to (1) Ensuring a geographic balance of funded CBOs (the number of funded CBOs may be limited in each eligible area based on the number of reported AIDS cases, e.g., no more than one funded CBO for each 1,000 reported AIDS cases in minority populations in 1993, 1994, and 1995), (2) providing support to racial and ethnic minority CBOs and CBOs serving other high risk populations with proven records of effectively reaching their target populations, and (3) supporting activities that address the HIV prevention priorities identified in the health department's comprehensive HIV prevention plan (if available).

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State single point of contact (SPOC) as early as possible to alert them to the prospective applications and receive instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East

Paces Ferry Road, NE., Room 300, Mail Stop E–15, Atlanta, GA 30305, no later than 60 days after the application deadline date CDC does not guarantee to accommodate or explain State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate State and/or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State and/or local health agency is determined by the applicant. The following information must be provided:

A. A copy of the face page of the application (SF 424);

B. A summary of the project that should be titled ''Public Health System Impact Statement (PHSIS)'', not to exceed one page, and include the following:

1. A description of the population to be served;

2. A summary of the services to be provided; and

3. A description of the coordination plans with the appropriate State and/or local health agencies.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.939, HIV Prevention Activities—Non-Governmental Organization Based.

Other Requirements

A. HIV Program Review Panel

Recipients must comply with the terms and conditions included in the document titled *Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control and Prevention (CDC) Assistance Programs (June 1992),* a copy of which is included in the application kit. In complying with the program review panel requirements contained in this document, recipients are encouraged to use a current program review panel such as the one created by the State health department's HIV/AIDS Prevention Program. If the recipient forms its own program review panel, at least one member must also be an employee or a designated representative of a State or local health department. The names of review panel members must be listed on the Assurance of Compliance Form, CDC 0.1113.

B. Accounting System

The services of a certified public accountant licensed by the State Board of Accountancy or equivalent must be retained throughout the budget period as a part of the recipient's staff or as a consultant to the recipient's accounting personnel. These services may include the design, implementation, and maintenance of an accounting system that will record receipts and expenditures of Federal funds in accordance with accounting principles, Federal regulations, and terms of the cooperative agreement.

C. Audits

Funds claimed for reimbursement under this cooperative agreement must be audited annually by an independent certified public accountant (separate and independent of the consultant referenced above or recipient's staff certified public accountant). This audit must be performed within 60 days after the end of the budget period, or at the close of an organization's fiscal year. The audit must be performed in accordance with generally accepted auditing standards (established by the American Institute of Certified Public Accountants (AICPA)), governmental auditing standards (established by the General Accounting Office (GAO)), and Office of Management and Budget (OMB) Circular A–133.

D. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided (in accordance with the appropriate guidelines and form provided in the application kit) to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee.

E. Paperwork Reduction Act

OMB clearance for the data collection initiated under this cooperative agreement is pending approval by the Office of Management and Budget.

Application Submission and Deadline

The original and two copies of the application (PHS Form 5161–1, OMB Number 0937–0189) must be submitted to Mr. Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–15, Atlanta, GA 30305, on or before October 15, 1996. Faxed copies will NOT be accepted. In addition, CDC strongly recommends that all applicants, simultaneously submit a copy of the application to their State HIV/AIDS Directors.

Deadline: Applications will meet the deadline if they are either received on or before the deadline date, or sent on or before the deadline date and received in time for submission to the review group. (Applicants must 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 proof of timely mailing.)

Applications that do not meet these criteria will be considered late and will not be considered in the current funding cycle. Late applications will be returned to the applicant.

Where to Obtain Additional Information

To receive the application kit, call (404) 332–4561. You will be asked to leave your name, address, and telephone number; and you must refer to Announcement Number 704. You will then receive program announcement 704, required application forms and attachments, a current list of SPOCs, a summary of HIV related objectives, a list of the State health department points of contact, and the HE/RR guidelines. The announcement is also available through the CDC home page on the Internet. The address for the CDC home page is http://www.cdc.gov.

If you have questions after reviewing the contents of the documents, business management technical assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–15, Atlanta, GA 30305, telephone (404) 842–6797, or INTERNET address, mcs9@ops.pgo1.em.cdc.gov.

Announcement Number 704, ''Cooperative Agreements for Minority Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects'' must be referenced in all requests for information pertaining to these projects.

Programmatic technical assistance may be obtained by calling Norm Fikes

in the Division of HIV/AIDS Prevention, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), Mail Stop E–58, Atlanta, GA 30333, telephone (404) 639–8317. (Technical assistance may also be obtained from your respective State/local health departments.)

Preapplication Workshops will be held in October and November 1996. Prospective applicants are encouraged to attend a workshop in their area. The purpose of these workshops is to assist prospective applicants in understanding CDC application requirements and program priorities. During the workshops, information will be presented on this application guidance, programmatic priorities, HIV prevention community planning, CDC business management requirements, and how to access additional preapplication resources relevant to application development. For additional information concerning workshops in your area, please contact your State or local health department or a project officer in the Division of HIV/AIDS Prevention, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), Mail Stop E–58, Atlanta, GA 30333, telephone (404) 639–8317.

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) 512–1800.

Dated: August 12, 1996.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 96–20897 Filed 8–15–96; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Evaluation of Family Support Programs.

OMB No.: New Request.

Description: This study, conducted under a contract to Abt Associates, Inc., responds to the requirement of Subpart 2, Section 435 of OBRA 1993, which directs the Secretary of Health and Human Services to evaluate the effectiveness of family support programs. The information collected will provide descriptive information about family support programs, including detailed information about program operations and variation among programs, and will address the question of the effectiveness of such programs in achieving their goals. The data collected will complement a previous review of existing evaluations of family support programs, and will provide prospective information on eight programs, including information about the operation of such programs and outcomes for families and children who participate. Information will be collected beginning in Fall, 1996, through interviews with parents, children, and teachers of children who are participants in family support programs. Domains of interest include adult and child strengths, home environment, child development, children's school success, development of children's social responsibility, family resources, family social support networks, adoption of healthy lifestyles, community environment, community resources, and community networks.

Respondents: Individuals or households, not-for-profit institutions.

ANNUAL BURDEN ESTIMATE

Instrument	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours
Family Interview	1,085	3.1	1.0	3,340
Child Interview	845	3.4	25	715
Student Interview	245	2	.25	125
Teacher Questionaire	825	2.8	.17	395

Estimated Total Annual Burden Hours: 4,575.

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: August 12, 1996.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 96–20910 Filed 8–15–96; 8:45 am]

BILLING CODE 4184–01–M

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: July 1996

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for welfare reform and combined welfare reform/Medicaid demonstration projects submitted to the Department of Health and Human Services for the month of July, 1996. It includes both those proposals being considered under the standard waiver process and those being considered under the 30 day process. Federal approval for the proposals has been requested pursuant to section 1115 of the Social Security Act. This notice also lists proposals that were previously submitted and are still pending a decision and projects that have been approved since July 1, 1995. The Health Care Financing Administration is publishing a separate notice for Medicaid only demonstration projects.

Comments: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove new proposals under the standard application process for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project contact the State contact listed for that project.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Aerospace Building, 7th Floor West, Washington DC 20447. Fax: (202) 205–3598; Phone: (202) 401–9220.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the Federal Register (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

On August 16, 1995, the Secretary published a notice in the Federal Register (60 FR 42574) exercising her discretion to request proposals testing welfare reform strategies in five areas. Since such projects can only incorporate provisions included in that announcement, they are not subject to the Federal notice procedures. The Secretary proposed a 30 day approval process for those provisions. As previously noted, this notice lists all new or pending welfare reform demonstration proposals under section 1115. Where possible, we have identified the proposals being considered under the 30 day process. However, the Secretary reserves the right to exercise her discretion to consider any proposal under the 30 day process if it meets the criteria in the five specified areas and the State requests it or concurs.

II. Listing of New and Pending Proposals for the Month of July, 1996

As part of our procedures, we are publishing a monthly notice in the Federal Register of all new and pending proposals. This notice contains proposals for the month of July, 1996.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend Work Pays Demonstration Project by adding provisions to: reduce benefit levels by 10% (but retaining the need level); reduce benefits an additional 15% after 6 months on assistance for cases with an able-bodied adult; time-limit assistance to able-bodied adults to 24 months, and not increase benefits for children conceived while receiving AFDC.

Date Received: 3/14/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Glen Brooks, (916) 657–3291.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend the Work Pays Demonstration Project by adding provisions to not increasing AFDC benefits to families for additional children conceived while receiving AFDC.

Date Received: 11/9/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657–2367.

Project Title: California—Assistance Payments Demonstration Project/ California Work Pays Demonstration Project (Amendment).

Description: Would amend the Assistance Payments Demonstration Project/California Work Pays Demonstration Project by adding provisions to California to allow two additional AFDC benefit reductions: (1) Reduce the Maximum Aid Payment (MAP) by 4.9 percent across-the-board statewide; and (2) divide California counties into two regions based on housing costs, and reduce both the Need Standard and the MAP in the region with the lower costs. In addition, the State is requesting blanket authority for future reductions in AFDC payment levels in conjunction with welfare reform state law changes.

Date Received: 3/13/96.

Type: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657–2367.

Project Title: California—Assistance Payments Demonstration Project/ California Work Pays Demonstration Project (Amendment).

Description: Would amend the Assistance Payments Demonstration Project/California Work Pays Demonstration Project by adding provisions to allow one additional provision: income of a senior parent living in the same household with a minor parent with a dependent child will not be deemed to the minor parent's child.

Date Received: 3/13/96.

Type: AFDC.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657–2367.

Project Title: Georgia—Jobs First Project.

Description: In ten pilot counties, would replace AFDC payment with paid employment; extend transitional Medicaid to 24 months; eliminate 100 hour employment rule for eligibility determination in AFDC-UP cases.

Date Received: 7/5/94.

Type: AFDC.

Current Status: Pending (not previously published).

Contact Person: Nancy Meszaros, (404) 657–3608.

Project Title: Georgia—Fraud Detection Project.

Description: Would seek to reduce the incidence of fraud in the AFDC and Food Stamps programs by imposing stronger penalties on individuals convicted of committing such fraud. Georgia proposes to change the fraud penalty to one year for the first violation and permanently for the second violation.

Date Received: 7/1/96.

Type: AFDC.

Current Status: Pending.

Contact Person: Betty Williams-Kirby, (404) 657–3604.

Project Title: Hawaii—Pursuit Of New Opportunities (PONO).

Description: Would, limit benefits to 60 months in a lifetime for all households except those exempt from work requirements; for all non-exempt households, progressively reduce the grant amount, by 20% after 2 months, then in annual stages to 50% in the fifth year of eligibility; exclude the income of dependent, minor student recipients from the 185% Gross Income Test; require all non-high school graduate or non-GED certified minor parent heads of households to participate in educational activities; use a Benefit Reduction Rate formula to allow participants to offset progressive grant reductions by keeping a larger portion of any earned income; eliminate all of AFDC-UP categorical requirements; strengthen JOBS participation requirements by eliminating certain exemptions such as, remoteness due to excessive travel time, current work activity, the non-principal earner in a two parent household, or full-time VISTA participants, etc.; allow families to retain up to $5,000 in resources; disregard one motor vehicle, regardless of equity value, needed for self-sufficiency purposes; delete the $50

child support pass-through; disregard all student loans, grants and scholarships as income.

Date Received: 05/07/96.

Type: AFDC.

Current Status: Pending.

Contact Person: Kristine Foster, (808) 586–5729.

Project Title: Indiana—Impacting Families Welfare Reform Demonstration—Amendments.

Description: Statewide, proposes expansions and amendments to current demonstration to impose a lifetime 24-month limit on cash assistance and categorical Medicaid eligibility (12 months for resident alien); allow 1 month AFDC credit (to a maximum of 24 at any one time) for each 6 consecutive months full-time employment; count each month of AFDC receipt from another state within the previous 3 years as 1 month against the lifetime limit; restrict permissible ''specified relatives'' for AFDC children and minor parents; extend AFDC, Medicaid, and food stamp fraud disqualification penalties; establish 3 unexcused absences per year as the statewide definition of unacceptable school attendance; provide a voucher equal to 50% of assistance amount for family cap child for goods and services related to child care; divert AFDC grants to subsidize child care costs; establish an option for an employed AFDC recipient to receive guaranteed child care or an AFDC payment equal to the family's benefit before employment; require a child's mother to establish paternity as a condition of eligibility for the child and the caretaker; establish additional conditions of eligibility for AFDC; impose penalties for illegal drug use; base CWEP hours on the combined value of AFDC and Medicaid assistance; make JOBS volunteers subject to the same sanctions as mandatory participants; continue eligibility for AFDC recipients until countable income reaches 100% of the federal poverty guidelines; expand voluntary quit definition and penalties; impose income limits on transitional Medicaid and child care and limit each to 12 months in a person's lifetime; with some exceptions, deny Medicaid under all coverage provisions to those determined ineligible as a result of AFDC welfare reform provisions; restrict Medicaid payments made to employees with employer's health care benefits to the lesser of the employee's insurance premium or the amount the state would otherwise pay; and require minor parents to live with a legally responsible adult and count the income and resources of non-parent adults. Additional provisions: Food Stamp recipients could be required to participate CWEP and job search; increase AFDC and Food Stamp penalties for non-compliance with CWEP and job search; require cooperation with child support as condition of eligibility for Food Stamps.

Date Received: 12/14/95; Amendment received 2/6/96.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: James H. Hmurovich, (317) 232–4704.

Project Title: Kansas—Actively Creating Tomorrow for Families Demonstration.

Description: Amended pending demonstration to provide that the demonstration would: replace $30 and ⅓ income disregard with continuous 40% disregard; disregard lump sum income, income and resources of children in school and interest income; count income and resources of adults, and at State option children, who receive SSI; exempt one vehicle without regard for equity value; eliminate 100-hour rule and work history requirements for UP cases; expand AFDC eligibility to pregnant women in 1st and 2nd trimesters; eliminate eight week job search limitation; allow alcohol and drug screening and treatment as a JOBS activity; eliminate the 20-hour work requirement limit for parents with children under 6; delay the effective date of changes in household composition; make work requirements in the AFDC and Food Stamp programs more uniform; and increase sanctions for not cooperating with child support enforcement activities and violations of employment and JOBS requirements.

Date Received: 7/26/94; amendment received 4/30/96.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Diane Dystra, (913) 296–3028.

Project Title: Maryland.

Description: Statewide, would expand, with some modifications, previously approved Family Investment Program (FIP) pilot county provisions to be statewide and introduce new provisions: Replace the current $90 and $30-and-one-third exclusions with a flat 20% earned income deduction, 50% for self-employed earned income; limit the child care disregard to $175 in all cases; allow case managers to set AFDC certification periods up to 1 year and require eligibility to be re-established before the end of each certification period; modify JOBS exemption requirements; allow $2,000 in countable resources and exclude one vehicle per household, life insurance, and certain real property; count stepparent income only if it is more than 50% of the poverty level; allow non-custodial parents and stepparents to participate in JOBS; provide welfare avoidance grants of up to 3 months benefit amount (up to 12 months in special circumstances); allow IV–A child care funds in lieu of AFDC for families diverted from cash assistance; impose immediate full-family sanctions for fraud and for failure to cooperate with JOBS or child support enforcement requirements; reduce the adverse notification period to 5 days; eliminate the $50 child support pass-through; allow only 1 assistance unit per family or payee; eliminate deprivation as an eligibility factor; change treatment of lump sums; eliminate JOBS assessment and employability plans; and modify JOBS program requirements.

Date Received: 4/26/96.

Type: AFDC.

Current Status: Pending.

Contact Person: Kathy Cook, (410) 767–7055.

Project Title: To Strengthen Michigan Families (Amendments).

Description: Statewide, would require attendance at a joint orientation held by the Michigan Jobs Commission and the Family Independence Agency for all adult AFDC, Refugee Cash Assistance (RCA), and food stamp applicants and recipients as a condition of eligibility; during the first 2 months of eligibility for benefits, remove full family's AFDC, RCA, and food stamp benefits for non-compliance with JOBS or Food Stamp Program (FSP) employment and training (E&T) requirements, for a minimum of one month; after the first two months of eligibility, reduce grant by 25 percent for noncompliance with work requirements and after 4 months of noncompliance close the case for a minimum of one month or until compliance; after 4 months non-compliance with child support enforcement requirements close the case until compliance; increase the asset limit to $3,000, count only liquid assets, and treat all lump sums as liquid assets rather than income for AFDC and FSP; modify redetermination requirements for AFDC and FSP; deny AFDC benefits to persons who have entered the State for employment purposes but do not intend to remain in Michigan; provide for the immediate effect of negative actions, allow specific case changes to be reflected in the month following the month of change, and create an agency overpayment standard for recovery purposes of $1,000 for AFDC and FSP; modify existing AFDC assistance unit

composition rules to include stepparents, stepsiblings, spouses and certain children age 18–19, and to exclude non-parent caretakers when the parent (except a minor parent) is in the home; allow a dependent child to live with an unrelated caretaker; eliminate the 185 percent of need test and apply the same earned income disregards to applicants and recipients; budget income of mandatory ineligibles; replace the dependent care disregard with vendor payments based on the Child Day Care Services program eligibility requirements; replace the 75th percentile rule for child care costs with reimbursement rates that represent reasonable child care market rates; eliminate deprivation as an eligibility criterion; modify QC review requirements; provide AFDC benefits to a pregnant woman starting at any point in the pregnancy rather than just the last trimester; use 100 percent title IV–A funds to provide advance EITC payments to eligible, employed AFDC recipients; budget the actual sponsor's contribution to a sponsored alien when determining the client's AFDC and food stamp eligibility and treat contribution as unearned income of the sponsored alien when budgeting against the needs of the group; extend AFDC eligibility only to U.S. citizens, legal permanent resident aliens, and certain other legal entrants; apply additional income exclusions for AFDC and FSP for a variety of income types, including inconsequential income, donations based on need, dependent child earnings, adoption subsidies, child support refunds, training payments, etc.; require reporting of gross income changes for AFDC and FSP only if $100 or more; define dependent child as a child who is unemancipated according to state law; provide law enforcement officers with the address of an AFDC or food stamps recipient who is a fugitive felon or who the law enforcement office believes has a fugitive felon living in the home; deny assistance to any AFDC or food stamp applicant or recipient who is identified as a fugitive felon; pay current monthly child support collections directly to the family and budget them against the AFDC grant, after the $50 disregard is applied; revise child support distribution cycle; extend transitional child care to 24 months and eliminate the requirement that a family receive AFDC in at least 3 of the 6 months immediately preceding the first month of AFDC ineligibility; place title IV–E funding (except for adoption subsidy payments) in a block grant; use JOBS funds to pay for transportation and other employment-related expenses; assign an individual to CWEP for 20 hours per week irrespective of the family's AFDC benefit level or receipt of child support; count all mandatory and optional JOBS components toward the AFDC–UP participation rate; expand the JOBS target population; waive employment and training exemptions for RCA participants to match the AFDC waiver granted to Michigan in October 1994; adopt the current AFDC waiver proposal regarding earned income disregards for RCA; limit the groups eligible for Medicaid; provide 12 months transitional Medicaid for AFDC cases that close due to child support payments and eliminate the requirement that a family receive AFDC in at least 3 or the 6 months before ineligibility; allow an age test for children's Medicaid eligibility rather than a birth date test; limit automatic Medicaid coverage to newborns of Medicaid recipients; include blind individuals in the definition of disability for Medicaid eligibility; determine a family's Medicaid eligibility recognizing that it operates as a single economic unit and use income and resource standards based on family composition rather than separate standards for individual members; define countable income and distinguish income from resources for Medicaid to be consistent with AFDC proposal; eliminate the burial fund and burial space exclusions for Medicaid; provide for long-term care through a combination of private insurance and Medicaid; modify Medicaid policy regarding trusts; allow State agency's disability or blindness determination for non-cash Medicaid clients to be final; eliminate advance notice requirement for Medicaid negative actions; and allow Medicaid Buy-In for persons with no employer-based coverage whose transitional Medicaid coverage ends.

Date Received: 6/27/96.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Dan Cleary, (517) 335–0015.

Project Title: Minnesota—Work First Program.

Description: In pilot counties, would provide vendor payments in lieu of regular AFDC benefits for applicants' rent and utilities for up to six months; sanction for at least six months job-ready applicants who fail to comply with job search and other applicants who fail to participate in JOBS orientation; and require part-time CWEP of unemployed, nonexempt job-ready individuals who fail to participate in job search for 32 hours/week or who after eight weeks of job search are not employed for at least 32 hours/week or not self-employed with a net income equal to the family's AFDC benefit. Individuals who refuse to participate in CWEP or are terminated from a CWEP job would incur a whole family sanction and become ineligible for AFDC for at least six months. Non-job-ready participants would be assigned appropriate education and training. Post-placement services would be provided for up to 180 days and Transitional Child Care and Medicaid without regard to AFDC receipt in 3 of the 6 months preceding ineligibility.

Date Received: 4/4/96.

Type: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Gus Avenido, (612) 296–1884.

Project Title: Minnesota—AFDC Barrier Removal Project.

Description: Statewide, would expand AFDC-UP eligibility; treat minor parents living with a caretaker parent on AFDC as a separate filing unit and disregard the caretaker parents' earned income up to 200 percent of the federal poverty guideline; disregard earned income of dependent children who are at least half-time students as well as all their savings deposited into an individual development account; increase the auto-equity limit to $4,500; cease recovering overpayments (once every two years per case) due to an individual's new employment resulting in ineligibility; and determine AFDC benefit amount for a family in which all members have resided in the State for less than 12 months based on the payment standard of the state of immediate prior residence if less than Minnesota's.

Minnesota has amended this application to include a proposed provision in which families who have resided in the State of Minnesota for less than 30 days would not be eligible for AFDC with the following exceptions: (1) Either the child or caretaker relative was born in Minnesota; (2) either the child or caretaker relative has resided in the State for 365 consecutive days in the past; (3) either the child or the caretaker relative went to Minnesota to join a close relative who has resided in the State for at least one year; or (4) the caretaker relative went to Minnesota to accept a bona fide offer of employment for which he or she was eligible. For purposes of the exemption close relative is defined as a parent, grandparent, brother, sister, spouse, or child. The State would allow county agencies to waive the 30 day requirement in cases of emergency or where unusual hardship would result from denial of benefits.

Date Received: 4/4/96; amendment received 5/28/96.

Type: AFDC.
Current Status: Pending.
Contact Person: Ann Sessoms, (612) 296–0978.

Project Title: New Mexico:Work First.
Description: Statewide would emphasize work by requiring job search prior to case approval; expand mandatory JOBS participation by exempting caretakers (1) over 65 years or (2) with children up to 1 year old; expand Transitional Child Care eligibility by eliminating the three-in-six rule and providing it for up to 36 months after ineligibility for AFDC due to earnings; provide special one-time payments needed by recipient to accept or retain employment; eliminate separate JOBS participation rates for AFDC-UP cases; change AFDC earned income disregard to 20 percent plus $134 per month standard deduction; increase resource limits to $1,500 for cash and exclude one vehicle regardless of value. Other provisions to encourage self sufficiency and personal responsibility are increased progressive sanctions for JOBS and paternity establishment cooperation, resulting in case closure for successive non-compliance; requiring minor parents to live in a supervised setting; eliminate the parental deprivation provisions; expand two-parent eligibility by eliminating the 100-hour rule and the work history requirement; make AFDC a closed-ended program which requires recipients to recertify their eligibility on a periodic basis, or have their case closed with proration of both food stamps and AFDC from date of application; eliminate reconciliation requirement so that over and under payments would not be reported or collected; and require AFDC and food stamp income change reporting and processing only at the time of periodic review and re-certification.
Date Received: 8/6/95.
Title: Combined AFDC/Medicaid.
Current Status: New.
Contact Person: Roberto Salazar (502) 827–7280.

Project Title: New York—Learnfare Program.
Description: Would phase in statewide a provision that would require AFDC children in grades 1 through 6 to attend school regularly by mandating a sanction of removal of the child's needs from the budget group for three months in those cases, where after counseling, the child has 5 or more unexcused absences in a quarter. Benefits for parents will be terminated, for failure without good cause, to sign the release form for educational records.
Date Received: 5/31/96.
Type: AFDC.
Current Status: Pending.
Contact Person: Jeff Gaskell, (518) 486–3415.

Project Title: New York—Intentional Program Violation Demonstration.
Description: Statewide would change the sanction for Intentional Program Violations making the period of ineligibility of the person committing the violation dependant on both the number of offenses and the amount of the overpayment incurred as a result of the violation.
Date Received: 5/31/96.
Type: AFDC.
Current Status: Pending.
Contact Person: Jeff Gaskell, (518) 486–3415.

Project Title: Oklahoma—Welfare Self-Sufficiency Initiative.
Description: In four pilots conducted in five counties each, would (1) extend transitional child care to up to 24 months; (2) require that all children through age 18 be immunized and require that responsible adults with preschool age children participate in parent education or enroll the children in Head Start or other preschool program; (3) not increase AFDC benefits after birth of additional children, but provide voucher payment for the increment of cash benefits that would have been received until the child is two years old; and (4) pay lesser of AFDC benefit or previous state of residence or Oklahoma's for 12 months for new residents.
Date Received: 10/27/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Raymond Haddock, (405) 521–3076.

Project Title: Pennsylvania—School Attendance Improvement Program.
Description: In 7 sites, would require school attendance as condition of eligibility.
Date Received: 9/12/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: Pennsylvania—Savings for Education Program.
Description: Statewide, would exempt as resources college savings bonds and funds in savings accounts earmarked for vocational or secondary education and disregard interest income earned from such accounts.
Date Received: 12/29/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: Pennsylvania—Common Sense Welfare to Work Program.
Description: Statewide, would impose 24 month time limit on receipt of AFDC after which individuals would be required to work or participate in subsidized employment, work experience, on-the-job training, community service or workfare for at least 20 hours per week; require adult applicants and recipients, pregnant/parenting minors, and minors without high school diplomas or equivalent who are not attending school to sign an Agreement of Mutual Responsibility (AMR) as a condition of eligibility for AFDC and impose a $40 per month penalty for failure to comply with the agreements in the AMR; impose sanctions for failing to comply with employment-related AMR provisions which would be progressive and could lead to permanent disqualification for the adult in the first 24 months and for the family after that period; provide the lesser of the Pennsylvania benefit or the former state benefit during the first 12 months of residency; deny AFDC to an individual serving a disqualification for either Food Stamp program or PA's General Assistance program fraud or who has been sentenced for a criminal offense but has not satisfied the penalty imposed by a court and to exchange information with the State Police and Board of Probation and Parole to identify such persons; deny AFDC and Medicaid to those who fail to appear, as a defendant, at a criminal court proceeding; require nonexempt applicants and recipients who are not employed an average of 20 hours/week to participate in an eight-week job search period and additional activities if employment is not found; after 24 months of AFDC receipt, require work or participate in subsidized employment, work experience, on-the-job training, community service or workfare for an average of 20 hours/week as a condition of receipt of cash assistance; limit exemptions from JOBS and work requirements; eliminate priority for volunteers under JOBS, limitations on periods of job search, and requirement to consider preferences of participant to the maximum extent possible in employability plan; eliminate workers' compensation coverage under community service activity; allow the filling of established unfilled vacancies under the Work Supplementation component, allow participation for 12 months, and cash out food stamp benefits for Work Supplementation participants; eliminate gross income test (i.e., 185 percent of need standard); disregard 50 percent of earned income without time limit; exclude one vehicle for AFDC and food

stamps; disregard all earned income of dependent children for AFDC and food stamps, and increase age limit for dependent children to 21 years of age; require recipients under 18 to attend high school or GED; extend Transitional Child Care (TCC) beyond 12 months, establish co-payments as a percentage of cost of care, expand eligibility to include cases which have received AFDC for one month and which close for any reason other than sanction if the individual is employed; extend transitional Medicaid to 12 months for cases which close as a result of child support collections; require cooperation with Child Support Enforcement for AFDC recipients and Medicaid-only applicants and recipients prior to authorization of assistance for applicants; redefine what constitutes noncooperation for child support; allow IV-D workers to determine cooperation rather than IV-A workers; provide AFDC to needy child who resides with non-relative if in the best interest of the child; expand two-parent eligibility by eliminating 100-hour definition of employment, 30-day waiting period, and work history requirements; expand eligibility to pregnant women in the first trimester of pregnancy; for AFDC and Medicaid, exclude value of life insurance and nonresident property, and in-kind income; for AFDC, Medicaid, and food stamps revise lump sum policy and exclude student financial aid; for AFDC and food stamps change budgeting methods and recovery of over/underpayments.

Date Received: 7/31/96.

Type: Combined AFDC/Medicaid.

Current Status: New.

Contact Person: Ed Zogby, (717) 772–7829.

Project Title: Utah—Single Parent Employment Demonstration (Amendments).

Description: Would amend the current Single Parent Employment Demonstration, establishing a 36 month lifetime limit on a family's receipt of AFDC, with exceptions; and count toward the time limit months of AFDC receipt in another state.

Date Received: July 2, 1996.

Type: AFDC.

Current Status: Pending.

Contact Person: Bill Biggs, (801) 538–4337.

Project Title: Virginia—Virginia Independence Program (Amendments).

Description: Would amend the Virginia Independence Program to require AFDC applicants and recipients (including specified relatives other than a parent) to provide information sufficient to identify the non-custodial parent. Failure to provide the required information would result in sanctions. In any case where an applicant/recipient does not claim good cause or good cause does not exist, an affidavit from the custodial parent attesting to the lack of information about the non-custodial parent/putative father, in and of itself, would not meet the definition of cooperation. If the first two genetic tests exclude the named putative fathers, the State will impose a sanction until paternity is established. If a relative other than the parent maintains the he does not know the identity of the child's parent and has no way to help identify the parent, the sanction would not be imposed.

Date Received: 5/24/96.

Type: AFDC.

Current Status: Pending (amended provisions not previously published) .

Contact Person: Barbara Cotter, (804) 692–1811.

Project Title: West Virginia—West Virginia Works.

Description: Statewide, would extend transitional child care to 24 months for families who are employed and otherwise eligible. In selected counties, provide a one-time diversion payment in lieu of AFDC; require development of a personal responsibility contract for AFDC applicants and recipients, and non-public assistance cases eligible for Food Stamps, as a condition of eligibility which will outline the assessed needs of the participant; require at least 20 hours of work participation per week by non-exempt parents over age 20, and require parents under age 20 to remain in school until they graduate or obtain a GED, with limited exemptions; work requirements for parents over 20 without a high school diploma or GED would not have to be coupled with education; require child immunization, school attendance and satisfactory progress and community service activities; time limit AFDC benefits based on a time frame for achieving goals not to exceed a 60 month lifetime limit on cash assistance for non-exempt families, with some extensions; impose fiscal sanctions if the adults fail to meet the terms of their personal responsibility contract without good cause or through fraud equal to a one third reduction in AFDC benefits for 3 months for the first sanction, a two thirds reduction in AFDC benefits for 3 months for the second sanction, and case closure until participation occurs for the third sanction; eliminate the JOBS conciliation requirement; increase by 10% the AFDC monthly cash benefit to families where both the husband and wife are living together and caring for her/his children; reduce to 75% the AFDC monthly cash benefit to families where there is another adult present in the household but not eligible for inclusion in the AFDC calculation; eliminate many JOBS exemptions, and make most remaining exemptions temporary, including allowing only a one-time exemption for children under 2 years of age (only 6 month exemptions will be provided for additional children); require minor parents to live at home or in an adult-supervised setting, attend and maintain satisfactory progress in an educational activity to complete high school, GED or vocational training; increase the allowable asset level to $5,000 and exempt one vehicle regardless of value; expand eligibility for transitional child care; allow a family to be eligible for transitional child care for up to 30 days for job search purposes, if they lose a job with good cause; for AFDC/UP, eliminate the requirement that the unemployed parent have a recent attachment to the labor force, and not work more than 100 hours per month; count all income received by any member of the family which can be used at the discretion of the household, including the first $50 of child support and SSI payments; increase earned income disregards to enable families to retain benefits up to 50% of the Federal poverty level; eliminate the 8 week limitation on job search activities; allow the State to extend transitional medical coverage to 24 months; and transfer the cash value of Food Stamp benefits for AFDC recipients to a wage pool for a voluntary subsidized employment activity.

Date Received: 7/1/96.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Sue Buster, (304) 558–3186.

Project Title: Wisconsin—Work Not Welfare and Pay for Performance Projects (Amendments).

Description: Statewide, would lower the JOBS exemption from a parent whose youngest child is one year old or younger to a parent whose youngest child is 12 weeks old or younger; require up to 40 hours a week in CWEP regardless of the amount of the family's AFDC grant and require participation in substance abuse and mental health treatment, as appropriate; include intentional failure or voluntary quit in a work component as a failure to cooperate with JOBS and apply JOBS program sanctions to the entire family; and limit AFDC receipt to 60 months in a lifetime, with exemptions and case-by-case extensions. The state would extend

child care to families earning up to 165 percent of poverty with graduated co-payments based on the cost of care, and change IV-A cases headed by a non-needy non-legally responsible relative to IV-E cases and provide cases headed by an adult SSI recipient a special child-only grant supplement in lieu of the regular AFDC payment for the child. Both types of cases would be exempt from the time limit and work requirements. Further, the state would require minor parents to live with a parent or in an adult-supervised setting. Also the state would establish a competitive process for selection of contractors to administer county programs.

Date Received: 5/8/96; Amendments received 5/17/96.

Type: AFDC.

Current Status: Pending.

Contact Person: Jean Sheil, (608) 266–0613.

Project Title: Wisconsin—Wisconsin Works (W2).

Description: Statewide, would establish performance standards for the administration of Wisconsin Works (W2) along with a competitive process for selection of contractors to administer county programs. The State would provide—but not guarantee—work positions, child care and health care coverage to families, (as defined by the State,) whose gross income does not exceed 115 percent of the federal poverty level (FPL), whose resources do not exceed $2,500 (excluding a homestead), and whose total auto equity assets do not exceed $10,000, with a 60-day State residency requirement for eligibility. The State would count all earned and unearned income, including child support (which will be paid directly to the custodial parent), except for EITC when determining W2 eligibility. The State would require participation in substance abuse and mental health treatment, as appropriate; exempt from a work requirement parents with a child less than 12 weeks old; and provide for an appeal process for W2 eligibility and benefit decisions. The State would review an individual W2 agency's financial eligibility decision only if the applicant petitions the State within 15 days of the decision and would not pay benefits pending a decision. Applicants would be required to search for unsubsidized employment during eligibility determination, and would be denied eligibility if they refused a bona fide offer of employment in the 180 days prior to application. The State would automatically refer all W2 participants to child support for services. The State would require minor parents to live with a parent or in an adult-supervised setting to receive W2 non-employment/non-cash benefits, e.g., financial planning assistance, case management; but minor parents would not be eligible for W2 employment/cash benefits. Teen children must attend school regularly. The state would provide children whose parents are SSI recipients a payment of $77.

The W2 payment amount would be determined according to job placement: Unsubsidized job, trial job (including up to $300 per month wage subsidy to employer), community service job (benefit of $555 per month), and transitional placement (benefit of $518 per month). Community service jobs would require 30 hours per week of work plus 10 hours per week of education and training; transitional placement jobs would require 28 hours per week of work plus 12 hours of education and training. In addition CWEP participation would be increased up to 40 hours per week. The State would sanction individuals $4.25 per each hour of non-participation in work requirements. In addition sanctions would be imposed upon the entire family for refusal to participate, without good cause, in a W2 employment position. Three refusals to participate in any W2 employment category would result in permanent ineligibility for that category. To assist families with one-time expenses, the State would provide Job Access Loans for employment support needs, e.g., car repair, uniforms, etc.; and would extend child care to families earning up to 165 percent of poverty with graduated co-payments based on family income and the category of care used. Child care would only be provided to children under 13.

The State would limit participation to 24 months in any one W2 employment position and would limit lifetime eligibility for benefits to 60 months, with extensions on a case-by-case basis; the 60-month limit would apply to certain JOBS participants beginning July 1, 1996. The State would change AFDC cases headed by a non-legally responsible relative to a IV–E case; provide job search assistance and case management to non-custodial parents with a child support order; impose stricter sanctions for non-cooperation with child support; and permanently deny W2 employment after three Intentional Program Violations. Benefit overpayments will be recouped for intentional violations at a rate set by the State. Corrective payments would not be made for underpayments. Eligibility for Emergency Assistance for certain homeless persons would be limited to once in a 36-month period unless the homelessness was caused by domestic abuse, and the State would allow displacement of regular employees by W2 participants in certain cases: i.e., partial displacement (reduction in hours); impairment of existing contracts; infringement upon promotional opportunities; and filling of any established unfilled position.

The State would eliminate transitional Medicaid and expand Medicaid (i.e., the W2 Health Plan) to families with gross income up to 165 of FPL, who would then remain eligible until their income increases to 200 percent of FPL; and would incorporate a mandatory HMO enrollment or primary provider program for W2 participants. Participants would be required to pay a share of W2 Health Plan premiums according to a sliding scale, and the State would impose stricter Medicaid sanctions for non-cooperation with child support. The State would merge the Food Stamps E&T program with the W2 Work Program; modify the Food Stamps work program exemptions; eliminate the Food Stamps gross income test; require nutrition education for Food Stamps recipients; and cash out food stamps.

Date Received: 5/29/96.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Jean Sheil, (608) 266–0613.

Project Title: Wyoming—New Opportunities and New Responsibilities—Phase II (Amendments).

Description: Proposes expansion of demonstration provisions currently limited to a pilot site statewide and further amendments to the current demonstration to establish a 5-year lifetime limit on cash assistance for adults, beginning with time on AFDC from July 1, 1987 (with limited exemptions and extensions); pursue child support from the absent minor parent's parents; freeze benefits based on household size 10 months after initial qualification; replace existing earnings disregards for recipients (except no disregard will apply for recipients disqualified due to fraud, education time limits, illegal alien) with a maximum earned income disregard of $200 for recipients; expand pay-for-performance from AFDC–UP to the regular AFDC population, with limited exemptions, where failure to perform any item in the self-sufficiency plan would cause disqualification of the parent for AFDC, Food Stamps, and Medicaid; reduce the grant by $40 when a nonexempt child fails to meet the performance requirements; require able-

bodied applicants and recipients to do job search for up to 16 weeks unless otherwise exempted; terminate the case when there is loss of contact with the client for 1 month after nonpayment for failure to meet the performance requirements; exclude the earned income and resources of a dependent child who is a full-time high school student; allow payment of the supplied shelter grant for households with a SSI recipient, unmarried minor parents, or recipients disqualified for other reasons (fraud, education time limits, illegal aliens); exclude one licensed vehicle with a fair market value of less than $12,000; increase the resource limit to $2,500 for those in compliance with, or exempted from, the performance requirements; and exclude veteran's service connected disability compensation if the annual income is less than the poverty level.

Date Received: 5/13/96.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Marianne Lee, (307) 777–6849.

III. Listing of Approved Proposals Since July 1, 1995

Project Title: Tennessee—Families First.

Contact Person: Glenda Shearon, (615) 313–5652.

Project Title: Utah—Single-Parent Employment Demonstration (Amendments).

Contact Person: Bill Biggs, (801) 538–4337.

IV. Requests for Copies of a Proposal

Requests for copies of an AFDC or combined AFDC/Medicaid proposal should be directed to the Administration for Children and Families (ACF) at the address listed above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal.

(Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research)

Dated: August 12, 1996.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 96–20938 Filed 8–15–96; 8:45am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 93F–0269]

Lonza, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 3B4387), proposing that the food additive regulations be amended to provide for the safe use of didecyldimethylammonium chloride as a preservative on wooden articles intended to contact food.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3095.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of August 12, 1993 (58 FR 42977), FDA announced that a food additive petition (FAP 3B4387) had been filed on behalf of Lonza, Inc., c/o Delta Analytical Corp., 7910 Woodmont Ave., suite 1000, Bethesda, MD 20814 (currently c/o Lewis & Harrison, 122 C St. NW., suite 740, Washington, DC 20001).

The petition proposed to amend the food additive regulations in § 178.3800 *Preservatives for wood* (21 CFR 178.3800) to provide for the safe use of didecyldimethylammonium chloride as a preservative on wooden articles intended to contact food. Lonza, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: July 19, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–20964 Filed 8–15–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket Nos. 80N–0012 and 84N–0067; DESI 10826]

Drug Efficacy Study Implementation; Certain Topical Anti-Infective Drug Products; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of pertinent parts of the new drug applications (NDA's) for cream and ointment products containing neomycin sulfate and gramicidin in addition to nystatin and triamcinolone acetonide. There is a lack of substantial evidence that the products as originally formulated are effective in the treatment of various dermatoses and as anti-infective agents for which they are labeled. Both products have been reformulated to eliminate neomycin sulfate and gramicidin, and FDA has approved the reformulated products as safe and effective.

EFECTIVE DATE: September 16, 1996.

ADDRESSES: Requests for guidance on the applicability of this notice to a specific product should be identified with the Drug Efficacy Study Implementation (DESI) number 10826 and directed to the Division of Prescription Drug Compliance and Surveillance (HFD–330), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for a hearing published in the Federal Register of September 25, 1981 (46 FR 47408), the Director of the Bureau of Drugs (now the Center for Drug Evaluation and Research) proposed to withdraw approval of NDA's for certain topical anti-infective drug products. The proposal was based on the lack of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) and 21 CFR 314.126 (previously 21 CFR 314.111(a)(5)). In response to that notice, requests for a hearing were filed for the following NDA's:

1. NDA's 60–572 and 60–576; Mycolog Ointment and Cream, respectively, both containing nystatin (100,000 units per gram (g)), triamcinolone acetonide (1.0 milligram (mg)/g), neomycin sulfate (2.5 mg/g), and gramicidin (0.25 mg/g); now held by Apothecon, a division of Bristol-Myers Squibb, P.O. Box 4500, Princeton, NJ 08543–4500.

2. NDA's 61–954 and 62–045; Myco Triacet Cream and Ointment, respectively, containing nystatin, neomycin sulfate, gramicidin, and triamcinolone acetonide; held by Lemmon Co., 650 Cathill Rd., Sellersville, PA 18960.

3. NDA's 62–135 and 62–136; Nystatin-Neomycin Sulfate-Gramicidin-Triamcinolone Acetonide Ointment and Cream, respectively; held by E. Fougera and Co. (formerly Byk Pharmaceutical Group), a division of Altana, Inc., 60 Baylis Rd., Melville, NY 11747.

4. NDA's 62–186 and 62–280; Nystatin-Neomycin Sulfate-Gramicidin-Triamcinolone Acetonide Cream and Ointment, respectively; held by Clay-

Park Labs, Inc. (formerly Clay Park Laboratories), 1700 Bathgate Ave., Bathgate Industrial Park, Bronx, NY 10457.

NMC Laboratories, 70–36 83d St., Glendale, NY 11385, filed a hearing request without reference to a particular product.

In a document published in the Federal Register of April 17, 1985 (50 FR 15227), FDA announced conditions for approval and marketing of reformulations of both the cream and ointment products that omit neomycin sulfate and gramicidin. FDA subsequently approved supplemental NDA's providing for reformulation of all the products listed above.

The drug manufacturers listed above have since withdrawn their hearing requests. Accordingly, FDA is now withdrawing approval of those parts of the NDA's listed above pertaining to the products containing neomycin sulfate and gramicidin.

Antibiotic drug monographs for nystatin-neomycin sulfate-gramicidin-triamcinolone acetonide ointment and cream products are cited in 21 CFR 449.550c and 449.550e, respectively. These monographs will be modified in a future Federal Register notice, if necessary. In accord with the plans announced by President Clinton on March 4, 1995, regarding reform of the Federal regulatory system as part of the Administration's ''Reinventing Government'' initiative, the agency has initiated the consideration of legislation that would eliminate the need for publication of antibiotic monographs.

Any drug product that is identical, related, or similar to the products listed above and is not the subject of an approved NDA is covered by the NDA's reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Prescription Drug Compliance and Surveillance (address above).

The Director of the Center for Drug Evaluation and Research, under section 505(e) of the act and under authority delegated to her (21 CFR 5.82), finds, on the basis of new information before her with respect to the cream and ointment products containing neomycin sulfate and gramicidin, evaluated together with the evidence available to her when the applications were approved, that there is a lack of substantial evidence that the products will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA 60–576 and NDA 60–572 that provide for Mycolog Cream and Ointment, respectively; those parts of NDA 61–954 and NDA 62–045 that provide for Myco Triacet Cream and Ointment, respectively; those parts of NDA 62–135 and NDA 62–136 that provide for the cream and ointment, respectively; and those parts of NDA 62–l86 and NDA 62–280 that provide for the cream and ointment, respectively, containing neomycin sulfate and gramicidin, and all the amendments and supplements for these products, is withdrawn effective September 16, 1996. Shipment in interstate commerce of the products above or any identical, related, or similar product that is not the subject of an approved new drug application will be unlawful as of that effective date.

Dated: June 28, 1996.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 96–20899 Filed 8–15–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 91N–0295]

RIN 0910–AA09

Medical Devices; Methods to Estimate Medical Device Denominator Data; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to gather and exchange information regarding the methods used by the medical device industry to derive estimates of numbers of devices manufactured, distributed, and in current use (collectively referred to as denominator data) for purposes of submitting baseline reports as required in the December 1995 medical device report (MDR) final rule. This workshop is intended to help FDA better understand these methods and therefore to better evaluate and utilize the denominator data.

DATES: The public workshop will be held on September 17, 1996, from 8:30 a.m. to 6 p.m. Submit registration forms by September 10, 1996. Persons wishing to make formal comments at the workshop must submit a request with outline of their presentation on or before September 3, 1996.

ADDRESSES: The public workshop will be held at the Parklawn Building, 5600 Fishers Lane, Conference Rooms D and E, Rockville, MD 20857. A proposed agenda and registration forms can be obtained after August 15, 1996, through the Center for Devices and Radiological Health (CDRH) Facts-on-Demand system. To receive these documents via FAX call the CDRH Facts-on-Demand system at 1–800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number, 1053, followed by the pound sign (#), then follow the remaining voice prompts to complete your request. Submit registration forms and requests to make formal comments to the contact person below. A transcript of the meeting may be available from the DSMA Facts line as of October 4, 1996.

FOR FURTHER INFORMATION CONTACT: Roselie A. Bright, Center for Devices and Radiological Health (HFZ–541), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–0600.

FDA is soliciting speakers from the industry to speak on methods they use to estimate denominator data. Speakers representing these categories of devices are being sought: Single use/disposable, multiple use, and implantables. If you are interested in speaking, please call the contact person as soon as possible. Speakers are asked to limit their presentations to 10–15 minutes. There is no registration fee, but advance registration is required due to space limitations. If you have a disability that affects your attendance at, or participation in, this meeting, please send a letter to the contact person and identify your needs. The availability of appropriate accommodations cannot be assured unless prior written notification is provided.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 11, 1995 (60 FR 63578), the agency published the MDR final rule. On April 11, 1996, (61 FR 16043), FDA announced the effective date of the MDR final rule was extended to July 31, 1996. On July 31, 1996 (61 FR 39868), the agency issued a stay of the effective date for certain provisions of the MDR final rule regarding baseline reporting requirements.

Under the December 11, 1995, final rule, manufacturers are required to submit individual reports of adverse events on a monthly basis, as well as annual baseline reports. Baseline reports are required, under § 803.55 (21 CFR 803.55), to include information specifically identifying a device for which an adverse event has been submitted. Under § 803.55, manufacturers are also required to

submit denominator data for the device identified, which includes the number of devices manufactured and distributed in the last 12 months, an estimate of the number of devices in current use, and a brief description of any methods used to estimate the number of devices distributed and in current use. Based on comments received subsequent to the issuance of the December 11, 1995, final rule, FDA stayed the requirement to submit this denominator data pending further evaluation (61 FR 39868).

During the stay, FDA has two projects planned: (1) A public workshop and (2) a demonstration project. The agency is requesting industry's assistance to accomplish both these projects. In preparation for the demonstration project, CDRH is convening a public workshop to enable the agency to better understand methods used to derive denominator estimates and therefore better evaluate and utilize these data.

For this workshop, CDRH is soliciting speakers from the medical device industry to speak for approximately 10–15 minutes each on methods they use to estimate denominator data. Given that methods may vary by type of device, FDA is interested in hearing from members of the medical industry representing three basic categories of devices: Single use/disposable, multiple use, and implantables. After opening remarks and background presentations by FDA, it is anticipating that the workshop will include a series of presentations by industry members representing these basic device categories in three sessions (one per category) over 1 to 2 days. FDA intends to invite a group of discussants, representing various disciplines (e.g., survey methods, statistics, procurement, marketing, epidemiology), to listen and to respond to the presentations. Several question and answer sessions are also planned for the benefit of attendees.

At the completion of the public workshop and the demonstration project, the agency will either lift the stay of the December 1995 final rule baseline denominator reporting requirements, retain the stay, or issue a new proposed rule to modify these requirements.

Dated: August 12, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–20965 Filed 8–15–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[ORD–090–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: June 1996

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

ACTION: Notice.

SUMMARY: During the month of June, one new proposal for a Medicaid demonstration project was submitted to the Department of Health and Human Services, one proposal was approved and one proposal was withdrawn. No proposals were disapproved during this time period. (This notice can be accessed on the Internet at HTTP://WWW.HCFA.GOV/ORD/ORDHP1.HTML.)

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Susan Anderson, (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the Federal Register (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the Federal Register with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process.

II. Listing of New, Pending, Approved, and Withdrawn Proposals for the Month of June 1996

A. Comprehensive Health Reform Programs

1. New Proposals

The following comprehensive health reform proposal was received during the month of June:

Demonstration Title/State: Community Care Systems—New Hampshire.

Description: The State submitted a revised proposal for ''Community Care Systems.'' This system will provide capitated, managed acute care services and coordination for specialty and support services not included in the health plan service package. The State proposes to implement this program in three phases: Phase 1 will enroll AFDC and AFDC-related children and families; Phase 2 will enroll the elderly population; and Phase 3 will enroll disabled adults and disabled children. The current waiver request is for Phase 1 only.

Date Received: June 5, 1996.

State Contact: Lorrie Lutz, Planning and Policy Development, State of New Hampshire, Department of Health and Human Services, 6 Hazen Drive, Concord, NY 03301–6505, (603) 271–4478.

Federal Project Officer: Cindy Shirk, Health Care Financing Administration, Office of Research and Demonstrations, Office of State Health Reform Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

2. Pending, Approved and Disapproved Proposals

We did not approve or disapprove any proposals during the month of June. The one new proposal submitted in May and now pending is as follows:

Demonstration Title/State: Maryland Medicaid Reform Proposal—Maryland.

Description: A statewide section 1115 demonstration proposal has been developed to: provide a patient-focused system through managed care entities; build on the strengths of the current Maryland health care system; provide comprehensive, prevention-orientated systems of care; hold Managed Care Organizations (MCOs) accountable for high-quality care; and achieve better value and predictability for State expenditures.

Date Received: May 3, 1996.

State Contact: Mary Mussman, M.D., M.P.H., Acting Executive Director, Center for Health Program Development and Management, Social Sciences Building, Room 309A, 5401 Wilkens Avenue, Baltimore, MD 21228–5398, (410)455–6804.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Office of State Health Reform Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Other pending proposals can be found in the Federal Register of January 23, 1996, 61 FR 1769.

3. Withdrawn Proposals

The following proposal was withdrawn June 4, 1996:

Demonstration Title/State: The Granite State Partnership for Access and Affordability in Health Care—New Hampshire.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

No new proposals were received during the month of June.

2. Approved Proposals

The following proposal was approved during the month of June:

Demonstration Title/State: Medicaid Family Planning Services for Women of Childbearing Age—Arkansas.

Description: This State demonstration will provide Medicaid covered family planning services for all women of childbearing age with incomes at or below 133 percent of the Federal Poverty Level.

Date Received: September 13, 1995 (October 2, 1995 date listed in 61 FR 1771 was not correct).

Date Approved: June 18, 1996.

State Contact: Thomas Dalton, Director, Arkansas Department of Human Services, P.O. Box 1437, Little Rock, Arkansas 72203–1437, (501) 682–8650.

Federal Project Officer: Rosemarie Hakim, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Pending and Withdrawn Proposals

We did not disapprove any Other Section 1115 Demonstration Proposals during June nor were any proposals withdrawn during that month. Pending proposals for the month of November 1995 published in the Federal Register on January 23, 1996, 61 FR 1769, and for the months of February and March 1996 published in the Federal Register on May 14, 1996, 61 FR 24318 remain unchanged with the exception of the approved proposal as shown above.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments.)

Dated: July 24, 1996.

Barbara Cooper,

Acting Director, Office of Research and Demonstrations.

[FR Doc. 96–20918 Filed 8–15–96; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contract Persons listed below in advance of the meetings.

Name of Panel: New Therapies for Thalassemia.

Dates of Meeting: September 16, 1996.

Time of Meeting: 10:00 a.m.

Place of Meeting: National Institutes of Health, Rockledge Building II, 6701 Rockledge Drive, Room 10158, Bethesda, Maryland 20892.

Agenda: To develop strategies for implementing clinically-related recommendations from the NHLBI Report on ''Cooley's Anemia: Progress in Biology and Medicine—1995'' as a future initiative.

Contact Person: Alan S. Levine, NHLBI/DBDR, Two Rockledge Center, 6701 Rockledge Drive, Rm. 10158, MSC 7950, Bethesda, Maryland 20892, Bethesda, Maryland, 20892, (301) 435–0050.

Name of Panel: Bone Marrow Transportation in Sickle Cell Anemia.

Dates of Meeting: September 24, 1996.

Time of Meeting: 10:00 a.m.

Place of Meeting: Natcher Building, LL-Room J, 45 Center Drive, Bethesda, Maryland 20892.

Agenda: To review current progress and identify future research initiatives in the use of bone marrow transplantation for the treatment of Sickle Cell Anemia.

Contact Person: Helena Mishoe, NHLBI/DBDR, Two Rockledge Center, 6701 Rockledge Drive, Rm. 10156, MSC 7950, Bethesda, Maryland 20892, Bethesda, Maryland 20892, (301) 435–0050.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 9, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20941 Filed 8–15–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: Cardiac Arrhythmias in Children.

Dates of Meeting: August 29, 1996.

Time of Meeting: 8:30 a.m.

Place of Meeting: Natcher Building 45, Conference Room B, 45 Center Drive, Bethesda, Maryland 20892.

Agenda: To evaluate the nature and severity of arryhythmias occurring in children on psychotropic drugs, and those that occur after cardiac surgery and recommend research priorities for future initiatives.

Contact Person: Thomas J. Doubt, NHLBI/DHVD, Two Rockledge Center, 6701 Rockledge Drive, Room 9044, MSC 7940, Bethesda, Maryland 20892, (301) 435–0540.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases

Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 9, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20942 Filed 8–15–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: August 13, 1996.

Time: 2:15 p.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: August 16, 1996.

Time: 4 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: August 12, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20940 Filed 8–13–96; 1:24 pm]

BILLING CODE 4140–01–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESS: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Allan Kiang, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7735 ext 270; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Immunization With Synthetic Peptides Generate Cytotoxic T Cell Responses Against the EWS/FL1 1 Ewing's Sarcoma Fusion Protein and the PAX–3/FKHR Alveolar Rhabdomysarcoma Fusion Protein

TJ Goletz, LJ Helman, JA Berzofsky (NCI), Filed 14 Sept 95, Serial No. 08/528,129

This invention provides novel methods of producing vaccines and therapeutics to viral infections or cancer(s). This method utilizes irradiated, peptide-pulsed antigen presenting cells (APCs) which are coated with synthetic or recombinant peptides. These APCs can be used to induce a tumor specific cytotoxic T lymphocyte (CTL) response. This broadly applicable method uses safe, non-toxic synthetic or recombinant peptides and does not utilize harmful adjuvants or live viral vectors. Peptides derived from viral or bacterial antigens or mutant oncogene or tumor suppressor gene products may be applied towards this method. For example, using this method, a synthetic peptide which corresponds to the site of the mutation in the tumor suppressor gene product p53 can be used to induce a CTL response which kills tumor cells endogenously expressing the mutant p53 gene. (portfolio: Cancer—Therapeutics, biological response modifiers; Cancer—Therapeutics, vaccines)

O-Malonlytyrosyl Compounds, O-Malonllytyrosyl Compound-Containing Peptides, and Uses Thereof

TR Burke, B Ye, M Akamatsu, X Yan, HK Kole, PR Roller (NCI), Filed 31 Mar 95, Serial No. 08/414,520

Phosphotyrosyl residues in signalling proteins, which appear to act as molecular switches in phosphotyrosyl-dependent cellular signal transduction pathways, are potential targets for therapeutic agents. The phosphotyrosol-dependent signal transduction pathway is composed of three elements: the protein kinases which add phosphates to tyrosine residues, the protein phosphatases which remove the phosphate, and the interaction of other signaling proteins with proteins containing phosphotyrosyl residues. This invention describes a phosphotyrosyl mimetic 0-malonyltryosine (OMT) which uses a malonate moiety in place of phosphate that can be derivatized and thus potentially made permeable to cell membranes. Peptides containing OMT residues are therefore potential therapeutic agents for disease states with altered cellular signaling including cancer. (portfolio: Cancer—Therapeutics, conventional chemotherapy, antimetabolites)

Assay for Sensitivity of Tumors to DNA-Platinating Chemotherapy

E Reed, M Dadholkar, F Bostick-Burton (NCI), Filed 07 Mar 95, Serial No. 08/399,617

The invention provides a method for determining the sensitivity of a tumor tissue to treatment with platinum-based chemotherapy. The method is based on detecting high levels of the mRNA for ERCC1 which includes exon VIII or concurrent expression of ERCC1 and XPAC mRNAs in fresh tumor tissues. Studies show that this method clearly distinguishes between platinum-sensitive and platinum-resistant tumors (J. Clin. Invest. 94:703–708, 1994). (portfolio Cancer—Research Reagents, DNA based)

Confirmationally Constrained Diacylglycerol Analogues

VE Marquez, J Lee, R Sharma, S Wang, GWA Milne, MC Nicklaus, PM Blumberg, NE Lewin (NCI), Filed 13 Jan 95, Serial No. 08/372,602

Diacylglycerol (DAG) is a member of the second messenger system in cell signal transduction. DAG is released from membrane phospholipids in response to the binding of a variety of agonists. Once released, DAG binds to the regulatory domain of protein kinase C (PK–C) and in doing so aids in the activation of the kinase. PK–C, when activated, is capable of phosphorlyating a variety of other proteins involved in cellular processes including growth, differentiation, inflammation, nerve function, tumor promotion, and ocogenic expression. Given the global action of PK–C, molecules that can activate or inactivate this enzyme would be very useful. The claims of this

invention describe a series of a diaclyglycerol analogues, which act as potent pharmacological agonists of PK–C and can be easily synthesized. (portfolio: Cancer—Therapeutics, conventional chemotherapy, antimetabolites)

Treatment of Cancer With Human Chorionic Gonadotropin

Y Lunardi-Iskandar, RC Gallo, JL Bryant (NCI), Filed 5 Aug 94, Serial No. 08/286,299

A major complication in treating tumors is that many of the known treatments, such as surgery, radiation or chemotherapy, have serious side effects. Other types of cancers are not amenable to conventional therapies due to the fact that the exact mechanism by which the disease develops is unknown. An example of this type of cancer is Kaposiś sarcoma. Kaposiś sarcoma is the most common malignancy in AIDS patients. Current therapies for Kaposiś sarcoma can cause myelotoxicity and neurotoxicity. In addition, these treatments can also induce immunosuppression. This invention describes the use of a naturally occurring human hormone, human chronic gonadotropin, for the treatment of Kaposiś sarcoma. Human chorionic gonadotropin may also be useful for the treatment of breast, prostate, ovary, and stomach carcinomas, as well as neuroblastomas. (portfolio: Infectious Diseases—Therapeutics, anti-virals, AIDS; Cancer—Therapeutics, conventional chemotherapy, hormonal compounds)

Therapeutic Polyamines

HS Basu, LJ Marton, BG Feuerstein, K Samejima (University of California; Josai University; NCI), Filed 05 Nov. 93, Serial No. 08/147,527

Most previous attempts to retard the growth of tumor cells by depleting the intracellular polyamine pool have been directed at inhibiting enzymes in the polyamine biosynthetic pathway; a process that does not completely deplete endogenous stores of these molecules. To date, most attempts at using polyamine biosynthetic inhibitors have resulted in incomplete inhibition of cell growth. With this invention, analogs have been developed that, while binding physically to DNA, do not function like natural polyamines and indeed case almost complete depletion of intracellular stores of these compounds. These compounds have shown great promise *in vitro* and *in vivo* against various tumors. Additionally, these synthetic polyamines have proven to be tumor sensitizers in conjunction with other conventional chemotherapeutices *in vivo*. (portfolio: Cancer—Therapeutics, conventional chemotherapy, other)

Topoisomerase II Inhibitors And Therapeutic Uses Therefor

Y Pommier, T MacDonald, JS Madalengoitia (NCI), Filed 23 Oct 92, Serial No. 07/965,922 CIP of 07/868,408)

DNA topology is maintained in all cells by the action of a class of enzymes termed topoisomerases. Many drugs used in cancer chemotherapy function by inhibiting the action of topoisomerases. This invention embodies a compound, azatoxin, which is a inhibitor of both topoisomerase II and tubulin polymerization. Azatoxin is unique compared to other topoisomerase inhibitors in that it inhibits the catalytic activity of the enzyme at specific sites of DNA. Certain derivatives of azatoxin are capable of inhibiting either topoisomerase activity or tubulin polymerization but not both. Therefore these derivatives are expected to be especially potent therapeutic compounds. (portfolio: Cancer—Therapeutics, conventional chemotherapy, antimetabolites)

Dated: August 6, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–20943 Filed 8–15–96; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–0525.

Proposed Project: National Household Survey on Drug Abuse—Revision—The National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, noninstitutionalized population of the Unitied States, age 12 and over. The data are used to estimate the prevalence of use of cigarette, alcohol, and illicit drug use, and abuse of licit drugs. The results are used by SAMHSA, ONDCP, other Federal agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources. A 200-household field test of a computer assisted data collection methodology will also be conducted. The total annual burden estimate is 23,592 hours as shown below:

	No. of respondents	No. of responses per respondent	Average burden per response	Total burden
1997 NHSDA	53,082	1	0.44 hrs.	23,403 hrs.
CAPI/ACASI Field Test	562	1	0.34 hrs.	189 hrs.
Total				23,592 hrs.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, D.C. 20503.

Dated: July 31, 1996.

Richard Kopanda,

Executive Officer, SAMHSA

[FR Doc. 96–20898 Filed 8–15–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–98]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information lines at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been received by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR Part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Navy: Mr. John Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, Code 241A; 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; Veterans Affairs: Mr. George L. Szwarcman, Department of Veterans Affairs, Director, Land Management Service, 811 Vermont Avenue, NW, Room 414, Lafayette Bldg., Washington, DC 20420; (202) 565–5941; (These are not toll-free numbers).

Dated: August 9, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 8/16/96

Suitable/Available Properties

Buildings (by State)

Portion Fed. Bldg.
College and Center Streets
Marshall 72650–
Landholding Agency: GSA
Property Number: 549630002
Status: Excess
Comment: portion of 3500 sq. ft., most recent use—office
GSA Number: 7–G–AR–552

California

Bldg. 1
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610015
Status: Excess
Comment: 16,500 sq. ft., most recent use—ofc/library/lab
GSA Number: 9–A–CA–1469

Bldg. 2
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610016
Status: Excess
Comment: 828 sq. ft., most recent use—isolation operation bldg.
GSA Number: 9–A–CA–1469

Bldg. 3
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.

Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610017
Status: Excess
Comment: 624 sq. ft., most recent use—boiler rm/garage/pit house
GSA Number: 9–A–CA–1469

Bldg. 4
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610018
Status: Excess
Comment: 146 sq. ft., most recent use—solvent storage
GSA Number: 9–A–CA–1469

Bldg. 5
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610019
Status: Excess
Comment: 2212 sq. ft., most recent use—green house
GSA Number: 9–A–CA–1469

Bldg. 6
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610020
Status: Excess
Comment: 200 sq. ft., most recent use—secure transformer bldg.
GSA Number: 9–A–CA–1469

Bldg. 20—VA Medical Center
Wilshire & Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979210003
Status: Unutilized
Comment: 8758 gross sq. ft., one story wooden, requires complete restoration meeting standards of national preservation laws and guidelines

Bldg. 13, VA Medical Center
Wilshire & Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979220001
Status: Underutilized
Comment: portion of 66,165 sq. ft. bldg., needs major rehab, no util., pres. of asbestos, in historic district, potential to be hazardous due to storage of radioactive material nearby

Bldg. 156, VAMC
Wilshire & Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979230015
Status: Underutilized
Comment: portion of 39,454 sq. ft. bldg., presence of asbestos, needs rehab, seismic reinforcement deficiencies, in his. district, potentially hazardous due to nearby radioactive material

Hawaii

Bldg. 4, Naval Station
Pearl Harbor, Bishop Point (Hickam AFB)
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779620043
Status: Unutilized
Comment: 576 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 20, Naval Station
Pearl Harbor, Bishop Point (Hickam AFB)
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779620044
Status: Unutilized
Comment: 252 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 573, Naval Station
Pearl Harbor, Bishop Point (Hickam AFB)
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779620045
Status: Unutilized
Comment: 1200 sq. ft., most recent use—storage, off-site use only

Illinois

Parcel 2
Portion Former Lock & Dam 51
Golconda Co: Pope IL 62938–
Landholding Agency: GSA
Property Number: 549610011
Status: Excess
Comment: 1274 sq. ft., bldg. which housed the lock control structures 2160 sq. ft. warehouse and ofc. bldg., presence of lead base paint, periodic flooding, Fed. Reg. of Historic Places
GSA Number: 2–D–IL–703

Parcel 3
Portion Former Lock & Dam 51
Golconda Co: Pope IL 62938–
Landholding Agency: GSA
Property Number: 549610012
Status: Excess
Comment: 3244 sq. ft. metal bldg., 11852 sq. ft. marina dock and parking lot, 100 year floodplain
GSA Number: 2–D–IL–703

Indiana

Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230007
Status: Underutilized
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house, access restrictions

Michigan

Little Rapids Lightkeeper Sta.
Little Rapids Channel
Sault St. Marie Co: Chippewa MI 49873–
Landholding Agency: GSA
Property Number: 549530002
Status: Excess
Comment: 1411 sq. ft. wood frame dwelling with 480 sq. ft. garage, and 121 sq. ft. storage bldg., poor condition, needs rehab, possible asbestos
GSA Number: 2–D–MI–722A

Nevada

Air Sound Suppresser
Nevada Air National Guard
1776 National Guard Way
Reno Co: Washoe NV 89502–4494
Landholding Agency: GSA
Property Number: 549620004
Status: Excess
Comment: 5318 sq. ft., most recent use—aircraft engine noise sound suppresser/storage, off-site use only, substantial cost inherent in dismantle, teardown of structure
GSA Number: 9–D–NV–507

Pennsylvania

Bldg. 25—VA Medical Center
Delafield Road
Pittsburgh Co: Allegheny PA 15215–
Landholding Agency: VA
Property Number 979210001
Status: Unutilized
Comment: 133 sq. ft., one story brick guard house, needs rehab

Utah

House
North Utah Highway 16
Randolph Co: Rich UT 84064–
Landholding Agency: GSA
Property Number: 549620001
Status: Excess
Comment: 1148 sq. ft., wooden frame, most recent use—office, septic system on private land
GSA Number: 7–A–UT–0498A

Vermont

Bennington Federal Building
118 South Street
Bennington VT 05201–
Landholding Agency: GSA
Property Number: 549620009
Status: Excess
Comment: 3326 sq. ft., most recent use—office/courts, listed on National Register of Historic Places/preservation restrictions
GSA Number: 1–G–VT–470

Washington

Coast Guard Housing
9551 Avondale Rd., NE
Redmond Co: King WA 98052–
Landholding Agency: GSA
Property Number: 549620008
Status: Excess
Comment: 3.6 existing units, major rehab, maybe economically infeasible to rehab due to present zoning
GSA Number: 9–U–WA–1109

Wisconsin

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010056
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 979010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped

California

(P) Camp Elliott

Rosedale Tract
San Diego Co: San Diego CA
Landholding Agency: GSA
Property Number: 549310008
Status: Surplus
Comment: Parcel 1—0.15 acre, Parcel 2—0.17 acre, located in the narrow median strip between Murphy Canyon Rd. and State Highway 15, previously leased by homeless provider
GSA Number: 9–GR(6)–CA–694A

Land
4150 Clement Street
San Francisco Co: San Francisco CA 94121–
Landholding Agency: VA
Property Number: 979240001
Status: Underutilized
Comment: 4 acres; landslide area

Indiana

Portion
Bureau of Prisons Vigo Farm
Linden Twp Co: Vigo IN
Landholding Agency: GSA
Property Number: 549620002
Status: Excess
Comment: 17.65 acres, most recent use—agriculture
GSA Number: 2–J–IN–507C

Louisiana

Barksdale Radio Beacon Annex
Barksdale Radio Beacon Annex
Bossier City Co: Bossier LA 71111–
Location: 7 miles south of Bossier City on highway 71 south; left 1¼ miles on highway C1552.
Landholding Agency: GSA
Property Number: 189010269
Status: Excess
Comment: 11.25 acres
GSA Number: 7–D–LA–0438A1

Maine

Remote Center Air
Ground Communication Facility
Westford Hill Road
Hodgdon Co: Aroostook ME 04730–
Landholding Agency: GSA
Property Number: 549610014
Status: Excess
Comment: 0.91 acre with 554 sq. ft. bldg. and tower, most recent use—unmanned communication facility
GSA Number: 1–ME–624

Maryland

VA Medical Center
9500 North Point Road
Fort Howard Co: Baltimore MD 21052–
Property Number: 979010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves

Montana

U.S. Army Reserve Center
Marcella Avenue
Lewistown Co: Fergus MT
Landholding Agency: GSA
Property Number: 219420009
Status: Unutilized
Comment: 4.16 acres of bare land
GSA Number: 7–D–MT–0607

Ohio

Bethany Relay Station
8070 Tylersville Road
Union Township Co: Butler OH 45040–
Landholding Agency: GSA
Property Number: 549610008
Status: Excess
Comment: 625 acres, most recent use—radio relay station, bldg. and approx. 125 acres are unsuitable due to distance from flammable explosive material
GSA Number: 1–Z–OH–726B

Puerto Rico

La Hueca—Naval Station
Roosevelt Roads
Vieques PR 00765–
Landholding Agency: GSA
Property Number: 549420006
Status: Excess
Comment: 323 acres, cultural site

Texas

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities

VA Medical Center
4800 Memorial Drive
Waco Co: McLennan TX 76711–
Landholding Agency: VA
Property Number: 979010081
Status: Underutilized
Comment: 2.3 acres, negotiating lease w/ Owens-Illinois Glass Plant, most recent use—parking lot

Virginia

4.619 (P) Atlantic Marine Ctr
561 Front Street
Norfolk VA 23510–
Landholding Agency: GSA
Property Number: 549620010
Status: Excess
Comment: 4.619 acres, most recent use—storage, easement/lease restrictions, subject to Chesapeake Bay Preservation Act
GSA Number: 4–C–VA–712

Washington

Second Stadium Home Site
1701 Martin Luther King Blvd.
Seattle Co: King WA 98144–
Landholding Agency: GSA
Property Number: 549540008
Status: Excess
Comment: 1.5061 acres of unimproved land, most recent use—temporary storage for construction equipment
GSA Number: 9–GRI–WA–543

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities

Suitable/Unavailable Properties

Buildings (by State)

Alabama

Natl Weather Service Station
Centreville
Brent Co: Bibb AL 35034–
Landholding Agency: GSA
Property Number: 549610005
Status: Excess
Comment: 2196 sq. ft. bldg., most recent use—office plus 2 ancillary bldgs with paved driveway and parking area, possible asbestos
GSA Number: 4–C–AL–764

Alaska

Ketchikan Ranger House
Ketchikan AK 99901–
Landholding Agency: GSA
Property Number: 549430009
Status: Surplus
Comment: 1832 sq. ft., 2 story residence, needs rehab, on National Register of Historic Places
GSA Number: 9–A–AK–0746

Arkansas

Federal Building
129 North Main Street
Benton Co: Saline AR 72201–
Landholding Agency: GSA
Property Number: 549620005
Status: Excess
Comment: 1900 sq. ft., most recent use—office, limitations due to potential historic significance
GSA Number: 7–G–AR–550

California

Bldg. 116
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979110009
Status: Underutilized
Comment: 60309 sq. ft., 3 story brick frame, seismic reinforcement defics., underutil. port of bldg. used intermitly., needs rehab, poss. asbestos in pipes/floor tiles, site access lim.

Colorado

Former AF Finance Center
3800 York Street
Denver Co: Denver CO 80205–
Landholding Agency: GSA
Property Number: 549310011
Status: Excess
Comment: 293,932 sq. ft., 1-story timber frame with masonry exterior, fair condition, most recent use—storage, office, rehab
GSA Number: 7–GR–CO–468–D

Motor Pool Facility
3720 Walnut St.
Boulder Co: Boulder CO 80306–
Landholding Agency: GSA
Property Number: 549610013
Status: Excess
Comment: 2520 sq. ft., most recent use—automotive maintenance facility, Colorado zoning restrictions
GSA Number: 7–G–CO–633

Delaware

Regional Poultry Research Lab

Georgetown Co: Sussex DE 19947–
Landholding Agency: GSA
Property Number: 549540001
Status: Excess
Comment: 5 bldgs., brick/aluminum siding, most recent use—office/laboratories/ storage/poultry raising, off-site use only
GSA Number: 4–A–DE–0459

Florida

Bldg. 36, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 35504–
Landholding Agency: VA
Property Number: 979230009
Status: Underutilized
Comment: portion of 15,984 sq. ft., 1 story concrete frame bldg., needs rehab, presence of asbestos, listed on Natl Register of Historic Places, access restrictions

Bldg. 37, VAMC
10,000 Bay Pines Blvd.
Pay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230010
Status: Underutilized
Comment: Third floor of a concrete frame bldg. (13,900 sq. ft.), presence of asbestos, listed on Natl Register of Historic Places, access restrictions

Indiana

Bldg. 24, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230005
Status: Underutilized
Comment: portion of 4,135 sq. ft. 2-story wood structure, needs major rehab, no sanitary or heating facilities, presence of asbestos, access restrictions

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230006
Status: Underutilized
Comment: 310 sq. ft., 1 story stone structure, needs major rehab, no sanitary or heating facilities, access restrictions

Kentucky

Federal Building
4th & Main Streets
Danville Co: Boyle KY 40422–
Landholding Agency: GSA
Property Number: 549430015
Status: Excess
Comment: 4890 sq. ft., 3-story, stone-concrete foundation, presence of asbestos, first floor occupied by US Court of Appeals Judge & staff until expiration of his tenure
GSA Number: 4–G–KY–604

Massachusetts

17 Single Family Residences
Navy Family Housing, Westover AFB
Chicopee Co: Hampden MA 01022–
Landholding Agency: GSA
Property Number: 549520002
Status: Excess
Comment: various sq. ft., good condition, utilities systems modification

99 Duplex Residences
Navy Family Housing, Westover AFB
Chicopee Co: Hampden MA 01022–
Landholding Agency: GSA
Property Number: 549520003
Status: Excess
Comment: various sq. ft., good condition, utilities systems modification

20 Fourplex Residences
Navy Family Housing, Westover AFB
Chicopee Co: Hampden MA 01022–
Landholding Agency: GSA
Property Number: 549520004
Status: Excess
Comment: various sq. ft., good condition, utilities systems modification

Michigan

Detroit Job Corps Center
10401 E. Jefferson & 1438 Garland;
1265 St. Clair
Detroit Co: Wayne MI 42128–
Landholding Agency: GSA
Property Number: 549510002
Status: Surplus
Comment: Main bldg. is 80,590 sq. ft., 5-story, adjacent parking lot, 2nd bldg. on St. Clair Ave. is 5140 sq. ft., presence of asbestos in main bldg., to be vacated 8/97
GSA Number: 2–L–MI–757

Minnesota

Coast Guard Family Housing
404 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230007
Status: Surplus
Comment: 1333 sq. ft., 1-story frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
406 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230008
Status: Surplus
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
408 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230009
Status: Surplus
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
418 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230010
Status: Surplus
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

Army Reserve Center
301 Lexington Ave. South
New Prague Co: LeSueur MN 56071–
Landholding Agency: GSA
Property Number: 549330003
Status: Surplus
Comment: 4316 sq. ft. brick veneer and concrete block office and training bldg. and a 1170 sq. ft. maintenance shop on 3.82 acres of land leased by the City
GSA Number: 2–D–MN–558

Bldg. 227
VA Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010033
Status: Unutilized
Comment: 850 sq. ft., 2 story wood frame and brick residence, utilities disconnected.

Missouri

District 2 Flag Quarters
16 Chaminade
Creve Coeur Co: St. Louis MO 63141–
Landholding Agency: GSA
Property Number: 549620003
Status: Excess
Comment: 2320 sq. ft. residence
GSA Number: 7–U–MO–0629

Montana

Bldg.—Conrad Training Site
15 miles east of the City of Conrad
Co: Pondera MT 59425–
Landholding Agency: GSA
Property Number: 189420025
Status: Excess
Comment: 7000 sq. ft., 1-story brick, most recent use—technical training site

Malstrom Communications Annex
(Transmitter), 39 78th St., N.
Malstrom AFB Co: Cascade MT 59405–
Landholding Agency: GSA
Property Number: 189510023
Status: Excess
Comment: 1966 sq. ft., limited utilities, needs roof replacement GSA Number: 7–D–MT–4240

USARC Bozeman Reserve Center
32 South Tracy Ave.
Bozeman Co: Gallatin MT
Landholding Agency: GSA
Property Number: 219420391
Status: Excess
Comment: 7600 sq. ft., 2-story, most recent use—office, sound condition, presence of asbestos, on list of historic buildings
GSA Number: 7–D–MT–0605

Nevada

5 Single Family Residences
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430004
Status: Excess
Comment: 1192 to 1378 sq. ft., 1 story wood residences, 3 bedrooms/1 bathroom
GSA Number: 9–U–NV–467–C

13 Single Family Residences
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430005
Status: Excess
Comment: 1192–1898 sq. ft., 1 story wood residences, 4 bedrooms/2 bathrooms
GSA Number: 9–U–NV–467–C

New Mexico

Magdalena Dormitory
Poplar and 8th Streets
Magdalena Co: Soccorro NM 87825–
Landholding Agency: GSA
Property Number: 549540006
Status: Excess
Comment: 14 bldgs. consisting of dormitory/ dining & storage facilities, apartments &

garages, vacant for 8 years, needs rehab, potential utilities
GSA Number: 7–I–NM–0543

New York

Bldg. 144, VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425–
Landholding Agency: VA
Property Number: 979210004
Status: Unutilized
Comment: 5215 sq. ft., 2 story wood frame residence, needs rehab, potential utilities

Bldg. 143, VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425–
Landholding Agency: VA
Property Number: 979210005
Status: Unutilized
Comment: 5215 sq. ft., 2 story wood frame residence, needs rehab, potential utilities

Bldg. 142/146, VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425–
Landholding Agency: VA
Property Number: 979210006
Status: Unutilized
Comment: 5215 sq. ft., 2 story wood frame residence with 380 sq. ft. attached garage, needs rehab, potential utilities

North Carolina

National Weather Service
Cape Hatteras Island
Buxton Co: Dare NC
Landholding Agency: GSA
Property Number: 549610002
Status: Excess
Comment: 2517 sq. ft., bldg. w/inflation bldg. on 4.78 acres, most recent use—office, storage

North Dakota

Dickinson Tech. Oper. Site
3 mi South of New England
Dickinson Co: Hettinger ND 58647–
Landholding Agency: GSA
Property Number: 549610009
Status: Excess
Comment: 6900 sq. ft., bldg. in good condition on 10 acres of land
GSA Number: 7–D–ND–0497

Ohio

Zanesville Federal Building
65 North Fifth Street
Zanesville Co: Muskingum OH
Landholding Agency: GSA
Property Number: 549520018
Status: Excess
Comment: 18750 sq. ft., most recent use—office, possible asbestos, eligible for listing on the Natl Register of Historic Places
GSA Number: 2–G–OH–781A

Natl. Weather Met. Observatory
Huber Heights Co: Montgomery OH
Landholding Agency: GSA
Property Number: 549540005
Status: Excess
Comment: 1100 sq. ft., 1 story, most recent use—office/admin.
GSA Number: 2–C–OH–796

Oklahoma

U.S. Federal Building
103 S. Hudson
Altus Co: Jackson OK 73521–
Landholding Agency: GSA
Property Number: 549620006
Status: Excess
Comment: 9860 gross sq. ft. with 25 outside parking spaces, most recent use—govt. offices, needs some repair
GSA Number: 7–G–OK–558

Pennsylvania

Storage & Maint. Facility
1200 Airport Road
Hopewell Co: Beaver PA 15001–
Landholding Agency: GSA
Property Number: 549330004
Status: Excess
Comment: 44157 sq. ft., 1-story concrete block bldg. (inadequate heating) and 19 acres of land, easements for pipelines and public utilities
GSA Number: 4–L–PA–766

Bldg. 2, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 979230011
Status: Undertilized
Comment: portion of 16,360 sq. ft. 3-story structure, most recent use—storage.
Bldg. 3, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon, PA 17042–
Landholding Agency: VA
Property Number: 979230012
Status: Underutilized
Comment: portion of bldg. (3850 and 4360 sq. ft.), most recent use—storage.

Bldg. 103, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon, PA 17042–
Landholding Agency: VA
Property Number: 979230014
Status: Underutilized
Comment: portion of 1215 sq. ft. 2-story stone farm house, needs repair.

Virginia

Bristol U.S. Army Reserve Ctr.
100 Piedmont Avenue
Bristol Co: Washington, VA 24201–
Landholding Agency: GSA
Property Number: 219440317
Status: Excess
Comment: 13,460 sq. ft., 2-story plus basement, brick structure, presence of asbestos, needs some rehab. (Property was published incorrectly on 10/13/95)
GSA Number: 4–D–VA–711

Washington

Hanford Site, 3000 Area
1st Street
Richland Co: Benton, WA 99352–
Location: ¼ mile east of Stevens Drive
Landholding Agency: GSA
Property Number: 549540007
Status: Excess
Comment: 16 bldgs. on 70 acres, buildings are concrete block/asbestos siding/wood frame, used for offices/storage, 122,931 sq. ft. total site, pres. of asbestos, Bldg. 1154 on Natl. Register
GSA Number: 10–B–WA–523–B

West Virginia

R.T. Price House
U.S. Route 2
Williamson Co: Mingo, WV 25661–
Landholding Agency: GSA
Property Number: 319520004
Status: Excess
Comment: 3116 sq. ft., brick, most recent use—office/conf., listed on Natl. Reg. of Historic Places, restriction against human habitation, recommend flood protection measures.
GSA Number: 4–D–WV–525

Wyoming

Bldg. 13
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan, WY 82801–
Landholding Agency: VA
Property Number: 979110001
Status: Unutilized
Comment: 3613 sq. ft., 3-story wood frame masonry veneered, potential utilities, possible asbestos, needs rehab.

Bldg. 79
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan, WY 82801–
Landholding Agency: VA
Property Number: 979110003
Status: Unutilized
Comment: 45 sq. ft., 1-story brick and tile frame, limited utilities, most recent use—reservoir house, use for storage purposes.

Land (by State)

California

Receiver Site
Delano Relay Station
Route 1, Box 1350
Deano Co: Tulare CA 93215–
Location: 5 miles west of Pixley, 17 miles north of Delano.
Landholding Agency: GSA
Property Number: 549010044
Status: Surplus
Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities, environmental restrictions
GSA Number: 9–2–CA–1308.

Florida

Compound, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas, FL 33504–
Landholding Agency: VA
Property Number: 979230017
Status: Underutilized
Comment: approx. 7 acres, storage compound, partially wooded

Illinois

VA Medical Center
3001 Green Bay Road
North Chicago Co: Lake, IL 60064–
Landholding Agency: VA
Property Number: 979010082
Status: Underutilized
Comment: 2.5 acres, currently being used as a construction staging area for the next 6–8 years, potential utilities.

Louisiana

New Iberia Training Area
Iberia Parish, LA
Landholding Agency: GSA
Property Number: 549610004
Status: Excess

Comment: 203.5 acres, potential environmental condition—storm water runoff
GSA Number: 7–D–LA–0467E

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Landholding Agency: VA
Property Number: 979010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities.

Minnesota

Bldg. 227–229 Land
VA Medical Center
Fort Snelling
St Paul Co: Hennepin, MN 55111–
Landholding Agency: VA
Property Number: 979010006
Status: Underutilized
Comment: 2.0 acres, potential utilities, buildings occupied, residence/garage.

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin, MN 55417–
Location: Land (Site of Building 15, 16, 21, 48, 64, T10)
Landholding Agency: VA
Property Number: 979010024
Status: Underutilized
Comment: 12.1 acres, most recent use—parking, potential utilties.

Land—12 acres
VAMC
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin, MN 55417–
Landholding Agency: VA
Property Number: 979010031
Status: Unutilized
Comment: 12 acres, possible asbestos, leased to Department of Natural Resources as a park walking trail.

New York

VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Landholding Agency: VA
Property Number: 979010017
Status: Underutilized
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased.

North Dakota

Trailer Lots 1–6
Stromquist 1st Addition
Devils Lake Co: Ramsey ND 58301–
Landholding Agency: GSA
Property Number: 419530001
Status: Excess
Comment: 45720 sq. ft. in trailer park

Ohio

Middleport Public Access Site
Robert C. Byrd Locks & Dam
Middleport Co: Meigs OH 45760–
Landholding Agency: GSA
Property Number: 319230001
Status: Excess
Comment: Approximately 17.23 acres including parking lot, flowage easement, right-of-way for city street and utilities
GSA Number: 2–D–OH–793

Pennsylvania

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001–
Landholding Agency: VA
Property Number: 979010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities.
Land No. 645
VA Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Location: Between Campania and Wiltsie Streets.
Landholding Agency: VA
Property Number: 979010080
Status: Unutilized
Comment: 41.97 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls.

Land—34.16 acres
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320–
Landholding Agency: VA
Property Number: 979340001
Status: Underutilized
Comment: 34.16 acres, open field, most recent use—recreation/buffer

Washington

Former Stadium Homes site
1701 28th Avenue, South
Seattle Co: King WA 98144–
Landholding Agency: GSA
Property Number: 549410005
Status: Excess
Comment: 1.46 acres; most recent use—highway equipment storage; potential for city utility services; land slopes
GSA Number: 9–GR(1)–WA–543

Sandpoint Control Tower
Near 7600 Sandpoint Way, NE
Seattle Co: King WA 98115–
Landholding Agency: GSA
Property Number: 549440003
Status: Excess
Comment: 11.3 acres, w/deteriorated bldg. and parking lot
GSA Number: 9–C–WA–1069

Wisconsin

Portion, Kewaunee Eng. Depot
East Storage Yard
Kewaunee Co: Kewaunee WI 54216–
Landholding Agency: GSA
Property Number: 319440013
Status: Excess
Comment: 0.95 acres, storage bldg. on prop. owned by State, limited access (water access only)
GSA Number: 2–D–WI–572

Suitable/To Be Excessed

Land (by State)

Minnesota

Land around Bldg. 240–249, 253
VA Medical Center
Fort Snelling
St. Paul Co: Nennepin MN 55111–
Landholding Agency: VA
Property Number: 979010007
Status: Unutilized
Comment: 3.76 acres, potential utilities.

Unsuitable Properties

Buildings (by State)

Alabama

Sand Island Light House
Gulf of Mexico
Mobile AL
Landholding Agency: GSA
Property Number: 549610001
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 4–U–AL–763

Alaska

Unalakleet Health Clinic (Former)
Unalakleet AK 99684–
Landholding Agency: GSA
Property Number: 549620007
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–F–AK–748

USCG MSD Office (2 buildings)
2958 Tongass Avenue
Ketchikan Co: Ketchikan AK 99901–
Landholding Agency: GSA
Property Number: 879130004
Status: Excess
Reason: Extensive deterioration

California

Former Naval Research Bldg.
Pasadena Co: Los Angeles CA 91106–
Landholding Agency: GSA
Property Number: 549430001
Status: Excess
Reason: Extensive deterioration
GSA Number: 9–N–CA–1304A

Naval Indust. Rsve. Ord. Plant
Pomona Co: Los Angeles CA 91769–2426
Landholding Agency: GSA
Property Number: 549520019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–N–CA–734B

Cape Mendocino Lighthouse
Capetown Co: Humboldt CA
Landholding Agency: GSA
Property Number: 549540004
Status: Excess
Reason: Other Secured Area
Comment: Structural deficiencies
GSA Number: 9–U–CA–622–B

Bldg. 2–43
Naval Air Weapons Station, Point Mugu
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 779630018
Status: Unutilized
Reason: Secured Area

Bldg. 2–43A
Naval Air Weapons Station, Point Mugu
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 779630019
Status: Unutilized
Reason: Secured Area

Bldg. 723
Naval Air Weapons Station, Point Mugu
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 779630020
Status: Unutilized

Reason: Secured Area

Hawaii

Bldg. 697
Pearl City Peninsula, FISC
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779630014
Status: Unutilized
Reason: Extensive deterioration

Bldg. 712
Pearl City Peninsula, FISC
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779630015
Status: Unutilized
Reason: Extensive deterioration

Bldg. 723
Pearl City Peninsula, FISC
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779630016
Status: Unutilized
Reason: Extensive deterioration

Bldg. 724
Pearl City Peninsula, FISC
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779630017
Status: Unutilized
Reason: Extensive deterioration

Illinois

Parcel 1
Portion Former Lock & Dam 51
Golconda Co: Pope IL 62938–
Landholding Agency: GSA
Property Number: 549610010
Status: Excess
Reason: Extensive deterioration
GSA Number: 2–D–IL–703

Indiana

Coast Guard Housing
5 Houses
Dana Co: Vermillion IN 47847–
Landholding Agency: GSA
Property Number: 549620011
Status: Excess
Reason: 2000 ft. of flammable or explosive material
GSA Number: 1–U–IN–505D

Bldg. 21, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230001
Status: Underutilized
Reason: Extensive deterioration

Bldg. 22, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230002
Status: Underutilized
Reason: Extensive deterioration

Bldg. 62, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230003
Status: Underutilized
Reason: Extensive deterioration

Mississippi

Bldg. 6, Boiler Plant
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410001
Status: Underutilized
Reason: Floodway

Bldg. 67
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 68
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410009
Status: Unutilized
Reason: Extensive deterioration

New York

Naval Indus. Rsv. Ordnance Pl.
121 Lincoln Avenue
Rochester Co: Monroe NY 14611–
Landholding Agency: GSA
Property Number: 549430011
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: TENT–2–N–NY–592

Point AuRoche Light
Beekmantown Co: Clinton NY 12901–
Landholding Agency: GSA
Property Number: 879420002
Status: Excess
Reason: Floodway Extensive deterioration
GSA Number: 2–4–NY–817

North Carolina

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville Co: Buncombe NC 28805–
Landholding Agency: VA
Property Number: 979010008
Status: Underutilized
Reason: Other
Comment: Friable asbestos.

Tennessee

Bldg. 60, VAMC Mountain Home
Johnson Co: Washington TN 37604–
Landholding Agency: VA
Property Number: 979220005
Status: Unutilized
Reason: Extensive deterioration

Texas

Bldg. 24
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010050
Status: Unutilized
Reason: Other
Comment: Friable asbestos.

Bldg. 25
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010051
Status: Unutilized
Reason: Other
Comment: Friable asbestos.

Bldg. 26
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010052
Status: Unutilized
Reason: Other
Comment: Friable asbestos.

Virginia

Tidewater Agriculture Station
6321 Holland Road
Suffolk VA 23437–
Landholding Agency: GSA
Property Number: 549540002
Status: Excess
Reason: Other
Comment: No legal access
GSA Number: 4–A–VA–709

Water Tower
Naval Amphibious Base, Little Creek
Murray Road
Virginia Beach VA
Landholding Agency: Navy
Property Number: 779630005
Status: Underutilized
Reason: Floodway

Water Tower
Naval Amphibious Base, Little Creek
10th Street
Virginia Beach VA
Landholding Agency: Navy
Property Number: 779630006
Status: Underutilized
Reason: Floodway

Bldg. LP–20
Naval Air Station Norfolk
Norfolk VA
Landholding Agency: Navy
Property Number: 779630021
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. LP–176
Naval Air Station Norfolk
Norfolk VA
Landholding Agency: Navy
Property Number: 779630022
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. LP–177
Naval Air Station Norfolk
Norfolk VA
Landholding Agency: Navy
Property Number: 779630023
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Washington

Portion—Former Sage Complex
Moses Lake Co: Grant WA 98837–
Landholding Agency: GSA
Property Number: 549530007
Status: Underutilized
Reason: Secured Area
GSA Number: 9–G–WA–513M

Wyoming

Bldg. 95
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA

Property Number: 979110004
Status: Unutilized
Reason: Other
Comment: Sewage digester for disposal plant.

Bldg. 96
Medical Center
N.W. of town at end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110005
Status: Unutilized
Reason: Other
Comment: Pump house for sewage disposal plant.

Structure 99
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110006
Status: Unutilized
Reason: Other
Comment: Mechanical screen for sewage disposal plant.

Structure 100
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110007
Status: Unutilized
Reason: Other
Comment: Dosing tank for sewage disposal plant.

Structure 101
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110008
Status: Unutilized
Reason: Other
Comment: Chlorination chamber for sewage disposal plant.

Bldg. 97, Medical Center
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979410011
Status: Unutilized
Reason: Other
Comment: Sewage disaposal plant

Structure 98, Medical Center
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979410012
Status: Unutilized
Reason: Other
Comment: Sludge bed/sewage disposal plant

Land (by State)

2—Water Tower Sites
Naval Amphibious Base, Little Creek
D/3rd St.
Virginia Beach
Landholding Agency: Navy
Property Number: 779630007
Status: Underutilized
Reason: Floodway

Arizona

58 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 970630001
Status: Unutilized
Reason: Floodway

20 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 970630002
Status: Underutilized
Reason: Floodway

California

Central Valley Project
San Luis Drain
Tracy Co: San Joaquin CA 95376–
Landholding Agency: GSA
Property Number: 549230003
Status: Excess
Reason: Other
Comment: Landlocked
GSA Number: 9–I–CA–1325

Parcel B
Santa Rosa Co: Sonoma CA
Landholding Agency: GSA
Property Number: 549310016
Status: Excess
Reason: Other
Comment: Sewage Treatment Plant
GSA Number: 9–G–CA–580C

DVA Medical Center
4951 Arroyo Road
Livermore Co: Alameda CA 94550–
Landholding Agency: VA
Property Number: 979010023
Status: Unutilized
Reason: Other
Comment: 750,000 gallon water reservoir.

Florida

Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230004
Status: Underutilized
Reason: Other
Comment: Inaccessible

Kentucky

9 Tracts
Daniel Boone National Forest Co: Owsley KY 37902–
Landholding Agency: GSA
Property Number: 549620012
Status: Excess
Reason: Floodway
GSA Number: 4–G–KY–607

Minnesota

VAMC
VA Medical Center
4801 8th Street No.
St. Cloud Co: Sterns MN 56303–
Landholding Agency: VA
Property Number: 979010049
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Missouri

86 Tracts—Lake Proj. Lands
Harry S. Truman Dam Co: Henry, St. Clai MO
Landholding Agency: GSA
Property Number: 549540010
Status: Excess
Reason: Floodway
GSA Number: 7D–MO–607F

New York

Tract 1
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010011
Status: Unutilized
Reason: Secured Area

Tract 2
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010012
Status: Underutilized
Reason: Secured Area

Tract 3
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010013
Status: Underutilized
Reason: Secured Area

Tract 4
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010014
Status: Unutilized
Reason: Secured Area

Ohio

Lewis Research Center
Cedar Point Road
Cleveland Co: Cuyahoga OH 44135–
Landholding Agency: GSA
Property Number: 549610007
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
Within airport runway clear zone
GSA Number: 2–Z–OH–598–I

South Carolina

Land—2.66 acres
Port Royal Co: Beaufort SC 29902–6148
Landholding Agency: GSA
Property Number: 549240009
Status: Excess
Reason: Floodway
GSA Number: 4–N–SC–0489A

Utah

4.3 acres—Portion
Wendover Airport
Wendover Co: Tooele UT 83354–
Landholding Agency: GSA
Property Number: 549630003
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 7–G–UT–401–L

Virginia

50′×50′ site
Naval Air Station Norfolk
SP area
Norfolk VA

Landholding Agency: Navy
Property Number: 779630002
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material
Floodway
50′×50′ site
Naval Air Station Norfolk
NM area
Norfolk, VA
Landholding Agency: Navy
Property Number: 779630003
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material
50′×50′ site
Naval Base Norfolk
SDA area
Norfolk VA
Landholding Agency: Navy
Property Number: 779630004
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material
Floodway
50′×50′ site
Fleet Combat Training Center Atlantic
Loon Court
Virginia Beach VA
Landholding Agency: Navy
Property Number: 779630008
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material
50′×50′ site
Fleet Combat Training Center Atlantic
Regulus Avenue
Virginia Beach VA 23461–
Landholding Agency: Navy
Property Number: 779630009
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material
50′×50′ site
Naval Weapons Station Yorktown
Barracks/Railroad Rd
Yorktown VA
Landholding Agency: Navy
Property Number: 779630010
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material
50′×50′ site
Naval Weapons Station Yorktown
Cheesecake/Burma Rd.
Yorktown VA
Landholding Agency: Navy
Property Number: 779630011
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material
50′×50′ site
Naval Weapons Station Yorktown
W. Beachwood/Burma Rd.
Yorktown VA
Landholding Agency: Navy
Property Number: 779630012
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material
50′×50′ site
Norfolk Naval Shipyard Portsmouth
Victory Blvd.
Norfolk VA
Landholding Agency: Navy
Property Number: 779630013
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material
Secured Area

[FR Doc. 96–20794 Filed 8–15–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Risk Assessment and Management Committee Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Risk Assessment and Management Committee (Committee), a Committee of the Aquatic Nuisance Species Task Force. The Committee meeting will focus on reviewing the public comments received on the Risk Assessment Review Process and the Black Carp Risk Assessment. After the review, comments will be incorporated, were appropriate, and both documents will be finalized and prepared for presentation to the ANS Task Force for approval. Also, the Committee will develop recommendations to the ANS Task Force on future direction and emphasis of the Committee to implement the prevention element of the ANS Program.

DATES: The Risk Assessment and Management Committee will meet from 9:00 a.m. to 4:00 p.m. on Tuesday, September 10, 1996, and 9:00 a.m. to 12:00 noon on Wednesday, September 11, 1996.

ADDRESSES: The Risk Assessment and Management Committee meeting will be held at the National Biological Service Building at 7920 N.W. 71st Street, Gainesville, Florida 32606.

FOR FURTHER INFORMATION CONTACT: Richard Orr, Risk Assessment and Management Committee Chairman, U.S. Department of Agriculture, Animal and Plant Health Inspection Service, telephone (301) 734–8939.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Risk Identification and Assessment Committee established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (P.L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Risk Assessment and Management Committee Chairman, U.S. Department of Agriculture, Animal and Plant Health Inspection Service (PPD), 4700 River Road Unit 117, Riverdale, MD 20737 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated August 12, 1996.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force Assistant Director—Fisheries.

[FR Doc. 96–20895 Filed 8–15–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NV–035–95–1220–00]

Temporary Closure of Public Lands: Nevada

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Temporary closure of certain public lands in Lyon and Mineral Counties on and adjacent to a motorcycle race course: High Sierra Motorcycle Club—Permit Number NV–030–9625.

PURPOSE: To provide for public safety during the official running of the Silver State Hare 'N' Hound Off-highway Motorcycle Race.

EFFECTIVE DATE AND TIMES: September 15, 1996; 6:00 a.m. through 5:00 p.m.

AUTHORITY: 43 CFR 8341; 43 CFR 8364 and 43 CFR 8372.

PENALTY: Any person failing to comply with the closure order may be subject to imprisonment for not more than 12 months or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

SUPPLEMENTARY INFORMATION: The permittee is required to clearly mark and monitor the event route during the closure period. Spectators shall remain in safe locations as directed by event officials and BLM personnel.

SPECIFIC INFORMATION: This event is a one-lap race along 60 to 90 miles of dirt roads and dry wash trails located in the Wassuk foothills east of Yerington, Nevada in Lyon and Mineral Counties within T10N R27E, R28E; T11N R26E, R27E; T12N R26E, R27E, R28E; T13N R26E, R27E; T14N R27E. The public lands to be closed to public use include existing roads and trails identified on the ground by colorful flagging and paper arrows attached to wooden stakes

designating the race route—25 feet route width the entire length of the course plus 100 feet by 300 feet mass start area. This closure will be in effect from 6:00 a.m. through 5:00 p.m. on Sunday, September 15, 1996. A map of the closure may be obtained from Fran Hull at the BLM contact address.

EXCLUSIONS: The above restrictions do not apply to agency, race officials, law enforcement, or emergency response personnel during the conduct of their official duties in relation to the race event.

FOR FURTHER INFORMATION CONTACT: James M. Phillips, Assistant District Manager, Non-Renewable Resources, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, Carson City, Nevada 89706. Telephone: (702) 885–6000.

Dated: August 5, 1996.

James M. Phillips,

Assistant District Manager, Non-Renewable Resources.

[FR Doc. 96–20879 Filed 8–15–96; 8:45 am]

BILLING CODE 4310–HC–M

[NV–931–1020–001]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Councils' Meeting Location and Time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for each meeting includes approval of minutes of the previous meeting, continuation of Council orientation, discussion of Standards and Guidelines for management of the public lands within the jurisdiction of the Council, identification of issues to be resolved and determination of the subject matter for future meetings.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meeting, or need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the District Manager at the Ely District Office, 702 North Industrial Way, HC33 Box 33500, Ely, NV 89301–9408, telephone 702–289–1800.

DATES, TIMES: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, BLM Office, 702 North Industrial Way, Ely, NV 89301–9408; September 7, 1996, starting at 9:00 a.m.; public comments will be at 11:30 a.m.

FOR FURTHER INFORMATION CONTACT: Curtis G. Tucker, Team Leader for the Northeastern Resource Advisory Council, Ely District Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 702–289–1800.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Susan Perkins,

Acting District Manager, Ely.

[FR Doc. 96–20886 Filed 8–15–96; 8:45 am]

BILLING CODE 4310–HC–M

[CA–060–06–5440–00–B026]

Notice of Proposed Decision Amending the California Desert Conservation Area Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed decision.

SUMMARY: The Bureau of Land Management proposes to amend the California Desert Conservation Area Plan by revising the northern boundary of the Singer Geoglyphs Area of Critical Environmental Concern (ACEC) to follow the 1988 realignment of State Route 78 and exclude the following public lands:

San Bernardino Base & Meridian, Imperial County, California

T.13 S., R.19 E.:

Section 21: That portion situated north of State Route 78, containing 5 acres more or less.

These lands would be classified as Multiple-Use Class M (Moderate Use) under the California Desert Conservation Area (CDCA) Plan.

DATES: A 30-day protest period on the proposed plan amendment begins August 16, 1996. Protests on the proposed plan amendment must be received no later than close of business, September 16, 1996.

ADDRESSES: Protests should be sent to: Bureau of Land Management, El Centro Resource Area, 1661 South 4th Street, El Centro, CA 92243.

FOR ADDITIONAL INFORMATION CONTACT: Thomas Zale, Multi-Resource Staff Chief, El Centro Resource Area at (619) 337–4420.

SUPPLEMENTARY INFORMATION: On February 14, 1996, the District Manager, California Desert District, approved a Record of Decision for a land exchange and a right-of-way for the Mesquite Regional Landfill. The Record of Decision noted that a proposed amendment to the California Desert Conservation Area to revise the boundary of the Singer Geoglyphs ACEC was being considered by the State Director, California. The proposed amendment was addressed in both the draft and final Environmental Impact Statement/Environmental Impact Report for the Mesquite Regional Landfill. A separate decision-making process for the proposed plan amendment is required in conformance with Federal Regulations (43 CFR 1610.5).

April 21, 1996, marked the end of a 60-day Governor's Consistency Review period for the proposed amendment to the California Desert Conservation Area Plan. The proposed amendment would revise the boundary of the Singer Geoglyphs ACEC to exclude approximately five acres of public land situated north of State Route 78 in Section 21, Township 13 South, Range 19 East, San Bernardino Meridian, Imperial County, California, and redesignate the excluded land as Multiple-Use Class M. The excluded land does not contain significant cultural resources for which the ACEC was designated and is separated from the remainder of the ACEC by the current alignment of State Route 78. The proposed decision is to approve the plan amendment.

Any person who participated in the planning process and has an interest which is or may be adversely affected by this proposed amendment may protest. A protest shall raise only those issues which were submitted for the record during the planning process. The protest shall be in writing and shall contain:

1. The name, mailing address, telephone number and interest of the person filing the protest;

2. A statement of the issue or issues being protested;

3. A statement of the part or parts of the plan amendment being protested;

4. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party, or an indication of the

date the issue or issues were discussed for the record; and,

5. A concise statement explaining why the State Director's proposed decision is believed to be wrong.

Action by the Director on any protest is the final action by the Department of the Interior.

Dated: August 6, 1996.

Thomas F. Zale,

Acting Area Manager.

[FR Doc. 96–20493 Filed 8–15–96; 8:45 am]

BILLING CODE 4310–40–P

Minerals Management Service

Outer Continental Shelf, Beaufort Sea; Notice of Leasing Systems, Sale 144

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. Identifying the bidding systems to be used and the reasons for such use; and

2. Designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. *Bidding systems to be used.* In the Outer Continental Shelf (OCS) Sale 144, blocks will be offered under the following bidding system as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)), as amended: bonus bidding with a fixed 12½-percent royalty.

a. *Bonus Bidding with a 12½-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA, as amended. This system has been chosen for all blocks proposed for Sale 144 because these blocks are expected to have high exploration, development, and production costs.

The Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12½-percent royalty system would be less than for the same block under a 16⅔-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, as the higher costs for exploration and development are the primary constraints to competition.

2. *Designation of Blocks.* All blocks in this lease sale will be offered under a 12½-percent royalty system because that system is most appropriate to the resource levels and costs expected in this sale area.

Cynthia Quarterman,

Director, Minerals Management Service.

Approved:

Dated: August 9, 1996.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 96–20864 Filed 8–15–96; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf, Western Gulf of Mexico, Notice of Leasing Systems, Sale 161

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. Identifying the bidding systems to be used and the reasons for such use; and

2. Designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. *Bidding systems to be used.* In the Outer Continental Shelf (OCS) Sale 161, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)), as amended: (a) bonus bidding with a fixed 16⅔-percent royalty on all unleased blocks in less than 200 meters of water; and (b)(i) bonus bidding with a fixed 16⅔-percent royalty on all unleased blocks in 200 meters of water or more, with a royalty suspension volume of up to 17.5 million barrels of oil equivalent on all unleased blocks in 200 to 400 meters of water; (ii) bonus bidding with a fixed 12½=percent royalty on all unleased blocks in 400 to 800 meters of water with a royalty suspension volume of up to 52.5 million barrels of oil equivalent; and (iii) bonus bidding with a fixed 12½-percent royalty on all unleased blocks in water depths of 800 meters or more with a royalty suspension volume of up to 87.5 million barrels of oil equivalent.

For bidding systems (b) (i), (ii), and (iii), the royalty suspension allocation rules are described in the Interim Rule (30 CFR Part 260) addressing royalty relief for new leases that was published in the Federal Register on March 25, 1996 (61 FR 12022).

a. *Bonus Bidding with a 16⅔-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b.(i) *Bonus Bidding with a 16⅔-Percent Royalty and a Royalty Suspension Volume (17.5 million barrels of oil equivalent).* This system is authorized by section (8)(a)(1)(H) of the OCSLA, as amended. This system complies with Sec. 304 of the Outer Continental Shelf Deep Water Royalty Relief Act (DWRRA). An incentive for development and production in water depths of 200 to 400 meters is provided through allocating royalty suspension volumes of 17.5 million barrels of oil equivalent to eligible fields.

b.(ii) *Bonus Bidding with a 12½-Percent Royalty and a Royalty Suspension Volume (52.5 million barrels of oil equivalent).* This system is authorized by section (8)(a)(1)(H) of the OCSLA, as amended. It has been chosen for blocks in water depths of 400 to 800 meters proposed for the Western Gulf of Mexico (Sale 161) to comply with Sec. 304 of the DWRRA. The 12½-percent royalty rate is used in deeper water because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow-water blocks. The use of a royalty suspension volume of 52.5 million barrels of oil equivalent for eligible fields provides an incentive for development and production appropriate for this water depth category.

b.(iii) *Bonus Bidding with a 12½-Percent Royalty and a Royalty Suspension Volume (87.5 million barrels of oil equivalent).* This system is authorized by section (8)(a)(1)(H) of the OCSLA, as amended. It has been chosen for blocks in water depths of 800 meters or more proposed for the Western Gulf of Mexico (Sale 161) to comply with Sec. 304 of the DWRRA. The use of a royalty suspension volume of 87.5 million barrels of oil equivalent for eligible fields provides an incentive for development and production appropriate for these deep-water depths.

2. *Designation of Blocks.* The selection of blocks to be offered under the four systems was based on the following factors:

a. Royalty rates on adjacent, previously leased tracts were considered

to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12½-percent royalty system based on the favorable performance of this system in these high-cost areas in past sales.

c. The royalty suspension volumes were based on the water depth specific volumes mandated by the DWRRA.

The specific blocks to be offered under each system are shown on the ''Stipulations, Lease Terms, and Bidding Systems'' and ''Royalty Suspension Areas for the Western Gulf of Mexico'' maps for Western Gulf of Mexico Lease Sale 161. These maps are available from the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Cynthia Quarterman,

Director, Minerals Management Service.

Approved:

Dated: August 9, 1996.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 96–20862 Filed 8–15–96; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–66]

Fresh Tomatoes and Bell Peppers

Determination

On the basis of the information developed in the subject investigation, the Commission determines [1] [2] that fresh tomatoes and bell peppers, provided for in subheadings 0702.00.20, 0702.00.40, 0702.00.60, and 0709.60.40 of the Harmonized Tariff Schedule of the United States,[3] are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing articles like or directly competitive with the imported articles.

Background

Following receipt of a petition filed on March 11, 1996, by the Florida Fruit & Vegetable Association, Orlando, FL, the Florida Bell Pepper Growers Exchange, Inc., Orlando, FL, the Florida Commissioner of Agriculture, Tallahassee, FL, the Ad Hoc Group of Florida Tomato Growers and Packers, and individual Florida bell pepper growers, the Commission, effective March 11, 1996, instituted Investigation No. TA–201–66 under section 202 of the Trade Act of 1974 to determine whether fresh tomatoes and bell peppers are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing articles like or directly competitive with the imported articles.

Notice of the institution of the Commission's investigation and of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 28, 1996 (61 F.R. 13875). The hearing in connection with the injury phase of the investigation was held in Washington, DC, on June 3, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel. The hearing on the remedy phase scheduled for August 1, 1996, was not held because the Commission made a negative injury determination and accordingly did not reach the question of remedy.

The Commission transmitted its determination in this investigation to the President on August 9, 1996. The views of the Commission are contained in USITC Publication 2985 (August 1996), entitled ''Fresh Tomatoes and Bell Peppers: Investigation No. TA–201–66.''

Issued: August 12, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–20875 Filed 8–15–96; 8:45 am]

BILLING CODE 7020–02–P

[1] Commissioner Bragg dissenting with regard to imports of fresh tomatoes and bell peppers other than (1) greenhouse tomatoes and bell peppers and (2) imports from Canada.

[2] Commissioner Nuzum not participating.

[3] The imported articles covered by this investigation are fresh or chilled tomatoes, including but not limited to the varieties known scientifically as *Lycopersicon esculentum*, *Lycopersicon cerasiforme*, and *Lycopersicon pyriforme*, but excluding tomatoes grown for processing. ''Bell peppers,'' also called sweet peppers, are defined as fresh or chilled peppers belonging to the species *Capsicum annuum var. annuum*, but excluding chili and cayenne peppers and peppers grown for processing.

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Jacor Communications, Inc. et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with United States District Court for the Southern District of Ohio in *United States of America* v. *Jacor Communications, Inc. et al.*, Civil Action C–1–96–757. The Complaint in this case alleged that the proposed acquisition of Citicasters, Inc. by Jacor Communications, Inc. would tend to lessen competition substantially in the sale of radio advertising in Cincinnati, Ohio and the surrounding areas in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment requires Jacor to divest within six months of the filing of the Final Judgment one of Cincinnati radio stations, WKRQ–FM, it will acquire from Citicasters. The proposed Final Judgment further requires defendants to ensure that, until the divestiture mandated by the decree has been accomplished, WKRQ will be operated as a viable, ongoing business and kept separate and apart from Jacor's other Cincinnati radio stations. Finally the proposed Final Judgment requires Jacor to give the United States prior notice as to certain future radio station acquisitions in Cincinnati or agreements that would grant Jacor the right to sell advertising time for Cincinnati stations that are not owned by Jacor.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Comments should be directed to Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, Department of Justice, 555 4th Street, NW., Room 8104, Washington, DC 2001.

Constance K. Robinson,

Director of Operations.

In the United States District Court for the Southern District of Ohio

United States of America, Plaintiff, v. Jacor Communications, Inc. and Citicasters, Inc., Defendants.

No. C–1–96–757 (Antitrust)
Stipulation
Judge Weber
Filed: 8/5/96

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

A. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice on the defendants and by filing that notice with the Court.

B. If Jacor enters into a local marketing agreement or time brokerage agreement (''LMA'') for WKRQ with another person that has entered into a written agreement to acquire the WKRQ Assets (''broker'') and the person and LMA have been approved by the Plaintiff, Jacor need not comply with Sections VIII (A), (C), (D), (F), (G), (H), (K), (M), or (N) of the Final Judgment, provided that the LMA includes the following provisions:

(1) Jacor shall not sell advertising time for WKRQ or any other station owned by the broker;

(2) If Jacor has any employee working at WKRQ, each such employee shall not sell advertising time, or participate in programming or financial decisions of the broker, and Jacor shall ensure that each such employee does not influence or attempt to influence, directly or indirectly, any decision related to programming or the sale of advertising time by the broker, except to the extent necessary for Jacor to fulfill its obligations as the licensee under applicable FCC rules and policies related to LMAs;

(3) Each such employee shall not have access to WKRQ confidential information, including marketing sales, pacing or rate information related to the sale of advertising time on radio stations in the Cincinnati area, and shall not communicate or otherwise disclose any information related to the sale of advertising on WKRQ or the format or programming at WKRQ to anyone at Jacor;

(4) Each such employee shall not be employed by another Jacor Cincinnati Radio Station except that Jacor employees may provide technical and administrative services to WKRQ;

(5) No officer, director or employee of Jacor shall be an officer, director or employee of the broker;

(6) The broker shall hold no interest in Jacor at the time it enters into the LMA, unless plaintiff agrees otherwise in writing;

(7) Jacor shall not hold an interest in the broker, and shall not receive compensation related to profits earned by the broker from advertising sales of WKRQ;

(8) Jacor shall exercise no right of control under the LMA to oversee the programming, personnel, operations or finances of WKRQ, without providing 14 days prior notice to plaintiff, except that if Jacor is required to take action to fulfill its obligations as the licensee under applicable FCC rules and policies related to LMAs, Jacor may take immediate action after notifying plaintiff. Such action shall be limited in scope and time to what is necessary to correct the problem and shall be consistent with FCC rules and policies;

(9) Jacor shall take all steps necessary to preserve the WKRQ Assets in good working condition within the bounds of its rights and obligations under the LMA; and

(10) Jacor and the broker shall enter into no agreement or understanding that limits competition between WKRQ and the Jacor Cincinnati radio stations.

For purposes of this Stipulation, the term ''broker'' means the person who enters into the LMA and the written agreement to acquire the WKRQ Assets, the person's successors and assigns and its subsidiaries, affiliates, parents, directors, officers, managers, agents and employees acting for or on behalf of any of them. This provision will survive the entry of the Final Judgment and terminate after the divestiture ordered by Section IV of the Final Judgment is completed.

C. The parties recognize that there could be a delay in obtaining approval by or a ruling of a government agency related to the divestiture required by Section IV of the Final Judgment, notwithstanding the diligent and good faith efforts of Jacor and any prospective owner of the WKRQ Assets. The Department will, in the exercise of its sole discretion, acting in good faith, give special consideration to extending the time period specified in Section IV of the Final Judgment provided that:

(1) Jacor has entered into a definitive agreement to divest the WKRQ Assets and such agreement and the prospective purchaser have been approved by the Department;

(2) All papers necessary to secure any governmental approvals and/or rulings to effectuate such divestiture (including but not limited to FCC, SEC and IRS approvals or rulings) have been filed with the appropriate agency;

(3) Receipt of such approvals are the only closing conditions that have not been satisfied or waived; and

(4) Jacor has demonstrated that neither it nor the prospective owner of the WKRQ Assets is responsible for any such delay.

D. The parties understand that nothing in the Final Judgment should be construed to require the trustee appointed pursuant to Section V of the Judgment to directly or indirectly control, supervise, direct or attempt to control the operations of WKRQ, without receiving the prior approval of the FCC. Such operations, including complete control and supervision of all of the programs, employees, finances, operations and policies of WKRQ, shall remain solely the responsibility of defendants, subject to its obligations set forth in Section VIII of the Final Judgment, or the responsibility of the broker, subject to the rights and limitations described in Paragraph (C), above. Nothing in this paragraph shall change or limit the right of the trustee to sell the WKRQ Assets pursuant to Section V of the Final Judgment.

E. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court; provided, however, the Citicasters need not comply with Section V or Sections VIII(B) through VIII(N) until the Jacor/Citicasters Transaction has been consummated; provided further that, prior to the consummation of the Transaction, Jacor shall take no action to impede or influence Citicasters' compliance with Section VIII(A); and provided, further, that Citicasters need not comply with Sections IV(B) through IV(D) until the earlier to occur of the consummation of the Transaction or ten business days following issuance of all FCC approvals required as a condition to the consummation of the Transaction, except that, prior to the time Citicasters' obligation to comply with Sections IV(B) through IV(D) arises, Citicasters shall use all reasonable efforts to cooperate with Jacor's efforts to divest the WKRQ Assets.

F. Jacor shall prepare and deliver reports in the form required by the provisions of paragraph B of Section VII of the proposed Final Judgment commencing no later than September 1,1996, and every thirty days thereafter pending entry of the Final Judgment.

G. In the event plaintiff withdraws its consent, as provided in paragraph (A) above, or if the proposed final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

H. All parties agree that this agreement can be signed in multiple counter-parts.

Dated: August 2, 1996.

For the Plaintiff:

Nancy M. Goodman,

Assistant Chief, Telecommunications Task Force.

Andrew S. Cowan,

Attorney, Telecommunications Task Force, U.S. Department of Justice, Antitrust Division, 555 4th Street N.W., Room 8104, Washington, DC 20001, (202) 514–5621.

For the Defendant:

Thomas B. Leary,

Counsel for Jacor Communications, Inc.

Tom D. Smith,

Counsel for Citicasters, Inc.

Whereas, plaintiff, the United States of America, having filed its Complaint herein on August 5, 1996, and plaintiff and defendants, by their respective attorneys, having consented to the entry of its Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is prompt and certain divestiture of certain assets to assure that competition is not substantially lessened;

And whereas, plaintiff requires Jacor to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to plaintiff that the divestitures ordered herein can be made and that Jacor will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

And, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. ''Jacor'' means defendant Jacor Communications, Inc., an Ohio corporation with its headquarters in Cincinnati, Ohio and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents, and employees acting for or on behalf of Jacor.

B. ''Citicasters'' means defendant Citicasters Inc., a Florida corporation with its headquarters in Cincinnati, Ohio, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents, and employees acting for or on behalf of Citicasters.

C. ''WKRQ Assets'' means all of the assets, tangible or intangible, used in the operation of the WKRQ–FM radio station ''WKRQ'') in Cincinnati, Ohio, including but not limited to: all real property (owned and leased) used in the operation of WKRQ; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property used in the operation of WKRQ; all licenses, permits and authorizations and applications therefor issued by the Federal Communications Commission (''FCC'') and other governmental agencies relating to WKRQ; all contracts, agreements, leases and commitments of Citicasters pertaining to WKRQ and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to WKRQ; and all logs and other records maintained by Citicasters or WKRQ in connection with the station's business. For all assets used jointly by WKRQ and WWNK–FM or WKRC–TV prior to the divestiture required by this Final Judgment, Jacor shall propose to plaintiff, within 7 days of the consummation of the Jacor/Citicasters Transaction, a plan for dividing such assets among these stations. Upon approval of the plan by plaintiff, the term''WKRQ Assets'' shall include only those assets allocated under the plan to WKRQ.

D. ''Jacor Cincinnati Radio Station'' means each broadcast radio station that is licensed to a community in the Cincinnati Area, and that Jacor owns, operates, manages, or has an interest in, or for which Jacor sells more than 20 percent of its advertising time.

E. ''Non-Jacor Radio Station'' means any radio broadcast station licensed to a community in the Cincinnati Area that is not a Jacor Cincinnati Radio Station.

F. ''Cincinnati Area'' means the Cincinnati, Ohio DMA as identified by The Arbitron Radio Market Report for Cincinnati (Winter 1996).

G. ''Jacor/Citicasters Transaction'' means the proposed acquisition of Citicasters by Jacor contemplated by the Agreement and Plan of Merger, dated as of February 12, 1996.

III. Applicability

The provisions of this Final Judgment apply to each of the defendants, its successors and assigns, its subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV. Divestiture of WKRQ

A. Jacor is hereby ordered and directed, in accordance with the terms of this Final Judgment, within six (6) months after the filing of this Final Judgment, to divest the WRRQ Assets to a purchaser acceptable to plaintiff. Unless plaintiff otherwise consents in writing, the divestiture pursuant to Section IV of this Final Judgment or by the trustee appointed pursuant to Section V shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the WKRQ Assets can and will be used by the purchaser as a viable, ongoing business. The divestiture, whether pursuant to Sections IV or V of this Final Judgment, shall be made (i) to a purchaser that, in the plaintiff's sole judgment, has the capability and intent of competing effectively, and has the managerial, operational, and financial capability to compete effectively as a radio station in the Cincinnati Area; and (ii) pursuant to an agreement the terms of which shall not interfere with the ability of the purchaser to compete effectively.

B. Defendants agree to use their best efforts to accomplish the divestiture as expeditiously and timely as possible. Plaintiff, in its sole discretion, may extend the time period for the divestiture for two additional periods of time not to exceed sixty (60) calendar days in toto.

C. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the WKRQ Assets. Defendants shall inform any person making a bona fide inquiry regarding a possible purchase that the sale is being

made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall make known to any person making an inquiry regarding a possible purchase of the WKRQ Assets that the assets described in Section II (C) are being offered for sale. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the WKRQ Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to plaintiff at the same time that such information is made available to any other person.

D. Defendants shall permit bona fide prospective purchasers of the WKRQ Assets to have access to personnel and to make such inspection of the assets, and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

V. Appointment of Trustee

A. In the event that Jacor has not divested the WKRQ Assets within six months of the filing of this Final Judgment with the Court, or within any extension granted under Section IV, the Court shall appoint, on application of the plaintiff and consistent with the rules of the FCC, a trustee selected by the plaintiff to effect the divestiture of the assets.

B. After the trustee's appointment has become effective, only the trustee shall have the right to sell the WKRQ Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections V and VI of this Final Judgment, and shall have other powers as the Court shall deem appropriate. Subject to Section V (C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investments bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals or agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiff, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the sale of the WKRQ Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee no later than fifteen (15) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining monies shall be paid to defendants and the trustee's services shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divestiture and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the WKRQ Assets and shall use their best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to effect all necessary regulatory approvals. Subject to a customary confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records, and facilities related to the WKRQ Assets and defendants shall develop such financial or other information as may be necessary to the divestiture of the WKRQ Assets. Defendants shall permit prospective purchasers of the WKRQ Assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of the WKRQ Assets as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the WKRQ Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

F. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to the parties, who shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate, which shall, if necessary, include extending the term of the trustee's appointment.

VI. Notification

Within two (2) business days following execution of a definitive agreement, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, Jacor or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendants, the proposed purchaser or purchasers, any other third party, or the trustee if applicable additional information concerning the proposed divestiture and the proposed purchaser or purchasers. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from

defendants, the proposed purchaser or purchasers, any third party, and the trustee, whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V (B) of this Final Judgment. Absent written notice that plaintiff does not object to the proposed purchaser or upon objection by plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in Section V (B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Jacor shall deliver to plaintiff an affidavit as to the fact and manner of defendants' compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the WKRQ Assets, and shall describe in detail each contact with any such person during that period.

B. Within twenty (20) calendar days of the filing of this Final Judgment, defendants shall deliver to plaintiff an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the WKRQ Assets pursuant to Section VIII of this Final Judgment. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate WKRQ as an active competitor, maintain the management, sales, marketing and pricing of WKRQ apart from that of the other Jacor Cincinnati Radio Stations, maintain and increase sales of advertising time at WKRQ, and maintain the WKRQ Assets in operable condition, continuing normal maintenance. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall preserve all records of all efforts made to preserve and divest the WKRQ Assets.

VIII. Preservation of Assets/Hold Separate

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendants shall preserve, hold, and continue to operate the business of WKRQ as an independent, ongoing, economically viable business, with its assets, management, and operations separate, distinct, and apart from the other Jacor Cincinnati Radio Stations. Defendants shall maintain the business of WKRQ as a viable and active competitor to the other Cincinnati radio stations, including the Jacor Cincinnati Radio Stations.

B. Defendants shall not coordinate the marketing, promotion, merchandising or terms of sale of advertising time on WKRQ with other current or hereafter acquired Jacor Cincinnati Radio Stations. There shall be no communications between personnel at WKRQ and those at other Jacor Cincinnati Radio Stations relating to any confidential business information, including any marketing, sales, pacing or rate information relating to the sale of advertising time on radio stations in the Cincinnati Area.

C. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time on WKRQ. In particular, defendants shall, consistent with market conditions, provide promotional, marketing and merchandising support for the sale of advertising time on WKRQ, including maintaining or increasing expenditures designed to promote WKRQ.

D. Defendants shall ensure that WKRQ has separate management, programming, sales personnel and other employees from the other Jacor Cincinnati Radio Stations, and ensure that the management, programming, sales personnel and employees of other Jacor Cincinnati Radio Stations, or anyone acting at their direction, do not influence or attempt to influence, directly or indirectly, any operational, programming, marketing or financial decisions of WKRQ, and vice versa.

E. Except in the ordinary course of business or as part of the disposition of the WRKQ Assets under this Final Judgment, defendants shall not, without the prior consent of plaintiff, sell, lease, assign, transfer, or otherwise dispose of, or pledge for collateral for loans (except such loans and credit facilities as are currently outstanding or replacements or substitutes therefor), the WKRQ Assets, including but not limited to the real estate, facilities, and equipment, all tangible and intangible assets used in connection with WKRQ's format, and all administrative, marketing, sales and support facilities, related to the sale of advertising time on WRKQ.

F. Defendants shall provide and maintain sufficient working capital, consistent with past practice, to maintain the WKRQ Assets as a viable, ongoing business.

G. Defendants shall provide and maintain sufficient lines and sources of credit, consistent with past practice, to maintain the general business operations of WKRQ as a viable, ongoing business.

H. Consistent with the stations' existing practices, defendants shall maintain, in accordance with sound accounting practices, separate, true and complete financial ledgers, books and records reporting the profits and losses of WKRQ on a monthly and quarterly basis.

I. Defendants shall refrain from taking any action designed to reduce the scope or level of competition between the general business operations of WKRQ and other Cincinnati radio stations, including current or hereafter acquired Jacor Cincinnati Radio Stations, or in the sale of advertising time on radio stations in the Cincinnati Area, without the prior consent of plaintiff.

J. Defendants shall refrain from taking any action designed to jeopardize its ability to divest the WKRQ Assets as a viable, ongoing business.

K. Defendants shall give five business days' prior notice to plaintiff of its decision to terminate any WKRQ management staff, on-air personality or sales employee.

L. Jacor shall not hire or contract to purchase services from any WKRQ employee including management, sales or production staff or on-air-personality.

M. Defendants shall give five business days' notice to plaintiff prior to either (1) changing WKRQ's format from Contemporary Hits Radio, or (2) Jacor changing the format of any current or hereafter acquired Jacor Cincinnati Radio Stations to an Adult Hits, Top 40, Soft Hits, Adult Contemporary, or to a similar format.

N. Defendants shall appoint a person or persons to oversee the WKRQ Assets, and who will be responsible for defendants' compliance with Section VIII of this Final Judgment.

IX. Notice

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-

Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the ''HSR Act''), Jacor, without providing advance notification to the United States Department of Justice, shall not directly or indirectly:

(1) acquire any assets of, or any equity or management interest in, any Non-Jacor Radio Station; provided, however, that Jacor need not provide notice under this provision for any direct or indirect acquisition of equity of a Non-Jacor Radio Station that would result in Jacor's holding no more than five percent of the total equity of the station; and provided further that assets for purpose of this Section IX(A) means: (i) substantially all the assets of a Non-Jacor Radio Station, or (ii) any trademarks, trade names, service marks, service names, copyrights, or call letters, or programming the purchase of which is accompanied by a non-compete covenant, whether or not the acquired assets constitute substantially all the assets of a Non-Jacor Radio Station; or

(2) enter into any agreement or understanding that would allow Jacor to market or sell advertising time for any Non-Jacor Radio Station; provided, however, that Jacor need not provide notice under this provision for any such agreement or understanding: (i) that is consideration for the sale by Jacor of proprietary news, weather or traffic programming to any such Non-Jacor Radio Station and would permit Jacor to sell no more than 5 percent of that station's advertising time for any day and no more than 20 percent of that station's advertising time for any hour segment, or (ii) that is consideration for Jacor's granting to such station rebroadcast rights for a sports event to which Jacor has exclusive broadcast rights, and would permit Jacor to sell no more than 15 percent of such station's advertising time for any day.

Notification shall be provided to the United States Department of Justice in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5–9 of the instructions must be provided only with respect to Jacor Cincinnati Radio Stations. Notification shall be provided at least thirty (30) days prior to acquiring any such interest covered in (1) or (2) above, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Department make a written request for additional information, Jacor shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

B. Jacor shall submit to the Department within ten (10) business days following the end of each of Jacor's fiscal quarters a list of each acquisition made by Jacor in that just-ended quarter of any assets of a Non-Jacor Radio Station that was not subject to the reporting and waiting period requirements of the HSR Act or to the notice and waiting period requirements of Section IX(A); provided, however, that the acquisition of physical assets valued at less than $25,000 need not be included in the list. The list shall include the identity of the parties to the transaction, the date of the transaction and a description of the assets acquired.

X. Compliance Inspection

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to enforcement of this Final Judgment; and

(2) Subject to the reasonable convenience of defendants and without restraint or interference from it, to interview officers, employees, and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in this Section X shall be divulged by plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry, except that plaintiff, after five years from the date of this Final Judgment's entry, in its sole discretion, may notify Jacor and the Court that Jacor shall no longer be subject to Section IX.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

The United States pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16 (b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The plaintiff filed a civil antitrust complaint on August 5, 1996, alleging that the proposed acquisition of Citicasters, Inc. (''Citicasters'') by Jacor Communications, Inc. (''Jacor'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. Jacor and Citicasters own and operate radio broadcast stations in various cities across the United States, and they are the first and third largest owners of radio stations in the Cincinnati, Ohio area.

The complaint alleges that the combination of these companies would substantially lessen competition in the sale of radio advertising time in Cincinnati, Ohio and the surrounding areas. The prayer for relief seeks: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and (2) a preliminary and permanent injunction preventing Jacor and Citicasters from carrying out the proposed merger.

Shortly before that suit was filed, a proposed settlement was reached that permits Jacor to complete its acquisition of Citicasters, yet preserves competition in the market for which the transaction would raise significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the complaint was filed.

The proposed Final Judgment orders Jacor to divest WKRQ–FM in Cincinnati, which it will acquire from Citicasters in the proposed transaction, including all the assets necessary to make WKRQ an economically viable competitor in the Cincinnati radio market. Unless the United States grants a time extension, Jacor must complete this divestiture within six months after the entry of the Final Judgment. If Jacor does not divest the WKRQ Assets during the divestiture period, the Court may appoint a trustee to sell the assets. The proposed Final Judgment further requires defendants to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, WKRQ will be operated independently as a viable, ongoing business, and kept separate and apart from Jacor's other Cincinnati radio stations. Finally, the proposed Final Judgment requires Jacor to give the United States prior notice as to certain future radio station acquisitions in Cincinnati or agreements that would grant Jacor the right to sell advertising time for non-Jacor radio stations in Cincinnati.

The United States and Jacor have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Defendant Jacor is an Ohio corporation with its headquarters in Cincinnati, Ohio. It currently owns and operates 22 stations in 7 cities.[1] In 1995, Jacor reported total revenues of approximately $134 million, $40 million from operations in the Cincinnati area. Jacor owns four Cincinnati radio stations, and sells advertising for three more radio stations under joint sales agreements (''JSAs'').

Citicasters is a Florida corporation headquartered in Cincinnati, Ohio. Citicasters owns 19 radio stations in 8 cities, and also owns two television stations. In 1995, Citicasters' total revenues were approximately $60 million, $10 million from its Cincinnati radio operations. Citicasters owns two radio stations in Cincinnati.

On February 12, 1996, Jacor agreed to purchase Citicasters for approximately $770 million. This transaction, which would combine Jacor and Citicasters, precipitated the Government's suit. As a result of the proposed transaction, Jacor would own six major radio stations in Cincinnati and control the sale of advertising time for three more.

B. Sale of Radio Advertising Time

The complaint alleges that the provision of advertising time on radio stations serving the Cincinnati metropolitan area constitutes a line of commerce and section of the country, or relevant market, for antitrust purposes. Advertisers that seek to reach residents of the Cincinnati area would not find radio stations that broadcast to other areas to be acceptable substitutes for Cincinnati stations.

Radio stations earn money by selling broadcast time to advertisers. Advertisers choose among radio stations by comparing differences among the stations' rates, audience size, audience composition, and availability of time for sale. An advertiser typically has a ''target audience'' (young women, for example) that it seeks to reach when marketing its product or service, and wants its target audience to have substantial exposure to its message. To ensure this reach and frequency, advertisers generally buy time on multiple radio stations in the same market. Because a radio station bases its rates on the size of its overall audience, advertisers prefer to advertise on stations that are listened to primarily by their target audience.

For Cincinnati advertisers, radio is a qualitatively different medium from television or newspapers. Perhaps most significantly, radio gives Cincinnati advertisers the ability to reach target audiences far more efficiently than other media. Cincinnati radio stations attract different types of audiences by adopting different formats, such as country or rock and roll. By choosing appropriate radio stations, a Cincinnati advertiser can reach a large percentage of its target audience without also reaching (and thus paying for) listeners outside of its target. Although television and newspapers are good vehicles for reaching a broad, undifferentiated audience, they generally lack radio's ability to provide efficient targeting.

Radio advertisements are also comparatively inexpensive to produce, and can be changed or modified easily and with little advance notice to the radio station. This makes radio advertising especially attractive to Cincinnati advertisers that need to change messages frequently (for example, to advertise different items as being on sale each week), as well as to companies with limited advertising budgets. Radio is also the most effective medium for delivering a message to consumers when they are traveling in their cars or outside their homes.

Radio thus has particular advantages for those seeking to place low-cost, targeted or time-sensitive advertising. Many Cincinnati advertisers therefore perceive radio as a distinct advertising medium from television or newspapers. Accordingly, many are not likely to switch any or some of their advertising budget from radio to other media were radio prices to rise 5–10%.

Radio stations negotiate rates individually with each advertiser. As an integral part of these negotiations, an advertiser will provide the station with a description of its target audience, as well as the reach and frequency it desires. Based on this information and the station's knowledge of its competitors, the station can identify the reasonable alternatives available to advertisers, and has the ability to charge advertisers different rates, based on whether such alternatives exist.

[1] In a separate acquisition, Jacor plans to acquire Noble Broadcast Group, Inc., which owns 10 radio stations.

C. Anticompetitive Consequences of the Proposed Merger

The complaint alleges that Jacor's proposed acquisition of Citicasters would lessen competition substantially in the provision of advertising time on radio in the Cincinnati area. The proposed acquisition would create further market concentration in an already highly concentrated market, and Jacor would control a substantial share of the advertising revenues in this market. Jacor presently controls 42% of all radio advertising revenues in Cincinnati, and its market share would rise to 53% after the proposed merger. According to the Herfindahl-Hirschman Index (''HHI''), a widely-used measure of market concentration defined and explained in Appendix A, Jacor possesses a pre-merger HHI of 2180, which would rise to 3077 after the merger.

Advertisers, at present, can choose among radio stations owned by Jacor, Citicasters and others. When there are multiple stations that could satisfy its needs, an advertiser can get competing bids from the stations, and so obtain better rates or other special services from them. After the merger, advertisers will have fewer radio companies to choose from, and many will have to purchase advertising time from Jacor/Citicasters so as to obtain the desired reach and frequency. Advertisers will thus lose the benefits that the existing competition between Jacor and Citicasters stations provides.

Currently, many advertisers feel that advertising on either one of the Jacor-controlled stations, or on WKRQ, is very important. Many of these advertisers' target audiences include young adults (listeners aged 18 to 34). Thus, the Jacor stations and WKRQ compete against each other for the business of advertisers trying to reach that audience, and in rate negotiations, advertisers use this competition to get better rates or increased services from the Citicasters and Jacor stations. This competition will be eliminated by the merger.

Currently, advertisers trying to reach young adults could efficiently reach this audience on the radio without having to use a Jacor station. Post-merger, however, many of these advertisers will be much more dependant on purchasing time from Jacor stations. Jacor could accordingly raise its rates, and reduce the quality of its service, to advertisers targeting young adults (or who need either the Jacor stations or WKRQ for other reasons) who would have scant alternatives to paying the increase, while maintaining lower rates for other advertisers. This would make a price increase profitable even though some advertisers could switch to other radio stations.

Non-Jacor radio stations in Cincinnati are not likely to respond to Jacor's increased prices after the acquisition by changing formats so as to attract a greater number of young adults. Most radio stations change format only when their existing formats are losing money. A station is also unlikely to change its format solely in response to higher prices being charged by a large established company that controls a number of stations in the market, such as Jacor.

Entry by new radio stations in this market is unlikely. The FCC is unlikely to grant a license to a new radio station, as there is insufficient spectrum to accommodate a new signal without interfering with existing signals. In addition, radio stations sited in nearby communities cannot easily boost their signal power so as to provide better coverage and thereby enter the Cincinnati market. Boosting a signal would interfere with neighboring stations on the same or similar frequencies, a violation of FCC regulations.

For these reasons, the Department concludes that the merger as proposed would substantially lessen competition in the sale of radio advertising time in the Cincinnati area, eliminate actual competition between Jacor and Citicasters, and result in increased rates for radio advertising time in the Cincinnati metropolitan area, all in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of radio advertising time in the Cincinnati metropolitan market. It requires the divestiture of WKRQ–FM, the station owned by Citicasters that competes most directly with Jacor stations for advertising dollars targeted to young adults. As a result of this divestiture, WKRQ–FM will remain as a strong competitor to the Jacor stations. The divestiture will preserve choices for advertisers and help ensure that radio advertising rates in Cincinnati do not increase as a result of the acquisition.

Unless the United States grants a time extension, this divestiture of WKRQ must be accomplished by Jacor within six months after entry of the Final Judgment. The defendants must divest the assets and rights associated with WKRQ in such a way as to satisfy the plaintiff that the station can and will be operated as a viable, ongoing business, and that until the divestiture, the station will be maintained as an independent competitor to the other stations in the Cincinnati area, including the Jacor stations.

If the defendants fail to divest WKRQ within the six months after entry of Final Judgment, or extension thereof, the Court, upon application of the United States, shall appoint a trustee nominated by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Jacor will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of WKRQ and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished. After appointment, the trustee will file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under the proposed Final Judgment. If the trustee has not accomplished the divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. At the same time, the trustee will furnish such report to the parties, who will each have the right to be heard and to make additional recommendations consistent with the purpose of the trust.

The proposed Final Judgment requires that Jacor maintain WKRQ separate and apart pending divestiture. The Judgment also contains provisions to ensure that the assets of WKRQ will be preserved so that the station after divestiture will remain a viable, aggressive competitor.

The proposed Final Judgment also prohibits Jacor from entering into certain agreements with other Cincinnati radio stations without providing at least thirty (30) days notice to the Department of Justice. Specifically, Jacor must notify the Department before acquiring any significant interest in another Cincinnati radio station, which would raise competitive concerns but might well be too small to be reported under the Hart-Scott-Rodino (''HSR'') premerger notification process. In addition, Jacor may not agree to sell radio advertising time for any other Cincinnati radio station, without providing such notice.

This provision ensures that the Department will receive advance notice of any acquisition, or agreements, through which Jacor will increase the amount of advertising time on radio stations that it can sell. In particular, this provision will require Jacor to notify the Department before it enters into any more joint sales agreements (''JSAs'') or limited management agreements (''LMAs'') with other stations in the Cincinnati area. Such agreements, whereby Jacor sells advertising for or manages other area radio stations, would effectively increase Jacor's market share in Cincinnati. In analyzing the Cincinnati radio market, the Department treated Jacor's three present JSA stations as if Jacor owned them outright. Despite their clear competitive significance, a JSA or an LMA probably would not be reportable to the Department under HSR. Thus, this provision in the decree ensures that the Department will receive notice of and be able to act, if appropriate, to stop any agreements that might have anticompetitive effects in the Cincinnati market.

The relief in the proposed Final Judgment is intended to remedy the competitive effects of the proposed acquisition of Citicasters by Jacor. Nothing in this Final Judgment is intended to limit the plaintiff's ability to investigate or bring actions, where appropriate, challenging other past or future activities of Jacor in the Cincinnati area, including its entry into JSAs, LMAs or other agreements related to the sale of advertising time on non-Jacor stations.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, United States Department of Justice, 555 4th Street, N.W., Room 8104, Washington, D.C. 20001.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its complaint against defendants. The plaintiff is satisfied, however, that the divestiture of WKRQ and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in the Cincinnati metro area. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry. ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [2] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *citing United States* v.

[2] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [4]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 2, 1996.

Respectfully submitted,

Nancy M. Goodman,

Assistant Chief, Telecommunications Task Force, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Room 8104, Washington, D.C. 20001, (202) 514–5621.

Exhibit A—Definition of HHI and Calculations for Market

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See Merger Guidelines § 1.51.

Based on available radio advertising revenues, the pre-merger HHI for the Cincinnati area radio market is 2180. After the proposed merger the HHI would be 3077, an increase of 897 points.

[FR Doc. 96–20860 Filed 8–15–96; 8:45 a.m.]

BILLING CODE 4410–01–M

[3] *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see BNS*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *See also Microsoft*, 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '') (citations omitted).

[4] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette Co.*, 406 F. Supp. at 716 (citations omitted); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 12, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB 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 submission of responses.

Agency: Employment and Training Administration.

Title: Revenue Quality Control—Tax Performance System.

OMB Number: 1203–0332.

Agency Number: ETA Handbook 407.

Frequency: Annually.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 52.

Estimated Time Per Respondent: 1,750.

Total Burden Hours: 91,000.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Revenue Quality Control (RQC)—Tax Performance System gathers and disseminates information on the timeliness and accuracy of State unemployment insurance tax operations. This submission proposes to extend the RQC program for three years.

Agency: Employment and Training Administration.

Title: Alternative Schools Random Assignment Evaluation, Student Follow-up Survey.

OMB Number: 1205–0331.

Frequency: Annually.

Affected Public: Individuals or households.

Number of Respondents: 1,600.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 800.

Total Annualized capital/startup costrs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $13,620.

Description: The Department of Labor (DOL) provides grants to seven cities to start alternative schools for at-risk youth based on the model of High School Redirection in Brooklyn. DOL has implemented a random assignment evaluation in three of the schools in the demonstration. DOL has previously obtained Office of Management and Budget approval to conduct follow-up interviewed for two of the schools in the evaluation, with the idea that it would subsequently come back to request approval for surveys for other sites in the evaluation. DOL is now seeking to do just that—to obtain approval for a follow-up survey and school records data collection at the Cincinnati school.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–20951 Filed 8–15–96; 8:45 am]

BILLING CODE 4510–23–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and State:

Volume III

Mississippi
MS960058 (AUGUST 16, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Connecticut
CT960001 (March 15, 1996)
CT960003 (March 15, 1996)
CT960004 (March 15, 1996)
CT960005 (March 15, 1996)
New York
NY960002 (March 15, 1996)
NY960034 (March 15, 1996)

Volume II

District of Columbia
DC960001 (March 15, 1996)
DC960003 (March 15, 1996)
Pennsylvania
PA960005 (March 15, 1996)
PA960006 (March 15, 1996)
PA960012 (March 15, 1996)
PA960013 (March 15, 1996)
PA960014 (March 15, 1996)
PA960026 (March 15, 1996)
PA960031 (March 15, 1996)
West Virginia
WV960001 (March 15, 1996)
WV960002 (March 15, 1996)
WV960003 (March 15, 1996)
WV960005 (March 15, 1996)
WV960006 (March 15, 1996)
WV960018 (March 15, 1996)

Volume III

Florida
FL960001 (March 15, 1996)
FL960009 (March 15, 1996)
FL960017 (March 15, 1996)
FL960032 (March 15, 1996)
FL960034 (March 15, 1996)
FL960100 (March 15, 1996)
Kentucky
KY960002 (March 15, 1996)
KY960007 (March 15, 1996)
KY960025 (March 15, 1996)
KY960027 (March 15, 1996)
KY960029 (March 15, 1996)
Mississippi
MS960007 (March 15, 1996)
MS960035 (March 15, 1996)

Volume IV

Indiana
IN960001 (May 17, 1996)
IN960002 (March 15, 1996)
IN960003 (March 15, 1996)
IN960004 (March 15, 1996)
IN960005 (March 15, 1996)
IN960006 (March 15, 1996)
Ohio
OH960002 (March 15, 1996)
OH960029 (March 15, 1996)

Volume V

Iowa
IA960006 (March 15, 1996)
IA960016 (March 15, 1996)
IA960032 (March 15, 1996)
IA960038 (March 15, 1996)
Kansas
KS960009 (March 15, 1996)
KS960011 (March 15, 1996)
KS960019 (March 15, 1996)
KS960025 (March 15, 1996)
KS960026 (March 15, 1996)
KS960063 (March 15, 1996)
Texas
TX960003 (March 15, 1996)
TX960007 (March 15, 1996)
TX960008 (March 15, 1996)
TX960009 (March 15, 1996)
TX960013 (March 15, 1996)
TX960017 (March 15, 1996)
TX960033 (March 15, 1996)
TX960034 (March 15, 1996)
TX960035 (March 15, 1996)
TX960037 (March 15, 1996)
TX960053 (March 15, 1996)
TX960069 (March 15, 1996)
TX960077 (March 15, 1996)

Volume VI

Alaska
AK960001 (March 15, 1996)
Colorado
CO960001 (March 15, 1996)
CO960005 (March 15, 1996)
CO960006 (March 15, 1996)
CO960007 (March 15, 1996)
CO960008 (March 15, 1996)
CO960009 (March 15, 1996)
CO960010 (March 15, 1996)
CO960011 (March 15, 1996)
CO960016 (March 15, 1996)
CO960021 (March 15, 1996)
CO960022 (March 15, 1996)
CO960023 (March 15, 1996)
CO960024 (March 15, 1996)
CO960025 (March 15, 1996)
Idaho
ID960001 (March 15, 1996)
ID960002 (March 15, 1996)
Oregon
OR960001 (March 15, 1996)
OR960017 (March 15, 1996)
Washington
WA960001 (March 15, 1996)
WA960002 (March 15, 1996)
WA960007 (March 15, 1996)
Wyoming
WY960008 (March 15, 1996)
WY960009 (March 15, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscriptions(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (Issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 9th Day of August 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–20692 Filed 8–15–96; 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 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 Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the ''Contingent Work Supplement to the Current Population Survey.''

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 15, 1996.

The Bureau of Labor Statistics 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.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue NE., Washington, DC 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of the official Government statistics on employment and unemployment for over 50 years. Collection of labor force data through the CPS is necessary to meet the requirements in Title 29, United States Code, Sections 1 through 9. Since the mid-1980s, there has been a growing belief among labor market researchers that employers require greater flexibility in their use of labor. As a result, many workers may find themselves in ''contingent jobs'' which are structured to last for only a limited duration or in alternative employment arrangements such as independent contracting, on-call work, contracting work, and working through temporary help firms. It is feared that workers with such employment may have little job security, low pay, and no fringe benefits. While anecdotal information about contingent and alternative employment abounds, accurate measurement of the extent and nature of

the phenomenon is lacking. This CPS supplement would provide objective information about ''contingent work.''

II. Current Actions

The contingent work supplement provides information on the number and characteristics of workers in contingent jobs, that is, jobs which are structured to last only a limited period of time. The survey also provides information about workers in several alternative employment arrangements, including those working as independent contractors and on-call workers, as well as those working through temporary help agencies or contract companies. The supplement was first conducted in February 1995. While the initial collection provided a wealth of information on contingent and alternative employment arrangements, being a new survey, it could not provide any information on the trend in such employment. A key purpose of the February 1997 collection is to provide a second point of comparison. This will enable the BLS and other researchers to examine whether contingent and alternative employment arrangements are becoming more common.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: Contingent Work Supplement.

OMB Number: 1220–0153.

Affected Public: Individuals.

Total Respondents: 60,000 individuals.

Frequency: One-time only.

Total Responses: 60,000 individuals.

Average Time Per Response: 8 minutes.

Estimated Total Burden Hours: 8,000 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 12th day of August, 1996.

Peter T. Spolarich,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 96–20926 Filed 8–15–96; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Biological Sciences: Committee of Visitors (COV) Review for Biochemistry and Molecular Structure and Function in the Division of Molecular & Cellular Biosciences.

Date and Time: Thursday, September 5 through Friday, September 6, 1996; 8:30 A.M. to 5:00 P.M.

Place: The National Science Foundation, Room 330, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Julius H. Jackson, Division Director for Molecular & Cellular Biosciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia. Telephone (703) 306–1440.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of Biochemistry and Molecular Structure and Function in the Division of Molecular & Cellular Biosciences.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: August 12, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–20867 Filed 8–15–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194)

Date and Time: September 4, 1996, 8:30 a.m.–5:00 p.m.

Place: Rooms 310 and 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Yousef Hashimi, SBIR Program Manager, (703) 306–1391, Darryl Gorman, SBIR Program Manager, SBIR Office, (703) 306–1391, Liselotte Schioler, Program Officer, Materials Research, (703) 306–1836, Virginia Ayers, Program Officer, Electrical and Communications Systems, (703) 306–1339, Liselotte Schioler, Program Officer, Materials Research, (703) 306–1836, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase I proposals concerning Electrical and Communications Systems, Flat Panel Displays and Materials Research, Magnetic Materials as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 12, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–20869 Filed 8–15–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation-(1194)

Date and Time: September 8–9, 1996, 8:30 a.m.–5:00 p.m.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Darryl Gorman, SBIR Program Manager, SBIR Office, (703) 306–1391, Liselotte Schioler, Program Officer, Materials Research, (703) 306–1836, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase I proposals concerning Materials Research and Electronic Ceramics as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 12, 1996.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 96–20868 Filed 8–15–96; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8971]

U.S. Energy Corporation; Final Finding of No Significant Impact

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to approve the detailed site decommissioning plan submitted by the licensee, U.S. Energy Corporation, for its Green Mountain Ion Exchange facility, and to amend NRC Source Material License SUA–1524 appropriately. An Environmental Assessment was performed by the NRC staff in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Park, Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone 301/415–6699.

SUPPLEMENTARY INFORMATION:

Background

U.S. Energy Corporation's (U.S. Energy's) Green Mountain Ion Exchange (GMIX) facility, located near Jeffrey City, Wyoming, is licensed under NRC Source Material License SUA–1524. Under SUA–1524, U.S. Energy is authorized for possession only of those byproduct materials, in the form of wastes and contaminated facilities and equipment, which resulted from previous GMIX operations. By letter dated July 22, 1991, U.S. Energy notified the NRC of its intent to decommission the GMIX facility and to terminate SUA–1524. By letter dated September 17, 1991, the NRC requested U.S. Energy to provide additional information to enable the NRC staff to evaluate the technical adequacy of U.S. Energy's proposed decommissioning plan.

U.S. Energy submitted a final decommissioning plan for the GMIX facility by letters dated September 29, and November 16, 1993. Supplemental data and analyses were provided at NRC staff request in letters dated March 6, May 24, and June 8, 1995.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is approval of U.S. Energy's detailed site decommissioning plan for the GMIX facility and an amendment to SUA–1524 to require U.S. Energy to decommission the facility in accordance with the approved plan.

Need for the Proposed Action

License Condition 13 of SUA–1524 requires U.S. Energy to submit a detailed decommissioning plan to the NRC at least 12 months prior to the planned initiation of final decommissioning activities. By letters dated September 29, and November 16, 1993, U.S. Energy Corporation submitted, for NRC approval, a detailed plan for the decommissioning and reclamation of the GMIX facility. This decommissioning plan discusses the dismantling of contaminated buildings, the clean-up of contaminated soils and ponds at the site, and the disposal of associated wastes.

Environmental Impacts of the Proposed Action

Noise and exhaust emissions associated with the small number of earth-moving machines employed in decommissioning activities will be appreciable during the 18 to 24 months U.S. Energy anticipates will be required to complete decommissioning. However, these impacts will be negligible due to the remoteness of the facility (3 persons living within 5 miles of the site). In addition, local wildlife disturbed by the activity will have access to the reclaimed site following the completion of decommissioning.

U.S. Energy will transport contaminated materials (e.g., soils, sludge, pipes, concrete) from the GMIX facility by truck for disposal in the tailings impoundment at Kennecott Uranium Company's (Kennecott's) Sweetwater Uranium Project. The trucks will be covered and will travel a distance of approximately 35 miles along county roads between the two facilities. U.S. Energy commits to following the applicable Federal transportation regulations. Trucks will be monitored for surface contamination and inspected for road worthiness and proper loading prior to departure from the GMIX facility, and the results of the inspections will be documented. If a truck shows surface contamination, it will be decontaminated prior to leaving the restricted area.

In the event of a spill, each truck will contain appropriate equipment and clothing for use by the driver in minimizing dispersal prior to the arrival of U.S. Energy and/or Kennecott personnel who will perform the actual cleanup. In addition, each truck will be equipped with a mobile radio or radiotelephone so that U.S. Energy and/or Kennecott can be informed in the case of an emergency.

Upon arrival at Kennecott, trucks and their contents will be logged and the information recorded. After disposing of their contents in the tailings impoundment, trucks will be reweighed, resurveyed, and decontaminated if necessary, prior to their return to the GMIX facility.

Conclusion

The NRC staff concludes that the activities to be conducted under U.S. Energy's site decommissioning plan will not cause significant environmental impacts.

Alternatives to the Proposed Action

Since the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the proposed action would be to deny the requested action. Denial of the proposed action would result in a delay in the decommissioning of the GMIX facility and reclamation of the site. This would allow decontaminated soils, sludges, and structures to remain onsite and to continue to pose potential health and safety impacts to the public and the environment.

Since the environmental impacts of the denial alternative are greater than those of the proposed action, there is no need to further evaluate alternatives to the proposed action.

Agencies and Persons Consulted

The NRC staff consulted with the State of Wyoming, Department of Environmental Quality (WDEQ). In a telephone conversation on February 5, 1996, Mr. Robert Lucht, UIC Program Supervisor, Water Quality Division of the WDEQ, stated that the WDEQ had no objections to the conclusions reached in this Environmental Assessment.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed amendment of NRC Source Material License SUA–1524. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be

significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 8th day of August 1996.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–20945 Filed 8–15–96; 8:45 am]

BILLING CODE 7590–01–U

[Docket No. 40–8948]

Notice of Meeting

SUMMARY: The Nuclear Regulatory Commission (NRC) will hold a public meeting in Cambridge, Ohio on September 16, 1996 to discuss the draft environmental impact statement (DEIS) on decommissioning the Shieldalloy Metallurgical Corporation (SMC), Cambridge, Ohio facility. NRC announced the availability of the DEIS on July 25, 1996 (61 FR 38789).

The entire meeting will be open to the public. NRC staff and contractors will be available to summarize the DEIS, answer questions related to information presented in the DEIS, and listen to comments to be considered in developing the final environmental impact statement. The primary objective of the meeting is to receive public comments on the DEIS and most of the meeting will be devoted to this objective.

DATE AND ADDRESSES: The meeting will be held on September 16, 1996, from 7:00 p.m.–10:00 p.m., at the Pritchard Laughlin Civic Center, located at 7033 Glenn Highway, Cambridge, Ohio 43725. Telephone 614/439–7009.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Thaggard, Low-Level Waste and Decommissioning Projects Branch, Mail Stop T7D–13, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Telephone 301/415–6718.

SUPPLEMENTARY INFORMATION: The NRC has prepared a DEIS that evaluates the environmental impacts and alternatives associated with SMC's proposed approach to decommissioning radiologically contaminated waste piles. NRC noticed the availability of the DEIS on July 25, 1996 (61 FR 38789). The U.S. Environmental Protection Agency noticed availability of the DEIS (EIS No. 960349) on August 2, 1996 (61 FR 40414). NRC's notice of availability stated that the public comment period on the DEIS would extend 90 days from the date of EPA's notice. Consequently, the comment period on the DEIS will expire on October 31, 1996.

The NRC is offering an opportunity for public review and comment on the DEIS in accordance with NRC requirements in 10 CFR 51.73, 51.74, and 51.117. The DEIS is a preliminary analysis of potential environmental impacts of SMC's proposed approach. NRC will not issue the final EIS until public comments on the DEIS are received and evaluated. Preliminary comments have already been provided to the NRC, which included additional alternatives for consideration. NRC staff will review the comments, conduct any necessary analyses, and make appropriate revisions in developing the final EIS. NRC is arranging this public meeting to provide an overview of the DEIS and an opportunity for the NRC to hear any public comments on the DEIS, including comments on the adequacy of the staff's assessment of the impacts and additional alternatives that deserve consideration.

Dated at Rockville, Maryland, this 7th day of August 1996.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–20944 Filed 8–15–96; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988; Notice of RRB Records Used in Computer Matching Programs

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of Records Used in Computer Matching Programs Notification to individuals who have received benefits under the Regional Rail Reorganization Act of 1973, or who may receive or have received benefits under the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, the RRB is issuing a public notice of its use and intent to use, in ongoing computer matching programs, certain information obtained from the United States Postal Service (USPS).

The purpose of this notice is to advise individuals who have received benefits under the Regional Rail Reorganization Act of 1973, or who may receive or have received benefits under the Railroad Retirement Act or the Railroad Unemployment Insurance Act of the use made by the RRB of this information obtained from USPS by means of a computer match.

DATES: Comments should be received by September 16, 1996.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Jeanette Spadavecchia, Bureau of Fiscal Operations, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4380.

SUPPLEMENTARY INFORMATION: Under certain circumstances, the Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice in the Federal Register regarding the establishment of that matching program. Such a notice must include information in the following first five categories:

Name of participating agencies: The Railroad Retirement Board and the United States Postal Service (USPS).

Purpose of the match: To identify postal employees who may owe delinquent debts to the Federal government under certain programs administered by the RRB, and to collect those debts by salary offset under the provisions of the Debt Collection Act of 1982 when voluntary repayment is not made.

Authority for conducting the Match: 39 U.S.C. 404 (Postal Reorganization Act) and 5 U.S.C. 5514 (Debt Collection Act of 1982)

Categories of records and individuals covered: USPS employee data records within Privacy Act System 050.020, identified as Finance Records—Payroll System (57 FR 57515) and RRB records from its Privacy Act System RRB 42—Uncollectible Benefit Overpayment Accounts (56 FR 182)

Inclusive dates of the matching program: The life of this agreement is 18 months, unless terminated earlier by either party. It will begin the later of the following: 30 days from the publication of this Federal Register notice or 40 days from the date the required package of documents is sent to OMB and the

designated House and Senate committees.

Procedure: The RRB will provide a data extract of its debtor files to the USPS, sorted in Social Security Number (SSN) sequence, that contain the name and SSN of each record subject. The USPS will compare this extract against its database of employee records, establishing ''hits'' (i.e., individuals common to both files) on the basis of matched SSN's. For each hit, the USPS will disclose to the RRB the following information: Name, SSN, date of birth, home address, work address, and employee type (permanent or temporary).

Other information: The notice we are giving here is in addition to any individual notice.

A copy of this notice has been or will be furnished to both Houses of Congress and the Office of Management and Budget.

Dated: August 7, 1996.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–20874 Filed 8–15–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–37550; File No. SR–Amex–96–23]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Partial Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Various Changes to the Exchange's Company Guide

August 9, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On July 11, 1996, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. As discussed below, the Commission is also granting accelerated approval to a portion of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend various sections of the Exchange's *Company Guide* to simplify the additional listing process, add a new shareholder distribution guideline applicable to banks, and make several minor ''housekeeping'' changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Additional Listings

The Exchange proposes to simplify its additional listing process. The additional listing process is an essential part of the Exchange's program to oversee its market generally and monitor the compliance of listed companies with Sections 711–713 of the *Company Guide,* which require prior shareholder approval of certain transactions involving the issuance of stock, *e.g.,* issuances of 20% or more of the outstanding shares at a discounted price or to effect an acquisition. Before a listed company issues additional securities of an already listed class, it is required to submit an additional listing application and obtain the Exchange's prior approval; similarly, transfer agents for listed companies are required to contact the Exchange to make sure that a company's request for new share issuances has been so approved. The Exchange typically receives in excess of 300 additional listing applications per year.

The Exchange has determined that it can substantially simplify the additional listing process for listed companies and transfer agents alike without undercutting its ability to regulate its market. To facilitate this, the Exchange has for the first time prepared a simplified, standardized application form, which can be used for all additional listings.[4] This form will allow companies to incorporate by reference any transactional information that is set forth in a proxy statement, prospectus or certain other descriptive documents, thus eliminating the need to provide duplicative summary information on the application itself. This will also enable the Exchange to significantly revise the applicable *Company Guide* provisions by eliminating confusing and unnecessary instructions.[5]

The Exchange is also proposing to eliminate the requirement that each application contain a reconciliation of all of the company's previously listed share reserves, retaining the reconciliation requirement only in the case of stock dividends, splits, or substitution listings. Rather than require issuers and transfer agents to engage in this extremely time-consuming exercise, which in most circumstances provides little practical information and delays the approval of pending corporate transactions, the Exchange has determined to generally allow transfer agents to reconcile their records of shares outstanding with the Exchange's on a quarterly basis. A similar procedure is followed at the New York Stock Exchange and in a series of informal discussions, all of the Exchange's major transfer agents indicated that they would prefer that the Exchange adopt it as well.

Together, these new procedures should provide substantial benefits to listed companies and the Exchange alike.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Claudia Crowley, Special Counsel, Amex, to Jennifer Choi, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated July 11, 1996 (''Amendment No. 1'').

[4] The Commission notes that the new form being adopted will require listed companies to provide substantially the same information as is required under the existing procedures. The form provides for (where applicable): Information for Stock Options, Plans and Grants; Information for a Private Placement; Information for an Acquisition; Information for Substitution Listing; Information for a Forward Stock Split or Stock Dividend; and a Reconciliation Sheet. Companies wanting to list additional shares must now complete this form, whereas previously, companies had the option of doing a ''short form'' or a ''standard form'' application.

[5] The Commission notes that in simplifying its listings process, the Amex proposes the following changes to its *Company Guide*: § 310 is renumbered as § 303; §§ 311–313 is deleted; § 320 is deleted; § 321 is renumbered as § 304 with modification made to text; new § 305 is added (Listing of Shares Pursuant to a Reverse Split/Substitution Listing); and § 330 is renumbered as § 306.

Distribution Guidelines for Banks

In recent years, the Exchange has listed a number of local banks, some immediately following their conversion from mutual association to stock ownership (''demutualizing'').[6] Such banks often have small, but because of their local concentration, stable ranks of shareholders. Even small banks are generally well above the financial criteria for original listing and due to the highly regulated nature of the banking industry there is usually little ''business risk'' associated with such listings.

The Exchange's public distribution guidelines call for 500,000 shares and 800 holders, or 1,000,000 shares and 400 holders. The Exchange has occasionally found that otherwise attractive local banks have less than one million shares in their public float, and fewer than 800 shareholders. Although the mix of shareholder and public float requirements is intended to accommodate a specialist's needs in maintaining a fair and orderly market, the Exchange has observed that local banks are generally steady traders with relatively stable prices, and that specialists have not encountered difficulties in trading them.

The Exchange is therefore proposing to adopt a specific distribution guideline applicable to banks, which would require only 400 public holders of a least 500,000 shares.[7] It should be noted that presently there are two other circumstances where the Exchange lists issues with a float of less than one million shares and only 400 holders: those are stocks which trade 2,000 shares a day or more, and warrants sold as part of a unit offering. The Exchange has not experienced any difficulties in providing an appropriate marketplace for these listings, and, as noted above, given the stability of the banks' shareholder bases and the regulated nature of the banking industry, the Exchange does not anticipate any difficulties with banking stocks.

Miscellaneous

There are several changes necessary to conform particular sections of the *Company Guide* to changes previously made to other sections:

Section 1003 of the *Company Guide* should be amended to provide that for continued listing purposes a company needs to have 300 public holders, and not 300 round lot holders. Similar changes were previously made to the Exchange's other public distribution guidelines.[8]

Section 505, which provides that the Exchange would not look favorably upon a stock split that would result in a price below $5, should be amended to refer to a $3 minimum price, to be consistent with the $3 stock price original listing guideline set forth in Section 102(b).[9]

Additionally, Section 220(b) of the *Company Guide* should be amended to conform to changes that were previously made to Section 140 of the *Company Guide* with respect to the maximum listing fee applicable to foreign issuers.[10]

Finally, Sections 510 and 512 of the *Company Guide* should be amended to conform to the three-day settlement time frame (''T+3'').

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to protect and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange, however, has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed changes to Sections 510 and 512, which conforms Amex rules to T+3 settlement, of the *Company Guide* on an accelerated basis prior to the 30th day after publication in the Federal Register.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–96–23 and should be submitted by [insert date 21 days from date of publication].

V. Commission Findings and Order Granting Partial Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission has concluded, for the reasons set forth below, that the amendments to sections 510 and 512 of the Amex's *Company Guide* are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular the requirement of Section 6(b)(5)[11] of the Act, which states in part, that the rules of an exchange must be designed to foster cooperation and coordination

[6] These transactions are typically conducted, in effect, as ''best efforts'' underwritings in the sense that it is impossible to predict how many deposit-holders will elect to become shareholders and the conversion itself is not contingent upon the ''accumulation'' of a specific number of shareholders.

[7] The new distribution provision for banks will be included in Section 102 of the Amex's *Company Guide.*

[8] *See* Section 102(a)—Distribution—of the *Company Guide* which describes the minimum number of shareholders as ''public shareholder.'' The *Company Guide* notes that the term ''public shareholders,'' as used therein, includes both shareholders of record and beneficial holders, but is exclusive of the holdings of officers, directors, controlling shareholders and other concentrated (i.e., 5% or greater) affiliated or family holdings.

[9] The Commission notes that the $3 minimum price was approved in Securities Exchange Act Release No. 24043 (January 30, 1987), 52 FR 4071.

[10] The Commission notes that the maximum $25,000 fee for non-U.S. issuers already listed on a foreign exchange was approved in Securities Exchange Act Release No. 34272 (June 28, 1994), 59 FR 34701.

[11] 15 U.S.C. 78f(b)(5).

with persons engaged in regulating, clearing, settling, and processing information.

On October 6, 1993, the Commission adopted Rule 15c6–1 under the Act,[12] which establishes three business days after the trade date (''T+3''), instead of five business days (''T+5''), as the standard settlement cycle for most securities transactions.[13] The rule became effective on June 7, 1995.[14] Although the Commission previously approved a number of changes to the Amex's rules to conform them to the T+3 requirement of Commission Rule 15c6–1,[15] Sections 510 and 512 were not amended to reflect the change in the settlement cycle.

It has been more than a year since the T+3 settlement cycle has been in operation. The current Sections 510 and 512 of the Amex's *Company Guide*, which provide for a T+5 settlement cycle, is inconsistent and incompatible with Commission's T+3 rules. Amex's current proposal will amend these sections to bring them in conformity with the mandated T+3 settlement cycle. Accordingly, the Commission believes that, because the Exchange has proposed the amendments to Sections 510 and 512 merely to reflect the T+3 cycle, the proposed rule change is consistent with the purposes of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the proposed rule change in the Federal Register. The Commission believes that accelerated approval of this portion of the proposal will benefit investors by eliminating the obsolete references to five-day settlement. Deleting the outdated references to T+5 settlement cycle as soon as possible will be beneficial because this amendment will eliminate any opportunities for confusion.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the portion of the proposed rule change (File No. SR–Amex–96–23) containing the amendments to Sections 510 and 512 of the Amex's Company Guide be and is hereby approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–20882 Filed 8–15–96; 8:45 am]

BILLING CODE 8010–01–M

[12] 17 CFR 240.15c6–1.

[13] *See* Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

[14] Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

[15] *See* Securities Exchange Act Release No. 35553 (March 31, 1995), 60 FR 18161.

[16] 17 CFR 200.30–3(a)(12).

[Release No. 34–37552; File No. SR–BSECC–96–02]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify Specialists' Clearing Fund Requirements

August 9, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 14, 1996, the Boston Stock Exchange Clearing Corporation (''BSECC'') filed with the Securities Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by BSECC. On July 23, 1996, BSECC filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to permit specialists to satisfy their clearing fund deposits through deposits required pursuant to the rules of the Boston Stock Exchange, Inc. (''Exchange'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSECC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

BSECC proposes to amend its Rule II, Section 1 relating to the maintenance and purpose of BSECC's clearing fund so that the BSECC clearing fund requirements for specialists[4] will be deemed satisfied by such specialists' liquidating equity deposits that are required pursuant to Exchange rules. Pursuant to Section 2(f), Chapter XXII of the Exchange rules, specialists must maintain a liquidating equity deposit with BSECC of $200,000 per specialist account. Currently, Section 2 of BSECC Rule II requires that all members contribute $6,000 to the clearing fund.[5]

BSECC believes the additional $6,000 provides little added protection for BSECC in the event of a specialist default. Therefore, BSECC proposes to amend Rule II, Section 1 to provide that specialists will be deemed to have met their clearing fund requirement through the liquidating equity deposit and that the amount of the liquidating equity deposit equal to the required clearing fund deposit shall be deemed to be the clearing fund deposit. Contemporaneously with this proposal, the Exchange has filed a proposed rule change (File No. SR–BSE–96–06) to amend the language of Chapter XXII, Section 2(f) of the Exchange rules to make it clear that each of the specialist's $200,000 minimum equity requirement on deposit with BSECC is deemed to be its clearing fund deposit up to the amount required to be deposited pursuant to BSECC's rules.

BSECC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder because it is designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

BSECC believes the proposed rule change will impose no burden on competition.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Karen A. Aluise, Assistant Vice President, BSECC, to Mark Steffensen, Division of Market Regulation, Commission (July 19, 1996).

[3] The Commission has modified these summaries.

[4] A specialist is a BSECC member that acts as a specialist on the floor of the Exchange and on whose behalf BSECC guarantees settlement of all trades executed by such member on the floor of the Exchange.

[5] BSECC Rule II, Section 5 specifies the use and application of clearing fund. Paragraph (d) of that section provides that clearing fund may be used to discharge a member's liability to BSECC, the Exchange, or Boston Stock Exchange Service Corporation.

[6] 15 U.S.C. 78q–1 (1988).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

BSECC has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which BSECC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Secretaries and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of BSECC. All submissions should refer to file number SR–BSECC–96–02 and should be submitted by September 6, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–20927 Filed 8–15–96; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37553; File No. SR–BSE–96–06]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Authorized Uses for Specialists' Minimum Equity Deposits

August 9, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 14, 1996, the Boston Stock Exchange, Inc. (''BSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by BSE. On July 23, 1996, BSE filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to permit the Boston Stock Exchange Clearing Corporation (''Clearing Corporation'') to use a portion of deposits made by specialists pursuant to BSE rules as clearing fund deposits.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

BSE proposes to amend Chapter XXII, Section 2(f) of its rules to clarify the authority of the Clearing Corporation to access a portion of specialists' [4] liquidating equity deposits as clearing fund. Section 2(f), Chapter XXII of BSE's rules requires specialists to maintain a liquidating equity deposit of $200,000 per specialist account (''minimum equity requirement'') with the Clearing Corporation. Under the proposed rule change, Section 2(f) will be amended to provide that the minimum equity requirement may be utilized by the Clearing Corporation and will be deemed to be clearing fund up to the amount required to be deposited as clearing fund pursuant to the Clearing Corporation's rules. Such provision only applies to specialists that also are members of the Clearing Corporation.

The Clearing Corporation's rules currently require a minimum $6,000 clearing fund deposit by its members. Contemporaneously with this proposal, the Clearing Corporation has filed a separate proposed rule change (File No. SR–BSECC–96–02) that will amend its Rule II, Section 1 regarding clearing fund. That rule proposal will permit BSE specialists to satisfy their clearing fund deposit requirements set forth in Section 2 of Clearing Corporation Rule II through use of their deposits required pursuant to BSE's minimum equity requirement.

BSE believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act [5] and the rules and regulations thereunder because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

BSE believes the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

BSE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Karen A. Aluise, Assistant Vice President, BSE, to Mark Steffensen, Division of Market Regulation, Commission (July 19, 1996).

[3] The Commission has modified the language in these sections.

[4] Pursuant to Chapter XV, Section 1 of BSE rules, a member may be registered as a specialist upon application to and with the consent of BSE. A specialist is subject to the rules contained in Chapter XIV of BSE's rules.

[5] 15 U.S.C. 78f(b)(5) (1988).

ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which BSE consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of BSE. All submissions should refer to file number SR–BSE–96–06 and should be submitted by September 6, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–20928 Filed 8–15–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Champion Healthcare Corporation, Common Stock, $.01 Par Value) File No. 1–5356

August 12, 1996.

Champion Healthcare Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, it has complied with Rule 18 of the Amex by filing with such Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its securities from listing on the Amex and by setting forth in detail to such Exchange the reasons for such proposed withdrawal, and the facts in support thereof. In making the decision to withdraw the Securities from listing on the Amex, the Company considered such factors, among others, as broadening the stockholder base, increasing the visibility of the Company, increasing the volume of shares traded and the requests made by certain of the Company's significant stockholders.

Any interested person may, on or before September 3, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20881 Filed 8–15–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37551; File No. SR–Phlx–96–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Respecting Index Exercise Settlement Values

August 9, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 29, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Rule 1000A respecting procedures for affixing index option exercise settlement prices. Specifically, Rule 1000A(b)(8), which defines ''closing index value,'' is proposed to be amended to state that in certain situations such value will be determined by the By-Laws and Rules of the Options Clearing Corporation (''OCC''). First, if OCC determines that the current index value is unreported or otherwise unavailable for purposes of calculating the closing index (exercise settlement) value, an OCC panel shall fix such value. Second, this panel shall also fix such value in the event that OCC determines that the primary market for securities representing a substantial part of the value of an underlying index is not trading at the time when the current index value would ordinarily be determined.

Currently, paragraph (b)(8) defines ''closing index value'' as the current index value calculated at the close of business on the day of exercise. If the day of exercise is not a trading day, the value is calculated on the last trading day before exercise. If the index is not P.M.-settled, but rather A.M.-settled, the closing value is the current index value as determined by the opening price of each component issue on the primary market on the last day of trading prior to expiration.

At this time, the Exchange proposes to adopt a second Commentary to Rule 1000A to provide reference to OCC By-Laws and Rules. The Exchange also proposes to recognize decisions of OCC panels, acting pursuant to OCC By-laws and Rules, that set the index value where securities comprising a substantial portion of the index are not open for trading when the value is being derived, as well as where the current index value is unreported or otherwise unavailable.

In addition, the Exchange proposes several minor amendments to Rule 1000A(b)(8) to clarify that the closing index value respecting A.M.-settled index options is not determined after the close of business. Further, the first Commentary to Rule 1000A is proposed to be amended by providing an example of settlement methods other than a

[6] 17 CFR 200.30–3(a)(12) (1995).

closing value, and specifically naming A.M.-settlement. The provisions will state that the closing index value respecting A.M.-settled index options is based on the opening price of each component issue on the primary market on the last day of trading prior to expiration. Moreover, deletion of the language prefacing this Commentary addressing series opened after March 30, 1987 is also proposed, because all index option series are now eligible for A.M.-settlement. The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This proposal is in response to the Options Clearing Corporation (''OCC'') rule change recently approved by the Commission in Release No. 37315 (File No. SR–OCC–95–18), amending the definition of current index value contained in OCC By-Law Article XVII, Section 1(C)(5). Specifically, the change permits a panel to affix exercise settlement prices for index options not only where the current index value is unreported or otherwise unavailable (as OCC's rules previously provided), but also where OCC determines that the primary market(s) for component stocks representing a substantial portion of the index value were not open for trading at the time when the current index value would ordinarily be determined. The OCC by-law change expressly allows, but does not require, this panel to utilize the previous day's closing index value. The value, in the judgment of the panel, must be appropriate for the protection of investors and the public interest.

Thus, to accommodate this change to OCC procedures, Phlx proposes to adopt a second Commentary to Rule 1000A(b)(8) to state that OCC provisions will determine the exercise settlement value in certain instances, including where the value is unreported or unavailable as well as where a substantial portion of the underlying securities are not open for trading on the primary market.

The Exchange believes that the proposal serves to clarify the responsibilities of the Exchange in both situations—in the event that the primary market for securities representing a substantial part of the value of an underlying index is not trading at the time when the current index value would normally be determined as well as in the event that the index value is unreported or otherwise unavailable for purposes of calculating the exercise settlement amount. The Exchange expects that the proposal should help ensure that Phlx member organizations are aware of the index value determination procedures. In this regard, the Exchange believes that the proposal will assist investors by providing reference to OCC's policies in Phlx rules.

In addition, the Exchange proposes several minor amendments to Rule 1000A(b)(8) to clarify that the closing index value respecting A.M.-settled index options is not determined after the close of business. Further, the first comment to Rule 1000A is proposed to be amended by providing an example of settlement methods other than a closing value, and specifically naming A.M.-settlement. The provisions will state that the closing index value respecting A.M.-settled index options is based on the opening price of each component issue on the primary market on the last day of trading prior to expiration. Moreover, deletion of the language prefacing this comment addressing series opened after March 30, 1987 is also proposed, because all index option series are now eligible for A.M.-settlement. The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, as well as to protect investors and the public interest, by coordinating Exchange policy respecting index values determinations with that of OCC. This, in turn, should provide more notice and certainty respecting the exercise settlement process, and promote prompt and accurate settlement of affected transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–30 and should be submitted by September 6, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–20929 Filed 8–15–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2875]

North Carolina; Declaration of Disaster Loan Area (Amendment #2)

In accordance with a notice from the Federal Emergency Management Agency, effective August 2, 1996, the above-numbered Declaration is hereby amended to include Bladen and Greene Counties in the State of North Carolina as a disaster area due to damages caused by severe storms, high wind, flooding, and related effects of Hurricane Bertha which occurred July 10–13, 1996.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Cumberland and Robeson in the State of North Carolina may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 16, 1996, and for loans for economic injury the deadline is April 18, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 7, 1996.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 96–20924 Filed 8–15–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2884]

Tennessee (And Contiguous Counties in Kentucky); Declaration of Disaster Loan Area

Obion County and the contiguous counties of Dyer, Gibson, Lake, and Weakley in the State of Tennessee, and Fulton and Hickman Counties in the Commonwealth of Kentucky constitute a disaster area as a result of damages caused by flooding which occurred on July 30–31, 1996. Applications for loans for physical damage may be filed until the close of business on October 7, 1996 and for economic injury until the close of business on May 7, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

For Physical Damage:	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 288406 for Tennessee and 288506 for Kentucky. For economic injury the numbers are 898300 for Tennessee and 898400 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 7, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–20925 Filed 8–15–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2878]

West Virginia; Declaration of Disaster Loan Area (Amendment #1)

The above-numbered Declaration, approved on July 29, 1996, is hereby amended to correct the economic injury number assigned to this disaster which was inadvertently published as 97300 in the original declaration. The correct number is 897300.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 27, 1996, and for economic injury the deadline is April 29, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: August 7, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–20923 Filed 8–15–96; 8:45 am]

BILLING CODE 8025–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancellation of a Limit and Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

August 12, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling a limit and guaranteed access level.

EFFECTIVE DATE: August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The United States Government has decided to cancel the limit and guaranteed access level (GAL) on imports of cotton and man-made fiber nightwear in Categories 351/651 from El Salvador established for the period beginning on January 1, 1996 and extending through December 31, 1996.

In the letter published below, the Chairman of CITA is directed, effective on August 15, 1996, to cancel the 1996 limit and GAL for Categories 351/651. Also, U.S. Customs Service is directed not to sign the form ITA–370P for export of U.S. formed and cut parts in Categories 351/651.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 65296, published on December 19, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the

implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 12, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 13, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in El Salvador and exported during the period which began on January 1, 1996 and extends through December 31, 1996.

Effective on August 15, 1996, you are directed to cancel the current limit and guaranteed access level for Categories 351/651.

Also effective on August 15, 1996, U.S. Customs Service is directed to no longer sign the form ITA–370P for export of U.S. formed and cut parts in Categories 351/651.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–20893 Filed 8–15–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Oman

August 12, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted variously for carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 61 FR 1361, published on January 19, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 12, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 16, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Oman and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on August 14, 1996, you are directed to amend the directive dated January 16, 1996 to adjust the limits for the following categories, as provided under the terms of the bilateral agreement between the Governments of the United States and the Sultanate of Oman:

Category	Adjusted twelve-month limit [1]
334/634	166,500 dozen.
335/635	249,439 dozen.
338/339	494,272 dozen.
340/640	239,606 dozen.
341/641	187,079 dozen.
347/348	891,745 dozen.
647/648/847	382,395 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–20892 Filed 8–15–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

OMB Control Number: 2139–0003

Proposed Agency Information Collection Activity; Comment Request

AGENCY: Department of Transportation.

ACTION: Notice.

SUMMARY: This notice announces that a data collection, Motor Carrier Quarterly and Annual Report Form MP–1, is coming up for renewal. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*, Pub. L. 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 quarterly financial data from Class I motor carriers of passengers.

DATES: Written comments must be submitted by October 15, 1996.

ADDRESSES: Please refer to OMB Control No. 2139–0003 in any correspondence. Send comments to: David Mednick, K–10, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590. Comments may be submitted by Fax to: (202) 366–3640. Comments may also be submitted electronically by e-mail to: david.mednick@bts.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters wishing BTS 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 OMB Control No. 2139–0003. The postcard will be dated/time stamped and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: David Mednick, K–10, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–8871, Fax: (202) 366–3640, e-mail: david.mednick@bts.gov.

SUPPLEMENTARY INFORMATION:

I. The Data Collection

Title: Motor Carrier Quarterly and Annual Report Form MP–1, Motor

Carriers of Passengers. OMB Control No. 2139–0003.

Form No.: BTS Form MP–1.

Type of Review: Extension of a currently approved collection.

Respondents: Class I Motor Carriers of Passengers.

Number of Respondents: 26.

Estimated Time Per Response: 90 minutes.

Total Annual Burden: 156 hours.

Needs and Uses: This data collection form was transferred from the Interstate Commerce Commission to the Department of Transportation (DOT) on January 1, 1996, by the ICC Termination Act of 1995. The OMB Control number while under the ICC was 3120–0021. Pursuant to14 U.S.C. 14123, DOT is required to collect annual financial reports from Class I motor carriers. DOT may also require motor carriers to file quarterly reports. In determining the matters to be covered by the reports, DOT must consider: (1) Safety needs; (2) the need to preserve confidential business information and trade secrets and prevent competitive harm; (3) private sector, academic, and public use of information in the reports; and (4) the public interest. BTS wishes to continue to provide periodic information on the health of the motor carrier of passengers industry, its impact on the economy, and the economy's impact on the industry. The current report accomplishes this with minimal data items to be completed quarterly.

II. Request for Comments

BTS requests comments concerning the information collection, including whether (a) the reports are needed by BTS to fulfill its legal mandate under 14 U.S.C. 14123 to collect financial data from motor carriers; (b) BTS accurately estimated the reporting burden; (c) there are other ways to enhance the quality, utility, or 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.

T.R. Lakshmanan,

Director, Bureau of Transportation Statistics.

[FR Doc. 96–20894 Filed 8–15–96; 8:45 am]

BILLING CODE 4910–FE–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending August 9, 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–96–1632.

Date filed: August 8, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 5, 1996.

Description: Joint application of Comair and Delta Air Lines, Inc., pursuant to 49 U.S.C. Section 41105 and Subpart Q of the Regulations, request that the Department approve the transfer to Comair of the authority held by Delta to transport persons, property and mail between New York City, New York/ Newark, New Jersey, and Ottawa/ Montreal, Canada, as contained in Delta's Experimental Certificate of Public Convenience and Necessity for Route 617, issued by Order 91–10–35 (amended), effective October 17, 1991.

Docket Number: OST–96–1634.

Date filed: August 9, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 6, 1996.

Description: Application of Servicios Aereos Tribasa, S.A. de C.V. (''Tribasa''), pursuant to 49 U.S.C. Section 41302, Part 211 of the Department's Economic Regulations and Subpart Q, applies for a foreign air carrier permit authorizing it to engage in foreign charter air transportation of persons between a point or points in Mexico, on the one hand, and a point or points in the United States, on the other hand.

Paulette V. Twine,

Chief Documentary Services Division.

[FR Doc. 96–20974 Filed 8–15–96; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ending 8/09/96

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1626.

Date filed: August 6, 1996.

Parties: Members of the International Air Transport Association.

Subject: TC2 Telex Mail Vote 820, Fares from Zaire to Belgium, r–1– 042h r–2–052e, Intended effective date: September 1, 1996.

Docket Number: OST–96–1627.

Date filed: August 6, 1996.

Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/C 0932 dated June 4, 1996, USA/US Territories-Austria/ Belgium/Germany/Netherlands/ Switzerland Cargo Resos r1–4, Tables—TC12 Rates 0526 dated August 2, 1996, Intended effective date: October 1, 1996.

Docket Number: OST–96–1628.

Date filed: August 6, 1996.

Parties: Members of the International Air Transport Association.

Subject: TC12 MV/P 0372 dated July 9, 1996, Mail Vote 813—US-Austria/ Belgium/Germany/Netherlands/ Scandinavia/Switzerland Resos, Telex Correcting Mail Vote, TC12 Meet/P 0581 dated August 2, 1996—Minutes, Intended effective date: October 1, 1996.

Docket Number: OST–96–1630.

Date filed: August 8, 1996.

Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/P 1760 dated July 5, 1996 r1; TC12 Reso/P 1761 dated July 5, 1996 r2; TC12 Reso/P 1762 dated July 5, 1996 r3; TC12 Reso/P 1763 dated July 5, 1996 r4; USA-Europe Expedited Passenger Resos (Summaries attached. Minutes are filed this date with the non-expedited portion of the agreement.) Intended effective date: November 1, 1996 and beyond.

Docket Number: OST–96–1631.

Date filed: August 8, 1996.

Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/P 1764 dated July 9, 1996 r–1–31, USA-Europe Passenger Resos (Excluding Austria/Belgium/ Germany/Netherlands/ Scandinavia/ Switzerland), Minutes—TC12 Meet/P 0580 dated July 30, 1996, Tables—TC12 Fares 0508 dated July 26, 1996, Intended effective date: October 1, 1996.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–20975 Filed 8–15–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tri-State Airport, Huntington, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the

application to impose and use the revenue from a PFC at Tri-State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

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

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Elonza Turner, Beckley Airports Field Office, Main Terminal building, 469 Airport Circle, Beaver, West Virginia 25813–6216.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry G. Salyers, Airport Director of the Tri-State Airport Authority at the following address: Tri-State Airport Authority, 1449 Airport Road, Unit 1, Box, Huntington, West Virginia 26505.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Tri-State Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Elonza Turner, Beckley Airports Field Office, Main Terminal building 469 Airport Circle, Beaver, West Virginia 25813–6216 (Tel. 304–252–6216). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tri-State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 24, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Tri-State Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 30, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1996.

Proposed charge expiration date: July 1, 1998.

Total estimated PFC revenue: $366,600.

Brief description of proposed projects: The PFC funds will be utilized to fund the local share of the following proposed AIP project.

—Repair Land Slide in Runway 30 Safety Area

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-Scheduled Part 135 and Part 121 charter operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Tri-State Airport Authority.

Issued in Jamaica, New York on August 7, 1996.

William Degraaff,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 96–20969 Filed 8–15–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board [1]

[Section 10706(a)(5)(A) Application No. 11]

Carbon Black Producers Pooling Agreement

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of agreement and request for comments.

SUMMARY: On May 23, 1996, Degussa Corp. and Columbian Chemicals Company (applicants) supplemented the application they originally filed on December 27, 1995, seeking approval of a shipper agreement under 49 U.S.C. 10706(a)(5)(A). Under the proposed agreement, applicants and any other participating carbon black producers would be permitted: (1) To discuss among themselves issues relating to the compensation railroads pay for use of producer-owned or leased cars, and to the producers' cost of car ownership and operation; and (2) to pool the freight cars they use to transport carbon black. The Board seeks public comment prior to acting on the application.

DATES: Comments must be filed by September 16, 1996, and applicants may file a reply by October 7, 1996.

ADDRESSES: Send pleadings referring to Section 10706(a)(5)(A) Application No. 11 to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Charles A. Spitulnik and Alicia M. Serfaty, Hopkins & Sutter, 888 16th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10706(a)(5)(A), shippers must obtain Board approval of any agreements to discuss among themselves the compensation to charge rail carriers for the use of privately owned or leased freight cars. The Board will approve an agreement only if it furthers the rail transportation policy of 49 U.S.C. 10101a. When necessary, additional conditions may be imposed by the Board to further that policy. If an agreement is approved, the antitrust laws do not apply to parties and other persons with respect to the making and carrying out of the agreement.

Under *Shippers Equitable Compensation Action Committee,* 365 I.C.C. 939 (1982) (*SECAC*), collective agreements for shippers, at a minimum, must contain three basic safeguards to be found consistent with the public interest: (1) an unrestricted guarantee of the right of independent action by both members and non-members; (2) a requirement for open meetings with a correlative requirement for reasonable notice to members and other interested noncarrier owners or rail cars lessees; and (3) a requirement for formal recordkeeping of all meetings by transcript or sound recording.[2]

In a decision served April 3, 1996, we held this proceeding in abeyance to give

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10706(a)(5)(A). Therefore, this notice applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

[2] *See American Petroleum Institute,* Section 10706(a)(5)(A) Application No. 4 (ICC served Nov. 18, 1982, and July 22, 1983); *Chemical Manufacturers Association,* 367 I.C.C. 290 (1983); *Institute of Shortening and Edible Oils, Inc.,* Section 10706(a)(5)(A) Application No. 6 (ICC served Mar. 22 and Dec. 7, 1983); and *U.S. Clay Producers Traffic Association, Inc.,* Section 10706(a)(5)(A) Application No. 10 (ICC served Mar. 21, 1985).

These are the same standards and requirements that are applied to rail carrier rate bureau applications. *See Western Railroads—Agreement,* 364 I.C.C. 1 (1980).

applicants an opportunity to incorporate these basic *SECAC* safeguards into their application, agreement, and by-laws. Additionally, we directed applicants to clarify whether they were seeking approval for the pooling aspects of the proposed agreement, and, if they were, we asked them to address: (1) the substantive scope of an approval under section 10706(a)(5)(A);[3] and (2) whether our authority under 49 U.S.C. 11342 to approve pooling agreements extends beyond rail carrier agreements.[4]

In their supplemental filing, applicants state that the proposed agreement was revised to comply fully with the *SECAC* standards and procedural requirements. As to the pooling aspects of the proposed agreement, applicants acknowledge that 49 U.S.C. 11342 is limited to approving agreements between or among carriers. Asserting that they seek approval under 49 U.S.C. 10706(a)(5)(A), and not under section 11342, applicants state that their application referred to section 11342 only to compare the benefits of coordination that are available to carriers with the benefits coordination would make available to applicants.

Applicants state that the primary objective of the proposed freight car pool is to eliminate the costly and inefficient 100% empty car return practice that characterizes the rail movement of carbon black and has become embedded in the overall rate structure (including car compensation) that applies to the movement of carbon black in producer-owned and leased cars. While acknowledging that activities under the proposed pool may resemble those of a typical rail pool, applicants contend that these activities in fact differ because they are integral to the producers' ability to discuss among themselves car compensation rates and the specific factors (including utilization and maintenance) that affect these rates. Accordingly, applicants state that they seek, and maintain that the Board may issue, approval and antitrust immunity for all of the activities set forth in the proposed agreement, including those related to the proposed freight car pool.[5]

Interested persons are invited to comment on whether the Board may approve the proposed agreement, under 49 U.S.C. 10706(a)(5)(A), and whether approval will confer antitrust immunity on the agreement's pooling aspects, or whether approval can or should be granted under 49 U.S.C. 11342 to make available the antitrust immunity conferred by 49 U.S.C. 11341(a). Also, comments are invited on the proposed agreement, as revised, with special attention to the following issues and how they may be affected if the proposed freight car pool is, or is not, immunized from the antitrust laws:

(1) How will the agreement further the rail transportation policy of 49 U.S.C. 10101a?

(2) Are there any anticompetitive effects that may result from the agreement?

(3) Are any additional safeguards necessary to ensure that the agreement will not have undesirable anticompetitive effects or suppress competition among pool members?

(4) What other matters should the Board consider in determining whether to approve the agreement?

Copies of the original and revised applications under 49 U.S.C. 10706(a)(5)(A) may be obtained free of charge by contacting applicants' representatives. In the alternative, the applications may be inspected at the offices of the Surface Transportation Board, Room 1221, during normal business hours. [Assistance for the hearing impaired is available through TDD service on (202) 927–5721.]

While it does not appear that this action will have a significant effect on the quality of the human environment or conservation of energy resources, comments on these issues are also invited.

A copy of this notice will be served on the: (1) Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; (2) Federal Trade Commission, Bureau of Competition, 6th Street & Pennsylvania Avenue, N.W., Washington, DC 20580; and (3) Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590.

Authority: 49 U.S.C. 10706(a)(5)(A).

Decided: August 1, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–20915 Filed 8–15–96; 8:45 am]

BILLING CODE 4915–00–P

[3] We noted that, in *Western Railroads—Agreement,* 1 I.C.C.2d 131, 133 n.3 (1984), the ICC, in addressing the scope of the immunity it could grant, stated:

The statute, in 49 U.S.C. 10706(a)(5)(A), provides for immunity under approved agreements between shippers to discuss the compensation to be paid shippers by rail carriers for use of rolling stock owned or leased by the shippers. It does not, however, provide immunity to shipper associations for other activities or for the discussion of rates generally.

[4] We noted that, in *The Baltimore and Ohio Railroad Company, Et Al.—Pooling of Car Service Regarding Multi-Level Cars,* Finance Docket No. 29653 (Sub-No. 4) (ICC served Apr. 26, 1988), the ICC found that its authority did not extend beyond rail carriers. There, the railroad pool members requested an exemption from 49 U.S.C. 11342 to permit them to amend their agreement to include a Shipper Executive Committee within the existing pool management structure. The request was dismissed for lack of jurisdiction either to approve the proposed amendment or to exempt it from regulation. The decision specifically noted that, while the dismissal did not preclude the formation of a shipper committee, the shipper committee would not be immunized from the antitrust laws.

[5] The agreement calls for a pooled fleet of freight cars to move carbon black. The pool is to be managed and distributed by a Pool Operator who is charged with seeking optimal operating efficiency, consistent with the equitable treatment of all pool participants. A car contribution plan is to be devised, and rules, procedures, and formulas are to be developed to govern: (1) either the calculation and processing of allowances or the collection and distribution of compensation; and (2) the apportionment of maintenance and repair expenses.

Surface Transportation Board [1]

[STB No. MC–F–19190 (Sub-No. 1)]

Adirondack Transit Lines, Inc., Pine Hill-Kingston Bus Corp. and Passenger Bus Corporation—Pooling—Greyhound Lines, Inc., and Vermont Transit Company, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed service pooling application.

SUMMARY: By application filed June 7, 1996, the Adirondack Group [Adirondack Transit Lines, Inc. (Adirondack), and its corporate affiliates, Pine Hill-Kingston Bus Corp. (Pine Hill) and Passenger Bus Corporation (PBC), all of Kingston, NY] and the Greyhound System [Greyhound Lines, Inc. (Greyhound), of Dallas, TX, and its corporate affiliate, Vermont Transit Co., Inc. (Vermont), of Burlington, VT] jointly request approval of a service pooling agreement under 49 U.S.C. 14302 with respect to motor passenger transportation services between various points in New York, including services extending between New York City, NY, and Montreal, Quebec, Canada.

DATES: Comments must be filed by September 16, 1996, and applicants' rebuttal must be filed by October 7, 1996.

ADDRESSES: Send an original and 10 copies of comments referring to STB

[1] The ICC Termination Act of 1995, Pub. L. 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 and proceedings to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 14302.

Docket No. MC–F–19190 (Sub-No. 1) to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, send one copy of comments to each of applicants' representatives: (1) Lawrence E. Lindeman, Suite 311, 218 N. Lee Street, Alexandria, VA 22314–2531; (2) Mark E. Southerst, General Counsel, Greyhound Lines, Inc., P.O. Box 660362, Dallas, TX 75266–0362; and (3) Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: James Llewellyn Brown, (202) 927–5252, or Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In Adirondack Lines, Inc., and Pine Hill-Kingston Bus Corp.—Pooling—Greyhound Lines, Inc., No. MC–F–19190 (ICC served Feb. 8, 1989), a service pooling agreement was approved between Adirondack and Pine Hill, on the one hand, and Greyhound, on the other, over their routes between Albany, NY, and New York City.

Applicants now seek to extend the scope of their coordinated operations[2] over the following additional routes: (1) Between Buffalo, NY, and New York City; (2) between Albany and Buffalo; (3) between Albany and points on Long Island, NY; and (4) between New York City and Montreal.[3] These routes also serve such intermediate points as Syracuse and Rochester, NY.

The Adirondack Group operates 6 eastbound and 7 westbound trips daily between Albany and either Buffalo or Syracuse. Greyhound operates 6 daily round trips between Buffalo and either Albany or Syracuse. Between Buffalo and New York City, the Adirondack Group operates 4 southbound trips and 3 northbound trips, and Greyhound operates 11 round trips. Between Albany and points on Long Island, the Adirondack Group operates 3 daily round trips and an additional weekend round trip on specified dates,[4] and the Greyhound System operates 1 daily round trip. Between New York City and Montreal, the Adirondack Group operates 4 daily round trips,[5] and Greyhound operates 5 daily round trips and 1 additional round trip on weekends.

Because their competing services, in many instances, operate at nearly the same times of day with buses that are only partially loaded, applicants assert that their operations are inefficient, costly, and, as a consequence, unable to compete effectively with Amtrak, airline service, and private automobiles.

The Adirondack Group operates over 1,500 miles of intercity bus routes, predominantly in New York, under the following operating authorities: No. MC–28356 (Adirondack); No. MC–2060 (Pine Hill); and No. MC–276393 (PBC).[6]

The Greyhound System operates over 90,000 miles of intercity bus routes throughout the nation. Greyhound holds operating authority under No. MC–1515, and Vermont holds operating authority under No. MC–45626.

Applicants contend that there is substantial intermodal competition between points on the affected routes. They assert that Amtrak operates daily passenger train service between New York City and Buffalo, New York City and Montreal, and New York City and Albany. Additionally, they identify numerous air flights[7] and contend that the region's highway network makes private automobile travel relatively quick and inexpensive.

The proposed pooling of services, according to applicants, will enable them to increase their passenger load per bus. This, in turn, will reduce their unit costs and make their services more competitive. Additionally, they emphasize that the proposed pooling of service will permit them to spread their schedules out more evenly throughout the day, affording the traveling public a greater choice of departure times and enhancing the convenience of bus travel.

Applicants already operate from common terminals in Schenectady and White Plains, NY. They assert that these joint terminal operations have reduced their unit costs and improved their competitive posture. Joint terminals, they note, are more convenient for passengers as well. With joint terminals, passengers may board the next bus to their destination without regard to which carrier operates the particular schedule. Connections are enhanced as well because passengers can transfer between buses of the different carriers without changing terminals.

Applicants assert that they are not domiciled in Mexico and are not owned or controlled by persons of that country. In addition, they assert that approval of the service pooling agreement will not significantly affect either the quality of the human environment or the conservation of energy resources. Although it does not appear that significant environmental or energy conservation effects will result from approval of this application, comments are also invited on this issue.

Copies of the pooling application may be obtained free of charge by contacting applicants' representatives. In the alternative, the pooling application may be inspected at the offices of the Surface Transportation Board, Room 1221, during normal business hours. [Assistance for the hearing impaired is available through TDD service on (202) 927–5721.]

A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: August 7, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–20916 Filed 8–15–96; 8:45 am]

BILLING CODE 4915–00–P

[2] The application indicates that applicants intend only to pool their services over these routes, and not to pool revenues or share expenses (except, perhaps, to the extent that use of common terminal facilities would result in sharing certain overhead expenses). Additionally, the application states that package express traffic is expected to be the subject of a later agreement. The appended agreement, however, purports to cover all ''bus operations'' and explicitly contemplates both passenger and package express traffic. Applicants should clarify this matter by the date comments are due.

[3] These routes are all operated in interstate or foreign commerce. The New York City-Buffalo route traverses New Jersey and serves Ridgeview, NJ. The Albany-Buffalo route is part of through services between such points as Boston, MA, and Toronto, Ontario, Canada. The Albany-Long Island route provides advertised connections to and from points in Connecticut and Massachusetts, and it connects with the New York City-Montreal route.

[4] The application states there are 5 daily round trips. However, footnotes in the bus schedules appended to the application indicate that two of these round trips operate only on specified dates and one of the two operates only between Kingston, NY, and Long Island.

[5] The Adirondack Group proposed to begin operations to and from Montreal in June 1996.

[6] The appendices or exhibits attached to the application appear to indicate that PBC operates under the trade name New York Trailways, but the record is not clear on this point. Applicants should either confirm or correct this point, as well, by the date comments are due.

[7] Applicants state that there are at least 75 daily flights in each direction between New York City and Buffalo or intermediate points, via American Airlines, Continental Airlines, Delta Airlines, U.S. Air, and United Airlines; 9 daily flights in each direction between Albany and Buffalo or intermediate points, via U.S. Air; 27 daily flights in each direction between New York City and Montreal, via American Airlines, Air Canada, Continental Airlines, and Delta Airlines; and 6 daily flights in each direction between Albany and points on Long Island, via U.S. Air.

Surface Transportation Board [1]

[Finance Docket No. 31989]

The Elk River Railroad, Inc.—Construction and Operation—in Clay and Kanawha Counties, WV

The Elk River Railroad, Inc. (TERRI) applied to the Interstate Commerce Commission (ICC), now the Surface Transportation Board (Board), for authority to construct and operate a 29.8-mile rail line from Hartland to Falling Rock, West Virginia. The ICC's Section of Environmental Analysis (SEA) began the environmental analysis of this proposal, considering the potential environmental impacts associated with TERRI's preferred route, and a ''no build'' alternative. SEA completed a Draft Environmental Impact Statement (served June 30, 1995).

The Board's SEA has now completed the environmental review process, and its conclusions are discussed in the Final Environmental Impact Statement (FEIS). SEA concludes that the proposed action would have adverse noise and safety impacts due to the close proximity of a substantial number of residences to the rail line. The proposed mitigation measures would reduce, but not totally eliminate, these impacts. There are, however, no feasible alternative rail routes by which this traffic could move. Furthermore, overall environmental impacts of the proposal may not be unduly severe if the recommended mitigation is implemented, particularly when balanced against the potential environmental benefits of reducing the increase in coal truck traffic. Therefore, the Section of Environmental Analysis recommends that the Board impose on any final decision approving the proposed construction and operation the mitigation measures contained in the FEIS.

Copies of the FEIS have been served on representative individuals and agencies. For additional information about the FEIS, please contact: Elaine K. Kaiser, Chief, Section of Environmental Analysis, or Michael Dalton at (202) 927–6197.

Copies of the FEIS are available to all persons for a fee through DC News and Data Inc. at (202) 289–4357 (assistance for the hearing impaired is available through TDD services (202) 927–5721) or by pickup from Room 2229, 1201 Constitution Avenue, NW, Washington, DC 20423. Because of limited resources, we are no longer able to make additional copies available at no cost.

Date made available to the public: August 9, 1996.

By the Surface Transportation Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 96–20914 Filed 8–15–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (the Act), enacted December 29, 1995, and effective January 1, 1996 abolished the Interstate Commerce Commission and transferred certain rail proceedings to the Surface Transportation Board (Board) if they involve functions retained by the Act. This proceeding concerns a function, authorization of rail construction under 49 U.S.C. 10901, that has been transferred to the Board.

Surface Transportation Board [1]

[Docket No. AB–389 (Sub-No. 1X)]

Georgia Great Southern Division, South Carolina Central Railroad Co., Inc.—Abandonment and Discontinuance Exemption—Between Albany and Dawson, in Terrell, Lee and Dougherty Counties, GA

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board exempts the Georgia Great Southern Division, South Carolina Central Railroad, Co., Inc., from the prior approval requirements of 49 U.S.C. 10903–04, to abandon its 13.62-mile line of railroad between Albany (milepost 86.5) and Sasser (milepost 72.88) and to discontinue service over its 5.38-mile rail line between Sasser and Dawson (milepost 67.5), in Terrell, Lee, and Dougherty Counties, GA, subject to public use, trail use/rail banking, historic preservation, other environmental, and standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 15, 1996. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) [2] and requests for interim trail use/rail banking under 49 CFR 1152.29 must be filed by August 26, 1996; and petitions to reopen must be filed by September 10, 1996.

ADDRESSES: Send pleadings referring to Docket No. AB–389 (Sub-No. 1X) to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Ave., N.W., Washington, D.C. 20423; and (2) Petitioner's representative, Michael W. Blaszak, 211 South Leitch Avenue, LaGrange, IL 60525–2162.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Ave., N.W., Washington, D.C. 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 9, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–20917 Filed 8–15–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this notice applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–42; OTS No. 6804]

First Federal Savings and Loan Association of Allen Parish, Oakdale, LA; Approval of Conversion Application

Notice is hereby given that on August 8, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Allen Parish, Oakdale, Louisiana, 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 Midwest Regional Office, Office of Thrift Supervision, 122 W. John

Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: August 12, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–20887 Filed 8–15–96; 8:45 am]

BILLING CODE 6720–01–M

[AC–43; OTS No. 02719]

Midwest Savings Bank, Bolingbrook, Illinois; Approval of Conversion Application

Notice is hereby given that on August 1, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Midwest Savings Bank, Bolingbrook, 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.

Dated: August 1, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–20888 Filed 8–15–96; 8:45 am]

BILLING CODE 6720–01–M

Union Federal Bank, An FSB; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Union Federal Bank, An FSB, Los Angeles, California OTS No. 3146, on August 9, 1996.

Dated: August 12, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–20889 Filed 8–15–96; 8:45 am]

BILLING CODE 6720–01–M

Federal Register

Friday
August 16, 1996

Part II

Department of the Interior

Minerals Management Service

Alaska Outer Continental Shelf Region, Beaufort Sea Natural Gas and Oil Lease Sale 144; Notice

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Alaska Outer Continental Shelf Region, Beaufort Sea Natural Gas and Oil Lease Sale 144

AGENCY: Minerals Management Service

ACTION: Final Notice of Sale

1. **Authority**. This Notice is issued pursuant to the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331-1356 (1994), and the regulations issued thereunder (30 CFR Part 256).

2. **Filing of Bids**. Sealed bids will be received by the Regional Director, Alaska OCS Region, Minerals Management Service (MMS), 949 E. 36th Avenue (Third Floor), Anchorage, Alaska 99508-4302. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m. local time) until the bid submission deadline at 10 a.m. September 17, 1996. Bid opening time will be 9 a.m., September 18, 1996, at the Marston Theater, Z. J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 61 FR 15968, published on April 10, 1996.

3. **Method of Bidding**. A separate bid in a sealed envelope labeled "Sealed Bid for Natural Gas and Oil Lease Sale 144, not to be opened until 9 a.m September 18, 1996." must be submitted for each block or bidding unit bid upon. The sealed envelope and the bid should in the following information: the company name, MMS qualification number, map number and name (abbreviations acceptable), and the block number of the block bid upon. For those blocks which must be bid upon as a bidding unit (see paragraph 12), all numbers of blocks comprising the bidding unit should appear on the sealed envelope and the bid. In addition, the total amount bid must be in whole dollar amounts. Any cent amount above the whole dollar will be ignored by MMS.

Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. Also, for identification purposes, the company name and MMS qualification number, map number and name (abbreviations acceptable), and the block number(s) must appear on the check or bank draft. No bid for less than all of a block or bidding unit, as referenced in paragraph 12, will be considered.

All documents must be executed in conformance with signatory authorizations on file in the Alaska OCS Regional office. Partnerships also need to submit or have on file in the Alaska OCS Regional office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in

percent to a maximum of five decimal places, e.g., 33.33333 percent. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding, Yearly Rental, and Royalty Systems. The following bidding, yearly rental, and royalty systems apply to this sale:

(a) Bidding Systems. All bids submitted at this sale must provide for a cash bonus in the amount of $62 or more per hectare or fraction thereof.

(b) Yearly Rental. All leases awarded will provide for a yearly rental payment of $13 per hectare or fraction thereof.

(c) Royalty Systems. All leases will provide for a minimum royalty of $13 per hectare or fraction thereof. A Fixed Royalty Rate of 12½ percent applies to all blocks and bidding units offered in this sale.

5. Equal Opportunity. Each bidder must qualify for the sale by submitting, prior to the bid submission deadline stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Program Representation Form, Form MMS-2032 (June 1985). See paragraph 14(g).

6. Bid Opening. Bid opening will begin at the bid opening time stated in paragraph 2. The opening of bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of bid opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $62 or more per hectare or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCSLA, as amended, and other applicable regulations may be returned to the person submitting that bid by the Regional Director and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease (Form MMS-2005 (March 1986) as amended), pay the balance of the cash bonus bid along with the first year's annual rental by electronic funds transfer in accordance with the requirements of 30 CFR 218.155 for each lease issued, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. See Federal Register at 58 FR 45255, published August 27, 1993.

Each person submitting a bid, or any person participating as a joint bidder in a bid, must submit, prior to the Bid Submission Deadline specified in this Notice, a Certification that the person is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. Persons submitting such certifications should review the requirements of 43 CFR, Part 12, Subpart D, as amended by Notice published in the Federal

Register at 60 FR 33035 (June 26, 1995). Copies of the preferred Certification format are available from the Alaska OCS Region Resource Center at the address cited in paragraph 2.

11. Official Protraction Diagrams. Blocks being offered may be located on the following OCS Official Protraction Diagrams (OPD's) available for $2 each from the Alaska OCS Region Resource Center at the address stated in paragraph 2.

These OPD's are based on the North American Datum of 1983 (NAD 83). They reflect current baseline and boundary information portrayed on a metric NAD 83 cadastre. Bidders must utilize the OPD(s) and block number(s) based on NAD 83 in submitting bids.

NR 05-01, Dease Inlet (approved February 1, 1996)

NR 05-02, Harrison Bay North (approved February 1, 1996)

NR 05-03, Teshekpuk (approved February 1, 1996)

NR 05-04, Harrison Bay (approved February 1, 1996)

NR 06-01, Beechey Point North (approved February 1, 1996)

NR 06-03, Beechey Point (approved February 1, 1996)

NR 06-04, Flaxman Island (approved February 1, 1996)

NR 07-03, Barter Island (approved February 1, 1996)

12. Description of the Areas Offered for Bids. The area is depicted on the map attached to this Notice.

The lease sale area offered for bidding is listed by OPD. Three categories of blocks appear under each OPD listed: (1) whole blocks, (2) split blocks, and (3) blocks which comprise bidding units.

Whole blocks fall entirely under the jurisdiction of the Federal Government. Each block must be bid on separately. Hectares for whole blocks listed in this paragraph are found on the appropriate OPD.

Split blocks are blocks divided into two or more portions. This occurs where part of the block lies within the seaward boundary of Alaska or where a jurisdictional dispute exists between the Federal and State Governments. A block may also be split into portions when a portion of the block lies within 3-to-6 geographical miles of the seaward boundary of Alaska. The Symbol "G" appearing next to the hectare amount for a portion of a block indicates that portion which lies within this 3-to-6 mile area. This area is subject to provisions of section 8(g) of the OCSLA (43 U.S.C. 1337) which provides for the sharing of any revenues received on these blocks with the State. Each split block portion listed under SPLIT BLOCKS must be bid on separately.

Split blocks referred to in the block list by an alpha designator (i.e., Block 6423 Area B) indicates that specific area so identified on the OCS Composite or Supplemental Block Diagram for that block. The letter symbol "D" appearing next to the hectare amount for a portion of a block indicates that portion of a block where a jurisdictional dispute between the Federal and State Governments is pending before the United States Supreme Court, United States of America

v. State of Alaska, No. 84, Original. Nothing in this Notice shall affect or prejudice the legal position of the United States in this case.

Bidding units are a combination of various portions of adjacent blocks. The entire bidding unit is listed under the OPD where the first partial block is located. When part of the bidding unit is located on an adjacent OPD, the appropriate OPD number will be listed (i.e., Block 6482, NR 05-01). All parts of a bidding unit must be bid on together.

Copies of block diagrams for split blocks are available from the Alaska OCS Region Resource Center at the address stated in paragraph 2.

Official Protraction Diagram NR 05-01, Dease Inlet (approved February 1, 1996)

(1) WHOLE BLOCKS:

6004-6011	6304-6321	6604-6623	6912-6923
6054-6061	6354-6371	6654-6673	6963-6973
6104-6111	6404-6423	6706-6723	7014-7023
6154-6167	6454-6473	6758-6773	7066-7073
6204-6220	6504-6523	6810-6823	7118-7119
6254-6270	6554-6573	6861-6873	

(2) SPLIT BLOCKS:

Blocks	Hectares	Blocks	Hectares
6704 Area B	1516.137337	6961 Area B	2163.970265 G
6705 Area B	2226.342895	6962 Area A	1093.698875 G
6754 Area B	2037.091486 G	7011 Area B	505.907508 G
6755 Area A	2201.064140 G	7012 Area B	2224.479338 G

6757 Area B	2204.977437	7013 Area A	796.386744 G
6806 Area B	1874.224721 G	7062 Area B	804.288224 G
6807 Area A	2096.553441 G	7063 Area A	2193.223634 G
6809 Area B	2096.102978	7065 Area B	2256.833750
6858 Area B	1699.412545 G	7114 Area B	2011.318740 G
6859 Area A	2146.689830 G	7115 Area A	1986.779794 G
6860 Area A	679.854790 G	7117 Area B	2286.433181
6910 Area B	2224.088344 G	7120 Area B	2100.802806
6911 Area A	1059.463142 G	7121 Area B	1145.433447
6960 Area B	529.517057 G	7122 Area A	1505.527716 G
		7123 Area A	1329.591909 G

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
6704 Area A	787.862663 G	
6705 Area A	77.657105 G	865.519768 G
6755 Area B	102.935860	
6756 Area B	1043.643113	1146.578973
6756 Area A	1260.356887 G	
6757 Area A	99.022563 G	1359.379450 G
6804 Area B	25.885767 G	
6805 Area B	569.268888 G	595.154655 G
6807 Area B	207.446559	
6808 Area B	967.035411	1174.481970
6808 Area A	1336.964589 G	
6809 Area A	207.897022 G	1544.861611 G
6856 Area B	105.175966 G	
6857 Area B	680.965432 G	786.141398 G
6859 Area B	157.310170	
6860 Area B	1624.145210	1781.455380
6908 Area B	.389914 G	
6909 Area B	928.155031 G	928.544945 G
6910 Area C	15.573454	
6911 Area B	1244.536858	1260.110312

6961 Area C	.412147	
6962 Area B	1210.301125	1210.713272
7012 Area C	17.706775	
7013 Area B	1507.613256	1525.320031
7063 Area B	110.776366	
7064 Area B	1356.002400	1466.778766
7064 Area A	947.997600 G	
7065 Area A	47.166250 G	995.163850 G
7112 Area B	.768534 G	
7113 Area B	846.655569 G	847.424103 G
7115 Area B	317.220206	
7116 Area B	1488.105600	1805.325806
7116 Area A	815.894400 G	
7117 Area A	17.566819 G	833.461219 G
7120 Area A	203.197194 G	
7121 Area A	1158.566553 G	1361.763747 G
7122 Area B	798.472284	
7123 Area B	974.408091	1772.880375

Official Protraction Diagram NR 05-02, Harrison Bay North (approved February 1, 1996)

(1) WHOLE BLOCKS:

6401-6404	6601-6612	6801-6818	7001-7023
6451-6454	6651-6662	6851-6868	7051-7073
6501-6506	6701-6716	6901-6923	7105-7123
6551-6556	6751-6766	6951-6973	

(2) SPLIT BLOCKS:

Blocks	Hectares
7101 Area B	1434.746943
7101 Area C	18.739046 GD
7102 Area B	1621.042769

7103 Area B	2125.999888	
7104 Area B	2303.868519	

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
7101 Area A	850.514011 G	
7102 Area A	682.957231 G	
7103 Area A	178.000112 G	
7104 Area A	.131481 G	1711.602835 G

Official Protraction Diagram NR 05-03, Teshekpuk (approved February 1, 1996)

(1) WHOLE BLOCKS:

None

(2) SPLIT BLOCKS:

Blocks	Hectares
6017 Area B	2095.733687 G
6018 Area A	2149.926967 G
6019 Area A	2225.916616 G
6020 Area A	2009.558726 G
6021 Area A	2161.299920 G
6022 Area B	1725.203101 G
6023 Area B	1172.850287 G
6024 Area B	1449.496516 G

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
6015 Area B	57.312785 G	
6016 Area B	982.683360 G	1039.996145 G
6018 Area B	154.073033	
6019 Area B	78.083384	
6020 Area B	294.441274	
6021 Area B	142.700080	669.297771

6067 Area B	105.001230 G	
6068 Area B	651.367452 G	
6069 Area B	455.762285 G	1212.130967 G
6070 Area B	689.579411 G	
6071 Area B	606.041153 G	
6072 Area B	3.736280 G	1299.356844 G

DISPUTED BIDDING UNITS:

Blocks	Hectares	Total Hectares
6024 Area C	7.386398 D	
6001 NR 05-04 Area C	75.902530 D	83.288928 D

Official Protraction Diagram NR 05-04, Harrison Bay (approved February 1, 1996)

(1) WHOLE BLOCKS:

6003	6110-6123	6261-6272	6415-6417
6007-6023	6160-6173	6312-6322	
6059-6073	6211-6222	6363-6370	

(2) SPLIT BLOCKS for NR 05-04, Harrison Bay:

Blocks	Hectares	Blocks	Hectares
6001 Area B	1816.494168 G	6310 Area B	2207.757788 G
6004 Area A	1964.600549 G	6311 Area A	694.562849 G
6006 Area B	2086.389821	6323 Area A	2245.918147
6055 Area B	1837.367207 G	6360 Area B	951.592080 G
6056 Area B	2229.751627 G	6371 Area B	1649.516033
6058 Area B	2217.289661	6373 Area C	76.133950 GD
6106 Area B	607.491404 G	6414 Area A	2301.178465
6107 Area B	1876.645904 G	6418 Area B	2140.706468
6108 Area B	496.574808	6419 Area B	1855.020936
6109 Area B	2249.487616	6421 Area B	2206.617255 G
6159 Area A	809.604567 G	6422 Area B	1292.341785 G
6208 Area B	1152.838040 G	6463 Area C	928.065371 GD
6210 Area B	2202.568837	6464 Area B	1832.683971 GD
6223 Area A	2207.761247	6466 Area A	537.259885 G
6260 Area A	1379.657040 G	6467 Area A	1946.180826 G
6260 Area B	924.342960	6468 Area A	2303.656020 G

6273 Area A	2240.192055	6469 Area B	2242.512061 G
		6516 Area B	2273.124935 G

DISPUTED SPLIT BLOCKS:

Blocks	Hectares
6513 Area B	1846.495134 D
6566 Area E	.933680 D

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
6002 Area B	2082.036316 G	
6052 Area B	64.185274 G	2146.221590 G
6004 Area B	339.399451	
6005 Area B	1206.887883	1546.287334
6005 Area A	1097.112117 G	
6006 Area A	217.610179 G	1314.722296 G
6053 Area B	249.264764 G	
6054 Area B	862.817884 G	1112.082648 G
6056 Area C	74.120171	
6057 Area B	1122.203932	1196.324103
6057 Area A	1181.796068 G	
6058 Area A	86.710339 G	1268.506407 G
6108 Area A	1807.425192 G	
6109 Area A	54.512384 G	1861.937576 G
6157 Area B	91.803869 G	
6158 Area B	2024.732946 G	2116.536815 G
6159 Area B	1494.395433	
6209 Area B	336.440119	1830.835552
6209 Area A	1967.559881 G	
6210 Area A	101.431163 G	2068.991044 G

6258 Area B	44.775710 G	
6259 Area B	1832.148522 G	
6309 Area B	354.260638 G	2231.184870 G
6310 Area C	4.239677	
6311 Area B	1609.437151	1613.676828
6361 Area A	2102.660983 G	
6362 Area A	202.328029 G	2304.989012 G
6361 Area B	201.339017	
6362 Area B	2101.671971	2303.010988
6371 Area A	654.361567 G	
6372 Area A	1445.002281 G	2099.363848 G
6371 Area C	.122400 GD	
6420 Area C	159.847448 GD	
6421 Area E	1.305890 GD	161.275738 GD
6372 Area B	858.997719	
6373 Area B	792.691061	1651.688780
6373 Area A	1417.704479 G	
6374 Area A	190.667349 G	1608.371828 G
6410 Area B	6.444269 G	
6411 Area B	1634.481707 G	1640.925976 G
6412 Area A	1791.793604 G	
6413 Area A	164.976853 G	1956.770457 G
6412 Area B	463.442083	
6413 Area B	1678.351680	2141.793763
6412 Area C	48.764313 GD	
6413 Area C	460.671467 GD	
6414 Area B	2.821535 GD	512.257315 GD
6418 Area A	163.293532 G	
6419 Area A	448.979064 G	
6420 Area A	1162.416925 G	1774.689521 G

6420 Area B	981.735627	
6421 Area C	5.455835	987.191462
6423 Area B	1188.664321 G	
6424 Area B	159.998768 G	1348.663089 G
6461 Area B	158.689513 G	
6462 Area B	1232.529600 G	1391.219113 G
6463 Area A	1250.268080 G	
6513 Area A	46.338251 G	1296.606331 G
6464 Area A	471.316029	
6465 Area A	1562.637120	2033.953149
6466 Area B	1751.626782	
6467 Area B	357.819174	
6468 Area B	.343980	2109.789936
6465 Area B	741.362880 GD	
6466 Area C	15.113333 GD	756.476213 GD
6470 Area B	1745.492263 G	
6471 Area B	403.746975 G	2149.239238 G
6513 Area D	102.000631 GD	
6514 Area D	821.134976 GD	
6515 Area C	289.061073 GD	
6516 Area C	3.100967 GD	1215.297647 GD
6514 Area A	295.680046 G	
6515 Area A	1827.693964 G	2123.374010 G
6517 Area B	1193.894986 G	
6518 Area B	242.080404 G	
6519 Area B	15.028797 G	1451.004187 G
6565 Area B	94.202719 G	
6566 Area B	235.433878 G	329.636597 G

DISPUTED BIDDING UNITS:

Blocks	Hectares	Total Hectares
6421 Area D	2.167496 D	
6470 Area C	32.941676 D	
6471 Area C	397.332872 D	432.442044 D
6423 Area C	320.342621 D	
6424 Area C	44.859227 D	
6401 NR 06-03 Area C	7.684236 D	372.886084 D
6461 Area C	.192983 D	
6462 Area C	500.217474 D	
6463 Area B	125.666549 D	626.077006 D
6512 Area B	949.801557 D	
6562 Area B	1179.890669 D	2129.692226 D
6513 Area C	309.165984 D	
6514 Area C	250.416451 D	559.582435 D
6514 Area B	936.768527 D	
6515 Area B	187.244963 D	1124.013490 D
6563 Area B	2163.882206 D	
6613 Area B	49.402872 D	2213.285078 D
6564 Area B	1850.644050 D	
6614 Area B	117.250971 D	1967.895021 D
6565 Area C	657.543412 D	
6566 Area C	6.036666 D	663.580078 D
6565 Area D	.580254 D	
6566 Area D	3.337266 D	3.917520 D

Official Protraction Diagram NR 06-01, Beechey Point North (approved February 1, 1996)

(1) WHOLE BLOCKS:

6901	7001	7101-7113
6951	7051-7062	

(2) SPLIT BLOCKS:

None

(3) BIDDING UNITS:

None

Official Protraction Diagram NR 06-03, Beechey Point (approved February 1, 1996)

(1) WHOLE BLOCKS:

6002-6014	6152-6169	6304-6324	6470-6474
6052-6064	6203-6220	6360-6374	6521-6524
6102-6114	6253-6274	6410-6424	

(2) SPLIT BLOCKS for NR 06-03, Beechey Point:

Blocks	Hectares	Blocks	Hectares
6202 Area A	2141.893470	6512 Area A	1244.613587 G
6252 Area B	54.885083	6517 Area B	858.795283 G
6353 Area A	2030.782661 G	6518 Area B	1845.320650 G
6354 Area A	2077.163526 G	6519 Area A	1494.060709 G
6355 Area A	1580.483381 G	6519 Area B	548.365384
6357 Area B	2100.885142	6520 Area A	1993.727575
6358 Area A	2233.257980	6572 Area B	2124.559720
6359 Area A	2234.885813	6573 Area A	2232.651475
6406 Area B	1773.924860 G	6574 Area A	2234.225338
6409 Area C	54.483249	6621 Area B	1883.946114 G
6464 Area A	1285.448222 G	6673 Area A	2061.316348 G
6467 Area A	1823.523742 G	6723 Area C	649.887938 G
6469 Area B	2201.875587	6724 Area B	1722.244106 G
6510 Area C	1185.584351 G		

DISPUTED SPLIT BLOCKS:

Blocks	Hectares
6403 Area C	54.188905 D
6664 Area H	10.798192 D
6871 Area H	1.097685 D

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
6302 Area B	53.201780	
6303 Area A	2235.197332	2288.399112
6351 Area A	197.636261 G	
6352 Area A	1910.590608 G	2108.226869 G
6353 Area D	3.057381	
6354 Area B	226.836474	
6355 Area B	723.516619	
6356 Area B	1292.063653	2245.474127
6356 Area A	1010.259940 G	
6357 Area A	132.425308 G	1142.685248 G
6401 Area B	157.280016 G	
6402 Area B	790.344473 G	
6403 Area B	638.600823 G	1586.225312 G
6404 Area B	627.287522 G	
6405 Area B	1172.342416 G	1799.629938 G
6407 Area C	2.009636 G	
6456 Area B	3.144125 G	
6457 Area B	100.414415 G	
6458 Area B	56.715093 G	162.283269 G
6459 Area B	121.759947 G	
6509 Area B	575.945106 G	697.705053 G
6459 Area E	1.672657 G	
6459 Area F	45.529974 G	
6460 Area A	1225.113688 G	1272.316319 G

6459 Area G	7.270061	
6460 Area B	1078.886312	1086.156373
6461 Area A	855.569123 G	
6462 Area A	39.042781 G	894.611904 G
6461 Area B	1106.886970	
6462 Area C	1051.535760	2158.422730
6461 Area C	341.543907 GD	
6462 Area D	1166.953119 GD	
6512 Area C	170.680093 GD	1679.177119 GD
6462 Area B	46.468340 G	
6463 Area A	962.747357 G	1009.215697 G
6463 Area C	347.178695 GD	
6464 Area C	1.115908 GD	348.294603 GD
6463 Area B	992.408640	
6464 Area B	948.102761	1940.511401
6465 Area B	1345.337023	
6466 Area B	939.249088	2284.586111
6465 Area A	880.513167 G	
6466 Area A	1337.944944 G	2218.458111 G
6465 Area C	78.149810 GD	
6466 Area C	26.805968 GD	104.955778 GD
6467 Area B	480.476258	
6468 Area B	1005.697186	1486.173444
6468 Area A	1298.302814 G	
6469 Area A	102.124413 G	1400.427227 G
6511 Area B	1317.049363 G	
6511 Area F	34.042331 G	1351.091694 G
6513 Area B	1325.471532 G	
6514 Area D	3.186090 G	1328.657622 G

6514 Area F	27.261596 G	
6515 Area B	1087.215396 G	
6516 Area B	937.645507 G	2052.122499 G
6519 Area C	261.573907 GD	
6520 Area B	310.272425 GD	
6569 Area C	15.336524 GD	
6569 Area D	8.137457 GD	
6570 Area D	395.552267 GD	
6570 Area E	792.421803 GD	
6571 Area C	218.697161 GD	2001.991544 GD
6568 Area B	169.382030 G	
6569 Area A	1450.542659 G	1619.924689 G
6570 Area B	89.615213	
6571 Area B	1200.170813	1289.786026
6570 Area A	1023.229843 G	
6620 Area B	639.967663 G	1663.197506 G
6571 Area A	885.132026 G	
6572 Area A	144.460532 G	1029.592558 G
6622 Area A	2043.745124 G	
6623 Area A	263.099557 G	2306.844681 G
6622 Area B	63.226068	
6623 Area B	176.632966	
6673 Area B	129.497196	369.356230
6624 Area C	1.670849	
6624 Area D	52.201562	53.872411
6623 Area D	1.669520	
6624 Area B	69.756912	
6674 Area B	1162.567898	1233.994330
6671 Area B	13.440127 G	
6672 Area B	1499.603175 G	
6722 Area B	4.975750 G	1518.019052 G

6673 Area C	45.549575 GD	
6674 Area C	258.282001 GD	303.831576 G
6674 Area A	883.150101 G	
6651 NR 06-04		
Area A	470.398885 G	
6652 NR 06-04		
Area A	2.250059 G	1355.799045 G

DISPUTED BIDDING UNITS:

Blocks	Hectares	Total Hectares
6511 Area I	18.547003 D	
6512 Area B	819.519862 D	
6513 Area C	627.248628 D	
6514 Area C	3.268556 D	1468.584049 D
6562 Area E	54.133710 D	
6563 Area B	519.111209 D	
6612 Area D	6.224107 D	
6613 Area B	95.276354 D	674.745380 D
6568 Area C	214.966103 D	
6569 Area B	829.983360 D	
6618 Area B	11.983782 D	
6619 Area B	471.468630 D	1528.401875 D
6570 Area C	3.180874 D	
6620 Area C	1056.588466 D	
6621 Area C	22.127843 D	1081.897183 D
6613 Area L	1.316685 D	
6614 Area F	8.346095 D	9.662780 D
6616 Area H	3.499116 D	
6665 Area G	2.265856 D	
6666 Area H	9.428979 D	15.193951 D
6663 Area F	.411756 D	
6664 Area J	3.242248 D	3.654004 D

6668 Area E	62.970317 D	
6669 Area D	47.853006 D	110.823323 D
6718 Area H	31.421963 D	
6719 Area B	1444.616901 D	
6720 Area B	142.812945 D	1618.851809 D
6718 Area F	16.036036 D	
6718 Area G	1.660841 D	
6768 Area B	11.596220 D	
6769 Area B	1023.168599 D	1052.461696 D
6723 Area D	465.197887 D	
6724 Area C	126.781009 D	591.978896 D
6770 Area B	1754.333492 D	
6771 Area B	189.251337 D	1943.584829 D
6819 Area B	8.574797 D	
6820 Area B	1968.218837 D	
6870 Area B	147.520199 D	
6871 Area G	23.682350 D	2147.996183 D
6874 Area B	34.102248 D	
6924 Area C	133.667472 D	
6901 NR 06-04		
Area B	4.413421 D	172.183141 D

Official Protraction Diagram NR 06-04, Flaxman Island (approved February 1, 1996)

(1) WHOLE BLOCKS:

6301-6303	6501-6524	6653-6655	6766-6774
6351-6364	6551-6574	6663-6674	6817-6824
6401-6424	6601-6606	6704-6705	6866-6872
6451-6474	6609-6624	6715-6724	6915-6921
			6968

(2) SPLIT BLOCKS:

Blocks	Hectares	Blocks	Hectares
6607 Area A	2302.334207	6805 Area B	1223.505530 G
6608 Area A	2233.748312	6808 Area A	2014.479386 G
6651 Area B	1833.601115	6810 Area B	1943.785440
6652 Area B	2301.749941	6859 Area B	1515.550440 G
6656 Area A	2302.332537	6873 Area B	2276.149547
6657 Area A	2180.423375	6924 Area B	1457.018060 G
6660 Area A	2302.341549	6965 Area B	1544.757411
6661 Area A	2232.031285	6966 Area B	1868.592669
6662 Area A	2233.665193	6967 Area B	2291.773725

(2) SPLIT BLOCKS:

Blocks	Hectares	Blocks	Hectares
6701 Area B	2209.806140 G	6969 Area B	2278.392617
6702 Area B	623.500264	6971 Area A	1614.287008 G
6703 Area B	2078.768238	6972 Area B	2251.489294 G
6706 Area A	2252.189085	7014 Area F	9.027088 G
6714 Area A	2233.612276	7016 Area B	2204.439276 G
6753 Area A	2013.653448 G	7017 Area B	508.869863
6754 Area A	1537.332127 G	7018 Area B	1863.898998
6755 Area A	1377.977350 G	7019 Area A	1605.964167 G
6756 Area B	1167.150436	7019 Area B	698.035833
6756 Area D	.621251 G	7020 Area B	2056.212489 G
6760 Area A	2250.907837	7068 Area B	2271.117684 G
6804 Area B	1123.248884 G		

DISPUTED SPLIT BLOCKS:

Blocks	Hectares
6857 Area C	3.951632 D
7014 Area C	10.669170 D

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
6658 Area B	51.626116	
6659 Area A	2233.734429	2285.360545

6702 Area A	1680.499736 G	
6703 Area A	225.231762 G	1905.731498 G
6707 Area B	71.824809	
6757 Area B	2077.292870	
6807 Area B	5.678601	2154.796280
6708 Area B	71.865330	
6758	2304.000000	2375.865330
6709 Area B	70.240582	
6759	2304.000000	2374.240582
6709 Area C	1.660430	
6709 Area D	51.536478	
6710 Area A	2250.901942	2304.098850
6712 Area B	51.279589	
6713 Area A	2232.003132	2283.282721
6751 Area B	195.020733 G	
6752 Area B	1399.851465 G	1594.872198 G
6753 Area B	290.346552	
6754 Area B	766.667873	
6755 Area B	892.984846	1949.999271
6756 Area C	17.188349 G	
6757 Area A	226.707130 G	243.895479 G
6764 Area B	51.189276	
6765 Area A	2233.590403	2284.779679
6802 Area D	85.202472 G	
6803 Area B	942.556106 G	1027.758578 G
6806 Area F	53.443721 G	
6807 Area A	2298.321399 G	2351.765120 G
6808 Area B	289.520614	
6809 Area B	929.873775	1219.394389

6809 Area A	1372.467864 G	
6810 Area A	258.125424 G	1630.593288 G
6811 Area B	71.888345	
6860 Area C	30.547487	
6861 Area B	951.392640	1053.828472
6812 Area B	71.901964	
6862 Area B	2169.468707	2241.370671
6813 Area B	70.289494	
6863 Area A	2252.741556	2323.031050
6814 Area B	1.652728	
6815 Area B	70.389368	
6864 Area C	1.652091	
6864 Area D	51.219152	
6865	2304.000000	2428.913339
6815 Area D	51.174139	
6815 Area C	1.652637	
6816	2304.000000	2356.826776
6856 Area B	.602672 G	
6857 Area B	369.712296 G	
6858 Area C	727.646270 G	1097.961238 G
6864 Area B	70.314043	
6914	2304.000000	2374.314043
6873 Area A	27.850453 G	
6874 Area A	485.182515 G	
6851 NR 07-03 Area A	793.119865 G	1306.152833 G
6874 Area B	899.883193	
6851 NR 07-03 Area B	591.945843	1491.829036
6912 Area D	32.535719	
6913 Area B	1797.010187	1829.545906

6922 Area A	550.270433 G	
6923 Area A	1753.862205 G	2304.132638 G
6922 Area B	1753.729567	
6923 Area B	550.137795	2303.867362
6963 Area G	2.684580	
6964 Area B	865.029131	867.713711
6963 Area F	48.559090 G	
6964 Area A	1368.713638 G	1417.272728 G
6965 Area A	754.155305 G	
6966 Area A	421.562948 G	
6967 Area A	12.226275 G	1187.944528 G
6965 Area C	5.087284 GD	
6966 Area C	13.844383 GD	18.931667 GD
6969 Area A	25.607383 G	
6970 Area A	823.853838 G	849.461221 G
6970 Area B	1480.146162	
6971 Area B	689.712992	
6972 Area C	11.554804	2181.413958
6973 Area B	1234.996685 G	
6974 Area B	292.100856 G	1527.097541 G
7014 Area H	41.862767 G	
7015 Area B	1911.125121 G	1952.987888 G
7017 Area A	1750.448638 G	
7018 Area A	347.294556 G	2097.743194 G
7017 Area C	44.681499 GD	
7018 Area C	92.806446 GD	137.487945 GD
7021 Area B	1292.604800 G	
7022 Area B	319.774837 G	1612.379637 G

7066 Area B	112.527213 G	
7067 Area B	1366.436760 G	1478.963973 G
7069 Area B	2135.058543 G	
7070 Area B	185.200947 G	2320.259490 G
7118 Area B	159.029862 G	
7119 Area B	441.050779 G	600.080641 G

DISPUTED BIDDING UNITS:

Blocks	Hectares	Total Hectares
6802 Area E	.174758 D	
6803 Area C	87.733584 D	87.908342 D
7015 Area C	19.955862 D	
7016 Area E	.162238 D	20.118100 D
7066 Area E	.031666 D	
7067 Area C	358.183697 D	358.215363 D

Official Protraction Diagram NR 07-03, Barter Island (approved February 1, 1996)

(1) WHOLE BLOCKS:

6401-6405	6601-6605	6801-6803
6451-6455	6651-6655	
6501-6505	6701-6705	
6551-6555	6751-6755	

(2) SPLIT BLOCKS:

Blocks	Hectares	Blocks	Hectares
6804 Area B	2178.037891	6854 Area A	2303.381715 G
6805 Area B	2285.855490	6855 Area A	2115.892432 G
6852 Area A	1427.547333 G	6855 Area B	188.107568
6853 Area A	1888.515007 G	6905 Area B	803.648492 G

(3) BIDDING UNITS:

Blocks	Hectares	Total Hectares
6804 Area A	125.962109 G	
6805 Area A	18.144510 G	144.106619 G
6852 Area B	876.452667	
6853 Area B	415.484993	
6854 Area B	.618285	1292.555945
6901 Area B	955.531820 G	
6902 Area B	1299.451616 G	2254.983436 G
6903 Area B	909.648483 G	
6904 Area B	281.073438 G	1190.721921 G

13. Lease Terms and Stipulations.

(a) Leases issued as a result of this sale will have initial terms of 10 years. Leases will be issued on Form MMS-2005 (March 1986). Copies of the lease form are available from the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated in paragraph 2.

(b) The following stipulations will be included in leases resulting from this sale, as indicated.

Stipulation No. 1, Protection of Biological Resources

If biological populations or habitats that may require additional protection are identified in the lease area by the Regional Supervisor, Field Operations (RS/FO), the RS/FO may require the lessee to conduct biological surveys to determine the extent and composition of such biological populations or habitats. The RS/FO shall give written notification to the lessee of the RS/FO's decision to require such surveys.

Based on any surveys that the RS/FO may require of the lessee or on other information available to the RS/FO on special biological resources, the RS/FO may require the lessee to:

(1) Relocate the site of operations;

(2) Establish to the satisfaction of the RS/FO, on the basis of a site-specific survey, either that such operations will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist;

(3) Operate during those periods of time, as established by the RS/FO, that do not adversely affect the biological resources; and/or

(4) Modify operations to ensure that significant biological populations or habitats deserving protection are not adversely affected.

If any area of biological significance should be discovered during the conduct of any operations on the lease, the lessee shall immediately report such findings to the RS/FO and make every reasonable effort to preserve and protect the biological resource from damage until the RS/FO has given the lessee direction with respect to its protection.

The lessee shall submit all data obtained in the course of biological surveys to the RS/FO with the locational information for drilling or other activity. The lessee may take no action that might affect the biological populations or habitats surveyed until the RS/FO provides written directions to the lessee with regard to permissible actions. The RS/FO will utilize the best available information as determined in consultation with the Arctic Biological Task Force.

Stipulation No. 2, Orientation Program

The lessee shall include in any exploration or development and production plans submitted under 30 CFR 250.33 and 250.34 a proposed orientation program for all personnel involved in exploration or development and production activities (including personnel of the lessee's agents, contractors, and subcontractors) for review and approval by the Regional Supervisor, Field Operations. The program shall be designed in sufficient detail to inform individuals working on the project of specific types of environmental, social, and cultural

concerns that relate to the sale and adjacent areas. The program shall address the importance of not disturbing archaeological and biological resources and habitats, including endangered species, fisheries, bird colonies, and marine mammals and provide guidance on how to avoid disturbance. This guidance will include the production and distribution of information cards on endangered and/or threatened species in the sale area. The program shall be designed to increase the sensitivity and understanding of personnel to community values, customs, and lifestyles in areas in which such personnel will be operating. The orientation program shall also include information concerning avoidance of conflicts with subsistence, commercial fishing activities, and pertinent mitigation.

The program shall be attended at least once a year by all personnel involved in onsite exploration or development and production activities (including personnel of the lessee's agents, contractors, and subcontractors) and all supervisory and managerial personnel involved in lease activities of the lessee and its agents, contractors, and subcontractors.

The lessee shall maintain a record of all personnel who attend the program onsite for so long as the site is active, not to exceed 5 years. This record shall include the name and date(s) of attendance of each attendee.

Stipulation No. 3, Transportation of Hydrocarbons

Pipelines will be required: (a) if pipeline rights-of-way can be determined and obtained; (b) if laying such pipelines is technologically feasible and environmentally preferable; and (c) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple-use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to recommendations of any advisory groups and Federal, State, and local governments and industry.

Following the development of sufficient pipeline capacity, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of an emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the Regional Supervisor, Field Operations.

Stipulation No. 4, Industry Site-Specific Bowhead Whale-Monitoring Program

Lessees proposing to conduct exploratory drilling operations, including seismic surveys, during the bowhead whale migration will be required to conduct a site-specific monitoring program approved by the Regional Supervisor, Field Operations (RS/FO); unless, based on the

size, timing, duration, and scope of the proposed operations, the RS/FO, in consultation with the North Slope Borough (NSB) and the Alaska Eskimo Whaling Commission (AEWC), determine that a monitoring program is not necessary. The RS/FO will provide the NSB, AEWC, and the State of Alaska a minimum of 30 but no longer than 60 calendar days to review and comment on a proposed monitoring program prior to approval. The monitoring program must be approved each year before exploratory drilling operations can be commenced.

The monitoring program will be designed to assess when bowhead whales are present in the vicinity of lease operations and the extent of behavioral effects on bowhead whales due to these operations. In designing the program, lessees must consider the potential scope and extent of effects that the type of operation could have on bowhead whales. Scientific studies and individual experiences relayed by subsistence hunters indicate that, depending on the type of operations, individual whales may demonstrate avoidance behavior at distances of up to 24 km. The program must also provide for the following:

(1) Recording and reporting information on sighting of other marine mammals and the extent of behavioral effects due to operations,

(2) Inviting an AEWC or NSB representative to participate in the monitoring program as an observer,

(3) Coordinating the monitoring logistics beforehand with the MMS Bowhead Whale Aerial Survey Project (BWASP),

(4) Submitting daily monitoring results to the MMS BWASP,

(5) Submitting a draft report on the results of the monitoring program to the RS/FO within 60 days following the completion of the operation. The RS/FO will distribute this draft report to the AEWC, the NSB, the State of Alaska, and the National Marine Fisheries Service (NMFS).

(6) Submitting a final report on the results of the monitoring program to the RS/FO. The final report will include a discussion of the results of the peer review of the draft report. The RS/FO will distribute this report to the AEWC, the NSB, the State of Alaska, and the NMFS .

Lessees will be required to fund an independent peer review of a proposed monitoring plan and the draft report on the results of the monitoring program. This peer review will consist of independent reviewers who have knowledge and experience in statistics, monitoring marine mammal behavior, the type and extent of the proposed operations, and an awareness of traditional knowledge. The peer reviewers will be selected by the RS/FO from experts recommended by the NSB, the AEWC, industry, NMFS, and MMS. The results of these peer reviews will be provided to the RS/FO for consideration in final approval of the monitoring program and the final report, with copies to the NSB, AEWC, and the State of Alaska.

In the event the lessee is seeking a Letter of Authorization (LOA) or Incidental Harassment Authorization (IHA) for incidental take from the NMFS, the monitoring program and review process required under the LOA or IHA may satisfy the requirements of this stipulation. Lessees must advise the RS/FO when it is seeking an LOA or IHA in lieu of meeting the requirements of this stipulation and provide the RS/FO with copies of all pertinent submittals and resulting correspondence. The RS/FO will coordinate with the NMFS and advise the lessee if the LOA or IHA will meet these requirements.

This stipulation applies to the following blocks for the time periods listed and will remain in effect until termination or modification by the Department of the Interior, after consultation with the NMFS and the NSB.

SPRING MIGRATION AREA
April 1 through June 15

OPD	Blocks Included
NR 05-01, Dease Inlet	6004 - 6011, 6054 - 6061, 6104 - 6111, 6154 - 6167, 6204 - 6220, 6254 - 6270, 6304 - 6321, 6354 - 6371, 6404 - 6423, 6454 - 6473, 6504 - 6523, 6554 - 6573, 6604 - 6623, 6654 - 6673, 6717 - 6723
NR 05-02, Harrison Bay North	6401 - 6404, 6451 - 6454, 6501 - 6506, 6551 - 6556, 6601 - 6612, 6651 - 6662, 6701 - 6716

CENTRAL FALL MIGRATION AREA
September 1 through October 31

OPD	Blocks Included
NR 05-01, Dease Inlet	6704 - 6716, 6754 - 6773, 6804 - 6823, 6856 - 6873, 6908 - 6923, 6960 - 6973, 7011 - 7023, 7062 - 7073, 7112 - 7123
NR 05-03, Teshekpuk	6015 - 6024, 6067 - 6072
NR 05-02, Harrison Bay North	6751 - 6766, 6801 - 6818, 6851 - 6868, 6901 - 6923, 6951 - 6973, 7001 - 7023, 7051 - 7073, 7101 - 7123

NR 05-04, Harrison Bay	6001 - 6023, 6052 - 6073, 6105 - 6123, 6157 - 6173, 6208 - 6223, 6258 - 6274, 6309 - 6324, 6360 - 6374, 6360 - 6374, 6410 - 6424, 6461 - 6471, 6512 - 6519, 6562 - 6566, 6613 - 6614
NR 06-01, Beechey Point North	6901, 6951, 7001, 7051 - 7062, 7101 - 7113
NR 06-03, Beechey Point	6002 - 6014, 6052 - 6064, 6102 - 6114, 6152 - 6169, 6202 - 6220, 6251 - 6274, 6301 - 6324, 6351 - 6374, 6401 - 6424, 6456 - 6474, 6509 - 6524, 6568 - 6574, 6618 - 6624, 6671 - 6674, 6723 - 6724, 6773
NR 06-04, Flaxman Island	6301 - 6303, 6351 - 6359, 6401 - 6409, 6451 - 6459, 6501 - 6509, 6551 - 6559, 6601 - 6609, 6651 - 6659, 6701 - 6709, 6751 - 6759, 6802 - 6809, 6856 - 6859

EASTERN FALL MIGRATION
August 1 through October 31

OPD	Blocks Included
NR 06-04, Flaxman Island	6360 - 6364, 6410 - 6424, 6460 - 6474, 6510 - 6524, 6560 - 6574, 6610 - 6624, 6660 - 6674, 6710 - 6724, 6760 - 6774, 6810 - 6824, 6860 - 6874, 6910 - 6924, 6961 - 6974, 7013 - 7022, 7066 - 7070, 7118 - 7119
NR 07-03, Barter Island	6401 - 6405, 6451 - 6455, 6501 - 6505, 6551 - 6555, 6601 - 6605, 6651 - 6655, 6701 - 6705, 6751 - 6755, 6801 - 6805, 6851 - 6855, 6901 - 6905

OPD	Blocks Included
NR 07-04, Mackenzie Canyon North	6401 - 6408, 6451 - 6458, 6501 - 6507, 6551 - 6557, 6601 - 6607, 6651 - 6657, 6701 - 6707, 6751 - 6757, 6801 - 6806, 6851 - 6856, 6901 - 6906, 6951 - 6956, 7001 - 7006, 7051 - 7055, 7101 - 7105
NR 07-05, Demarcation Point	6016 - 6026, 6067 - 6076, 6118 - 6126, 6169 - 6176, 6221- 6226, 6273 - 6276, 6323 - 6326
NR 07-06, Mackenzie Canyon	6001 - 6004, 6051 - 6054, 6101 - 6103, 6151 - 6153, 6201 - 6203, 6251 - 6252, 6301 - 6302, 6351

Stipulation No. 5, Subsistence Whaling and Other Subsistence Activities

Exploration and development and production operations shall be conducted in a manner that prevents unreasonable conflicts between the oil and gas industry and subsistence activities (including, but not limited to, bowhead whale subsistence hunting).

Prior to submitting an exploration plan or development and production plan (including associated oil-spill contingency plans) to the MMS for activities proposed during the bowhead whale migration period, the lessee shall consult with the potentially affected subsistence communities, Barrow, Kaktovik, or Nuiqsut, the North Slope Borough (NSB), and the Alaska Eskimo Whaling Commission (AEWC) to discuss potential conflicts with the siting, timing, and methods of proposed operations and safeguards or mitigating measures which could be implemented by the operator to prevent unreasonable conflicts. Through this consultation, the lessee shall make every reasonable effort to assure that exploration, development, and production activities are compatible with whaling and other subsistence hunting activities and will not result in unreasonable interference with subsistence harvests.

A discussion of resolutions reached during this consultation process and plans for continued consultation shall be included in the exploration plan or the development and production plan. In particular, the lessee shall show in the plan how activities will be scheduled and located to prevent unreasonable conflicts with subsistence activities. Lessees shall also include a discussion of multiple or simultaneous operations, such as ice management and seismic activities, that can be expected to occur during operations in order to more accurately assess the potential for any cumulative affects. Communities, individuals, and other entities who were involved in the consultation shall be identified in the plan. The RS/FO shall send a copy of the exploration plan or development and production plan (including associated oil-spill contingency plans) to the potentially affected communities, and the AEWC at the time they are submitted to the MMS to allow concurrent review and comment as part of the plan approval process.

In the event no agreement is reached between the parties, the lessee, the AEWC, the NSB, the National Marine Fisheries Service (NMFS), or any of the subsistence communities that could potentially be affected by the proposed activity may request that the RS/FO assemble a group consisting of representatives from the subsistence communities, AEWC, NSB, NMFS, and the lessee(s) to specifically address the conflict and attempt to resolve the issues before making a final determination on the adequacy of the measures taken to prevent unreasonable conflicts with subsistence harvests. Upon request, the RS/FO will assemble this group before making a final determination on the adequacy of the measures taken to prevent unreasonable conflicts with subsistence harvests.

The lessee shall notify the RS/FO of all concerns expressed by subsistence hunters during operations and of steps taken to address such concerns. Lease-related use will be restricted when the RS/FO determines it is necessary to prevent unreasonable conflicts with local subsistence hunting activities.

In enforcing this stipulation, the RS/FO will work with other agencies and the public to assure that potential conflicts are identified and efforts are taken to avoid these conflicts, (for example, timing operations to avoid the bowhead whale subsistence hunt). These efforts might include a seasonal drilling restrictions, seismic and threshold depth restrictions, and requirements for directional drilling and the use of other technologies deemed appropriate by the RS/FO.

Subsistence whaling activities occur generally during the following periods:

August to October: Kaktovik whalers use the area circumscribed from Anderson Point in Camden Bay to a point 30 kilometers north of Barter Island to Humphrey Point east of Barter Island. Nuiqsut whalers use an area extending from a line northward of the Nechelik Channel of the Colville River to Flaxman Island, seaward of the Barrier Islands.

September to October: Barrow hunters use the area circumscribed by a western boundary extending approximately 15 kilometers west of Barrow, a northern boundary 50 kilometers north of Barrow, then southeastward to a point about 50 kilometers off Cooper Island, with an eastern boundary on the east side of Dease Inlet. Occasional use may extend eastward as far as Cape Halkett.

Stipulation No. 6, Agreement Between the United States of America and the State of Alaska

This stipulation applies to the following blocks or portions of blocks referred to in this Notice as disputed: NR 05-03, Teshekpuk, block 6024; NR 05-04, Harrison Bay, blocks 6001, 6421, 6423-6424, 6461-6463, 6470-6471, 6512-6515, 6562-6566, 6613-6614; NR 06-03, Beechey Point, blocks 6401, 6403, 6511-6514, 6562-6563, 6568-6570, 6612-6614, 6616, 6618-6621, 6663-6666, 6668-6669, 6718-6720, 6723-6724, 6768-6771, 6819-6820, 6870-6871, 6874, 6924; NR 06-04, Flaxman Island, blocks 6802-6803, 6857, 6901, 7014-7016, 7066-7067.

This lease is subject to the "Agreement Between the United States of America and the State of Alaska Pursuant to Section 7 of the Outer Continental Shelf Lands Act and Alaska Statutes 38.05.137 for the Leasing of Disputed Blocks in Federal Outer Continental Shelf Oil and Gas Lease Sale 144 and State Oil and Gas lease Sale 86" (referred to as the "Agreement"), and the lessee hereby consents to every term of that Agreement. Nothing in that Agreement or this Notice shall affect or prejudice the legal position of the United States in *United States of America v. State of Alaska*, United States Supreme Court No. 84, Original.

Any loss incurred or sustained by the lessee as a result of obtaining validation and recognition of this lease pursuant to the Agreement, and in particular any loss incurred or sustained by the lessee as a result of conforming this lease with any and all provisions of all applicable laws of the party prevailing in *United States of America v. State of Alaska*, No. 84 Original, shall be borne exclusively by the lessee.

No taxes payable to the State of Alaska will be required to be paid with respect to this lease until such time as ownership of or jurisdiction over the lands subject to this lease is resolved. In the event that the lands subject to this lease or any portion of them are judicially determined to be State lands, the lessee shall pay to the State of Alaska a sum equivalent to the State taxes which would have been imposed under Alaska law if the lands, or portion thereof determined to be State lands, had been undisputed State lands from the date the lease was executed, plus interest at the annual legal rate of interest provided under Alaska law accruing from the date the taxes

would have become due under Alaska law. Such payment shall be in lieu of, and in satisfaction of, the actual State taxes.

Stipulation No. 7, Agreement Regarding Unitization

This stipulation applies to the following blocks or portions of blocks referred to in this Notice as disputed: NR 05-03, Teshekpuk, block 6024; NR 05-04, Harrison Bay, blocks 6001, 6421, 6423-6424, 6461-6463, 6470-6471, 6512-6515, 6562-6566, 6613-6614; NR 06-03, Beechey Point, blocks 6401, 6403, 6511-6514, 6562-6563, 6568-6570, 6612-6614, 6616, 6618-6621, 6663-6666, 6668-6669, 6718-6720, 6723-6724, 6768-6771, 6819-6820, 6870-6871, 6874, 6924; NR 06-04, Flaxman Island, blocks 6802-6803, 6857, 6901, 7014-7016, 7066-7067.

This lease is subject to the "Agreement Regarding Unitization for the Outer Continental Shelf Oil and Gas Lease Sale 144 and State Oil and Gas Lease Sale 86 Between the United States of America and the State of Alaska" and the lessee is bound by the terms of that Agreement.

14. Information to Lessees.

(a) Information on Community Participation in Operations Planning. Lessees are encouraged to bring one or more residents of communities in the area of operations into their planning process. Local communities often have the best understanding of how oil and gas activities can be safely conducted in and around their area without harming the environment or

interfering with community activities. Involving local community residents in the earliest stages of the planning process for proposed oil and gas activities can be beneficial to the industry and the community. Community representation on management teams developing plans of operation, oil spill contingency plans, and other permit applications can help communities understand permitting obligations and help industry to understand community values and expectations for oil and gas operations being conducted in and around their area.

(b) Information on Kaktovikmiut Guide - "In This Place." The people of Kaktovik, the Kaktovikmiut, have compiled "A Guide for Those Wishing to Work in The Country of the Kaktovikmiut." The guide's intent, in part, is to provide information that may promote a better understanding of their concerns. Lessees are encouraged to obtain copies of the guide and to incorporate it into their Orientation Program to assist in fostering sensitivity and understanding of personnel to community values, customs, and lifestyles in areas in which they will be operating.

(c) Information on Nuiqsutmiut Paper. The people of Nuiqsut, the Nuiqsutmiut, have compiled a paper for people working in their country. The paper provides information that may promote a better understanding of their concerns. Lessees are encouraged to obtain copies of the paper and to incorporate it into their Orientation Program to assist in fostering sensitivity and understanding of personnel to community values, customs, and lifestyles in areas in which they will be operating.

(d) Information on the Arctic Biological Task Force . Lessees are advised that in the enforcement of the Protection of Biological Resources stipulation, the Regional Supervisor, Field Operations (RS/FO), will consider recommendations from the Arctic Biological Task Force (BTF) composed of designated representatives of the MMS, Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), and Environmental Protection Agency (EPA). Personnel from the State of Alaska and local communities are invited and encouraged to participate in the proceedings of the BTF. The RS/FO will consult with the Arctic BTF on the conduct of biological surveys by lessees and the appropriate course of action after surveys have been conducted.

(e) Information on Bird and Marine Mammal Protection. Lessees are advised that during the conduct of all activities related to leases issued as a result of this sale, the lessee and its agents, contractors, and subcontractors will be subject to the provisions of the Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1361 et seq.); the Endangered Species Act (ESA), as amended (16 U.S.C. 1531 et seq.); and applicable International Treaties.

Lessees and their contractors should be aware that disturbance of wildlife could be determined to constitute harm or harassment and thereby be in violation of existing laws and treaties. With respect to endangered species and marine mammals, disturbance could be determined to constitute a "taking" situation. Under the ESA, the term "take" is defined to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Under the MMPA, "take" means "harass, hunt, capture, or kill or attempt

to harass, hunt, capture, or kill any marine mammal." These Acts and applicable Treaties require violations be reported to the NMFS or the FWS, as appropriate.

Incidental taking of marine mammals and endangered and threatened species is allowed only when the statutory requirements of the MMPA and/or the ESA are met. Section 101(a)(5) of the MMPA (16 U.S.C. 1371(a)(5)) allows for the taking of small numbers of marine mammals incidental to a specified activity within a specified geographical area. Section 7(b)(4) of the ESA (16 U.S.C. 1536(b)(4)) allows for the incidental taking of endangered and threatened species under certain circumstances. If a marine mammal species is listed as endangered or threatened under the ESA, the requirements of both the MMPA and the ESA must be met before the incidental take can be allowed.

Under the MMPA and ESA, the NMFS is responsible for species of the order Cetacea (whales and dolphins) and the suborder Pinnipedia (seals and sea lions) except walrus; the FWS is responsible for polar bears, sea otters, walrus, and birds. Procedural regulations implementing the provisions of the MMPA are found at 50 CFR Part 18.27 for FWS, and at 50 CFR Part 228 for NMFS.

Lessees are advised that specific regulations must be applied for and in place and that a Letter of Authorization (LOA) or Incidental Harassment Authorization (IHA) must be obtained by those proposing the activity to allow the incidental take of marine mammals whether or not they are endangered or threatened. The regulatory process may require 1 year or longer.

Of particular concern is disturbance at major wildlife concentration areas, including bird colonies, marine mammal haulout and breeding areas, and wildlife refuges and parks. Maps depicting major wildlife concentration areas in the lease area are available from the RS/FO. Lessees are also encouraged to confer with the FWS and NMFS in planning transportation routes between support bases and leaseholdings.

Lessees should exercise particular caution when operating in the vicinity of species whose populations are known or thought to be declining and which are not protected under the ESA; specifically, Steller's eider and Pacific walrus. The FWS issued incidental take regulations for walruses in the Beaufort Sea and adjacent northern coast of Alaska that were in effect for an 18-month period beginning December 16, 1993 (50 CFR 18.121 et seq.). These regulations have been extended until December 15, 1998. Incidental take regulations are promulgated only upon request, and the FWS must be in receipt of a petition prior to initiating the regulatory process. Incidental, but not intentional, taking is authorized only by U.S. citizens holding an LOA issued pursuant to these regulations. An LOA or IHA must be requested annually.

Behavioral disturbance of most birds and mammals found in or near the lease area would be unlikely if aircraft and vessels maintain at least a 1-mile horizontal distance and aircraft maintain at least a 1,500-foot vertical distance above known or observed wildlife concentration areas, such as bird colonies and marine mammal haulout and breeding areas.

For the protection of endangered whales and marine mammals throughout the lease area, it is recommended that all aircraft operators maintain a minimum 1,500-foot altitude when in transit between support bases and exploration sites. Lessees and their contractors are encouraged to minimize or reroute trips to and from the leasehold by aircraft and vessels when endangered whales are likely to be in the area.

Human safety should take precedence at all times over these recommendations.

(f) Information on River Deltas. Lessees are advised that certain river deltas of the Beaufort Sea coastal plain (such as the Kongakut, Canning, and Colville) have been identified by the FWS as special habitats for bird nesting and fish overwintering areas, as well as other forms of wildlife. Shore-based facilities in these river deltas may be prohibited by the permitting agency.

(g) Information on Endangered Whales and MMS Monitoring Program. Lessees are advised that the MMS intends to continue its areawide endangered bowhead whale monitoring program in the Beaufort Sea during exploration activities. The program will gather information on whale distribution patterns which will be used by MMS and others to assess impacts on bowhead whales.

The MMS will perform an environmental review for each proposed exploration plan and development and production plan, including an assessment of cumulative effects of noise on endangered whales. Should the review conclude that activities described in the plan will be a

threat of serious, irreparable, or immediate harm to the species, the RS/FO will require that activities be modified, or otherwise mitigated before such activities would be approved.

Lessees are further advised that the RS/FO has the authority and intends to limit or suspend any operations, including preliminary activities, as defined under 30 CFR 250.31, on a lease whenever bowhead whales are subject to a threat of serious, irreparable, or immediate harm to the species. Should the information obtained from MMS or lessees' monitoring programs indicate that there is a threat of serious, irreparable, or immediate harm to the species, the RS/FO will require the lessee to suspend operations causing such effects, in accordance with 30 CFR 250.10. Any such suspensions may be terminated when the RS/FO determines that circumstances which justified the ordering of suspension no longer exist. Notice to Lessees No. 86-2 specifies performance standards for preliminary activities.

Incidental taking of marine mammals and endangered and threatened species is allowed only when the statutory requirements of the MMPA and/or the ESA are met. Section 101(a)(5) of the MMPA (16 U.S.C. 1371(a)(5)) allows for the taking of small numbers of marine mammals incidental to a specified activity within a specified geographical area. Section 7(b)(4) of the ESA (16 U.S.C. 1536(b)(4)) allows for the incidental taking of endangered and threatened species under certain circumstances. If a marine mammal species is listed as endangered or threatened under the ESA, the requirements of both the MMPA and the ESA must be met before the incidental take can be allowed.

Information regarding endangered whales will be reviewed periodically by the MMS in consultation with the NMFS, the State of Alaska, the North Slope Borough (NSB), and the Alaska Eskimo Whaling Commission (AEWC). The sources of information include: the MMS monitoring program; the industry site-specific monitoring program; pertinent results of the MMS environmental studies; observations of subsistence hunters utilizing the area and other applicable information. The purpose of the review will be to determine whether existing mitigating measures adequately protect the endangered whales. Should the review indicate the threat of serious, irreparable, or immediate harm to the species, the MMS will take action to protect the species, including the possible imposition of a seasonal drilling restriction, or other restrictions if appropriate.

(h) Information on the Availability of Bowhead Whales for Subsistence Hunting Activities. Lessees are advised that the NMFS issues regulations for incidental take of marine mammals, including bowhead whales. Incidental take regulations are promulgated only upon request, and the NMFS must be in receipt of a petition prior to initiating the regulatory process. Incidental takes of bowhead whales are allowed only if an LOA or an IHA is obtained from the NMFS pursuant to the regulations in effect at the time. An LOA or an IHA must be requested annually. In issuing an LOA or an IHA, the NMFS must determine that proposed activities will not have an unmitigable adverse effect on the availability of the bowhead whale to meet subsistence needs by causing whales to abandon or avoid hunting areas, directly displacing subsistence users, or placing physical barriers between whales and subsistence users.

Lessees are also advised that, in reviewing proposed exploration plans which propose activities during the bowhead whale migration, the MMS will conduct an environmental review of the potential effects of the activities, including cumulative effects of multiple or simultaneous operations, on the availability of the bowhead whale for subsistence use. The MMS may limit or require operations be modified if they could result in significant effects on the availability of the bowhead whale for subsistence use.

The MMS and the NMFS will establish procedures to coordinate results from site-specific surveys required by Sale 144 Stipulation No. 4 and NMFS LOA's or IHA's to determine if further modification to lease operations are necessary.

(i) Information on Consultation with NMFS to Protect Bowhead Whales in the Spring-Lead System. The MMS has been advised by the NMFS that, based on currently available information and technology, NMFS believes that development and production activities in the spring lead systems used by bowhead whales along the Chukchi Sea coast and extending to the northeast of Point Barrow would likely jeopardize the continued existence of the bowhead whale population. The NMFS has advised that they will reconsider this conclusion when new information, technology, and/or measures become available or are proposed that would effectively eliminate or otherwise mitigate this potential jeopardy situation. In addition, NMFS biological opinions are based on the assumption that there will not be any exploration within the spring-lead system. Therefore, the lessees are advised that MMS and NMFS will review exploration plans to ascertain if endangered species consultation will be required for activities planned during the

spring (April 1 to June 15). Lessees are advised that specific options, alternatives, and/or mitigating measures may be developed for exploration, production, and development activities during MMS consultation with NMFS as new information or technology is developed for specific development plans, but that the possibility exists that exploration, development, and production on leases in this area may be constrained or precluded.

(j) Information on Geological and Geophysical Survey Activity. Lessees are advised of the potential effect of geological and geophysical (G&G) activity to bowhead whales and subsistence hunting activities. High resolution G&G surveys are distinguished from 2-D and 3-D geophysical surveys by the magnitude of the energy source used in the survey, the size of the survey area, the number and length of arrays used, and duration of the survey period. High resolution G&G surveys are typically conducted after a lease sale in association with a specific exploration or development program or in anticipation of future lease sale activity. The 2-D and 3-D geophysical surveys are typically conducted prior to lease sales.

Lessees are advised that all G&G survey activity conducted in the Beaufort Sea Planning Area, either under the pre-lease permitting regulations at 30 CFR 251, or as part of an approved exploration or development and production plan at 30 CFR 250, is subject to environmental and regulatory review by the MMS. It is the intention of MMS to treat pre-lease G&G activities in a manner similar to the post-lease G&G activities. The MMS has standard mitigating measures which are applied to these activities, and lessees are encouraged to review these measures before developing their applications for G&G permits. Copies of the non-proprietary portions of all

G&G permit applications will be provided by MMS to the NSB, the AEWC, and potentially affected subsistence communities for comment. The MMS may impose restrictions (including the timing of operations relative to open water) and other requirements (such as having a locally approved coordinator on board) on G&G surveys to minimize unreasonable conflicts between the G&G survey and subsistence whaling activities.

Lessees and applicants are advised that MMS will require any proposed G&G activity to be coordinated with potentially affected subsistence communities, the NSB, and the AEWC to identify potential conflicts and develop plans to avoid these conflicts. Copies of the results of any required monitoring plans will be provided by MMS to the potentially affected subsistence communities, the NSB, and the AEWC for comment. In the event of no agreement, a similar conflict resolution process as described in Stipulation No. 5 - *Subsistence Whaling and Other Subsistence Activities* will be implemented

(k) Information on Polar Bear Interaction. Lessees are advised that polar bears may be present in the area of operations, particularly during the solid-ice period. Lessees should conduct their activities in a manner which will limit potential encounters and interaction between lease operations and polar bears. The FWS is responsible for the protection of polar bears under the provisions of the MMPA of 1972, as amended. Lessees are advised to contact the FWS regarding proposed operations and actions which might be taken to minimize interaction with polar bears. OCS Study MMS 93-0008 contains guidelines for oil and gas operations in polar bear habitats.

Lessees are advised that the FWS issued final regulations for incidental take of polar bears in the Beaufort Sea and adjacent northern coast of Alaska effective December 16, 1993 (50 CFR 18.111, et seq.). These regulations were in effect for an 18-month period and have been extended for an additional 40 months through December 15, 1998. The FWS must be in receipt of a petition for incidental take prior to initiating the regulatory process. Incidental takes of polar bears are allowed only if an LOA or an IHA is obtained from the FWS pursuant to the regulations in effect at the time. An LOA or an IHA must be requested annually.

Lessees are reminded of the provisions of the 30 CFR 250.40 regulations which prohibit discharges of pollutants into offshore waters. Trash, waste, or other debris which might attract polar bears or be harmful to polar bears should be properly stored and disposed of to minimize attraction of, or encounters with, polar bears.

The lessees are advised to read and be familiar with the Guidelines for Oil and Gas Operations in Polar Bear Habitats, OCS Study MMS 93-0008. Copies of these guidelines are available for the lessees from the MMS Alaska Regional office.

(l) Information on the Spectacled Eider and Steller's Eider. Lessees are advised that in 1993 the spectacled eider (*Somateria fischeri*) was listed as threatened by the FWS and is protected by the ESA of 1973, as amended 16 U.S.C. 1531 et seq.). Lessees are further advised that the Steller's eider (*Polysticta stelleri*) is being considered by the FWS for listing as an endangered species under the ESA.

Lessees are advised that exploration and development and production plans submitted to MMS will be reviewed by the FWS to ensure spectacled eider's and their habitats are protected. If the Steller's eider is listed as endangered under the ESA, it will be afforded similar protection.

(m) Information on Sensitive Areas To Be Considered in the Oil-Spill Contingency Plans (OSCP). Lessees are advised that certain areas are especially valuable for their concentrations of marine birds, marine mammals, fishes, or other biological resources or cultural resources and should be considered when developing OSCP's. Identified areas and time periods of special biological and cultural sensitivity include:

(1) the lead system off Point Barrow, April-June;

(2) the salt marshes from Kogru Inlet to Smith Bay, June-September;

(3) the Plover Islands, June-September;

(4) the Boulder Patch in Stefansson Sound, June-October;

(5) the Camden Bay area (especially the Nuvugag and Kaninniivik hunting sites), January, April-September, November;

(6) the Canning River Delta, January-December;

(7) the Barter Island - Demarcation Point Area, January-December;

(8) the Colville River Delta, January-December;

(9) the Cross, Pole, Egg, and Thetis Islands, June-September;

(10) the Flaxman Island waterfowl use and polar bear denning areas, January-December; (Leffingwell Cabin, a National Historic Site, is located on Flaxman Island);

(11) the Jones Island Group (Pingok, Spy, and Leavitt Islands) and Pole Island are known polar bear denning areas, November-April; and

(12) the Sagavanirktok River delta.

These areas are among areas of special biological and cultural sensitivity to be considered in the OSCP required by 30 CFR 250.42. Lessees are advised that they have the primary responsibility for identifying these areas in their OSCP's and for providing specific protective measures. Additional areas of special biological and cultural sensitivity may be identified during review of exploration plans and development and production plans.

Industry should consult with FWS or State of Alaska personnel to identify specific environmentally sensitive areas within National Wildlife Refuges or State special areas which should be considered when developing a project-specific OSCP.

Consideration should be given in an OCSP as to whether use of dispersants is an appropriate defense in the vicinity of an area of special biological and cultural sensitivity. Lessees are advised that prior approval must be obtained before dispersants are used.

(n) Information on Oil-Spill-Cleanup Capability. Exploratory drilling, testing, and other downhole activities will be prohibited in broken-ice conditions unless the lessee demonstrates to the RS/FO, the capability to detect, contain, clean up, and dispose of spilled oil in broken ice. For production operations, spill response plans must include a thorough evaluation of the burnability and emulsification characteristics of the field's crude oil under Arctic open-water and broken-ice conditions. The adequacy of these plans will be determined by the RS/FO with full consideration of the comments and recommendations received through the public review process. Lessees may be required to conduct additional field tests to verify response capabilities in broken-ice conditions.

(o) Information on Oil-Spill-Response Preparedness. Lessees are advised that they must be prepared to respond to oil spills which could occur as a result of offshore oil and gas exploration and development activities. With or prior to submitting a plan of exploration or a development and production plan, the lessee will submit for approval an OSCP in accordance with 30 CFR 250.42 and 30 CFR 254. Of particular concern are sections of the OSCP which address potential spill size and trajectory, specific actions to be taken in the event of a spill, the location and appropriateness of oil-spill equipment, and the ability of the lessee to protect communities and important resources from adverse effects of a spill. In the event local communities could be immediately affected by a spill, lessees are encouraged to stage response equipment within those communities and to utilize community resources in their response effort. In addition, lessees will be required to conduct spill response drills which include deployment of equipment to demonstrate response preparedness for spills under realistic conditions. Guidelines for oil-spill-

contingency planning and response drills which supplement 30 CFR 250.43 and 30 CFR 254 have been developed and are available from the RS/FO.

(p) Information on the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.). Lessees are advised that Section 1016(c)(1) of the Oil Pollution Act (OPA) of 1990 (33 U.S.C. 2716(c)(1)) requires that lessees establish and maintain evidence of financial responsibility of $150,000,000 for offshore facilities. This provision supersedes the $35,000,000 requirement under Title III of the OCSLA, as amended (43 U.S.C. 1814). The authority to administer this provision has been transferred from the U. S. Coast Guard (USCG) to the MMS. On April 16, 1993, MMS issued a Notice to Lessees, No. 93-1N, to establish interim guidelines for certificates of oil spill financial responsibility. The interim guidelines retain the $35,000,000 oil spill financial responsibility requirement for offshore facilities until new superseding regulations are issued.

In addition, the MMS issued interim regulations at 30 CFR 254 pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1321(j)), as amended by section 4202(b)(4) of the OPA, addressing oil spill response plans for offshore facilities. The OCS lease activities will be subject to the provisions of this interim rule and subsequent final regulations in addition to existing OSCP regulations at 30 CFR 250 issued under the OCSLA.

(q) Information on Coastal Zone Management. The State of Alaska will review OCS plans and associated OSCP's through the review process for consistency with the Alaska Coastal Management Program (ACMP). The ACMP includes statewide standards found in 6 AAC 80

and enforceable policies found within approved coastal district programs. Contingency plans will be reviewed for compliance with state standards, the use of best available and safest technologies, and with state and regional contingency plans on a case-by-case basis.

(r) Information on Navigational Safety. Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the USCG pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. Lessees are encouraged to contact the USCG regarding any identified restrictions. The U.S. Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCSLA, as amended.

For additional information, prospective bidders should contact the U.S. Coast Guard, 17th Coast Guard District, P.O. Box 3-5000, Juneau, Alaska 99802, (907) 586-7355. For Corps of Engineers information, prospective bidders should contact U.S. Corps of Engineers, Alaska District, Regulatory Branch (1145b), P.O. Box 898, Anchorage, Alaska 99506-0898, (907) 753-2724.

(s) Information on Offshore Pipelines. Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both departments for regulations applicable to offshore pipelines.

(t) Information on Affirmative Action Requirements. Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see *Federal Register* of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the

affirmative action forms contain language that would be superseded by revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the requirements of the revised regulations will be deemed to be part of the existing affirmative action forms.

(u) Information on Discharge of Produced Waters. Lessees are advised that the State of Alaska prohibits discharges of produced waters on State tracts within the 10-meter depth contour. Discharges of produced waters into marine waters are subject to conditions of National Pollutant Discharge Elimination System permits issued by the EPA, and may also include a zero-discharge requirement on Federal tracts within the 10-meter contour.

(v) Information on Use of Existing Pads and Islands. During the review and approval process for exploration and development and production plans, MMS will encourage lessees to use existing pads and islands wherever feasible.

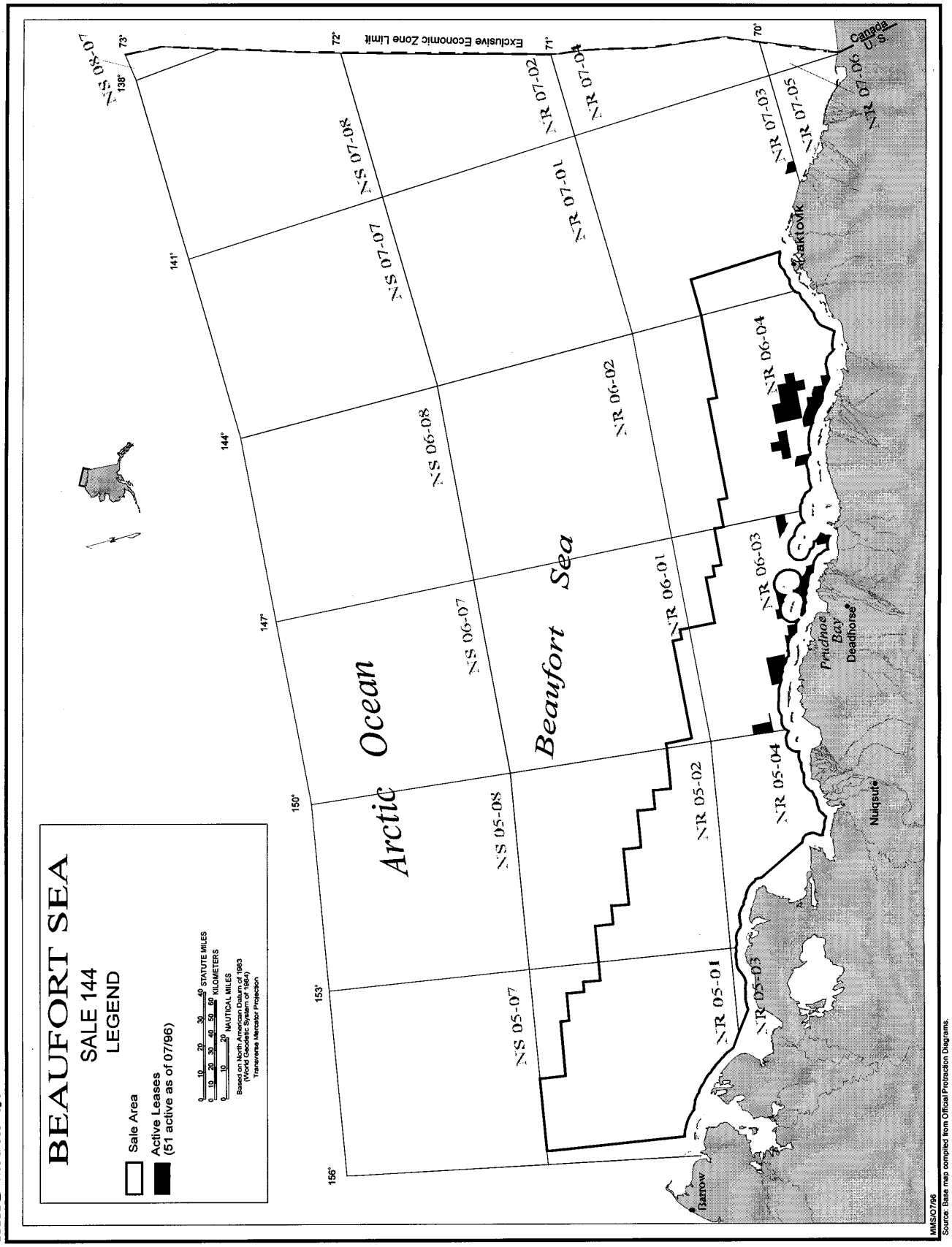
Cynthia Quarterman
Director, Minerals Management Service

Approved:

Sylvia V. Baca
Assistant Secretary, Land and Minerals Management

8/1/96

Date



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Federal Register

Friday
August 16, 1996

Part III

Department of the Interior

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 161; Notice

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 161

AGENCY: Minerals Management Service, Interior.

ACTION: Final notice.

1. *Authority.* This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR Part 256).

2. (a) *Filing of Bids.* Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m., Central Standard Time (c.s.t.)) until the Bid Submission Deadline at 10 a.m. Tuesday, September 24, 1996. Hereinafter, all times cited in this Notice refer to c.s.t. unless otherwise stated. Bids will not be accepted the day of Bid Opening, Wednesday, September 25, 1996. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or written withdrawal request is received by the RD prior to 10 a.m. Tuesday, September 24, 1996. Bid Opening Time will be 9 a.m., Wednesday, September 25, 1996, at the Royal Sonesta Hotel, 300 Bourbon Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 61 FR 15968, published on April 10, 1996.

(b) In the event a natural disaster (such as widespread flooding) or other occurrence causes the MMS Gulf of Mexico Regional Office to be closed on Tuesday, September 24, 1996, bids will be accepted until 9 a.m. Wednesday, September 25, 1996, at the site of bid opening specified above. Under these conditions, bids may be modified or withdrawn upon written notification up until 9 a.m. Wednesday, September 25, 1996. Closure of the office may be determined by calling (504) 736–0557 and hearing a recorded message to that effect.

3. *Method of Bidding.*

(a) *Submission of Bids.* A separate signed bid in a sealed envelope labeled ''Sealed Bid for Oil and Gas Lease Sale 161, not to be opened until 9 a.m., c.s.t., Wednesday, September 25, 1996'' must be submitted for each tract bid upon. The sealed envelope and the bid should contain the following information: the company name, Gulf of Mexico Company Number (GOM Company Number), area number and/or name (abbreviations acceptable), and the block number of the tract bid upon. In addition, the total amount bid to be considered by MMS must be in whole dollar amount. Any cent amount above the whole dollar will be ignored by MMS.

Bidders must submit with each bid 1/5 of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals Management Service. For identification purposes, the following information must appear on the check or draft: company name, GOM Company Number, and the area and block bid on (abbreviation acceptable). No bid for less than all of the unleased portion(s) of a block will be considered.

All documents must be executed in conformance with signatory authorizations on file in the MMS Gulf of Mexico Regional Office. Partnerships also need to submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

(b) *Submission of Statement(s) Regarding Certain Geophysical Data.* Each company submitting a bid, or participating as a joint bidder in such a bid, shall submit, prior to the Bid Submission Deadline specified in paragraph 2 of this Notice, a statement or statements identifying any processed or reprocessed pre and post stack depth migrated geophysical data in their possession or control pertaining to each and every block on which they are participating as a bidder. The existence, extent, type of such data, and identification of specific lines or 3D surveys must be clearly stated. In addition, the statement shall certify that no such data are in their possession for any other blocks on which they participate as a bidder. The statement shall be submitted in an envelope separate from those containing bids and shall be clearly marked; an example of a preferred format for the statement and the envelope is included in the document titled ''Trial Procedures for Access to Certain Geophysical Data in the Gulf of Mexico'' (revised January 19, 1996). Only one statement per bidder is required for each sale, but more than one may be submitted if desired, provided that all tracts bid on by that company are covered in the one or more statements.

Paragraph 14(j), *Information to Lessees,* contains additional information pertaining to geophysical data.

4. *Bidding, Yearly Rental, and Royalty Systems.* The following bidding, yearly rental, and royalty systems apply to this sale:

(a) *Bidding Systems.* All bids submitted at this sale must provide for a cash bonus in the amount of $25.00 or more per acre or fraction thereof.

(b) *Yearly Rental.* All leases awarded on tracts in water depths of 200 meters and greater as depicted on the map ''Royalty Suspension Areas For The Western Gulf Of Mexico'' provided with this Notice (i.e., tracts in any of the three royalty suspension areas) will provide for a yearly rental payment of $7.50 per acre or fraction thereof until initial production is obtained.

All leases awarded on other tracts (i.e., those in water depths of less than 200 meters) will provide for a yearly rental payment of $5.00 per acre or fraction thereof until initial production is obtained.

(c) *Royalty Systems.* After initial production is obtained, leases will provide for a minimum royalty of the amount per acre or fraction thereof as specified as the yearly rental in paragraph 4(b) above, except during periods of royalty suspension as discussed in paragraph 4(c)(3) of this Notice. The following royalty systems will be used in this sale:

(1) *Leases with a 12½-Percent Royalty.* This royalty rate applies to tracts in water depths of 400 meters or greater; this area is shown on the Stipulations, Lease Terms, and Bidding Systems Map applicable to this Notice (see paragraph 13). Leases issued on the tracts offered in this area will have a fixed royalty rate of 12½ percent, except during periods of royalty suspension (see paragraph 4(c)(3) of this Notice).

(2) *Leases with a 16⅔-Percent Royalty.* This royalty rate applies to tracts in water depths of less than 400 meters (see aforementioned map). Leases issued on the tracts offered in this area will have a fixed royalty rate of 16⅔ percent, except during periods of royalty suspension for leases in water depths 200 meters or greater (see paragraph 4(c)(3) of this Notice).

(3) *Royalty Suspension.* In accordance with Public Law 104–58, signed by the President on November 28, 1995, MMS has developed procedures providing for the suspension of royalty payments on production from eligible leases issued as a result of this sale. MMS will allow only one royalty suspension volume per field regardless of the number of eligible leases producing the field. For purposes of this paragraph, an eligible lease is one that: is located in the Gulf of Mexico in water depths 200 meters or deeper; lies wholly west of 87 degrees, 30 minutes West longitude; and is offered subject to a royalty suspension volume authorized by statute.

An eligible lease from this sale may receive a royalty suspension volume only if it is in a field where no currently active lease produced oil or gas (other than test production) before November 28, 1995. The following applies only to eligible leases in fields meeting this condition.

(i) The royalty suspension volumes are:

—17.5 million barrels of oil equivalent (mmboe) in 200 to 400 meters of water;
—52.5 mmboe in 400 to 800 meters of water; and
—87.5 mmboe in 800 meters of water and greater.

A map titled ''Royalty Suspension Areas For The Western Gulf Of Mexico'' (March 1996) depicting blocks in which such suspensions may apply is currently available from the MMS Gulf of Mexico Regional Office (see paragraph 14(a) of this Notice).

(ii) When production first occurs from any of the eligible leases in a field (not including test production), MMS will determine the royalty suspension volume applicable to eligible lease(s) in that field. The determination is based on the royalty suspension volumes and the map specified in paragraph 4(c)(3)(i) above.

(iii) If a new field consists of eligible leases in different water depth categories, the royalty suspension volume associated with the deepest eligible lease applies.

(iv) If an eligible lease is the only eligible lease in a field, royalty is not owed on the production from the lease up to the amount of the applicable royalty suspension volume.

(v) If a field consists of more than one eligible lease, payment of royalties on the eligible leases' initial production is suspended until their cumulative production equals the field's established royalty suspension volume. The royalty suspension volume for each eligible lease is equal to each lease's actual production (or production allocated under an approved unit agreement) until the field's established royalty suspension volume is reached.

(vi) If an eligible lease is added to a field that has an established royalty suspension volume, the field's royalty suspension volume will not change even if the added lease is in deeper water. The additional lease may receive a royalty suspension volume only to the extent of its production before the cumulative production from all eligible leases in the field equals the field's previously established royalty suspension volume.

(vii) If MMS reassigns a well on an eligible lease to another field, the past production from that well will count toward the royalty suspension volume, if any, specified for the new field to which it is assigned. The past production will not be counted toward the suspension volume, if any, from the first field.

(viii) An eligible lease may receive a royalty suspension volume only if the entire lease is west of 87 degrees, 30 minutes West longitude. A field that lies on both sides of this meridian will receive a royalty suspension volume only for those eligible leases lying entirely west of the meridian.

(ix) An eligible lease may obtain more than one royalty suspension volume. If a new field is discovered on an eligible lease that already benefits from the royalty suspension volume for another field, production from that new field receives a separate royalty suspension.

(x) A lessee must measure natural gas production subject to the royalty suspension volume as follows: 5.62 thousand cubic feet of natural gas equals one barrel of oil equivalent, as measured fully saturated at 15.025 psi, 60 degrees F.

(xi) In any year during which the arithmetic average of the closing prices on the New York Mercantile Exchange for light sweet crude oil exceeds $28.00 per barrel, royalties on the production of oil must be paid at the lease stipulated royalty rate (see paragraphs 4(c) (1) and (2) above), and production during such years counts toward the royalty suspension volume.

In any year during which the arithmetic average of the closing prices on the New York Mercantile Exchange for natural gas exceeds $3.50 per million British thermal units, royalties on the production of natural gas must be paid at the lease stipulated royalty rate (see paragraphs 4(c) (1) and (2) above), and production during such years counts toward the royalty suspension volume.

These prices for oil and natural gas are as of the end of 1994 and must be adjusted for subsequent years by the percentage by which the implicit price deflator for the gross domestic product changed during the preceding calendar year.

(xii) A royalty suspension will continue until the end of the month in which the cumulative production from eligible leases in the field reaches the royalty suspension volume for the field.

Paragraph 14(l), *Information to Lessees,* contains additional information pertaining to royalty suspension matters.

5. *Equal Opportunity.* The certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985) must be on file in the MMS Gulf of Mexico Regional Office prior to lease award (see paragraph 14(e)).

6. *Bid Opening.* Bid opening will begin at the bid opening time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time.

7. *Deposit of Payment.* Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal of Tracts.* The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for the tract.

9. *Acceptance, Rejection, or Return of Bids.* The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any tract will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest legal bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $25.00 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned

to the person submitting that bid by the RD and not considered for acceptance.

To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, the MMS has modified its two-phased process for bid adequacy determination. The MMS will not automatically accept legal high bids on confirmed and wildcat tracts which receive three or more bids. Such tracts will be evaluated in accordance with the remaining elements of the MMS bid adequacy procedures. This modification was described in the Federal Register on March 29, 1996 (61 FR 14162). A copy of the revised bid adequacy procedures (''Summary of Procedures for Determining Bid Adequacy at Offshore Oil and Gas Lease Sales: Effective April 1996, with Sale 157'') is available from the MMS Gulf of Mexico Regional Office (see paragraph 14(a) of this Notice).

10. *Successful Bidders.* The following requirements apply to successful bidders in this sale:

(a) *Lease Issuance.*

Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease (Form MMS–2005 (March 1986) as amended), pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued by electronic funds transfer in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended.

Paragraphs 14 (m) and (n), *Information to Lessees,* contain additional information pertaining to this matter.

(b) *Certification Regarding Nonprocurement Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.*

Each person involved as a bidder in a successful high bid must have on file, in the MMS Gulf of Mexico Regional Office Adjudication Unit, a currently valid certification that the person is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, a subsequent certification is required before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 CFR, Part 12, Subpart D, as amended in the Federal Register of June 26, 1995, at 60 CFR 33035.

Copies of the certification form are available from the MMS Gulf of Mexico Regional Office Public Information Unit. See Paragraph 14(a) of this Notice for directions on how to obtain the forms.

11. *Leasing Maps and Official Protraction Diagrams.* Tracts offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the MMS Gulf of Mexico Regional Office (see paragraph 14(a)):

(a) Outer Continental Shelf Leasing Maps—Texas, Nos. 1 through 8. This is a set of 16 maps which sells for $18.00.

(b) Outer Continental Shelf Official Protraction Diagrams. These diagrams sell for $2.00 each.

NG 14–3 Corpus Christi (rev. 01/27/76)
NG 14–6 Port Isabel (rev. 01/15/92)
NG 15–1 East Breaks (rev. 01/27/76)
NG 15–2 Garden Banks (rev. 10/19/81)
NG 15–4 Alaminos Canyon (rev. 04/27/89)
NG 15–5 Keathley Canyon (rev. 04/27/89)
NG 15–8 (No Name) (rev. 04/27/89)

12. *Description of the Areas Offered for Bids.*

(a) Acreage of blocks is shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, or transected by administrative lines such as the Federal/State jurisdictional line. Information on the unleased portions of such blocks, including the exact acreage, is included in the following document as a part of this Notice and is currently available from the MMS Gulf of Mexico Regional Office:

Western Gulf of Mexico Lease Sale 161—Final Notice. Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease.

(b) *Tracts not available for leasing.* The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11 (a) and (b), except for those blocks or partial blocks already under lease. A list of Western Gulf of Mexico tracts currently under lease is included in the Sale Notice Package available from the MMS Gulf of Mexico Regional Office (see paragraph 14(a)).

(1) Although they are currently unleased, no bids will be accepted on High Island Area, East Addition, South Extension, Blocks A–375 and A–398 (at the Flower Garden Banks).

(2) Although they are currently unleased, no bids will be accepted on the following blocks located off Corpus Christi which have been identified by the Navy as needed for testing equipment and training mine warfare personnel: Mustang Island Area Blocks 793, 799, and 816.

(3) Although they are currently unleased, no bids will be accepted on the following blocks which are currently under appeal: High Island Area Block 170, and Galveston Area, South Addition, Block A–125.

Note: As noted in the Final Notice of Sale for Sale 157, tracts or portions of tracts beyond the United States Exclusive Economic Zone are offered based upon provisions of the 1982 Law of the Sea Convention, and could be subject to a continental shelf delimitation agreement between the United States and Mexico.

A list of these tracts or portions of tracts and a map are included in the Sale Notice Package available from the MMS Gulf of Mexico Regional Office (see paragraph 14(a)).

13. *Lease Terms and Stipulations.*

(a) Leases resulting from this sale will have initial terms as shown on the Stipulations, Lease Terms, and Bidding Systems Map applicable to this Notice and will be on Form MMS–2005 (March 1986). Copies of the map and lease form are available from the MMS Gulf of Mexico Regional Office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on the map described in paragraph 13(a) and as supplemented by references in this Notice.

Stipulation No. 1—Topographic Features.

(This stipulation will be included in leases located in the areas so indicated in the Biological Stipulation Map Package associated with this Notice which is available from the MMS Gulf of Mexico Regional Office (see paragraph 14(a).)

The banks that cause this stipulation to be applied to blocks of the Western Gulf are:

Bank name	No activity zone defined by Isobath (meters)
Shelf Edge Banks	
West Flower Garden Bank [1] (defined by 1/4 1/4 1/4 system).	100
East Flower Garden Bank [1] (defined by 1/4 1/4 1/4 system).	100
MacNeil Bank	82
29 Fathom Bank	64
Rankin Bank	85
Geyer Bank	85
Elvers Bank	85
Bright Bank [2]	85
McGrail Bank [2]	85
Rezak Bank [2]	85
Sidner Bank [2]	85
Parker Bank [2]	85
Stetson Bank	52
Appelbaum Bank	85

Bank name	No activity zone defined by Isobath (meters)
Low Relief Banks [3]	
Mysterious Bank	74,76,78, 80,84
Coffee Lump	Various
Blackfish Ridge	70
Big Dunn Bar	65
Small Dunn Bar	65
32 Fathom Bank	52
Claypile Bank [4]	50
South Texas Banks [5]	
Dream Bank	78,82
Southern Bank	80
Hospital Bank	70
North Hospital Bank	68
Aransas Bank	70
South Baker Bank	70
Baker Bank	70

[1] Flower Garden Banks—In paragraph (c) a ''4-Mile Zone'' rather than a ''1-Mile Zone'' applies.

[2] Central Gulf of Mexico bank with a portion of its ''1-Mile Zone'' and/or ''3-Mile Zone'' in the Western Gulf of Mexico.

[3] Low Relief Banks—Only paragraph (a) applies.

[4] Claypile Bank—Paragraphs (a) and (b) apply. In paragraph (b) monitoring of the effluent to determine the effect on the biota of Claypile Bank shall be required rather than shunting.

[5] South Texas Banks—Only paragraphs (a) and (b) apply.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath (''No Activity Zone'' as shown in the aforementioned Biological Stipulation Map Package) of the banks as listed above.

(b) Operations within the area shown as ''1,000-Meter Zone'' in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as ''1-Mile Zone'' in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a ''1–Mile Zone'' designated, the ''1,000-Meter Zone'' in paragraph (b) is not designated.)

(d) Operations within the area shown as ''3–Mile Zone'' in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

Stipulation No. 2—Military Areas

(This stipulation will be included in leases located within the Warning Areas as shown on the map described in paragraph 13(a).)

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS), to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any agency of the United States Government, its contractors or subcontractors, or any of its officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the following table.

Notwithstanding any limitation of the lessee's liability in Section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, or to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities, conducted within individual designated warning areas. Necessary monitoring control, and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors, will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf, boat, ship, or aircraft traffic into the individual designated warning areas shall enter into an agreement with the commander of the individual command headquarters listed in the following list, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats, ships, and aircraft operating into the warning areas at all times.

W–228—Chief, Naval Air Training, Naval Air Station, Office No. 206, Corpus Christi, Texas 78419–5100, Telephone: (512) 939–3862/2621

W–602—Headquarters ACC/DORR, Detachment 1, Operations Headquarters, Air Combat Command, Offutt AFB, Nebraska 68113–5550, Telephone: (402) 294–2334

Stipulation No. 3—Operations in the Naval Mine Warfare Area

(This stipulation will apply to Mustang Island Area East Addition Blocks 732, 733, and 734.)

(a) The placement, location, and planned periods of operation of surface structures on this lease during the exploration stage are subject to approval by the Regional Director (RD), Minerals Management Service Gulf of Mexico Region, after the review of the operator's Exploration Plan (EP). Prior to approval of the EP, the RD will consult with the Commander, Mine Warfare Command, in order to determine the EP's

compatibility with scheduled military operations. No permanent structures nor debris of any kind shall be allowed in the area covered by this lease during exploration operations.

(b) To the extent possible, sub-seafloor development operations for resources subsurface to this area should originate outside the area covered by this lease. Any above-seafloor development operations within the area covered by this lease must be compatible with scheduled military operations as determined by the Commander, Mine Warfare Command. The lessee will consult with and coordinate plans for above-seafloor development activities (including abandonment) with the Commander, Mine Warfare Command. The Development Operations Coordination Document (DOCD) must contain the locations of any permanent structures, fixed platforms, pipelines, or anchors planned to be constructed or placed in the area covered by this lease as part of such development operations. The DOCD must also contain the written comments of the Commander, Mine Warfare Command on the proposed activities. Prior to the approval of the DOCD, the RD will consult with the Commander in order to determine the DOCD's compatibility with scheduled military operations.

For more information, consultation, and coordination, the lessee must contact:

Commander, Mine Warfare Command, 325 Fifth Street, SE., Corpus Christi, Texas 78419–5032, Phone: (512) 939–4895

14. *Information to Lessees.*

(a) *Supplemental Documents.* For copies of the various documents identified as available from the MMS Gulf of Mexico Regional Office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, either in writing or by telephone at (504) 736–2519 or (800) 200–GULF. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736–2759.

(b) *Navigation Safety.* Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended.

U.S. Army Corps of Engineers (COE) permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with Section 4(e) of the OCS Lands Act, as amended.

For additional information, prospective bidders should contact Lt. Commander Ken Parris, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, (504) 589–6901. For COE information, prospective bidders should contact Mr. Dolan Dunn, Chief Evaluation Section, Regulatory Branch, Post Office Box 1229, Galveston, Texas 77553, (409) 766–3935.

(c) *Offshore Pipelines.* Bidders are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) *8-Year Leases.* Bidders are advised that any lease issued for a term of 8 years will be canceled shortly after the end of the fifth year, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated; or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria; or if there is not a suspension of operations in effect. Furthermore, a rental payment for the sixth year will be due despite the cancellation. Bidders are referred to 30 CFR 256.37 and the MMS Gulf of Mexico Regional Office Letter to Lessees and Operators of February 13, 1995.

(e) *Affirmative Action.* Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS–2005, March 1986), would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60–1.5(a)(1) and 60–1.7(a)(1). Submission of Form MMS–2032 (June 1985) and Form MMS–2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) *Ordnance Disposal Areas.* Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on the map described in paragraph 13(a). These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi area range from approximately 600 to 900 meters. Water depths in the East Breaks area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards.

(g) *Archaeological Resources.* Bidders are advised that a Final Rule regarding archaeological resources was published in the Federal Register on October 21, 1994 (59 FR 53091), granting specific authority to each MMS Regional Director to require archaeological surveys and reports (under 30 CFR 250, 256, 260, and 281) and the submission of these reports to the Regional Director prior to exploration, development and production, or installation of lease-term or right-of-way pipelines. MMS Notice to Lessees (NTL) 91–02 (Outer Continental Shelf Archaeological Resources Requirements for the Gulf of Mexico OCS Region) published in the Federal Register on December 20, 1991 (50 FR 66076) effective February 17, 1992, specifies survey methodology, linespacing, and archaeological report writing requirements for lessees and operators in the MMS Gulf of Mexico Region.

Two additional documents are available from the MMS Gulf of Mexico Region Public Information Office (see paragraph 14(a)):

''List of Lease Blocks Within the High-Probability Area for Historic Period Shipwrecks on the OCS'' dated January 30, 1995. This list supersedes the list promulgated by the MMS Letter to Lessees (LTL) of November 30, 1990.

''List of Lease Blocks Within the High-Probability Area for Prehistoric Archaeological Resources on the OCS'' dated January 30, 1995.

Implementation of this Final Rule and NTL 91–02 obviates the need for the Protection of Archaeological Resources Stipulation required for previous issues.

(h) *Proposed Rigs to Reefs.* Bidders are advised that there are OCS artificial reef sites and planning areas for the Gulf

of Mexico. These are generally located in water depths of less than 200 meters. While all existing and proposed sites require a permit from the U.S. Army Corps of Engineers, this ''Rigs to Reefs'' program is implemented through State sponsorship through the following State Coordinators:

Alabama Mr. Walter M. Tatum, (334) 968–7576
Florida Mr. Jon Dodrill, (904) 922–4340
Louisiana Mr. Rick Kasprzac, (504) 765–2375
Mississippi Mr. Mike Buchanan, (601) 385–5860
Texas Ms. Jan Coulbertson, (713) 474–1418

For more information, on artificial reef sites, prospective bidders should contact the above listed State Artificial Reef Coordinators for their areas of interest.

(i) *Proposed Lightering Zones.* Bidders are advised that the U.S. Coast Guard has proposed designating certain areas of the Gulf of Mexico (60 FR 1958 of January 5, 1995), as lightering zones for the purpose of permitting single hull vessels to off-load oil within the U.S. Exclusive Economic Zone. Such designation may have implications for oil and gas operations in the areas. Additional information may be obtained from Lieutenant Commander Stephen Kantz, Project Manager, Oil Pollution Act (OPA 90) Staff, at (202) 267–6740.

(j) *Statement Regarding Certain Geophysical Data.* Pursuant to Sections 18 and 26 of the OCS Lands Act, as amended, and the regulations issued thereunder, MMS has a right of access to certain geophysical data and information obtained or developed as a result of operations on the OCS. MMS is sensitive to the concerns expressed by industry regarding the confidentiality of individual company work products and client lists and the potential burden of responding to a myriad of requests from MMS pertaining to the existence and availability of these types of reprocessed geophysical data. To resolve the concerns of both industry and MMS with respect to such cases, MMS has worked with industry to develop the requirements contained within paragraph 3(b) *Method of Bidding* above. MMS has modified the previous procedure to require that bidders who are in possession of the requested data, now identify the specific data by line name or 3D phase. This will help MMS in identifying time data that may already be in our data base and at the same time not impose undue burden on industry by rerequesting it. These requirements are being imposed on a trial basis to determine their effectiveness and are subject to modification in future sales.

The details of this requirement are specified in the document ''Trial Procedures for Access to Certain Geophysical Data in the Gulf of Mexico'' (revised January 19, 1996), which is available upon request from the MMS Gulf of Mexico Region Public Information Unit (see paragraph 14(a)). In brief, these requirements include:

(1) In the period for ninety (90) days after the sale, bidders will allow MMS to inspect such data within seven (7) days of a written request from MMS, and upon further written request will transmit to MMS, within ten (10) working days, such data. After this ninety day period, a response time of thirty (30) days following an MMS written request will be considered adequate.

(2) Successful bidders must retain such data for three (3) years after the sale, and unsuccessful bidders must retain such data for six (6) months after the sale, for possible acquisition by MMS.

For the six (6) month period after the sale, based on a review of the allowable cost of data reproduction to MMS for three-dimensional and two-dimensional data sets, the company providing the reprocessed data will be reimbursed at a rate of $480 per block or part thereof for three-dimensional data and $2 per line mile for two-dimensional data. Afterwards, reimbursement will be subject to the terms and conditions of 30 CFR 251.13(a).

All geophysical data and information obtained and reviewed by MMS pursuant to these procedures shall be held in the strictest confidence and treated as proprietary in accordance with the applicable terms of 30 CFR 251.14.

For additional information, contact the MMS Gulf of Mexico Regional Office of Resource Evaluation at (504) 736–2720.

(k) *Information about Indicated Hydrocarbons.* Bidders are advised that MMS makes available, about 3 months prior to a lease sale, a list of unleased tracts having well bores with indicated hydrocarbons. Basic information relating to production, well bores, and pay range for each tract is included in the list. The list is available from the MMS Gulf of Mexico Region Public Information Unit (see paragraph 14(a)).

(l) *Royalty Relief.* The Outer Continental Shelf (OCS) Deep Water Royalty Relief Act authorizes the Secretary of the Interior to offer certain deepwater OCS tracts in the Central and Western Gulf of Mexico for lease with suspension of royalties for a volume, value, or period of production the Secretary determines. An interim rule was published in the Federal Register (61 FR 12022; March 25, 1996) that specifies the royalty suspension terms under which the Secretary will make tracts available for this sale. Bidders are advised to review that document for additional details on this matter. For further information, bidders may contact Walter Cruickshank of the MMS Offshore Minerals Analysis Division at (202) 208–3822.

A map titled ''Royalty Suspension Areas For The Western Gulf Of Mexico'' depicting blocks in which such suspensions may apply is currently available from the MMS Gulf of Mexico Regional Office (see paragraph 14(a) of this Notice).

The publication ''OCS Operations Field Names Master List'' depicts currently established fields in the Gulf of Mexico. This document is updated monthly and reprinted quarterly. Copies may be obtained from the MMS Gulf of Mexico Regional Office (see paragraph 14(a) of this Notice).

(m) *Lease Instrument.* Bidders are advised that the lease instrument will include royalty relief provisions (paragraph 4(c)(3) of this Notice) and 8-year lease cancellation provisions (paragraph 14(d) of this Notice) where applicable. Leases will continue to be issued on Form MMS–2005 (March 1986) as amended.

(n) *Electronic Funds Transfer.* Bidders are advised that the 4/5ths and first year rental EFT instructions for lease payoff have been revised and updated by MMS Royalty Management. Companies may now use either the Fedwire Deposit System or the Automated Clearing House (overnight payments). See paragraph 10(a) of this Notice.

(o) *Minimizing Oil and Gas Structures Near the Flower Garden Banks.* Bidders are reminded of Notice to Lessees and Operators (NTL) 85–8, ''Minimizing Oil and Gas Structures in the Gulf of Mexico,'' dated November 26, 1985. Section II of the NTL sets forth the MMS' policy with regard to the minimization of structures for drilling, development, and production on OCS leases. The policy requires that such structures including lease-term pipelines be placed in a manner that causes minimum interference with other significant uses of the OCS. Please be advised that the MMS will strictly adhere to this policy when reviewing Exploration Plans and Development Operations Coordination Documents which propose the use or installation of such structures within the ''Four-Mile Zone'' and adjacent areas surrounding the Flower Garden Banks National Marine Sanctuary.

Dated: August 9, 1996.

Cynthia Quarterman,

Director, Minerals Management Service.

Approved:

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

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Federal Register

Friday
August 16, 1996

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 10

Rulemaking Policies and Procedures; Proposed Removal of Part 10; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 10

[Docket No. FR–3292–P–04]

RIN 2501–AB43

Rulemaking Policies and Procedures; Proposed Removal of Part 10

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: Part 10 of HUD's regulations, commonly known as HUD's ''Rule on Rules,'' contains HUD's policies and procedures for the promulgation and issuance of rules, including the use of public participation in the rulemaking process. This rule proposes to remove part 10 and replace this part with an uncodified policy statement, published in the Federal Register, that would advise the public of HUD's policies and procedures regarding rulemaking. This rule also proposes to revise HUD's rulemaking policies by removing the commitment to undertake notice and comment rulemaking for those matters that are exempt from notice and comment rulemaking under the Administrative Procedure Act. HUD's proposed statement of regulatory policies and procedures is part of this notice of proposed rulemaking.

DATES: Comments Due Date: October 15, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title and to the specific sections in the regulation. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Camille E. Acevedo, Assistant General Counsel for Regulations, Office of General Counsel; Room 10276; U.S. Department of Housing and Urban Development; 451 Seventh Street, SW; Washington, DC 20410–0500; telephone (202) 708–3055. Hearing or speech-impaired individuals may call HUD's TTY number 1–800–877–8399 (Federal Information Relay Service). (The ''800'' number is a toll-free number, the ''708'' number is not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Part 10 establishes HUD's policy of affording public participation in the Department's rulemakings, gives notice of the location of HUD's Rules Docket, and sets forth procedures for HUD rulemakings, including the public's right to petition for rulemaking. In promulgating part 10, HUD, along with several other Federal agencies during this same time period, responded to public sentiment to the effect that agencies administering loan and grant programs, which are exempt from notice and comment rulemaking under 5 U.S.C. 553 (the Administrative Procedure Act, (APA)), should not exclude themselves from comparable limitations on their authority to promulgate regulations.[1]

There were two recent efforts by HUD to amend the policies and procedures in part 10.

November 14, 1991 Proposed Rule. On November 14, 1991 (56 FR 57869), HUD published a proposed rule entitled ''Rulemaking Policies and Procedures—Public Comment Periods.'' Through this rule, HUD proposed to reduce the 60-day public comment period it required for all rules under part 10. The November 14, 1991 proposed rule would have permitted HUD discretion in establishing the period for public comment on rules in a manner similar to that permitted by the APA. The rule would continue to provide for 60-day public comment period as the norm for HUD rulemaking, but would allow for a minimum of 30 days upon a finding of good cause. HUD received 21 public comments on this rule. The majority of the commenters opposed the rule.

October 14, 1992 Proposed Rule. On October 14, 1992 (57 FR 47166), HUD published a proposed rule entitled, ''Rulemaking Policies and Procedures—Expediting Rulemaking and Policy Implementation''. Relying on the exemption from notice and comment rulemaking in the APA for matters involving public property, loans, grants, benefits or contracts (the ''proprietary'' exemption), the October 14, 1992 proposed rule would have amended part 10 to dispense with notice and comment rulemaking, except where required by statute.

The October 14, 1992 proposed rule provided two discretionary grounds for employing advance notice and comment to the public: (1) where HUD determined it to be ''essential for the formulation of the rule,'' or (2) necessary to ''enhance'' the rulemaking where ''time is not of the essence.'' HUD received 77 comments on the proposed rule. The majority of the commenters opposed the rule's attempt to curtail the use of advance notice and opportunity for comment. The reasons for objecting to curtailing notice and comment rulemaking varied, but the overwhelming reason was that the commenters believe that public input makes for a better rule.

The 1991 and 1992 proposed rules are withdrawn by this proposed rule.

II. This Proposed Rule

This rule proposes to remove part 10 from HUD's regulations, and replace part 10 with an uncodified policy statement, published in the Federal Register, that would advise the public of HUD's policies and procedures regarding regulations. This rule also proposes to remove from HUD's rulemaking policies its commitment to undertake notice and comment rulemaking for matters that are exempt from notice and comment rulemaking under the APA.

A. Proposed Removal of Part 10

On March 4, 1995, President Clinton issued a directive to all Federal agencies to eliminate obsolete and unnecessary regulations and to streamline the remaining regulations to ensure that they are ''smart'' rules, rules that are sensible, understandable, cost-effective, customer friendly, and minimally burdensome. In response to the President's directive, HUD conducted a line-by-line review of its regulations, and submitted two reports to the President outlining the Department's strategy for achieving the President's regulatory objectives. One of the principles of this review was that only matters that were required to be promulgated by regulation would be codified. To the maximum extent possible, HUD would find alternative, legally permissible means of informing

[1] Part 10 was initially issued on December 22, 1971 (36 FR 24423), and underwent several revisions. Part 10, as currently codified, was promulgated on January 5, 1979 (44 FR 1606). With respect to similar rules and policies of other agencies, see the notice of the Department of Agriculture, published on July 24, 1971 (36 FR 13804); the notice of the Department of Health and Human Services, published on February 5, 1971 (36 FR 2532); the notice of the Department of the Interior, published on May 5, 1971 (36 FR 8336); the notice of the Small Business Administration, published on August 25, 1971 (36 FR 16716); the rule of the Department of Defense, published on February 3, 1975 (40 FR 4911, redesignated at 41 FR 27074 on July 1, 1976, and redesignated and amended at 56 FR 64482 on December 10, 1991, see 32 CFR part 336); the notice of the Department of Transportation, published on February 26, 1979 (44 FR 11034); and the rule of the Department of Labor, published on January 2, 1981 (46 FR 35) concerning 29 CFR part 2.

the public of its policies and procedures.

In furtherance of the President's directive, HUD proposes to remove part 10 from its codified regulations, and to include HUD's rulemaking policies and procedures in a statement of policy to be published in the Federal Register. Several agencies have set forth their rulemaking policies and procedures in uncodified Federal Register documents, and through this document HUD proposes to do the same. (See footnote 1 in this preamble, and also see the more recently issued notice of the Farm Credit Administration on its rulemaking policies, published on May 16, 1995, 60 FR 26034.) HUD's ''Statement of Regulatory Policies and Procedures'' will be published in the Federal Register after taking into consideration the public comments received on this proposed rule, and the proposed Statement of Regulatory Policies and Procedures, contained in Section III of this preamble.

B. Proposed Removal of Commitment to Undertake Notice and Comment Rulemaking in All Matters

With the exception of the removal of the commitment to undertake notice and comment rulemaking in all matters, HUD is not proposing to make significant changes in its rulemaking policies and procedures. On the matter of notice and comment rulemaking, HUD would continue to be governed by the two general statutory authorities that currently govern HUD rulemakings: (1) section 552 of the APA (5 U.S.C. 552); and (2) section 553 of the APA (5 U.S.C. 553). Additionally, HUD, along with the other Federal agencies, must adhere to any regulatory principles and procedures adopted by the President through executive order or other Presidential document (such as Presidential memorandum).

1. Authorities Governing Rulemaking

Section 552. Section 552(a)(1) of the APA, the public information section of the APA, requires each Federal agency to publish in the Federal Register several types of documents, including ''substantive rules of general applicability'' and ''statements of policy.'' Failure to publish a rule may result in its being unenforceable against the public. Section 552 requires HUD to have a regulatory structure based on regular publication of rules and policies in the Federal Register. The publication requirements of section 552 apply to all rules, even those subject to the ''proprietary'' exemption from advance public participation set forth in section 553.

Section 553. Section 553, the APA's informal rulemaking provision, specifies the situations in which the public must be given advance notice and an opportunity to comment on proposed regulations. Section 553(a)(1) contains an exception to this requirement for matters relating to ''public property, loans, grants, benefits, or contracts''—the so-called ''proprietary'' exemption. Rules that do not qualify for the ''proprietary'' exemption or other section 553 exemptions must provide for advance notice and opportunity to comment, unless notice and comment are ''impracticable, unnecessary, or contrary to the public interest.''

Many HUD programs are grant, loan and benefit programs (such as HUD's Federal Housing Administration programs, Government National Mortgage Association programs, Community Development Block Grant programs, and public and Indian housing programs) and fit within the proprietary exemption. However, other HUD programs or other HUD responsibilities do not qualify for the ''proprietary'' exemption. These include such ''regulatory'' authorities as the Real Estate Settlement Procedures Act (RESPA), Manufactured Home Standards, Interstate Land Sales, Lead-Based Paint Abatement, and possibly certain authorities under the Fair Housing Act.

Executive Order 12866. In addition to the APA, HUD would continue to be governed by President Clinton's Executive Order 12866 on Regulatory Planning and Review (issued September 30, 1993, and published on October 4, 1993, 58 FR 51735). Section 6(a)(1) of the Executive Order contains the following guidance on public participation in rulemaking:

> Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation .... In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days.

The Executive Order imposes a clear and affirmative obligation on Federal agencies to ensure the public's meaningful participation in the development of agency rules. Specifically, the Executive Order encourages public participation before agencies' issuance of a notice of proposed rulemaking, where appropriate.

In response to this provision in the Executive Order, HUD has conducted a number of meetings with members of the public, formal and informal, to solicit public guidance early in the rulemaking process. HUD's Fiscal Year 1995 Regulatory Plan, published on November 14, 1994 (59 FR 57087), contains several examples of rules in which HUD sought the input of affected members, through informal meetings or public meetings, before a proposed rule was published. These examples included HUD's Consolidated Plan rule, the Section 3 (Economic Opportunities for Low- and Very Low-Income Persons) rule, the Indian Housing Consolidation Regulation rule, the Noncitizens rule, and the Public Housing Management Assessment rule. Additional examples of rules in which HUD solicited public comment before issuance of the rule, that have occurred since publication of the November 1994 Regulatory Plan, include HUD's Significant Facilities and Services rule (four public meetings were held), the Occupancy Standards rule (three informal meetings were held), and the Mortgagee Review Board regulation.

In addition, under President Clinton's Executive Order, HUD has published one rule developed through the negotiated rulemaking process and is currently involved in its second negotiated rulemaking. HUD's first negotiated rulemaking entitled ''Low-Income Public and Indian Housing—Vacancy Rule'' was published as a proposed rule on July 19, 1995 (60 FR 37294), and the final rule was published on February 28, 1996 (61 FR 7586). HUD's second negotiated rulemaking addresses the subject of the treatment of certain fees received by mortgage brokers and other retail lenders under the Real Estate Settlement Procedures Act (RESPA), and the Negotiated Rulemaking Advisory Committee has been formed and is meeting regularly to address the issues involved in this rulemaking.

Negotiated rulemaking is a process that brings together all the interests affected by a rule and seeks to reach a consensus policy, and is strongly encouraged by this Administration. HUD anticipates increased use of this effective mechanism for ensuring early and meaningful public participation.

2. Limitations on Notice and Comment Rulemaking

In adopting the proprietary exemption in section 553 of the APA, the Congress recognized from the outset the additional time that notice and

comment rulemaking in the areas of public property, loans, grants, benefits and contracts would involve, and that given the subject areas involved, agencies have a legitimate and recognizable need to make loans, grants or other benefits available to the affected public more quickly than notice and comment rulemaking allows (even under the most efficient rulemaking procedures). In adopting the proprietary exemption in section 553, the Congress found that agencies were justified in proceeding without notice and comment rulemaking in proprietary matters and that no further justification on the part of the agency is required for dispensing with notice and comment rulemaking on proprietary matters.

HUD believes that the removal of its commitment to undertake advance notice and comment rulemaking in all matters would not result in a significant diminution of public participation in HUD rulemakings. HUD's use of notice and comment rulemaking has become more targeted over the years, more focused on situations in which public participation is most valuable. Concomitantly, HUD also has focused on situations in which advance notice should be waived for good cause. Working within the existing part 10 over the years, HUD has identified several ''good cause'' exceptions to part 10's advance participation requirements, and these are as follows:

a. Rules involving little or no discretion. Notice and comment rulemaking is not required where implementation of the applicable statutory provision allows for minimal, if any, agency discretion. This includes so-called ''self-executing'' laws. The rationale is that public comment is only of value where there is a significant amount of discretion involved in the rulemaking. Typically, matters falling into this category are implemented by informal means (such as handbooks and HUD notices), followed by a conforming final rule, if a rule is required to be published by section 552 of the APA or part 10.

b. ''Temporary programs.'' Notice and comment rulemaking is not required for demonstrations, pilot programs, and similar temporary programs. The rationale is that demonstrations and other temporary programs are presumed not to contemplate the delay inherent in notice and comment rulemaking, and because they are temporary programs, they are not intended to be permanently codified. These types of programs are typically implemented by non-regulatory means, such as a notice of funding availability (NOFA) or, if sufficiently directed, a contract with the recipient.

c. Provisions in appropriations acts. Notice and comment rulemaking is not required for new programs or amendments that are included in appropriations acts and that apply for one year only (the statutory directives are only applicable for one year) or are tied to specific appropriation funds. The rationale is that by tying these authorities to specific time periods and appropriation funds, the Congress can be presumed to have intended their immediate implementation, without the delay attendant to notice and comment rulemaking. These provisions are typically implemented by informal means, such as notices of funding availability (NOFAs) and other notices.

d. Authorizing legislation with funding. Notice and comment rulemaking is not required for recently enacted authorizing legislation that requires a rulemaking to implement the legislative authority, and that has funding for the first time. The assumption is that by funding such a program, the Congress intends the program to be up and running as soon as possible, and does not envision a two-stage rulemaking process that could unduly delay funding distribution, even under the most efficient rulemaking processes. These programs can be implemented in a variety of ways, including by interim rule or by NOFA accompanied by a proposed rule.

e. Statutory deadlines. With increasing frequency, HUD authorizing statutes contain specific deadlines for the issuance of implementing regulations. Where compliance with a deadline does not permit use of two-stage rulemaking, implementation is permitted by interim rulemaking to ensure that the rule takes effect within the prescribed deadline.

f. Statutory rulemaking directives. Over the years, the Congress has become increasingly directional about the use of public participation in HUD rulemakings. In some cases, Congress has mandated notice and comment rulemaking for specific provisions or entire titles or subtitles of authorizing statutes.[2] In other cases, the Congress has provided for implementation by interim rule, with public participation after rule effectiveness.[3] In still other cases, the Congress has provided for implementation by non-regulatory means.[4] Finally, the Congress has increasingly called for the effectiveness of statutory provisions without regard to HUD rulemaking.[5]

Because of HUD's interpretation of part 10 and the increasing incidence of Congressional direction of regulatory policy, the areas subject to HUD's use of notice and comment rulemaking under part 10 have considerably narrowed over the years. The Department recognizes the importance of public participation in the remaining situations, and is committed to ensuring the public is given meaningful participation in those matters as required by the APA.

The Department believes that the commitment to undertake notice and comment rulemaking in all matters, even those exempt by the APA from advance notice and comment, is not necessary and, as shown by the preceding discussion, is not always practicable. Additionally, the Department believes that its policies regarding rulemaking need not be codified in the Code of Federal Regulations. These policies may be set forth by notice that is published in the Federal Register, as several other agencies have done.

III. HUD's Proposed Statement of Regulatory Policies and Procedures

The following sets forth HUD's proposed Statement of Regulatory Policies and Procedures.

Statement of Regulatory Policies and Procedures

A. Policy

The Department of Housing and Urban Development will develop regulations consistent with the Administrative Procedure Act (APA), the Department of Housing and Urban Development Act, and any other statute, executive order, or Administration directive that contains specific rulemaking directions applicable to

[2] See, for example, the following provisions of: (1) the Housing and Community Development Act of 1992 (Pub.L. 102–550, approved October 28, 1992): sec. 191 (title I), sec. 222 (title II), sec. 332 (title III), and sec. 685 (title VI); and (2) sec. 103(h) of the Multifamily Housing Property Disposition Reform Act of 1994 (Pub.L. 103–233, approved April 11, 1994) (notice/proposed rule for alternative uses for prevention of mortgage defaults).

[3] See, for example, sec. 101(f) of the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233) (interim rule to implement property disposition reforms) and sec. 332 of the Housing and Community Development Act of 1992 (Pub. L. 102–550) (interim rule for title III).

[4] See, for example, the following provisions of the HUD Demonstration Act of 1993 (Pub. L. 103–120): sec. 2(c)(6) (noncompetitive selection in innovative homeless program) and secs. 4(d) and 6(e) (notices to implement the NCDI and pension fund initiatives).

[5] See, for example, sec. 2 of the Housing and Community Development Act of 1992 (Pub. L. 102–550) and sec. 113 of H.R. 2046 (104th Cong., 1st Sess.), the United States Housing Act of 1995.

HUD. HUD will promulgate regulations where required by statute, or necessary to interpret the law, or to promote the objectives of the agency. To achieve its objective, HUD will:

1. Strive to ensure that each regulation has a well-defined objective.

2. Promulgate regulations that, to the extent feasible, specify performance criteria and objectives rather than command and control requirements.

3. Issue regulations that are clear and easy to understand to all who may be affected by the regulation, and that are as brief and uncomplicated as possible.

4. Issue regulations that have been developed giving adequate consideration to regulatory alternatives, and that have been developed based on a reasoned determination of the costs and benefits involved in the regulation.

5. Coordinate its rulemaking with other agencies to eliminate or minimize unnecessary duplication of regulations or inconsistency.

6. Provide for public participation in the rulemaking consistent with the APA and all other applicable statutes and executive orders, and provide meaningful public participation in the development of the rule at the earliest stage possible.

HUD will consider these principles as it develops new regulations and as it reviews existing regulations to determine whether the regulations continue to be necessary and effective.

B. Rules Docket

1. All Federal Register documents and records of published documents are maintained in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

2. All public comments on Federal Register documents should refer to the docket number appearing in the heading of the rule, and should be addressed to the Rules Docket Clerk.

3. Federal Register documents are public records. After a docket is established, any person may examine docketed materials, including public comments, at any time during regular business hours, and may obtain a copy of any docketed material.

C. Petitions for Rulemaking

1. Any interested person may petition the Secretary for the issuance, amendment, or repeal of a rule. Each petition shall:

a. Be submitted to the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410.

b. Set forth the text or substance of the rule or amendment proposed or specify the rule sought to be repealed;

c. Explain the interest of the petitioner in the action sought; and

d. Set forth all data and arguments available to the petitioner in support of the action sought.

2. No public procedures will be held directly on the petition before its disposition. If the Secretary finds that the petition contains adequate justification, a rulemaking proceeding will be initiated or a final rule will be issued, as appropriate. If the Secretary finds that the petition does not contain adequate justification, the petition will be denied by letter or other notice, with a brief statement of the ground for denial. The Secretary may consider new evidence at any time; however, repetitious petitions for rulemaking will not be considered.

D. Additional Rulemaking Proceedings

The Secretary may invite interested persons to present oral arguments, appear at informal hearings, or participate in any other procedure affording opportunity for oral presentation of views. The transcripts or minutes of such meetings, as appropriate, will be kept and filed in the Rules Docket.

E. Hearings

1. The provisions of 5 U.S.C. 556 and 557, which govern formal hearings in adjudicatory proceedings, do not apply to informal rulemaking proceedings described in this part. When opportunity is afforded for oral presentation, such informal hearing is a nonadversary, fact-finding proceeding. Any rule issued in a proceeding under this part in which a hearing is held is not based exclusively on the record of such hearing.

2. When a hearing is provided, the Secretary will designate a representative to conduct the hearing, and if the presence of a legal officer is desirable, the General Counsel will designate a staff attorney to serve as the officer.

F. Adoption of a Final Rule

All timely comments are considered in taking final action on a proposed rule. Each preamble to a final rule will contain a short analysis and evaluation of the relevant significant issues set forth in the comments submitted, and a clear concise statement of the basis and purpose of the rule.

G. Petitions for Reconsideration

Petitions for reconsideration of a final rule will not be considered. Such petitions, if filed, will be treated as petitions for rulemaking in accordance with section C of this notice.

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, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Impact on small entities. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and, by approving it, certifies that the proposed rule will not have a significant impact on a substantial number of small entities. The proposed rule is procedural only, and would not have a substantive effect on small entities.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule is procedural only, and would not have potential for significant impact on family-formation, maintenance, and general well-being, and thus is not subject to review under the Order.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this proposed rule is procedural only, and would 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 among the various levels of government.

List of Subjects in 24 CFR Part 10

Administrative practice and procedure.

Accordingly, under the authority of 42 U.S.C. 3535(d), part 10 is proposed to be removed from title 24 of the Code of Federal Regulations.

Dated: July 18, 1996.

Henry G. Cisneros,

Secretary.

[FR Doc. 96–20697 Filed 8–15–96; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Friday
August 16, 1996

Part V

Department of Education

Office for Civil Rights; Sexual Harassment Guidance: Peer Sexual Harassment; Draft Document Availability and Request for Comments; Notice

DEPARTMENT OF EDUCATION

Office for Civil Rights; Sexual Harassment Guidance: Peer Sexual Harassment; Draft Document Availability and Request for Comments

AGENCY: Department of Education.

SUMMARY: The Assistant Secretary for Civil Rights announces the availability upon request of a draft document entitled ''Sexual Harassment Guidance: Peer Sexual Harassment'' (Guidance).

The Guidance provides educational institutions with information regarding the standards used by OCR to investigate and resolve cases involving claims that peer sexual harassment has created a hostile environment in violation of Title IX of the Education Amendments of 1972. Title IX prohibits gender discrimination in education programs that receive Federal financial assistance.

DATES: Comments on the draft Guidance must be received on or before September 30, 1996.

ADDRESSES: All comments concerning and all requests for copies of the draft Guidance should be addressed to Howard I. Kallem, U.S. Department of Education, 600 Independence Avenue, S.W., Room 5414 Switzer Building, Washington, D.C. 20202–1174. Telephone: (202) 205–9641. The Guidance is also available on line at the Department's Home Page at http:\\www.ed.gov.

FOR FURTHER INFORMATION CONTACT: Howard I. Kallem. Telephone: (202) 205–9641. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9683 or 1–800–421–3481. Internet: Howard—Kallem@ed.gov.

SUPPLEMENTARY INFORMATION: The purpose of the Guidance is to inform educational institutions that receive Federal financial assistance regarding the standards that OCR follows, and that the institutions should follow, when investigating allegations that peer sexual harassment has created a hostile environment in violation of Title IX. Peer sexual harassment can be the basis for a Title IX violation if the conduct creates a hostile environment and the school has notice of the hostile environment but fails to remedy it. OCR has investigated claims of peer harassment filed pursuant to Title IX since at least 1989 and the standards contained in the Guidance reflect OCR nationwide practice and reflect well established legal principles developed under Title VII of the Civil Rights Act of 1964, which prohibits gender discrimination in employment.

The Department is accepting public comment on whether the Guidance is clear and complete.

Also, in the coming weeks OCR will be issuing draft policy guidance addressing issues related to sexual harassment of students by teachers and other school employees, which is also prohibited by Title IX.

INVITATION TO COMMENT: Interested persons are invited to submit comments and recommendations regarding the Guidance.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 5414, 330 C Street, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Dated: August 13, 1996.

Norma V. Cantú,

Assistant Secretary for Civil Rights.

[FR Doc. 96–20976 Filed 8–15–96; 8:45 am]

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Federal Register

Friday
August 16, 1996

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1996–97 Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AD69

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1996–97 Season

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Proposed rule.

SUMMARY: This rule proposes special migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 1996–97 migratory bird hunting season.

DATES: The comment period for these proposed regulations will end August 26, 1996.

ADDRESSES: Comments should be sent to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 634—ARLSQ, 1849 C St., NW., Washington, DC 20240. Comments received, if any, on these proposed special hunting regulations and tribal proposals will be available for public inspection during normal business hours in Room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1714).

SUPPLEMENTARY INFORMATION: In the March 22, 1996, Federal Register (61 FR 11986), the Service requested proposals from Indian tribes wishing to establish special migratory bird hunting regulations for the 1996-97 hunting season, under the guidelines described in the June 4, 1985, Federal Register (50 FR 23467). The Service developed guidelines in response to tribal requests for recognition of their reserved hunting rights and, for some tribes, recognition of their authority to regulate hunting by both tribal and non-tribal members on their reservations. The guidelines include possibilities for:

(1) on-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines apply to those tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes wish to establish special hunting regulations for tribal members on ceded lands.

Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, the Service provides the following clarification. The Service routinely provides copies of Federal Register publications to all State Directors, tribes and others interested parties. It is the responsibility of the States, tribes and others to notify the Service of any concern regarding any feature(s) of any regulations to the attention of the Service. When the Service receives such notification, we will initiate consultation.

Service guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where it has been a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season defined by the 1916 Migratory Bird Convention with Canada, and does not adversely affect the status of the migratory bird resource.

Before developing the guidelines, the Service reviewed available information on the current status of migratory bird populations; reviewed the current status of migratory bird hunting on Federal Indian reservations; and evaluated the potential impact of such guidelines on migratory birds. The Service concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for nontribal members on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, however, because tribal proposals must include:

(a) details on the harvest anticipated under the requested regulations;

(b) methods to be used in measuring or monitoring harvest (such as bag checks, mail questionnaires, etc.);

(c) steps to be used to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) the tribes ability to establish and enforce migratory bird hunting regulations.

The Service may modify or establish regulations experimentally, after evaluation and confirmation of harvest information obtained by the tribes.

The Service believes the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, the Service notes that they have been employed successfully since 1985. The Service believes they have been tested adequately and therefore, made them final beginning with the 1988–89 hunting season. It should be stressed here, however, that use of the guidelines is not mandatory and no action is required if a tribe wishes to observe the hunting regulations established by the

State(s) in which the reservation is located.

In summary, this document proposes 1996–97 season migratory bird hunting regulations for participating tribes.

Hunting Season Proposals from Indian Tribes and Organizations

For the 1996–97 hunting season, the Service received requests from twenty tribes and Indian organizations in accordance with 1985 proposal guidelines and appropriate for Federal Register publication. The Fond du Lac Band of Lake Superior Chippewa Indians (Minnesota), the Point No Point Treaty Tribes (Washington), and the Swinomish Indians (Washington) are included in the regulations this year for the first time.

The Service actively solicits regulatory proposals from other tribal groups that have are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. The Service encourages tribes to work with us to develop agreements for management of migratory bird resources on tribal lands.

It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. A final rule will be published later in an August 1996 Federal Register that will include tribal regulations for the early-hunting season. The early season begins on September 1 each year and most commonly includes such species as mourning doves and white-winged doves. A final rule will also be published in a September 1996 Federal Register that will include regulations for late-season hunting. The late season begins on or around October 1 and most commonly includes waterfowl species.

In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, daily bag and possession limits for ducks on some areas are shown as ''Same as permitted Pacific Flyway States under final Federal frameworks,'' and limits for geese will be shown as the same permitted by the State(s) in which the tribal hunting area is located.

The proposed frameworks for early-season regulations were published in the Federal Register on July 19, 1996 (61 FR 37994); early-season final frameworks will be published in mid-August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. The Service will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established.

As previously discussed, no action is required by tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located.

The proposed regulations for the twenty tribes with proposals that meet the established criteria are shown below.

(a) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Non-tribal Hunters)

The Colorado River Indian Reservation is located in Arizona and California. The tribes own almost all lands on the reservation, and have full wildlife management authority.

In their 1996–97 proposal, dated June 21, 1996, the Colorado River Indian Tribes requested split dove seasons. They propose their early season begin September 1 and end September 15, 1996. Daily bag limits would be 10 mourning or 10 white-winged doves either singly or in the aggregate. The late season for doves is proposed to open November 16, 1996, and close January 15, 1997. A daily bag limit would be 10 mourning doves. The possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to noon. Other special tribally set regulations would apply.

The tribes also propose split duck hunting seasons. The first season would run from October 13, 1996, through November 10, 1996, and the second from December 7, 1996, through January 5, 1997. The tribes propose the same season dates for coots and common moorhens. The daily bag limit for ducks, including mergansers, would be 4 birds, which would include no more than 2 redheads, 2 pintails, 1 canvasback, or 1 Mexican duck. The possession limit would be twice the daily bag limit. The daily bag limit for coots and common moorhens would be 25, singly or in the aggregate. The possession limit for coots and common moorhens would be twice the daily bag limit.

For geese, the Colorado River Indian Tribes propose a season of October 19, 1996, through January 19, 1997. The daily bag and possession limits for geese would be 5, which would include no more than 3 white geese (snow and/or Ross and blue geese) and not more than 2 dark geese (Canada geese).

Under the proposed regulations described here and, based upon past seasons, the tribes estimate harvest will be less than 400 ducks and 100 geese.

Hunters must have a valid Colorado River Indian Reservation hunting permit in their possession while hunting. As in the past, the regulations would apply both to tribal and non-tribal hunters, and non-toxic shot is required for waterfowl hunting. The Service proposes to approve the Colorado River Indian Tribes regulations for the 1996–97 hunting season.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Non-tribal Hunters)

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the tribes are currently operating under a cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation. The tribes proposed special regulations for waterfowl hunting were submitted to the Service in a May 28, 1996, proposal.

As in the past, tribal regulations for nontribal members would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana.

Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel shot is the only legal shotgun load on the reservation for waterfowl.

The requested season dates and bag limits are generally similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by non-tribal hunters.

The Service proposes to approve the tribes' request for special migratory bird regulations for the 1996–97 hunting season.

(c) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Non-tribal Hunters)

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. Since the 1993–94 season, the tribe has selected special waterfowl hunting regulations independent of the State of South Dakota. The tribe observes migratory bird hunting regulations contained in 50 CFR part 20.

In a May 20, 1996, proposal, the tribe requested duck season dates of October 26 to December 22, 1995, with the same daily bag and possession limits permitted by the final Federal frameworks. The season and bag limits would be essentially the same as last year, given the final Federal frameworks, and harvest is again expected to be low because of the small number of hunters. In 1994–95, duck harvest was 48 birds, down from 67 in 1993–94.

For geese, the tribe requested a goose hunting season of October 5, 1996, through January 5, 1997, with the daily bag and possession limits the same as those permitted by final Federal frameworks. The tribe's estimated harvest for last season has not been compiled, however, the 1994–95 harvest was 90 geese. This figure is less than half of the estimated harvest for the previous hunting season. Harvest for the 1996–97 coming season should be approximately the same as that in 1994–95.

The Service proposes to approve the tribal requests for duck and goose hunting regulations. As with all other groups, the Service requests the tribe continue to survey and report harvest.

(d) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

For the first time, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians are cooperating to establish special migratory bird hunting regulations for tribal members. In the past, the Service and the band established these special regulations under the auspices of the Great Lakes Indian Fish and Wildlife Commission. The Fond du Lac's May 29, 1996, proposal covers land ceded to the band under the Treaty of 1854 in northeast Minnesota.

The band's proposal for 1996–97 is essentially the same as that approved by the Service last year for the Great Lakes Indian Fish and Wildlife Commission. For a more complete review of the history, and the Service's position, surrounding the establishment of special migratory bird hunting regulations on lands ceded under the Treaty of 1854, see the proposal by the Great Lakes Indian Fish and Wildlife Commission below.

Specifically, the Fond du Lac Band proposes a September 14 to November 24, 1996, season on ducks, mergansers, geese, coots and moorhens, sora and virginia rails, snipe, and woodcock. Proposed bag limits would consist of the following:

Ducks

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

Mergansers

Daily Bag Limit: 5 mergansers, including no more than 1 hooded merganser.

Geese

Daily Bag Limit: 10 geese.

Coots and Common Moorhens (Common Gallinules)

Daily Bag Limit: 25 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

Daily Bag and Possession Limit: 25 sora and Virginia rails singly, or in the aggregate.

Common Snipe

Daily Bag Limit: 8 common snipe.

Woodcock

Daily Bag Limit: 5 woodcock.

The following general conditions apply:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR Part 20 as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

The band anticipates harvest will be fewer than 500 ducks and geese and 150 coots. Estimated harvest is based on mail survey results from the 1995 season.

The Service proposes to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewas.

(e) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, federally recognized tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory tribe of the Treaty of 1836. The Service has approved special regulations for tribal members of the 1836 treaty's signatory tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 1996–97 season, the Grand Traverse Band of Ottawa and Chippewa Indians proposes a tribal member duck season that would run from September 15 through November 30, 1996. A daily bag limit of 7 would include no more than 1 pintail, 1 canvasback, 1 black duck, 2 wood ducks, 2 redheads, and 2 hen mallards.

For Canada geese, the tribe proposes a September 1 through November 30, 1996, and a January 1 through February 7, 1996, season. For white-fronted geese, brant, and snow geese, the tribe proposes an October 1 through November 30, 1996, season. The daily bag limit for all geese (including brant) would be 5 birds. Based on Service information, it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the tribe. All other Federal regulations

contained in 50 CFR part 20 would apply.

The tribe proposes to closely monitor harvest through game bag checks, patrols, and mail surveys. In particular, the tribe proposes monitoring the harvest of Southern James Bay Canada geese to assess any impacts of tribal hunting on the population.

The Service proposes to approve the Grand Traverse Band of Ottawa and Chippewa Indian's requested 1996–97 special migratory bird hunting regulations.

(f) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC, which represents the various bands). Beginning in 1986, a tribal season on ceded lands in the western portion of the State's Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources, and the Service has approved special regulations for tribal members in both Michigan and Wisconsin since the 1986-87, hunting season. In 1987, the GLIFWC requested and the Service approved special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. The Service acknowledged the State's concern, but pointed out that the United States Government has recognized the Indian hunting rights decided in the Voigt case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the Voigt decision did not specifically address ceded land outside Wisconsin. The Service believes this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, the Service has approved special regulations since the 1987-88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of reserved treaty rights for band members to hunt and fish was pivotal in a Service decision to approve a special 1991–92 season for the 1836 ceded area in Michigan.

Recently, certain GLIFWC member bands have brought suit to resolve the issue of hunting, fishing and gathering rights in the Minnesota ceded areas covered under the 1837 and 1854 treaties. The Federal Government has intervened in support of the bands.

In a May 29, 1996, letter, the GLIFWC proposed off-reservation special migratory bird hunting regulations for the 1996–97 seasons. Details of the proposed regulations are shown below. In general, the proposal is essentially identical to the regulations approved for the 1995–96 season for ducks (including mergansers) and geese for all of the Minnesota and Wisconsin ceded areas. Bag limits for ducks and geese in these areas would be 20 and 10, respectively, although certain sex and species restrictions would apply. Regulations proposed for the 1836 and 1842 Treaty areas located in Michigan would be the same as those permitted for the State of Michigan, except for the daily bag limit of geese. In the past, the GLIFWC's request for increased goose bag limits was objected to by the Service in the belief that the Southern James Bay Population of Canada Geese, a population that has declined dramatically in the past several years, could potentially be further hurt by this action. We now know that this goose population is not a major contributor to the GLIFWC member band harvest; probably less than 25 geese from this population are taken annually by the Bay Mills Community hunters.

Results of the 1995–96 hunter survey show that 2747 ducks and 391 geese were actually harvested. Under the proposed regulations, harvest is expected to be similar to last year and most likely would not exceed 3000 ducks and 900 geese.

The Service believes that regulations advanced by the GLIFWC for the 1996–97 hunting season are biologically acceptable and recommends approval. If the regulations are finalized as proposed, the Service would request that the GLIFWC closely monitor the member band duck harvest and take any actions necessary to reduce harvest if locally nesting populations are being significantly impacted.

The Commission and the Service are parties to a Memorandum of Agreement (MOA) designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. Its intent is to provide long-term cooperative application.

Also, as in recent seasons, the proposal contains references to Chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. Chapter 10 regulations parallel State and Federal regulations and, in effect, are not changed by this proposal.

The GLIFWC's proposed 1996–97 waterfowl hunting season regulations are as follows:

Ducks

A. Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Begin September 15 and end November 7, 1996.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

B. Michigan, 1842 Treaty Zone: Same dates, season lengths, and daily bag limits permitted the State of Michigan for this area under final Federal frameworks.

C. Michigan, 1836 Treaty Zone: Same dates, season lengths, and daily bag limits permitted the State of Michigan for this area under final Federal frameworks.

Mergansers

A. Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Begin September 15 and end November 7, 1996.

Daily Bag Limit: 5 mergansers.

B. Michigan, 1842 Treaty Zone: Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5, including no more than 1 hooded merganser.

C. Michigan, 1836 Treaty Zone: Same dates and season length permitted the State of Michigan for this area under Federal frameworks. The daily bag limit would be 5, including no more than 1 hooded merganser.

Geese: Canada Geese

A. Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Begin September 15 and end December 1, 1996.

Daily Bag Limit: 10 Canada geese, minus the number of blue, snow or white-fronted geese taken.

B. Michigan, 1842 Treaty Zone: Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5.

C. Michigan, 1836 Treaty Zone: Same dates, season length and daily bag limit permitted the State of Michigan for this area under final Federal frameworks.

Geese: Blue, Snow and White-fronted Geese

A. Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Begin September 15 and end December 1, 1996.

Daily Bag Limit: 10 geese, minus the number of Canada geese taken.

B. Michigan, 1842 Treaty Zone: Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 7 geese, minus the number of Canada geese taken and including no more than 2 white-fronted geese.

C. Michigan, 1836 Treaty Zone: Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 7 geese, minus the number of Canada geese taken and including no more than 2 white-fronted geese.

Other Migratory Birds: Coots and Common Moorhens (Common Gallinules)

A. Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Begin September 15 and end November 7, 1996.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Michigan, 1842 Treaty Zone: Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 20, singly or in the aggregate.

C. Michigan, 1836 Treaty Zone: Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 20, singly or in the aggregate.

Sora and Virginia Rails

A. Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Begin September 15 and end November 7, 1996.

Daily Bag Limit: 25 sora and Virginia rails singly, or in the aggregate.

B. Michigan, 1842 Treaty Zone: Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag and possession limit would be 25 sora and Virginia rails singly, or in the aggregate.

C. Michigan, 1836 Treaty Zone: Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag and possession limit would be 25 sora and Virginia rails singly, or in the aggregate.

Common Snipe

A. Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Begin September 15 and end November 7, 1996.

Daily Bag Limit: 8 common snipe.

B. Michigan, 1842 Treaty Zone: Same dates and season length permitted for the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 8 common snipe.

C. Michigan, 1836 Treaty Zone: Same dates and season length permitted for the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 8 common snipe.

Woodcock

A. Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Begin September 3 and end November 30, 1996.

Daily Bag Limit: 5 woodcock.

B. Michigan, 1842 Treaty Zone: Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5 woodcock.

C. Michigan, 1836 Treaty Zone: Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5 woodcock.

D. General Conditions

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR Part 20 as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State laws. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

5. Minnesota and Michigan--Duck Blinds and Decoys. Tribal members hunting in Michigan and Minnesota will comply with tribal codes that contain provisions that parallel applicable State laws concerning duck blinds and/or decoys.

(g) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Non-tribal Hunters)

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986-87 hunting season. The tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

In a May 15, 1996, proposal, the tribe proposed a 1996–97 waterfowl season opening date of October 5 and a closing date of November 30, 1996. Daily bag and possession limits would be the same as Pacific Flyway States. The tribe proposes, however, a closed season on canvasbacks and Canada geese. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

The Jicarilla Game and Fish Department's annual estimate of waterfowl harvest is relatively small. In the 1995–96 season, estimated duck harvest was 1,104, down from 1,212 in 1994–95. The species composition in the past has included mainly mallards, gadwall, teal, and wigeon. Northern pintail comprised only 2 percent of the total harvest in 1994.

The proposed regulations are essentially the same as were established last year and the tribe anticipates the maximum 1996–97 waterfowl harvest would be around 1,300 ducks. However, a severe drought which occurred on the reservation could limit waterfowl hunting opportunities and result in a significantly decreased harvest.

The Service proposes to approve the tribe's requested 1996–97 hunting seasons.

(h) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Non-tribal Hunters)

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4600 acres. The tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The tribe enjoys excellent wildlife management relations with the State. The tribe and the State have an operational Memorandum of Understanding with emphasis on fisheries but also for wildlife. The non-tribal member seasons described below pertain to a 176 acre waterfowl management unit. The tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area.

For the first time, the requested 1996–97 regulations also include a proposal for Kalispel-member only migratory bird hunting on Kalispel-ceded lands within Washington and Idaho.

For the 1996–97 migratory bird hunting seasons, the Kalispel Tribe proposed, in a June 18, 1996, letter, tribal and non-tribal member waterfowl seasons. For non-tribal members, the tribe requests seasons which begin 2 weeks earlier and end 2 weeks later than those for the State of Washington in the same area. The outside frameworks, however, for ducks and geese would run from October 1, 1996, through January 31, 1997. In that period, non-tribal hunters would be allowed to hunt on weekends, holidays and continuously in the month of December for a total of 68 days. Hunters should obtain further information on days from the Kalispel Tribe. Daily bag and possession limits would be the same as those for the State of Washington. Harvest is expected to be less than 200 geese and 250 ducks.

All other State and Federal regulations contained in 50 CFR Part 20, such as use of steel shot and possession of a signed migratory bird hunting stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel proposes outside frameworks for ducks and geese of October 1, 1996, through January 31, 1997. However, during that period, the tribe proposes that the season run continuously. Daily bag and possession limits would be the same as those for the States of Washington and Idaho. Harvest is expected to be less than 200 geese and 250 ducks.

Tribal members would be required to possess a signed Federal migratory bird stamp and a tribal ceded lands permit.

The Service proposes to approve the regulations requested by the Kalispel Tribe.

(i) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon and the Klamaths. The Klamath Indian Game Commission sets the seasons. The tribal biological staff and tribal Regulatory Enforcement Officers monitor tribal harvest by frequent bag checks and hunter interviews.

In a May 31, 1996, letter, the Klamath Tribe proposed season dates that run from October 1, 1996, through January 31, 1997. Daily bag limits would be 9 for ducks and 6 for geese with possession limits twice the daily bag limit. The daily bag and possession limit for coots would be 25. Shooting hours would be one-half hour before sunrise to one-half hour after sunset.

Based on the number of birds produced in the Klamath Basin, the tribe expects that this year's duck harvest will be similar to last year's while goose harvest will most likely be above 1995 levels. Information on tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath basin.

The Service proposes to approve the regulations of the Klamath Tribe.

(j) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Non-tribal Hunters)

The Lower Brule Sioux Tribe first established tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, however, the Lower Brule Tribe currently has full management authority. On-reservation management authority over fish and wildlife was established for the Lower Brule Sioux Tribe via a MOA with the State of South Dakota, dated October 24, 1986. The MOA provides the tribe jurisdiction over fish and wildlife on reservation lands, including deeded and Corps of Engineers taken lands. Although the tribe is in litigation with the State of South Dakota regarding jurisdiction, this MOA has continued to be in effect until ultimate settlement by the Federal District Court. This year, the Federal District Court granted a recent motion for a stay which will allow the existing MOA to continue. Meetings between the Lower Brule Sioux Tribe, the South Dakota Department of Game, Fish and Parks and the Service are continuing. For the 1996–97 season, this stay will allow the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to tribal and non-tribal hunters.

For the 1996–97 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a duck season length of 83 days, the same number of days as allowed in the High Plains Management Unit. The tribe's proposed season would run from October 10 through December 31, 1996. The daily bag limit would be the same as that allowed by South Dakota. Possession limits would be twice the daily bag limits.

The tribe's proposed goose season would run from October 7 through December 31, 1996, with a daily bag limit of 2 dark geese, which may not include more than 1 white-fronted geese. The daily bag limit for light geese would be 10. Possession limits would be twice the daily bag limits.

In the 1995–96 season, hunters harvested an estimated 411 geese and 362 ducks. In 1994, duck harvest species composition was primarily mallard (57 percent), gadwall (10 percent), and green-winged teal (10 percent). Goose harvest was 98 percent Canada geese. Additionally, 1995 tribal goose camp harvest was 2,511 geese. For the past 3 years, goose camp harvest averaged approximately 3,000 geese. In 1994, 97 percent of this traditional harvest was Canada geese.

The tribe anticipates a duck harvest of 500 birds and a goose harvest similar to the 3-year average if its 1996–97 regulations are approved. All basic Federal regulations contained in 50 CFR Part 20, including the use of steel shot, Migratory Waterfowl Hunting and Conservation Stamp, etc., would be observed by the tribe's proposed regulations. In addition, the Lower

Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution on June 1982 and updated in 1996.

The Service proposes to approve the tribe's proposed regulations for the Lower Brule Reservation.

(k) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Non-tribal Hunters)

Since 1985, the Service has established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The nation owns almost all lands on the reservation and has full wildlife management authority.

In a July 17, 1996, communication, the tribe proposed special migratory bird hunting regulations on the reservation for both tribal and non-tribal members for the 1996–97 hunting season for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For waterfowl, the Navajo Nation requests the earliest opening dates and longest seasons, and the same daily bag and possession limits, permitted Pacific Flyway States under final Federal frameworks.

For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through 30. The Navajo Nation also proposes daily bag limits of 10 and 5 for mourning dove and band-tailed pigeon, respectively. Possession limits would be twice the daily bag limits.

In addition, the nation proposes to require tribal members and non-members to comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

The Service proposes to approve the Navajo Nation request for these special regulations for the 1996–97 migratory bird hunting seasons.

(l) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform regulations for migratory bird hunting by tribal and non-tribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced their own hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for the tribe and Wisconsin.

In a June 3, 1996, letter to the Service, the tribe proposed special migratory bird hunting regulations. For ducks, geese, and woodcock, the tribe described the general ''outside dates'' as being September 1 through November 30, 1996, inclusive.

The tribe recommends a season quota of 150 Canada geese. Canada goose bag limits would be 2 tribally tagged geese per day. The tribe will reissue 2 tags when 2 birds are registered. The possession limit for Canada geese is 4. If the quota is attained before the season concludes, the tribe will recommend closing the season early.

For ducks, the tribe proposes a daily bag limit of 5 birds, which could include no more than 3 mallards, 1 hen mallard, 4 wood ducks, 1 canvasback, 1 redhead, 2 pintails, and 1 hooded merganser.

For woodcock, the tribe proposes a daily bag and possession limit of 6 and 12, respectively.

The tribe proposes shooting hours be one-half hour before sunrise to sunset. Tribal members and non-tribal members hunting on the Reservation or on lands under the jurisdiction of the tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR, with the following exceptions. Indian hunters would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity would not be limited to 3 shells.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin, provided the tribe continues to delay the opening of their duck season until September 15. The Oneida tribe has traditionally delayed the opening of their duck season to September 15 to avoid possible significant impacts on local nesting duck populations. The Service commends the tribe for these conservation efforts.

(m) Point No Point Treaty Tribes, Kingston, Washington (Tribal Members and Non-tribal Hunters)

For the first time, the Service and the Point No Point Treaty Tribes, consisting of the Skokomish, Port Gamble Sklallam, Jamestown Sklallam, and Elwha Sklallam tribes, are cooperating to establish special regulations for migratory bird hunting. The four tribes have reservations located on the Olympic Peninsula in Washington. All four tribes have successfully administered tribal hunting regulations since 1985 and each tribe has a comprehensive hunting ordinance.

The tribes' May 10, 1996, proposal requests seasons for ducks, geese, brant, snipe, grebes, and mourning doves with the earliest opening date available, and the same daily bag and possession limits and season length allowed under final Federal frameworks for the Pacific Flyway and the State of Washington in 1996. For conservation, the tribes request a closed season on wood ducks, harlequin ducks, Aleutian Canada geese, cackling Canada geese, band–tailed pigeons and swans.

Anticipated tribal harvest under the proposed regulations is approximately 300 to 350 birds for all four tribes. Harvest is monitored using a mail survey after the season.

The Service proposes to approve the Point No Point Treaty Tribes requested 1996–97 regulations.

(n) Seminole Tribe of Florida, Big Cypress Seminole Reservation, Clewiston, Florida (Tribal Members and Non-tribal Hunters)

For the first time, in the 1995–96 migratory bird seasons, the Seminole Tribe of Florida and the Service cooperated to establish regulations for the 70,000 acre Big Cypress Seminole Reservation. Located northwest of Miami, the Big Cypress Seminole Reservation is totally tribally owned and the tribe has full wildlife management authority.

For the 1996–97 season, the Seminole Tribe proposes establishing a mourning dove season from September 22, 1996, through January 15, 1997. Hunting would be allowed for tribal and non-tribal members, but would be on Sundays only from 1:00 p.m. to sunset. Daily bag limits would be the same as those allowed within the Federal frameworks for the State of Florida. All other Federal regulations contained in 50 CFR part 20 would apply.

The tribe expects the harvest for the Reservation to be 6,000 doves, and will cease hunting after the anticipated harvest has been reached. The tribe controls all entry to the hunt area.

The Service proposes to approve the Seminole Tribe's requested 1996–97 special migratory bird hunting regulations.

(o) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Non-tribal Hunters)

Almost all of the Fort Hall Indian Reservation is tribally-owned. The tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by non-tribal members on reservation lands owned by non-Indians. As a compromise, since 1985, the Service has established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the tribes and provided for different season dates than in the remainder of the State. The Service agreed to the season dates because they seemed to provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. The Service has no objection to the State's use of this zone again in the 1996–97 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a May 22, 1996, proposal for the 1996–97 hunting season, the Shoshone-Bannock Tribes requested a continuous duck (including mergansers) season with the maximum number of days and the same daily bag and possession limits permitted Pacific Flyway States, under final Federal frameworks. The tribes propose that, if the same number of hunting days (93) are permitted as last year, the season would have an opening date of October 8, 1996, and a closing date of January 8, 1997. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted Pacific Flyway States. The tribes anticipate harvest will be between 2,000 and 5,000 ducks.

The tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted Idaho under Federal frameworks. The tribes propose that, if the same number of hunting days (93) are permitted as in previous years, the season would have an opening date of October 8, 1996, and a closing date of January 8, 1997. The tribes anticipate harvest will be between 4,000 and 6,000 geese.

Non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

The Service notes that the requested regulations are nearly identical to those of last year and proposes they be approved for the 1996–97 hunting season.

(p) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

For the first time, in the 1995–96 migratory bird seasons, the Squaxin Island Tribe of Washington and the Service cooperated to establish special tribal migratory bird hunting regulations. These special regulations would apply to tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

For the 1996–97 season, the tribe proposes establishing duck, coot, and snipe seasons that would run from September 15, 1996, through January 15, 1997. The daily bag limit for ducks would be 5 per day and could include only 1 canvasback. The season on harlequin ducks would be closed. For coots and snipe, the daily bag limit would be 25 and 8, respectively.

For geese, the tribe proposes establishing a season that would run from September 15, 1996, through January 15, 1997. The daily bag limit for geese would be 4 per day and could include only 2 snow geese and 1 dusky Canada goose. The season on Aleutian and Cackling Canada geese would be closed.

For brant, the tribe proposes establishing a September 15 to December 31, 1996, season with a daily bag limits of 2 birds per day. The tribe also proposes a September 15 to December 1, 1996, season for band-tailed pigeons with a daily bag limit of 2 per day.

In all cases, the possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to one-half hour after sunset and steel shot would be required for migratory bird hunting. Further, the tribe requires all harvest be reported to their Natural Resources Office within 72 hours.

Under the proposed regulations, the tribe estimates the harvest for the Reservation will be as follows: 400 ducks; 2,500 coots; 800 snipe; 400 geese; and 200 brant. In 1995, the tribe reports that there was no harvest of any species. Tribal regulations are enforced by the tribe's Law Enforcement Department.

The Service proposes to approve the Squaxin Island Tribe's requested 1996–97 special migratory bird hunting regulations.

(q) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Non-tribal Hunters)

The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie and Skykomish tribes and other tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation at Marysville, Washington. The tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to non-member hunting unless opened by Tulalip Tribal regulations.

In a June 19, 1996, letter, the Tulalip Tribes proposed tribal and non-tribal hunting regulations for the 1996–97 seasons as follows:

For ducks and coot, the proposed season for tribal members would be from September 15, 1996, through February 1, 1997. In the case of non-tribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed for the State of Washington under final Pacific Flyway Federal frameworks. Daily bag and possession limits for Tulalip Tribal members would be 6 and 12 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established for the State of Washington in accordance with final Federal frameworks. For non-tribal hunters, bag and possession limits would be the same as those permitted the State of Washington under final Federal frameworks. Non-tribal members should check with the Tulalip tribal authorities regarding additional conservation measures which may apply to specific species managed within the region.

For geese, tribal members are proposed to be allowed to hunt from September 15, 1996, through February 1, 1997. Non-tribal hunters would be allowed the longest season and the latest closing date permitted for the State of Washington under final Federal frameworks. For tribal hunters, the goose daily bag and possession limits would be 6 and 12, respectively, except that the bag limits for brant, cackling Canada geese and dusky Canada geese would be those established for the Pacific Flyway in accordance with final Federal frameworks. For non-tribal hunters hunting on reservation lands,

the daily bag and possession limits would be those established in accordance with final Federal frameworks for the State of Washington. The Tulalip Tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

Snipe open seasons would follow seasons proposed for ducks and coot detailed above. For both tribal and non-tribal hunters, snipe daily bag and possession limits would be 6 and 12, respectively.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the tribe. Non-tribal hunters sixteen years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, 1990–92 harvest information indicates a total take by tribal and non-tribal hunters under 1,000 ducks and 500 geese, annually. The Service proposes approval of the Tulalip Tribes request for the above seasons. The Service requests that harvest be monitored closely and regulations be reevaluated for future years if harvest becomes too great in relation to population numbers.

(r) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Non-tribal Hunters)

The White Mountain Apache Tribe owns all reservation lands, and the tribe has recognized full wildlife management authority. The White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to for the 1995–96 hunting year.

The hunting zone for waterfowl continues to be restricted and is described as: the entire length of the Black and Salt Rivers forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 6 and 7. All other waters of the reservation would be closed to waterfowl hunting for the 1996–97 season.

For non-tribal hunters, the tribe proposes a continuous duck, coot, merganser, gallinule and moorhen hunting season, with an opening date of November 9, 1996, and a closing date of January 19, 1997. For tribal members, the tribe proposes a closing date of February 2, 1997. The tribe proposes a daily duck bag limit of 3, which can have no more than 1 redhead, 2 canvasbacks, 1 pintail, and 1 hen mallard. The daily bag limit for mergansers is 3. The daily bag limit for coots, gallinules and moorhens would be 25 singly, or in the aggregate.

For geese, the season is proposing a non-tribal hunter season from November 9, 1996, through January 19, 1997. For tribal members, the tribe is proposing a closing date of February 2, 1997. Hunting would be limited to Canada geese, and the daily bag limit would be 2.

Season dates for band-tailed pigeons and mourning doves would run concurrently from September 6 through September 15, 1996, in Wildlife Management Units 7 and 10, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 8, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails and snipe on the White Mountain Apache lands under this proposal. A number of special regulations apply to tribal and non-tribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

The Service proposes to approve the regulations requested by the tribe for the 1996–97 seasons.

(s) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Non-tribal Hunters)

On May 30, 1996, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 1996–97 season. The Yankton Sioux tribal waterfowl hunting season would be open to both tribal members and non-tribal hunters. The waterfowl hunting regulations would apply to tribal and trust lands within the external boundaries of the reservation.

For duck (including mergansers) and coots, the Yankton Sioux Tribe proposes a season starting October 19, 1996, and running for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be the same as those adopted by the State of South Dakota.

For geese, the tribe has requested a dark geese (Canada geese, brant, white-fronts) and snow geese hunting season starting November 2, 1996, and ending January 31, 1997. Daily bag and possession limits would be the same as those adopted by the State of South Dakota.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, pertaining to shooting hours and the manner of taking. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

During the 1995–96 hunting season, the tribe reported that 34 non-tribal hunters took 75 Canada geese, 10 snow geese, and 25 ducks. Tribal members harvested less than 50 geese. For the 1996–97 season, the tribe anticipates a harvest of less than 150 geese and 50 ducks.

The Service concurs with the Yankton Sioux proposal for the 1996–97 hunting season, and requests that the tribe continue monitoring and reporting the harvest of Canada, snow and white-fronted geese.

(t) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

For the first time, the Service and the Swinomish Indian Tribal Community are cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal Community is a federally recognized Indian tribe consisting of the Suiattle, Skagit, and Kikialos tribes. The Swinomish Reservation was established by the Point Elliott Treaty of 1855 and lies in the Puget Sound area north of Seattle, Washington.

The Tribal Community proposes an off-reservation duck, merganser, Canada goose, brant, and coot season opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing 30 days after the State of Washington closes. Daily bag and possession limits would be the same as those allowed by the State except that the Swinomish request an additional three birds of each species over that allowed by the State.

The Community anticipates that the proposed regulations will result in the harvest of approximately 200 to 300 ducks, 25 to 50 Canada geese, 75 mergansers, 100 brant, and 50 coot. The Swinomish propose a tag and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All tribal regulations will be enforced by tribal fish and game officers.

On reservation, the Tribal Community proposes a hunting season for the above mentioned species beginning on the earliest possible opening date and closing March 9, 1997. The Swinomish propose to manage harvest by a tagging system and anticipate harvest will be similar to that expected off reservation.

The Service believes the estimated harvest by the Swinomish will be minimal and will not adversely effect migratory bird populations. The Service proposes to approve the Tribal Community's proposed regulations for the 1996–97 season.

Public Comment

The Service intends that adopted final rules be as responsive as possible to all concerned interests and wants to obtain comments from all interested areas of the public, as well as other government agencies. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

However, special circumstances involved in the establishment of these regulations limit the amount of time the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need to establish final rules before September 1, 1995, and the unavailability until late July of specific reliable data for each year's status of waterfowl. Therefore, the Service believes allowing comment periods past the dates specified is contrary to the public interest.

No public comment was provided to the Service regarding the Notice of Intent published on March 22, 1996, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members.

Comment Procedure

It is the policy of the Department of the Interior to afford the public an opportunity to participate in the rulemaking process, whenever practical. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, D.C. 20240. The public may inspect comments during normal business hours at the Service's office in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA. The Service will consider all comments received and will try to acknowledge received comments, but may not provide an individual response to each commenter.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the ''Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES-75-74)'' was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the Federal Register on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88-14)'' was filed on June 9, 1988, and notice of availability was published in the Federal Register on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). Copies of these documents are available from the Service at the address indicated under the caption ADDRESSES. In addition, an August 1985 environmental assessment titled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the Service.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531-1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat...'' Consequently, the Service has initiated Section 7 consultation under the Endangered Species Act for the proposed migratory bird hunting seasons including those which occur on Federally recognized Indian reservations and ceded lands.

Findings from these consultations will be included in a biological opinion and may cause modification of some regulatory measures proposed in this document. The final rule will reflect any modifications. The Service's biological opinion resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and Office of Migratory Bird Management, U.S. Fish and Wildlife Service, at the address indicated under the caption **ADDRESSES.**

Regulatory Flexibility Act, Executive Order 12866, and the Paperwork Reduction Act

In the March 22 Federal Register, the Service reported measures it took to comply with requirements of the Regulatory Flexibility Act and Executive Order 12866. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1995 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $258 and $586 million at small businesses. Copies of the Analysis are available from the Office of Migratory Bird Management. The Service is currently updating and expanding the 1995 Analysis.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

The Service has examined these proposed regulations under the Paperwork Reduction Act of 1995 and found no information collection requirements.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform - Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Based on the results of soon to be completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 1996, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal members or for both tribal and non-tribal members may differ from those established by States in which the

reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers) and geese.

The rules that eventually will be promulgated for the 1996-97 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

Dated: August 12, 1996

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–20963 Filed 8–15–96; 8:45 am]

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August 16, 1996

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling; Guidelines for Voluntary Nutrition Labeling of Raw Fruits, Vegetables, and Fish and Policy for Data Base Review for Voluntary and Mandatory Nutrition Labeling; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94N–0155]

RIN 0910–AA19

Food Labeling; Guidelines for Voluntary Nutrition Labeling of Raw Fruits, Vegetables, and Fish; Identification of the 20 Most Frequently Consumed; and Policy for Data Base Review for Voluntary and Mandatory Nutrition Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the guidelines for voluntary nutrition labeling of raw fruits, vegetables, and fish and revising the nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish. This action is in response to the requirements of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) and will make the voluntary nutrition labeling program (hereinafter referred to as the voluntary program) more consistent with mandatory nutrition labeling of other foods regulated by FDA. The agency is also setting out its policy on its review of data bases in both the voluntary and mandatory nutrition labeling programs.

EFFECTIVE DATE: August 18, 1997.

FOR FURTHER INFORMATION CONTACT: Mary M. Bender, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5592.

SUPPLEMENTARY INFORMATION:

I. Background

In response to requirements of the 1990 amendments (Pub. L. 101–535), FDA published final regulations in the Federal Register of November 27, 1991 (56 FR 60880, and corrected at 57 FR 8174, March 6, 1992), that: (1) Identified the 20 most frequently consumed raw fruits, vegetables, and fish in the United States; (2) established guidelines for the voluntary nutrition labeling of these foods; and (3) set out the criteria for substantial compliance by food retailers with the guidelines for the voluntary nutrition labeling of these foods.

FDA stated in § 101.45(i) (21 CFR 101.45(i)) that it would publish and provide an opportunity for comment on updates of the nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish (or a notice that nutrition labeling values have not changed from the previous publication) at least every 2 years. In the preamble to the voluntary nutrition labeling final rule (56 FR 60880 at 60881), FDA advised that once final regulations governing nutrition labeling of processed, packaged foods (except for those foods subject to regulation by the U.S. Department of Agriculture (USDA)) were finalized, it would revise the guidelines for the voluntary program to make them as consistent as possible with those final rules. FDA published the final regulations implementing the 1990 amendments in the Federal Register of January 6, 1993, including regulations on mandatory nutrition labeling of processed, packaged foods (58 FR 2079); reference daily intakes and daily reference values (58 FR 2206); and serving sizes (58 FR 2229). FDA made technical changes in these final rules on August 18, 1993 (58 FR 44020).

FDA published a proposal in the Federal Register of July 18, 1994 (59 FR 36379) (hereinafter referred to as the July 1994 proposal), and a correction notice in the Federal Register of July 21, 1994 (59 FR 37190), to update the nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish and to revise the guidelines for the voluntary nutrition labeling of these foods to reflect the January 6, 1993, final rules as modified. Interested persons were given until September 16, 1994, to comment. In the Federal Register of October 17, 1994 (59 FR 52275), FDA reopened the comment period until November 16, 1994, in response to several requests for an extension of the comment period.

FDA received 29 responses to the July 1994 proposal, each of which contained one or more comments. The comments generally supported the July 1994 proposal. A number of comments suggested modification and revision in various provisions of the July 1994 proposal. A summary of the suggested changes and the agency's responses follows.

One comment suggested changes in the definition of ''substantial compliance'' in § 101.43(c) (21 CFR 101.43(c)) and in the study design for the required biennial surveys specified in § 101.43(b) to allow for separate levels of substantial compliance for large and small stores.

FDA did not raise this issue in the July 1994 proposal. It is therefore outside the scope of this rulemaking. Persons interested in this issue may petition the agency in accordance with 21 CFR 10.30.

II. Compliance by Food Retailers

A. Good-Faith Effort/Flexibility

1. One comment encouraged FDA to continue to permit flexibility in providing information to consumers. The comment stated that the most appropriate way for retailers to provide information is dependent on in-store space requirements as well as specific needs of consumers and grocers. The comment stated that the continually changing rules of the voluntary program distort compliance efforts and asked that FDA consider the industry's efforts to comply with ever-changing rules and to adopt a ''good faith effort'' approach in determining substantial compliance. The comment stated that retailers are waiting for the revised nutrition labeling values, that supplies of posters and brochures that display the old nutrition labeling values have dwindled, and that new stores may be unable to obtain display information until sometime after the final rule issues with the new values.

FDA used a good faith effort approach in the survey conducted in November and December 1994 by finding retailers to be in compliance with the guidelines if they followed the November 27, 1991, regulations or used the nutrition labeling values proposed in the July 1994 proposal (59 FR 36379 at 36388 and as corrected at 59 FR 37190).

These final regulations grant retailers flexibility in disseminating the nutrition labeling information to consumers through various means and materials. The regulations allow for the information to be presented in a variety of ways (shelf labels, signs, posters, brochures, notebooks, or leaflets) (§ 101.45(a)(1) (21 CFR 101.45(a)(1))) and provide guidance for retailers who choose to use a chart format (§ 101.45(a)(3)) and for those who use an individual label format (§ 101.45(a)(4)).

In addition, § 101.43(a) recognizes that signs providing nutrition information may be lost or damaged. Thus the regulation provides that retailers will be considered to be in compliance if they provide consumers with at least 90 percent of the nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish. Further, § 101.43(a) states that retailers need only provide data for items among those most frequently consumed that are sold in their stores. They need not have nutrition information on items not sold in their stores.

Although the comment refers to ''continuously changing rules,'' the agency does not foresee any additional major changes to the voluntary program

except for the updating of the nutrition labeling values of the most frequently consumed foods. The changes that FDA is making at this time to the guidelines for the voluntary program are primarily to make them as consistent as possible with the January 6, 1993, mandatory nutrition labeling regulations for processed, packaged foods.

B. Use of FDA Data for Compliance

FDA proposed in § 101.43(a)(3) and § 101.45(b) that for retailers to be in compliance with the voluntary program, they must provide customers with the nutrition labeling values developed by FDA in Appendices C and D to part 101 (21 CFR part 101) (except that information on potassium is voluntary). FDA stated that its tentative view was that use of these values will ensure consistency of values among retail stores and thus prevent consumer confusion.

2. One comment supported retailer use of data provided by FDA. Another comment supported the continued revisions to labeling values to reflect newer data and changes in labeling to be consistent with labeling of other foods. This comment endorsed providing consumers with the most accurate and complete information in a consistent format to alleviate customer confusion. However, another comment stated that the proposed requirement that FDA's values be used for the voluntary program was too restrictive. The comment supported the use of more cost-effective, realistic, and workable standards in nutrition labeling and suggested using food composition data from USDA to provide as much information to consumers as possible. The comment said that no one would argue that USDA's data are inaccurate and said that FDA's nutrition labeling regulations are based on food consumption surveys conducted by USDA.

FDA finds that its provision to retailers of the nutrition labeling values for the voluntary program is the most cost-effective method to transmit this information to consumers, and that this method promotes consistency in the information received by consumers. Retailers will incur no costs relating to sampling design, collection procedures, laboratory analysis, or statistical evaluation of data. The costs that will be incurred by retailers participating in the voluntary program will be limited to the purchase or development of the charts, brochures, or other materials for consumer use.

FDA does not agree that mean values from USDA data bases are appropriate for nutrition labeling. The nutrition labeling regulations in § 101.9 (g)(4) and (g)(5) state that FDA will consider a product misbranded if analyzed nutrient levels for naturally occurring vitamins, minerals, protein, total carbohydrate, polyunsaturated fat, monounsaturated fat, and potassium are not at least equal to 80 percent of the value declared on the label, and if analyzed nutrient levels for calories, sugars, total fat, saturated fat, cholesterol, and sodium are more than 20 percent in excess of the value declared on the label. To meet these requirements, the agency encourages manufacturers to use FDA compliance calculations to determine the nutrition labeling values for their products (Ref. 1). Use of mean values (such as those from USDA data bases) for nutrition labeling, as suggested by the comment, is less likely to assure manufacturers of being in compliance with FDA's regulations.

Some of the USDA's food composition data are not truly representative because they are based on small sample sizes or do not take into account specific variables, such as geographic area. Thus, mean food composition values available in various USDA publications are, generally, not suitable for labeling purposes.

FDA has provided nutrition labeling values for the most frequently consumed raw fruits, vegetables, and fish in Appendices C and D. The agency did obtain data for some of these foods from the USDA National Nutrient Databank and other USDA sources. However, where possible, FDA applied compliance calculations to the data obtained from USDA (as well as other data sources) and used the resulting, adjusted values.

It is true, as the comment states, that FDA used information from USDA food consumption surveys to establish reference amounts customarily consumed in § 101.12 (quantities of foods commonly consumed per eating occasions) for use by manufacturers in determining serving sizes for nutrition labeling. However, FDA does not agree with the comment that the use of USDA food consumption data by FDA for that purpose necessitates FDA's use of USDA food composition data for purposes of nutrition labeling if those data are not adequate for those purposes. Based on the foregoing, having fully considered the comments, FDA has adopted §§ 101.43(a)(3) and 101.45(b) as proposed.

III. The 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish

A. Plural Versus Singular Food Names

3. One comment requested latitude in the use of plural versus singular names for fruits and vegetables (e.g., peach versus peaches). The comment stated that FDA was not consistent in the use of plural and singular food names and asked for clarification.

In the July 1994 proposal, FDA used singular food names if the serving was one whole unit (e.g., apple, banana) or part of a whole unit (e.g., salmon, watermelon, avocado) and plural food names if the serving was more than one unit (e.g., grapes, strawberries, green peas, scallops). FDA requests that retailers (and trade associations that provide nutrition labeling information to retailers) use the plural and singular designations for food names for raw fruits, vegetables, and fish provided by FDA in Appendices C and D to part 101 when they provide nutrition labeling information to consumers. However, the agency does not consider the use of singular or plural names to be an issue for the biennial compliance surveys. Noncompliance of a retailer will be judged as failure to provide the nutrition labeling values as specified in this final rule.

B. Food Names

4. One comment requested name changes for three foods. The comment wanted ''lettuce'' to be called ''iceberg lettuce,'' ''sweet cherries'' to be called ''cherries,'' and ''honeydew melon'' to be called ''honeydew.''

FDA notes that ''lettuce'' is specified as ''iceberg lettuce'' in § 101.44(b) and in Appendix C to part 101. FDA mistakenly used the more general term ''lettuce'' in referring to this food in Appendix C of the July 1994 proposal. FDA is not convinced that consumers would be served by changing the name ''sweet cherries'' to ''cherries'' or ''honeydew melon'' to ''honeydew.'' Use of these alternate names for sweet cherries and honeydew melon by retailers will not, however, result in a finding of noncompliance.

C. Changes to the 20 Most Frequently Consumed Fish

FDA received no comments about its proposed changes to the list of the 20 most frequently consumed fish. Therefore, the proposed changes to the fish list (i.e., to list flounder and sole as one entry, to have three subgroups for salmon, and to add swordfish) have been incorporated in § 101.44(c) and Appendix D to part 101.

IV. Presentation of the Nutrition Labeling Values

The July 1994 proposal was designed to make the guidelines for the voluntary program more consistent with the January 6, 1993, nutrition labeling regulations in terms of what information is required (content), and how that information is to be presented (format). The proposed guidelines would allow the information to be presented in a chart format (§ 101.45(a)(3)) as well as in an individual label format (§ 101.45(a)(4)) that is similar to that used for processed, packaged foods.

There was general support among the comments for the proposed content and format for the nutrition labeling of raw fruits, vegetables, and fish. In particular, comments generally agreed that: (1) Labels on produce should be as consistent as possible with those on other foods; (2) saturated fat and cholesterol should be allowed to be listed in a footnote rather than in columns for produce; (3) the entire footnote for Daily Values (DV's) for two calorie levels should not be required to be listed on charts; and (4) if producers and packers label an individual product, they should comply with the format and other regulations that apply to packaged foods.

A. Optional Nutrients

5. One comment requested that the word ''required'' be omitted from proposed § 101.45(a)(2) because it provides that only ''required nutrients'' should be declared in accordance with § 101.9(c) and makes no provision for voluntary inclusion of information on other micronutrients. The comment stated that, as long as it is done accurately, vendors should be allowed to include information for any essential vitamin or mineral listed in § 101.9(c)(8)(iv), not only the required nutrients, to the same extent that they are allowed to do so for the same products in processed form. The comment stated that removing the word ''required'' would allow for the listing of beta-carotene under vitamin A (see § 101.9(c)(8)(vi)), and that fruits and vegetables are a good source of this nutrient.

Two other comments requested that FDA address the use of optional nutrients in the voluntary program. They stated that information about optional nutrients is allowed on processed foods, and that they strongly supported the declaration of optional nutrients as part of the voluntary program. Another comment requested that FDA permit inclusion of data on the vitamin B–6 content of bananas because bananas are an excellent source of this nutrient. The comment stated that inadequate dietary intake of vitamin B–6 is a potential public health issue, and that inclusion of vitamin B–6 on the nutrition label will serve an important public health function.

FDA is persuaded by these comments that providing information on optional nutrients for foods in the voluntary program will be useful. Thus, FDA is providing for the declaration of information on optional nutrients for raw fruits, vegetables, and fish, particularly on labels for individual foods (e.g., on signs, brochures, or food packages). Declarations of optional nutrients included on individual labels should follow the requirements under § 101.9(c). Therefore, FDA is removing the word ''required'' in § 101.45(a)(2), as suggested by the comment.

However, FDA is concerned about the size and readability of charts if they provide information on optional nutrients.

Including optional nutrients on charts will require extra columns and thus make the charts larger. Some comments (discussed in section IV.D. of this document) expressed concern that charts carrying only the required information are too large and unreadable. Therefore, FDA urges retailers to carefully consider the consequences of including optional nutrients in charts.

If optional nutrients are included on charts (see § 101.45(a)(3)), retailers should provide values for the nutrients for all foods and not leave blanks for some foods. FDA fears that consumers might interpret blanks for optional nutrients in charts as zeros. Alternatively, information can be provided on optional nutrients in a footnote outside the column format of the chart (e.g., ''bananas contain 35% of the DV for vitamin B–6'').

B. Use of Individual Labels on Posters

6. One comment stated that posters with horizontal and vertical lines are difficult for consumers to read and provided an alternative poster with 40 individual produce nutrition labels. The comment asked whether the exceptions for chart format posters apply to other poster formats.

In proposed § 101.45(a)(3), FDA stated that when nutrition labeling information is provided for raw fruits, vegetables, and fish on signs, posters, brochures, notebooks, or leaflets, it may be presented in charts in horizontal or vertical columns. This proposed provision would not have required the use of horizontal or vertical columns. However, to clarify that other formats may be used, FDA has modified § 101.45(a)(3) to provide for the optional use of a poster containing a compilation of individual nutrition labels. FDA has also modified the first sentence of § 101.45(a)(3) to clarify that it pertains to materials containing nutrition information for more than one raw fruit, vegetable, or fish, whereas § 101.45(a)(4) pertains to nutrition labeling for individual raw fruits, vegetables, or fish. The exceptions noted in § 101.45 (a)(3)(i) through (a)(3)(iii) for labeling materials containing nutrition information on more than one item will apply to all such materials, i.e., signs, posters, brochures, notebooks, or leaflets.

C. Use of Linear Formats

7. FDA proposed in § 101.45(a)(3) to not permit the use of linear formats in the voluntary program. One comment opposed this restriction. The comment encouraged FDA to find retailers in compliance even if nutrition information is provided in a different format from those specified in § 101.45 and stated that flexibility and creativity should be encouraged. The comment said that alternate formats may be preferable to reach specific populations. The comment stated that the linear format can achieve the desired results as well as the columnar format, and that the retailer should be granted the flexibility to determine what format best suits the needs of its customers. The comment stated that the other labeling requirements regarding highlighting, type size, and other format elements will ensure that the information displayed in a linear format will be visible and readable.

FDA is not persuaded that the linear format (i.e., display) would be useful for providing voluntary nutrition labeling. A linear display is not particularly easy to read, and the difficulties would be exacerbated on posters that a consumer may have to read from a distance. Under § 101.9(j)(13)(ii), linear displays can only be used to present the nutrition label if the food package has less than 40 square inches of space available to bear labeling, and the package shape and size cannot accommodate a standard vertical or tabular display. Posters, brochures, and other means for providing nutrition information under § 101.45(a)(3) are not limited in size and therefore do not meet these criteria. Thus, FDA has retained the restriction on the use of linear displays in § 101.45(a)(3). At the same time, however, the agency modified § 101.45(a)(3) to change ''linear format'' to ''linear display'' to use terminology

consistent with § 101.9(j)(13)(ii)(A)(*2*) and to cross-reference that section.

Linear displays are not precluded under § 101.45(a)(4) for individual labels as long as the labels meet the criteria in § 101.9(j)(13)(ii).

D. Use of Abbreviated Charts

To make the charts containing the nutrition labeling values for raw fruits, vegetables, and fish more readable, FDA proposed in § 101.45(a)(3)(ii) that the full footnote required in § 101.9(d)(9)(i), which lists the DV for six nutrients for two calorie levels, not be required. Because no comments opposed this action, § 101.45(a)(3)(ii) is included in the final rule as proposed.

FDA proposed in § 101.45(a)(3)(iii) to provide the option of omitting the columns for saturated fat and cholesterol for fruits and vegetables, omitting the columns for sugars and fiber for fish, and instead providing the following footnotes: ''Most fruits and vegetables provide negligible amounts of saturated fat and cholesterol; avocados provide 1 gram (g) of saturated fat per ounce,'' and ''Fish provide negligible amounts of dietary fiber and sugars.'' FDA proposed these footnotes to reduce the size of the charts on which nutrition information is presented (to make them more readable) without reducing the amount of information provided to consumers.

8. One comment requested that the portion of the footnote regarding the fat content of raw produce for the voluntary nutrition labeling chart (i.e., ''* * * avocados provide 1 g of saturated fat per ounce'') be changed to ''* * * avocados provide 1 g of saturated fat, 1 g of polyunsaturated fat, and 3 grams of monounsaturated fat per ounce.'' The comment said that this additional information about avocados will be useful for consumers, especially diabetics, because the new diabetes guidelines recommend increasing consumption of monounsaturated fatty acids.

Because information on polyunsaturated and monounsaturated fat may be provided on processed foods, FDA has decided to revise § 101.45(a)(3)(iii) to permit the inclusion of information about the level of these nutrients in avocados (as suggested by the comment) on an optional basis by retailers. To provide the added flexibility, FDA revised § 101.45(a)(3)(iii) to make the subject footnote an example of an appropriate footnote, rather than the required footnote, and added a sentence stating that information about the polyunsaturated and monounsaturated fat content of avocados may be included. In addition, FDA clarified that if the listings of saturated fat and cholesterol are left off of charts or off of individual nutrition labels used on signs, posters, brochures, notebooks, or leaflets, the required information on saturated fat and cholesterol must be included in a footnote.

9. One comment stated that the new charts proposed by FDA will be less readable than the previous ones because there will be 22 columns instead of 10, and that much of the information is repetitious because there are dual listings (i.e., weight amounts and percent DV's) for some nutrients. The comment stated that the new charts will have too much information for consumers to handle. The comment stated that current signs are manageable, but that the new ones will require either smaller type (making it unreadable to consumers) or larger signs (which are impractical to hang). Further, the comment stated that the firm that submitted this comment planned to do away with signs and to use a manual and leaflets if the July 1994 proposal becomes final. The comment requested that FDA allow for the use of abbreviated charts as signs in produce and seafood departments if complete information (e.g., in manuals or leaflets) is available to consumers elsewhere in the store. It stated that a note on the chart could direct consumers to the more detailed information. The comment suggested that abbreviated charts for fruits and vegetables could omit calories from fat, cholesterol, and saturated fat and list only the percent DV's (and not weight amounts) for nutrients, and that for fish, such charts could omit sugars, dietary fiber, and potassium and list only the percent DV's for nutrients. The comment noted that declaration of percent DV's is the most important information on the nutrition label, as reflected in FDA's requirement that it be in bold face.

FDA acknowledges that the new charts containing nutrition labeling for raw produce and fish will contain more information, and thus require larger charts or smaller print, than the old charts. FDA has addressed, in part, the issue of the size of the charts by allowing for the omission of the columns for saturated fat and cholesterol for fruits and vegetables and the columns for dietary fiber and sugars for fish (§ 101.45(a)(3)(iii)). FDA does not feel that it is appropriate to omit the column for calories from fat for fruits and vegetables, as the comment suggests, because seven of these foods have values greater than zero for calories from fat. Information on calories from fat is important for consumers, and a footnote to the chart that specifies the number of calories from fat for seven fruits and vegetables would be lengthy and difficult to read.

In response to the suggestion that the column for potassium be included on the chart for fruits and vegetables but omitted from the chart for fish, FDA notes that the column for potassium is optional on both charts. However, FDA also notes that potassium provided by fish is as important as potassium provided by fruits and vegetables. Several comments agreed that information on potassium is important for consumers, and that it should be optionally provided.

Any inconsistency between abbreviated charts without columns listing the quantitative amounts by weight for nutrients for which percent DV's are declared, as suggested by the comment, and the nutrition labeling of processed, packaged foods could lead to consumer confusion. There was general agreement among the comments that nutrition labeling information for fruits, vegetables, and fish should be as consistent as possible with labeling provided for other foods. Additionally, the quantitative amounts by weight continue to be important to, and used by, many health professionals and consumers. For instance, the results of FDA's 1995 Health and Diet Survey showed that, among respondents who used the Nutrition Facts label to obtain nutrition information on a food product, a majority use the g and milligram (mg) amounts on the label solely or in combination with the percent DV's (69 percent). Few of the respondents in the survey used only the percent DV's (14 percent) (Ref. 4).

Because the size and readability of the charts are important issues, the agency encourages retailers and educators to experiment with various chart formats, to test and determine consumer responses to them, and to share the results of these studies with FDA. However, after considering the information needs of consumers and the comment's expressed concern about chart size, FDA concludes that the requirement that it is adopting strikes an appropriate balance between these potentially competing factors.

E. Nutrient Values on Individual Labels

FDA proposed in § 101.45(a)(4) that individual nutrition labels (e.g., over bins or on packaging) for raw fruits, vegetables, and fish provided by retailers meet the requirements of § 101.9(d). This proposed provision would have required that individual labels carry the full footnote set forth in § 101.9(d)(9), which provides

information about daily values for two calorie levels, rather than the abbreviated footnote permitted for the chart format under § 101.45(a)(3)(ii), unless the package is otherwise exempt under §§ 101.9(f) or 101.9(j)(13) from such a requirement.

10. Several comments disagreed with the need for the full footnote on individual labels provided by retailers above or close to food bins or containers. The comments stated that the modified label, without the lengthy DV's footnote, would be appropriate because of space and readability concerns. One comment stated that the sign could direct the consumer to a source of more complete information in the store. Another comment noted that short, modified labels are allowed on some processed foods and should be allowed for foods in the voluntary program.

FDA is persuaded by the comments that the footnote concerning nutrient requirements at two calorie levels could create concerns about space and readability for individual labels provided by retailers on signs that are over or near food bins or containers for raw fruits, vegetables, and fish. Therefore, FDA has added a sentence to § 101.45(a)(4) that reads, ''For individual labels provided by retailers on signs and posters, the footnote required in § 101.9(d)(9) may be shortened to 'Percent Daily Values are based on a 2,000 calorie diet.' '' The agency also notes that foods that qualify may use the simplified format (see § 101.9(f)). Thus, FDA has provided for the use ′of short, modified nutrition labels with individual raw fruits, vegetables, and fish.

F. Nutrition Labeling Values for a Particular Commodity

11. A commodity group asked whether the nutrition label that was developed and made available by the group in April 1993 could continue to be used on bags and boxes of that commodity.

As discussed in section II.B. of this document, to be in compliance with § 101.45(b) of the guidelines for the voluntary program, retailers must provide consumers with the nutrition labeling values provided by FDA in Appendices C and D to part 101 for the most frequently consumed raw fruits, vegetables, and fish. (As for the date when use of these values must begin, see section VI. of this document.) Individual nutrition labels used on raw fruits, vegetables, and fish that are packaged by a grower, producer, or shipper should provide the information listed in § 101.45(a)(4). If growers, producers, or shippers wish to provide individual nutrition labels on packaging materials for foods included in the voluntary program, they should use the labeling values provided by FDA.

However, if a nutrition label developed by a commodity group is for a specific genus or species, then a more specific name for the product should be used, as stated in § 101.45(c)(1), and the commodity group should have the data to support the labeling values used for the product. The nutrition labeling values in Appendices C and D to part 101 are for generic commodities. If a commodity group wishes to amend the nutrient values for a generic item, FDA encourages the group to submit the values to the agency as specified in § 101.45(b)(1) for consideration for inclusion in the agency's next revision of Appendices C and D. If upon review of the data, FDA decides to use the labeling values for the generic item, those values will be made available for public comment. Any nutrition labeling value for a generic item that the agency decides to incorporate into Appendix C or D will have to be used by retailers for them to be considered to be in compliance.

FDA is agreeable to having its labeling values used on bags of cut raw produce that qualify for the voluntary program (e.g., they have received no further processing or are not packaged with added ingredients such as salad dressing or croutons).

V. Timeframe for Updating Nutrient Values

12. FDA stated in the July 1994 proposal that the nutrition labeling values for the most frequently consumed raw fruits, vegetables, and fish would be revised every 2 years (proposed § 101.45(b)). Several comments thought that this timeframe was too short. One comment expressed concern about retailers keeping up with the 2-year revisions and stated that too frequent changes in the values will result in confusion in the marketplace. The comment stated that changes will require education of retail store operators, and that it is time-consuming and expensive for industry to prepare, obtain, and display new compliance materials. The comment stated that new materials cannot be adequately disseminated to the industry in less than 6 months and asked that FDA consider the administrative and economic burden imposed on the industry.

Four comments recommended updates every 4 years (every other compliance reporting period) rather than every 2 years. Reasons given for extending the time between revisions were: (1) To accommodate the time lag in relaying information to retailers and industry members; (2) to use up old packaging in stock; (3) difficulties for retailers, shippers, and packaging companies in changing packaging materials; (4) cost of printing educational materials; (5) the shelf life of educational materials, which is longer than 2 years; and (6) FDA's inability to complete revisions every 2 years. One comment stated that growers will choose not to put nutrition labeling information on bags of produce if the values are changed on a biennial basis.

FDA agrees that biennial updates of the nutrition labeling values as well as the list of the 20 most frequently consumed raw fruits, vegetables, and fish are difficult for both FDA and retailers, and that updates every 4 years are more reasonable and cost-effective. Accordingly, FDA has revised § 101.45(b) to state that, if necessary, revisions will be proposed every 4 years.

VI. Effective Date for Compliance

13. FDA proposed that any revision that is made in the voluntary program would be effective 30 days after publication of the final rule. A number of comments stated that this time period is too short for retailers and for growers, shippers, and packers. The comments stated that more time is needed to: (1) Finalize the updated charts and have retailers print and distribute their materials throughout their stores; (2) print labels and posters and devise new advertising campaigns; (3) order and receive new packaging; and (4) avoid inventory disposal costs and allow depletion, rather than destruction, of label inventory. Several comments stated that the short effective date would be an economic hardship for growers and shippers with nutrition labeling on packaging materials. Two comments recommended an extended effective date for growers and shippers who voluntarily label produce.

One comment requested that FDA expressly advise that any new nutrient values for raw fish will not have to be used by manufacturers in the nutrition labeling of retail-packaged, single-ingredient raw fish products until, at a minimum, 180 days after publication of the final rule. The comment stated that FDA focused on the effect of voluntary nutrition labeling in retail stores but did not consider manufacturers who use FDA values in nutrition labeling retail-packaged, single-ingredient products. The comment stated that manufacturers of packaged raw fish products must create new label plates, print labels,

package inventory, ship products bearing the new labels, and allow for transit and holding time if the product is exported to the United States.

Several comments noted that FDA allowed considerably more time (16 months and then 19 months as extended) in establishing the effective date for the labeling provisions of the 1990 amendments for processed foods and asked that the produce and fish industries be given more time. Comments requesting a longer time period suggested 4 months (one request), 6 months (one request), 1 year (four requests), 15 months (one request), and 18 months (one request).

FDA agrees that an effective date of 30 days after publication of the final rule is too short for retailers to get new nutrition labeling materials in place. Taking the various suggestions for extended time frames into consideration, FDA has set the effective date of this final rule to be 1 year from the date of publication in the Federal Register. Labeling values in Appendices C and D to part 101 may be and should be used at the retail level as soon as possible, beginning on the date of publication. However, because of the relatively short amount of time before the 1996 FDA Compliance Survey, FDA will consider either the old (1991) or new (1996) labeling values to be acceptable for retail stores to be considered to be in compliance with the voluntary program during the upcoming survey.

Likewise, growers, shippers, and packers who provide nutrition labeling on packages of raw fruits, vegetables, and fish will have 1 year to come into compliance with this document. While growers, shippers, and packers will not be assessed for compliance as a part of the 1996 FDA Compliance Survey for the voluntary program, they will need to be in compliance with § 101.9 (as modified by § 101.45(a)(4)). Accordingly, those who use the generic nutrient values in Appendix C or D to part 101 in nutrition labeling will have 1 year to update nutrient values on the food labels.

VII. Nutrition Labeling Values for the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish

In the July 1994 proposal, FDA stated that the information that it used to arrive at the proposed nutrition labeling values for raw fruits, vegetables, and fish included data provided by the Produce Marketing Association (PMA), Nutrition Network (on behalf of the International Banana Association), and USDA (for fish and produce). FDA received a few comments in response to the July 1994 proposal that included additional data for some foods from other sources. PMA submitted new labeling values based upon their original raw data that were referenced in the proposal. FDA considered data from all sources and used those data, as appropriate, to calculate the labeling values set forth in this document in Appendices C and D to part 101. In these calculations, to the extent possible, FDA used the statistical methodology that it recommends in the ''FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases'' (i.e., using compliance calculations based on 95 percent prediction intervals) (Ref. 1). Complete documentation for the nutrition labeling values for raw fruits, vegetables, and fish is found in Reference 5.

A. Fat Values for Raw Fruits and Vegetables

14. One comment requested that the fat content of all raw fruits and vegetables containing less than 1 g of fat be listed as zero g.

FDA is not aware of any basis for establishing rules on how nutrient values are determined for raw fruits and vegetables that are different from those for other foods. The nutrition labeling regulations require that the amount of fat be expressed to the nearest 0.5 g increment below 5 g (§ 101.9(c)(2)). However, if the amount of fat is less than 0.5 g, the label value of 0 g may be used. Thus, for fruits and vegetables containing less than 1 g, but more than 0.5 g of fat, FDA rounded to 0.5 g if the amount present was 0.74 g or less, and rounded to 1 g if the amount present was 0.75 g or more. Thus, FDA has not taken the action requested by the comment.

B. Fat Values for Grapefruit, Kiwifruit, Strawberries, and Tomatoes

15. One comment expressed concern about the fat values for grapefruit, kiwifruit, strawberries, and tomatoes. The comment stated that the analytical method (ether extract) that was used to obtain the data overestimates fat when it is present in trace amounts compared to current techniques such as high pressure liquid chromatography (HPLC) or gas chromatography. The comment stated that, consequently, it may be necessary to reanalyze the fat content for those commodities. Five other comments questioned the fat content of grapefruit, and four of those comments suggested that FDA had made an error in rounding. These comments suggested that the fat content of grapefruit is 0 g rather than 0.5 g.

FDA looks forward to receiving new data submissions for raw fruits and vegetables (including grapefruit, kiwifruit, strawberries, and tomatoes) based upon more current analytical methods. The agency will consider those data and will make changes, if appropriate, at the next opportunity for revision of the labeling values for these foods. For the purposes of this final rule, however, FDA determined the fat content of kiwifruit, strawberries, and tomatoes based on the PMA data, using statistical methodology specified in the labeling manual. Revised fat values are listed in Appendix C to part 101 for kiwifruit (1 g, 2 percent DV), strawberries (0 g, 0 percent DV), and tomatoes (0.5 g, 1 percent DV).

FDA acknowledges that it made an error in tentatively assigning a 0.5 g fat value for grapefruit. After reviewing the PMA data, FDA concluded that the fat value for grapefruit is 0 g, 0 percent DV.

C. Fiber Values for 12 Fruits and Vegetables

16. One comment stated that FDA's fiber values in the July 1994 proposal were too low for bananas, cucumbers, and radishes and too high for oranges, grapefruit, tangerines, sweet cherries, kiwifruit, onions, sweet corn, sweet potatoes, and green beans. The comment provided only mean values for dietary fiber for these foods based upon five methods.

FDA reviewed the information on dietary fiber provided by the comment. Unfortunately, the comment did not include raw data, measures of variance (e.g., standard deviations), or the number of samples or composites analyzed, information required for FDA to perform compliance calculations to determine appropriate nutrition labeling values. Because the comment did not provide adequate information for revision of the label values for dietary fiber, FDA will make no changes based upon this comment.

FDA encourages the produce industry to do complete laboratory analyses and welcomes submissions of data for fiber accompanied by detailed information. The agency will consider those data and will make changes, if appropriate, at the next opportunity for revision of the labeling values for these foods. As discussed in sections VII.F. and VII.H. of this document, FDA has revised the fiber values for some foods in this document based on data submitted in other comments.

D. Nutrition Labeling Values for Apples

17. One comment provided FDA with data on the nutrient composition of apples that, the comment claimed,

upgraded the data on file with FDA, which were provided by PMA in 1990. The submission provided data describing the contribution of sugars to total carbohydrate, the levels of saturated and unsaturated fatty acids, and the total fatty acid content. The comment requested that these newer data be included in FDA's revision of the nutrition labeling values for raw apples because they are more complete and accurate and reflect the use of more current analytical methods.

FDA reviewed the newer data for apples (Ref. 6) and used these data, along with other available data, to derive labeling values using compliance calculations based on 95 percent prediction intervals for the levels of calories from fat, total fat, saturated fat, total carbohydrate, and sugars in this final rule. The following summarizes changes to the nutrition labeling values in Appendix C for apples based on the data submitted in the comment:

TABLE 1

Apple nutrient	Proposed values		Final rule values	
Calories from fat	10		0	
Total fat	1 g	2% DV	0 g	0% DV
Total carbohydrate	24 g	8% DV	22 g	7% DV
Sugars	20 g		16 g	

Note: The value for saturated fat remains the same as in the July 1994 proposal at 0 g, 0 percent DV.

FDA made additional changes to the nutrition labeling values for apples based upon another comment, as described in section VII.H. of this document.

E. Nutrition Labeling Values for Avocados

18. One comment provided new data for potassium, protein, and vitamin C in California avocados. Based on the new data, the submission requested that the value for potassium be changed from 105 mg, 3 percent DV to 170 mg, 5 percent DV; that the value for protein be changed from 0 g to 1 g; and that the value for vitamin C be changed from 2 percent DV to 4 percent DV.

FDA reviewed the newer data for avocados (Ref. 7), confirmed that the label values suggested by the comment were correctly derived using compliance calculations based on 95 percent prediction intervals, and used these data in deriving the label values for potassium, protein, and vitamin C for avocados in this final rule. The changes that FDA has made to the nutrition labeling values in Appendix C for avocados based on the comment are summarized below:

TABLE 2

Avocado nutrient	Proposed values		Final rule values	
Potassium	105 mg	3% DV	170 mg	5% DV
Protein	0 g		1 g	
Vitamin C		2% DV		4% DV

FDA made additional changes to the nutrition labeling values for avocados based upon another comment, as described in section VII.H. of this document.

F. Nutrition Labeling Values for Bananas

19. In developing the July 1994 proposal, FDA used data on the composition of bananas that were submitted on behalf of the International Banana Association. Those data were derived from data from a 1982–1983 study by the United Fresh Fruit and Vegetable Association (UFFVA) and from a 1990 PMA study. FDA calculated nutrition labeling values for bananas using compliance calculations based on 95 percent prediction intervals and published these values in Appendix C of the July 1994 proposal.

One comment stated that the 1982–1983 UFFVA data should not be used for fiber and vitamin C, and that the FDA values for these two nutrients in bananas should be revised based only on the PMA data. The comment stated that there are statistically significant differences between the two data sets for dietary fiber and vitamin C, which suggests that only one data set may appropriately be used. The comment stated that the differences are likely attributable to the different analytical methods used in the surveys. The comment said that the 1982–83 UFFVA data were based upon a method of analysis that measured crude fiber, neutral detergent fiber, and pectin, while the 1990 PMA fiber data were based on the AOAC Enzymatic-Gravimetric Method. The 1982–1983 UFFVA vitamin C data were obtained with a titrimetric assay that measures ascorbic acid but not dehydroascorbic acid, while the 1990 PMA data were based on a method that measures both active forms of vitamin C. The comment stated that based on the 1990 PMA data alone, fiber should be 4 g, 15 percent DV, and vitamin C should be 9 mg, 15 percent DV.

FDA accepts the explanation for the data discrepancies for dietary fiber and vitamin C in bananas presented in the comment. The analytical methods used by UFFVA in 1982–1983 to analyze fiber and vitamin C are no longer appropriate for labeling purposes; however, the analytical methods used for the more recent PMA data are appropriate. As a result, FDA recalculated the nutrition labeling values for dietary fiber and vitamin C based on PMA data only. The agency recalculated the nutrition labeling values for bananas for all other nutrients based on both data sources (UFFVA and PMA) (Ref. 8), using compliance calculations based on 95 percent prediction intervals. The following summarizes the differences between the proposed values and the values in Appendix C set forth in this final rule:

TABLE 3

Banana nutrient	Proposed values		Final rule values	
Total fat	0.5 g	1% DV	0 g	0% DV
Potassium	390 mg	11% DV	400 mg	11% DV
Dietary fiber	1 g	4% DV	4 g	16% DV
Vitamin C		0% DV		15% DV
Iron		0% DV		2% DV

G. Nutrition Labeling Values for Tangerines

20. One comment stated that FDA used incorrect values for calories, calories from fat, fat, vitamin C, calcium, and vitamin A in tangerines. It stated that, based on the PMA report on tangerines (Ref. 9), calories should be 45 (not 80), calories from fat should be 5 (not 10), fat should be 1 g (not 2 g), vitamin C should be 40 percent DV (not 35 percent DV), and calcium should be 4 percent DV (not 2 percent DV). The comment disagreed with the proposed value for vitamin A (which FDA derived from PMA data) for tangerines. It stated that PMA only tested for beta-carotene, but that the predominant carotenoid in tangerines is beta-cryptoxanthin. The comment also provided numerous scientific articles containing data, obtained by a variety of methods including newer HPLC methods, for the beta-cryptoxanthin (3-hydroxy beta carotene) content of tangerines. The comment recommended that FDA use the mean vitamin A value from USDA Handbook 8–9 for its derivation of the compliance value.

FDA would first like to note that the proposed value for total fat in tangerines was 1 g, 2 percent DV, and not 2 g of fat, as stated by the comment. For the tangerine values in Appendix C to part 101, FDA derived the label values from raw data provided by a comment, using compliance calculations based on 95 percent prediction intervals. Those data were the only raw data available. The revised values for tangerines are 50 calories; 0 calories from fat; 0.5 g, 1 percent DV total fat; 50 percent DV vitamin C; and 4 percent DV for calcium.

FDA agrees that the method used by PMA measured only beta-carotene and excluded the contribution of beta-cryptoxanthin to the vitamin A activity for tangerines. The agency notes that there is more than one AOAC method for the measurement of carotenes in foods, and that the method that PMA stated that it used is specific for non-hydroxylated carotenes and does not measure mono-hydroxylated carotenes such as beta-cryptoxanthin. However, alternative AOAC methods do permit the measurement of these substances and have been used historically to obtain vitamin A values for food composition tables (Ref. 10). It should be noted that the vitamin A activity of beta-cryptoxanthin has been considered to be about 50 percent of that for beta-carotene (Ref. 11). As discussed in section II.B. of this document, FDA does not consider the use of mean values, such as those in Handbook 8–9, appropriate for labeling purposes.

FDA looks forward to receiving new data submissions for tangerines based upon more comprehensive analytical methodology for vitamin A. The agency will consider those data and will make changes, if appropriate, at the next opportunity for revision of the labeling values. The labeling value for vitamin A remains at 0 percent DV.

H. Statistical Methodology for Deriving Nutrition Labeling Values From PMA Data

Before FDA published the July 1994 proposal, PMA provided the agency with nutrition labeling values for 31 fruits and vegetables that PMA had derived from the raw data it had compiled using 80 percent prediction intervals. FDA included many of these nutrition labeling values in the July 1994 proposal.

21. Several comments expressed concern about the rounding of the nutrition labeling values for fruits and vegetables in the July 1994 proposal, specifically the values obtained from PMA. One comment stated that FDA was inconsistent in rounding labeling values (e.g., in calculating the values for total fat for grapefruit, apples, and tangerines) and requested that FDA be consistent. Other comments specifically questioned how percent DV's were derived from the rounded or unrounded labeling values (e.g., dietary fiber and iron in onions).

FDA recalculated labeling values derived from the raw data that PMA had submitted (described later in this section of this document) and is using those recalculated values in this final rule. With respect to the rounding issues raised by the comments, FDA points out that the nutrition labeling regulations (§ 101.9(d)(7)(ii)) allow percent DV's to be calculated from the original or rounded nutrient values. PMA calculated percent DV's based on the original values. In recalculating the percent DV's, FDA used rounded values. The agency did so to provide consistency in the chart format (i.e., to be sure that the same quantitative amount of a nutrient is associated with the same percent DV). FDA notes that if percent DV's are calculated from original values, it may lead to inconsistencies in the chart that would be confusing to consumers. FDA applied the rounding rules (§ 101.9(c)) consistently to the data used for calculating the values in this final rule. Therefore, FDA has responded fully to these comments.

22. Two comments expressed concern that FDA's use of PMA's nutrition labeling values derived from 80 percent prediction intervals was not consistent with the way the food industry develops nutrition labeling values for processed, packaged foods. The comments stated that fruits and vegetables will be placed at a marketing disadvantage compared to other foods subject to the 1990 amendments, and that consumers will receive less useful and consistent information.

FDA agrees with the comments. The 80 percent prediction values provided by PMA and used in the July 1994 proposal were not entirely appropriate because they were not based on 95 percent prediction intervals. As stated elsewhere in this document, FDA recommends that labeling values be derived from compliance calculations based on 95 percent prediction intervals and be consistent with statistical methodology in the ''FDA Nutrition Labeling Manual: A Guide for Developing and Using Databases'' (Ref. 1).

During the comment period, the agency received data from various sources and considered all of those data in determining the final values. In a comment, PMA submitted a new set of nutrition labeling values for 31 raw fruits and vegetables and asked that those values be used in the final rule. The nutrition labeling values in PMA's comment were derived by using a

different statistical methodology than PMA used in its original submission. Instead of values based upon 80 percent prediction intervals, the nutrition labeling values in the comment were derived by using 95 percent confidence intervals.

When the agency reviewed these values, it found the following concerns with the statistical methodology (Ref. 12) that PMA had used:

(1) PMA used a one-sided 95 percent *confidence* interval to do the compliance calculations rather than the FDA-recommended one-sided 95 percent *prediction* interval. (A confidence interval is used to confidently bracket the true parameters of a population. A prediction interval is associated with confidently bracketing the mean or any number of future samples from the same population. A compliance value based upon FDA laboratory analysis consists of a composite of 12 units. The value is necessarily considered by the industry as the mean of 12 future units, which is expected to be in line with the labeled values. The limit of the prediction interval is lower (or higher, depending on the applications) than the corresponding limit of the confidence interval for a given level of significance (Ref. 1).)

(2) PMA did not always use the minimum of the means and compliance calculations for class II nutrients (naturally occurring vitamins, minerals, protein, total carbohydrate, complex carbohydrate, dietary fiber, unsaturated fat, and potassium) and the maximum of the means and compliance calculations for third group nutrients, as listed in § 101.9(g)(5) (calories, sugars, total fat, saturated fat, cholesterol, and sodium).

(3) In § 101.9(g)(4)(ii), total carbohydrate is defined as a class II nutrient. PMA derived total carbohydrate values under the assumption that total carbohydrate is a third group nutrient (see § 101.9(g)(5)), rather than a class II nutrient.

FDA is grateful to PMA for submitting the nutrition labeling values for 31 fruits and vegetables as a comment, but the agency has decided not to use these values. Instead, FDA recalculated the nutrition labeling values for those raw fruits and vegetables (Ref. 12) using the raw data submitted by PMA, with 95 percent prediction intervals. These nutrition labeling values are presented in Appendix C to part 101.

Additional differences between the nutrition labeling values in this final rule and those provided by PMA in their comment can be attributed to the following factors:

(1) Although PMA submitted revised data for bananas, the agency used other data (described in section VII.F. of this document) that were submitted during the comment period to update the nutrition labeling values for this food.

(2) FDA used data from PMA and from other comments to update nutrition labeling values for apples (described in section VII.D. of this document) and avocados (described in section VII.E. of this document).

(3) PMA calculated percent DV's based on the original values rather than the rounded values. FDA recalculated the percent DV's based on rounded values to avoid consumer confusion (as discussed in section VII.H. of this document).

(4) FDA did not use the values for calories from fat provided by PMA because PMA used 9 calories per g of fat rather than 8.37 calories per g of fat, the appropriate factor to be used for fruits and vegetables (Refs. 13 and 14).

(5) For watermelon, oranges, strawberries, tangerines, and leaf lettuce, FDA adjusted the total carbohydrate value to reflect the sum of dietary fiber and sugars. Total carbohydrate is generally determined ''by difference'' (i.e., it is the weight remaining when the weight of the sum of protein, fat, water, and ash are subtracted from the total weight of the food). In theory, the sum of dietary fiber and sugars should be equal to or less than total carbohydrate because both dietary fiber and sugars are forms of carbohydrate. However, for watermelon, oranges, strawberries, tangerines, and leaf lettuce, the weight of total dietary fiber (values derived from PMA data) and sugars (values obtained from USDA (Ref. 15)) exceeded the weight of total carbohydrate. In the July 1994 proposal, FDA explained that the agency adjusted for this discrepancy in several foods by increasing the weight of total carbohydrate to be at least equal to the sum of dietary fiber and sugars (59 FR 36379 at 36383; Ref. 16). FDA explained that because the values for dietary fiber and sugars are determined by laboratory analysis, they are more accurate than the value for total carbohydrate, which is determined by difference. The agency received no comments expressing disapproval with this adjustment. Therefore, the agency made this adjustment in calculating the values for total carbohydrate in watermelon, oranges, strawberries, tangerines, and leaf lettuce in this final rule.

(6) In order to have calories from fat consistent for a given total fat value, FDA derived calories from fat for fruits and vegetables from the rounded, rather than unrounded, total fat label value. The caloric equivalent for fat is 8.37 calories per g for fruits and vegetables. Thus, 0.5 g of fat is equivalent to 4.19 calories, and according to § 101.9(c)(1)(ii), ''* * * amounts less than 5 calories may be expressed as zero.'' As a result, Appendix C consistently lists 0 calories for 0.5 g of total fat.

The following is a summary of changes from the proposed nutrition labeling values for 30 raw fruits and vegetables that FDA derived from the raw data provided by PMA during the comment period, using compliance calculations based on 95 percent prediction intervals:

TABLE 4

Food nutrient	Proposed values		Final rule values	
Apple:				
Potassium	160 mg		170 mg	
Dietary fiber	4 g	16% DV	5 g	20% DV
Vitamin A		0% DV		2% DV
Vitamin C		6% DV		8% DV
Iron		0% DV		2% DV
Watermelon:				
Calories		90		80
Total carbohydrate	26 g		27 g	
Dietary fiber	1 g	4% DV	2 g	8% DV
Vitamin A		10% DV		20% DV
Calcium		0% DV		2% DV
Iron		2% DV		4% DV

TABLE 4—Continued

Orange:				
Calories		80		70
Potassium	250 mg		260 mg	
Dietary fiber	5 g	20% DV	7 g	28% DV
Vitamin A		0% DV		2% DV
Vitamin C		120% DV		130% DV
Calcium		4% DV		6% DV
Iron		0% DV		2% DV
Cantaloupe:				
Sodium	35 mg		25 mg	
Potassium	210 mg	6% DV	280 mg	8% DV
Total carbohydrate	13 g		12 g	
Vitamin A		80% DV		100% DV
Grapefruit:				
Calories		70		60
Potassium	210 mg	6% DV	230 mg	7% DV
Total carbohydrate	18 g	6% DV	16 g	5% DV
Dietary fiber	5 g	20% DV	6 g	24% DV
Vitamin A		10% DV		15% DV
Vitamin C		80% DV		110% DV
Calcium		4% DV		2% DV
Strawberries:				
Calories		70		45
Total Fat	0.5 g	1% DV	0 g	0% DV
Potassium	220 mg	6% DV	270 mg	8% DV
Total carbohydrate	17 g	6% DV	12 g	4% DV
Dietary fiber	3 g	12% DV	4 g	16% DV
Vitamin C		130% DV		160% DV
Iron		0% DV		4% DV
Honeydew melon:				
Sodium	45 mg	2% DV	35 mg	1% DV
Potassium	290 mg	8% DV	310 mg	9% DV
Total carbohydrate	14 g	5% DV	13 g	4% DV
Vitamin A		0% DV		2% DV
Vitamin C		40% DV		45% DV
Avocado:				
Calories		60		55
Calories from fat		50		45
Total fat	6 g	9% DV	5 g	8% DV
Total carbohydrate	2 g		3 g	
Dietary fiber	1 g	4% DV	3 g	12% DV
Lemon:				
Calories		20		15
Sodium	10 mg		5 mg	
Potassium	65 mg	2% DV	90 mg	3% DV
Total carbohydrate	6 g		5 g	
Vitamin C		35% DV		40% DV
Pineapple:				
Calories		70		60
Potassium	100 mg		115 mg	
Total carbohydrate	17 g	6% DV	16 g	5% DV
Protein	0 g		1 g	
Calcium		0% DV		2% DV
Iron		0% DV		2% DV
Tangerine:				
Calories		80		50
Calories from fat		10		0
Total fat	1 g	2% DV	0.5 g	1% DV
Sodium		5 mg		0 mg
Potassium	120 mg	3% DV	180 mg	5% DV
Total carbohydrate	20 g	7% DV	15 g	5% DV
Protein		0 g		1 g
Vitamin C		35% DV		50% DV
Calcium		2% DV		4% DV
Sweet cherries:				
Calories from fat		10		0
Total fat	1 g	2% DV	0.5 g	1% DV
Potassium	260 mg	7% DV	300 mg	9% DV
Total carbohydrate	23 g	8% DV	22 g	7% DV
Protein	1 g		2 g	
Vitamin A		0% DV		2% DV
Vitamin C		8% DV		15% DV
Iron		0% DV		2% DV

TABLE 4—Continued

Kiwifruit:				
Calories from fat		15		10
Total fat	1.5 g		1 g	
Potassium	450 mg	13% DV	480 mg	14% DV
Total carbohydrate	25 g		24 g	
Vitamin C		200% DV		240% DV
Potato:				
Calories		120		100
Sodium	5 mg		0 mg	
Potassium	680 mg	19% DV	720 mg	21% DV
Total carbohydrate	27 g		26 g	
Dietary fiber	2 g	8% DV	3 g	12% DV
Protein	3 g		4 g	
Vitamin C		40% DV		45% DV
Calcium		0% DV		2% DV
Iceberg lettuce:				
Calories		20		15
Potassium	85 mg	2% DV	120 mg	3% DV
Vitamin A		2% DV		4% DV
Vitamin C		4% DV		6% DV
Calcium		0% DV		2% DV
Iron		0% DV		2% DV
Tomato:				
Calories from fat		10		0
Total fat	1 g	2% DV	0.5 g	1% DV
Potassium	300 mg	9% DV	360 mg	10% DV
Vitamin A		15% DV		20% DV
Vitamin C		35% DV		40% DV
Calcium		0% DV		2% DV
Onion:				
Potassium	200 mg	6% DV	240 mg	7% DV
Total carbohydrate		16 g		14 g
Protein		1 g		2 g
Vitamin C		15% DV		20% DV
Iron		0% DV		2% DV
Carrot:				
Calories		40		35
Sodium		50 mg		40 mg
Potassium	220 mg	6% DV	280 mg	8% DV
Total carbohydrate		9 g		8 g
Vitamin A		220% DV		270% DV
Vitamin C		8% DV		10% DV
Celery:				
Calories		25		20
Sodium	125 mg	5% DV	100 mg	4% DV
Potassium	300 mg	9% DV	350 mg	10% DV
Vitamin C		10% DV		15% DV
Broccoli:				
Calories		50		45
Sodium	70 mg	3% DV	55 mg	2% DV
Potassium	480 mg	14% DV	540 mg	15% DV
Total carbohydrate		9 g		8 g
Dietary fiber	4 g	16% DV	5 g	20% DV
Protein	4 g		5 g	
Vitamin A		10% DV		15% DV
Vitamin C		200% DV		220% DV
Iron		4% DV		6% DV
Green cabbage:				
Sodium	25 mg		20 mg	
Potassium	170 mg		190 mg	
Total carbohydrate	6 g		5 g	
Vitamin C		60% DV		70% DV
Iron		0% DV		2% DV
Cucumber:				
Potassium		160 mg		170 mg
Dietary fiber	0 g	0% DV	1 g	4% DV
Vitamin C		8% DV		10% DV
Bell pepper:				
Potassium	240 mg	7% DV	270 mg	8% DV
Vitamin A		6% DV		8% DV
Vitamin C		150% DV		190% DV
Calcium		0% DV		2% DV
Iron		0% DV		2% DV

TABLE 4—Continued

Cauliflower:				
Sodium	40 mg	2% DV	30 mg	1% DV
Potassium	250 mg	7% DV	270 mg	8% DV
Leaf lettuce:				
Sodium	40 mg	2% DV	30 mg	1% DV
Potassium	210 mg	6% DV	230 mg	7% DV
Total carbohydrate	3 g		4 g	
Dietary fiber	1 g	4% DV	2 g	8% DV
Vitamin A		30% DV		40% DV
Vitamin C		4% DV		6% DV
Calcium		2% DV		4% DV
Mushrooms:				
Potassium	280 mg	8% DV	300 mg	9% DV
Protein	2 g		3 g	
Vitamin C		0% DV		2% DV
Iron		0% DV		2% DV
Green (snap) beans:				
Potassium	190 mg	5% DV	200 mg	6% DV
Vitamin A		2% DV		4% DV
Vitamin C		8% DV		10% DV
Iron		0% DV		2% DV
Radishes:				
Calories		20		15
Sodium	30 mg		25 mg	
Potassium	180 mg	5% DV	230 mg	7% DV
Total carbohydrate	4 g		3 g	
Protein	0 g		1 g	
Calcium		0% DV		2% DV
Summer squash:				
Potassium	240 mg		260 mg	
Dietary fiber	1 g	4% DV	2 g	8% DV
Vitamin A		4% DV		6% DV
Vitamin C		25% DV		30% DV
Asparagus:				
Calories		20		25
Potassium	210 mg	6% DV	230 mg	7% DV
Total carbohydrate	5 g	2% DV	4 g	1% DV
Vitamin C		10% DV		15% DV
Calcium		0% DV		2% DV
Iron		0% DV		2% DV

I. Fat and Calorie Values for Catfish

23. For the July 1994 proposal, FDA used data on catfish obtained from the USDA National Nutrient Databank which included both farmed and wild catfish. Three comments expressed concern that the proposed values for fat (9 g) and calories (170) were too high and did not accurately reflect the farmed catfish available in retail markets in the United States, which constitute the vast majority of the catfish consumed in the United States. The comments stated that the fat content of catfish is affected by species, size of fish, diet of fish, season of year, stocking rate of pond, pond size, and sex of fish. The comments also provided data from Nettleton et al. (Ref. 17) on farmed catfish composition and requested that FDA consider this information in developing revised labeling values for this fish.

Based on the comments, FDA was concerned that the proposed labeling values for catfish did not accurately reflect the farmed catfish available in retail markets. FDA calculated new nutrition labeling values from data for farm-raised catfish available from Nettleton et al. (Ref. 17) and with 95 percent prediction intervals. Although the comments had only pointed to problems with the values for fat and calories, FDA applied compliance calculations to the other nutrients for which information was available in reference 17 to be sure that the full nutritional profile for this fish is accurate and consistent (Ref. 18). The resulting changes in labeling values are summarized below:

TABLE 5

Catfish nutrient	Proposed values		Final rule values	
Calories	170		140	
Saturated fat	1.5 g	8% DV	2 g	10% DV
Cholesterol	55 mg	18% DV	50 mg	17% DV
Potassium	350 mg	10% DV	230 mg	7% DV
Protein	21 g		17 g	

Because FDA confirmed that the consumption of catfish in the United States is predominantly farmed catfish (Ref. 19), the agency concluded that the data from Nettleton et al. provided more accurate label values for catfish and is thus adopting these values in this document. The values for total fat did not change.

J. Fat and Calorie Values for Orange Roughy

24. Because of the lack of acceptable information concerning the total fat content, inclusive of wax esters, of orange roughy, in the July 1994 proposal, FDA used a fat value for this fish that did not include wax esters. FDA requested information on the total fat content of this fish and stated that it would provide a value for total fat in the next revision of the nutrition labeling values if such a value were available. This action would make the listing of total fat in orange roughy consistent with the definition of total fat in § 101.9(c)(2) (i.e., the amount of total lipid fatty acids present expressed as triglycerides).

No comments were received that provided information on the total fat content of orange roughy. One comment questioned why FDA wanted a value for total fat in orange roughy that includes the presence of wax esters because wax esters are not a metabolizable source of energy in humans and have no dietary significance. The comment stated that nutrition labeling should provide consumers with information with which to make dietary choices, and that it is misleading to add nonmetabolizable fat to the value for fat in orange roughy. The comment stated that the elevated levels of fat that would result from the addition of wax esters would falsely suggest to consumers that orange roughy was contributing a substantial amount of metabolizable fat to daily intake. The comment said that providing such levels in the nutrition label would be a disservice to consumers who are seeking foods, such as orange roughy, that contribute a minimum amount of fat to their diet. The comment recommended that FDA retain the fat value for orange roughy presented in the July 1994 proposal.

Because FDA did not receive any data on the total fat content of orange roughy, the agency will continue to use values for fat that do not include the wax esters despite the fact that the labeling of total fat for orange roughy remains an exception to the definition of total fat in § 101.9(c)(2). FDA continues to request information that would provide a basis for revising the declaration of total fat to reflect the presence of wax esters in orange roughy but that would not be misleading to the consumer.

The agency understands the point made in the comment. It intends to address the issue of declaration of available fat in a separate rulemaking.

K. Saturated Fat Value for Atlantic/Pacific Mackerel

25. One comment stated that FDA's proposed value for saturated fat for Atlantic/Pacific mackerel is 6 g, while USDA's mean value for 84 g of cooked Atlantic mackerel is 3.5 g, and asked that this discrepancy be examined.

The proposed value for saturated fat in Atlantic and Pacific mackerel was based upon data obtained from the USDA National Nutrient Databank. However, in response to the comment, FDA reviewed the data for saturated fat. After consulting with USDA, FDA discovered that the saturated fat data that FDA received were not in the units indicated in the data file. The saturated fat data were actually presented as percentages of the total fat content, rather than as g amounts. After converting the saturated fat values to g, FDA applied compliance calculations to the data (Ref. 20). As a result, the agency found that the labeling value for saturated fat for Atlantic/Pacific mackerel is 1.5 g with 8 percent DV. Appendix D has been modified accordingly.

L. Sodium and Cholesterol in Ocean Perch

26. One comment disagreed with FDA's proposed values for sodium (200 mg) and cholesterol (75 mg) for ocean perch. It stated that USDA's mean sodium value for raw ocean perch from the National Nutrient Databank is 78.80 mg, with a range of 59 to 109.02 mg, and that using the 75 percent retention factor would result in a mean value of 88.26 and a range of 66.08 to 122.10 mg. This comment suggested that FDA set the sodium value for ocean perch at 90 mg, the rounded mean value. The comment said that USDA's mean value for cholesterol in ocean perch is 47.05 mg, with a range of 32.48 to 60.93 mg, and suggested that FDA use a rounded value of 45 mg for this nutrient.

FDA applied compliance calculations based upon 95 percent prediction intervals to data obtained from the USDA National Nutrient Databank to develop the sodium and cholesterol values of ocean perch that it included in Appendix D in the July 1994 proposal. In response to this comment, FDA compared the statistical parameters (mean, standard error, and sample size) in Handbook 8 to those derived from data provided by USDA from the National Nutrient Databank.

After discovering these parameters did not match, FDA asked USDA to review the data that it had sent to FDA. In its review, USDA discovered that the data file sent to FDA contained entries for species of fish other than ocean perch. Because this data file was incorrectly labeled, FDA used inappropriate nutrient data to derive the nutrition labeling values for ocean perch.

After consulting with USDA, FDA identified and extracted the nutrient data for ocean perch from the data file and rederived nutrition labeling values for this document (Ref. 21). In table 6 of this document is a summary of changes to the nutrition labeling values for ocean perch that FDA derived from these data, with compliance calculations based on 95 percent prediction intervals.

TABLE 6

Ocean perch nutrient	Proposed values		Final rule values	
Calories from fat		25		20
Total fat	3.5 g	5% DV	2.0 g	3% DV
Cholesterol	75 mg	25% DV	50 mg	17% DV
Sodium	200 mg	8% DV	95 mg	4% DV
Potassium	330 mg	9% DV	290 mg	8% DV
Protein	20 g		21 g	
Vitamin C		4% DV		0% DV
Calcium		4% DV		10% DV
Iron		2% DV		6% DV

M. Calories From Fat for Lobster

27. In the July 1994 proposal, FDA made an error in the determination of calories from fat for lobster. Lobster contains 0.5 g total fat, and the calories from fat should have been zero ((9.02 calories per g)(0.5 g fat)) = 4.51 calories, which rounds to zero according to § 101.9(c)(1)(ii)), instead of 5 calories as indicated in the July 1994 proposal. FDA has corrected this error in Appendix D of this document.

VIII. Nutrient Content Claims and Health Claims for Raw Fruits, Vegetables, and Fish

28. One comment expressed concern about nutrient content and health claims for raw fruits, vegetables, and fish and asked that FDA clarify two points. The comment asked whether labeling information on a chart in a retail store for a raw fruit or vegetable in the voluntary program would suffice for a packaged commodity that has a claim on the package. The comment also asked whether a nutrient content claim or health claim for a raw fruit or vegetable not among the 20 most frequently consumed follows the same rules applicable to produce within the voluntary program (i.e., if point-of-purchase nutrition labeling suffices for packaged commodities).

FDA addressed the question of the need for nutrition labeling for packaged raw fruits and vegetables that bear a claim in a publication on frequently asked questions that it issued in August 1993 (Ref. 22). At that time it stated: ''Claims subject the food to nutrition labeling in accordance with § 101.45, which means that nutrition information will have to be available at point of purchase although not necessarily on the package.''

FDA encourages processors and packers of raw fruits, vegetables, and fish who put nutrient content or health claims on their packaging to also include nutrition label information because it is not possible to predict whether the products will be sold in stores where retailers make the nutrition information available to consumers. Even if processors and packers are able to control the flow of their products into specific retail stores, they will have no control over retailers' decisions to display (or to continue to display) nutrition labeling information for these products. Depending upon retailers to provide nutrition labeling values to justify nutrient content or health claims would be a gamble for the processors and packers, who assume liability for their products with claims. FDA encourages processors and packers who provide nutrient content or health claims on the packaging of these foods to also include the nutrition information.

For raw fruits, vegetables, and fish that are not among the 20 most frequently consumed, it is even less likely that nutrition information for that particular commodity will be available in retail stores. Therefore, FDA encourages processors and packers who provide nutrient content or health claims on the packaging of these foods to also include the nutrition information.

IX. FDA Review of Submitted Data Bases

FDA encourages industry to submit data for raw produce and raw fish to the agency for consideration for the next revision of nutrition labeling information for raw commodities. In addition, FDA continues to request food manufacturers and trade associations representing products falling under mandatory nutrition labeling regulations to submit proposed studies to collect nutrient data for nutrition labeling data base compilation. In the July 1994 proposal for the voluntary program, the agency acknowledged that problems existed in the process for data base review and sought feedback on how to improve upon that process (59 FR 36379 at 36387). The agency specifically solicited comments regarding evaluation criteria related to: (1) The nature and rigor of the evaluation process and (2) the policy of interim approvals, as well as followup procedures and time frames to ensure long-term interest in continued data collection.

In response, FDA received comments regarding all aspects of the data base review process. Most comments expressed general support for a modification of the data base review process. In addition, some comments commended FDA for attempting to provide industry with a nutrient data base policy that would reduce the costs of labeling their products.

29. Several comments cited the enormous effort and expense needed to abide by the requirements in the ''FDA Nutrition Labeling Manual: A Guide for Developing and Using Databases'' (Ref. 1). One comment stated that if the manual's requirements serve as the gold standard, and companies will never be able to meet that standard, then the standard must be changed into one that is more cost-effective, realistic, and workable. Another comment recommended that FDA scale back its evaluation criteria. It stated that the current manual's evaluation criteria require enormous effort and expense for data base development, primarily because the number of samples required for a single raw commodity may be in the thousands. The number of samples selected for analysis directly relates to the total cost of the nutrition labeling of products.

Several comments presented estimates of the cost of analyzing commodities based on the requirements in the manual. They argued that these high costs were so burdensome to small businesses that the manufacturers would opt not to nutrition label their products and thus defeat the purpose of the 1990 amendments. Comments also argued that if manufacturers could not afford nutrition labeling, they would have a strong marketing disadvantage in selling their products. Another comment suggested that if historical information indicates that the level of a particular mandatory nutrient is zero, and it is generally accepted as such, then no individual analyses should be necessary (e.g., fiber in milk). Still another comment stated that sample sizes need not be as large as the manual suggests to be statistically valid, and that smaller sample sizes would reduce the total costs of analyses. The comment stated that FDA did not balance the cost of a nutrient analysis with the marginal increase in accuracy that may come from doing more analyses.

FDA continues to acknowledge the potential usefulness of data bases to reduce costs associated with nutrition labeling. A data base compiled and submitted by a trade association representing a large number of members would represent less cost than would be required if each member company were to analyze its own products and submit its own individual data base. The agency wishes to emphasize that submission of a data base to FDA for the purpose of nutrition labeling is voluntary. Each manufacturer, however, is responsible for ensuring the validity of the nutrient values that appear on its label.

The manual provides generic guidelines for industry to use in preparing and developing data bases. Industry may choose to follow these guidelines or may use alternative procedures even though they are not provided for in the manual. If industry wishes to submit a data base to FDA, but chooses to use alternative procedures, the organization preparing the data base may wish to discuss those procedures with the agency to prevent expenditure of money and effort on activities that the agency may later find unacceptable. The agency recognizes that everything recommended in the manual cannot be achieved at the present time for most

commodities, even by some of the larger trade associations. FDA does expect, however, that all planned studies will continue to be based upon consideration of the statistical random sampling, methodology, design, and treatment of data that are described in the manual. The agency has stated that analysis is not needed for nutrients where reliable data bases or scientific knowledge establish that a nutrient is not present in the product (58 FR 2109, January 6, 1993).

A great deal of information already exists for some foods regarding factors that influence nutrient variability (e.g., variety, season, species). As a result, it may be possible to reduce the number of samples to be assayed on the basis of data and knowledge of which nutrients vary with changing parameters. In addition, information describing the effect of various factors on nutrient content of foods may be obtained through the completion of experimental pilot studies. These data in turn may provide information on nutrient variability that will also provide a basis for reducing the number of samples necessary for a valid data base.

30. Questions continue to arise over the issue of whether data base submitters may use USDA Handbook 8 data, data obtained through literature searches, or historical data with limited quality assurance from manufacturers. Several comments were in favor of FDA allowing data base developers to use USDA Handbook 8 values in their data base submissions. Other comments suggested that the use of historical data would add depth and broad coverage and would, therefore, provide a positive aspect to the data bases. They argued that such allowances would lessen the number of nutrient analyses needed to arrive at an appropriate label value while reducing the total cost of conducting nutrient analyses.

FDA continues to acknowledge the value of data available from USDA Handbook 8 and from the scientific literature, but as stated in response to comment 2, mean composition values derived from those sources are generally not suitable for labeling purposes. The agency's policy is to recommend that products be labeled according to nutrient composition based upon laboratory analysis.

In response to the comments, FDA reassessed how best to consider historical data submitted for review. The agency has decided to review and to allow the use of historical data submitted for labeling purposes, as long as those data are accompanied by a planned study to collect additional data for updating the label values. FDA will evaluate the historical data for completeness and reasonableness. If analytical methods have changed substantially from those used in gathering the data, or if it is obvious that the sampling design used to develop the data is incorrect, the agency may choose not to accept the historical data. Otherwise, if FDA determines that the historical data are complete and reasonable, the agency will allow use of the data, as long as the manufacturer plans to collect additional data to update those values.

31. One comment suggested that data should be presented on a per 100-g basis as well as the reference amount.

FDA agrees with the suggestion and recommends that industry submitting data bases to FDA provide those data on both the 100 g and the reference amount bases. The agency continues to encourage industry to submit data not only to FDA but also to USDA for use in compilations such as Handbook 8. Data submitted for inclusion in Handbook 8 should be provided on a mean 100-g basis and not as label values that have been derived by FDA compliance algorithms.

32. One comment urged FDA to revise the analytical methods section of the manual to make the text compatible with nutrition labeling regulations in § 101.9(g)(2). The comment noted that this regulation allows for non-AOAC analytical methods if AOAC methods are neither available nor appropriate. The comment further suggested that there would be improvement in the accuracy of the data as a result of using diverse analytical methods. Another comment suggested that FDA require companies or trade associations to submit a table of proposed analytical methods with accompanying information concerning specific validation of the method used by the on-site or commercial lab for the matrix of interest.

The manual's recommendations are consistent with § 101.9(g)(2), wherein the agency advises companies or associations to use non-AOAC methods where no AOAC method is available or appropriate. The manual recommends the use of non-AOAC methods only in the absence of AOAC-validated methods. The agency agrees that the process of refining methods of analysis will reduce variability in nutrient levels but does not agree that use of diverse analytical methods will reduce variability. FDA respects the worldwide consensus surrounding the applicability, specificity, sensitivity, accuracy, precision, and detectability of methods validated by AOAC International and continues to recommend the use of those methods in obtaining measures of nutrient content.

The agency agrees with the comment that suggested that data base developers should submit a table delineating proposed analytical methods for each nutrient, with accompanying information concerning specific validation of the method used by the onsite or commercial lab for the matrix of interest. In fact, in response to FDA's requests for such data, several submissions to FDA have already included a table of the analytical methods used and accompanying documentation validating the use of the method.

33. One comment suggested that manufacturers should be able to send data in an electronic format. The comment noted that if software were developed in the form of a template, then FDA would greatly improve its review process.

FDA strongly agrees with this comment and will consider use of electronic methods for data collection as it continues to assess and improve its data base submission and review process.

34. FDA received the greatest number of comments regarding interim approvals for nutrient data bases. This issue relates specifically to data bases for products having mandatory labeling. The comments addressed the following three primary issues: (1) Whether submitters should receive interim approvals; (2) if so, at what point in the process; and (3) for what time period. All comments on the subject expressed support for the issuance of interim approvals. Some comments suggested that an interim approval should be granted if the submitter has made a good faith effort to abide by the guidelines, as discussed in the nutrition labeling manual. Several comments proposed various criteria for granting interim approvals. One comment suggested a grading scale for data bases that would also take into account the length of time for an interim approval. Another comment proposed that FDA create a checklist to serve as the basis for interim approvals and thus expedite the review process. Suggested time periods for interim approval ranged from 1 to 10 years.

FDA has carefully examined and fully considered the thoughtful comments submitted in response to this issue. Based on its review of the comments, FDA has decided to modify its approach to data bases that are submitted to the agency for review. The new policy directly addresses concerns relevant to interim review and approval of data bases. FDA implemented a new

discretionary enforcement strategy for those manufacturers who submit interim data to the agency for approval. Interim data in the form of nutrition label values should be accompanied by raw data. If there are data that the manufacturer has determined to be unsuitable, they should also be submitted with explanation. FDA will continue to evaluate interim data (i.e., historical or newly collected) submitted for review if those data are accompanied by a plan to collect additional data for the purpose of updating label values. However, in order to facilitate the use of the developing nutrient data base and to limit the uncertainty that could result from an unforeseen delay in agency review of the data base, firms are free upon submission to begin use of the nutrient label values and to initiate the planned studies to collect and update nutrient values. During this interim period, FDA does not anticipate that it will take action against a product bearing label values included in a data base submitted to the agency for review. If any product is identified through FDA compliance activities as including label values that are out of compliance, contingent on the company's willingness to come into compliance, the agency intends to work with both the manufacturer and the data base developer to understand and correct the problem label values.

When FDA receives the interim data and planned studies referred to above, it will first evaluate the label values relative to the raw data. FDA will recalculate label values based solely on the raw data that have been submitted. The agency will derive label values using compliance calculations based upon 95 percent prediction intervals and, when appropriate, will use weighting procedures, as recommended in the nutrition labeling manual. FDA will evaluate the data for completeness and reasonableness, e.g., it will consider whether or not there are enough samples, and whether all nutrients are included. FDA requests that supporting documentation, such as analytical methodology and a sampling plan, accompany interim data. The agency acknowledges, however, that a large amount of the interim data available from manufacturers and trade associations are based upon historical data, where the analytical methodology and sampling plan are not available. Hence, FDA will not refuse to accept data solely on the basis that it is not accompanied by comprehensive documentation, so long as the reason such documentation is not provided is fully explained and is acceptable to the agency.

FDA will review the accompanying planned studies to collect additional data, concentrating on analytical methodology and on the reasonableness of the factors that could account for nutrient variability (e.g., style, region), rather than on the rigor of sampling design or statistical treatment of the data. FDA cautions, however, that data base submitters should follow FDA's recommendations regarding sampling strategies, weighting procedures, and statistical treatment of data that are described in the nutrition labeling manual.

FDA will respond in writing after review of the data and the planned studies. FDA will address the nutrient label values that were submitted and will indicate whether it has any objection to continuing the planned studies or to continued use of the label values for 2 years from the date of the agency response.

After those 2 years, manufacturers will be expected to provide the agency with a summary update that reassesses the interim label values based upon completion of the planned laboratory analyses. The agency will evaluate how the study findings bear on the interim label values and will consider whether it would have any objection to continued use of the updated interim values for up to an additional 5 years. At the same time, however, the agency may suggest modifications to the ongoing plan of study. If after review of data and planned studies, FDA determines that the label values or studies are not appropriate, as indicated above, the agency will notify the manufacturer of that decision.

Please note that a primary focus of FDA's compliance review of product labels is on nutrient content claims (e.g., ''high fiber'', ''low fat'') that are used. FDA will continue to closely monitor products making such claims and expects that the manufacturer, packer, or distributor will have sufficient data to support the validity of such claims.

X. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Analysis of Impacts

FDA has examined the economic implications of the final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. sections 601 and 612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the economic impact of a rule on small entities. FDA finds that this final rule is not a significant rule as defined by Executive Order 12866, and finds under the Regulatory Flexibility Act, that the final rule will not have a significant impact on a substantial number of small entities.

A. Costs of the Regulation

The costs of a labeling regulation are the incremental administrative, analytical, redesign, and label inventory disposal costs associated with the regulatory action. Because FDA is requiring that retailers use the nutrition values provided by FDA, there are not expected to be any analytical costs or other costs of obtaining the information. FDA has information that the typical sign, which is the most frequently used form of labeling of raw products, has an expected useful life of 6 months. Therefore, there will be no label inventory disposal costs because existing signs normally would have been replaced during the compliance period. However, FDA does not believe that signs normally would have been redesigned during that period. Therefore, the costs of the regulation are administrative and redesign costs.

In the July 1994 proposal, FDA estimated that the average cost of redesigning signs to label raw fruits, vegetables, and fish is $100 per year per store. There are approximately 31,000 chain stores and 68,000 independent grocery stores that fall under the compliance guidelines. Therefore, if those stores currently complying with the guidelines continue to do so, annual costs of compliance will be approximately $7.5 million. Because these regulations require that the nutrition values for raw fruits, vegetables, and fish be readdressed and possibly revised every 4 years, FDA anticipates that stores may need to incur these redesign costs as frequently as once every 4 years.

B. Costs Incurred by the Federal Government

Executive Order 12866 requires agencies also to estimate costs to Government. The 1990 amendments require that FDA determine every 2 years whether there is substantial compliance with the labeling guidelines. If substantial compliance does not exist, FDA must make compliance mandatory. FDA estimates that the costs incurred by Government are approximately $150,000 every 2 years to establish a contract to survey food retailers, oversee the contract, and publish a report on the status of voluntary compliance. Total costs incurred by Government, discounted to infinity at 7 percent are $1 million.

If compliance with the guidelines becomes mandatory, costs incurred by the Government would not significantly change because the costs associated with determining whether there is substantial compliance would be replaced by enforcement costs. Also, if FDA were to make compliance mandatory, costs incurred by retailers would increase to $9.9 million in the first year and recurring every 4 years as values are modified, or $42 million discounted to infinity at 7 percent.

Total costs of this regulation are $7.5 million in the first year, or $32 million discounted to infinity at 7 percent.

C. Benefits of this Regulation

In the Regulatory Impact Analysis of the Proposed Rules to Amend the Food Labeling Regulations (56 FR 60856, November 27, 1991), FDA stated that the benefit of labeling raw fruits, vegetables, and fish is a change in purchase behavior that would happen if the information presented was new to some consumers and was important to their consumption decision. At present, however, the majority of consumers have been exposed to the labeling on these products. Based on results of the 1992 survey, 76 percent of retailers (representing 77 percent of annual sales) of raw fruits and vegetables were in compliance with current nutrition labeling guidelines. In addition, 73 percent of retailers (representing 74 percent of annual sales) of raw fish were in compliance. Results from the 1994 survey establish that compliance is 75 percent for raw produce (representing 81.4 percent of annual sales) and 75 percent for raw fish (representing 77 percent of annual sales).

The actions in this document are designed to produce consistency between voluntary nutrition labeling of raw fruits, vegetables, and fish and the nutrition labeling of processed, packaged foods. Similarly, FDA is specifying that compliance requires that retailers use the nutrition values provided by FDA for the 20 most frequently consumed raw fruits, vegetables, and fish, thus providing consistency among retailers. FDA has concluded that the flexibility of allowing manufacturers to use other values does not outweigh the consumer confusion caused by different values for the same food in different stores. However, FDA is allowing commodity groups to develop a nutrition label for a specific genus or species provided that they have the data to support the labeling values presented to the consumer, and they use a more specific name for the product. Therefore, the agency intends to avoid a tradeoff between consistency and accuracy.

35. Comments supporting the proposed rules stated that making the guidelines for the labeling of raw fruits, vegetables, and fish consistent with the labeling of processed, packaged foods will reduce opportunities for consumer confusion caused by the current inconsistencies between retailers who use different nutrient values for the same commodities. The comments stated that the rules will permit meaningful comparisons between raw products and other foods. However, FDA also received one comment that stated that the reduced confusion that would result will not benefit consumers. The comment stated that these costs would be borne by consumers for little or no benefit. Using potatoes as an example, the comment stated that the new rounding rules provide a disservice for consumers looking for reasonably priced, readily available, well-liked foods high in potassium. The comment argued that the new rules would prevent nutrient content claims on potatoes, thus making it necessary for consumers to scrutinize the label for information about the potassium content of potatoes.

The nutrition labeling values for potatoes presented in Appendix C to part 101 are based on PMA data. The revised values for potassium for potatoes would not preclude a ''high potassium'' claim, as stated by the comment. Therefore, FDA notes that the comment's concerns that the new rounding rules would reduce benefits to consumers by prohibiting nutrient content claims is unwarranted.

D. Regulatory Flexibility

36. One comment stated that FDA should have prepared an initial regulatory flexibility analysis for the July 1994 proposal and asks that FDA do so prior to issuing a final rule. The comment stated that the proposed regulations represent a significant restructuring of food labeling of new commodities, and that businesses complying with the regulations confront a number of economic hurdles. Finally, the comment alleged that the failure of FDA to consider both the effects of the short phase in period and less burdensome alternatives are inconsistent with the requirements of the Regulatory Flexibility Act.

The nutrition labeling of raw fruits, vegetables, and fish is a voluntary program. Retailers may decide whether they wish or do not wish to participate in the program. However, the comment was concerned that, in order for the program to remain voluntary, a number of small retailers must choose to participate in the program.

For the purposes of this analysis, FDA defines a grocery store as small if its annual sales are under $20 million. This definition is consistent with the Small Business Administration's size standards (61 FR 3280, January 31, 1996). According to Dun and Bradstreet, as of June 1996, there are approximately 196,000 grocery stores in the United States. Sales data were available for 183,000 stores. Of these, 99 percent (or 180,500 stores) meet the definition of a small grocery store. Congress exempted stores with annual sales less than $500,000, or 109,000 stores with sales data available. There are 71,000 grocery stores for which data are available with annual sales between $500,000 and $20 million.

For purposes of determining substantial compliance, FDA samples 2,000 grocery stores weighted by size (above and below $2 million annual sales). The sample is also distributed by sales, region/state, and chain versus independent. Chain stores with less than $2 million annual sales are not included in the sample because the majority are convenience stores. FDA also does not include either fish markets or fruit and vegetable markets. Substantial compliance was achieved in the 1992 and 1994 surveys without compliance by the smallest stores as a group (sales under $2 million) because these stores constitute a small percent of total sales. FDA notes, however, that in order for substantial compliance to be achieved, many small grocery stores with annual sales between $2 million and $20 million will have to continue to comply with these regulations. Therefore, FDA finds that this rule will impact on a substantial number of small entities. However, FDA has determined that the cost of compliance per store is $100. This amount is sufficiently small that it will not cause either a significant increase in costs or a significant

decrease in revenues. Therefore, FDA concludes that this rule will not result in a significant impact on a substantial number of small entities.

As explained elsewhere in this document, FDA has been convinced by the comment that it is not feasible for all the materials containing nutrition labeling information on raw fruits, vegetables, and fish to be changed before the next compliance survey of the industry. Thus, for the purpose of determining substantial compliance, FDA will consider a retail store to be in compliance if the nutrition labeling information complies with either current (1996) values or values previously published in the Federal Register (56 FR 60856 at 60880).

Therefore, the short compliance period should not result in any undue burden.

37. One comment objected to the cost estimates presented in the analysis of the July 1994 proposal. The comment stated that, although the voluntary program only applies to the 20 most frequently consumed raw fruits, vegetables, and fish for which FDA is providing data, the producers of the other 150+ retail produce items offered would be required to bear the cost of analyzing their products if they attempted to provide the same type of information as required of the top 20 fruits and top 20 vegetables. The comment further stated that producers of commodities not sold in large quantities, most of which are small entities, cannot afford the cost associated with an analysis that would be acceptable under FDA's data base review process. These producers would be at a marketing disadvantage as compared with producers of the top 20 fruits and vegetables.

FDA agrees that some producers of commodities not listed in the top 20 most frequently consumed fruits, vegetables, or fish may be placed at a competitive disadvantage as retailers currently shift the costs of determining the nutrient values of products to producers. However, FDA is unaware of the extent to which this is a problem for small businesses. Furthermore, FDA has no data to indicate the importance of a nutrition profile in marketing these products. However, the more important these profiles are, the more likely that increased sales could cover the costs of analysis. FDA also notes that acceptable nutrient data is available for many of these products through USDA's Handbook 8 and other databases.

XII. The Paperwork Reduction Act of 1995

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

XIII. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

1. Food and Drug Administration, Center for Food Safety and Applied Nutrition, ''FDA Nutrition Labeling Manual: A Guide for Developing and Using Data bases,'' Washington, DC, 1993 ed.

2. Food and Drug Administration, Center for Food Safety and Applied Nutrition, ''Report on Voluntary Compliance of Food Retailers in Providing Nutrition Labeling Information for Raw Fruits and Vegetables, and for Raw Fish,'' Washington, DC, May 8, 1993.

3. National Retail Tracking Index, ''Food and Drug Administration, Nutrition Labeling Information Study, Raw Fruits/Vegetables and Raw Fish,'' Englewood Cliffs, NJ, March 1, 1995.

4. FDA 1995 Health and Diet Survey, Food Label Use and Nutrition Education Module, Food and Drug Administration, Center for Food Safety and Applied Nutrition, Washington, DC, November 1995.

5. Food and Drug Administration, Center for Food Safety and Applied Nutrition, ''Documentation for the 1996 Nutrition Labeling Values for the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish,'' Washington, DC, June 1996.

6. O'Neill, K. R., ''Results of Raw Apple Nutritional Analyses from PMA and IAI Submissions for Appendix C,'' CFSAN, FDA, Washington, DC, September 5, 1995.

7. O'Neill, K. R., ''Results of Raw Avocado Nutritional Analyses for PMA and CAC Submissions for Appendix C,'' CFSAN, FDA, Washington, DC, September 6, 1995.

8. O'Neill, K. R., ''Results of Raw Bananas Nutritional Analyses for International Banana Association, Inc., Submission for Appendix C,'' CFSAN, FDA, Washington, DC, August 15, 1995.

9. Hegenauer, J., and E. Pivonka, ''Tangerine Nutrition Study,'' Produce Marketing Association Nutrition Labeling Program, Newark, DE, August 3, 1992.

10. Simpson, K. L., and S. C. S. Tsou, ''Vitamin A and Provitamin Composition of Foods,'' edited by Bauernfeind, J. C., Vitamin A Deficiency and Its Control, pp. 461–478, Academic Press, Inc., 1986.

11. Bauernfeind, J. C., ''Carotenoid Vitamin A Precursors and Analogs in Foods and Feeds,'' Journal of Agricultural Food Chemistry, 20(3):456–473, 1972.

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13. Gebhardt, S. E., R. Cutrufelli, and R. H. Matthews, ''Composition of Foods, Fruits and Fruit Juices, Raw, Processed, Prepared,'' Agriculture Handbook No. 8–9, USDA, Washington, DC, p. 8, 120, August 1982.

14. Haytowitz, D. B., R. H. Matthews, ''Composition of Foods, Vegetables and Vegetable Products, Raw, Processed, Prepared,'' Agriculture Handbook No. 8–11, USDA, p. 10, Washington, DC, 1984.

15. Matthews, R. H., P. R. Pehrsson, and M. Farhat-Sabet, ''Sugar Content of Selected Foods: Individual and Total Sugars.'' USDA Home Economics Research Report No. 48, September 1987.

16. Pennington, J. A. T., ''FDA Voluntary Nutrition Labeling Program for Raw Fruits, Vegetables, and Fish: Documentation for the Proposed Nutrition Labeling Values,'' CFSAN, FDA, Washington, DC, October 1993.

17. Nettleton, J. A., W. H. Allen, L. V. Klatt, W. M. N. Ratnayake, and R. G. Ackman, ''Nutrients and Chemical Residues in One- to Two-Pound Mississippi Farm-raised Channel Catfish (Ictalurus punctatus),'' *Journal of Food Science*, 55(4):954–958, 1990.

18. O'Neill, K. R., ''Results of Cooked Catfish Nutritional Analyses for Appendix D to Part 101: Nutritional Facts for Cooked Fish,'' CFSAN, FDA, Washington, DC, August 17, 1995.

19. Allen, B., Memo to FDA, The Catfish Institute, Belzoni, MS, February, 9, 1996.

20. O'Neill, K. R., ''Results of Atlantic/Pacific Mackerel Nutritional Analyses for Appendix D to Part 101: Nutritional Facts for Cooked Fish (Revised),'' CFSAN, FDA, Washington, DC, March 15, 1996.

21. O'Neill, K. R., ''Results of Ocean Perch Nutritional Analyses for Appendix D to Part 101: Nutritional Facts for Cooked Fish,'' CFSAN, FDA, Washington, DC, March 7, 1996.

22. Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Food Labeling, ''Food Labeling Questions and Answers,'' p. 21, Washington, DC, August 1993.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.43 is amended by revising paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 101.43 Substantial compliance of food retailers with the guidelines for the voluntary nutrition labeling of raw fruits, vegetables, and fish.

(a) * * *

(1) Be presented in the store or other type of establishment in a manner that is consistent with § 101.45(a)(1);

(2) Be presented in content and format that are consistent with § 101.45(a)(2), (a)(3), and (a)(4); and

(3) Include data that have been provided by FDA in Appendices C and D to part 101 of this chapter, except that the information on potassium is voluntary.

* * * * *

3. Section 101.44 is amended by revising paragraph (c) to read as follows:

§ 101.44 Identification of the 20 most frequently consumed raw fruits, vegetables, and fish in the United States.

* * * * *

(c) The 20 most frequently consumed raw fish are: Shrimp, cod, pollock, catfish, scallops, salmon (Atlantic/Coho, chum/pink, sockeye), flounder/sole, oysters, orange roughy, Atlantic/Pacific mackerel, ocean perch, rockfish, whiting, clam, haddock, blue crab, rainbow trout, halibut, lobster, and swordfish.

4. Section 101.45 is revised to read as follows:

§ 101.45 Guidelines for the voluntary nutrition labeling of raw fruits, vegetables, and fish.

(a) Nutrition labeling for raw fruits, vegetables, and fish listed in § 101.44 should be presented to the public in the following manner:

(1) Nutrition labeling information should be displayed at the point of purchase by an appropriate means such as by a label affixed to the food or through labeling including shelf labels, signs, posters, brochures, notebooks, or leaflets that are readily available and in close proximity to the foods. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media.

(2) Serving sizes should be determined, and nutrients declared, in accordance with § 101.9 (b) and (c), respectively, except that the nutrition labeling data should be based on the raw edible portion for fruits and vegetables and on the cooked edible portion for fish. The methods used to cook fish should be those that do not add fat, breading, or seasoning (e.g., salt or spices).

(3) When nutrition labeling information is provided for more than one raw fruit, vegetable, or fish on signs, posters, brochures, notebooks, or leaflets, it may be presented in charts with horizontal or vertical columns or as a compilation of individual nutrition labels. Nutrition labeling that is presented in a linear display (see § 101.9(j)(13)(ii)(A)(*2*)) will not be considered to be in compliance. The heading ''Nutrition Facts'' must be in a type size larger than all other print in the nutrition label. The required information (i.e., headings, serving sizes, list of nutrients, quantitative amounts by weight (except for vitamins and minerals), and percent of Daily Values (DV's) (except for sugars and protein) must be clearly presented and of sufficient type size and color contrast to be plainly legible, with numeric values for percent of DV highlighted in contrast to the quantitative amounts by weight and hairlines between all nutrients.

(i) Declaration of the number of servings per container need not be included in the nutrition labeling of raw fruits, vegetables, and fish.

(ii) Except for the statement ''Percent Daily Values are based on a 2,000 calorie diet,'' the footnote required in § 101.9(d)(9) is not required. However, when labeling is provided in brochures, notebooks, leaflets, or similar types of materials, retailers are encouraged to include the footnote.

(iii) When the nutrition labeling information for more than one raw fruit or vegetable is provided on signs, posters, brochures, notebooks, or leaflets, the listings for saturated fat and cholesterol may be omitted from the charts or individual nutrition labels so long as the fact that most fruits and vegetables provide negligible amounts of these nutrients, but that avocados contain 1 gram (g) of fat per ounce, is stated in a footnote (e.g., ''Most fruits and vegetables provide negligible amounts of saturated fat and cholesterol; avocados provide 1 g of saturated fat per ounce''). The footnote may also contain information about the polyunsaturated and monounsaturated fat content of avocados. When the nutrition labeling information for raw fish is provided on a chart, the listings for dietary fiber and sugars may be omitted if the following footnote is used, ''Fish provide negligible amounts of dietary fiber and sugars.''

(4) When nutrition labeling is provided for individual raw fruits, vegetables, or fish on packages or on signs, posters, brochures, notebooks, or leaflets, it should be displayed in accordance with § 101.9, except that the declaration of the number of servings per container need not be included. For individual labels provided by retailers on signs and posters, the footnote required in § 101.9(d)(9) may be shortened to ''Percent Daily Values are based on a 2,000 calorie diet.''

(b) Nutrition label values provided by the Food and Drug Administration (FDA) in Appendices C and D to part 101 for the 20 most frequently consumed raw fruits, vegetables, and fish listed in § 101.44 shall be used to ensure uniformity in declared values. FDA will publish proposed updates of the 20 most frequently consumed raw fruits, vegetables, and fish and nutrition label data for these foods (or a notice that the data sets have not changed from the previous publication) at least every 4 years in the Federal Register.

(1) The agency encourages the submission of data bases with new or additional nutrient data for any of the most frequently consumed raw fruits, vegetables, and fish to the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, for review and evaluation. FDA may incorporate these data in the next revision of the nutrition labeling information for the top 20 raw fruits, vegetables, and fish.

(i) Guidance in the development of data bases may be found in the ''FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases,'' available from the FDA Office of Food Labeling.

(ii) The submission to FDA should include, but need not be limited to, information on the following: Source of the data (names of investigators, name of organization, place of analyses, dates of analyses), number of samples, sampling design, analytical methods, and statistical treatment of the data. Proposed quantitative label declarations may be included. The proposed values for declaration should be determined in accordance with the ''FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases.''

(2) [Reserved]

(c) Data bases of nutrient values for raw fruits, vegetables, and fish that are not among the 20 most frequently consumed may be used to develop nutrition labeling values for these foods. This includes data bases of nutrient values for specific varieties, species, or cultivars of raw fruits, vegetables, and fish not specifically identified among the 20 most frequently consumed.

(1) The food names and descriptions for the fruits, vegetables, and fish should clearly identify these foods as distinct from foods among the most frequently consumed list for which FDA has provided data.

(2) Guidance in the development of data bases may be found in the ''FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases.''

(3) Nutrition labeling values computed from data bases are subject to the compliance provisions of § 101.9(g).

(i) Compliance with the provisions of § 101.9(g) may be achieved by use of a data base that has been developed following FDA guideline procedures and approved by FDA.

(A) The submission to FDA for approval should include but need not be limited to information on the following: Source of the data (names of investigators, name of organization, place of analyses, dates of analyses), number of samples, sampling design, analytical methods, statistical treatment of the data, and proposed quantitative label declarations. The values for declaration should be determined in accordance with the ''FDA Nutrition Labeling Manual: A Guide for Developing and Using Databases.''

(B) FDA approval of a data base and nutrition labeling values shall not be considered granted until the Center for Food Safety and Applied Nutrition has agreed to all aspects of the data base in writing. Approvals will be in effect for a limited time, e.g., 10 years, and will be eligible for renewal in the absence of significant changes in agricultural or industry practices (e.g., a change occurs in a predominant variety produced). FDA will take steps to revoke its approval of the data base and nutrition labeling values if FDA monitoring suggests that the data base or nutrition labeling values are no longer representative of the item sold in this country. Approval requests shall be submitted in accordance with the provision of § 101.30 of this chapter.

(ii) [Reserved]

5. Appendices C and D are added to part 101 to read as follows:

APPENDIX C TO PART 101.—NUTRITION FACTS FOR RAW FRUITS AND VEGETABLES

Nutrition facts[1] for raw fruits and vegetables edible portion	Calories	Calories from fat	Total fat		Saturated fat		Cholesterol		Sodium		Potassium		Total Carbohydrate		Dietary Fiber		Sugars	Protein	Vitamin A	Vitamin C	Calcium	Iron
			(g)	(%)	(g)	(%)	(mg)	(%)	(mg)	(%)	(mg)	(%)	(g)	(%)	(g)	(%)	(g)	(g)	(%)	(%)	(%)	(%)
Banana, 1 medium (126 g/4.5 oz)	110	0	0	0	0	0	0	0	0	0	400	11	29	10	4	16	21	1	0	15	0	2
Apple, 1 medium (154 g/5.5 oz)	80	0	0	0	0	0	0	0	0	0	170	5	22	7	5	20	16	0	2	8	0	2
Watermelon, 1/18 medium melon; 2 cups diced pieces (280 g/10.0 oz)	80	0	0	0	0	0	0	0	10	0	230	7	27	9	2	8	25	1	20	25	2	4
Orange, 1 medium (154 g/5.5 oz)	70	0	0	0	0	0	0	0	0	0	260	7	21	7	7	28	14	1	2	130	6	2
Cantaloupe, 1/4 medium (134 g/4.8 oz)	50	0	0	0	0	0	0	0	25	1	280	8	12	4	1	4	11	1	100	80	2	2
Grapes, 1 1/2 cups (138 g/4.9 oz)	90	10	1	2	0	0	0	0	0	0	270	8	24	8	1	4	23	1	2	25	2	2
Grapefruit, 1/2 medium (154 g/5.3 oz)	60	0	0	0	0	0	0	0	0	0	230	7	16	5	6	24	10	1	15	110	2	0
Strawberries, 8 medium (147 g/5.3 oz)	45	0	0	0	0	0	0	0	0	0	270	8	12	4	4	16	8	1	0	160	2	4
Peach, 1 medium (98 g/3.5 oz)	40	0	0	0	0	0	0	0	0	0	190	5	10	3	2	8	9	1	2	10	0	0
Pear, 1 medium (166 g/5.9 oz)	100	10	1	2	0	0	0	0	0	0	210	6	25	8	4	16	17	1	0	10	2	0
Nectarine, 1 medium (140 g/5.0 oz)	70	0	0.5	1	0	0	0	0	0	0	300	9	16	5	2	8	12	1	4	15	0	2
Honeydew Melon, 1/10 medium melon (134 g/4.8 oz)	50	0	0	0	0	0	0	0	35	1	310	9	13	4	1	4	12	1	2	45	0	2
Plums, 2 medium (132 g/4.7 oz)	80	10	1	2	0	0	0	0	0	0	220	6	19	6	2	8	10	1	6	20	0	0
Avocado, California, 1/5 medium (30 g/1.1 oz)	55	45	5	8	1	5	0	0	0	0	170	5	3	1	3	12	0	1	0	4	0	0
Lemon, 1 medium (58 g/2.1 oz)	15	0	0	0	0	0	0	0	5	0	90	3	5	2	1	4	1	0	0	40	2	0
Pineapple, 2 slices, 3″ diameter, 3/4″ thick (112 g/4 oz)	60	0	0	0	0	0	0	0	10	0	115	3	16	5	1	4	13	1	0	25	2	2
Tangerine, 1 medium (109 g/3.9 oz)	50	0	0.5	1	0	0	0	0	0	0	180	5	15	5	3	12	12	1	0	50	4	0
Sweet cherries, 21 cherries; 1 cup (140 g/5.0 oz)	90	0	0.5	1	0	0	0	0	0	0	300	9	22	7	3	12	19	2	2	15	2	2
Kiwifruit, 2 medium (148 g/5.3 oz)	100	10	1	2	0	0	0	0	0	0	480	14	24	8	4	16	16	2	2	240	6	4
Lime, 1 medium (67 g/2.4 oz)	20	0	0	0	0	0	0	0	0	0	75	2	7	2	2	8	0	0	0	35	0	0
Potato, 1 medium (148 g/5.3 oz)	100	0	0	0	0	0	0	0	0	0	720	21	26	9	3	12	3	4	0	45	2	6
Iceberg lettuce, 1/6 medium head (89 g/3.2 oz)	15	0	0	0	0	0	0	0	10	0	120	3	3	1	1	4	2	1	4	6	2	2
Tomato, 1 medium (148 g/5.3 oz)	35	0	0.5	1	0	0	0	0	5	0	360	10	7	2	1	4	4	1	20	40	2	2
Onion, 1 medium (148 g/5.3 oz)	60	0	0	0	0	0	0	0	5	0	240	7	14	5	3	12	9	2	0	20	4	2
Carrot, 7″ long, 1 1/4″ diameter (78 g/2.8 oz)	35	0	0	0	0	0	0	0	40	2	280	8	8	3	2	8	5	1	270	10	2	0
Celery, 2 medium stalks (110 g/3.9 oz)	20	0	0	0	0	0	0	0	100	4	350	10	5	2	2	8	0	1	2	15	4	2
Sweet corn, kernels from 1 medium ear (90 g/3.2 oz)	80	10	1	2	0	0	0	0	0	0	240	7	18	6	3	12	5	3	2	10	0	2
Broccoli, 1 medium stalk (148 g/5.3 oz)	45	0	0.5	1	0	0	0	0	55	2	540	15	8	3	5	20	3	5	15	220	6	6
Green cabbage, 1/12 medium head (84 g/3.0 oz)	25	0	0	0	0	0	0	0	20	1	190	5	5	2	2	8	3	1	0	70	4	2
Cucumber, 1/3 medium (99 g/3.5 oz)	15	0	0	0	0	0	0	0	0	0	170	5	3	1	1	4	2	1	4	10	2	2
Bell pepper, 1 medium (148 g/5.3 oz)	30	0	0	0	0	0	0	0	0	0	270	8	7	2	2	8	4	1	8	190	2	2
Cauliflower, 1/6 medium head (99 g/3.5 oz)	25	0	0	0	0	0	0	0	30	1	270	8	5	2	2	8	2	2	0	100	2	2
Leaf lettuce, 1 1/2 cups shredded (85 g/3.0 oz)	15	0	0	0	0	0	0	0	30	1	230	7	4	1	2	8	2	1	40	6	4	0
Sweet Potato, medium, 5″ long, 2″ diameter (130 g/4.6 oz)	130	0	0	0	0	0	0	0	45	2	350	10	33	11	4	16	7	2	440	30	2	2
Mushrooms, 5 medium (84 g/3.0 oz)	20	0	0	0	0	0	0	0	0	0	300	9	3	1	1	4	0	3	0	2	0	2
Green onion, 1/4 cup chopped (25 g/0.9 oz)	10	0	0	0	0	0	0	0	5	0	70	2	2	1	1	4	1	0	2	8	0	0
Green (snap) beans, 3/4 cup cut (83 g/3.0 oz)	25	0	0	0	0	0	0	0	0	0	200	6	5	2	3	12	2	1	4	10	4	2
Radishes, 7 radishes (85 g/3.0 oz)	15	0	0	0	0	0	0	0	25	1	230	7	3	1	0	0	2	1	0	30	2	0
Summer squash, 1/2 medium (98 g/3.5 oz)	20	0	0	0	0	0	0	0	0	0	260	7	4	1	2	8	2	1	6	30	2	2
Asparagus, 5 spears (93 g/3.3 oz)	25	0	0	0	0	0	0	0	0	0	230	7	4	1	2	8	2	2	10	15	2	2

[1] Raw, edible weight portion. Percent (%) Daily Values are based on a 2,000 calorie diet.

APPENDIX D TO PART 101.—NUTRITION FACTS FOR COOKED FISH

Nutrition facts[1] fish (84 g/3 oz)	Calories	Calories from fat	Total fat		Saturated fat		Cholesterol		Sodium		Potassium		Total carbohydrate		Dietary fiber		Sugars (g)	Protein (g)	Vitamin A (%)	Vitamin C (%)	Calcium (%)	Iron (%)
			(g)	(%)	(g)	(%)	(mg)	(%)	(mg)	(%)	(mg)	(%)	(g)	(%)	(g)	(%)						
Shrimp	80	10	1	2	0	0	165	55	190	8	140	4	0	0	0	0	0	18	0	0	2	15
Cod	90	0	0.5	1	0	0	45	15	60	3	450	13	0	0	0	0	0	20	0	0	2	2
Pollock	90	10	1	2	0	0	80	27	110	5	360	10	0	0	0	0	0	20	0	0	0	2
Catfish	140	80	9	14	2	10	50	17	40	2	230	7	0	0	0	0	0	17	0	0	0	0
Scallops, about 6 large or 14 small	120	10	1	2	0	0	55	18	260	11	280	8	2	1	0	0	0	22	0	0	2	2
Salmon, Atlantic/Coho	160	60	7	11	1	5	50	17	50	2	490	14	0	0	0	0	0	22	0	0	0	4
Salmon, Chum/Pink	130	35	4	6	1	5	70	23	65	3	410	12	0	0	0	0	0	22	2	0	0	2
Salmon, Sockeye	180	80	9	14	1.5	8	75	25	55	2	320	9	0	0	0	0	0	23	4	0	0	2

APPENDIX D TO PART 101.—NUTRITION FACTS FOR COOKED FISH—Continued

Nutrition facts[1] fish (84 g/3 oz)	Calories	Calories from fat	Total fat		Saturated fat		Cholesterol		Sodium		Potassium		Total carbohydrate		Dietary fiber		Sugars (g)	Protein (g)	Vitamin A (%)	Vitamin C (%)	Calcium (%)	Iron (%)
			(g)	(%)	(g)	(%)	(mg)	(%)	(mg)	(%)	(mg)	(%)	(g)	(%)	(g)	(%)						
Flounder/sole	100	14	1.5	2	0.5	3	60	20	90	4	290	8	0	0	0	0	0	21	0	0	2	2
Oysters, about 12 medium	100	35	3.5	5	1	5	115	38	190	8	390	11	4	1	0	0	0	10	0	0	6	45
Orange roughy	80	10	1	2	0	0	20	7	70	3	330	9	0	0	0	0	0	16	0	0	0	0
Mackerel, Atlantic/Pacific	210	120	13	20	1.5	8	60	20	100	4	400	11	0	0	0	0	0	21	0	0	0	5
Ocean perch	110	20	2	3	0	0	50	17	95	4	290	8	0	0	0	0	0	21	0	0	10	6
Rockfish	100	20	2	3	0	0	40	13	70	3	430	12	0	0	0	0	0	21	4	0	0	2
Whiting	110	25	3	5	0.5	3	70	23	95	4	320	9	0	0	0	0	0	19	2	0	6	0
Clams, about 12 small	100	15	1.5	2	0	0	55	18	95	4	530	15	0	0	0	0	0	22	10	0	6	60
Haddock	100	10	1	2	0	0	80	27	85	4	340	10	0	0	0	0	0	21	0	0	2	6
Blue crab	100	10	1	2	0	0	90	30	320	13	360	10	0	0	0	0	0	20	0	0	8	4
Rainbow trout	140	50	6	9	2	10	60	20	35	1	370	11	0	0	0	0	0	21	4	4	6	2
Halibut	110	20	2	3	0	0	35	12	60	3	490	14	0	0	0	0	0	23	2	0	4	4
Lobster	80	0	0.5	1	0	0	60	20	320	13	300	9	1	0	0	0	0	17	0	0	4	2
Swordfish	130	35	4.5	7	1	5	40	13	100	4	310	9	0	0	0	0	0	22	2	2	0	4

[1] Cooked, edible weight portion. Percent (%) Daily Values are based on a 2,000 calorie diet.

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Dated: July 31, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–20966 Filed 8–15–96; 8:45 am]

BILLING CODE 4160–01–P

Federal Register

Friday
August 16, 1996

Part VIII

Environmental Protection Agency

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Status of Equipment Certified and Emissions Levels To Be Used by Operators Using Compliance Option 2; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5547–7]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Status of Equipment Certified and Emissions Levels To Be Used by Operators Using Compliance Option 2

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: In the preamble to the final rule regarding retrofit/rebuild requirements for 1993 and earlier model year urban buses (58 FR 21359, April 21, 1993), the Environmental Protection Agency (EPA) stated that it would review retrofit/rebuild equipment that was certified by July 1994, and again by July 1996, and publish the post-rebuild particulate matter emission levels for urban bus engines affected by the program. These post-rebuild levels are used by operators for calculating their fleet emission levels under Option 2. In a previous Federal Register document (59 FR 45626, September 2, 1994), EPA published the post-rebuild PM levels based on equipment that was certified as of July 1994. Today's Federal Register notice fulfills EPA's obligation to review equipment certified by July 1996, and to publish the post-rebuild PM levels.

In addition, today's Federal Register provides notice to transit operators regarding a program inequity that could result between compliance Option 1 and Option 2, if EPA were to certify a 0.10 g/bhphr PM reduction kit that met life cylce cost requirements.

EFFECTIVE DATE: The information of this notice is effective as of August 16, 1996.

ADDRESSES: This notice, as well as other materials relevant to the final rule, is contained in Public Docket A–91–28. This docket is located in room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 ''M'' Street, S.W., Washington, DC 20460.

Dockets may be inspected from 8:00 am until 5:30 pm, Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Tom Stricker, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. Telephone: (202) 233–9322.

SUPPLEMENTARY INFORMATION:

I. Background

Section 219(d) of the Clean Air Act requires EPA to promulgate regulations that require certain 1993 and earlier model year urban buses having engines, which are replaced or rebuilt after January 1, 1995, comply with an emission standard or control technology reflecting the best retrofit technology and maintenance practices reasonably achievable. On April 21, 1993, EPA published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The Urban Bus Retrofit/Rebuild Program requires affected operators of urban buses to choose between two compliance options. Option 1 establishes particulate matter (PM) emissions requirements for each urban bus in an operator's fleet whose engine is rebuilt or replaced. Option 2 is a fleet averaging program that sets out specific annual target levels for average PM emissions from urban buses in an operator's fleet.

In the final rule, EPA stated that it would review the retrofit/rebuild equipment that was certified by July 1, 1994, and again by July 1, 1996, and publish the post-rebuild PM emission levels for urban bus engines affected by the program. These post-rebuild levels are to be used by operators choosing to comply with Option 2 for calculating their fleet emission levels. In a previous Federal Register notice (59 FR 45626, September 2, 1994), EPA published post-rebuild PM levels based on equipment that was certified as of July 1, 1994. Today's Federal Register notice fulfills EPA's obligation to review equipment certified by July 1, 1996, and to update the post-rebuild PM levels accordingly. The emission levels contained in today's notice must be used by operators using Option 2 for determining their Target Level for the Fleet (TLF) for calendar years 1998 and thereafter. EPA expects transit operators complying with Option 2 will begin taking fleet actions on or after January 1, 1997, to ensure compliance with the TLF beginning in calendar year 1998. Today's publication of the post-rebuild PM levels will provide operators with adequate lead time to begin planning these fleet actions.

II. Review of Certified Equipment and Program Requirements

As of July 1, 1996, no equipment had been certified for any engine models as meeting the 0.10 g/bhphr PM standard for less than the applicable life cycle cost requirement ($7,940 in 1992 dollars). However, equipment had been certified for most engine models as meeting the 25 percent reduction standard for less than the applicable life cycle cost requirement ($2,000 in 1992 dollars). The following paragraph briefly describes the equipment certified by EPA as of July 1, 1996. The reader is directed to the referenced Federal Register cites for more information regarding each certification.

Engelhard Corporation was the first to be granted certification for a technology that provided a 25 percent PM reduction and met life cycle cost requirements (60 FR 28402, May 31, 1995). The technology consists of a catalytic converter-muffler that replaces the original muffler installed on the bus. This equipment triggered program requirements for most two-stroke cycle engines under compliance Option 1. The second certification granted by EPA was also to Engelhard Corporation for its engine upgrade/catalytic converter muffler combination (60 FR 47170, September 11, 1995). This kit consists of a catalytic converter muffler, as well as several ceramic coated engine parts; however, the kit is not certified as meeting life cycle cost requirements. The third certification granted by EPA was to Detroit Diesel Corporation (DDC) for its 6V92TA MUI engine upgrade (60 FR 51472, October 2, 1995). The original certification of this kit was on the basis of providing at least a 25 percent PM reduction. However, EPA recently expanded certification to include the basis of meeting life cycle cost requirements.[1] This certification did not trigger any additional program requirements, because the 25 percent PM reduction standard for the applicable engine models had already been triggered by the first Engelhard certification. The fourth certification granted by EPA was to Cummins Engine Company (Cummins) for its L10 engine upgrade (60 FR 64046, December 13, 1995). This equipment is certified as meeting both the emissions requirements and life cycle cost requirements of the regulations, and as such, it triggered program requirements for most four-stroke cycle engines under compliance Option 1. The fifth certification granted by EPA was to Johnson Matthey for its catalytic exhaust muffler (61 FR 16773, April 17, 1996). The technology consists of an exhaust catalyst that replaces the original muffler on the bus. This equipment is certified as meeting both

[1] This certification approval is documented in a letter from the Director of the Engine Programs and Compliance Division (EPCD) to Detroit Diesel Corporation (DDC), dated June 24, 1996. Publication of this approval in the Federal Register was being processed at the time of today's publication.

the emissions requirements and life cycle cost requirements of the regulations, but did not trigger any additional program requirements, because the 25 percent PM reduction standard for the applicable engine models had already been triggered by the first Engelhard certification. Finally, EPA granted certification to DDC for its engine upgrade kit for use on electronically controlled 6V92TA DDEC II engines.[2] This equipment reduces PM by at least 25 percent, but is not certified to comply with the life cycle cost requirements of the regulations. It does not trigger any additional program requirements.

EPA has reviewed all equipment certified as of July 1, 1996. In accordance with 40 CFR 85.1403(c)(1)(iii)(A), Table 1 lists the post-rebuild PM emission level for engine models affected by program regulations. For those engine models for which equipment was certified by July 1, 1996, as meeting the 25 percent PM reduction standard *and* as meeting the life cycle cost requirements, EPA selected as the post-rebuild level the lowest emission level (greater than 0.10 g/bhphr) certified for such equipment. For those engine models for which no equipment was certified by July 1, 1996, as meeting the emissions requirements and life cycle cost requirements, the post-rebuild level has been selected to be equal to the pre-rebuild level as listed in 40 CFR 85.1403(c)(1)(iii)(A). For engine models with a pre-rebuild PM level below 0.1 g/bhphr, the post-rebuild PM level has been selected to be equal to the pre-rebuild PM level listed in 40 CFR 85.1403(c)(1)(iii)(A).

Transit operators complying with Option 2 must use the post-rebuild PM levels shown in Table 1 to calculate their TLF for calendar years 1998 and thereafter.[3] The determination of whether to use the pre-rebuild emission level or the post-rebuild emission level must be made in accordance with 40 CFR 85.1403(c)(1)(iv).

TABLE A.— CERTIFICATION LEVELS UNDER OPTION 2 FOR CALCULATING TLF IN CALENDAR YEARS 1998 AND THEREAFTER

Engine models	Model year	PM pre-rebuild certification level	PM post-rebuild certification level	Code	Family
DDC 6V92TA MUI	1979–87	0.50	0.30	All	All.
	1988–1989	0.30	0.22	All	All.
DDC 6V92TA DDEC I	1986–89	0.30	0.23	All	All.
DDC 6V92TA DDEC II	1988–91 (w/out PM trap)	0.31	0.23	All	All.
	1992–93 (w/out PM trap)	0.25	0.19	All	All.
	1993 (w/ PM trap)	0.07	0.07	All	All.
DDC Series 50	1993	0.16	0.16	All	All.
DDC 6V71N	1973–87	0.50	0.38	All	All.
DDC 6V71N	1988–89	0.50	0.38	All	All.
DDC 6V71T	1985–86	0.50	0.38	All	All.
DDC 8V71N	1973–84	0.50	0.38	All	All.
DDC 6L71TA	1990	0.59	0.59	All	All.
DDC 6L71TA	1988–89	0.31	0.23	All	All.
DDC 6V71TA DDEC	1990–91	0.30	0.23	All	All.
DDC 8V92TA	1979–87	0.50	0.38	All	8V92TA
	1988	0.39	0.29	All	8V92TA.
DDC 8V92TA–DDEC	1988	0.41	0.31	All	8V92TA-DDEC II.
DDC 8V92TA	1989	0.47	0.35	9E70	KDD0736FW89.
DDC 8V92TA	1989	0.39	0.29	9A90	KDD0736FW89.
DDC 8V92TA	1989	0.34	0.26	9G85	KDD0736FW89.
DDC 8V92TA DDEC	1989	0.41	0.31	1A	KDD0736FZH4.
DDC 8V92TA	1990	0.47	0.35	9E70	LDD0736FAH9.
DDC 8V92TA DDEC	1990	0.49	0.37	1A	LDD0736FZH3.
DDC 8V92TA DDEC	1991	0.25	0.19	1A or 5A	MDD0736FZH2.
DDC 8V92TA DDEC	1992–93	0.21	0.16	1D	NDD0736FZH1 & PDD0736FZHX.
DDC 8V92TA DDEC	1992–93	0.29	0.22	6A	NDD0736FZH 1 & PDD0736FZHX.
DDC 8V92TA DDEC	1992–93	0.20	0.15	5A	NDD0736FZH 1 & PDD0736FZHX.
DDC 8V92TA DDEC	1992–93	0.25	0.19	1A	NDD0736FZH 1 & PDD0736FZHX.
CUMMINS L–10	1985–1987	0.65	0.34	All	All.
	1988–1989	0.55	0.34	All	All.
	1990–1992	0.46	0.34	All	All.
L–10EC	1992	0.25	0.25	All	All.
Cummins L–10 EC w/trap	1993	0.05	0.05	All	All.
Alternatively Fueled Engines	pre-1994	0.10	0.10	All	All.
Other Engines	pre-1988	0.50	0.50	All	All.

[2] This certification approval is documented in a letter from the Director of the Engine Programs and Compliance Division (EPCD) to Detroit Diesel Corporation (DDC), dated June 28, 1996. Publication of this approval in the Federal Register was being processed at the time of today's publication.

[3] Please refer to Section III of today's notice, Potential Inequity Between Compliance Option 1 and Option 2, for additional information regarding future TLF calculations.

TABLE A.— CERTIFICATION LEVELS UNDER OPTION 2 FOR CALCULATING TLF IN CALENDAR YEARS 1998 AND THEREAFTER—Continued

Engine models	Model year	PM pre-rebuild certification level	PM post-rebuild certification level	Code	Family
	1988–1993	Certification level.	Certification level.	All	All.

An urban bus operator choosing to comply with Option 2 must be able to demonstrate that its fleet level attained (FLA) is equal to or less than its TLF. Using the formulas in 40 CFR 85.1403(c)(1) and Table 1 above, operators can calculate their TLF for calendar year 1998 and thereafter. The FLA is calculated using the formula of 40 CFR 85.1403(c)(2) and the certification level of the specific equipment installed on each bus. In order to ensure it is in compliance with its TLF for calendar year 1998,[4] transit operators are expected to begin taking appropriate fleet actions beginning early in calendar year 1997. In order to provide adequate lead time to operators for planning fleet actions, the final rule required EPA to base post-rebuild PM levels on equipment certified as of July 1, 1996.

III. Potential Inequity Between Compliance Option 1 and Option 2

The following provides notice to transit operators and other interested parties that EPA has become aware of a potential inequity between the two compliance options, and discusses the factors which lead to this potential inequity.

Two compliance options are available to transit operators complying with the retrofit/rebuild regulations. Option 1 establishes PM emissions requirements for each urban bus in an operator's fleet whose engine is rebuilt or replaced, and Option 2 is a fleet averaging program that sets out specific annual target levels for average PM emissions from urban buses in an operator's fleet.

In the early stages of developing the urban bus program, EPA contemplated only one compliance program (current compliance Option 1). However, based on public comments, and EPA's desire to offer flexibility to transit operators, an averaging program (compliance Option 2) was added to the program. EPA's intent was that the Option 2 averaging program yield equivalent PM reductions compared to Option 1, for approximately the same cost to transit operators. The equivalency of the two options is programmatically linked because the TLF for Option 2 is dependent upon equipment certified for use under Option 1. To the extent that a transit operator complying with Option 1 is required to use PM reduction technology at the time of engine rebuild or replacement (i.e., to the extent that program requirements are triggered for Option 1), the Option 2 TLF is based on the same equipment. In addition, EPA intended to ensure that transit operators would have equivalent and adequate lead time to plan their compliance strategies, regardless of which option they chose.

Despite EPA's efforts to ensure equivalency of the compliance options, a potential inequity may result if equipment is certified after the post-rebuild PM level revision of today's notice. If equipment is certified as meeting the 0.10 g/bhphr PM standard for less than the life cycle cost requirement ($7,940 in 1992 dollars), transit operators choosing to comply with Option 1 will be required to use such equipment (or other equipment certified as meeting 0.10 g/bhphr) when rebuilding or replacing affected engines beginning six months after the effective date of certification. On the other hand, because today's Federal Register notice does not contain 0.10 g/bhphr as the post-rebuild level for any engine models (excluding those originally certified at or below 0.10 g/bhphr), Option 2 would be substantially less stringent in terms of PM reductions and equipment costs.

During the development of the final rule of April 23, 1993, EPA expected that certification activity under this regulation would be completed by mid-1996. EPA expected industry to seek equipment certification as early as possible after the final rule was promulgated because the population of affected pre-94 model year buses would become smaller each year. Delaying certification would be equivalent to ignoring a portion of the potential market. At the same time, EPA needed to determine when to schedule revisions of post-rebuild PM levels for use under Option 2, such that; (1) the number of revisions were not so numerous as to discourage use of Option 2, and (2) the final revision considered virtually all equipment that would ultimately be certified under this program. EPA determined that two revisions of the post-rebuild PM levels, one in mid-1994 and one in mid-1996, would be sufficient to address both concerns.[5]

Certification activity under this program has substantially lagged behind the schedule anticipated by EPA and upon which the development of the final rule was based. Certification of the first PM reducing equipment was not granted until May 31, 1995, nearly one year *after* the first revision of post-rebuild PM levels. EPA is currently reviewing several notifications of intent to certify (including one intended to trigger the 0.10 g/bhphr PM standard), and expects to receive several more in the next few months. If EPA certifies equipment that triggers the 0.10 g/bhphr PM standard under Option 1 and which creates requirements under Option 1, but not under Option 2, then the two program compliance options would be unequal. EPA is currently reviewing the potential impacts this inequity could have on the retrofit/rebuild program and ways to ensure that PM benefits are not lost as a result of the potential inequity.

EPA stated in the final rule that it expects to publish, as an appendix to the Code of Federal Regulations (CFR), the final post-rebuild PM levels to be used by transit operators choosing to comply with Option 2. EPA will defer publication of this appendix in the CFR until after the rulemaking to add a third post-rebuild PM level revision. The PM levels contained in today's notice must be used in the interim by transit operators for calculating their fleet emissions levels.

[4] An operator choosing to comply with Option 2 must be in compliance with the TLF for a given calendar year beginning the first day of that calendar year. For example, to be in compliance with the TLF for 1998 calendar year, the FLA must be equal to or below the TLF for 1998 beginning January 1, 1998.

[5] See discussion in the preamble to the final rule, 58 Fed. Reg. 21359, April 23, 1993, pp. 21374–5.

Dated: July 31, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 96–20955 Filed 8–15–96; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday
August 16, 1996

Part IX

Department of Health and Human Services

Centers for Disease Control and Prevention

Proposed Revision—Vaccine Information Materials; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Revision—Vaccine Information Materials

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice with comment period.

SUMMARY: Under section 2126 of the Public Health Service Act, the CDC must develop vaccine information materials which health care providers are required to provide to patients/parents prior to administration of specific vaccines. CDC proposes to revise the vaccine information materials pertaining to polio vaccine for distribution should the recommended schedule for use of particular polio vaccines be revised. CDC seeks written comment on these proposed materials.

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

ADDRESSES: Written comments should be addressed to Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, N.E., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, (404) 639–8200.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by health care providers to any patient (or to the parent or guardian in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program.

The vaccines currently covered under this program are diphtheria, tetanus, pertussis, measles, mumps, rubella, and poliomyelitis vaccines. Since April 15, 1992, any health care provider who intends to administer one of the covered vaccines is required to provide copies of the vaccine information materials prior to administration of any of these vaccines. The materials currently in use were published in a Federal Register notice on June 20, 1994 (59 FR 31888).

Development and revision of the vaccine information materials has been delegated by the Secretary to the Centers for Disease Control and Prevention. Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

Proposed Revisions to the Polio Vaccine Information Materials

During the past two years, the Advisory Committee on Immunization Practices (ACIP) has been considering changing the recommended schedule for polio vaccination from four doses of oral polio vaccine (OPV) to a sequential schedule of two doses of inactivated polio vaccine (IPV), followed by two doses of OPV for routine childhood immunization. At its meeting in June 1996, the committee voted to approve this new sequential schedule as the preferred polio vaccination schedule, while considering schedules using either all IPV or all OPV as also fully acceptable and preferred for some children in certain situations. Adoption of this ACIP recommendation is under consideration by the Director of the Centers for Disease Control and Prevention.

Should the Director of the CDC adopt this recommendation, revised polio vaccine information materials will need to be available to provide information on the new recommendation for a sequential schedule on all OPV and IPV schedules prior to any implementation date. Therefore, given the statutory time frame for revising the materials, CDC is initiating revision of the polio vaccine information materials by publishing this notice that seeks comment on proposed materials for all three schedules. This notice will be withdrawn or modified if the Director rejects or modifies the polio vaccination recommendation of the ACIP.

We invite written comment on the proposed polio vaccine information statement included in this notice, entitled ''Polio Vaccine: What You Need to Know Before You or Your Child Gets Either Oral or Inactivated Polio Vaccine.'' CDC also intends to consult with the Advisory Commission on Childhood Vaccines, health care provider and parent organizations, and the Food and Drug Administration, as mandated under section 2126, prior to finalizing these materials.

POLIO VACCINE

What you need to know before you or your child gets either oral or inactivated polio vaccine.

About the Disease

Polio is a serious disease. It spreads when germs pass from an infected person to the mouths of others. Polio can:

- Paralyze a person (make arms and legs unable to move)
- Cause death

About the Vaccines

Benefits of the Vaccines

Vaccination is the best way to protect against polio. Before we had polio vaccines, there were thousands of cases of polio in the United States. Now most children get the vaccines, and there are very few cases.

There Are 2 Kinds of Polio Vaccine

IPV, or Inactivated Polio Vaccine, is given as a shot in the leg or arm.

OPV, or Oral Polio Vaccine, is given by mouth as drops.

Polio Vaccine Schedule

Most children should have a total of 4 doses of polio vaccine. The recommended schedule uses both IPV and OPV:

2 months of age—IPV
4 months of age—IPV
12–18 months of age—OPV
4–6 years of age—OPV

Why This Schedule?

IPV by itself protects against polio, but an all-IPV schedule means getting 4 shots. IPV has no known problems, except mild soreness where the shot was given, but IPV only protects the child who gets the shot. It does not help stop the spread of polio germs from one person to another.

OPV by itself protects against polio and helps stop the spread of polio germs from one person to another. But OPV, very rarely, causes polio in the child who receives it or in a person in close contact with the child who receives it.

With the recommended schedule, using IPV first followed by OPV, your

child gets the benefits of both vaccines: Excellent protection against polio, fewer shots, protection from epidemics, and less risk of polio from OPV. Also, the IPV shots are thought to protect the person getting the vaccine from getting polio from later vaccinations with OPV.

If you prefer, your child may get only OPV or only IPV. Either of these vaccines alone will protect your child against polio. Ask your doctor or nurse about these options.

Other vaccines may be given at the same time as polio vaccine.

Who Should Get Polio Vaccine?

Most doctors recommend that almost all young children get polio vaccine. But some children should get only one type of polio vaccine, and some should not get any polio vaccine at all:

✔Tell your doctor or nurse if the person getting the vaccine or anyone in close contact with that person can't fight serious infections because of:

- A disease she/he was born with.
- Treatment with drugs such as long-term steroids.
- Any kind of cancer.
- Cancer treatment with x-rays or drugs.
- AIDS or HIV infection.

If so, your doctor or nurse will probably give all IPV doses.

✔Tell your doctor or nurse if the person getting the vaccine has an allergy to the drugs neomycin or streptomycin. If so, your doctor or nurse will probably give all OPV doses.

✔Tell your doctor or nurse if the person getting the vaccine:

- Ever had a serious allergic reaction or other problem after getting polio vaccine.
- Has a moderate or severe illness

If you are not sure whether any of these statements apply to you, ask your doctor or nurse.

If you are over 18 years old, you probably do not need polio vaccine unless you are likely to be exposed to polio virus while traveling to countries where polio still occurs.

Travel

If you are traveling to a country where there is polio, you should get either IPV or OPV. Ask your doctor or nurse which vaccine you should get.

Pregnancy

If protection is needed during pregnancy, either IPV or OPV can be used.

Child Getting OPV (Unvaccinated Parents or Guardians)

If you have never gotten polio vaccine and your child is getting vaccinated with OPV, it is important to talk to your doctor or nurse about getting IPV for yourself. There is a very slight chance that a person who has close contact with a person who has received OPV could get polio if that person was never vaccinated against polio. IPV will provide protection against this risk.

What Are the Risks From Polio Vaccine?

As with any medicine, there is a very small risk that a person getting polio vaccine could have a serious problem, or even die. This risk is much smaller than the risks from the disease would be if people stopped using polio vaccine.

Almost all people who get polio vaccine have no problems from it.

Risks: All-IPV Schedule

This vaccine is not known to cause problems except mild soreness where the shot is given.

Risks: All-OPV Schedule

There is a very small chance of getting polio paralysis from the vaccine.

- After the first dose of OPV: About 1 case occurs for every 1½ million doses.
- After later doses of OPV: About 1 case occurs for every 30 million doses.

Also, if you never got polio vaccine yourself, there is a very small chance of getting polio paralysis from having close contact with a child who got OPV in the past 30 days.

- After the first dose of OPV, about 1 case occurs for every 2 million doses.
- After later doses of OPV, about 1 case occurs for every 15 million doses.

Examples of close contact include changing diapers or kissing.

Risks: IPV-OPV Schedule

There is still a very small risk of getting polio disease from OPV after 2 doses of IPV. But the risk is much lower than when OPV alone is given.

There is still a risk of getting polio disease from close contact with a child who got OPV. It may be less when the child gets one or more doses of IPV before a dose of OPV.

What to do if there is a serious reaction:

☞ Call a doctor or get the person to a doctor right away.

☞ Write down what happened and the date and time it happened, and tell your doctor.

☞ Ask your doctor, nurse, or health department to file a Vaccine Adverse Event Report (VAERS) form, or you can call: (800) 822–7967 (toll-free).

The National Vaccine Injury Compensation Program gives payment to persons thought to be injured by vaccines. For details call: (800) 338–2382 (toll-free).

If you want to learn more about polio vaccines, your doctor or nurse can give you the vaccine package inserts or suggest other sources of information.

U.S. Department of Health and Human Services

Centers for Disease Control and Prevention

Polio 00/00/00 (Proposed)

Vaccine Information Statement

42 U.S.C. 300aa–26

Dated: August 8, 1996.

Claire V. Broome,

Deputy Director, Centers for Disease Control and Prevention (CDC).

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Federal Register/Code of Federal Regulations

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

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Privacy Act Compilation **523–3187**

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FEDERAL REGISTER PAGES AND DATES, AUGUST

40145–40288 1
40289–40504 2
40505–40716 5
40717–40948 6
40949–41292 7
41293–41482 8
41483–41728 9
41729–41948 10
41949–42136 13
42137–42370 14
42371–42528 15
42529–42772 16

CFR PARTS AFFECTED DURING AUGUST

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

Executive Orders:
10163 (Amended by EO 13013) 41483
13013 41483

Administrative Order

5 CFR

531 40949
831 41714
837 41714
841 41714
842 41714
843 41714
844 41714
847 41714
1620 41485
2634 40145
2635 40950
2470 41293
2471 41293
2472 41293
2473 41293
Ch. LIV 40500
Ch. LXVI 40505

Proposed Rules:
591 41746

7 CFR

19 42371
26 40145
51 40289
400 40952
457 41297
620 42137
663 41949
915 40290
920 40506
922 40954
923 40954
924 ..... 40954, 40956
927 42529
928 40146
929 41729
931 42529
932 40507
944 40507
985 40959
1005 41488
1007 41488
1011 41488
1046 41488
1467 42137
1703 42462
4000 42371

Proposed Rules:
210 42396
220 ..... 40481, 42396
225 42396
226 ..... 40481, 42396
300 42565
301 ..... 40354, 40361, 41990
319 ..... 40362, 42565
457 ..... 41527, 41531
911 40550
944 40550
1530 40749
1710 41025
1714 41025
1717 41025
1786 41025

8 CFR

217 41684

Proposed Rules:
3 ..... 40552, 41684
103 ..... 40552, 41684
212 40552
235 40552
236 40552
242 40552
287 40552
292 40552
292a 40552

9 CFR

78 41730
94 40292
317 42143

10 CFR

50 41303

Proposed Rules:
25 40555
95 40555
430 41748
434 40882
435 40882
490 41032

11 CFR

104 42371
110 40961

Proposed Rules:
109 41036
110 41036

12 CFR

26 40293
212 40293
348 40293
563 40293
701 41312
931 40311
933 42531

Proposed Rules:
3 42565
208 42565
225 42565
325 42565
357 40756
567 42565

613.....42091
614.....42091
615.....42901
618.....42901
619.....42901
620.....42901
626.....42901
703.....41750
704.....41750
932.....42570
934.....41535
935.....40364
941.....42570

13 CFR

107.....41496
121.....42376

14 CFR

17 (2 documents) 42396, 42397
25.....41949,42144
39 .....40313, 40511, 41733, 41951, 41953, 41955, 41957, 42549
71 .....40147, 40315, 40316, 40717, 40718, 40719, 40961, 41684, 41735, 41736, 42146
73.....42550
95.....40148
97 .....40150, 40151, 42551, 42552, 42554

Proposed Rules:

23.....41688
25 .....40710, 41688, 41924, 42577
33.....41688
39 .....40159, 40758, 40760, 40762, 41037, 41039, 41537, 41539, 41751, 41753, 41755, 41757, 42195
71.....40365
91.....41040
93.....41040
121.....41040
135.....41040
255.....42197, 42208
Ch. 1 41750

15 CFR

679.....40481
774.....41326
799A 41326

16 CFR

1700.....40317

Proposed Rules:

1507.....41043

17 CFR

1.....41496
4.....42146
211.....40721

18 CFR

284.....40962
381.....40722

Proposed Rules:

35.....41759
284.....41406

19 CFR

10.....41737
12.....41737
102.....41737
134.....41737

20 CFR

348.....42377
404.....41329

21 CFR

73.....40317
101 .....40320, 40963, 42742
136.....40513
137.....40513
139.....40513
175.....42378
177.....42379
178.....42381
179.....42381
184.....40317
522.....41498, 42383
556.....42383
601.....40153
620.....40153
630.....40153
640.....40153
650.....40153
660.....40153
680.....40153
1309.....40981
1310.....40981
1313.....40981

Proposed Rules:

352.....42398

22 CFR

126.....41499, 41737
602.....40332

23 CFR

Proposed Rules:

655.....40484

24 CFR

103.....41480
111.....41282
115.....41282
982.....42129
3500.....41944

Proposed Rules:

10.....42722

25 CFR

Proposed Rules:

214.....41365

26 CFR

1.....40993, 42165
31.....40993
301.....42178
602.....40993

Proposed Rules:

1.....42401
31.....42401
35a.....42401
301.....42401
502.....42401
503.....42401
509.....42401
513.....42401
514.....42401
516.....42401
517.....42401
517.....42401
520.....42401
521.....42401

27 CFR

252.....41500
290.....41500

Proposed Rules:

4.....40568
5.....40568
7.....40568
19.....40568
20.....40568
22.....40568
24.....40568
25.....40568
27.....40568
70.....40568
250.....40568
251.....40568
252.....42462
290.....42462

28 CFR

29.....40723
42.....42556
90.....40727

29 CFR

4.....40714
5.....40714
1691.....42556
1926.....41738
2510.....41220
4044.....42384

Proposed Rules:

1.....40366
5.....40366
102.....40369

30 CFR

203.....40734
735.....40155
937.....40155
950.....40735

Proposed Rules:

250.....41541
936.....40369

31 CFR

211.....41739

Proposed Rules:

344.....40764

32 CFR

Proposed Rules:

202.....40764

33 CFR

100 .....40513, 42505, 41506
110.....40993
117.....40515
154.....41452, 42462
156.....41452
157.....41684
165.....40515, 40994

Proposed Rules:

165.....40587

36 CFR

31.....40996
211.....415070

Proposed Rules:

7.....41058
242.....41060

37 CFR

101.....40997
102.....40997
501.....40997

38 CFR

Proposed Rules:

1.....40589
3.....41368
17.....41108

39 CFR

111.....42478
233.....42557

Proposed Rules:

701.....42219

40 CFR

3.....40500
5.....41330
30.....41959
51.....40940, 41838
52 .....40516, 41331, 41335, 41338, 41342, 41838
81.....40516, 41342
85.....40940
122.....41698
180 .....40337, 40338, 40340
261.....40519
271.....40520, 41345
272.....41345
282.....41507
300.....40523

Proposed Rules:

52 .....40591, 40592, 41371, 41372
59.....40161
64.....41991
70.....41991, 42222
71.....41991
81 .....41371, 41759, 41764
153.....41764
159.....41764
260.....41111
261.....41111, 42318
262.....41111
264.....41111
268.....41111
269.....41111
271.....41111, 42318
281.....40592
300 .....40371, 42402, 42404
302.....42318

41 CFR

50–201.....40714
50–206.....40714
101–11.....41000
101–35.....41003
101–43.....41352
101–46.....41352
201–23.....40708
201–24.....40708
Ch. 301 40524

42 CFR

406.....40343
407.....40343
408.....40343
415.....42385
416.....40343
417.....42385
473.....42385
498.....42385

43 CFR

4.....40347
12.....40525

Proposed Rules:

1862.....42579

3600.....40373
3610.....40373
3620.....40373
3860.....42407

44 CFR

64.....40525, 42179
65.....40527

Proposed Rules:

67.....40595

45 CFR

1610.....41960
1617.....41963
1632.....41964
1633.....41965

46 CFR

31.....41684
35.....41684
70.....40281
108.....40281
133.....40281
168.....40281
199.....40281
572.....40530

Proposed Rules:

10.....41208
15.....41208

47 CFR

1 .....40155, 41006, 41966
2.....41006, 42386
15.....41006, 42558
20.....40348
24.....41006
63.....40531
64.....42181, 42558
68.....42181, 42386
73 .....40156, 40746, 41019, 42189, 42190, 42394
90.....40747
97.....41006

Proposed Rules:

20.....40374
25.....40772
32.....40161, 41208
64.....40161, 41208
73 .....40774, 40775, 41114, 42228, 42229, 42230, 42412, 42413

48 CFR

Ch. 1.....41466, 41477
2.....41467
5.....41467
7.....41467
8.....41467
9.....41467, 41472
12.....41467
15.....41467
16.....41467
17.....41467
19.....41467
22.....41467
23.....41473
25.....41475
31.....41476
32.....41467
33.....41467
34.....41467
37.....41467
38.....41467
39.....41467
45.....41467
46.....41467
51.....41467
52.....41467, 41473
53.....41467
506.....42190
547.....42190
552.....42190, 46462
901.....41702
905.....41702
906.....41702
908.....41702
909.....41684
915.....41702
916.....41702
917.....41702
922.....41702
928.....41702
932.....41702
933.....41702
935.....41702
936.....41702
942.....41702
945.....41702
952.....41702
971.....41702
1801.....40533
1802.....40533
1803.....40533
1804.....40533
1805.....40533
1806.....40533
1825.....42394
1852.....40533

Proposed Rules:

1.....41212
4.....41212, 41214
5.....41212
7.....40284
12.....41214
14.....41212
15.....40284, 41214
16.....40284, 41214
25.....41214
31.....41214
36.....41212
37.....40284
46.....40284, 41214
52.....40284, 41214
909.....40775
952.....40775
970.....40775

49 CFR

192.....41019
544.....41985
571.....41355, 41510

Proposed Rules:

361.....40781
362.....40781
363.....40781
364.....40781
385.....40781
386.....40781
391.....40781
393.....40781
571 .....40784, 41510, 41764
1002.....42190

50 CFR

13.....40481
14.....40481
17.....41020
20.....42492
222.....41514
285.....40352
660.....40156, 40157
679 .....40158, 40353, 40748, 41024, 41363, 41523, 41744

Proposed Rules:

20 .....42495, 42500, 42506, 42730
30.....41115
100.....41060
216.....40377
217.....41116
222.....41116, 41541
227.....40810
300.....41987
622.....42413
660.....41988
679.....40380

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

FEDERAL COMMUNICATIONS COMMISSION

Communications equipment:
- Radio frequency devices--
  - Television receivers; UHF noise figure performance measurements; reporting requirements elimination; published 6-17-96

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright arbitration royalty panel rules and regulations:
- Digital phonorecord delivery rate adjustment proceeding; published 7-17-96

POSTAL SERVICE

Inspection Service/Inspector General authority:
- Commercial espionage as criminal activity added to mail cover regulations; published 8-16-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:
- Carolina et al.; comments due by 8-19-96; published 7-18-96

Nectarines and peaches grown in California; comments due by 8-21-96; published 7-22-96

Oranges and grapefruit grown in Texas; comments due by 8-21-96; published 7-22-96

Oranges, grapefruit, tangerines, and tangelos grown in Florida; comments due by 8-23-96; published 7-24-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Hawaiian and territorial quarantine notices:
- Papaya, carambola, and litchi; comments due by 8-22-96; published 7-23-96

Plant-related quarantine, domestic:
- Mediterranean fruit fly; comments due by 8-19-96; published 6-19-96

AGRICULTURE DEPARTMENT

Food and Consumer Service

Child nutrition programs:
- National school lunch, school breakfast, child and adult care food, and summer food service programs--
  - Meat alternates; comments due by 8-19-96; published 7-5-96

COMMERCE DEPARTMENT

International Trade Administration

Watches duty exemption program:
- Duty-exemption entitlement allocations in Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 8-21-96; published 7-22-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

International Code of Conduct for Responsible Fisheries implementation plan; availability; comments due by 8-23-96; published 7-25-96

DEFENSE DEPARTMENT

Army Department

Environmental analysis of army actions; comments due by 8-21-96; published 7-22-96

DEFENSE DEPARTMENT

Acquisition regulations:
- U.S. European Command (EUCOM) supplement; comments due by 8-19-96; published 6-20-96

Federal Acquisition Regulation (FAR):
- Commercial items contracts and subcontracts; cost accounting standards exemption; comments due by 8-20-96; published 6-21-96
- Contracts, fixed-priced; performance incentives; comments due by 8-19-96; published 6-20-96
- Costs related to legal/other proceedings; comments due by 8-19-96; published 6-20-96
- Drug-free workplace; certification requirements; comments due by 8-19-96; published 6-20-96
- Foreign selling costs; comments due by 8-19-96; published 6-20-96
- Historically black colleges and universities/minority institutions; collection of award data; comments due by 8-19-96; published 6-20-96
- Independent research and development/bid and proposal in cooperative arrangements; comments due by 8-19-96; published 6-20-96
- Irrevocable letters of credit and alternatives to Miller Act bonds; comments due by 8-19-96; published 6-20-96
- North American Free Trade Agreement Implementation Act; implementation; comments due by 8-19-96; published 6-20-96
- Preaward debriefings; comments due by 8-23-96; published 6-24-96

ENERGY DEPARTMENT

Acquisition regulations:
- Management and operating contracts--
  - Contract reform initiative; implementation; comments due by 8-23-96; published 6-24-96
  - Contract reform initiative; implementation; comments due by 8-23-96; published 6-24-96
  - Performance-based management contracting, fines, penalties, etc.; comments due by 8-23-96; published 7-25-96

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Industrial Combustion Coordinated Rulemaking Advisory Committee--
  - Establishment; comments due by 8-20-96; published 6-21-96

Air programs:
- Stratospheric ozone protection--
  - Fire extinguishers containing hydro-chlorofluorocarbons (HCFCs); ban reconsideration; comments due by 8-19-96; published 7-18-96

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 8-19-96; published 7-18-96
- Louisiana; comments due by 8-21-96; published 7-22-96
- Oregon; comments due by 8-19-96; published 7-18-96
- Tennessee; comments due by 8-19-96; published 7-18-96
- Washington; comments due by 8-22-96; published 7-23-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Avermectin B1 and its delta-8,9-isomer; comments due by 8-23-96; published 7-24-96
- N-acyl sarcosines and sodium n-acyl sarcosinates; comments due by 8-23-96; published 7-24-96
- Polybutene; comments due by 8-23-96; published 7-24-96
- Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate; comments due by 8-19-96; published 7-18-96

Solid wastes:
- Hazardous waste combustors, etc.; maximum achievable control technologies performance standards; comments due by 8-19-96; published 5-30-96

Superfund program:
- National oil and hazardous substances contingency plan--
  - National priorities list update; comments due by 8-21-96; published 7-22-96
  - National priorities list update; comments due by 8-21-96; published 7-22-96

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Texas; comments due by 8-19-96; published 7-3-96

FEDERAL DEPOSIT INSURANCE CORPORATION

Deposit insurances rules; simplification; comments due by 8-20-96; published 5-22-96

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Commercial items contracts and subcontracts; cost accounting standards exemption; comments due by 8-20-96; published 6-21-96

Contracts, fixed-priced; performance incentives; comments due by 8-19-96; published 6-20-96

Costs related to legal/other proceedings; comments due by 8-19-96; published 6-20-96

Drug-free workplace; certification requirements; comments due by 8-19-96; published 6-20-96

Foreign selling costs; comments due by 8-19-96; published 6-20-96

Historically black colleges and universities/minority institutions; collection of award data; comments due by 8-19-96; published 6-20-96

Independent research and development/bid and proposal in cooperative arrangements; comments due by 8-19-96; published 6-20-96

Irrevocable letters of credit and alternatives to Miller Act bonds; comments due by 8-19-96; published 6-20-96

North American Free Trade Agreement Implementation Act; implementation; comments due by 8-19-96; published 6-20-96

Preaward debriefings; comments due by 8-23-96; published 6-24-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

Latex condoms; expiration date; labeling requirements; comments due by 8-22-96; published 5-24-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare and Medicaid:

Provider appeals; technical amendments; comments due by 8-23-96; published 6-24-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Annual hunting regulations; and special youth waterfowl hunting day establishment; comments due by 8-23-96; published 8-15-96

INTERIOR DEPARTMENT

Watches duty exemption program:

Duty-exemption entitlement allocations in Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 8-21-96; published 7-22-96

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:

Unitization; model unit agreements; comments due by 8-19-96; published 8-9-96

Royalty management:

Federal leases; natural gas valuation regulations; amendments; comments due by 8-19-96; published 7-22-96

INTERIOR DEPARTMENT

National Park Service

Boating and water use activities:

Prohibited operations; comments due by 8-23-96; published 6-24-96

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Texas; comments due by 8-23-96; published 7-24-96

JUSTICE DEPARTMENT

Grants:

Juvenile Justice and Delinquency Prevention Office formula grants; comments due by 8-19-96; published 7-3-96

Privacy Act; implementation; comments due by 8-19-96; published 7-18-96

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:

Records access and information release; comments due by 8-20-96; published 6-21-96

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Commercial items contracts and subcontracts; cost accounting standards exemption; comments due by 8-20-96; published 6-21-96

Contracts, fixed-priced; performance incentives; comments due by 8-19-96; published 6-20-96

Costs related to legal/other proceedings; comments due by 8-19-96; published 6-20-96

Drug-free workplace; certification requirements; comments due by 8-19-96; published 6-20-96

Foreign selling costs; comments due by 8-19-96; published 6-20-96

Historically black colleges and universities/minority institutions; collection of award data; comments due by 8-19-96; published 6-20-96

Independent research and development/bid and proposal in cooperative arrangements; comments due by 8-19-96; published 6-20-96

Irrevocable letters of credit and alternatives to Miller Act bonds; comments due by 8-19-96; published 6-20-96

North American Free Trade Agreement Implementation Act; implementation; comments due by 8-19-96; published 6-20-96

Preaward debriefings; comments due by 8-23-96; published 6-24-96

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

New Jersey; comments due by 8-20-96; published 6-21-96

Ports and waterways safety:

Lower Hudson River, NY; safety zone; comments due by 8-20-96; published 8-5-96

TRANSPORTATION DEPARTMENT

Aviation economic regulations:

Large certificated air carriers; passenger origin-destination survey reports; comments due by 8-23-96; published 6-24-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules:

Rocky Mountain National Park, CO; special flight rules in vicinity; comments due by 8-19-96; published 7-23-96

Airworthiness directives:

Jetstream; comments due by 8-19-96; published 7-10-96

McDonnell Douglas; comments due by 8-19-96; published 7-10-96

Class D airspace; comments due by 8-19-96; published 6-19-96

Class E airspace; comments due by 8-19-96; published 6-19-96

Organization, functions, and authority delegations:

Commercial Space Transportation; CFR chapter III name change; comments due by 8-21-96; published 7-22-96

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Practice and procedure:

Rail rate reasonableness, exemption and revocation proceedings; expedited procedures; comments due by 8-21-96; published 7-26-96

VETERANS AFFAIRS DEPARTMENT

Practice and procedure;

Disinterments in national cemeteries

Immediate family member definition; revision; comments due by 8-19-96; published 6-20-96