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Monday
September 30, 1996

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WASHINGTON, DC

WHEN: October 22, 1996 at 9:00 a.m.

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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.

FEDERAL DEPOSIT INSURANCE CORPORATION

5 CFR Part 3202

RINs 3064–AA07, 3209–AA16

Supplemental Financial Disclosure Requirements for Employees of the Federal Deposit Insurance Corporation

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation, with the concurrence of the Office of Government Ethics (OGE), is removing an interim supplemental financial disclosure regulation for FDIC employees, that has supplemented the OGE executive branch wide financial disclosure regulation, 5 CFR part 2634. In light of the OGE determination that agencies that obtain written approval from OGE for supplemental financial disclosure forms are not required to have supplemental financial disclosure regulations, the FDIC has determined that its supplemental financial disclosure regulation is no longer needed. This is consistent with the goals of the FDIC's regulation review project on eliminating unnecessary regulations pursuant to Section 303 (a) of the Riegle Community Development and Regulatory Improvement Act of 1994. The substance of the eliminated regulation will be continued in the FDIC internal written procedure that existed before the part 3202 regulation was established.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: Richard M. Handy, Assistant Executive Secretary (Ethics), Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429; telephone: (202) 898–7271.

SUPPLEMENTARY INFORMATION: On July 26, 1993, the FDIC, with the concurrence of OGE, published an interim rule on supplemental financial disclosure requirements for FDIC employees, with a 60-day public comment period. 58 FR 39625–39628. No comments were received in response to the 1993 publication.

The FDIC's interim supplemental financial disclosure regulation, which has been codified at 5 CFR part 3202, has supplemented OGE's Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture regulation, which is codified at 5 CFR part 2634. Section 3202.101 describes financial disclosure reports filing requirements, their custody and confidentiality. Section 3202.102 describes the printing of confidential financial disclosure forms in three parts with an FDIC identification number. Section 3202.103 describes confidential reports of employee interest in FDIC-insured depository institutions. Section 3202.104 describes confidential reports of employee indebtedness. Section 3202.105 describes confidential statements of employee credit card obligation in insured state nonmember banks.

At the time that the FDIC's part 3202 regulation was established in 1993, it was thought that a regulation would be necessary in order to allow the FDIC to continue to use the supplemental financial disclosure forms that it had previously used in connection with the disclosures discussed above. Since then, OGE has determined that agencies that obtain written approval from OGE for their supplemental forms are not required to have supplemental financial disclosure regulations. This is consistent with the goals of the FDIC's regulation review project on eliminating unnecessary regulations pursuant to Section 303 (a) of the Riegle Community Development and Regulatory Improvement Act of 1994. The FDIC will continue the substance of the part 3202 regulation in its pre-existing internal written procedures, with appropriate updating revisions, once the regulation is eliminated. Reliance on the internal written procedures alone will allow the FDIC to adapt its disclosure requirements more easily to organizational changes that periodically occur than if the regulation remains in place. The FDIC previously obtained OGE's approval of its supplemental forms which are incorporated into the FDIC's internal written procedures. Therefore, with OGE concurrence, the FDIC has determined that it is appropriate to remove its part 3202 regulation.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (a) (2) and (b), the FDIC Board of Directors has found that good cause exists for waiving the regular notice of proposed rulemaking as to this final rule removal action. This action is being taken because it is in the public interest that the part 3202 regulation which concerns matters of agency organization, practice and procedure be removed. The regulation is not needed at this time because the matters in the regulation are covered adequately by internal written FDIC procedures, as approved in pertinent part by the OGE.

Regulatory Flexibility Act

Because no general notice of proposed rulemaking was published prior to this final rule, the requirements of the Regulatory Flexibility Act for an initial and final regulatory flexibility analysis do not apply (5 U.S.C. 601(2)).

Paperwork Reduction Act

This final rule removal action does not contain any information collections as defined by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Therefore, no material has been submitted to the Office of Management and Budget.

List of Subjects in 5 CFR Part 3202

Administrative practice and procedure, Conflict of interests, Financial disclosure, Government employees, Privacy, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and in accordance with its authority under 5 U.S.C. 7301 and 5 CFR 2634.103, the Board of Directors of the Federal Deposit Insurance Corporation, with the concurrence of the Office of Government Ethics, is amending chapter XXII of title 5 of the Code of Federal Regulations as follows:

PART 3202—[REMOVED]

1. Part 3202 is removed.

By Order of the Board of Directors.

Dated at Washington, D.C. this 10th day of September, 1996.

Jerry L. Langley,

Executive Secretary.

Concurred in this 23d day of September, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 96–25009 Filed 9–27–96; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–0910]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is revising its official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and substitutes for individual staff interpretations. The revisions to the commentary provide guidance on issues that the Board has been asked to clarify, including credit scoring and spousal signature rules.

DATES: *Effective date.* September 30, 1996.

Compliance date. Compliance is optional until October 31, 1996.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Sheilah A. Goodman, or Natalie E. Taylor, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412. For users of the Telecommunications Device for the Deaf, contact Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. This statute is implemented by the Board's Regulation B (12 CFR Part 202). The Board also has an official staff commentary (12 CFR Part 202 (Supp. I)) that interprets the regulation. The commentary provides general guidance to creditors in applying Regulation B to various credit transactions, and is updated periodically to address significant questions that arise.

II. Summary of Revisions to the Commentary

In December 1995 (60 FR 67097, December 28, 1995), the Board proposed amendments to the staff commentary to Regulation B. The Board received approximately 70 comments on the proposal. The majority of the comments were from financial institutions and their attorneys. Overall, commenters generally favored the proposed amendments, although they raised a number of technical issues. Opposition to the proposal mostly addressed the comment pertaining to the use of age scorecards. After reviewing the comment letters, and upon further analysis, the Board has modified its interpretation regarding scorecards and some other portions of the update, as discussed below.

Section 202.2—Definitions

2(p) Empirically Derived and Other Credit Scoring Systems

Comment 2(p)–2, as proposed, clarified that the performance of a credit scoring system should be monitored to ensure its predictive ability. Commenters were concerned that, by use of the term ''monitor,'' the proposal required a continuous analysis, which would be costly and disruptive to their operations. The comment, as adopted, provides that creditors must periodically review their systems to ensure predictive ability, but are not required to review their systems on a continuous basis. The Board believes the required frequency depends upon a variety of factors such as changes in the local economy, and shifts in the lender's customer base. However, creditors must review their systems when evidence suggests that the systems are no longer predicting risk as intended.

Commenters also asked the Board to clarify the responsibility for revalidation if the creditor did not develop the system. A creditor is responsible for any system that it uses, including its revalidation, but may use a third party to perform the revalidation. In accordance with section 202.2(p)(2), if the system is developed using borrowed credit experience, the initial validation and any subsequent revalidation must be based on the creditor's own data when it becomes available.

Section 202.5—Rules Concerning Taking of Applications

5(e) Written Applications

Comment 5(e)–3 is adopted as proposed.

Section 202.6—Rules Concerning Evaluation of Applications

6(b) Specific Rules Concerning Use of Information

6(b)(2)

Comment 6(b)(2)–2 is revised to address the use of age in a credit scoring system. Under the ECOA and Regulation B, if a creditor chooses to consider age by assigning a value to an applicant's age, the age of elderly applicants must not be assigned a negative value. Thus, a credit scoring system must ensure that the age of applicants 62 or older is assigned a factor, value, or weight that is at least as favorable as the factor, value, or weight assigned to the age of any other class of applicants.

Proposed Commentary

In December 1995, the Board proposed adding a comment which specified that, in an age-based scorecard system, creditors could satisfy the requirement of not assigning a negative factor or value by scoring an elderly applicant under the applicable scorecard and, if the applicant did not qualify, by rescoring the applicant under scorecards for other age-based groups. The proposal was consistent with informal opinions given by the Board's staff regarding the need for creditors using age scorecards to comply with the ''negative factor or value'' limitation established by the ECOA.

Commenters raised numerous questions about the Board's proposal. For example, some commenters noted that the regulation addresses the treatment of the elderly as a class in a credit scoring system, rather than the treatment of a single elderly applicant who is declined under the applicable scorecard but might be approved when rescored under a card developed for another age class. Other commenters expressed concern that rescoring an elderly applicant on models that were not developed using data for elderly persons would invalidate an otherwise ''empirically derived, demonstrably and statistically sound'' credit scoring system. Some commenters noted that implementing the proposed requirement would be costly because of the systems and procedural changes that would be required, and that increased costs would not be balanced by commensurate benefits to the elderly. Numerous commenters believed the proposed

revisions would discourage the use of age-based systems, because creditors would have to choose between taking additional risk on elderly applicants or qualifying fewer younger applicants. In addition, commenters stated that the proposed rescoring would likely result in few additional elderly applicants receiving credit. Upon further analysis, the Board has modified the final interpretation. The modification reflects the Board's interpretation that the ECOA and Regulation B require creditors that score age in a credit scoring system to treat elderly applicants as a class as favorably as all other classes of applicants on the basis of age.

Direct Scoring of Age

If a creditor directly scores age by assigning points to an applicant's age category, elderly applicants must receive at least the same number of points as the most favored class of nonelderly applicants. For example, if a system assigns 10 points for ages 18–20, 20 points for ages 21–27, 15 points for ages 28–39, 18 points for ages 40 to 51, and 22 points for ages 52 to 61, then applicants who are 62 and older must receive at least 22 points.

The Board believes that similarly, if a system assigns points to some other variable based on the applicant's age, applicants who are 62 and older must receive at least the same number of points as the most favored class of nonelderly applicants. For example, a system could score an applicant's type of residence based on the age of the applicant and assign points to applicants who rent their dwellings (such as 20 points for ages 18–28, 10 points for ages 29–45, and 8 points for ages 46–61). In such a system, elderly applicants who rent their dwellings must receive at least the same number of points as the most favored age class; in this example, applicants 62 and older who rent their dwellings must receive at least 20 points. This rule applies whether a creditor uses a single scorecard or more than one scorecard.

Use of Age-split Scorecards

Commenters raised questions about, and the Board has considered, the applicability of Regulation B to two different types of age-split scorecard systems. Specifically, the Board has considered whether a creditor could segment the applicant population and develop one card for a narrow range of applicants under a certain age (sometimes called a ''youth'' card) and a second card for the general population. Applicants on the youth card—typically in their late twenties or younger—would be evaluated using attributes that are predictive for that age class, while applicants on the second card would be evaluated using attributes predictive for the general population. The Board believes that when a system uses a standard card for the general population with a wide age range that includes the elderly, the system does not score age. Accordingly, in this type of system, there is no issue of assigning a negative factor or value to the age of elderly applicants.

On the other hand, the Board has considered whether a creditor could segment the applicant population using scorecards with narrower age ranges. Such scorecards assign value based on characteristics predictive for that narrow age class. Unlike the use of a standard card for the general population with a wide range that includes the elderly, the Board believes that inclusion of the elderly in scorecards with narrower age ranges does score age. Since the elderly would not be evaluated using attributes for the general population, creditors may not assign a negative factor or value to the age of elderly applicants.

Negative Factor or Value

Commenters suggested alternative ways that a creditor could satisfy the ECOA's requirement that a negative factor or value not be assigned to the age of elderly applicants. For example, it was suggested that creditors could be required to establish, at the time scorecards are developed, that elderly applicants as a class would not have been treated more favorably if scored using cards developed for other age categories. While the final comment does not address this issue, the Board believes one approach would be to demonstrate that no more than one-half of elderly applicants rejected under the scorecard including their age group would have been approved if scored under another card in the system.

Comment 6(b)(2)–4 addresses the use of age in a reverse mortgage transaction. The comment is adopted generally as proposed. The comment now includes a reference to default, to parallel the definition of a reverse mortgage in Regulation Z (Truth in Lending), 12 CFR 226. The comment also clarifies that a reverse mortgage program that requires applicants to be at least 62 years of age is permissible under § 202.6(b)(2)(iv), which allows creditors to favor the elderly by offering products to applicants 62 and older that are not available to other customers.

The comment also clarifies that using age in a reverse mortgage transaction to determine factors such as the amount of the credit, the monthly payment that the borrower will receive, or the estimated repayment date is permissible under § 202.6(b)(2)(iii) as long as the determination is made on a case-by-case basis.

6(b)(6)

Proposed comment 6(b)(6)–1 is withdrawn. The comment would have specified that if a creditor considers credit history, it must consider information presented by the applicant that is not included in the credit report, if it is of the type the creditor normally considers on a credit report. Also, the comment would have specified that when one spouse is applying for individual credit, the creditor must consider information presented by the applicant that would tend to show that a credit history appearing in the names of both spouses is not reflective of the applicant's individual creditworthiness.

Some commenters welcomed the additional guidance; others believed that the existing comment was sufficiently clear, and that the proposal raised a number of issues without resolving them. Specifically, many commenters voiced concern about how the comment would apply to creditors that rely exclusively on credit scoring to make credit decisions. The Board is withdrawing the comment because it believes the issues raised by the commenters warrant further study, and that section 202.6(b)(6) and the existing commentary provide adequate guidance at this time.

Section 202.7—Rules Concerning Extensions of Credit

7(d) Signature of Spouse or Other Person

7(d)(2)

Comment 7(d)(2)–1 addresses unsecured credit and the treatment of joint property. The comment clarifies that when determining the value of an applicant's interest in jointly owned property, a creditor must look to the actual form of ownership of the property prior to or at consummation. Several commenters asked whether in making such determinations, creditors may consider the possibility of subsequent changes to property ownership. The comment makes clear that the possibility of a subsequent change in the form of ownership may not be considered. For example, when a married applicant applies for individual credit, and qualifies based on separate property, a creditor may not consider the possibility that the separate property may later be transferred into joint ownership. Similarly, in valuing a married applicant's interest in property,

a creditor may not consider the possibility that the couple may one day divorce. Therefore, a creditor may not require the signature of the nonapplicant spouse in these or similar circumstances.

The proposed revisions to comment 7(d)(2)–1(ii) included examples of instruments that creditors might ask a joint owner of property to sign to support the applicant's request for unsecured credit—mentioning, among other things, a security agreement, mortgage, and deed of trust. Because these examples are appropriate only for secured credit, they have been deleted. The comment retains the limitation that where, under state law, the creditor may use other instruments to reach joint property, a creditor may not routinely ask nonapplicants to sign any instrument requiring that they forfeit their interest in jointly owned property as a condition of the credit extension. Some commenters expressed concern that creditors will be prevented from reaching joint property in the event of an applicant's death or default. The comment is not intended to prevent access to jointly owned property in these circumstances, but to clarify that if state law gives a creditor access to the property by some other means—for example, through a limited guarantee—requiring nonapplicants to forfeit their interest in jointly owned property is prohibited by the regulation.

7(d)(6)

Comment 7(d)(6)–1 clarifies that a creditor may require that partners, officers or directors personally guarantee an extension of credit to a business, even if the business is creditworthy, as long as a guarantee is not required on a prohibited basis.

Commenters asked the Board to clarify that shareholders may be required to guarantee an extension of credit to a closely held corporation, even if creditworthy, given that in most instances these shareholders have interests that are analogous to the interests of partners, officers, or directors of other businesses. The comment has been revised accordingly.

Comment 7(d)(6)–2 is generally adopted as proposed. A cross-reference to section 202.7(d)(2) is added.

Section 202.13—Information for Monitoring Purposes

13(a) Information to be Requested

Comment 13(a)–6 clarifies that, except as provided, monitoring information must be collected by any creditor that satisfies and replaces the existing obligation.

13(b) Obtaining of Information

Comments 13(b)–4 and 13(b)–5 are generally adopted as proposed, including adding two new paragraphs and redesignating original paragraphs 4 and 5.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Consumer protection, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set forth in the preamble, the Board amends 12 CFR part 202 as follows:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. In Supplement I to Part 202, under *Section 202.2 Definitions,* under *2(p) Empirically derived and other credit scoring systems.*, four new sentences are added at the end of paragraph 2 to read as follows:

Supplement I to Part 202—Official Staff Interpretations

* * * * *

Section 202.2 Definitions

* * * * *

2(p) Empirically derived and other credit scoring systems.

* * * * *

2. * * * To ensure that predictive ability is being maintained, creditors must periodically review the performance of the system. This could be done, for example, by analyzing the loan portfolio to determine the delinquency rate for each score interval, or by analyzing population stability over time to detect deviations of recent applications from the applicant population used to validate the system. If this analysis indicates that the system no longer predicts risk with statistical soundness, the system must be adjusted as necessary to reestablish its predictive ability. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data when it becomes available.

* * * * *

3. In Supplement I to Part 202, under *Section 202.5 Rules Concerning Taking of Applications,* under 5(e) *Written applications.*, paragraph 3. is revised to read as follows:

* * * * *

Section 202.5 Rules Concerning Taking of Applications

* * * * *

5(e) Written applications.

* * * * *

3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to section 202.13(b), *Applications through electronic media* and *Applications through video.*)

* * * * *

4. In Supplement I to Part 202, under *Section 202.6 Rules Concerning Evaluation of Applications,* under paragraph 6(b)(2), paragraph 2. is revised; paragraphs 4. and 5. are redesignated as paragraphs 5. and 6., respectively; and new paragraph 4. is added to read as follows:

* * * * *

Section 202.6—Rules Concerning Evaluation of Applications

* * * * *

Paragraph 6(b)(2)

* * * * *

2. *Consideration of age in a credit scoring system.* Age may be taken directly into account in a credit scoring system that is ''demonstrably and statistically sound,'' as defined in section 202.2(p), with one limitation: applicants 62 years or older must be treated at least as favorably as applicants who are under 62. If age is scored by assigning points to an applicant's age category, elderly applicants must receive the same or a greater number of points as the most favored class of nonelderly applicants.

i. *Age-split scorecards.* A creditor may segment the population into scorecards based on the age of an applicant. In such a system, one card covers a narrow age range (for example, applicants in their twenties or younger) who are evaluated under attributes predictive for that age group. A second card covers all other applicants who are evaluated under the attributes predictive for that broad class. When a system uses a card covering a wide age range that encompasses elderly applicants, the credit scoring system does not score age. Thus, the system does not raise the issue of assigning a negative factor or value to the age of elderly applicants. But if a system segments the population by age into multiple scorecards, and includes elderly applicants in a narrower age range, the credit scoring system does score age. To comply with the act and regulation in such a case, the creditor must ensure that the system does not assign a negative factor or value to the age of elderly applicants as a class.

* * * * *

4. *Consideration of age in a reverse mortgage.* A reverse mortgage is a home-secured loan in which the borrower receives payments from the creditor, and does not become obligated to repay these amounts (other than in the case of default) until the borrower dies, moves permanently from the home or transfers title to the home, or upon a specified maturity date. Disbursements to the borrower under a reverse mortgage typically are determined by considering the value of the borrower's home, the current interest rate, and the borrower's life expectancy. A reverse mortgage program that requires borrowers to be age 62 or older is

permissible under section 202.6(b)(2)(iv). In addition, under section 202.6(b)(2)(iii), a creditor may consider a borrower's age to evaluate a pertinent element of creditworthiness, such as the amount of the credit or monthly payments that the borrower will receive, or the estimated repayment date.

* * * * *

5. In Supplement I to Part 202, *Section 202.7—Rules Concerning Extensions of Credit,* is amended as follows:

a. Under Paragraph 7(d)(2), paragraph 1. is revised; and

b. Paragraph 7(d)(6) is revised.

The revisions read as follows:

* * * * *

Section 202.7 Rules Concerning Extensions of Credit

* * * * *

Paragraph 7(d)(2)

1. *Jointly owned property.* If an applicant requests unsecured credit, does not own sufficient separate property, and relies on joint property to establish creditworthiness, the creditor must value the applicant's interest in the jointly owned property. A creditor may not request that a nonapplicant joint owner sign any instrument as a condition of the credit extension unless the applicant's interest does not support the amount and terms of the credit sought.

i. *Valuation of applicant's interest.* In determining the value of an applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition; the value of the applicant's interest after such action; and the cost associated with the action. This determination must be based on the form of ownership prior to or at consummation, and not on the possibility of a subsequent change. For example, in determining whether a married applicant's interest in jointly owned property is sufficient to satisfy the creditor's standards of creditworthiness for individual credit, a creditor may not consider that the applicant's separate property may be transferred into tenancy by the entirety after consummation. Similarly, a creditor may not consider the possibility that the couple may divorce. Accordingly, a creditor may not require the signature of the nonapplicant spouse in these or similar circumstances.

ii. *Other options to support credit.* If the applicant's interest in jointly owned property does not support the amount and terms of credit sought, the creditor may offer the applicant other options to provide additional support for the extension of credit. For example—

A. Requesting an additional party (see § 202.7(d)(5));

B. Offering to grant the applicant's request on a secured basis (see § 202.7(d)(4)); or

C. Asking for the signature of the joint owner on an instrument that ensures access to the property in the event of the applicant's death or default, but does not impose personal liability unless necessary under state law (e.g., a limited guarantee). A creditor may not routinely require, however, that a joint owner sign an instrument (such as a quitclaim deed) that would result in the forfeiture of the joint owner's interest in the property.

* * * * *

Paragraph 7(d)(6)

1. *Guarantees.* A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. A creditor may require the personal guarantee of the partners, directors, or officers of a business, and the shareholders of a closely held corporation, even if the business or corporation is creditworthy. The requirement must be based on the guarantor's relationship with the business or corporation, however, and not on a prohibited basis. For example, a creditor may not require guarantees only for women-owned or minority-owned businesses. Similarly, a creditor may not require guarantees only from the married officers of a business or married shareholders of a closely held corporation.

2. *Spousal guarantees.* The rules in § 202.7(d) bar a creditor from requiring a signature of a *guarantor's spouse* just as they bar the creditor from requiring the signature of an *applicant's spouse.* For example, although a creditor may require all officers of a closely held corporation to personally guarantee a corporate loan, the creditor may not automatically require that spouses of married officers also sign the guarantee. If an evaluation of the financial circumstances of an officer indicates that an additional signature is necessary, however, the creditor may require the signature of a spouse in appropriate circumstances in accordance with § 202.7(d)(2).

* * * * *

6. In Supplement I to Part 202, *Section 202.13—Information for Monitoring purposes,* is amended as follows:

a. Under *13(a) Information to be requested.,* paragraph 6. is revised; and

b. Under *13(b) Obtaining of information.,* paragraphs 4. and 5. are redesignated as paragraphs 6. and 7., respectively, and new paragraphs 4. and 5. are added.

The revisions and additions are to read as follows:

* * * * *

Section 202.13 Information for Monitoring purposes

13(a) Information to be requested.

* * * * *

6. *Refinancings.* A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower. A creditor that receives an application to refinance an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again but is not required to do so if it was obtained in the earlier transaction.

* * * * *

13(b) Obtaining of information.

* * * * *

4. *Applications through electronic media.* If an applicant applies through an electronic medium (for example, the Internet or a facsimile) without video capability that allows the creditor to see the applicant, the creditor may treat the application as if it were received by mail or telephone.

5. *Applications through video.* If a creditor takes an application through a medium that allows the creditor to see the applicant, the creditor treats the application as taken in person and must note the monitoring information on the basis of visual observation or surname, if the applicant chooses not to provide the information.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, September 24, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–24917 Filed 9–27–96; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 556, 560, 563, 566, 571, 590

[No. 96–87]

RIN 1550–AA94

Lending and Investment

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS or Office) is today issuing a final rule updating, reorganizing, and substantially streamlining its lending and investment regulations and policy statements. These amendments are being made pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review (Reinvention Initiative) and section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA), which requires OTS and the other federal banking agencies to review, streamline, and modify regulations and policies to improve efficiency, reduce unnecessary costs, and remove inconsistent, outmoded, and duplicative requirements.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: For general information contact: William J. Magrini, Senior Project Manager, (202) 906–5744, Supervision Policy; Ellen J. Sazzman, Counsel (Banking and Finance), (202) 906–7133; or Deborah Dakin, Assistant Chief Counsel, (202)

906–6445, Regulations and Legislation Division, Chief Counsel's Office. For information about preemption, contact Evelyne Bonhomme, Counsel (Banking and Finance), (202) 906–7052, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

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I. Background

In a comprehensive review of its regulations, beginning in the spring of 1995, pursuant to section 303 of the CDRIA [1] and the Administration's Reinvention Initiative, OTS identified its lending and investment regulations as an important area for updating and streamlining. Lending and investment are key areas of thrift operations and these regulations had not been comprehensively reviewed in a number of years. Each lending and investment regulation was reviewed to determine whether it was current and understandable; could be eliminated without endangering safety and soundness, diminishing consumer protection or violating statutory requirements; addressed subject matter more suited for handbook guidance; and was consistent with the regulations of the other banking agencies. OTS also sought industry input regarding staff's initial recommendations through an industry focus group meeting among seven thrift representatives, an industry trade association and OTS staff. As a result of this review, OTS identified a number of ways in which its lending and investment regulations could be revised to reduce regulatory burden. On January 17, 1996, OTS issued a notice of proposed rulemaking.[2]

Today's final rule is substantially similar to the January proposal. Readers will note, however, that the final rule also sets forth, for ease of reference, the full text of OTS's regulations on lending limits, real estate lending standards, disclosures on adjustable-rate mortgages, and the reappraisal of real estate owned (REO). These regulations have been moved, with only technical and conforming changes, into new Part 560, Lending and Investment, so that all lending regulations will be grouped together and more easily located. The final rule also incorporates technical corrections to fix cross-references in other regulations to regulations that are being modified, moved, or removed as part of this final rule.

The final rule reduces the number of lending and investment regulations from 43 to 23 and results in a net reduction of 11 pages of CFR text. As it proposed, OTS has removed unnecessary, duplicative, and outdated lending and investment regulations such as § 563.97 (loans in excess of 90% of value), § 545.44 (mortgage transactions with the Federal Home Loan Mortgage Corporation (Freddie Mac)), and § 545.37 (combination loans). OTS has also revised certain regulations to be less burdensome, *e.g.*, amending the scope of commercial loans under current § 545.46(b) to exclude commercial loans made by service corporations from its parent's percentage-of-assets limitations and removing restrictions on manufactured home loans and investments in government securities and state housing corporations.

OTS has also converted the detail in some regulations into guidance to give thrifts more flexibility in addressing safety and soundness concerns in a particular area, *e.g.*, current § 563.160 (loan classification) and current § 563.170(c) (loan documentation). OTS's movement toward a more guidance-oriented approach in the lending and investment area brings OTS's regulations into greater uniformity with those of the other federal banking agencies consistent with the objectives of section 303 of the CDRIA.

OTS's objective in removing the detail from some regulations and relying on a more general set of regulations and safety and soundness standards is to allow institutions greater flexibility in their lending and investment operations. However, OTS still insists that an association maintain adequate loan documentation, classify its assets, and establish appropriate valuation allowances consistent with generally accepted accounting principles and safety and soundness.

OTS is also sensitive to commenters' concerns regarding the potential for examiners to treat guidelines as binding regulations. OTS will emphasize the proper interpretation of supervisory guidance in its examiner training programs to ensure that guidance is not treated in the same manner as binding regulations.

OTS has also reorganized its lending and investment regulations to make them easier to locate and use. First, all lending and investment regulations have been moved to a new Part 560, ''Lending and Investment,'' that specifies which regulations apply to all savings associations (such as loan documentation, disclosure, and real estate lending standards) and which apply only to federal savings associations (such as specific lending powers.) This part incorporates provisions currently located in Parts 545 and 563 that are being modified as part of today's final rule. It also incorporates sections currently located in Part 563 that are being transferred to Part 560 without change. These regulations—real estate lending standards, disclosure requirements for adjustable-rate mortgages, lending limits, and appraisal requirements for real estate owned—are being moved to Part 560 for the convenience of those using OTS's lending regulations.

OTS has also removed unnecessary restatements of statutory authority and limitations from various sections of Part 545 and replaced them with a regulation in chart format that provides easy reference to the statutory authority for, and limitations on, federal associations' lending and investment powers.

OTS has added a general lending preemption provision in new Part 560. This provision (discussed more fully in the section-by-section analysis in Sec. II.B. below) restates long-standing preemption principles applicable to federal savings associations, as reflected in earlier regulations, court cases, and numerous legal opinions issued by OTS and the Federal Home Loan Bank Board (FHLBB), OTS's predecessor agency. In those opinions, OTS has consistently taken the position that, with certain narrow exceptions, any state laws that purport to affect the lending operations of federal savings associations are preempted. None of the changes implemented today should be construed as evidencing in any way an intent by OTS to change this long held position: OTS still intends to occupy the field of lending regulation for federal savings associations. OTS believes that the new lending preemption regulation is clearer and should significantly reduce the instances in which institutions need to request interpretive guidance from OTS.

In summary, OTS believes that regulations that address safety and

[1] 12 U.S.C. 4803(a)(1).

[2] 61 FR 1162 (January 17, 1996).

soundness requirements should generally be limited to those requirements necessary for OTS to carry out its supervisory responsibilities. If regulations are unnecessarily detailed and rigid, regulated entities may find themselves unable to respond to market innovations. Today's final rule achieves what OTS believes is the right balance by placing essential safety and soundness requirements in binding regulations and putting more expansive guidance on sensible practices in handbooks.

II. Summary of Comments and Description of the Final Rule

A. General Discussion of the Comments

The public comment period on the January 17 proposal closed on April 16, 1996. Fourteen commenters responded to the notice of proposed rulemaking. Seven federal savings associations, three national financial institution trade associations, two law firms, one national bank, and one state appraiser trade association submitted comments.

All but one of the commenters generally supported OTS efforts to update, streamline, and reorganize its lending and investment regulations. Commenters praised OTS's proposed elimination of unnecessary and burdensome lending and investment restrictions and indicated that the proposed modifications would be helpful. Commenters believed that the proposed changes would significantly reduce the compliance burden on the thrift industry and facilitate greater operational flexibility and product innovation. Commenters generally concurred with OTS's view that many of the proposed amendments would provide savings associations with the flexibility needed to compete with other financial institutions, particularly commercial banks, to engage in new lending activities made possible by technological changes, and to respond more quickly to market innovation. Most commenters also supported the consolidation of all lending and investment regulations into a new Part 560.

Commenters also generally supported OTS's proposal to shift some of its regulations to guidance in the Thrift Activities Handbook (Handbook). Commenters noted that moving specific loan documentation requirements currently found in § 563.170, specific loan classification requirements currently in § 563.160, and restrictions on investments in commercial paper and corporate debt securities currently in § 545.75 into the Handbook was appropriate, given that OTS now has more sophisticated examination and reporting methods and better trained examiners to monitor thrift activities. Commenters recognized that OTS regulations traditionally have been more detailed and less flexible than those applicable to banks. They agreed that OTS's proposal to move from a somewhat regulation-specific to a more guidance-oriented approach would give thrifts more flexibility to address safety and soundness concerns in a manner best suited to each individual institution. Commenters also believed that shifting OTS regulations into the Handbook would reduce the costs of regulatory compliance by increasing a thrift's operational flexibility.

At least one commenter was concerned, however, that the Handbook could become so detailed that it would stifle product innovation and management judgment or duplicate provisions that remained in the regulations. Commenters also expressed the concern that examiners might view guidelines in the Handbook as binding requirements with no resulting relief in regulatory burden. To prevent this, commenters supported OTS's plan to provide examiner training that would emphasize the intended flexibility of supervisory guidance. Additionally, OTS is reviewing the text of regulations being repealed today to determine what portions will provide helpful guidance and what portions should be disposed of altogether. The process of converting regulatory text to guidance will be done thoughtfully, recognizing the different roles performed by regulations and guidance.

A number of commenters raised concerns that the proposed changes on preemption of state laws affecting lending might be misunderstood as a narrowing of OTS's traditional preemption position. These concerns are discussed in detail in the section-by-section analysis below in reference to § 560.2.

B. Section-by-Section Analysis

1. Existing Lending and Investment Sections

Section 545.31 Election Regarding Classification of Loans or Investments

OTS proposed retaining in modified form paragraph (a) of § 545.31, which set forth OTS's general rule that where a loan or investment meets the requirements of more than one authorizing provision, the association may elect to place it in any applicable category. OTS received no comments on this paragraph, which is retained as proposed, in modified form, as new § 560.31.

OTS also proposed retaining paragraph (b) of § 545.31, which provided that loan commitments are included in total assets and accounted for as an investment for purposes of determining applicable statutory or regulatory investment authority limitations only to the extent that funds are advanced and not repaid.[3] OTS received no comments on this paragraph, which is retained as proposed as part of new § 560.31(a).

OTS proposed retaining paragraphs (c) and (d) of § 545.31, which addressed respectively the treatment of loans sold to third parties for purposes of calculating percentage-of-assets investment limitations and treatment of loans secured by assignment of loans. OTS received no comments on these paragraphs, which are retained in new § 560.31. One commenter addressing the treatment of commercial loans did suggest that OTS explicitly state that commercial loans sold or participated out do not count toward a thrift's 10 percent commercial loan limit. OTS believes that new § 560.31(b), which provides that loans sold to a third party are only included in calculating a percentage-of-assets investment limitation to the extent that they are sold with recourse, addresses this point. In response to the commenter, OTS is adding the phrase ''or portions of loans'' to the regulation to clarify that any portion of participation loans sold without recourse need not be aggregated when calculating loans subject to any percentage-of-assets investment limit.

The January proposal indicated that the definitions of ''real estate loan'' and ''loan commitment'' would be addressed in a later rulemaking that would review the overall structure of OTS's regulations and might move OTS regulatory definitions into a common part of the Code of Federal Regulations (CFR) (the Regulatory Structure rulemaking). In order to avoid confusion pending that rulemaking, however, OTS has decided to incorporate these definitions, substantially unchanged, into a new ''Definitions'' section, § 560.3. The future Regulatory Structure rulemaking may review these definitions to determine if they should be modified, removed, or relocated to another location in the regulations.

[3] Today's final rule carries forward this longstanding treatment of loan commitments for purposes of HOLA section 5(c) investment limitations. OTS notes, however, that contractual commitments to advance funds continue to be considered ''loans and extensions of credit'' under the loans-to-one borrower regulation (existing § 563.93, now § 560.93).

Section 545.32 Real Estate Loans

Consistent with its regulatory streamlining efforts, OTS proposed deleting paragraph (a) of § 545.32 and moving its statutory reference into the new lending and investment powers chart. Paragraph (a) reiterated the Home Owners' Loan Act's (HOLA's) general grant of authority for federal savings associations to make or invest in residential (home) or nonresidential real estate loans [4] and explicitly authorized federal savings associations to ''originate, invest in, sell, purchase, service, participate or otherwise deal in (including brokerage and warehousing) [real estate] loans.'' One commenter did suggest that OTS clarify that deletion of paragraph (a) is not intended to eliminate any of the activities in which federal savings associations may engage with respect to real estate loans. OTS is deleting paragraph (a) as proposed. However, OTS wishes to emphasize that it does not intend any change in federal thrifts' authority to conduct these activities. OTS is moving the statutory reference in paragraph (a) into the new lending and investment powers chart at § 560.30.

OTS also proposed to delete paragraphs (b)(1) and (b)(2) of § 545.32, because these sections duplicated more comprehensive interagency-developed real estate lending standards and appraisal standards set forth at 12 CFR 563.100–563.101 and 12 CFR Part 564, respectively. OTS received no comments on these paragraphs and is deleting them as proposed. As part of today's rulemaking, the real estate lending standards are being moved into Part 560 as new § 560.100–560.101.

OTS also proposed deleting paragraphs (b) (3), (4), (5), and (6) of § 545.32. These paragraphs discussed federal savings associations' authority to adjust the terms of real estate loans, to amortize real estate loans, to charge certain initial fees for real estate loans, and to establish escrow accounts. OTS believes that the authority to adjust, amortize, establish escrow accounts for, and charge fees for loans properly falls within the scope of a federal savings association's statutory authority to originate loans pursuant to the HOLA,[5] and these particular aspects of lending do not need to be specifically identified or restricted in the CFR. Although commenters generally supported elimination of these paragraphs, one commenter raised the concern that if OTS removed specific regulatory language referring to the authority of federal thrifts to adjust terms, amortize, charge certain fees, and establish escrow accounts for real estate loans, states may challenge whether OTS continues to occupy the field of federal thrift lending regulation and may attempt to impose their own lending regulations on thrifts. However, by removing these paragraphs, OTS does not intend any narrowing of federal thrifts' authority to conduct these activities, but rather to enhance associations' flexibility in lending. Each of these areas is specifically cited in the new § 560.2 as an area in which state law is preempted. Whether OTS continues to have a specific regulation or chooses to remove a federal regulation to streamline its regulations and reduce regulatory burden, the agency still intends to occupy the entire field of lending regulation for federal savings associations. Accordingly, OTS is deleting paragraphs (b) (3), (4), (5), and (6) as proposed.

Paragraph (c) of § 545.32 defined the phrase ''loan made on the security of real estate.'' In its proposal OTS sought comment on whether the current definition of secured real estate loan has provided adequate guidance for savings associations. One commenter indicated that the current definition does not adequately deal with situations involving state single action rules. OTS will consider this comment when the agency proceeds with the definitional portion of the Regulatory Structure rulemaking. In the interim, this definition is being included in § 560.3, ''Definitions.''

OTS proposed deleting paragraph (d) of § 545.32, which addressed loan-to-value ratios, because it duplicates more comprehensive interagency real estate lending standards. Commenters supported elimination of this paragraph and OTS is deleting paragraph (d) as proposed.

Section 545.33 Home Loans

In the proposal, OTS indicated that it was considering moving the introductory paragraph of § 545.33 to a common definitional section of the regulations as part of the Regulatory Structure Proposal. OTS received no comments on this language, which generally describes home loans and will retain this paragraph as part of § 560.3 ''Definitions,'' until its reconsideration during the definitional rulemaking.

OTS proposed to delete paragraph (a) of § 545.33. This section described the authority of federal savings associations to amortize home loans. One commenter did raise a concern that deletion of this section could throw into question federal preemption of state laws prohibiting balloon payments. As discussed under § 545.32(b) (3)–(6), the authority to amortize home loans properly falls within the scope of savings associations' statutory authority to originate loans and does not need to be specifically identified in the CFR. New § 560.2 specifically confirms that states cannot regulate how federal savings associations amortize their loans. Accordingly, OTS is deleting paragraph (a) as proposed.

OTS proposed to delete paragraph (b), which addressed loan-to-value ratios (LTV) for home loans. Commenters agreed with OTS's view that the interagency real estate lending standards address the same issues in a more comprehensive and current manner and supported deletion of this paragraph. OTS is deleting paragraph (b) as proposed.

One commenter did contend that some language in paragraph (b) should be retained to make clear that home loans that comply at origination with the LTV ratios set forth in the interagency real estate lending standards but thereafter exceed them due to negative amortization should not require special recordkeeping or reporting to a thrift's board of directors. OTS has no requirement in either the real estate lending guidelines or its regulations that such loans be reported to a thrift's board and so removing this paragraph does not impose any new reporting requirements on thrifts.

OTS proposed to delete paragraph (c), which set forth limitations on the adjustments that may be made to the terms of residential mortgages. It requires that adjustments to rates, payments, or loan balances be tied to a national or regional index beyond the control of the savings association or a formula or schedule set forth in the loan contract. These limitations on federal savings associations are generally much more restrictive than those applicable to state-chartered lenders offering mortgages and have not been revised since 1983, when adjustable rate mortgage (ARM) loans were still relatively new in the marketplace. Federal savings associations must also comply with the notice and disclosure requirements of current § 563.99.

OTS proposed to delete paragraph (c), including the external index requirement, to give thrifts and consumers greater flexibility in structuring ARM transactions. Most commenters supported the proposed deletion, agreeing that it would give thrifts additional flexibility to compete with other mortgage lenders not subject to similar requirements. These commenters also agreed that the competitive market place makes such

[4] 12 U.S.C. 1464(c)(1)(B), (c)(2)(B).

[5] 12 U.S.C. 1464(c)(1)(B), (c)(2)(B).

requirements unnecessary given the wide variety of possible sources for home mortgage loans. Commenters also confirmed that consumers have become familiar with ARM loans and receive detailed disclosures when requesting such loans. The majority of commenters addressing the issue concluded that as long as information about adjustments is clearly disclosed to purchasers, the terms of the ARM loan should be a matter of contract between the savings association and the purchaser.[6]

One commenter, a bank trade association, opposed the removal of this requirement, arguing that it would be inconsistent with the Office of the Comptroller's decision to retain such a requirement for national banks.[7] Another commenter, a trade association representing savings associations and banks, suggested further study before removing the requirement. Both commenters suggested that consumers might be better protected by retaining this requirement. The second commenter emphasized the importance of adequate disclosure.

Upon review of the comments received, OTS has decided to adopt a new section, § 560.35, ''Adjustments to Home Loans,'' requiring that a federal savings association generally use a national or regional index for ARM loans. Examples of such acceptable indices include the Eleventh District's Cost of Funds Index and indices tied to one-year Treasury bills. OTS has also decided, however, to give an association the flexibility to use alternative indices after notifying OTS. The notice should address how indices will be derived, how the association will ensure the indices' availability and verifiability, and how the indices will be disclosed to borrowers. Additionally, the notice should outline the internal controls and processes that the association will put in place to administer and monitor such indices. Once OTS has reviewed and not objected to an institution's internal procedures for the use of alternative indices, subsequent notices need only address how new indices are derived. If OTS does not object within 30 days, the association may proceed with using alternative indices. Use of alternative indices will also be reviewed as part of the agency's safety and soundness and compliance examinations.

The foregoing changes do not affect the requirement that any index used must be readily available, independently verifiable, and adequately disclosed in accordance with the Truth in Lending Act, any applicable regulations, and new § 560.210, which replaces existing § 563.99. Associations still may use one or more indices or a formula or schedule set forth in the loan contract to adjust the interest rate, payments, or loan balance.

OTS believes that this change will allow institutions potentially greater flexibility in structuring and managing their loan portfolios while allowing the agency the opportunity to review an association's proposed ARM loan program, structure, and safeguards to determine whether they would result in a suitable index to use for ARM transactions. Consumers will continue to have the protection of a verifiable and disclosed index and of OTS review. In response to the commenters who noted that the Office of the Comptroller of the Currency (OCC) has recently taken a different position on this issue, OTS notes that the external indices issue is more important for federal thrifts than it is for national banks. Unlike banks, thrifts are subject to the Qualified Thrift Lender (QTL) rule. That statutorily mandated rule, 12 CFR 563.50–563.52, requires thrifts to hold an average of 65% or more of their assets in residential mortgage loans. Because national banks have no such requirement, they often originate such loans, but then sell them in the secondary mortgage market. They rarely would have the occasion to develop an alternative index because the secondary market usually requires the use of an outside index.

Because thrifts must hold the majority of their assets in residential mortgages, they are more vulnerable to interest rate risk than national banks. Enabling thrifts to tie their yields on 1–4 family residential loans with the rates they pay on deposits would help thrifts to manage this risk and offset the competitive disadvantage resulting from the QTL rule.

No commenters addressed the other requirements of § 545.33(c) (4)–(5), which are being removed as proposed.

OTS proposed to delete paragraph (d) of § 545.33, which addressed loans on cooperatives. Commenters agreed with OTS's view that the interagency real estate lending standards address the same issues in a more comprehensive and flexible manner and that this paragraph was duplicative of those lending standards. OTS is deleting paragraph (d) as proposed.

OTS proposed deleting paragraph (e) of § 545.33, which addressed loans to facilitate trade-in or exchange, because the interagency real estate lending standards cover the same issues in a more comprehensive and flexible manner. Commenters supported deletion of this paragraph. OTS is deleting paragraph (e) as proposed.

Paragraph (f) of § 545.33 specifies which OTS regulations must be followed by state savings associations and certain other state lenders who elect to make loans under the Alternative Mortgage Parity Act.[8] The Alternative Mortgage Parity Act preempts state laws that might otherwise limit certain state creditors' ability to offer alternative mortgage instruments if they comply with the OTS regulations identified in this paragraph. OTS proposed moving paragraph (f) in order to make it more accessible and easier to locate and to clarify that all OTS lending regulations apply to loans originated under the Parity Act. OTS received no comments on this proposed change. Accordingly, OTS is moving the provisions of this paragraph, as modified to reflect changes elsewhere in today's final rule, into new § 560.220, as part of a subpart specifically dealing with alternative mortgages. The title of that subpart and § 560.220, will highlight the content, making it easier for those unfamiliar with OTS's regulations to locate.

Section 545.34 Limitations for Home Loans Secured by Borrower-Occupied Property

OTS proposed removing paragraph (a) of § 545.34 and incorporating its provisions into the new consolidated lending preemption regulation at § 560.2. Paragraph (a) confirmed that federal savings associations may include due-on-sale clauses in loan instruments to the extent authorized under federal statutes and regulations regardless of state prohibitions of due-on-sale clauses.[9] OTS received no comments on this proposed change, which is adopted as proposed.

Paragraphs (b) and (c) permitted federal savings associations to include provisions imposing late fees and prepayment penalties in loan contracts on home loans subject to certain conditions. OTS proposed removing these paragraphs and incorporating their limitations into new § 560.34. The three commenters who discussed these

[6] One commenter suggested removing all caps on ARM loans. The OTS notes that 12 U.S.C. 3806, which applies to all creditors, including savings associations, requires that all ARM loans, as defined in that section, include limitations on the maximum interest rate applicable during the loan term.

[7] See 61 FR 11294, 11297 (March 20, 1996).

[8] The Alternative Mortgage Parity Act, Pub. L. 97–320, Title VII (Parity Act), 12 U.S.C. 3801 *et seq.*, authorizes certain housing creditors to make alternative mortgage transactions notwithstanding any contrary state law under certain conditions. Housing creditors that rely on the Parity Act and are not commercial banks or credit unions must comply with applicable OTS lending regulations.

[9] 12 U.S.C. 1701j–3; 12 CFR Part 591.

paragraphs supported this reorganization. Upon further review, however, OTS believes that separating these two paragraphs into two separate, more specifically identified, regulations will make them easier for users to locate. New § 560.33 will cover late charges and new § 560.34 will address prepayment penalties.

Two commenters also suggested that OTS reduce or eliminate the required fifteen-day grace period for borrowers before imposition of a late charge. The commenters noted that only OTS, among federal bank regulators, has such a lengthy grace period, and suggested at least reducing the period to ten days to put savings associations on a more level playing field with other mortgage lenders. OTS believes that the fifteen-day grace period does not impose a hardship on institutions. OTS is retaining the fifteen-day grace period in the final rule.

One commenter also suggested that OTS delete the reference to ''monthly'' billing in § 545.34(b) (now incorporated into § 560.33), inasmuch as some creditors offer bi-weekly or other mortgage plans. OTS is adopting this suggestion and deleting the word ''monthly'' from the final rule in order to afford institutions and consumers more flexibility in structuring payment plans.

Section 545.35 Other Real Estate Loans

Section 545.35 set forth federal savings associations' authority to lend and invest in nonresidential real estate subject to certain statutory and regulatory limitations. Paragraph (a) required compliance with real estate lending standards. Paragraph (b) reiterated the statutory limit of 400 percent of an association's total capital imposed on investments in nonresidential real estate. Pursuant to its streamlining efforts, OTS proposed to delete this section, incorporate the reference to federal savings associations' statutory authority to invest in nonresidential real estate into the lending and investment powers chart, and place related limitations into an accompanying endnote. OTS received no comments on § 545.35 and is making the changes proposed.

Section 545.36 Loans To Acquire or To Improve Real Estate

OTS proposed to delete § 545.36, which set forth regulatory investment limitations pertaining to acquisition, development, and construction loans. The one commenter addressing this proposed change supported OTS's view that the interagency real estate lending standards and interagency safety and soundness standards dealt with the same issues in a more comprehensive and current manner. Accordingly, OTS is deleting this section as proposed. OTS intends to incorporate paragraphs (c) and (d) of § 545.36 into the Handbook to provide guidance beyond that contained in the interagency real estate lending standards to thrifts making development loans.

Section 545.37 Combination Loans

OTS is deleting § 545.37 as proposed. This section allowed thrifts to combine sequentially different types of loans authorized by Part 545 and made at different stages of a project, with the term of each loan beginning at the end of the previous loan. This provision was useful when OTS regulations limited the number of years for which certain types of loans could be made. OTS removed those restrictions in 1992. OTS believes this section is therefore no longer necessary. The sole commenter addressing this section supported its deletion.

Section 545.38 Insured and Guaranteed Loans

Paragraphs (a) and (b) of § 545.38 authorized federal thrifts to make insured and guaranteed residential real estate loans, notwithstanding other provisions of Part 545 but subject to certain limitations. OTS proposed deleting these paragraphs as unnecessary. Federal savings associations may make an unlimited percentage of residential real estate loans, subject to the interagency real estate lending standards. Other regulatory restrictions have already been removed or are being deleted from Part 545 today. OTS received no comments on these proposed deletions, which are adopted as proposed.

Paragraph (c) addressed nonresidential real estate loans that are guaranteed by the Economic Development Administration, the Farmers Home Administration, or the Small Business Administration. OTS proposed deleting this paragraph and incorporating the HOLA's statutory grant of authority for federal thrifts to make guaranteed nonresidential real estate loans in the endnotes to the lending and investment powers chart. The sole commenter addressing § 545.38 supported deletion of the section as unnecessary and duplicative of the interagency real estate lending standards.

Accordingly, OTS is deleting this paragraph as proposed and incorporating the statutory reference into the lending and investment powers chart.

Section 545.39 Loans Guaranteed Under the Foreign Assistance Act of 1961

OTS proposed deleting § 545.39, which reiterated the HOLA's grant of authority [10] to federal thrifts to make loans guaranteed under the Foreign Assistance Act,[11] and incorporating its provisions into the lending and investment powers chart. OTS received no comments on this section. OTS is incorporating the provisions of § 545.39 into the lending and investment powers chart and endnotes and new § 560.43.

Section 545.40 Loans on Low-Rent Housing

OTS proposed to delete § 545.40, which exempted loans made pursuant to certain low rent housing programs of the Department of Housing and Urban Development from regulatory maximum loan term and loan-to-value limitations. OTS believes that this section is unnecessary because the loan term and loan-to-value ratio limitations referred to in the section have already been or are now being removed from OTS regulations. The one commenter who addressed this section supported its elimination. Accordingly, OTS is deleting this section as proposed. By deleting this section, OTS does not intend to limit federal thrifts' authority to make low-rent housing loans pursuant to applicable statutory and regulatory provisions, but rather to remove obsolete restrictions that only serve to confuse those using OTS's regulations.

Section 545.41 Community Development Loans and Investments

OTS proposed to delete § 545.41 because it simply reiterated the HOLA's grant of authority to federal savings associations to make direct community development loans and investments, subject to an overall five percent of assets limitation.[12] OTS received no comments on this proposed change. OTS is deleting this section as proposed and incorporating the statutory authority reference into the lending and investment powers chart.

Section 545.42 Home Improvement Loans

Section 545.42 reiterated the HOLA's grant of authority to federal thrifts to make home improvement loans subject to prudent lending standards.[13] OTS

[10] 12 U.S.C. 1464(c)(4)(C).
[11] 22 U.S.C. 2181, 2184.
[12] 12 U.S.C. 1464(c)(3)(B).
[13] 12 U.S.C. 1464(c)(1)(J).

proposed deleting this section and incorporating the reference to federal thrifts' statutory authority to make home improvement loans into the lending and investment powers chart. OTS received no comments on § 545.42 and is making the proposed changes.

Section 545.43 State Housing Corporation Investment-Insured

OTS proposed to delete § 545.43 because it reiterated the HOLA's grant of authority to federal thrifts to invest in state housing corporation loans [14] subject to a regulatory 30 percent of assets limitation. This section also duplicates restrictions in current § 563.95, which regulates investment in state housing corporations for all savings associations.[15] OTS received no comments on this section. OTS is deleting § 545.43, as proposed, including the 30 percent of assets limitation. The reference to the HOLA's grant of authority to federal thrifts to invest in state housing corporation loans has been incorporated into the lending and investment powers chart.

Section 545.44 Mortgage Transactions With the Federal Home Loan Mortgage Corporation

Section 545.44 provided, in accordance with HOLA section 5(c)(1)(E) and the Federal Home Loan Mortgage Corporation Act, that federal thrifts may enter into or perform mortgage transactions with Freddie Mac. It did not impose any additional regulatory restrictions. OTS proposed to delete this section as an unnecessary reiteration of statutory authority and of savings associations' inherent power to enter into business contracts. The sole commenter addressing § 545.44 supported its deletion as unnecessary. OTS is deleting § 545.44 as proposed. HOLA section 5(c)(1)(E) is now referenced in the lending and investment powers chart.

Section 545.45 Manufactured Home Financing

OTS proposed to delete paragraph (a) of § 545.45, which contained definitions relating to manufactured home financing. The proposed deletion of other paragraphs of this section made these definitions unnecessary. OTS received no comments on this paragraph and is deleting it as proposed.

OTS proposed to delete paragraph (b) of § 545.45, which reiterated the HOLA's grant of authority to federal thrifts to invest in or make manufactured home loans.[16] The two commenters addressing this section supported these streamlining efforts, and OTS is deleting paragraph (b) as proposed. OTS is incorporating the statutory reference to federal thrifts' authority to invest in manufactured home loans into the lending and investment powers chart.

Paragraphs (c) and (d) of § 545.45 addressed inventory financing and retail financing for manufactured home chattel paper and established term and loan-to-value limits for such loans. OTS proposed deleting these paragraphs because they describe underwriting standards for manufactured homes that are more suitable as guidance. The two commenters addressing these paragraphs supported removing loan-to-value and maximum term limits on manufactured homes to eliminate micromanagement of the lending process. Accordingly, OTS is deleting these paragraphs as proposed.

However, the commenters disagreed as to the extent to which these paragraphs should be transferred to the Handbook. One commenter suggested that underwriting guidance in the Handbook pay particular attention to the unique risk characteristics associated with manufactured home financing. The second commenter believed that limitations in the Handbook would not necessarily produce better manufactured home loan performance but rather would only limit credit availability for low and medium income borrowers and leave thrifts at a competitive disadvantage with regard to other types of institutions. This commenter contended that a prudent underwriting program that balanced creditworthiness and payment capacity of a borrower along with product parameters, pricing differentials, and reserve requirements provided a better means for managing risk than a program containing strict limits on particular factors.[17] OTS will review these suggestions prior to issuing any guidance regarding mobile home lending.

OTS proposed to delete paragraph (e) of § 545.45, which provided that a federal thrift's sale of manufactured home chattel paper must be sold without recourse. Since that paragraph was first adopted, OTS has adopted a capital regulation that requires thrifts to hold appropriate levels of capital against all sales with recourse.[18] OTS received no comments on this proposed change and is deleting paragraph (e) as proposed.

Section 545.46 Commercial Loans

OTS proposed to delete paragraph (a) of § 545.46, which simply reiterated the HOLA's grant of authority to federal thrifts to invest in and make commercial loans not to exceed 10 percent of their assets.[19] OTS also proposed to incorporate the authority and statutory limitation in paragraph (a) into the lending and investment powers chart. Commenters generally supported these proposed changes, which are adopted as proposed.

OTS also proposed deleting paragraph (b), which defined commercial loans to include commercial overdrafts related to demand accounts and commercial unsecured loans by service corporations. OTS proposed to incorporate paragraph (b)(1) (commercial overdrafts) into an endnote to the lending and investment powers chart. OTS received no comments on this proposed change, which is adopted as proposed.

OTS also proposed to remove the requirement that commercial loans made at the service corporation level be aggregated with the 10 percent of assets limit on commercial lending. Commenters generally agreed with OTS's view that the statutory maximum aggregate 3 percent of assets that federal savings associations may invest in service corporations [20] generally provides a sufficient safeguard for savings associations investing in service corporations engaged in commercial lending as it does for all other types of activities conducted in service corporations. Under the current regulations, only a service corporation's commercial loans are aggregated with its parent's loans for purposes of statutory percentage-of-assets limitations on general investment authority, while other service corporation investments are not.[21] Most commenters agreed with

[14] 12 U.S.C. 1464(c)(1)(P).

[15] Section 563.95, as discussed later, is being modified and moved into new Part 560.

[16] 12 U.S.C. 1464(c)(1)(J).

[17] This commenter also suggested expanding the definition of residential property in existing § 563.101 (now § 560.101) of the interagency real estate lending standards to include manufactured homes placed on real property regardless of whether the home is permanently affixed as determined by state law. The OTS believes that modifying the substance of that section, which was developed on an interagency basis, is not within the scope of this rulemaking and defers consideration of this suggestion until a later date.

[18] See 12 CFR 567.1(kk), 567.6(a)(2)(i)(C).

[19] 12 U.S.C. 1464(c)(2)(A). The language in § 545.46(a) regarding pre-1984 investment limits is obsolete and has been deleted.

[20] 12 U.S.C. 1464(c)(4)(B).

[21] 12 CFR 545.74(c)(1)(1996). For purposes of some other regulations, such as loans to one borrower (12 CFR 563.93, to be recodified at 12 CFR 560.93) and transactions with affiliates (12 CFR 563.41 and 563.42), investments at the service corporation level are aggregated with investments of

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OTS that such a distinction is not warranted and that such loans should no longer be subject to the 10 percent of assets limitation on commercial lending set forth in HOLA section 5(c)(2)(A).

These commenters also agreed that by removing this aggregation requirement federal thrifts will be afforded modest additional flexibility to expand their commercial lending. This incremental enhancement of thrifts' lending authority will benefit both thrifts and their customers, without endangering safety and soundness or thrifts' primary mission of providing mortgage lending.

One bank trade association commenter did express a concern that removing the requirement to aggregate commercial loans made by a service corporation with its parent's loans might circumvent the HOLA ceiling on commercial loans. However, the HOLA does not require that a service corporation's commercial loans be aggregated with its parent's loans for purposes of statutory percentage-of-assets limitations on general investment authority. Service corporations do not fall within the definition of savings association for purposes of applying HOLA's investments limits. As noted above, the HOLA imposes an aggregate limit on investments in service corporations of 3 percent of assets, but does not impose sublimits on service corporation investments. The FHLBB's original inclusion of a service corporation's commercial loans within its parent savings association's commercial lending authority was done in 1983 when commercial lending was a new activity for savings associations. Given the levels of capital now required for such loans and OTS's experience in regulating this activity, OTS believes that allowing this modest increase in commercial lending authority is appropriate. OTS therefore will follow the plain statutory language of HOLA sections 5(c)(2)(A) and 5(c)(4)(B), which do not require aggregation of a service corporation's commercial loans with those made by its parent.

Section 545.47 Overdraft Loans

OTS proposed to delete § 545.47, because it simply reiterated the HOLA's grant of authority to federal thrifts to make loans specifically related to transaction accounts, including overdraft loans. OTS also proposed to incorporate the reference to federal thrifts' statutory authority to make overdraft loans into the lending and investment powers chart accompanied by an endnote specifying that commercial overdraft loans formerly covered by § 545.46 remain subject to the same commercial lending limits. OTS received no comment on these proposed changes, which are adopted as proposed.

Section 545.48 Letters of Credit

Section 545.48 authorized federal thrifts to issue letters of credit in conformance with the Uniform Commercial Code or the Uniform Customs and Practices for Documentary Credits and subject to certain general standards. As already discussed, the HOLA expressly authorizes federal thrifts to invest in or make loans, and this express authorization to make loans necessarily includes within it the authority to make loan commitments and issue letters of credit. For ease of reference, OTS proposed to reference the authority of federal thrifts to issue letters of credit in the lending and investment powers chart. OTS also proposed to incorporate the substance of § 545.48(a) into new § 560.120 as prudent standards for the issuance of letters of credit. OTS solicited comment on whether transferring the substance of § 545.48(a) to the new Part 560 would provide needed uniform standards for all savings associations.

The two commenters to address this section both supported OTS's efforts to update § 545.48 to reflect current market standards and industry usage for letters of credit. Both commenters also supported OTS's adoption of regulatory requirements for the issuance of letters of credit for all savings associations in order to provide uniform standards for all thrifts. While applauding OTS's efforts to modernize its letters of credit regulation, however, one commenter contended that the specific language of the proposed rule was not crafted to address some of the regulatory issues raised by contemporary letters of credit practice. This commenter suggested that OTS review the most recent interpretive ruling on letters of credit issued by the OCC, which was published after OTS issued its notice of proposed rulemaking.[22]

Having reviewed the OCC's interpretive ruling, OTS has determined to substantially adopt the approach taken by the OCC with respect to the regulation of letters of credit. OTS believes that the OCC ruling incorporates many of the modern market standards and industry usage applicable to letters of credit. Furthermore, by substantially adopting the OCC's approach, OTS is acting consistent with Section 303 of the CDRIA, which encourages the federal banking agencies to move towards greater uniformity in regulations on common supervisory issues.

In its February 9, 1996 ruling, the OCC treats letters of credit and independent undertakings as equivalent transactions for regulatory purposes. The OCC uses the term ''independent undertakings'' to encompass letters of credit as well as all such unilateral commitments under which a bank's obligation to honor its commitment is dependent solely on the proper presentation of specified documents regardless of extrinsic factors (except fraud, forgery, or an overriding public policy issue).[23] As the OCC points out, the term ''independent undertakings'' is used by the United Nations Commission on International Trade Law to cover a broad array of transactions including commercial letters of credit, standby letters of credit, and other undertakings that are functionally identical or equivalent to letters of credit.[24]

The new § 560.120 states that a thrift may issue and commit to issue letters of credit. The new section also allows thrifts to issue and commit to other independent undertakings approved by OTS. OTS also believes that, in the thrift context, the broad scope of the term ''independent undertaking'' and its recent evolution require closer supervision of such transactions when they fall outside the more traditional activities generally known as letters of credit. National banks have traditionally been more involved in international banking transactions and may be more familiar than most thrifts with nontraditional activities that fall within the term ''independent undertakings''. OTS believes that allowing thrifts to issue independent undertakings of a type specifically approved by OTS strikes the appropriate balance between giving thrifts greater flexibility to potentially engage in new types of transactions while at the same time ensuring that thrifts have properly evaluated the risks posed by a particular transaction consistent with prudent banking practice. OTS anticipates that its approval may take the form of legal opinions, general guidance, or case-by-case approvals, depending upon how the undertakings are presented to the agency.

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the parent savings association. This final rule does not affect those regulatory provisions.

[22] See Interpretive Ruling: Independent Undertakings To Pay Against Documents (12 CFR 7.1016) (61 FR 4849, 4852–3, 4865, February 9, 1996, effective April 1, 1996).

[23] See Notice of Proposed Rulemaking: Interpretive Rulings, 60 FR 11924, 11926 (March 3, 1995).

[24] 61 FR at 4852.

Paragraph (a) of the new § 560.120 explains that a savings association may issue and commit to issue a letter of credit or other approved independent undertaking. Paragraph (a) also provides a non-exclusive list of sample laws and rules of practice [25] and explains that non-documentary conditions on the thrift's undertaking are not relevant to the thrift's obligation to honor its commitment.

Paragraph (b) of the final rule requires that thrifts evaluate certain safety and soundness factors when issuing letters of credit and approved independent undertakings. Paragraph (b) also requires that thrifts possess the operational expertise commensurate with the sophistication of their letter of credit and independent undertaking activities. The final rule also permits a thrift to issue a letter of credit or other approved undertaking without an express expiration date, provided that the thrift retains the right not to renew the transaction and to cancel the transaction upon notice to the parties.

OTS also proposed to delete paragraph (b) of § 545.48, which addressed the treatment of funds advanced under a letter of credit without compensation from the account party, because it duplicates § 545.31(b), which OTS proposes to incorporate into § 560.31(a). OTS received no comment on this proposed deletion, which is adopted as proposed.

Because issuing a letter of credit is not in and of itself a loan or investment, the reference to letters of credit has been removed from the lending and investment powers chart. When a savings association advances funds under the terms of a letter of credit or independent undertaking, those funds will then constitute a loan and will be counted toward the appropriate HOLA section 5(c) investment category.

Section 545.49 Loans on Securities

OTS proposed to delete § 545.49, which simply reiterated the HOLA's grant of authority to federal thrifts to invest in loans to financial institutions and brokers secured by obligations backed by the United States government or certain agencies or instrumentalities thereof.[26] OTS also proposed to incorporate a reference to thrifts' statutory authority to invest in such loans secured by U.S. government or agency-backed obligations into the lending and investment powers chart. The agency also proposed to remove as unnecessary the introductory paragraph limiting permissible investments in agencies or instrumentalities of the United States to those entities named in § 566.1(g)(3). OTS received no comments on this section and accordingly deletes this section as proposed.

Section 545.50 Consumer Loans

Section 545.50 reiterates the HOLA's grant of authority to federal thrifts to make consumer loans subject to a 35 percent of assets limit.[27] For purposes of determining compliance with this limit, federal thrifts must aggregate their consumer loans with any investments in corporate debt securities and commercial paper.[28] In other words, a federal thrift's aggregate investments in consumer loans, corporate debt securities, and commercial paper may not exceed 35 percent of its assets.

OTS proposed to delete paragraph (a) of § 545.50 and to incorporate the reference to federal thrifts' statutory authority to make consumer loans, subject to the statutory asset limit, into the lending and investment powers chart. OTS also proposed to include an endnote incorporating the provisions of paragraph (c) of § 545.50, which addressed loans to dealers in consumer goods. Commenters were generally supportive of these changes and OTS is making the proposed changes.

OTS also solicited comment on how the definition of consumer loan set forth in paragraph (b) of § 545.50 could be clarified and coordinated with other OTS regulations that address consumer credit. Several commenters pointed out the inconsistency between paragraph (b)'s definition of ''consumer loan,'' which expressly excludes credit cards, and § 561.12, which defines ''consumer credit'' to include credit cards. OTS recognizes the ambiguity that arises from the use of these similar, but not identical, terms in different regulatory provisions. For purposes of HOLA investment limits and Part 560, the term ''consumer loan'' will continue to be defined in the Definitions section, new § 560.3, as it has been in § 545.50. As part of a later Regulatory Structure rulemaking, OTS will consider how best to minimize or eliminate the potential for confusion presented by differing definitions of similar terms.

Under current OTS regulations, credit card loans are not subject to the 35 percent of assets investment limit applicable to consumer loans, corporate debt securities, and commercial paper. Section 545.51, discussed below, governs credit card activity of federal savings associations and imposes no percentage of assets limits on credit cards. This approach mirrors the HOLA. HOLA section 5(b)(4) authorizes federal thrifts to invest in consumer loans, corporate debt securities, and commercial paper subject to a 35 percent of assets limit is separate from the statutory provision that authorizes thrifts to invest in credit cards. The statutory provision authorizing credit cards contains no percentage of assets limit. The legislative history does not provide any clear guidance regarding whether any linkage was intended. The sole commenter addressing this issue agreed with OTS's position that the plain language of the HOLA imposes no percentage of assets limit on credit card operations.

The final rule carries forward the structure of OTS's existing regulations. Under the final rule, ''consumer loan'' will continue to be defined in a manner that excludes credit card loans. Thus, credit card loans are not subject to the 35 percent of assets limit on consumer loans. However, the regulation notes, at endnote 5 to § 560.30, that OTS may impose a case-by-case limit on this or any type of lending activity if the association's concentration in such investments presents a safety and soundness concern.

Section 545.51 Credit Cards

OTS proposed to delete paragraph (a) of § 545.51, which reiterated the HOLA's grant of statutory authority to federal thrifts to engage in credit card operations.[29] OTS proposed to incorporate a reference to federal savings associations' statutory authority to engage in credit card operations into the lending and investment powers chart. OTS received no comments on this paragraph and adopts these changes as proposed.

OTS also proposed to delete paragraph (b) of § 545.51, which addressed the confidentiality of personal security identifiers in conjunction with credit card operations, because it is redundant with the provisions of the Electronic Funds Transfer Act and Regulation E.[30] The one commenter addressing this paragraph supported this reasoning. OTS is deleting this paragraph as proposed.

Section 545.52 Loans on Savings Accounts

OTS proposed to delete § 545.52, which reiterated the HOLA's grant of authority to federal thrifts to make loans

[25] See footnote to the new § 560.120(a).

[26] 12 U.S.C. 1464(c)(1)(L).

[27] 12 U.S.C. 1464(c)(2)(D).

[28] *Id.*

[29] 12 U.S.C. 1464(b)(4).

[30] See 15 U.S.C. 1693 *et seq.* and 12 CFR Part 205 respectively.

on the security of savings accounts and sets forth regulatory limits on such loans.[31] OTS proposed to incorporate the reference to federal thrifts' statutory authority to make loans on savings accounts into the lending and investment powers chart and retain the limitation on such loans to the withdrawal amount of the savings account as an endnote to the chart. OTS received no comments on this section and the proposed changes to § 545.52 are adopted as proposed.

Section 545.53 Finance Leasing

Paragraph (a) of § 545.53 authorized federal thrifts to engage in various leasing activities that are the functional equivalent of lending, subject to certain regulatory limitations.[32] OTS proposed to reference federal thrifts' finance leasing authority in the proposed lending and investment powers chart, with an endnote cross-referencing applicable regulatory limitations. OTS received no comment on this proposed change, which is adopted as proposed.

OTS also proposed to consolidate the finance leasing requirements of § 545.53 with the general leasing requirements of § 545.78 into one streamlined section, new § 560.41. In connection with this consolidation, OTS proposed to delete the term limits for finance leases and to increase the minimum residual value requirement for finance leases from 20 to 25 percent. The one commenter addressing these proposed changes supported the proposed consolidation and agreed with OTS's reasoning that institutions should be free to establish their own term limits based on prudent underwriting criteria and market conditions. The commenter also supported the increase in residual value requirement because it enhanced the flexibility of thrifts' leasing operations. Because of the complexity of leasing activities, this commenter also suggested that OTS provide clear underwriting guidance for various types of leasing activities in the Handbook as well as additional examiner training on leasing arrangements. A second commenter requested a clearer definition of ''full-payout lease'' in § 560.41(c).

In this final rule, OTS is consolidating its leasing regulations into the newly adopted § 560.41. The section has been revised to clarify its scope and definitions. OTS is also eliminating the term limits and increasing the minimum residual value requirement for finance leases to 25 percent. OTS notes that the OCC allows national banks to make finance leases with a residual value of 25 percent of the original cost of the property to the lessor.[33] OTS plans to add underwriting guidance to the Handbook addressing leasing arrangements.

OTS is also consolidating the salvage powers provisions in § 545.53 into the new § 560.41. Paragraph (e) of that new section outlines a thrift's salvage powers on all types of leases.

Section 545.72 Government Obligations

Section 545.72 reiterated the HOLA's grant of authority to federal thrifts to invest in obligations of any state, territory, or political subdivision thereof.[34] OTS proposed to delete this section and incorporate the reference to federal thrifts' statutory authority to invest in government obligations into the lending and investment powers chart. OTS also proposed incorporating the provisions of § 545.72(a) regarding investments in obligations meeting investment grade requirements into a new § 560.42 entitled ''State and local government obligations.'' The lending and investment powers chart would cite the new § 560.42 in its endnotes. OTS received no comments on these proposed changes, which are adopted as proposed.

In order to encourage additional sound community-related investments, OTS also proposed modifying regulatory restrictions in § 545.72(b) before their incorporation into the new § 560.42. OTS proposed to clarify that the 1 percent of assets limitation for investments in obligations of a state or political subdivision where a savings association has its home or a branch office that do not meet the rating or full faith and credit requirements of § 545.72(a) is an aggregate limit. However, OTS also proposed to allow savings associations to invest additional amounts in such obligations, without geographic restrictions, if the obligation is specifically approved for investment by OTS.

The two commenters addressing this section supported OTS's reasoning that this change would afford savings associations additional flexibility to invest in government obligations without any threat to the associations' safety and soundness. One commenter noted that the obligations of local municipalities often are rated noninvestment grade or are unrated, yet these communities could benefit from local savings associations' increased investment in municipal bonds. Both commenters believed that thrifts with strong capital, sound underwriting standards, and broadly diversified investment portfolios should have the discretion to invest in government obligations. One commenter argued that OTS should not require prior approval before an association is permitted to invest in government obligations in a locality in which the association does not have a home or branch office. OTS, however, believes that such prior approval is appropriate because the purchase of noninvestment grade or unrated obligations is potentially risky, and associations should be prepared to demonstrate that their decision to invest in such obligations does not pose any threat to the association's safety or soundness.

OTS believes that the proposed changes will give savings associations additional flexibility while still allowing the agency to monitor the risks presented by investments in government obligations. The proposed rule gives thrifts the option to invest in unrated government securities, exceed the 1 percent of assets limit for unrated securities of localities where the thrift has an office, or invest in obligations in localities where they do not have an office if the thrifts obtain prior OTS approval. Accordingly, OTS adopts the proposed modifications to paragraphs (a) and (b) of § 545.72 and incorporates those modified provisions into the new § 560.42.

OTS also proposed to remove the restriction on gold-related obligations contained in paragraph (c) of § 545.72 as obsolete. OTS received no comment on the proposed deletion, which is adopted as proposed.

Section 545.73 Inter-American Savings and Loan Bank

Section 545.73 reiterated federal savings associations' authority to invest in the share capital and capital reserve of the Inter-American Savings and Loan Bank, subject to statutory and regulatory limitations on the amount of investment.[35] OTS proposed to remove this section and incorporate this authority and limitations into the new lending and investment powers chart, endnotes, and new § 560.43, which addresses foreign assistance investments. OTS received no comment on these proposed changes, which are adopted as proposed.

[31] 12 U.S.C. 1464(c)(1)(A).

[32] Section 545.53 cited several HOLA lending provisions, 12 U.S.C. 1464 (c)(1)(B), (c)(2)(A), and (c)(2)(D), as the basis for federal thrifts' finance leasing authority.

[33] The OCC has recently proposed amendments to its leasing regulation at 60 FR 46246 (September 6, 1995).

[34] 12 U.S.C. 1464(c)(1)(H).

[35] 12 U.S.C. 1464(c)(4)(C).

Section 545.74 Service Corporations

OTS proposed, as discussed under § 545.46 above, to no longer aggregate commercial loans made by a savings association's service corporation with commercial loans made by the savings association itself for purposes of the statutory 10 percent of assets limitation. The agency proposed a conforming change to § 545.74(c)(1)(vi), where this regulatory aggregation is repeated. The remaining provisions of § 545.74 are currently under separate review as part of the agency's reinvention of its subsidiaries regulations.[36] The one commenter specifically addressing the conforming change to § 545.74 supported excluding any commercial loan booked by a service corporation from the 10 percent commercial loan limit for federal savings associations. The commenter noted, as did the OTS proposal, that this modification would make the treatment of commercial loans owned by service corporations consistent with the treatment of noncommercial loans owned by service corporations. Accordingly, OTS has modified this paragraph as proposed.

Section 545.75 Commercial Paper and Corporate Debt Securities

Section 545.75(a) reiterated the HOLA's grant of authority to federal thrifts to invest in commercial paper and corporate debt securities.[37] OTS proposed to delete this paragraph and to reference federal thrifts' statutory authority to invest in commercial paper and corporate debt securities in the lending and investment powers chart. The agency also proposed to retain the limitations on these investments contained in paragraphs (b) and (c) and to move them into the new § 560.40 on commercial paper and corporate debt securities in Part 560.[38]

The only commenter to address this section questioned why paragraph (b) requires a thrift's investments in commercial paper and corporate debt securities to be denominated in dollars. OTS agrees with this commenter's position that the HOLA, 12 U.S.C. 1464(c)(2)(D), does not require such denomination, and previous OTS opinions have stated that such investments are permissible as long as foreign currency risks are properly hedged. Accordingly, OTS adopts § 560.40 as proposed with the modification that commercial paper and corporate debt securities are no longer required to be denominated in dollars.

OTS also proposed to delete paragraph (d) of § 545.75 as no longer having any practical application for thrifts in light of § 28(d) of the Federal Deposit Insurance Act[39] (FDIA). Paragraph (d) authorized a federal savings association to invest in commercial paper and corporate debt securities not meeting the rating and marketability requirements of paragraphs (b) and (c), so long as such investments are not otherwise prohibited by § 28(d) of the FDIA, which prohibits investments by thrifts in unrated corporate bonds. Although OTS solicited comment as to whether there was any scenario under which an investment authorized by paragraph (d) would not violate § 28(d) of the FDIA, OTS received no responsive comments. Because OTS believes that paragraph (d) has no practical application for thrifts, it is deleting paragraph (d) as proposed.

Section 545.78 Leasing

Paragraph (a) of § 545.78 reiterated the HOLA's grant of authority to federal thrifts to invest in tangible personal property for leasing purposes.[40] OTS proposed to incorporate a reference to this statutory authority into the proposed lending and investment powers chart. As already discussed under § 545.53 earlier, OTS also proposed to consolidate the general leasing restrictions applicable to federal savings associations in § 545.78 with the finance leasing restrictions in § 545.53 into a new § 560.41. The one commenter addressing these proposed changes supported the consolidation, and OTS is adopting these changes as proposed.

OTS also proposed to delete paragraph (b) of § 545.78, which imposes a maximum 70 percent residual value limit for general leasing activities. OTS believes that such an underwriting restriction may be unduly restrictive if applied in all cases and that such lease underwriting considerations are better addressed within each association's prudent leasing policies, which will be subject to review by OTS examiners. Furthermore, OTS plans to provide underwriting guidance on leases in its Handbook. The one commenter addressing this section supported the proposed deletion because it would give additional flexibility to thrifts in structuring lease arrangements. The commenter also suggested that additional underwriting guidance be included in the Handbook because of the complexity of leasing activities.

OTS is deleting the maximum 70 percent residual value limit as proposed and replacing that requirement with more flexible underwriting guidance in the Handbook. As discussed earlier under § 545.53, the new § 560.41 addresses both general leasing and finance leasing authority.

Section 556.2 Power To Engage in Escrow Business

Section 556.2 addressed federal thrifts' power to engage in the escrow business. OTS proposed to delete this policy statement, because OTS believes that the authority to establish escrow accounts is subsumed within the authority of federal savings associations to make loans and does not need to be specifically identified in the CFR. See discussion above with regard to § 545.32(b)(6). Although one commenter supported the proposed elimination of this section as unnecessary, a second commenter raised a concern that elimination of this section might raise preemption concerns. For the reasons discussed above with regard to § 545.32(b)(6), OTS believes that a thrift's power to establish escrow accounts does not need to be specifically identified in the CFR. Furthermore the new preemption regulation at § 560.2 specifically cites escrow accounts as an area in which state law is preempted. Accordingly, OTS is deleting § 556.2, as proposed.

Section 556.3 Real Estate

Section 556.3(a) addressed the treatment of motels as either improved nonresidential real estate or combination home and business property for real estate categorization purposes. OTS proposed to delete this paragraph and incorporate it into guidance. Section 556.3(b) permitted federal thrifts to purchase paving certificates that constitute a lien on property securing an association's loan. OTS proposed to delete this section and transfer the language of the policy statement to the Handbook. OTS received no comment on these proposed deletions, which are adopted as proposed.

Section 556.10 First Liens on Properties Sold by the Secretary of HUD

Section 556.10 reiterated federal thrifts' authority to make mortgage loans insured by the Federal Housing Administration and secured by first liens on improved real estate and discussed the treatment and documentary evidence of such loans after disposal by the Secretary of

[36] See Notice of Proposed Rulemaking, Subsidiaries and Equity Investments, 61 FR 29976 (June 13, 1996).

[37] 12 U.S.C. 1464(c)(2)(D).

[38] The agency also solicited comment on whether these provisions should, alternatively, be removed from the regulations and incorporated as guidance in the Handbook.

[39] 12 U.S.C. 1831e(d).

[40] 12 U.S.C. 1464(c)(2)(C).

Housing and Urban Development. OTS proposed to delete this policy statement and move it to guidance in the Handbook. OTS received no comment on this proposed deletion, which is adopted as proposed.

Section 563.93 Lending Limitations

Section 563.93 contained lending limits on all loans and extensions of credit made by all savings associations and their subsidiaries. This section and its accompanying Appendix are being redesignated and moved unchanged into new Part 560 as § 560.93, for ease of reference.

Section 563.95 Investment in State Housing Corporations

Section 563.95 covered investments in or loans to state housing corporations by all savings associations. It imposed certain conditions, including percentage-of-asset limitations, depending on the type of loan or investment and the savings association's capital level. OTS proposed to modify and update this section and move it into a new § 560.121 in new Part 560.

Paragraph (a) dealt with loans to, and investments in obligations of, state housing corporations that are secured, directly or indirectly, by first liens on federally insured improved real estate. OTS proposed to remove percentage-of-asset investment limitations in this paragraph (a). Commenters supported OTS's reasoning that removing the percentage-of-assets limit would allow thrifts to exercise business judgment in determining the amount they wished to invest in such loans and obligations, subject, as always, to overall safety and soundness considerations.

OTS proposed to update the language in paragraph (b), which covers investments in obligations of state housing corporations that do not fall under paragraph (a), in several ways. First, the agency proposed to remove the outdated limitation based on a thrift's level of ''general reserves surplus and undivided profits.'' Instead, any thrift that is adequately capitalized under 12 CFR Part 565 may make such investments. Second, OTS proposed to allow investments under paragraph (b) to be made in obligations of state housing corporations located in any state in which the association has its home or a branch office. Third, OTS proposed to revise the aggregate limit on such investments to equal a thrift's total capital under 12 CFR Part 567 (rather than its general reserves, surplus, and undivided profits) and to move this requirement into a new paragraph (b)(2). Finally, the agency proposed to delete the requirement that a thrift may make no more than 25 percent of its aggregate investment in this type of obligation in the obligations of any one state housing corporation. This requirement effectively required an institution to invest in four state housing corporations any time it wished to invest in one.

Commenters believed that revisions to restrictions on investments in state housing corporations would encourage institutions to make additional sound community related investments. Savings associations' increased participation in community-related investments could potentially benefit communities and their affordable housing programs without undermining thrifts' safety and soundness. Commenters also agreed that elimination of the 25 percent limit on investments to a single state housing corporation should cause no problem because thrifts will be protected by the cap on aggregate investments and by examiners' asset concentration review. One commenter urged OTS to go further and make additional revisions, such as allowing thrifts to invest in obligations of state housing corporations throughout the country, not just where the thrift has a home or branch office. This commenter also suggested removing the aggregate cap on total investments, subject to OTS approval, under certain circumstances. OTS, however, believes that the proposed regulatory language strikes the appropriate balance between giving thrifts additional flexibility with respect to investment in state housing corporations and ensuring safe and sound operations. Accordingly, OTS adopts the proposed revisions to paragraphs (a) and (b) of § 563.95 and incorporates those revisions into the new § 560.121.

The agency also proposed to delete existing paragraph (c), which allows thrifts (that otherwise have the legal authority to do so) to make direct equity investments in equity securities of state housing authorities. Federal thrifts currently do not have authority to invest in equity securities of state housing corporations, and section 28 of the FDIA constrains state chartered thrifts from making, or retaining past July 1, 1994, any equity investment not permissible for federal thrifts.[41] Although OTS solicited comment as to whether there was any scenario under which paragraph (c) was still relevant, no commenters responded to this request. OTS deletes paragraph (c) of § 563.95 as proposed.

The agency proposed to move paragraph (d), substantially unchanged, into new § 560.121 as paragraph (c). This paragraph addresses a thrift's obligation, before making an investment in a state housing corporation, to obtain the corporation's agreement to make information available to OTS upon request. OTS received no comment on this provision which is adopted as proposed.

Section 563.97 Loans in Excess of 90 Percent of Value

OTS proposed to delete § 563.97, which authorized thrifts to make loans on the security of residential real estate with loan-to-value ratios in excess of 90 percent of value, consistent with the interagency real estate lending standards. Commenters agreed that the interagency real estate lending standards address the same issue in a more comprehensive manner. OTS is deleting § 563.97 as proposed.

Section 563.99 Fixed-Rate and Adjustable-Rate Mortgage Loan Disclosures, Adjustment Notices, and Interest Rate Caps

Section 563.99 defined fixed and adjustable-rate mortgage loans and required thrifts to make certain disclosures to applicants of adjustable-rate mortgage loans. In order to establish parity in coverage with other lenders, OTS proposed to add a new paragraph (g) to exclude from § 563.99's coverage adjustable-rate loans that are primarily for a business, commercial, or agricultural purpose, consistent with the Federal Reserve Board's (FRB) Truth in Lending regulation, Regulation Z.[42]

Commenters generally favored making § 563.99's coverage consistent with that of Regulation Z. Section 563.99 covered all adjustable-rate loans with a term of more than one year, secured by property occupied or to be occupied by the borrower. Unlike § 563.99, Regulation Z's coverage is not determined by the nature of the secured property but rather by other criteria, *e.g.*, the extension of credit must be primarily for personal, family, or household purposes.[43] As the regulations interacted, certain transactions were encompassed by § 563.99 but not by Regulation Z. By adopting the proposed changes to § 563.99, OTS will be minimizing the differences between that section and Regulation Z. For example, a savings

[41] See 12 U.S.C. 1831e(c), which states that a state chartered savings association ''may not directly acquire or retain any equity investment of a type or in an amount that is not permissible for a Federal savings association,'' with a limited exception for service corporation investments.

[42] Regulation Z exempts from its disclosure requirements extensions of credit primarily for business, commercial, or agricultural purposes. *See* 12 CFR 226.3(a)(1).

[43] 12 CFR 226.1(c)(1)(iv).

association that makes a business purpose ARM loan secured by a home will no longer be subject to the disclosure requirements set forth at § 563.99; nor would any disclosures be required under Regulation Z.

Several commenters recommended deleting the disclosure portions of § 563.99 in their entirety because those provisions were duplicative of Regulation Z. Commenters argued that two sets of disclosure regulations confused lenders and required them to search two places to figure out applicable regulatory requirements. OTS will undertake a comprehensive review of § 563.99 in conjunction with the FRB's review of Regulation Z pursuant to section 303 of the CDRIA.[44] Pending that review, § 563.99 is being redesignated as § 560.210, so that all lending regulations will be grouped together in Part 560. The only changes being made to § 563.99 are changing its title to be more descriptive of its content, adding a new paragraph (g), as discussed above, and removing paragraph (a)(2), which defined ''fixed rate mortgage loan,'' a term not used in the regulation. OTS does note that the disclosure requirements of current § 563.99 and Regulation Z[45] are substantially similar.

Section 563.100–563.101 Real Estate Lending Standards

These sections prescribed real estate lending standards that require all savings associations to adopt and maintain comprehensive written real estate lending policies that are consistent with safe and sound practices and with the Guidelines for Real Estate Lending.[46] Savings associations' policies must address certain lending considerations including loan-to-value limits, loan administration procedures, portfolio diversification standards, and documentation, approval, and reporting requirements. OTS did not propose changes to these sections, but indicated its intent to redesignate and move them substantially unchanged into a new Part 560. OTS received no comment on these proposed redesignations and is redesignating them as §§ 560.100–560.101 in the final rule issued today. The Appendix containing the guidelines is also being redesignated.

Section 563.160 Classification of Certain Assets

Section 563.160 required thrifts to classify their own assets and establish valuation allowances. OTS proposed to delete this section in its entirety.[47] The one commenter addressing this section favored its deletion and suggested placing classification guidance in the Handbook. This commenter noted that the section's deletion would be consistent with the stance of the other banking agencies which set forth their asset classification systems as supervisory guidance, not as regulations.

Upon further consideration, OTS has decided to retain a short classification regulation simply stating that a savings association must have an internal system to classify assets and must establish appropriate valuation allowances or charge-offs, as appropriate. OTS believes that retaining a short classification regulation at new § 560.160 will ensure that a thrift's board of directors takes responsibility for monitoring its classification system. OTS will transfer more detailed guidance concerning asset classification to the Handbook consistent with the supervisory guidance of the other federal banking agencies.

Section 563.170 Examinations and Audits; Appraisals; Establishment and Maintenance of Records

Paragraph (a) of § 563.170 authorizes OTS to examine thrifts consistent with OTS policies and to annually assess thrifts for the costs of such examinations based on the thrifts' assets. OTS proposed to retain this paragraph. The agency received no comment on this section, which is retained as proposed in its current location.

Paragraph (b) authorizes OTS to select appraisers to perform appraisals of real estate in connection with examinations and audits and requires thrifts to pay for such appraisal services. OTS proposed to retain this paragraph. The agency received no comment on this section, which is also retained as proposed.

Paragraph (c) sets forth general record maintenance requirements for savings associations to ensure that examiners have access to an accurate and complete record of all business transacted by the thrift. OTS proposed to retain this general introductory paragraph, with a modification to incorporate language in current paragraph (c)(9) on maintaining records required by other laws or regulations.

Paragraphs (c) (1)–(9), however, set forth a list of specific loan documents that, at a minimum, thrifts must maintain to comply with § 563.170(c). OTS proposed replacing the specific documentation requirements listed in paragraphs (c) (1)–(9) with more general documentation standards in a new § 560.170 in Part 560. These proposed standards were drawn from the interagency Standards for Safety and Soundness regulations and attached Guidelines Establishing Standards for Safety and Soundness.[48] These guidelines set forth loan documentation and credit underwriting requirements to which all federal insured depository institutions are expected to adhere. These underwriting and documentation standards minimize the need for OTS to have a regulation mandating specific documentation requirements.[49]

Commenters unanimously supported OTS's proposal to eliminate the detailed list of documents required in paragraphs (c) (1)–(9). Commenters agreed with OTS's reasoning that although the documents listed were generally appropriate for prudent lending, a rigid requirement that all documents be present for each loan was too restrictive and did not necessarily address all safety and soundness concerns. Commenters believed that elimination of the specific document list would give lenders more flexibility to tailor loan documentation to various types of loans and to determine which particular documents would be most appropriate for a specific loan.

For example, previously § 563.170(c)(1)(v) required either a financial statement or a credit report for all loans, ostensibly to justify the borrower's willingness and ability to repay the loan. However, the ability and willingness of a borrower to repay a consumer or home loan may be better demonstrated with a verification of employment (not previously required) and a satisfactory credit report, rather than a financial statement. For commercial borrowers, verification by

[44] Pursuant to section 303(b) of the CDRIA, the FRB is required to review its regulations with respect to disclosures pursuant to the Truth In Lending Act with regard to adjustable-rate mortgages in order to simplify the disclosures, if necessary, and make the disclosures more meaningful and comprehensible to consumers. 12 U.S.C. 4803.

[45] See 12 CFR 226.19(b), 226.20(c).

[46] Appendix A to the real estate lending standards at current §§ 563.100–101.

[47] OTS had already requested comment on deleting the definitions of ''Substandard,'' ''Doubtful,'' and ''Loss'' set forth in paragraph (b) and the definition of ''Special Mention'' assets in paragraph (e) because definitions of those terms are contained in the Handbook. 58 FR 38730 (July 20, 1993). Commenters supported such deletions. The OTS proposed deleting paragraph (f) as part of its regulatory review proposal, 60 FR 44442 (August 28, 1995), and received no unfavorable comments.

[48] 12 CFR Part 570 and Appendix A thereto, 60 FR 35674 (July 10, 1995).

[49] Guidelines appended to the interagency real estate lending standards also state that an institution should establish loan administration procedures that address documentation. See 12 CFR Part 563, Subpart D, Appendix A (redesignated in this rulemaking as Appendix to § 560.101).

the institution that the borrower's financial statements accurately reflect all assets, liabilities, and any other guarantees or encumbrances is more important to the decision to extend credit than the mere presence of a financial statement. The more flexible language of new § 560.170 will allow thrifts to obtain documentation that best satisfies safety and soundness concerns raised in a particular transaction, while at the same time relieving thrifts of the burden of technical compliance with a document checklist that may not necessarily be relevant to prudent lending.

Commenters also agreed that deleting paragraphs (c) (1)–(9) would relieve savings associations of documentation requirements that exceed those for banks and other financial institutions as well as enable savings associations to take better advantage of technological marketplace advances such as telephone and computerized home banking. New § 560.170 will allow savings associations to participate in telephone and computerized home banking without running afoul of paper driven-requirements. Accordingly OTS adopts the changes to § 563.170(c) as proposed.

In its proposal, OTS also considered transferring the current document list in paragraphs (c) (1)–(5), and (7) to the Handbook to be used as a checklist of records generally maintained by prudent lenders to support a loan. Several commenters raised concerns regarding the language of the guidance that would be included in the Handbook. One commenter urged that if OTS includes a document list in the Handbook, the agency should also clearly state that the list is intended only as guidance and not as rigid minimum requirements for safety and soundness. The commenter suggested inserting language to the effect that the lender (based on borrower creditworthiness, the specific program and product offering, pricing, project delinquency, loss profile, and title and appraisal information) should have the discretion not to require certain documents in any given situation. Another commenter recommended deletion of the requirement that loan documents identify a purpose for the loan because lines of credit are now used for any purpose, the identification of which is not necessary to proper underwriting. The interagency guidelines establishing standards for safety and soundness do state that a lender should identify the purpose of a loan.[50] However, OTS will review these comments prior to issuing any loan documentation guidance to be included in the Handbook.

Paragraph (c)(10) of § 563.170 exempted certain small business loans from the documentation requirements set forth in paragraphs (c) (1)–(7). OTS proposed to delete paragraph (c)(10) inasmuch as the streamlining of the requirements currently located in paragraphs (c) (1)–(7) eliminates the need for this exemption. OTS received no comment on this paragraph, which is deleted as proposed.

OTS proposed to retain paragraph (d) of § 563.170, which addresses changes in the location of accounting or control records. One commenter questioned whether advances in computer technology rendered this paragraph obsolete since computerized accounting and control records could be accessed at many locations. Although OTS recognizes that computerized records may be read from computer terminals in many locations, OTS believes that the agency may need to know the location of the server where computer records are physically stored for examination purposes. Accordingly, OTS is retaining this paragraph as proposed.

OTS proposed to retain paragraph (e), which addresses use of data processing services for maintenance of records. One commenter suggested that all but the last sentence of this paragraph could be eliminated inasmuch as maintenance of records by means of data processing services has become the norm and requiring a thrift to notify the Region in which its principal office is located of such maintenance creates unnecessary paperwork. Although OTS agrees that thrifts routinely maintain records by means of data processing services, the agency believes that this paragraph serves the purpose of requiring institutions to identify the particular records to be maintained by a data processing service and the location where such records are maintained. This information may be critical to an examination or enforcement inquiry. Accordingly, OTS is retaining this paragraph as proposed.

To summarize, § 563.170 is being modified as proposed, by removing the specific loan documentation requirements of paragraphs (c) (1) through (10) and by retaining the remainder of the regulation. The specific loan documentation requirements have been replaced by more general lending documentation requirements in new § 560.170.

Section 563.172 Reevaluation of Real Estate Owned

Section 563.172 required savings associations to appraise all real estate owned (REO) at the earlier of in-substance foreclosure or at the time of acquisition and, thereafter, as dictated by prudent management policy. In its proposal OTS discussed deleting this section because thrifts can apply the appraisal regulations and general accounting principles (GAAP) to determine when an appraisal may be appropriate or necessary for safety and soundness. Two commenters supported elimination of this section to give lenders more flexibility with regard to the timing of an appraisal for property soon to become REO. Commenters agreed, however, that it is sound policy to require an appraisal for REO. Upon consideration, OTS has decided to retain this regulation to specify when, at a minimum, safety and soundness require an appraisal of REO. Accordingly, it is incorporating § 563.172 unchanged into the new Part 560 as new § 560.172.

Section 571.8 Investment in State Housing Corporations

Section 571.8 limited savings associations' investment authority in state housing corporations to certain public and private corporations and agencies. OTS proposed to delete this policy statement as an unnecessary limitation on the definition of state housing corporation. The one commenter to address this section supported its deletion. OTS is deleting § 571.8 as proposed.

Section 571.13 Participation Interests in Pools of Loans

Section 571.13 addressed appropriate documentation for a savings association's purchase of a participation interest in a pool of loans (in the nature of mortgage-backed securities) and indicated that compliance with the documentation requirements of § 563.170 may be impracticable for such transactions. OTS proposed to delete this section inasmuch as the proposed revision of § 563.170(c) would eliminate the need for this policy statement. OTS received no comment on this section, which is deleted as proposed. OTS plans to transfer the documentation guidance for purchases of participation interests in pools of loans to the Handbook.

Section 571.20 Payment for Appraisals

OTS proposed to delete § 571.20, which addressed payment by savings associations for appraisals obtained as part of an OTS examination. OTS received no comment on this section, which is deleted as proposed. OTS expects to transfer this policy statement to the Handbook.

[50] 60 FR at 35679.

Section 571.22 Most Favored Lender Status

Section 571.22 implemented section 4(g) of the HOLA, which authorizes savings associations to charge on any extension of credit an interest rate equal to the greater of: (a) One percentage point above the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district in which the savings association is located; or (b) the rate allowed by the laws of the State in which the savings association is located for the state's most favored lender. OTS proposed to move § 571.22 into new § 560.2(d)(1) and requested comment on whether certain provisions in § 571.22 should be modified. Because HOLA section 4(g) and this regulation apply to all savings associations, however, § 571.22 is being moved to a new § 560.110, ''Most Favored Lender, Usury Preemption'' in Subpart B of Part 560, which applies to all savings associations. Changes to the text of the regulation are discussed under § 560.110 below.

2. New Part 560—Lending and Investment

OTS proposed to adopt a new Part 560, Lending and Investment, that would ultimately include all of the agency's lending and investment regulations except for Appraisals (Part 564) and subsidiary-related investments (currently proposed to be located in new Part 559). Commenters generally agreed with OTS's view that this reorganization will make it much easier for those using the agency's regulations to find all relevant lending and investment powers, authorities, and limitations. Accordingly, OTS is adopting new Part 560 as discussed below.

Section 560.1 General

This section sets out the basic statutory authority for lending and indicates which regulations in this part will apply only to federal savings associations and which regulations apply to all savings associations. It also briefly sets forth the agency's expectations that all lending and investment activities are to be conducted prudently, consistent with safety and soundness, with adequate portfolio diversification, and in a manner appropriate for the size of the institution, the nature and scope of its operations, and conditions in its lending market. OTS received no comment on this section, which is adopted as proposed, with minor clarifications.

Section 560.2 Applicability of Law

This section sets forth OTS's longstanding position, as developed in case law and legal opinions by both OTS and its predecessor, the FHLBB, and as reflected in § 545.2, on the federal preemption of state laws affecting the lending activities of federal savings associations. Because the agency proposed to move its lending regulations out of Part 545 and, thus, separate them from its general preemption regulation, § 545.2, and because the agency proposed to remove many of the details of the lending regulations that had been previously cited in preemption opinions, OTS also proposed new § 560.2 to confirm and carry forward its existing preemption position.

It is well established that state laws can be preempted not only by federal statutes, but also by federal regulations promulgated pursuant to authority delegated by Congress.[51] In this regard, the Supreme Court has recognized that Congress gave the regulator of federal savings associations broad preemptive authority:

> Congress enacted the HOLA [as] ''a radical and comprehensive response to the inadequacies of the existing state systems * * *.'' Thus, in section 5(a) of the [HOLA], Congress gave the [FHLBB and now the OTS] plenary authority to issue regulations * * * ''providing for the * * * incorporation, examination, operation, and regulation of [federal savings] associations * * *.''
>
> Congress directed that, in regulating federal [savings associations], the [FHLBB and OTS should] consider ''the best practices of local mutual thrift and home financing institutions in the United States,'' which were at the time all state-chartered. By so stating, Congress plainly envisioned that federal savings [associations] would be governed by what the [FHLBB and now OTS]—not any particular state—deemed to be the best practices, and approved the [FHLBB's and OTS's] promulgation of regulations superseding state law * * *.[52]

Consistent with the foregoing, courts have long recognized that federal savings associations organized under the HOLA are uniquely federalized financial institutions—even more so than national banks.[53] Prior to enactment of the HOLA, '' 'the states had developed a hodgepodge of savings and loan laws and regulations, and Congress hoped the [the FHLBB, and now OTS] rules would set an example for uniform and sound savings and loan regulation.' '' [54]

Thus, OTS is authorized to promulgate regulations that preempt state laws affecting the operations of federal savings associations when deemed appropriate to: (i) Facilitate the safe and sound operation of federal savings associations, (ii) enable federal savings associations to conduct their operations in accordance with the best practices of thrift institutions in the United States, or (iii) further other purposes of the HOLA. Because lending lies at the heart of the business of a federal thrift, OTS and its predecessor, the FHLBB, have long taken the position that the federal lending laws and regulations occupy the entire field of lending regulation for federal savings associations, leaving no room for state regulation. For these purposes, the field of lending regulation has been defined to encompass all laws affecting lending by federal thrifts, except certain specified areas such as basic real property, contract, commercial, tort, and criminal law.

As a result, instead of being subject to a hodgepodge of conflicting and overlapping state lending requirements, federal thrifts are free to originate loans under a single set of uniform federal laws and regulations. This furthers both the ''best practices'' and safety and soundness objectives of the HOLA by enabling federal thrifts to deliver low-cost credit to the public free from undue regulatory duplication and burden. At the same time, the interests of borrowers are protected by the elaborate network of federal borrower-protection statutes applicable to federal thrifts, including the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act, the Fair Credit Reporting Act, the Consumer Leasing Act, the Fair Debt Collection Practices Act, the Community Reinvestment Act, and the Federal Trade Commission Act.[55] In addition, in those instances

[51] *Fidelity Federal Savings & Loan Association* v. *de la Cuesta*, 458 U.S. 141, 153–154 (1982).

[52] *Id.* at 160–167 (citations omitted).

[53] *People* v. *Coast Federal Savings & Loan Association*, 98 F. Supp. 311, 319 (S.D. Calf. 1951).

[54] *Conference of Federal Savings and Loan Associations* v. *Stein*, 604 F.2d 1256 (9th Cir. 1979) (citation omitted).

[55] Several of these statutes contain provisions that expressly disclaim any intent to preempt non-conflicting state statutes falling in the same subject area. *E.g.*, 12 U.S.C. 2616 (Real Estate Settlement Procedures Act); and 15 U.S.C. 1610 (Truth in Lending Act). The fact that one or several federal statutes do not preempt certain types of state laws, however, does not preclude the possibility that other federal statutes or regulations might do so under more defined or specific circumstances. In this regard, it is important to note that the above-referenced federal statutes that contain preemption disclaimers apply to all types of lenders (including state-chartered lenders), not just federal savings

Continued

where OTS has detected a gap in the federal protections provided to borrowers, the agency has promulgated regulations imposing additional consumer protection requirements on federal thrifts.[56]

New § 560.2 carries forward this approach to federal preemption. Although the final form of regulation is similar to what was proposed, some changes have been made in response to comments received. Several commenters expressed concern that the statement in proposed § 560.2(a) that OTS intended to occupy the entire field of lending regulation for federal thrifts would not be sufficient to restrain state regulators from asserting jurisdiction, given that OTS was also proposing to remove some of its more detailed regulatory language specifically authorizing federal thrifts to engage in various lending-related practices, *e.g.*, advertising, charging certain fees, and establishing escrow accounts. One commenter suggested that OTS expand its noninclusive illustrative list of the types of state laws preempted to reference additional laws, such as those pertaining to private mortgage insurance or other credit enhancements, loan servicing, charging application and overlimit fees, establishing impound and similar accounts, using credit reports, and setting certain interest rate ceilings. Other commenters echoed these concerns.

In response to commenters' concerns, OTS has made some changes to § 560.2. Paragraph (a) still explicitly states the agency's intent to occupy the field of lending regulation for federal thrifts. However, the statutory bases and regulatory rationale for this occupation are more clearly articulated. In addition, to avoid any impression that the repeal of certain lending regulations is intended to abdicate portions of the lending field to state regulation, we have added an affirmation that, ''OTS intends to give federal savings associations maximum flexibility to exercise their lending powers in accordance with a uniform federal scheme of regulation.''

Paragraph (b) contains an expanded list of examples of the types of state laws that are preempted. The introductory text in paragraph (b) continues to emphasize that the list is not intended to be exhaustive. Failure to mention a particular type of state law that affects lending should *not* be deemed to constitute evidence of an intent to permit state laws of that type to apply to federal thrifts. To the contrary, § 560.2 is based on the premise that any state law that affects lending is preempted unless it clearly falls within the parameters of paragraph (c).

Paragraph (b) also continues to contain an exception clause indicating that certain state laws that would not ordinarily apply to federal savings associations may nevertheless apply when an association elects to utilize a state's most favored lender usury rate. When utilizing a state's most favored lender rate, a federal savings association must comply with all laws of its ''location'' state that fall within the ambit of the term ''interest,'' as used in section 4(g) of the HOLA, as well as any other state laws ''material to the determination of the interest rate.'' For a fuller discussion of these issues, see the description below of new § 560.110 (most favored lender).

Paragraph (c) describes certain types of state laws that OTS does not intend to preempt. Several commenters urged deletion of this paragraph. Commenters expressed concern that states seeking to avoid federal preemption of their laws or regulations might attempt to characterize those laws as falling within paragraph (c). Commenters contended that the language used to describe the categories of non-preempted laws was too broad and could create ambiguity about which state laws federal thrifts would be required to follow. For example, states might place laws purporting to regulate lending-related fees in the portions of state codes dealing with general contract or real property laws in an effort to avoid preemption.

OTS believes that paragraph (c) should be retained in order to provide guidance regarding the scope of preemption intended by paragraph (a). OTS wants to make clear that it does not intend to preempt basic state laws such as state uniform commercial codes and state laws governing real property, contracts, torts, and crimes. To reduce the potential for misunderstanding, however, we have made several changes to paragraph (c). First, we have modified the regulatory language that precedes the list of state laws that are not preempted. The introductory language now indicates that laws falling in these areas are not preempted to the extent that they either: (i) Have only an incidental impact on lending; or (ii) are otherwise not contrary to the purposes expressed in paragraph (a) of the regulation. We also have added a provision to paragraph (c) disclaiming an intent to preempt other state laws that may affect lending, but that OTS, upon review, finds further a vital state interest and meet the foregoing two-part test.

Adding this two-part test to the regulation will provide an interpretive standard for identifying state laws that may be designed to look like traditional property, contract, tort, or commercial laws, but in reality are aimed at other objectives, such as regulating the relationship between lenders and borrowers, protecting the safety and soundness of lenders, or pursuing other state policy objectives.

When confronted with interpretive questions under § 560.2, we anticipate that courts will, in accordance with well established principles of regulatory construction, look to the regulatory history of § 560.2 for guidance. In this regard, OTS wishes to make clear that the purpose of paragraph (c) is to preserve the traditional infrastructure of basic state laws that undergird commercial transactions, not to open the door to state regulation of lending by federal savings associations. When analyzing the status of state laws under § 560.2, the first step will be to determine whether the type of law in question is listed in paragraph (b). If so, the analysis will end there; the law is preempted. If the law is not covered by paragraph (b), the next question is whether the law affects lending. If it does, then, in accordance with paragraph (a), the presumption arises that the law is preempted. This presumption can be reversed only if the law can clearly be shown to fit within the confines of paragraph (c). For these purposes, paragraph (c) is intended to be interpreted narrowly. Any doubt

associations. The fact that Congress did not wish to preempt the application of state laws to this general universe of lenders (including lenders chartered and regulated by the very states whose laws would be preempted), does not preclude the possibility that Congress may have elsewhere evidenced a specific intent to preempt, or permit a federal regulator to preempt, the application of state laws to a particular category of lender—in this case, federal savings associations. This is precisely the conclusion reached by the court in *First Federal Savings & Loan Association* v. *Greenwald,* 591 F.2d 417 (1st Cir. 1979). There, the court held that OTS's predecessor, the FHLBB, was authorized by Congress in the HOLA to preempt state lending laws even when they fall in areas covered by the preemption disclaimer in the Real Estate Settlement Procedures Act. We believe the court's holding reflects a correct understanding of the interplay between the HOLA and the above-referenced statutes, as evidenced by the legislative history of the HOLA. See, *e.g.,* 124 Cong. Rec. 33848 (Statement of Rep. Minish); 124 Cong. Rec. 36148 (1978) (colloquy between Sen. Proxmire and Sen. Brooke confirming that federal thrifts are not subject to state truth in lending requirements); 124 Cong. Rec. 33848–33849 (statement of Rep. St Germain to the same effect); and 126 Cong. Rec. 6981 (1980) (colloquy between Rep. St Germain and Rep. Patterson confirming that thrifts, unlike national banks, are not subject to state lending laws).

[56] See, *e.g.,* 12 CFR Part 535 (prohibited consumer credit practices) and new §§ 560.33 (late charges), 560.34 (prepayments), and 560.35 (adjustments to home loans).

should be resolved in favor of preemption.

As questions arise, OTS will issue interpretive guidance consistent with the foregoing. While recognizing that no regulation can anticipate and expressly resolve all questions, we believe that new § 560.2 provides thrifts with substantially more guidance than was available under § 545.2, thereby enabling them to plan and operate their lending operations more efficiently. From time to time, OTS will review, update, and modify § 560.2 to ensure that it reflects new developments and promotes ''best practices'' and safety and soundness.

Paragraph (d) of proposed § 560.2 was derived from former § 571.22. It is being adopted as § 560.110, incorporating the modifications described earlier under that section.

Section 560.3 Definitions

This new section has been added to set forth in Part 560 lending-related definitions formerly located in Part 545.

Subpart A—Lending and Investment Powers for Federal Savings Associations

This subpart contains lending and investment regulations directly applicable only to federal savings associations. These regulations are nonetheless relevant to state-chartered savings associations by virtue of § 28 (a) and (b) of the FDIA and the Federal Deposit Insurance Corporation's regulations at 12 CFR 303.13, which look to the type and amount of activities permissible for federal savings associations as a baseline for activities permitted for state-chartered savings associations.

Section 560.30 General Lending and Investment Powers

Proposed § 560.30 took the form of a chart that listed many of the lending and investment powers granted to federal thrifts by the HOLA. It was derived from the regulations that currently appear in Part 545. An important component of this regulation are the endnotes to the chart that elaborate upon statutory limitations, impose regulatory limitations, or otherwise describe conditions on the exercise of these powers.

Commenters generally found the chart to be a very workable reference tool, particularly for percentage of assets limitations for specific types of loans and investments. Commenters believed that the chart form with its statutory cross references made it easier for the CFR user to locate statutory authority for various types of loans and investments. At least one commenter suggested that the chart would be more useful if it were more inclusive and listed additional statutory and regulatory lending and investment powers. Accordingly, OTS is adopting the lending and investment powers chart in the final rule in a more inclusive form with additional references to thrifts' statutory powers with regard to bankers' bank stock, business development credit corporations, unsecured construction loans, deposits, securities issued by the Federal government and government-sponsored enterprises, HUD-insured or guaranteed investments, insured loans, liquidity investments, mortgage-backed securities, nonconforming loans, the National Housing Partnership Corporation and related partnerships and joint ventures, and small business-related securities.[57] Other references in the chart on community development and letters of credit have been modified or removed so that the chart more clearly reflects lending and investment powers specifically authorized by the statute.

Section 560.31 Election Regarding Categorization of Loans or Investments and Related Calculations

This section is derived from current § 545.31, incorporating the modifications described earlier under that section.

Section 560.33 Late Charges

This section is derived from current § 545.34(b). It has been modified as discussed under that section.

Section 560.34 Prepayments

This section is derived from current § 545.34(c). The first sentence of that section has been rewritten to make it easier to understand, but no substantive change is intended. Advanced payments of regular installments are not considered prepayments for purposes of this regulation, as compared to payments to reduce the principal balance due on a loan.

Section 560.35 Adjustments to Home Loans

This section is derived from current § 545.33(c) and has been modified as discussed under that section.

[57] As part of its subsidiaries and equity investment proposal, OTS has requested comment on other additions to this chart, affecting service corporations, certain open-end management investment companies, and small business investment companies. 61 FR at 29981.

Section 560.40 Commercial Paper and Corporate Debt Securities

This section is derived from paragraphs (b) and (c) of current § 545.75. It has been modified as discussed under that section.

Section 560.41 Leasing

This section consolidates and reorganizes current § 545.53 (finance leasing) and § 545.78 (general leasing authority), incorporating the modifications described under those sections. It has been reorganized to clarify the separate sources of authority and requirements that apply to these two types of leasing.

Section 560.42 State and Local Government Obligations

This section is derived from § 5(c)(1)(H) of the HOLA and paragraphs (a) and (b) of current § 545.72. It is being adopted as proposed.

Section 560.43 Foreign Assistance Investments

This section is a consolidation and reorganization of current §§ 545.39 and 545.73.

Subpart B—Lending and Investment Provisions Applicable to All Savings Associations

This subpart contains safety and soundness based lending standards and provisions applicable to all savings associations, including state savings associations, to the extent that they have the authority to make the investments it discusses.

Section 560.93 Lending Limitations

This section, including its appendices, has been moved, with only technical conforming changes, from § 563.93.

Section 560.100 Real Estate Lending Standards; Purpose and Scope

This section has been transferred without change from § 563.100.

Section 560.101 Real Estate Lending Standards

This section and the accompanying appendix have been transferred with only technical and conforming changes, from § 563.101 and Part 563, Subpart D, Appendix A.

Section 560.110 Most Favored Lender Usury Preemption

This section implements section 4(g) of the HOLA. Section 4(g) provides that, notwithstanding any contrary state law, savings associations may charge interest on any extension of credit at a rate equal to the greater of: (a) One percentage

point above the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district in which the savings association is located; or (b) the rate allowed by the laws of the state in which the savings association is located for the state's most favored lender, *i.e.*, the class of state lending institution authorized to charge the highest interest rate. Section 560.110 replaces § 571.22, which is being removed today.

In its January proposal, OTS restated the text of § 571.22, with several changes intended to eliminate unnecessary verbiage. However, OTS also solicited comment regarding whether paragraph (b) of the regulation should be modified to conform more closely to the OCC's most favored lender regulation.

Paragraph (b) of § 571.22 indicated that any savings association electing to make loans at the interest rate authorized for a state most favored lender must also comply with the same ''substantive state law requirements'' that are applicable to that state lender when making loans of the same type. The OCC interpretive regulation, which implements a parallel statutory provision for national banks, uses a slightly different phrase to describe what types of state laws must be complied with pursuant to the most favored lender doctrine. The OCC requires national banks to comply with all state laws that apply to the state most favored lender and are ''material to the determination of the interest rate'' authorized under state law.[58] OTS has previously opined that this standard is similar, though not identical, to OTS's ''substantive law'' standard.[59] OTS specifically requested comment regarding whether paragraph (b) of § 571.22 should be replaced in its entirety with a reference to state laws that are ''material to the determination of the interest rate.''

Two commenters responding to this inquiry supported adoption of the OCC's regulatory language. The commenters believed that the OCC language is more precise and its adoption would promote parity and uniformity in the agencies' interpretations of most favored lender questions consistent with section 303 of the CDRIA.

A third commenter raised a concern that the OCC's provision (''material to the determination of the interest rate'') was narrower in scope than OTS's substantive law standard. This commenter noted that OTS currently interprets substantive state law requirements to include disclosure laws. The commenter reasoned that by complying with federal disclosure laws and disclosure laws in the state where it is located, a thrift need not comply with disclosure laws in states where it is not located but where borrowers reside. The commenter argued that this approach helps thrifts to make interstate loans more efficiently under a single set of disclosures that comply with federal law and the law of state where it is located without having to comply with a multiplicity of state specific disclosure requirements.

Contrary to the commenter's concern, adopting the ''materiality'' standard will not subject federal thrifts to the disclosure laws of ''non-location'' states. New § 560.2(b)(9), discussed above, specifically indicates that state disclosure requirements do not apply to federal thrifts, except when required by § 560.110. Nothing in § 560.110 applies the disclosure laws of non-location states to federal savings associations. Under § 560.110, only the disclosure laws of the location state will ever apply. If the ''substantive law'' standard were carried forward, the disclosure laws of the location state would apply every time a thrift made a loan under the most favored lender doctrine. By contrast, if the ''materiality'' standard is adopted, the disclosure laws of the location state will apply only in those rare instances where those laws are material to the determination of the interest rate. Thus, in the interest of reducing regulatory burden and establishing greater uniformity, OTS has decided to adopt the ''materiality'' standard.

The debate about the ''materiality'' standard, however, raises a more general question about whether OTS should conform the entire text of its most favored lender regulation to the OCC regulation. In this regard, we note that the courts have recognized that, when enacting section 4(g) of the HOLA, Congress intended to give savings associations the same most favored lender status conferred upon national banks.[60] Thus, OTS and its predecessor, the FHLBB, have long looked to the OCC regulation and other precedent interpreting the national bank most favored lender provision for guidance in interpreting section 4(g) and OTS's implementing regulation.[61] But for the distinction discussed above regarding the ''materiality'' standard, differences between OTS and OCC regulations have been purely a matter of syntax, not substance.

In February of this year, after OTS had issued its proposal, the OCC amended and updated its most favored lender regulation.[62] The primary change was to add an express definition of the term ''interest'' that was consistent with past precedent. The Supreme Court recently upheld this definition as a reasonable construction of the statutory most favored lender provision for national banks.[63] Under the OCC's amended regulation, the term ''interest'' is defined to include, without limitation, numerical periodic rates, late fees, not sufficient funds fees, overlimit fees, annual fees, cash advance fees, and membership fees.

Given the similarities between section 4(g) of the HOLA and the national bank most favored lender provision, OTS believes that the term ''interest'' as it appears in section 4(g) and OTS's implementing regulation should be interpreted in a manner consistent with the OCC regulation and the Supreme Court's decision, even if the new OTS regulation did not expressly define the term.[64]

Therefore, rather than perpetuate nonsubstantive differences in syntax that could create confusion, OTS has decided to conform new § 560.110 to the OCC regulation. We do not believe this results in any substantive change from former § 571.22, except for adoption of the ''materiality'' standard, discussed above. Conforming to the OCC regulation is consistent with the commenters' view that the OCC's syntax is clearer and more precise, and with the congressional command to move toward greater banking agency uniformity.

Section 560.120 Letters of Credit and Other Independent Undertakings To Pay Against Documents

This section is derived from current § 545.48 and establishes standards for letters of credit for all savings associations, incorporating the modifications discussed under that section.

[58] 12 CFR 7.7310 (revised and recodified at 12 CFR 7.4001, 61 FR at 4869).

[59] OTS Op. Chief Counsel, Oct. 14, 1992.

[60] *Gavey Properties/762* v. *First Financial Savings & Loan*, 845 F.2d 519, 521 (5th Cir. 1988); and 12 CFR 571.22 (1996).

[61] See, *e.g.*, OTS Op. Chief Counsel, Dec. 24, 1992, pp. 3–4.

[62] 61 FR at 4869.

[63] *Smiley* v. *Citibank (South Dakota), N.A.*, 116 S. Ct. 1730 (1996).

[64] This means, among other things, that when federal thrifts elect to make loans in reliance on the most favored lender rate of their location state, they must comply with any limits the location state imposes on the lending fees encompassed within the term ''interest,'' notwithstanding § 560.2(b)(5). In all other circumstances, state restrictions on loan-related fees are preempted, as provided in § 560.2(b)(5).

Section 560.121 Investments in State Housing Corporations

This section is derived from current § 563.95, incorporating the modifications described earlier under that section.

Section 560.160 Asset Classification

This section requires each savings association to have an internal system to classify its assets and to establish appropriate valuations or charge-offs, as appropriate. It replaces the more detailed regulation found at current § 563.160.

Section 560.170 Records for Lending Transactions

This section contains general loan documentation requirements based on the interagency safety and soundness standards and guidelines found at 12 CFR Part 570. It replaces the specific loan documentation requirements previously found at § 563.170(c) (1)–(10), and incorporates the modifications described earlier under that section.

Section 560.172 Reevaluation of Real Estate Owned

This section has been transferred, without change, from § 563.172.

Subpart C—Alternative Mortgage Transactions

This subpart contains rules applicable to alternative mortgages originated by federal and state savings associations and certain other state lenders.

Section 560.210 Disclosures for Adjustable-Rate Mortgage Loans, Adjustment Notices, and Interest-Rate Caps

This section has been transferred from § 563.99. It has been amended as discussed under that section and to remove a definition, ''fixed rate mortgage loan,'' that is no longer used in the regulation.

Section 560.220 Alternative Mortgage Parity Act

This section (originally proposed as § 560.210) is derived from current § 545.33(f), ''Notice of housing creditors regarding alternative mortgage transactions'' and applies to state savings associations and certain other state-chartered lenders. OTS has observed that state housing creditors interested in engaging in alternative mortgage transactions could not easily locate § 545.33(f). Placing these provisions into a subpart specifically dealing with alternative mortgages will make them more accessible. The section has been streamlined and modified to remove cross-references to repealed provisions and to clarify the scope of federal lending regulations applicable to state housing creditors electing to originate loans under the Parity Act. While the proposal indicated that all of new Part 560 would be considered appropriate and applicable to the exercise of the authority under the Parity Act, the final rule has been revised to identify the appropriate sections with greater specificity. One commenter suggested adding language to clarify that this section does not limit the preemption of the imposition of state licensing requirements on federal associations. Because of modifications made to the final preemption regulation at § 560.2, OTS believes that the addition of this language is not necessary. States may not impose lending license requirements on federal thrifts.

III. Disposition of Existing Lending and Investment Regulations

Original provision	New provision	Comment
§ 545.31 (a),(b)	§§ 560.31(a), 560.3.	Modified. Substance has been moved into § 560.31(a); definitions have been moved into § 560.3.
§ 545.31 (c),(d)	§ 560.31 (b),(c)	Modified.
§ 545.32(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.32(b) (1),(2)		Removed.
§ 545.32(b) (3)-(6)		Removed, included as areas in which state law is preempted under § 560.2.
§ 545.32(c)	§ 560.3	Substantially unchanged.
§ 545.32(d)		Removed.
§ 545.33 Introductory paragraph.	§ 560.3	Substantially unchanged.
§ 545.33(a)		Removed, included as area in which state law is preempted under § 560.2.
§ 545.33(b)		Removed.
§ 545.33(c) (1)–(3)	§ 560.35	Modified.
§ 545.33(c) (4),(5)		Removed.
§ 545.33 (d),(e)		Removed.
§ 545.33(f)	§ 560.220	Modified.
§ 545.34(a)	§ 560.2	Modified and reorganized.
§ 545.34(b)	§ 560.33	Modified.
§ 545.34(c)	§ 560.34	Modified.
§ 545.35	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.36		Removed. Paragraphs (c) and (d) to be incorporated into guidance.
§ 545.37		Removed.
§ 545.38 (a),(b)		Removed.
§ 545.38(c)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.39(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.39(b)	§ 560.43	Modified.
§ 545.40		Removed.
§ 545.41	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.42	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.43	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.44		Removed.
§ 545.45(a)		Removed.
§ 545.45(b)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.45 (c),(d)		To be incorporated into guidance.
§ 545.45(e)		Removed.
§ 545.46(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.46(b) introductory paragraph and (b)(1).	§ 560.30	Incorporated into lending and investment powers chart.

Original provision	New provision	Comment
§ 545.46(b)(2)		Removed.
§ 545.47	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.48(a)	§ 560.120	Significantly changed.
§ 545.48(b)		Removed.
§ 545.49	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.50(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.50(b)	§ 560.3	Substantially unchanged.
§ 545.50(c)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.51(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.51(b)		Removed.
§ 545.52	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.53(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.53 (b)–(d)	§ 560.41	Significantly changed.
§ 545.72 Introductory paragraph.	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.72 (a),(b)	§ 560.42	Significantly changed.
§ 545.72(c)		Removed.
§ 545.73 Introductory paragraph.	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.73 (a),(b)	§ 560.43	Modified.
§ 545.74 (c)(1)(vi)		Modified.
§ 545.75(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.75 (b),(c)	§ 560.40	Modified.
§ 545.75(d)		Removed.
§ 545.78	§ 560.30. See also § 560.41..	Significantly changed and incorporated into lending and investment powers chart.
§ 556.2		Removed.
§ 556.3		To be incorporated into guidance.
§ 556.10		To be incorporated into guidance.
§ 563.93	§ 560.93	Redesignated with no changes.
§ 563.95	§ 560.121	Significantly changed.
§ 563.97		Removed.
§ 563.99	§ 560.210	Redesignated and modified by removing paragraph (a)(2) and adding new paragraph (g).
§ 563.100	§ 560.100	Redesignated without change.
§ 563.101	§ 560.101	Redesignated without change.
§ 563.160	§ 560.160	Significantly changed.
§ 563.170 (a),(b)		Unchanged.
§ 563.170(c) introductory text		Modified.
§ 563.170 (c)(1)–(10)	§ 560.170	Significantly changed.
§ 563.170 (d),(e)		Unchanged.
§ 563.172	§ 560.172	Unchanged.
§ 571.8		Removed.
§ 571.13		To be incorporated into guidance.
§ 571.20		To be incorporated into guidance.
§ 571.22	§ 560.110	Significantly changed.

IV. Administrative Procedure Act

This final rule results from the notice of proposed rulemaking OTS published on January 17, 1996. In addition to the regulatory language proposed in that notice, OTS is today redesignating, without substantive change, other lending-related regulations previously located in Part 563 into new Part 560. Pursuant to section 553(b) of the Administrative Procedure Act, OTS hereby finds that good cause exists not to publish those provisions for public notice and comment. They are merely being renumbered and grouped with other lending-related regulations for the convenience of users, thus public notice and opportunity to comment are unnecessary.

V. Paperwork Reduction Act of 1995

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The recordkeeping requirements contained in 12 CFR 560.170 and 563.170 of this final rule have been submitted to and approved by the Office of Management and Budget under OMB Control No. 1550–0078 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

In response to comments received, OTS has decided to adopt 12 CFR 560.35, which was not part of the proposal. The reporting requirements contained in this section have been submitted to the Office of Management and Budget for review.

Comments on all aspects of these information collections should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to OTS, 1700 G Street, NW., Washington, DC 20552.

The recordkeeping requirements in this final rule are found in 12 CFR 560.35, 560.170, and 563.170. The reporting and recordkeeping requirements set forth in this final rule are needed by OTS in order to supervise savings associations and develop regulatory policy. The likely recordkeepers are OTS-regulated savings associations. Start-up costs to respondents: None.

Records are to be maintained for the period of time respondent/recordkeeper owns the loan plus three years.

The burden estimates for new § 560.35 are as follows:

Estimated number of respondents: 120.

Estimated average annual burden hours per respondent: 1.

Estimated number of hours per response: 20 hours.

Estimated number of total annual burden hours: 2,400 hours.

Start-up costs to respondents: None.

VI. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

VII. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not impose any additional burdens or requirements upon small entities and reduces burdens on all savings associations. The regulations have been reorganized to group all lending regulations together in a single part, which will make the regulations easier to locate and use. A chart setting forth the lending and investment powers of savings associations, with accompanying statutory citations, will make it easier for small savings associations to determine the scope of their lending authority. Loan documentation requirements have been streamlined and should result in less paperwork for small associations holding low-dollar amount, non-complex, loans in their portfolios.

VIII. Unfunded Mandates Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

IX. Effective Date

Section 302 of CDRIA delays the effective date of regulations promulgated by the Federal banking agencies that impose additional reporting, disclosure, or new requirements to the first day of the first calendar quarter following publication of the final rule. OTS believes that CDRIA does not apply to this final rule because it imposes no new burden. It reduces regulatory burden in the lending and investment areas and provides added flexibility.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 556

Savings associations.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 566

Liquidity, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 590

Banks, banking, Loan programs—housing and community development, Manufactured homes, Mortgages, Savings associations.

Accordingly, and under the authority of 12 U.S.C. 1462a, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§§ 545.31–545.43, 545.45–545.53 [Removed]

2. Sections 545.31 through 545.43 and 545.45 through 545.53 are removed.

§§ 545.72–545.73 [Removed]

3. Sections 545.72 and 545.73 are removed.

§ 545.74 [Amended]

4. Section 545.74 is amended by revising paragraph (c)(1)(vi) to read as follows:

§ 545.74 Service corporations.

* * * * *

(c) * * *

(1) * * *

(vi) Commercial loans and participations therein.

* * * * *

§ 545.75 [Removed]

5. Section 545.75 is removed.

§ 545.78 [Removed]

6. Section 545.78 is removed.

PART 556—STATEMENTS OF POLICY

7. The authority citation for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j–3; 15 U.S.C. 1693–1693r.

§§ 556.2, 556.3, 556.10 [Removed]

8. Sections 556.2, 556.3, and 556.10 are removed.

9. Part 560 is added to read as follows:

PART 560—LENDING AND INVESTMENT

Sec.

560.1 General.
560.2 Applicability of law.
560.3 Definitions.

Subpart A—Lending and Investment Powers for Federal Savings Associations

560.30 General lending and investment powers.
560.31 Election regarding categorization of loans or investments and related calculations.
560.33 Late charges.
560.34 Prepayments.
560.35 Adjustments to home loans.
560.40 Commercial paper and corporate debt securities.
560.41 Leasing.
560.42 State and local government obligations.
560.43 Foreign assistance investments.

Subpart B—Lending and Investment Provisions Applicable to all Savings Associations

560.93 Lending limitations.
560.100 Real estate lending standards; purpose and scope.
560.101 Real estate lending standards.
560.110 Most favored lender usury preemption.
560.120 Letters of credit and other independent undertakings to pay against documents.
560.121 Investment in state housing corporations.
560.160 Asset classification.
560.170 Records for lending transactions.
560.172 Re-evaluation of real estate owned.

Subpart C—Alternative Mortgage Transactions

560.210 Disclosures for adjustable-rate mortgage loans, adjustment notices, and interest-rate caps.
560.220 Alternative Mortgage Parity Act.

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

§ 560.1 General.

(a) *Authority and scope.* This part is being issued by OTS under its general rulemaking and supervisory authority

under the Home Owners' Loan Act (HOLA), 12 U.S.C. 1462 *et seq.* Subpart A of this part sets forth the lending and investment powers of Federal savings associations. Subpart B of this part contains safety-and-soundness based lending and investment provisions applicable to all savings associations. Subpart C of this part addresses alternative mortgages and applies to all savings associations.

(b) *General lending standards.* Each savings association is expected to conduct its lending and investment activities prudently. Each association should use lending and investment standards that are consistent with safety and soundness, ensure adequate portfolio diversification and are appropriate for the size and condition of the institution, the nature and scope of its operations, and conditions in its lending market. Each association should adequately monitor the condition of its portfolio and the adequacy of any collateral securing its loans.

§ 560.2 Applicability of law.

(a) *Occupation of field.* Pursuant to sections 4(a) and 5(a) of the HOLA, 12 U.S.C. 1463(a), 1464(a), OTS is authorized to promulgate regulations that preempt state laws affecting the operations of federal savings associations when deemed appropriate to facilitate the safe and sound operation of federal savings associations, to enable federal savings associations to conduct their operations in accordance with the best practices of thrift institutions in the United States, or to further other purposes of the HOLA. To enhance safety and soundness and to enable federal savings associations to conduct their operations in accordance with best practices (by efficiently delivering low-cost credit to the public free from undue regulatory duplication and burden), OTS hereby occupies the entire field of lending regulation for federal savings associations. OTS intends to give federal savings associations maximum flexibility to exercise their lending powers in accordance with a uniform federal scheme of regulation. Accordingly, federal savings associations may extend credit as authorized under federal law, including this part, without regard to state laws purporting to regulate or otherwise affect their credit activities, except to the extent provided in paragraph (c) of this section or § 560.110 of this part. For purposes of this section, ''state law'' includes any state statute, regulation, ruling, order or judicial decision.

(b) *Illustrative examples.* Except as provided in § 560.110 of this part, the types of state laws preempted by paragraph (a) of this section include, without limitation, state laws purporting to impose requirements regarding:

(1) Licensing, registration, filings, or reports by creditors;

(2) The ability of a creditor to require or obtain private mortgage insurance, insurance for other collateral, or other credit enhancements;

(3) Loan-to-value ratios;

(4) The terms of credit, including amortization of loans and the deferral and capitalization of interest and adjustments to the interest rate, balance, payments due, or term to maturity of the loan, including the circumstances under which a loan may be called due and payable upon the passage of time or a specified event external to the loan;

(5) Loan-related fees, including without limitation, initial charges, late charges, prepayment penalties, servicing fees, and overlimit fees;

(6) Escrow accounts, impound accounts, and similar accounts;

(7) Security property, including leaseholds;

(8) Access to and use of credit reports;

(9) Disclosure and advertising, including laws requiring specific statements, information, or other content to be included in credit application forms, credit solicitations, billing statements, credit contracts, or other credit-related documents and laws requiring creditors to supply copies of credit reports to borrowers or applicants;

(10) Processing, origination, servicing, sale or purchase of, or investment or participation in, mortgages;

(11) Disbursements and repayments;

(12) Usury and interest rate ceilings to the extent provided in 12 U.S.C. 1735f–7a and part 590 of this chapter and 12 U.S.C. 1463(g) and § 560.110 of this part; and

(13) Due-on-sale clauses to the extent provided in 12 U.S.C. 1701j–3 and part 591 of this chapter.

(c) *State laws that are not preempted.* State laws of the following types are not preempted to the extent that they only incidentally affect the lending operations of Federal savings associations or are otherwise consistent with the purposes of paragraph (a) of this section:

(1) Contract and commercial law;

(2) Real property law;

(3) Homestead laws specified in 12 U.S.C. 1462a(f);

(4) Tort law;

(5) Criminal law; and

(6) Any other law that OTS, upon review, finds:

(i) Furthers a vital state interest; and

(ii) Either has only an incidental effect on lending operations or is not otherwise contrary to the purposes expressed in paragraph (a) of this section.

§ 560.3 Definitions.

For purposes of this part:

Consumer loans include loans for personal, family, or household purposes and loans reasonably incident thereto, and may be made as either open-end or closed-end consumer credit, but do not include credit extended in connection with credit cards nor *bona fide* overdraft loans.

Home loans include any loans made on the security of homes (including a unit of a condominium or cooperative), combinations of homes and business property, farm residences, and combinations of farm residences and commercial farm real estate.

Loan commitment includes a loan in process, a letter of credit, or any other commitment to extend credit.

Real estate loan includes any loan for which a Federal savings association relies substantially upon the real estate as the primary security for the loan. A loan is made on the security of real estate if:

(1) The security property is real estate pursuant to the law of the state in which the property is located;

(2) The security interest of the Federal savings association may be enforced as a real estate mortgage or its equivalent pursuant to the law of the state in which the property is located;

(3) The security property is capable of separate appraisal; and

(4) With regard to a security property that is a leasehold or other interest for a period of years, the term of the interest extends, or is subject to extension or renewal at the option of the Federal savings association for a term of at least five years following the maturity of the loan.

Subpart A—Lending and Investment Powers for Federal Savings Associations

§ 560.30 General lending and investment powers.

Pursuant to section 5(c) of the HOLA, 12 U.S.C. 1464(c), a Federal savings association may make, invest in, purchase, sell, participate in, or otherwise deal in (including brokerage or warehousing) all loans and investments allowed under section 5(c) of the HOLA including the following loans, extensions of credit, and investments, subject to the limitations indicated and any such clarifying terms, conditions, or case-by-case limitations

as may be prescribed from time to time by the Office by opinion, policy directive, order, or regulation:

LENDING AND INVESTMENT POWERS CHART

Category	HOLA authorization	Statutory Investment Limitations (notes contain applicable regulatory limitations)
Bankers' bank stock	5(c)(4)(E)	Same terms as applicable to national banks.
Business development credit corporations	5(c)(4)(A)	The lesser of .5% of total outstanding loans or $250,000.
Commercial loans	5(c)(2)(A)	10% of total assets.
Commercial paper and corporate debt securities	5(c)(2)(D)	Up to 30% of total assets.[1] [2]
Community development loans and equity investments	5(c)(3)(B)	5% of total assets, provided equity investments do not exceed 2% of total assets.[3]
Construction loans without security	5(c)(3)(D)	In the aggregate, the greater of total capital or 5% of total assets.
Consumer loans	5(c)(2)(D)	Up to 35% of total assets.[1] [4]
Credit cards	5(b)(4)	None.[5]
Deposits in insured depository institutions	5(c)(1)(G)	None.[5]
Education loans	5(c)(3)(A)	5% of total assets.
Federal government and government-sponsored enterprise securities and instruments.	5(c)(1)(C) 5(c)(1)(D) 5(c)(1)(E) 5(c)(1)(F)	None.[5]
Finance leasing	5(c)(1)(B) 5(c)(2)(A) 5(c)(2)(B) 5(c)(2)(D)	Based on purpose and property financed.[6]
Foreign assistance investments	5(c)(4)(C)	1% of total assets.[7]
General leasing	5(c)(2)(C)	10% of assets.[6]
Home improvement loans	5(c)(1)(J)	None.[5]
Home (residential) loans[8]	5(c)(1)(B)	None.[5] [9]
HUD-insured or guaranteed investments	5(c)(1)(O)	None.[5]
Insured loans	5(c)(1)(I) 5(c)(1)(K)	None.[5]
Liquidity investments	5(c)(1)(M)	None.[5]
Loans secured by deposit accounts	5(c)(1)(A)	None.[5] [10]
Loans to financial institutions, brokers, and dealers	5(c)(1)(L)	None.[5] [11]
Manufactured home loans	5(c)(1)(J)	None.[5] [12]
Mortgage-backed securities	5(c)(1)(R)	None.[5]
National Housing Partnership Corporation and related partnerships and joint ventures.	5(c)(1)(N)	None.[5]
Nonconforming loans	5(c)(3)(C)	5% of total assets.
Nonresidential real property loans	5(c)(2)(B)	400% of total capital.[13]
Small-business-related securities	5(c)(1)(S)	None.[5]
State and local government obligations	5(c)(1)(H)	None.[5] [14]
State housing corporations	5(c)(1)(P)	None.[5] [15]
Transaction account loans, including overdrafts	5(c)(1)(A)	None.[5] [16]

NOTES:

[1] For purposes of determining a Federal savings association's percentage of assets limitation, investment in commercial paper and corporate debt securities must be aggregated with the Federal savings association's investment in consumer loans.

[2] A Federal savings association may invest in commercial paper and corporate debt securities, which includes corporate debt securities convertible into stock, subject to the provisions of § 560.40 of this part.

[3] The 2% of assets limitation is a sublimit for investments within the overall 5% of assets limitation on community development loans and investments. The qualitative standards for such loans and investments are set forth in HOLA section 5(c)(3)(B), as explained in an opinion of the OTS Chief Counsel dated May 10, 1995 (available upon request at the address set forth in § 516.1(a) of this chapter).

[4] Amounts in excess of 30% of assets, in aggregate, may be invested only in loans made by the association directly to the original obligor and for which no finder's or referral fees have been paid. A Federal savings association may include loans to dealers in consumer goods to finance inventory and floor planning in the total investment made under this section.

[5] While there is no statutory limit on certain categories of loans and investments, including credit card loans, home improvement loans, and deposit account loans, OTS may establish an individual limit on such loans or investments if the association's concentration in such loans or investments presents a safety and soundness concern.

[6] A Federal savings association may engage in leasing activities subject to the provisions of § 560.41 of this part.

[7] This 1% of assets limitation applies to the aggregate outstanding investments made under the Foreign Assistance Act and in the capital of the Inter-American Savings and Loan Bank. Such investments may be made subject to the provisions of § 560.43 of this part.

[8] A home (or residential) loan includes loans secured by one-to-four family dwellings, multi-family residential property and loans secured by a unit or units of a condominium or housing cooperative.

[9] A Federal savings association may make home loans subject to the provisions of §§ 560.33, 560.34 and 560.35 of this part.

[10] Loans secured by savings accounts and other time deposits may be made without limitation, provided the Federal savings association obtains a lien on, or a pledge of, such accounts. Such loans may not exceed the withdrawable amount of the account.

[11] A Federal savings association may only invest in these loans if they are secured by obligations of, or by obligations fully guaranteed as to principal and interest by, the United States or any of its agencies or instrumentalities, the borrower is a financial institution insured by the Federal Deposit Insurance Corporation or is a broker or dealer registered with the Securities and Exchange Commission, and the market value of the securities for each loan at least equals the amount of the loan at the time it is made.

[12] If the wheels and axles of the manufactured home have been removed and it is permanently affixed to a foundation, a loan secured by a combination of a manufactured home and developed residential lot on which it sits may be treated as a home loan.

[13] Without regard to any limitations of this part, a Federal savings association may make or invest in the fully insured or guaranteed portion of nonresidential real estate loans insured or guaranteed by the Economic Development Administration, the Farmers Home Administration, or the Small Business Administration. Unguaranteed portions of guaranteed loans must be aggregated with uninsured loans when determining an association's compliance with the 400% of capital limitation for other real estate loans.

[14] This category includes obligations issued by any state, territory, or possession of the United States or political subdivision thereof (including any agency, corporation, or instrumentality of a state or political subdivision), subject to § 560.42 of this part.

[15] A Federal savings association may invest in state housing corporations subject to the provisions of § 560.121 of this part.

[16] Payments on accounts in excess of the account balance (overdrafts) on commercial deposit or transaction accounts shall be considered commercial loans for purposes of determining the association's percentage of assets limitation.

§ 560.31 Election regarding categorization of loans or investments and related calculations.

(a) If a loan or other investment is authorized under more than one section of the HOLA, as amended, or this part, a Federal savings association may designate under which section the loan or investment has been made. Such a loan or investment may be apportioned among appropriate categories, and may be moved, in whole or part, from one category to another. A loan commitment shall be counted as an investment and included in total assets of a Federal savings association for purposes of calculating compliance with HOLA section 5(c)'s investment limitations only to the extent that funds have been advanced and not repaid pursuant to the commitment.

(b) Loans or portions of loans sold to a third party shall be included in the calculation of a percentage-of-assets or percentage-of-capital investment limitation only to the extent they are sold with recourse.

(c) A Federal savings association may make a loan secured by an assignment of loans to the extent that it could, under applicable law and regulations, make or purchase the underlying assigned loans.

§ 560.33 Late charges.

A Federal savings association may include in a home loan contract a provision authorizing the imposition of a late charge with respect to the payment of any delinquent periodic payment. With respect to any loan made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, no late charge, regardless of form, shall be assessed or collected by a Federal savings association, unless any billing, coupon, or notice the Federal savings association may provide regarding installment payments due on the loan discloses the date after which the charge may be assessed. A Federal savings association may not impose a late charge more than one time for late payment of the same installment, and any installment payment made by the borrower shall be applied to the longest outstanding installment due. A Federal savings association shall not assess a late charge as to any payment received by it within fifteen days after the due date of such payment. No form of such late charge permitted by this paragraph shall be considered as interest to the Federal savings association and the Federal savings association shall not deduct late charges from the regular periodic installment payments on the loan, but must collect them as such from the borrower.

§ 560.34 Prepayments.

Any prepayment on a real estate loan must be applied directly to reduce the principal balance on the loan unless the loan contract or the borrower specifies otherwise. Subject to the terms of the loan contract, a Federal savings association may impose a fee for any prepayment of a loan.

§ 560.35 Adjustments to home loans.

(a) For any home loan secured by borrower-occupied property, or property to be occupied by the borrower, adjustments to the interest rate, payment, balance, or term to maturity must comply with the limitations of this section and the disclosure and notice requirements of § 560.210 of this part.

(b) Adjustments to the interest rate shall correspond directly to the movement of an index satisfying the requirements of paragraph (d) of this section. A Federal savings association also may increase the interest rate pursuant to a formula or schedule that specifies the amount of the increase, the time at which it may be made, and which is set forth in the loan contract. A Federal savings association may decrease the interest rate at any time.

(c) Adjustments to the payment and the loan balance that do not reflect an interest-rate adjustment may be made if:

(1) The adjustments reflect a change in an index that may be used pursuant to paragraph (d) of this section;

(2) In the case of a payment adjustment, the adjustment reflects a change in the loan balance or is made pursuant to a formula, or to a schedule specifying the percentage or dollar change in the payment as set forth in the loan contract; or

(3) In the case of an open-end line-of-credit loan, the adjustment reflects an advance taken by the borrower under the line-of-credit and is permitted by the loan contract.

(d)(1) Any index used must be readily available and independently verifiable. If set forth in the loan contract, an association may use any combination of indices, a moving average of index values, or more than one index during the term of a loan.

(2) Except as provided in paragraph (d)(3) of this section, any index used must be a national or regional index.

(3) A Federal savings association may use an index not satisfying the requirements of paragraph (d)(2) of this section 30 days after filing a notice in accordance with § 516.1(c) of this chapter unless, within that 30-day period, OTS has notified the association that the notice presents supervisory concerns or raises significant issues of law or policy. If OTS does notify the association of such concerns or issues, the Federal savings association may not use such an index unless and until it applies for and receives OTS's prior written approval in accordance with § 516.1(c) of this chapter.

§ 560.40 Commercial paper and corporate debt securities.

Pursuant to HOLA section 5(c)(2)(D), a Federal savings association may invest in, sell, or hold commercial paper and corporate debt securities subject to the provisions of this section.

(a) *Limitations.* (1) Commercial paper must be:

(i) As of the date of purchase, rated in either one of the two highest categories by at least two nationally recognized investment ratings services as shown by the most recently published rating made of such investments; or

(ii) If unrated, guaranteed by a company having outstanding paper that is rated as provided in paragraph (a)(1)(i) of this section.

(2) Corporate debt securities must be:

(i) Securities that may be sold with reasonable promptness at a price that corresponds reasonably to their fair value; and

(ii) Rated in one of the four highest categories by a nationally recognized investment ratings service at its most recently published rating before the date of purchase of the security.

(3) A Federal savings association's total investment in the commercial paper and corporate debt securities of any one issuer, or issued by any one

person or entity affiliated with such issuer, together with other loans, shall not exceed the general lending limitations contained in § 560.93(c) of this part.

(4) Investments in corporate debt securities convertible into stock are subject to the following additional limitations:

(i) The purchase of securities convertible into stock at the option of the issuer is prohibited;

(ii) At the time of purchase, the cost of such securities must be written down to an amount that represents the investment value of the securities considered independently of the conversion feature; and

(iii) Federal savings associations are prohibited from exercising the conversion feature.

(5) A Federal savings association shall maintain information in its files adequate to demonstrate that it has exercised prudent judgment in making investments under this section.

(b) Notwithstanding the limitations contained in this section, the Office may permit investment in corporate debt securities of another savings association in connection with the purchase or sale of a branch office or in connection with a supervisory merger or acquisition.

§ 560.41 Leasing.

(a) *Permissible activities.* Subject to the limitations of this section, a Federal savings association may engage in leasing activities. These activities include becoming the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, obtaining an assignment of a lessor's interest in a lease of such property, and incurring obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

(b) *Definitions.* For the purposes of this section:

(1) The term *net lease* means a lease under which the Federal savings association will not, directly or indirectly, provide or be obligated to provide for:

(i) The servicing, repair or maintenance of the leased property during the lease term;

(ii) The purchasing of parts and accessories for the leased property, except that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of paragraph (c)(2)(i) of this section;

(iii) The loan of replacement or substitute property while the leased property is being serviced;

(iv) The purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(v) The renewal of any license, registration, or filing for the property unless such action by the Federal savings association is necessary to protect its interest as an owner or financier of the property.

(2) The term *full-payout lease* means a lease transaction in which any unguaranteed portion of the estimated residual value relied on by the association to yield the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, does not exceed 25% of the original cost of the property to the lessor. In general, a lease will qualify as a full-payout lease if the scheduled payments provide at least 75% of the principal and interest payments that a lessor would receive if the finance lease were structured as a market-rate loan.

(3) The term *realization of investment* means that a Federal savings association that enters into a lease financing transaction must reasonably expect to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from:

(i) Rentals;

(ii) Estimated tax benefits, if any; and

(iii) The estimated residual value of the property at the expiration of the term of the lease.

(c) *Finance leasing*—(1) *Investment limits.* A Federal savings association may exercise its authority under HOLA sections 5(c)(1)(B) (residential real estate loans), 5(c)(2)(A) (commercial, business, corporate or agricultural loans), 5(c)(2)(B) (nonresidential real estate loans), and 5(c)(2)(D) (consumer loans) by conducting leasing activities that are the functional equivalent of loans made under those HOLA sections. These activities are commonly referred to as financing leases. Such financing leases are subject to the same investment limits that apply to loans made under those sections. For example, a financing lease of tangible personal property made to a natural person for personal, family or household purposes is subject to all limitations applicable to the amount of a Federal savings association's investment in consumer loans. A financing lease made for commercial, corporate, business, or agricultural purposes is subject to all limitations applicable to the amount of a Federal savings association's investment in commercial loans. A financing lease of residential or nonresidential real property is subject to all limitations applicable to the amount of a Federal savings association's investment in these types of real estate loans.

(2) *Functional equivalent of lending.* To qualify as the functional equivalent of a loan:

(i) The lease must be a net, full-payout lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of the lease;

(ii) The portion of the estimated residual value of the property relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee, and not on the residual market value of the leased property; and

(iii) At the termination of a financing lease, either by expiration or default, property acquired must be liquidated or released on a net basis as soon as practicable. Any property held in anticipation of re-leasing must be reevaluated and recorded at the lower of fair market value or book value.

(d) *General leasing.* Pursuant to section 5(c)(2)(C) of the HOLA, a Federal savings association may invest in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture, for the purpose of leasing that property. In contrast to financing leases, lease investments made under this authority need not be the functional equivalent of loans.

(e) *Leasing salvage powers.* If, in good faith, a Federal savings association believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, it may:

(1) As the owner and lessor, take reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(2) As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual right, or take any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(3) Include any provisions in a lease, or make any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (e)(1) and (e)(2) of this section.

§ 560.42 State and local government obligations.

Pursuant to HOLA section 5(c)(1)(H), a Federal savings association may invest in obligations issued by any state, territory, possession, or political subdivision thereof, subject to the following conditions:

(a) A Federal savings association may not invest more than 10% of its total capital in obligations of any one issuer, exclusive of general obligations of the issuer.

(b) Except as provided in paragraph (c) of this section, the obligations must:

(1) Continue to hold one of the four highest national investment grade ratings; or

(2) Must be issued by a public housing agency and backed by the full faith and credit of the United States.

(c) Notwithstanding the limitations in paragraph (b) of this section, a Federal savings association may invest:

(1) In the aggregate, up to one percent of its assets in the obligations of a state, territory, possession, or political subdivision in which the association's home office or a branch office is located; or

(2) In any obligations approved by the Office.

§ 560.43 Foreign assistance investments.

Pursuant to HOLA section 5(c)(4)(C), a Federal savings association may make foreign assistance investments in an aggregate amount not to exceed one percent of its assets, subject to the following conditions:

(a) For any investment made under the Foreign Assistance Act, the loan agreement shall specify what constitutes an event of default, and provide that upon default in payment of principal or interest under such agreement, the entire amount of outstanding indebtedness thereunder shall become immediately due and payable, at the lender's option. Additionally, the contract of guarantee shall cover 100% of any loss of investment thereunder, except for any portion of the loan arising out of fraud or misrepresentation for which the party seeking payment is responsible, and provide that the guarantor shall pay for any such loss in U.S. dollars within a specified reasonable time after the date of application for payment.

(b) To make any investments in the share capital and capital reserve of the Inter-American Savings and Loan Bank, a Federal savings association must be adequately capitalized and have adequate allowances for loan and lease losses. The Federal savings association's aggregate investment in such capital or capital reserve, including the amount of any obligations undertaken to provide said Bank with reserve capital in the future (call-able capital), must not, as a result of such investment, exceed the lesser of one-quarter of 1% of its assets or $100,000.

Subpart B—Lending and Investment Provisions Applicable to all Savings Associations

§ 560.93 Lending limitations.

(a) *Scope.* This section applies to all loans and extensions of credit made by a savings association and its subsidiaries. This section does not apply to loans made by a savings association to its subsidiaries or to its affiliates. The terms *subsidiary* and *affiliate* have the same meanings as those terms are defined in § 563.41 of this chapter.

(b) *Definitions.* In applying these lending limitations, savings associations shall apply the definitions and interpretations promulgated by the Office of the Comptroller of the Currency consistent with 12 U.S.C. 84. See 12 CFR part 32. In applying these definitions, pursuant to 12 U.S.C. 1464, savings associations shall use the terms *savings association, savings associations,* and *savings association's* in place of the terms *national bank* and *bank, banks, and bank's,* respectively. For purposes of this section:

(1) The term *one borrower* has the same meaning as the term *person* set forth at 12 CFR part 32. It also includes, in addition to the definition cited therein, a *financial institution* as defined at § 561.19 of this chapter.

(2) The term *company* means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, the term *company* includes a *savings association* and a *bank.*

(3) *Contractual commitment to advance funds* has the meaning set forth in 12 CFR part 32.

(4) *Loans and extensions of credit* has the meaning set forth in 12 CFR part 32, and includes investments in commercial paper and corporate debt securities. The Office expressly reserves its authority to deem other arrangements that are, in substance, *loans and extensions of credit* to be encompassed by this term.

(5) The term *loans* as used in the phrase *Loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted for in good faith* does not include an association's taking of a purchase money mortgage note from the purchaser *provided that:*

(i) No new funds are advanced by the association to the borrower; and

(ii) The association is not placed in a more detrimental position as a result of the sale.

(6) The term *fully phased-in capital standards* means the capital standards that will be in effect at the expiration of all statutory and regulatory phase-in requirements set forth in 12 U.S.C. 1464(t) and §§ 567.2, 567.5, and 567.9 of this chapter.

(7) *Readily marketable collateral* has the meaning set forth in 12 CFR part 32.

(8) *Residential housing units* has the same meaning as the term *residential real estate* set forth in § 541.23 of this chapter. The term *to develop* includes the various phases necessary to produce housing units as an end product, to include: acquisition, development and construction; development and construction; construction; rehabilitation; or conversion. The term *domestic* includes units within the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands.

(9) *Single family dwelling unit* has the meaning set forth in § 541.20 of this chapter.

(10) A *standby letter of credit* has the meaning set forth in 12 CFR part 32.

(11) *Unimpaired capital and unimpaired surplus* means—

(i) A savings association's core capital and supplementary capital included in its total capital under part 567 of this chapter; plus

(ii) The balance of a savings association's allowance for loan and lease losses not included in supplementary capital under part 567 of this chapter; plus

(iii) The amount of a savings association's loans to, investments in, and advances to subsidiaries not included in calculating core capital under part 567 of this chapter.

(c) *General limitation.* Section 5200 of the Revised Statutes (12 U.S.C. 84) shall apply to savings associations in the same manner and to the same extent as it applies to national banks. This statutory provision and lending limit regulations and interpretations promulgated by the Office of the Comptroller of the Currency pursuant to a rulemaking conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 553 et seq. (including the regulations appearing at 12 CFR part 32) shall apply to savings associations in the same manner and to the same extent as these provisions apply to national banks:

(1) The total loans and extensions of credit by a savings association to one borrower outstanding at one time and not fully secured, as determined in the same manner as determined under 12

U.S.C. 84(a)(2), by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed 15 percent of the unimpaired capital and unimpaired surplus of the association.

(2) The total loans and extensions of credit by a savings association to one borrower outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 per centum of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitation contained in paragraph (c)(1) of this section.

(d) *Exceptions to the general limitation*—(1) *$500,000 exception.* If a savings association's aggregate lending limitation calculated under paragraphs (c)(1) and (c)(2) of this section is less than $500,000, notwithstanding this aggregate limitation in paragraphs (c)(1) and (c)(2) of this section, such savings association may have total loans and extensions of credit, for any purpose, to one borrower outstanding at one time not to exceed $500,000.

(2) *Statutory exceptions.* The exceptions to the lending limits set forth in 12 U.S.C. 84 and 12 CFR part 32 are applicable to savings associations in the same manner and to the extent as they apply to national banks.

(3) *Loans to develop domestic residential housing units.* Subject to paragraph (d)(4) of this section, a savings association may make loans to one borrower to develop domestic residential housing units, not to exceed the lesser of $30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus, including all amounts loaned under the authority of the General Limitation set forth under paragraphs (c)(1) and (c)(2) of this section, *provided that:*

(i) The final purchase price of each single family dwelling unit the development of which is financed under this paragraph (d)(3) does not exceed $500,000;

(ii) The savings association is, and continues to be, in compliance with its fully phased-in capital standards, as defined in paragraph (b)(6) of this section;

(iii) OTS permits, subject to conditions it may impose, the savings association to use the higher limit set forth under this paragraph (d)(3). A savings association that meets the requirements of paragraphs (d)(3) (i), (ii), (iv) and (v) of this section and that meets the requirements for ''expedited treatment'' under § 516.3(a) of this chapter may use the higher limit set forth under this paragraph (d)(3) if the savings association has filed a notice with OTS that it intends to use the higher limit at least 30 days prior to the proposed use. A savings association that meets the requirements of paragraphs (d)(3) (i), (ii), (iv) and (v) of this section and that meets the requirements for ''standard treatment'' under § 516.3(b) of this chapter may use the higher limit set forth under this paragraph (d)(3) if the savings association has filed a notice with OTS and an order has been issued permitting the savings association to use the higher limit;

(iv) Loans made under this paragraph (d)(3) to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus; and

(v) Such loans comply with the applicable loan-to-value requirements that apply to Federal savings associations.

(4) The authority of a savings association to make a loan or extension of credit under the exception in paragraph (d)(3) of this section ceases immediately upon the association's failure to comply with any one of the requirements set forth in paragraph (d)(3) of this section or any condition(s) set forth in a Director's order under paragraph (d)(3)(iii) of this section.

(5) Notwithstanding the limit set forth in paragraphs (c)(1) and (c)(2) of this section, a savings association may invest up to 10 percent of unimpaired capital and unimpaired surplus in the obligations of one issuer evidenced by:

(i) Commercial paper rated, as of the date of purchase, as shown by the most recently published rating by at least two nationally recognized investment rating services in the highest category; or

(ii) Corporate debt securities that may be sold with reasonable promptness at a price that corresponds reasonably to their fair value, and that are rated in one of the two highest categories by a nationally recognized investment rating service in its most recently published ratings before the date of purchase of the security.

(e) *Loans to finance the sale of REO.* A savings association's loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted for in good faith shall not, when aggregated with all other loans to such borrower, exceed the General Limitation in paragraph (c)(1) of this section.

(f) *Calculating compliance and recordkeeping.* (1) The amount of an association's unimpaired capital and unimpaired surplus pursuant to paragraph (b)(11) of this section shall be calculated as of the association's most recent periodic report required to be filed with OTS prior to the date of granting or purchasing the loan or otherwise creating the obligation to repay funds, unless the association knows, or has reason to know, based on transactions or events actually completed, that such level has changed significantly, upward or downward, subsequent to filing of such report.

(2) If a savings association or subsidiary thereof makes a loan or extension of credit to any one borrower, as defined in paragraph (b)(1) of this section, in an amount that, when added to the total balances of all outstanding loans owed to such association and its subsidiary by such borrower, exceeds the greater of $500,000 or 5 percent of unimpaired capital and unimpaired surplus, the records of such association or its subsidiary with respect to such loan shall include documentation showing that such loan was made within the limitations of paragraphs (c) and (d) of this section; for the purpose of such documentation such association or subsidiary may require, and may accept in good faith, a certification by the borrower identifying the persons, entities, and interests described in the definition of one borrower in paragraph (b)(1) of this section.

(g) [Reserved]

(h) *More stringent restrictions.* The Director may impose more stringent restrictions on a savings association's loans to one borrower if the Director determines that such restrictions are necessary to protect the safety and soundness of the savings association.

Appendix to § 560.93—Interpretations

Section 560.93–100 Interrelation of General Limitation With Exception for Loans To Develop Domestic Residential Housing Units

1. The § 560.93(d)(3) exception for loans to one person to develop domestic residential housing units is characterized in the regulation as an ''alternative'' limit. This exceptional $30,000,000 or 30 percent limitation does not operate *in addition to* the 15 percent General Limitation or the 10 percent additional amount an association may loan to one borrower secured by readily marketable collateral, but serves as the uppermost limitation on a savings association's lending to any one person once an association employs this exception. An example will illustrate the Office's interpretation of the application of this rule:

Example: Savings Associations A's lending limitation as calculated under the 15 percent General Limitation is $800,000. If Association A lends Y $800,000 for commercial purposes, Association A cannot lend Y *an additional* $1,600,000, or 30 percent of capital and surplus, to develop

residential housing units under the paragraph (d)(3) exception. The (d)(3) exception operates as the uppermost limitation on all lending to one borrower (for associations that may employ this exception) *and includes any amounts loaned to the same borrower under the General Limitation.* Association A, therefore, may lend only an additional $800,000 to Y, provided the paragraph (d)(3) prerequisites have been met. The amount loaned under the authority of the General Limitation ($800,000), when added to the amount loaned under the exception ($800,000), yields a sum that does not exceed the 30 percent uppermost limitation ($1,600,000).

2. This result does not change even if the facts are altered to assume that some or all of the $800,000 amount of lending permissible under the General Limitation's 15 percent basket is not used, or is devoted to the development of domestic residential housing units.

In other words, using the above example, if Association A lends Y $400,000 for commercial purposes and $300,000 for residential purposes—both of which would be permitted under the Association's $800,000 General Limitation—Association A's remaining permissible lending to Y would be: first, an additional $100,000 under the General Limitation, and then another $800,000 to develop domestic residential housing units if the Association meets the paragraph (d)(3) prerequisites. (The latter is $800,000 because in no event may the total lending to Y exceed 30 percent of unimpaired capital and unimpaired surplus). If Association A did not lend Y the remaining $100,000 permissible under the General Limitation, its permissible loans to develop domestic residential housing units under paragraph (d)(3) would be $900,000 instead of $800,000 (the total loans to Y would still equal $1,600,000).

3. In short, under the paragraph (d)(3) exception, the 30 percent or $30,000,000 limit will always operate as the uppermost limitation, unless of course the association does not avail itself of the exception and merely relies upon its General Limitation.

Section 560.93–101 Interrelationship Between the General Limitation and the 150 Percent Aggregate Limit on Loans to all Borrowers To Develop Domestic Residential Housing Units

1. The Office has already received numerous questions regarding the allocation of loans between the different lending limit ''baskets,'' *i.e.,* the 15 percent General Limitation basket and the 30 percent Residential Development basket. In general, the inquiries concern the manner in which an association may ''move'' a loan from the General Limitation basket to the Residential Development basket. The following example is intended to provide guidance:

Example: Association A's General Limitation under section 5(u)(1) is $15 million. In January, Association A makes a $10 million loan to Borrower to develop domestic residential housing units. At the time the loan was made, Association A had not received approval under a Director order to avail itself of the residential development exception to lending limits. Therefore, the $10 million loan is made under Association A's General Limitation.

2. In June, Association A receives authorization to lend under the Residential Development exception. In July, Association A lends $3 million to Borrower to develop domestic residential housing units. In August, Borrower seeks an additional $12 million commercial loan from Association A. Association A cannot make the loan to Borrower, however, because it already has an outstanding $10 million loan to Borrower that counts against Association A's General Limitation of $15 million. Thus, Association A may lend only up to an additional $5 million to Borrower under the General Limitation.

3. However, Association A may be able to reallocate the $10 million loan it made to Borrower in January to its Residential Development basket provided that: (1) Association A has obtained authority under a Director's order to avail itself of the additional lending authority for residential development and maintains compliance with all prerequisites to such lending authority; (2) the original $10 million loan made in January constitutes a loan to develop domestic residential housing units as defined; and (3) the housing unit(s) constructed with the funds from the January loan remain in a stage of ''development'' at the time Association A reallocates the loan to the domestic residential housing basket. The project must be in a stage of acquisition, development, construction, rehabilitation, or conversion in order for the loan to be reallocated.

4. If Association A is able to reallocate the $10 million loan made to Borrower in January to its Residential Development basket, it may make the $12 million commercial loan requested by Borrower in August. Once the January loan is reallocated to the Residential Development basket, however, the $10 million loan counts towards Association's 150 percent aggregate limitation on loans to all borrowers under the residential development basket (section 5(u)(2)(A)(ii)(IV)).

5. If Association A reallocates the January loan to its domestic residential housing basket and makes an additional $12 million commercial loan to Borrower, Association A's totals under the respective limitations would be: $12 million under the General Limitation; and $13 million under the Residential Development limitation. The full $13 million residential development loan counts toward Association A's aggregate 150 percent limitation.

§ 560.100 Real estate lending standards; purpose and scope.

This section, and § 560.101 of this subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribe standards for real estate lending to be used by savings associations and all their includable subsidiaries, as defined in 12 CFR 567.1(l), over which the savings associations exercise control, in adopting internal real estate lending policies.

§ 560.101 Real estate lending standards.

(a) Each savings association shall adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate.

(b) (1) Real estate lending policies adopted pursuant to this section must:

(i) Be consistent with safe and sound banking practices;

(ii) Be appropriate to the size of the institution and the nature and scope of its operations; and

(iii) Be reviewed and approved by the savings association's board of directors at least annually.

(2) The lending policies must establish:

(i) Loan portfolio diversification standards;

(ii) Prudent underwriting standards, including loan-to-value limits, that are clear and measurable;

(iii) Loan administration procedures for the savings association's real estate portfolio; and

(iv) Documentation, approval, and reporting requirements to monitor compliance with the savings association's real estate lending policies.

(c) Each savings association must monitor conditions in the real estate market in its lending area to ensure that its real estate lending policies continue to be appropriate for current market conditions.

(d) The real estate lending policies adopted pursuant to this section should reflect consideration of the Interagency Guidelines for Real Estate Lending Policies established by the Federal bank and thrift supervisory agencies.

Appendix to § 560.101—Interagency Guidelines for Real Estate Lending Policies

The agencies' regulations require that each insured depository institution adopt and maintain a written policy that establishes appropriate limits and standards for all extensions of credit that are secured by liens on or interests in real estate or made for the purpose of financing the construction of a building or other improvements.[1] These guidelines are intended to assist institutions in the formulation and maintenance of a real estate lending policy that is appropriate to the size of the institution and the nature and

[1] The agencies have adopted a uniform rule on real estate lending. See 12 CFR Part 365 (FDIC); 12 CFR Part 208, Subpart C (FRB); 12 CFR Part 34, Subpart D (OCC); and 12 CFR 560.100–560.101 (OTS).

scope of its individual operations, as well as satisfies the requirements of the regulation.

Each institution's policies must be comprehensive, and consistent with safe and sound lending practices, and must ensure that the institution operates within limits and according to standards that are reviewed and approved at least annually by the board of directors. Real estate lending is an integral part of many institutions' business plans and, when undertaken in a prudent manner, will not be subject to examiner criticism.

Loan Portfolio Management Considerations

The lending policy should contain a general outline of the scope and distribution of the institution's credit facilities and the manner in which real estate loans are made, serviced, and collected. In particular, the institution's policies on real estate lending should:

- Identify the geographic areas in which the institution will consider lending.
- Establish a loan portfolio diversification policy and set limits for real estate loans by type and geographic market (e.g., limits on higher risk loans).
- Identify appropriate terms and conditions by type of real estate loan.
- Establish loan origination and approval procedures, both generally and by size and type of loan.
- Establish prudent underwriting standards that are clear and measurable, including loan-to-value limits, that are consistent with these supervisory guidelines.
- Establish review and approval procedures for exception loans, including loans with loan-to-value percentages in excess of supervisory limits.
- Establish loan administration procedures, including documentation, disbursement, collateral inspection, collection, and loan review.
- Establish real estate appraisal and evaluation programs.
- Require that management monitor the loan portfolio and provide timely and adequate reports to the board of directors.

The institution should consider both internal and external factors in the formulation of its loan policies and strategic plan. Factors that should be considered include:

- The size and financial condition of the institution.
- The expertise and size of the lending staff.
- The need to avoid undue concentrations of risk.
- Compliance with all real estate related laws and regulations, including the Community Reinvestment Act, anti-discrimination laws, and for savings associations, the Qualified Thrift Lender test.
- Market conditions.

The institution should monitor conditions in the real estate markets in its lending area so that it can react quickly to changes in market conditions that are relevant to its lending decisions. Market supply and demand factors that should be considered include:

- Demographic indicators, including population and employment trends.
- Zoning requirements.
- Current and projected vacancy, construction, and absorption rates.
- Current and projected lease terms, rental rates, and sales prices, including concessions.
- Current and projected operating expenses for different types of projects.
- Economic indicators, including trends and diversification of the lending area.
- Valuation trends, including discount and direct capitalization rates.

Underwriting Standards

Prudently underwritten real estate loans should reflect all relevant credit factors, including:

- The capacity of the borrower, or income from the underlying property, to adequately service the debt.
- The value of the mortgaged property.
- The overall creditworthiness of the borrower.
- The level of equity invested in the property.
- Any secondary sources of repayment.
- Any additional collateral or credit enhancements (such as guarantees, mortgage insurance or takeout commitments).

The lending policies should reflect the level of risk that is acceptable to the board of directors and provide clear and measurable underwriting standards that enable the institution's lending staff to evaluate these credit factors. The underwriting standards should address:

- The maximum loan amount by type of property.
- Maximum loan maturities by type of property.
- Amortization schedules.
- Pricing structure for different types of real estate loans.
- Loan-to-value limits by type of property.

For development and construction projects, and completed commercial properties, the policy should also establish, commensurate with the size and type of the project or property:

- Requirements for feasibility studies and sensitivity and risk analyses (*e.g.*, sensitivity of income projections to changes in economic variables such as interest rates, vacancy rates, or operating expenses).
- Minimum requirements for initial investment and maintenance of hard equity by the borrower (*e.g.*, cash or unencumbered investment in the underlying property).
- Minimum standards for net worth, cash flow, and debt service coverage of the borrower or underlying property.
- Standards for the acceptability of and limits on non-amortizing loans.
- Standards for the acceptability of and limits on the use of interest reserves.
- Pre-leasing and pre-sale requirements for income-producing property.
- Pre-sale and minimum unit release requirements for non-income-producing property loans.
- Limits on partial recourse or nonrecourse loans and requirements for guarantor support.
- Requirements for takeout commitments.
- Minimum covenants for loan agreements.

Loan Administration

The institution should also establish loan administration procedures for its real estate portfolio that address:

- Documentation, including:

Type and frequency of financial statements, including requirements for verification of information provided by the borrower;

Type and frequency of collateral evaluations (appraisals and other estimates of value).

- Loan closing and disbursement.
- Payment processing.
- Escrow administration.
- Collateral administration.
- Loan payoffs.
- Collections and foreclosure, including:

Delinquency follow-up procedures;
Foreclosure timing;
Extensions and other forms of forbearance;
Acceptance of deeds in lieu of foreclosure.

- Claims processing (*e.g.*, seeking recovery on a defaulted loan covered by a government guaranty or insurance program).
- Servicing and participation agreements.

Supervisory Loan-to-Value Limits

Institutions should establish their own internal loan-to-value limits for real estate loans. These internal limits should not exceed the following supervisory limits:

Loan category	Loan-to-value limit (percent)
Raw land	65
Land development	75
Construction:	
Commercial, multifamily,[1] and other nonresidential	80
1- to 4-family residential	85
Improved property	85
Owner-occupied 1- to 4-family and home equity	([2])

[1] Multifamily construction includes condominiums and cooperatives.

[2] A loan-to-value limit has not been established for permanent mortgage or home equity loans on owner-occupied, 1- to 4-family residential property. However, for any such loan with a loan-to-value ratio that equals or exceeds 90 percent at origination, an institution should require appropriate credit enhancement in the form of either mortgage insurance or readily marketable collateral.

The supervisory loan-to-value limits should be applied to the underlying property that collateralizes the loan. For loans that fund multiple phases of the same real estate project (e.g., a loan for both land development and construction of an office building), the appropriate loan-to-value limit is the limit applicable to the final phase of the project funded by the loan; however, loan disbursements should not exceed actual development or construction outlays. In situations where a loan is fully cross-collateralized by two or more properties or is secured by a collateral pool of two or more properties, the appropriate maximum loan amount under supervisory loan-to-value limits is the sum of the value of each property, less senior liens, multiplied by the appropriate loan-to-value limit for each

property. To ensure that collateral margins remain within the supervisory limits, lenders should redetermine conformity whenever collateral substitutions are made to the collateral pool.

In establishing internal loan-to-value limits, each lender is expected to carefully consider the institution-specific and market factors listed under ''Loan Portfolio Management Considerations,'' as well as any other relevant factors, such as the particular subcategory or type of loan. For any subcategory of loans that exhibits greater credit risk than the overall category, a lender should consider the establishment of an internal loan-to-value limit for that subcategory that is lower than the limit for the overall category.

The loan-to-value ratio is only one of several pertinent credit factors to be considered when underwriting a real estate loan. Other credit factors to be taken into account are highlighted in the ''Underwriting Standards'' section above. Because of these other factors, the establishment of these supervisory limits should not be interpreted to mean that loans at these levels will automatically be considered sound.

Loans in Excess of the Supervisory Loan-to-Value Limits

The agencies recognize that appropriate loan-to-value limits vary not only among categories of real estate loans but also among individual loans. Therefore, it may be appropriate in individual cases to originate or purchase loans with loan-to-value ratios in excess of the supervisory loan-to-value limits, based on the support provided by other credit factors. Such loans should be identified in the institutions' records, and their aggregate amount reported at least quarterly to the institution's board of directors. (See additional reporting requirements described under ''Exceptions to the General Policy.'') The aggregate amount of all loans in excess of the supervisory loan-to-value limits should not exceed 100 percent of total capital.[2] Moreover, within the aggregate limit, total loans for all commercial, agricultural, multifamily or other non-1-to- 4 family residential properties should not exceed 30 percent of total capital. An institution will come under increased supervisory scrutiny as the total of such loans approaches these levels.

In determining the aggregate amount of such loans, institutions should: (a) Include all loans secured by the same property if any one of those loans exceeds the supervisory loan-to-value limits; and (b) include the recourse obligation of any such loan sold with recourse. Conversely, a loan should no longer be reported to the directors as part of aggregate totals when reduction in principal or senior liens, or additional contribution of collateral or equity (e.g., improvements to the real property securing the loan), bring the loan-to-value ratio into compliance with supervisory limits.

Excluded Transactions

The agencies also recognize that there are a number of lending situations in which other factors significantly outweigh the need to apply the supervisory loan-to-value limits. These include:

- Loans guaranteed or insured by the U.S. government or its agencies, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the supervisory loan-to-value limit.
- Loans backed by the full faith and credit of a state government, provided that the amount of the assurance is at least equal to the portion of the loan that exceeds the supervisory loan-to-value limit.
- Loans guaranteed or insured by a state, municipal or local government, or an agency thereof, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the supervisory loan-to-value limit, and provided that the lender has determined that the guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement.
- Loans that are to be sold promptly after origination, without recourse, to a financially responsible third party.
- Loans that are renewed, refinanced, or restructured without the advancement of new funds or an increase in the line of credit (except for reasonable closing costs), or loans that are renewed, refinanced, or restructured in connection with a workout situation, either with or without the advancement of new funds, where consistent with safe and sound banking practices and part of a clearly defined and well-documented program to achieve orderly liquidation of the debt, reduce risk of loss, or maximize recovery on the loan.
- Loans that facilitate the sale of real estate acquired by the lender in the ordinary course of collecting a debt previously contracted in good faith.
- Loans for which a lien on or interest in real property is taken as additional collateral through an abundance of caution by the lender (e.g., the institution takes a blanket lien on all or substantially all of the assets of the borrower, and the value of the real property is low relative to the aggregate value of all other collateral).
- Loans, such as working capital loans, where the lender does not rely principally on real estate as security and the extension of credit is not used to acquire, develop, or construct permanent improvements on real property.
- Loans for the purpose of financing permanent improvements to real property, but not secured by the property, if such security interest is not required by prudent underwriting practice.

Exceptions to the General Lending Policy

Some provision should be made for the consideration of loan requests from creditworthy borrowers whose credit needs do not fit within the institution's general lending policy. An institution may provide for prudently underwritten exceptions to its lending policies, including loan-to-value limits, on a loan-by-loan basis. However, any exceptions from the supervisory loan-to-value limits should conform to the aggregate limits on such loans discussed above.

The board of directors is responsible for establishing standards for the review and approval of exception loans. Each institution should establish an appropriate internal process for the review and approval of loans that do not conform to its own internal policy standards. The approval of any such loan should be supported by a written justification that clearly sets forth all of the relevant credit factors that support the underwriting decision. The justification and approval documents for such loans should be maintained as a part of the permanent loan file. Each institution should monitor compliance with its real estate lending policy and individually report exception loans of a significant size to its board of directors.

Supervisory Review of Real Estate Lending Policies and Practices

The real estate lending policies of institutions will be evaluated by examiners during the course of their examinations to determine if the policies are consistent with safe and sound lending practices, these guidelines, and the requirements of the regulation. In evaluating the adequacy of the institution's real estate lending policies and practices, examiners will take into consideration the following factors:

- The nature and scope of the institution's real estate lending activities.
- The size and financial condition of the institution.
- The quality of the institution's management and internal controls.
- The expertise and size of the lending and loan administration staff.
- Market conditions.

Lending policy exception reports will also be reviewed by examiners during the course of their examinations to determine whether the institutions' exceptions are adequately documented and appropriate in light of all of the relevant credit considerations. An excessive volume of exceptions to an institution's real estate lending policy may signal a weakening of its underwriting practices, or may suggest a need to revise the loan policy.

Definitions

For the purposes of these Guidelines:

Construction loan means an extension of credit for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

Extension of credit or loan means:

(1) The total amount of any loan, line of credit, or other legally binding lending commitment with respect to real property; and

(2) The total amount, based on the amount of consideration paid, of any loan, line of credit, or other legally binding lending commitment acquired by a lender by purchase, assignment, or otherwise.

[2] For the state member banks, the term ''total capital'' means ''total risk-based capital'' as defined in Appendix A to 12 CFR Part 208. For insured state non-member banks, ''total capital'' refers to that term described in table I of Appendix A to 12 CFR Part 325. For national banks, the term ''total capital'' is defined at 12 CFR 3.2(e). For savings associations, the term ''total capital'' is defined at 12 CFR 567.5(c).

Improved property loan means an extension of credit secured by one of the following types of real property:

(1) Farmland, ranchland or timberland committed to ongoing management and agricultural production;

(2) 1- to 4-family residential property that is not owner-occupied;

(3) Residential property containing five or more individual dwelling units;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use, except income-producing owner-occupied 1- to 4-family residential property.

Land development loan means an extension of credit for the purpose of improving unimproved real property prior to the erection of structures. The improvement of unimproved real property may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

Loan origination means the time of inception of the obligation to extend credit (i.e., when the last event or prerequisite, controllable by the lender, occurs causing the lender to become legally bound to fund an extension of credit).

Loan-to-value or *loan-to-value ratio* means the percentage or ratio that is derived at the time of loan origination by dividing an extension of credit by the total value of the property(ies) securing or being improved by the extension of credit plus the amount of any readily marketable collateral and other acceptable collateral that secures the extension of credit. The total amount of all senior liens on or interests in such property(ies) should be included in determining the loan-to-value ratio. When mortgage insurance or collateral is used in the calculation of the loan-to-value ratio, and such credit enhancement is later released or replaced, the loan-to-value ratio should be recalculated.

Other acceptable collateral means any collateral in which the lender has a perfected security interest, that has a quantifiable value, and is accepted by the lender in accordance with safe and sound lending practices. Other acceptable collateral should be appropriately discounted by the lender consistent with the lender's usual practices for making loans secured by such collateral. Other acceptable collateral includes, among other items, unconditional irrevocable standby letters of credit for the benefit of the lender.

Owner-occupied, when used in conjunction with the term *1- to 4-family residential property* means that the owner of the underlying real property occupies at least one unit of the real property as a principal residence of the owner.

Readily marketable collateral means insured deposits, financial instruments, and bullion in which the lender has a perfected interest. Financial instruments and bullion must be salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, on an auction or similarly available daily bid and ask price market. Readily marketable collateral should be appropriately discounted by the lender consistent with the lender's usual practices for making loans secured by such collateral.

Value means an opinion or estimate, set forth in an appraisal or evaluation, whichever may be appropriate, of the market value of real property, prepared in accordance with the agency's appraisal regulations and guidance. For loans to purchase an existing property, the term ''value'' means the lesser of the actual acquisition cost or the estimate of value.

1- to 4-family residential property means property containing fewer than five individual dwelling units, including manufactured homes permanently affixed to the underlying property (when deemed to be real property under state law).

§ 560.110 Most favored lender usury preemption.

(a) *Definition.* The term ''interest'' as used in 12 U.S.C. 1463(g) includes any payment compensating a creditor or prospective creditor for an extension of credit, making available of a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, not sufficient funds (NSF) fees, overlimit fees, annual fees, cash advance fees, and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing repayment of any extension of credit, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports.

(b) *Authority.* A savings association located in a state may charge interest at the maximum rate permitted to any state-chartered or licensed lending institution by the law of that state. If state law permits different interest charges on specified classes of loans, a federal savings association making such loans is subject only to the provisions of state law relating to that class of loans that are material to the determination of the permitted interest. For example, a federal savings association may lawfully charge the highest rate permitted to be charged by a state-licensed small loan company, without being so licensed, but subject to state law limitations on the size of loans made by small loan companies. Except as provided in this paragraph, the applicability of state law to Federal savings associations shall be determined in accordance with § 560.2 of this part. State supervisors determine the degree to which state-chartered savings associations must comply with state laws other than those imposing restrictions on interest, as defined in paragraph (a) of this section.

(c) *Effect on state definitions of interest.* The Federal definition of the term ''interest'' in paragraph (a) of this section does not change how interest is defined by the individual states (nor how the state definition of interest is used) solely for purposes of state law. For example, if late fees are not ''interest'' under state law where a savings association is located but state law permits its most favored lender to charge late fees, then a savings association located in that state may charge late fees to its intrastate customers. The savings association may also charge late fees to its interstate customers because the fees are interest under the Federal definition of interest and an allowable charge under state law where the savings association is located. However, the late fees would not be treated as interest for purposes of evaluating compliance with state usury limitations because state law excludes late fees when calculating the maximum interest that lending institutions may charge under those limitations.

§ 560.120 Letters of credit and other independent undertakings to pay against documents.

(a) *General authority.* To the extent that it has legal authority to do so, a savings association may issue and commit to issue letters of credit within the scope of applicable laws or rules of practice recognized by law.[1] It may also issue other independent undertakings within the scope of such laws or rules of practice recognized by law, that have been approved by OTS (approved undertaking). Under such letters of credit and approved undertakings, the savings association's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the account party and the beneficiary. A savings association may also confirm or otherwise undertake to honor or purchase specified documents

[1] Samples of laws or rules of practice applicable to letters of credit and other independent undertakings include, but are not limited to: the applicable version of Article 5 of the Uniform Commercial Code (UCC) (1962, as amended 1990) or revised Article 5 of the UCC (as amended 1995) (available from West Publishing Co., 1/800/340–9378); the Uniform Customs and Practice for Documentary Credits (International Chamber of Commerce (ICC) Publication No. 500) (available from ICC Publishing, Inc., 212/206–1150); the United Nations Commission on International Trade Law (UNCITRAL) Convention on Independent Guarantees and Standby Letters of Credit (adopted by UNCITRAL 1995) (available from UNCITRAL, 212/963–5353); and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (ICC Publication No. 525) (available from ICC Publishing, Inc., 212/206–1150); as any of the foregoing may be amended from time to time.

upon their presentation under another person's independent undertaking within the scope of such laws or rules.

(b) *Safety and soundness considerations.*—(1) *Terms.* As a matter of safe and sound banking practice, savings associations that issue letters of credit or approved undertakings should not be exposed to undue risk. At a minimum, savings associations should consider the following:

(i) The independent character of the letter of credit or approved undertaking should be apparent from its terms (such as terms that subject it to laws or rules providing for its independent character);

(ii) The letter of credit or approved undertaking should be limited in amount;

(iii) The letter of credit or approved undertaking should:

(A) Be limited in duration; or

(B) Permit the savings association to terminate the letter of credit or approved undertaking, either on a periodic basis (consistent with the savings association's ability to make any necessary credit assessments) or at will upon either notice or payment to the beneficiary; or

(C) Entitle the savings association to cash collateral from the account party on demand (with a right to accelerate the customer's obligations, as appropriate); and

(iv) The savings association either should be fully collateralized or have a post-honor right of reimbursement from its customer or from another issuer of a letter of credit or an independent undertaking. Alternatively, if the savings association's undertaking is to purchase documents of title, securities, or other valuable documents, it should obtain a first priority right to realize on the documents if the savings association is not otherwise to be reimbursed.

(2) *Additional considerations in special circumstances.* Certain letters of credit and approved undertakings require particular protections against credit, operational, and market risk:

(i) In the event that the undertaking is to honor by delivery of an item of value other than money, the savings association should ensure that market fluctuations that affect the value of the item will not cause the savings association to assume undue market risk;

(ii) In the event that an undertaking provides for renewal, the terms for renewal should be consistent with the savings association's ability to make any necessary credit assessments prior to renewal; and

(iii) In the event that a savings association issues an undertaking for its own account, the underlying transaction for which it is issued must be within the savings association's authority and comply with any safety and soundness requirements applicable to that transaction.

(3) *Operational expertise.* The savings association should possess operational expertise that is commensurate with the sophistication of its letter of credit or independent undertaking activities.

(4) *Documentation.* The savings association must accurately reflect its letters of credit or approved undertakings in its records, including any acceptance or deferred payment or other absolute obligation arising out of its contingent undertaking.

§ 560.121 Investment in state housing corporations.

(a) Any savings association to the extent it has legal authority to do so, may make investments in, commitments to invest in, loans to, or commitments to lend to any state housing corporation; provided, that such obligations or loans are secured directly, or indirectly through a fiduciary, by a first lien on improved real estate which is insured under the National Housing Act, as amended, and that in the event of default, the holder of such obligations or loans has the right directly, or indirectly through a fiduciary, to subject to the satisfaction of such obligations or loans the real estate described in the first lien, or the insurance proceeds.

(b) Any savings association that is adequately capitalized may, to the extent it has legal authority to do so, invest in obligations (including loans) of, or issued by, any state housing corporation incorporated in the state in which such savings association has its home or a branch office; provided (except with respect to loans), that:

(1) The obligations are rated in one of the four highest grades as shown by the most recently published rating made of such obligations by a nationally recognized rating service; or

(2) The obligations, if not rated, are approved by the Office. The aggregate outstanding direct investment in obligations under paragraph (b) of this section shall not exceed the amount of the savings association's total capital.

(c) Each state housing corporation in which a savings association invests under the authority of paragraph (b) of this section shall agree, before accepting any such investment (including any loan or loan commitment), to make available at any time to the Office such information as the Office may consider to be necessary to ensure that investments are properly made under this section.

§ 560.160 Asset classification.

(a) (1) Each savings association shall evaluate and classify its assets on a regular basis in a manner consistent with, or reconcilable to, the asset classification system used by OTS in its Thrift Activities Handbook (Available at the address listed in § 516.1 of this chapter).

(2) In connection with the examination of a savings association or its affiliates, OTS examiners may identify problem assets and classify them, if appropriate. The association must recognize such examiner classifications in its subsequent reports to OTS.

(b) Based on the evaluation and classification of its assets, each savings association shall establish adequate valuation allowances or charge-offs, as appropriate, consistent with generally accepted accounting principles and the practices of the federal banking agencies.

§ 560.170 Records for lending transactions.

In establishing and maintaining its records pursuant to § 563.170 of this chapter, each savings association and service corporation should establish and maintain loan documentation practices that:

(a) Ensure that the institution can make an informed lending decision and can assess risk on an ongoing basis;

(b) Identify the purpose and all sources of repayment for each loan, and assess the ability of the borrower(s) and any guarantor(s) to repay the indebtedness in a timely manner;

(c) Ensure that any claims against a borrower, guarantor, security holders, and collateral are legally enforceable;

(d) Demonstrate appropriate administration and monitoring of its loans; and

(e) Take into account the size and complexity of its loans.

§ 560.172 Re-evaluation of real estate owned.

A savings association shall appraise each parcel of real estate owned at the earlier of in-substance foreclosure or at the time of the savings association's acquisition of such property, and at such times thereafter as dictated by prudent management policy; such appraisals shall be consistent with the requirements of part 564 of this chapter. The Regional Director or his or her designee may require subsequent appraisals if, in his or her discretion, such subsequent appraisal is necessary under the particular circumstances. The foregoing requirement shall not apply to any parcel of real estate that is sold and

reacquired less than 12 months subsequent to the most recent appraisal made pursuant to this part. A dated, signed copy of each report of appraisal made pursuant to any provisions of this part shall be retained in the savings association's records.

Subpart C—Alternative Mortgage Transactions

§ 560.210 Disclosures for adjustable-rate mortgage loans, adjustment notices, and interest-rate caps.

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

(1) *Adjustable-rate mortgage loan* means a mortgage loan, secured by property occupied or to be occupied by the borrower, providing for adjustments to the interest rate which cause a change in balance, term to maturity, or payment levels other than those established by a fixed, predetermined schedule at the time of contracting for the loan.

(2) [Reserved]

(3) *Applicant* means a natural person (or persons) making a loan application.

(4) *Home* means real estate as defined by § 541.14 of this chapter, manufactured housing, combinations of homes and business property, and farm residences or combinations of farm residences and commercial farm real estate.

(b) *Initial disclosures for adjustable-rate mortgage loans.* Savings associations offering adjustable-rate home loans, except open-end loans, with a term of more than one (1) year and secured by property occupied or to be occupied by the borrower, shall provide two types of written disclosure to prospective borrowers when an application form is provided or before the payment of a non-refundable fee, whichever is earlier:

(1) The booklet titled Consumer Handbook on Adjustable Rate Mortgages published by the Office and the Federal Reserve Board, or a suitable substitute (Available at the address listed in § 516.1 of this chapter.).

(2) A loan program disclosure for each adjustable-rate home loan program in which the consumer expresses an interest. The following disclosures, as applicable, shall be provided: [2]

(i) The fact that the interest rate, payment, or term of the loan can change.

(ii) The index or formula used in making adjustments, and a source of information about the index or formula.

(iii) An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the use of a margin.

(iv) A statement that the consumer should ask about the current margin value and current interest rate.

(v) The fact that the interest rate will be discounted, and a statement that the consumer should ask about the amount of the interest rate discount.

(vi) The frequency of interest rate and payment changes.

(vii) Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover.

(viii) An historical example, based on a $10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program. The example shall be based upon index values beginning in 1977 and be updated annually until a 15-year history is shown. Thereafter, the example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limitations, that would have been affected by the index movement during the period.

(ix) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on the most recent payment shown in the historical example.

(x) The maximum interest rate and payment for a $10,000 loan originated at the most recent interest rate shown in the historical example assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan.

(xi) The fact that the loan program contains a demand feature.

(xii) The type of information that will be provided in notices of adjustments and the timing of such notices.

(xiii) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.

(c) *Adjustment notices.* An adjustment to the interest rate with or without a corresponding adjustment to the payment in an adjustable-rate transaction subject to this section is an event requiring new disclosures to the consumer. At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, and at least 25, but no more than 120, calendar days before a payment at a new level is due, the following written disclosures, as applicable, must be delivered or placed in the mail:

(1) The current and prior interest rates.

(2) The index values upon which the current and prior interest rates are based.

(3) The extent to which the creditor has foregone any increase in the interest rate.

(4) The contractual effects of the adjustment, including the payment due after the adjustment is made, and a statement of the loan balance.

(5) The payment, if different from that referred to in paragraph (c)(4) of this section, that would be required to amortize fully the loan at the new interest rate over the remainder of the loan term.

(d) [Reserved]

(e) *Maximum interest rate caps.* All savings associations making adjustable-rate loans, originated on or after December 8, 1987, whether open-end or closed-end, shall comply with Regulation Z (12 CFR 226.30) by specifying in their credit contracts the maximum interest rate that may be imposed during the term of the obligation.

(f) *Exception.* The disclosures in paragraph (b) of this section are not required in connection with the extension of consumer credit as defined in § 561.12 of this chapter even if it is secured by a borrower-occupied home as long as the home is not the primary security for the loan.

(g) *Exempt transactions.* This section does not apply to an extension of credit primarily for a business, commercial, or agricultural purpose.

§ 560.220 Alternative Mortgage Parity Act.

Pursuant to 12 U.S.C. 3803, housing creditors that are not commercial banks, credit unions, or Federal savings associations may make alternative mortgage transactions as defined by that section and further defined and described by applicable regulations identified in this section, notwithstanding any state constitution, law, or regulation. In accordance with section 807(b) of Public Law 97–320, 12 U.S.C. 3801 note, §§ 560.33, 560.34, 560.35, and 560.210 of this part are identified as appropriate and applicable to the exercise of this authority and all regulations not so identified are deemed inappropriate and inapplicable. Housing creditors engaged in credit sales should read the term ''loan'' as ''credit sale'' wherever applicable.

[2] A sample disclosure form may be found in the Federal Register issue of May 23, 1988 (53 FR 18262) or may be obtained from the Office at the address listed in § 516.1 of this chapter.

PART 563—OPERATIONS

10. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806.

§ 563.51 [Amended]

11. Section 563.51(f)(1)(i) is amended by removing the phrase ''§ 545.45(a)(1)'', and by adding in lieu thereof the phrase ''§ 560.30''.

Subpart D of Part 563—[Removed and Reserved]

12. Subpart D of part 563 is removed and reserved.

§ 563.160 [Removed]

13. Section 563.160 is removed.

14. Section 563.170 is amended by revising paragraph (c) to read as follows:

§ 563.170 Examinations and audits; appraisals; establishment and maintenance of records.

* * * * *

(c) *Establishment and maintenance of records.* To enable the Office to examine savings associations and affiliates and audit savings associations, affiliates, and service corporations pursuant to the provisions of paragraph (a) of this section, each savings association, affiliate, and service corporation shall establish and maintain such accounting and other records as will provide an accurate and complete record of all business it transacts. This includes, without limitation, establishing and maintaining such other records as are required by statute or any other regulation to which the savings association, affiliate, or service corporation is subject. The documents, files, and other material or property comprising said records shall at all times be available for such examination and audit wherever any of said records, documents, files, material, or property may be.

* * * * *

§ 563.172 [Removed]

15. Section 563.172 is removed.

PART 566—LIQUIDITY

16. The authority citation for part 566 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1465, 1467a; 15 U.S.C. 1691, 1691a.

§ 566.1 [Amended]

17. Section 566.1(g)(6)(i) is amended by removing the phrase ''§ 545.72(a)'', and by adding in lieu thereof the phrase ''§ 560.42''.

PART 571—STATEMENTS OF POLICY

18. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§§ 571.8, 571.13, 571.20, 571.22 [Removed]

19. Sections 571.8, 571.13, 571.20, and 571.22 are removed.

PART 590—PREEMPTION OF STATE USURY LAWS

20. The authority citation for part 590 continues to read as follows:

Authority: 12 U.S.C. 1735f–7a.

§ 590.4 [Amended]

21. Section 590.4(e)(1) is amended by removing the phrase ''§ 545.33(f)'', and by adding in lieu thereof the phrase ''§ 560.220''.

Dated: September 11, 1996.

By the Office of Thrift Supervision.

John F. Downey,

Executive Director, Supervision.

[FR Doc. 96–23726 Filed 9–27–96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–37; Amendment 39–9732; AD 96–18–08]

Airworthiness Directives; Pratt & Whitney PW2000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney PW2000 series turbofan engines, that requires a reduction in the cyclic service life limit for hubs, disks, airseals, blade retaining plates, and airsealing ring supports on certain high pressure turbines (HPT) and low pressure turbines (LPT), and provides for optional inspections for cracks or rework of certain HPT and LPT hardware in order to retain the original, higher cyclic service life limit for these components. This amendment is prompted in part by new temperature data from engine testing, which were used in recalculating stress levels, and resulted in a change to the calculated cyclic service life limit. The actions specified by this AD are intended to prevent HPT or LPT failure, which may result in an uncontained engine failure and possible damage to the aircraft.

DATES: Effective November 29, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Fisher, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7149, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney PW2000 series turbofan engines was published in the Federal Register on October 16, 1995 (60 FR 53554). That action proposed to require a reduction in the cyclic service life limit for hubs, disks, airseals, blade retaining plates, and airsealing ring supports on certain HPT and LPT hardware, and provide for optional inspections for cracks or rework of certain HPT and LPT hardware in order to retain the original, higher cyclic service life limit for these components.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that the AD should be withdrawn. The commenter states that life reductions are already provided in Chapter 05 of the Engine Manual, thereby mandating the appropriate part lives. Furthermore, the commenter states that by mandating the SBs in the AD, all standard practices referenced within these SBs become mandated, so that the overhaul shops will be required to obtain multiple alternative methods of compliance, since their shop practices may be different than those referenced in the AD. The FAA does not concur. Service life limits that appear as airworthiness limitations at the time of type-

certification can be changed to more restrictive limits only by way of rulemaking through an Airworthiness Directive. A change to the service bulletin alone will not mandate a new, more restrictive, life limit. While the new limits will typically appear in service instructions or manuals before an AD is published, the FAA must complete the change by publishing an AD. Regarding the commenter's issue on obtaining multiple alternative methods of compliance, the FAA has revised this final rule to permit certain applicable earlier revisions to various SBs.

Relative to the issue of SB standard shop practice references being different than those employed by the airlines and overhaul shops, the FAA recommends the commenter obtain alternate methods of compliance for their shop practices that are relevant to the requirements of this AD.

One commenter states that the AD should be revised to agree with the requirements of PW Alert Service Bulletin (ASB) No. PW2000 72–450, Revision 5, dated May 28, 1994. Paragraph (e) in the compliance section of the NPRM states that the initial inspection must be performed prior to 6,000 total part cycles (TPC). The AD should be revised to allow first run hubs to continue in service up to 7,500 TPC prior to initial inspection. The FAA concurs and has revised this final rule accordingly.

The commenter also states that paragraph (e) should be revised to require the initial inspection prior to 7,500 TPC, and suggests a wording change to better align the wording and intent with PW ASB No. PW2000 72–450, Revision 5, dated May 28, 1994. The FAA concurs in part. The initial inspection has been revised in this final rule to be performed prior to 7,500 TPC, but the FAA believes that the compliance structure in the NPRM is clearer than that proposed by the commenter, and has therefore not revised the wording in this final rule.

The FAA has determined that the new, reduced life limits imposed by this AD will not adversely affect fleet scheduling or result in grounded aircraft due to the fact that these limits have already been published in Chapter 05 of the applicable Engine Manuals, Airworthiness Limitation Section, and operators have been notified previously in a timely manner. Therefore, this AD does not include a phase-in period or drawdown schedule of affected components.

Since issuance of the NPRM, PW has issued ASB No. PW2000 A72–450, Revision 6, dated July 9, 1996. This final rule references this latest as well as the previous revisions.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 650 engines of the affected design in the worldwide fleet. The FAA estimates that 600 engines installed on aircraft of U.S. registry will be affected by this AD, and that no additional labor costs will be incurred by the fleet since inspection and replacement intervals fall within the normal maintenance and overhaul periods. Therefore, the FAA has determined that there would be no additional cost impact on U.S. operators.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–18–08 Pratt & Whitney: Amendment 39–9732. Docket 95–ANE–37.

Applicability: Pratt & Whitney Models PW2037, PW2037(M), PW2040, PW2240, and PW2337 turbofan engines installed on but not limited to Boeing 757 series and Ilyushin IL96 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure turbine (HPT) or low pressure turbine (LPT) failure, which may result in an uncontained engine failure and possible damage to the aircraft, accomplish the following:

(a) Remove from service 1st stage HPT disks, Part Number (P/N) 1A5301, prior to exceeding 5,000 total part cycles since new (TPC), if installed with blade retaining plate, P/N 1A6998, and replace with serviceable parts. If blade retaining plate, P/N 1A6998, has not been installed on disk, P/N 1A5301, the disk may accumulate 15,000 TPC prior to removal from service.

(b) Remove from service 1st stage HPT blade retaining plates, P/N 1A6998, prior to exceeding 5,000 TPC, and replace with serviceable parts. If rework is accomplished prior to exceeding 5,000 TPC in accordance with the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. PW2000 A72–82, Revision 1, dated April 25, 1986; Revision 2, dated July 17, 1986; Revision 3, dated November 7, 1986; or Revision 4, dated June 18, 1987, and reidentified as assembly P/N 1B2373, the blade retaining plate may accumulate 15,000 TPC prior to removal from service.

(c) Remove from service 2nd stage HPT blade retaining plates, P/N 1B0450, prior to exceeding 7,000 TPC, and replace with serviceable parts.

(d) Remove from service 2nd stage HPT blade retaining plates, P/N 1B0945 (assembly P/N 1B0947), and replace with serviceable parts, in accordance with the

Accomplishment Instructions of PW ASB No. PW2000 A72–228, Revision 2, dated May 10, 1988; Revision 3, dated August 25, 1988; or Revision 4, dated November 9, 1988, as follows:

(1) Prior to exceeding 5,000 TPC, for retaining plates that have not been inspected in accordance with the Accomplishment Instructions of the above ASB prior to 3,000 TPC.

(2) Prior to exceeding 8,000 TPC, for retaining plates that have been inspected in accordance with the Accomplishment Instructions of the above ASB prior to 3,000 TPC.

(e) Remove from service 2nd stage HPT hubs, P/N's 1A8302, 1B1002, 1B1202, or 1B4902 prior to exceeding 7,500 TPC, and replace with serviceable hubs. Hubs may accumulate 15,000 TPC prior to removal from service if they are inspected at intervals that do not exceed 6,000 cycles in service since last inspection, in accordance with the Accomplishment Instructions of PW Service Bulletin (SB) No. PW2000 72–450, Original, dated March 13, 1992; Revision 1, dated March 26, 1992; Revision 2, dated April 7, 1992; Revision 3, dated May 29, 1992; Revision 4, dated August 28, 1992; Revision 5, dated May 28, 1994; or Revision 6, dated July 9, 1996.

(f) Remove from service 2nd stage HPT hubs, P/N 1B6602, prior to exceeding 7,500 TPC, and replace with serviceable hubs. Hubs may accumulate 15,000 TPC prior to removal from service if hub assemblies are inspected prior to 7,500 TPC to verify scarf cut blades are installed and to inspect the blade platform rail fillet radii dimensions, in accordance with the Accomplishment Instructions of PW SB No. PW2000 72–501, dated September 30, 1993. Hub assemblies found with non-scarf cut blades must be reinspected at intervals not to exceed 6,000 TPC since last inspection. Blades found with under minimum rail fillet radii dimensions must be scrapped.

(g) Remove from service HPT lenticular airseal, P/N 1A8209, prior to exceeding 4,000 TPC, and replace with serviceable airseals. Airseals may accumulate 15,000 TPC prior to removal from service if:

(1) Inspected prior to exceeding 4,000 TPC, and thereafter inspected at intervals not to exceed 250 cycles in service since last inspection, in accordance with Compliance Paragraph E of the Accomplishment Instructions of PW ASB No. PW2000 A72–220, Revision 3, dated April 13, 1989, or Revision 4, dated September 20, 1989; or

(2) The 2nd stage HPT case and vane assembly is reworked and reidentified prior to exceeding 4,000 TPC, in accordance with the Accomplishment Instructions of PW SB No. PW2000 72–233, Revision 2, dated September 27, 1988, or Revision 3, dated May 30, 1989.

(h) For PW2037, PW2037(M), and PW2337 model engines, remove from service 4th stage LPT disks, P/N's 8A1024, 8A1534, or 8A2137 prior to exceeding 17,000 TPC, and replace with serviceable disks.

(i) For PW2040 and PW2240 model engines, remove from service 4th stage LPT disks, P/N's 8A1534 or 8A2137, prior to exceeding 15,000 TPC, and replace with serviceable disks.

(j) Remove from service 3rd stage LPT airsealing ring supports, P/N 8A1783, and replace with serviceable parts, as follows:

(1) For PW2040 and PW2240 model engines, prior to exceeding 15,000 TPC.

(2) For PW2037, PW2037(M), and PW2337 model engines, prior to exceeding 17,000 TPC. Airsealing ring supports may accumulate 20,000 TPC prior to removal from service if they were fluorescent penetrant inspected in accordance with Section 72–53–00 of PW2000 Engine Manual, P/N 1A6231.

(k) For PW2037, PW2037(M), and PW2337 model engines, remove from service prior to exceeding 17,000 TPC, and replace with serviceable parts, as follows:

(1) 4th stage LPT airseal, P/N's 8A1014 or 8A1805.

(2) 5th stage LPT airseal, P/N's 8A1015 or 8A1806.

(3) 7th stage LPT airseal, P/N's A8A1017, A8A1808, 8A2097, or A8A2097.

(l) Parts listed in paragraph (k) of this AD may accumulate 20,000 TPC prior to removal from service if they were fluorescent penetrant inspected for cracks between 12,000 TPC and 17,000 TPC in accordance with Section 72–53–00 of PW2000 Engine Manual, P/N 1A6231.

(m) For PW2040 and PW2240 model engines, remove from service prior to exceeding 15,000 TPC, and replace with serviceable parts, as follows:

(1) 4th stage LPT airseal, P/N's 8A1014 or 8A1805.

(2) 5th stage LPT airseal, P/N's 8A1015 or 8A1806.

(3) 7th stage LPT airseal, P/N's A8A1017, A8A1808, 8A2097, or A8A2097.

(n) Parts listed in paragraph (m) of this AD may accumulate the following TPC prior to removal if they were fluorescent penetrant inspected for cracks between 10,000 TPC and 15,000 TPC in accordance with Section 72–53–00 of PW2000 Engine Manual, P/N 1A6231.

(1) 4th stage LPT airseal, P/N's 8A1014 or 8A1805, prior to exceeding 18,000 TPC.

(2) 5th stage LPT airseal, P/N's 8A1015 or 8A1806, prior to exceeding 19,000 TPC.

(3) 7th stage LPT airseal, P/N's A8A1017, A8A1808, 8A2097, or A8A2097, prior to exceeding 20,000 TPC, accomplish the following:

(o) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(q) The actions required by this AD shall be done in accordance with the following PW service documents:

Document No.	Pages	Revision	Date
ASB No. PW2000 A72–82	1	1	April 25, 1986.
	2–6	Original	June 7, 1985.
	7–9	1	April 25, 1986.
	10	Original	June 7, 1985.
	11	1	April 25, 1986.
Total Pages: 11.			
ASB No. PW2000 A72–82	1	2	July 17, 1986.
	2–6	Original	June 7, 1985.
	7–9	1	April 25, 1986.
	10	Original	June 7, 1985.
	11	2	July 17, 1986.
Total Pages: 11.			
ASB No. PW2000 A72–82	1–4	3	November 7, 1986.
	5,6	Original	June 7, 1985.
	7–14	3	November 7, 1986.
Total Pages: 14			
ASB No. PW2000 A72–82	1	4	June 18, 1987.
	2–4	3	November 7, 1986.
	5,6	Original	June 7, 1985.
	7–12	3	November 7, 1986.
	13	4	June 18, 1987.

Document No.	Pages	Revision	Date
	14	3	November 7, 1986.
Total Pages: 14.			
ASB No. PW2000 A72–228	1	2	May 10, 1988.
	2	Original	July 6, 1987.
	3	2	May 10, 1988.
	4	1	March 29, 1988.
	5–26	2	May 10, 1988.
Total Pages: 26.			
ASB No. PW2000 A72–228	1	3	August 25, 1988.
	2	Original	July 6, 1987.
	3	2	May 10, 1988.
	4	3	August 25, 1988.
	5–19	2	May 10, 1988.
	20	3	August 25, 1988.
	21,22	2	May 10, 1988.
	23	3	August 25, 1988.
	24–26	2	May 10, 1988.
Total Pages: 26.			
ASB No. PW2000 A72–228	1	4	November 9, 1988.
	2	Original	July 6, 1987.
	3	4	November 9, 1988.
	4	3	August 25, 1988.
	5–19	2	May 10, 1988.
	20	3	August 25, 1988.
	21,22	2	May 10, 1988.
	23	3	August 25, 1988.
	24–26	4	November 9, 1988.
Total Pages: 26.			
SB No. PW2000 72–450	1–26	Original	March 13, 1992.
Total Pages: 26.			
SB No. PW2000 72–450	1	1	March 26, 1992.
	2–11	Original	March 13, 1992.
	12,13	1	March 26, 1992.
	14,15	Original	March 13, 1992.
	16,17	1	March 26, 1992.
	18–21	Original	March 13, 1992.
	22,23	1	March 26, 1992.
	24,25	Original	March 13, 1992.
	26	1	March 26, 1992.
Total Pages: 26.			
SB No. PW2000 72–450	1	2	April 7, 1992.
	2,3	Original	March 13, 1992.
	4,5	2	April 7, 1992.
	6–11	Original	March 13, 1992.
	12	1	March 26, 1992.
	13	2	April 7, 1992.
	14,15	Original	March 13, 1992.
	16,17	1	March 26, 1992.
	18–21	Original	March 13, 1992.
	22,23	1	March 26, 1992.
	24,25	Original	March 13, 1992.
	26	1	March 26, 1992.
Total Pages: 26.			
SB No. PW2000 72–450	1–5	3	May 29, 1992.
	6–11	Original	March 13, 1992.
	12	1	March 26, 1992.
	13	3	May 29, 1992.
	14	Original	March 13, 1992.
	15–29	3	May 29, 1992.
Total Pages: 29.			
ASB No. PW2000 72–450	1	4	August 28, 1992.
	2–5	3	May 29, 1992.
	6–11	Original	March 13, 1992.
	12	1	March 26, 1992.
	13	3	May 29, 1992.
	14	Original	March 13, 1992.
	15	4	August 28, 1992.
	16	3	May 29, 1992.
	17	4	August 28, 1992.
	18–29	3	May 29, 1992.
Total Pages: 29.			
ASB No. PW2000 72–450	1	5	May 28, 1994.
	2	4	May 28, 1994.
	3–5	3	May 29, 1992.

Document No.	Pages	Revision	Date
	6–11	Original	March 13, 1992.
	12	1	March 26, 1992.
	13	3	May 29, 1992.
	14	Original	March 13, 1992.
	15	4	August 28, 1992.
	16	3	May 29, 1992.
	17	4	August 28, 1992.
	18–29	3	May 29, 1992.
Total Pages: 29.			
ASB No. PW2000 72–450	1	6	July 9, 1996.
	2	4	May 28, 1994.
	3–5	3	May 29, 1992.
	6–11	Original	March 13, 1992.
	12	1	March 26, 1992.
	13	3	May 29, 1992.
	14	Original	March 13, 1992.
	15	4	August 28, 1992.
	16	3	May 29, 1992.
	17	4	August 28, 1992.
	18–28	3	May 29, 1992.
	29	6	July 9, 1996.
Total Pages: 29.			
SB No. PW2000 72–501	1–12	Original	September 30, 1993.
Total Pages: 12.			
ASB No. PW2000 A72–220	1	3	April 13, 1989.
	2	1	July 29, 1987.
	3–26	3	April 13, 1989.
Total Pages: 26.			
ASB No. PW2000 A72–220	1	4	September 20, 1989.
	2	1	July 29, 1987.
	3–6	3	April 13, 1989.
	7–9	4	September 20, 1989.
	10–16	3	April 13, 1989.
	17–27	4	September 20, 1989.
Total Pages: 27.			
SB No. PW2000 72–233	1,2	2	September 27, 1988.
	3–7	Original	August 7, 1987.
	8	1	January 22, 1988.
	9,10	2	September 27, 1988.
Total Pages: 10.			
SB No. PW2000 72–233	1–4	3	May 30, 1989.
	5	Original	August 7, 1987.
	6	3	May 30, 1989.
	7	Original	August 7, 1987.
	8	1	January 22, 1988.
	9,10	3	May 30, 1989.
Total Pages: 10.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, CT 06108; telephone (860) 565–7700. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office ofthe Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(r) This amendment becomes effective on November 29, 1996.

Issued in Burlington, Massachusetts, on August 26, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–22769 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 92–NM–225–AD; Amendment 39–9768; AD 96–20–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that requires detailed visual inspections to detect cracking of a certain fuselage frame, and repair, if necessary. This AD also provides for an optional terminating action for the repetitive inspections. This amendment is prompted by reports of a fatigue crack found initiating at hole ''I'' of frame 47 on two of these airplanes. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the airplane.

DATES: Effective November 4, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 4, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket,

1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was published in the Federal Register on April 12, 1993 (58 FR 19068). That action proposed to require detailed visual inspections to detect cracking of a certain fuselage frame, and repair, if necessary. That action also proposed to provide for an optional terminating action for the repetitive inspection requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposed rule.

Request to Revise the Applicability of the Proposed Rule

One commenter requests that the applicability of paragraphs (a)(2) and (a)(3) of the proposal be revised to include Model A300 B4–120, B4–220, C4–203, and F4–203 series airplanes. The FAA does not concur. As of the effective date of this AD, those models are not type certificated for operation in the United States; further, the FAA cannot assume continued airworthiness responsibilities (via AD action) for airplanes that do not have a U.S. Type Certificate.

Request to Withdraw Proposed Rule

The same commenter states that, since issuance of the NPRM, Airbus has issued Revision 3 of Airbus A300 Service Bulletin 53–265. The commenter points out that this revision no longer contains the inspection of the rear spar 47 lower flange at holes ''H'' and ''I'', as specified in Revision 2 of that service bulletin. This inspection has been transferred to Airbus Service Bulletin A300–53–299. The commenter also points out that Service Bulletin A300–53–299 cancels and supersedes Airbus Industrie All Operators Telex (AOT) 53–02, dated November 2, 1992 . (AOT 53–02 and Revision 2 of Service Bulletin 53–265 are referenced in this AD as the appropriate source of service information.) The commenter also states that Revision 3 of Service Bulletin 53–265 has been incorporated in Revision 2 of the Airbus Industrie A300 Supplemental Structural Inspection Document (SSID); the procedures specified in the SSID are currently required by AD 96–13–11, amendment 39–9679 (61 FR 35122, July 5, 1996).

From this comment the FAA infers that the commenter is requesting that the proposed AD be withdrawn. The FAA does not concur. The FAA acknowledges that the procedures specified in Revision 3 of Service Bulletin 53–265 and Service Bulletin A300–53–299 are incorporated in the Airbus A300 SSID. However, AD 96–13–11, which mandates the SSID program for U.S. operators, provides a ''grace period'' of one year to incorporate the SSID into the operator's maintenance program; the ''grace period'' effectively delays initiation of the inspections by at least that amount of time. Additionally, Airbus Service Bulletin A300–53–299 recommends inspection compliance times with additional ''grace periods'' for affected airplanes that have surpassed the number of flight cycles at which cracking is likely to initiate. Several airplanes already have accumulated as much as 8,000 flight cycles above that flight cycle threshold. In light of these items, and in consideration of the amount of time that has already elapsed since issuance of the original notice, the FAA has determined that the inspections required by this AD must be initiated as soon as practicable (as specified in the AD), and that further delay of this final rule action is not appropriate.

New Relevant Service Information

Since issuance of the NPRM, Airbus has issued Service Bulletin A300–53–299, dated December 14, 1993. The rototest inspection in this service bulletin is identical to that described in Airbus Service Bulletin 53–265, Revision 1, dated March 10, 1992 (which was referenced in the NPRM as the appropriate source of service information). Therefore, the FAA has revised paragraph (d) of the final rule to include reference to Service Bulletin A300–53–299 as an additional source of service information for accomplishing the optional rototest inspection.

Additionally, the FAA has determined that the crack repair procedures specified in Airbus Service Bulletin A300–53–299, dated December 14, 1993, and in Airbus Service Bulletin 53–265, Revision 1, dated March 10, 1992, are appropriate for repair cracks found during the visual inspection(s) required by paragraph (a) and (b). The FAA has revised paragraph (c) of the final rule to indicate this.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 20 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,000, or $600 per airplane.

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

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–20–02 Airbus Industrie: Amendment 39–9768. Docket 92–NM–225–AD.

Applicability: Model A300 B2–1C, B2K–3C, B2–203, B4–2C, and B4–103, series airplanes, on which Modification 2626 has not been installed; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Perform a detailed visual inspection to detect cracking of the fuselage, frame 47 at hole ''I'', in accordance with Airbus All Operator Telex (AOT) 53–02, dated November 2, 1992, at the times specified in paragraphs (a)(1), (a)(2), or (a)(3), as applicable.

(1) For Model A300 B2–1C, B2K–3C, and B2–203 series airplanes: Perform the inspection prior to the accumulation of 15,000 total landings, or within 50 landings after the effective date of this AD, whichever occurs later.

(2) For Model A300 B4–2C and B4–103 series airplanes: Perform the inspection prior to the accumulation of 18,700 total landings, or within 50 landings after the effective date of this AD, whichever occurs later.

(3) For Model A300 B4–203 series airplanes: Perform the inspection prior to the accumulation of 14,100 total landings, or within 50 landings after the effective date of this AD, whichever occurs later.

(b) If no crack is detected during the inspection required by paragraph (a) of this AD, repeat the detailed visual inspection at intervals not to exceed 200 landings.

(c) If a crack is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, repair in accordance with either paragraph (c)(1), (c)(2), or (c)(3) of this AD:

(1) Repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or

(2) Repair in accordance with crack repair procedures specified in Airbus A300 Service Bulletin 53–265, Revision 2, dated March 10, 1992; or

(3) Repair in accordance with crack repair procedures specified in Airbus Service Bulletin A300–53–299, dated December 14, 1993.

(d) Conducting a repetitive Rototest inspection of hole ''I'' in accordance with Airbus A300 Service Bulletin 53–265, Revision 2, dated March 10, 1992, or Airbus Service Bulletin A300–53–299, dated December 14, 1993, constitutes terminating action for the detailed visual inspections required by this AD. If any crack is found, prior to further flight, repair it in accordance with that service bulletin.

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

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

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

(g) The visual inspection shall be done in accordance with Airbus All Operator Telex (AOT) 53–02, dated November 2, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 4, 1996.

Issued in Renton, Washington, on September 19, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–24654 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–72–AD; Amendment 39–9769; AD 96–20–03]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

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

DATES: Effective November 4, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of Novmeber 4, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton,

Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe and Propulsion Branch, ANE–173, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7523; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–20–12, amendment 39–8046 (56 FR 47901, September 23, 1991), which is applicable to all deHavilland DHC–8–100 and –300 series airplanes, was published in the Federal Register on July 16, 1996 (61 FR 37019). The action proposed to supersede AD 91–20–12 to continue to require repetitive inspections to detect loose bolts at the retract actuator support fitting of the main landing gear (MLG); and, if necessary, to require a magnetic particle inspection, replacement of loose bolts, and replacement of cracked fittings. In addition, the action proposed to require modification of the frame and the retraction actuator fitting of the MLG, which would constitute terminating action for the repetitive inspection requirements. The action also proposed to revise to revise the applicability of the existing AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

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

The actions that are currently required by AD 91–20–12, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $7,500, or $60 per airplane.

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

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

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8046 (56 FR 47901, September 23, 1991), and by adding a new airworthiness directive (AD), amendment 39–9769, to read as follows:

96–20–03 de Havilland, Inc.: Amendment 39–9769. Docket 95–NM–72–AD.

Supersedes AD 91–20–12, Amendment 39–8046.

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

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

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

(f) The modifications shall be done in accordance with de Havilland Service Bulletin S.B. 8–54–34, Revision 'A', dated July 21, 1995; and de Havilland Service Bulletin S.B. 8–54–27, Revision 'B', dated August 22, 1994, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 4, 1996.

Issued in Renton, Washington, on September 19, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–24653 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–152–AD; Amendment 39–9770; AD 96–20–04]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes, that requires modification of the passenger door lock warning system. This amendment is prompted by reports that the passenger door opened during flight due to an improperly locked door; additionally, the door warning signal was not sufficiently visible to alert the flight crew of this condition. The actions specified by this AD are intended to ensure that the flight crew is aware of an unlocked passenger door prior to takeoff of the airplane. This condition, if not corrected, could result in inadvertent opening of the passenger door while the airplane is in flight.

DATES: Effective November 4, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 4, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes was published in the Federal Register on April 4, 1996 (61 FR 15002). That action proposed to require modification of the passenger door lock warning system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request for Guidance Prior to Modification

A second commenter supports the proposed compliance times. However, this commenter suggests that the manufacturer provide all affected operators with specific guidance for use during the period prior to implementation of the modification. The commenter notes that this may entail special preflight inspections or equipment operation. The commenter makes this suggestion due to the high significance of a failure that could occur prior to the time accomplishment of the modification is required.

The FAA agrees with the commenter's suggestion that additional guidance or

procedures may be useful to operators prior to accomplishment of the modification to ensure that passenger doors are closed properly prior to takeoff. The FAA has forwarded this suggestion to the manufacturer to determine if any additional information may be disseminated to operators in the interim to aid in avoidance of the addressed unsafe condition. However, the FAA does not intend to require interim action in this final rule.

Therefore, no change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 37 Fokker Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 22 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $865 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $80,845, or $2,185 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–20–04 Fokker: Amendment 39–9770. Docket 95–NM–152–AD.

Applicability: All Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent opening of the passenger door while the airplane is in flight, accomplish the following:

(a) Modify the passenger door lock warning system at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes in post-Fokker Service Bulletin F28/52–72 configuration: Accomplish the modification within 9 months after the effective date of this AD, in accordance with Fokker Service Bulletin F28/52–101, Revision 1, dated August 24, 1992.

(2) For airplanes in pre-Fokker Service Bulletin F28/52–72 configuration: Accomplish the modification within 1,500 landings after the effective date of this AD, in accordance with Fokker Service Bulletin F28/52–112, dated February 1, 1995.

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

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

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

(d) The modification shall be done in accordance with the following Fokker service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page	Revision level shown on page	Date shown on page
F28/52–101, Revision 1, August 24, 1992	1–6	1	August 24, 1992.
	7–13	Original	November 1, 1988.
F28/52–112, February 1, 1995	1–16	Original	February 1, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind

Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 4, 1996.

Issued in Renton, Washington, on September 19, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–24652 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–49–AD; Amendment 39–9772; AD 96–20–06]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that currently requires inspection to determine the number of hours time-in-service on the landing gear control unit, and modification of the cable (electrical wiring circuit) of the landing gear control unit. That AD was prompted by a report of failure of a micro-switch in the landing gear control unit. This amendment requires installation of a new landing gear control unit. This amendment also expands the applicability of the existing AD to include additional airplanes. The actions specified by this AD are intended to prevent uncommanded retraction of a landing gear, which could adversely affect airplane controllability.

DATES: Effective November 4, 1996.

The incorporation by reference of Jetstream Service Bulletin J41–32–044, dated September 22, 1995, listed in the regulations is approved by the Director of the Federal Register as of November 4, 1996.

The incorporation by reference of Jetstream Alert Service Bulletin J41–A32–042, dated April 13, 1995 listed in the regulations was approved previously by the Director of the Federal Register as of June 14, 1995 (60 FR 28035, May 30, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–09–03, amendment 39–9241 (60 FR 28035, May 30, 1995), which is applicable to certain Jetstream Model 4101 airplanes, was published in the Federal Register on April 29, 1996 (61 FR 18707). The action proposed to supersede AD 95–09–03. For those airplanes subject to AD 95–09–03, it proposed to continue to require an inspection to determine the number of hours time-in-service on the landing gear control unit, and modification of the cable (electrical wiring circuit) of the landing gear control unit. For those airplanes and certain others, it proposed to require installation of a new improved landing gear control unit.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed Rule

One commenter supports the proposed rule.

Request to Limit Applicability of Proposed Rule

One commenter questions why the proposed rule requires Jetstream Modification JM41490 (modification of the cable of the landing gear control unit) to be accomplished on the additional airplanes that have been included in the applicability of the proposed rule. The commenter states that this modification was installed on airplanes having constructor numbers 41052 and subsequent at the manufacturer's facility prior to delivery. Therefore, those airplanes should not be subject to the requirement for that modification.

The FAA points out that Modification JM41490 (which is described in Jetstream Alert Service Bulletin J41–A32–042) is required by AD 95–09–03 to be accomplished on Model 4101 airplanes having constructor numbers 41001 through 41046 inclusive, and 41048 through 41052 inclusive. That requirement is specified in paragraph (a) of AD 95–09–03. Paragraph (a) of this new AD merely restates the requirements of paragraph (a) of AD 95–09–03. It clearly indicates that it is applicable only to those same airplanes that were subject to AD 95–09–03; no new, additional airplanes are subject to the requirements of that paragraph. Further, airplanes on which those actions have been performed previously, do not have to be modified in accordance with that paragraph a second time.

Request to Verify Parts Availability

One commenter states that it has information that the manufacturer has been unable to produce the landing gear control units at the originally planned rate. The commenter requests that the FAA verify with the manufacturer that the landing gear control units required by paragraph (b) of the proposed rule will be available for installation within the proposed compliance time of six months.

The FAA has verified with the manufacturer that there should be no delay in the manufacturing of those parts. Therefore, the compliance time of six months for this AD will remain unchanged.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 44 Jetstream Model 4101 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 95–09–03, and retained in this AD, take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The required parts are provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $18,480, or $420 per airplane. The FAA has been advised that all affected U.S. operators have accomplished these requirements; therefore, there is no future cost impact of these requirements on current U.S. operators of these airplanes.

The new installation that is required by this new AD will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided at no cost to the operator. Based on these figures, the

cost impact on U.S. operators of the new requirements of this AD is estimated to be $15,840, or $360 per airplane. This cost impact figure is based on assumptions that no operator has yet accomplished this requirement of this AD action, and that no operator would accomplish that action in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9241 (60 FR 28035, May 30, 1995), and by adding a new airworthiness directive (AD), amendment 39–9772, to read as follows:

96–20–06 Jetstream Aircraft Limited: Amendment 39–9772. Docket 96–NM–49–AD. Supersedes AD 95–09–03, Amendment 39–9241.

Applicability: Model 4101 airplanes, constructor numbers 41001 through 41073 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded retraction of the landing gear, which can adversely affect airplane controllability, accomplish the following:

(a) For airplanes having constructor numbers 41001 through 41046 inclusive, and 41048 through 41052 inclusive; equipped with either landing gear control unit part number 717701–1 or 717701–1 Mod A: Within 8 hours time-in-service after June 14, 1995 (the effective date of AD 95–09–03, amendment 39–9241), perform an inspection to determine the number of hours time-in-service on the landing gear control unit, in accordance with Jetstream Alert Service Bulletin J41–A32–042, dated April 13, 1995.

(1) For those airplanes on which the control unit has accumulated less than 200 hours time-in-service: Prior to further flight, modify the cable (electrical wiring circuit) of the landing gear control unit in accordance with the alert service bulletin.

(2) For those airplanes on which the control unit has accumulated 200 hours or more time-in-service: Within 50 hours time-in-service or within 7 days after June 14, 1995 (the effective date of AD 95–09–03, amendment 39–9241), whichever occurs earlier, modify the cable (electrical wiring circuit) of the landing gear control unit in accordance with the alert service bulletin.

(b) For airplanes having constructor numbers 41001 through 41073 inclusive: Within 6 months after the effective date of this AD, install a new improved landing gear control unit and modify the wiring, in accordance with Jetstream Service Bulletin J41–32–044, dated September 22, 1995.

(c) As of the effective date of this AD, no person shall install a landing gear control unit having part number 717701–1 or 717701–1 Mod A, on any airplane.

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

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

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

(f) The inspection and modification shall be done in accordance with Jetstream Alert Service Bulletin J41–A32–042, dated April 13, 1995. The installation shall be done in accordance with Jetstream Service Bulletin J41–32–044, dated September 22, 1995. The incorporation by reference of Jetstream Alert Service Bulletin J41–A32–042, dated April 13, 1995, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of June 14, 1995 (60 FR 28035, May 30, 1995). The incorporation by reference of Jetstream Service Bulletin J41–32–044, dated September 22, 1995, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 4, 1996.

Issued in Renton, Washington, on September 19, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–24651 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–203–AD; Amendment 39–9771; AD 96–20–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 767 series airplanes, that requires repetitive operational tests to verify proper deployment of the ram air turbine

(RAT), and replacement of the rotary actuator motor with a new or serviceable rotary actuator motor, if necessary. This amendment is prompted by reports of corroded rotary actuator motors of the RAT found on in-service airplanes. The actions specified by this AD are intended to ensure that the RAT actuator motor is not corroded to the point where it may result in the failure of the RAT to deploy and subsequently result in loss of emergency hydraulic power to the flight controls in the event that power is lost in both engines.

DATES: Effective November 4, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 4, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sheila Kirkwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2675; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 767 series airplanes was published in the Federal Register on March 21, 1996 (61 FR 11593). That action proposed to require repetitive operational tests to verify proper deployment of the ram air turbine (RAT) system, and replacement of the rotary actuator motor with a new or serviceable rotary actuator motor, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request To Revise Unsafe Condition Finding

One commenter, Boeing Commercial Airplane Group, requests that certain language that appeared in the preamble to the notice, which referred to the FAA's finding of an unsafe condition, be revised. Specifically, the commenter requests that the wording be changed to state that the addressed unsafe condition ''could exist,'' rather than is ''likely to exist'' [on other airplanes of this same type design]. The commenter gives no particular justification for this request; however, the FAA infers that, by changing this wording as suggested, the commenter seeks to minimize the adverse implication regarding the safety of its products.

The FAA does not concur. The phrasing used in that discussion is not accidental. Part 39.1, ''Applicability,'' of the Federal Aviation Regulations (FAR) (14 CFR 39.1) states:

> This part prescribes airworthiness directives that apply to aircraft * * * when—
>
> (a) An unsafe condition exists in a product; and
>
> (b) That condition is likely to exist or develop in other products of the same type design.''

Therefore, the finding that the condition is ''likely to exist'' (or develop) is necessary to ensure that the AD falls within the scope of part 39; its absence would arguably subject the FAA to legal challenge for inappropriately using the AD process to issue rules that do not meet the criteria for AD's. While it is understandable that a manufacturer would like to minimize any adverse implications regarding the safety of its products, the FAA reiterates that the purpose of an AD is to correct an identified unsafe condition in aircraft, regardless of where it is or what it is caused by. In essence, the AD serves to protect the flying public from the consequences of the unsafe condition. The AD also serves to protect the manufacturer from the liability that would be faced should the unsafe condition not be corrected.

Request To Clarify Description of Intent of the Rule

This same commenter requests that the description of the intent of the rule, which appeared in the preamble to the notice, be changed so that it is more accurate. The specific statement in the preamble relevant to this issue indicated that the AD actions are:

> Intended to prevent * * * corrosion, which could result in failure of the RAT to deploy and subsequent loss of emergency hydraulic power to the flight controls, in the event that power is lost in both engines.

The commenter points out that the proposed operational tests will help to ensure that the RAT motor is not heavily corroded, but the tests will not prevent corrosion. The commenter suggests that the language be revised to specify more accurately that the operational tests:

> * * * Will ensure that the RAT motor is not heavily corroded and can deploy the RAT. The RAT must be able to be deployed to provide emergency hydraulic power to the flight controls in the event that power is lost in both engines.

The FAA partially agrees with this commenter's request.

First, the commenter is correct in pointing out that the required operational tests will not prevent corrosion. The FAA has revised the wording relative to this issue in the appropriate places in this final rule.

Second, the FAA points out that the intent of the statement that appeared in the preamble to the notice was to specify what unsafe condition the requirements of the AD are addressing. The commenter's suggested rewording (i.e., ''The RAT must be able to be deployed * * *'') highlights the fact that there are pertinent sections of part 25 of the Federal Aviation Regulations (14 CFR part 25) which require that the RAT be able to be deployed in order to provide emergency hydraulic power to the flight controls. However, the language that is used in the AD is formatted to highlight the unsafe condition that is created when the failure of associated components in a system does not permit the RAT to deploy as required. It is this concept that the statement of the intent of the AD is meant to convey, not merely to restate the function of a required system.

The FAA acknowledges that the statement could be clarified further, however, and has revised the language in the appropriate portions of this final rule to specify that the intent of the actions of this AD is:

> ''* * * To ensure that the RAT actuator motor is not corroded to the point where it may result in the failure of the RAT to deploy and subsequently result in loss of emergency hydraulic power to the flight controls in the event that power is lost in both engines.

Requests To Extend Compliance Time

Several commenters request that the proposal be revised to extend the compliance time for the repetitive operational tests from the proposed 1,000-flight hour intervals to as much as 3,000 flight hours or 15 months, whichever occurs later. To justify this request, the commenters point out the following issues:

1. The airframe manufacturer, Boeing, recommends a 3,000-flight hour interval for repetitive tests.

2. One of the failed rotary actuator motors of the RAT that was found in service was on a high-cycle airplane that was operated in a high humidity, salt water environment. That type of environment is more conducive to the initiation of corrosion, but is not the typical environment in which the majority of affected airplanes are operated. Further, these commenters state that, even though Boeing has advised that recent high humidity tests have demonstrated that the subject motor has a propensity to corrode under high humidity conditions, affected operators are not seeing such results under field conditions. While the conclusions drawn from reviewing results of the Boeing tests may justify the FAA's adoption of the rule, the commenters request that service experience be considered in determining an appropriate compliance interval.

3. One affected operator states that it has accomplished roughly 90 deployment tests similar to the proposed test over a 9-year period and there have been no reports of failure.

4. The proposed 1,000-flight hour interval would pose an ''unjustified economic burden on the affected operators,'' since it does not take into account the necessary removal and return to service of the motor, repetitive testing, and administrative costs to monitor and schedule accomplishment of the tests for the remaining life of the Model 767 fleet. The repetitive interval should be extended to coincide with normally scheduled maintenance, so that special scheduling will be unnecessary. An interval of 3,000-flight hours would be appropriate, and would to ensure that any detrimental effect associated with corrosion is identified.

5. An extension of the repetitive test interval to include both a flight cycle threshold and a calendar time will address the FAA's concern that the addressed problem is caused by exposure to high cycling. This would also provide an acceptable level of safety without overburdening operators who use their aircraft on longer stage lengths.

The FAA has considered this information presented by the commenters, and agrees that the test interval can be revised somewhat. The FAA concurs with the point that a calendar time interval is appropriate since corrosion of the RAT actuator motor could occur while the airplane is on the ground. In light of this, the FAA finds that repetitive interval of 6 months will ensure that both long-range and short-range airplanes, as well as those that are infrequently used, will achieve the same level of safety with respect to the RAT deploy system.

However, corrosion that occurs as a result of high-cycle use (condensation due to thermal cycling) is also a concern; therefore, the FAA maintains that the repetitive test interval cannot be based solely on calendar time, but must be related to flight hours as well. Based on recent test data presented by the manufacturer, as well as in-service history, the FAA has determined that a repetitive interval of 3,000 flight hours is appropriate. This interval will also coincide with regularly scheduled maintenance visits for most affected operators.

The final rule has been revised to specify that the repetitive tests must be performed at intervals of 3,000 flight hours or 6 months, whichever occurs first.

Request To Revise Description of Test Result Conditions

One commenter requests that the proposed rule be revised to clarify the conditions for which the operational testing is performed. The commenter maintains that the tests are actually deployment tests to determine merely if the RAT deploys or if it does not. In light of this, the commenter requests that paragraph (a)(1) be revised to state, ''If the RAT deploys * * *''; and that paragraph (a)(2) be revised to state, ''If the RAT does not deploy * * *'' The commenter considers this revised wording to be clearer than that which appeared in the notice.

The FAA does not concur with the commenter's suggested changes, but acknowledges that some clarification is warranted.

As for paragraph (a)(1), the intent of the test is that the RAT deploy properly. Even the Boeing service bulletin containing the test procedures, describes a successful test as one in which the RAT ''deploys correctly.'' The FAA finds that the quality of deployment should be considered for this test. For example, a RAT could deploy, but have some problems in doing so; in that case, the RAT should not be considered to have deployed correctly. In light of this, and to maintain standard terminology between the AD and the referenced service bulletin, the FAA has revised paragraph (a)(1) to read, ''If the RAT deploys correctly * * *''

As for paragraph (a)(2), the FAA finds that commenter's suggested phrase, ''does not deploy,'' is not specific enough for determining the test result. That language would not encompass deployments where the RAT may get stuck in transit and may only partially deploy. However, the FAA does consider that the language should be clarified on this point and therefore, has revised the phrasing of paragraph (a)(2) to read, ''If the RAT does not fully deploy * * *''

Request To Permit Use of ETOPS Program in Lieu of Rule Requirements

One commenter requests that the proposal be revised to allow operators to rely on their approved Extended Range Twin-Engine Operations (ETOPS) programs, in lieu of the AD requirements, as a means to ensure the reliability of the RAT on each airplane. The commenter considers that this approach takes into account individual operators' operating environments and service experience. This commenter also states that it has been accomplishing deployment tests ever since its Model 767's went into service as part of the ETOPS program and, in approximately 90 deployment tests accomplished over a period of 9 years, has had no reports of failure.

The FAA does not concur with the commenter's request. The deployment tests that are performed as part of this commenter's ETOPS program apparently entail the deployment of the RAT only every 10 months. As explained previously, the FAA has determined that repetitive deployments must be performed every 6 months or 3,000 flight cycles, whichever occurs first, in order to ensure that corrosion is detected and corrected before it can lead to the problems that this AD addresses.

Request To Give Credit for Testing Prior to Delivery

One commenter requests that the proposed rule be revised to give credit to new airplanes on which a RAT system functional test, which includes a manual RAT deployment test, is accomplished either in the factory or on the flight line prior to delivery of the airplane.

The FAA concurs and has added a statement to the final rule to give credit for such testing only as the initial test required by the AD. However, all airplanes are subject to the repetitive tests.

Request To Reference Later Revisions of Cited Service Bulletin

Boeing requests that the proposed rule be revised to reference Revision A of Boeing Alert Service Bulletin 767–29A0080 as the appropriate source of service information. The commenter states that this service bulletin, as yet unreleased, will clarify some of the RAT manual deploy test and the RAT retraction procedures. It will also

contain additional information concerning corrective action if the RAT manual deploy circuit breaker trips and there is no measured RAT down-stop gap after deploying the RAT.

The FAA does not concur. The revision of the service bulletin that the commenter refers to has not yet been issued, nor has it been approved by the FAA.

Request To Clarify Background Information

One commenter requests that the description of the service history prompting this AD action, as it appeared in the preamble to the notice, be clarified as follows:

1. In the preamble, the FAA indicated that there had been ''several'' reports of corroded rotary actuator motors of the RAT found on in-service airplanes. However, the commenter points out that there have been only two reports of heavily corroded RAT motors in service that have resulted in failures to deploy.

2. The preamble contained a statement indicating that ''investigation revealed'' that the RAT motor is not sealed. The commenter points out that *by design* the RAT motor is not sealed.

3. The preamble described the area where the RAT actuator motor is located as the ''right aft fairing;'' however, this area is specifically the ''right aft wing-to-body fairing.''

4. The preamble stated that the motor is susceptible to moisture accumulation when exposed to ''high'' cycling; however, a more accurate description is ''altitude'' cycling.

The FAA agrees that these points should be clarified as suggested by the commenter. However, because this background information is not repeated in the final rule, no specific change is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This rule is considered to be interim action. The manufacturer has advised the FAA that it is pursuing development of a redesigned RAT rotary actuator motor that is not susceptible to corrosion. Once that item is developed, approved, and available, the FAA may consider further rulemaking.

Cost Impact

There are approximately 583 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 197 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $11,820, or $60 per airplane, per operational test.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–20–05 Boeing: Amendment 39–9771. Docket 95–NM–203–AD.

Applicability: All Model 767 series airplanes, certificated in any category.

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

Compliance: Required as indicated.

To ensure that the RAT actuator motor is not corroded to the point where it may result in the failure of the RAT to deploy and subsequently result in loss of emergency hydraulic power to the flight controls in the event that power is lost in both engines, accomplish the following:

(a) Within 6 months after the effective date of this AD; unless previously accomplished within the last 6 months or 3,000 flight hours prior to the effective date of this AD, whichever is later; perform an operational test to verify proper deployment of the ram air turbine (RAT) in accordance with Boeing Alert Service Bulletin 767–29A0080, dated October 12, 1995.

(1) If the RAT deploys correctly, repeat the operational test thereafter at intervals not to exceed 6 months or 3,000 flight hours, whichever occurs first.

(2) If the RAT does not fully deploy, prior to further flight, replace the rotary actuator motor with a new or serviceable rotary actuator motor, in accordance with the service bulletin. Thereafter, repeat the operational test at intervals not to exceed 6 months or 3,000 flight hours, whichever occurs first.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–29A0080, dated October 12, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 4, 1996.

Issued in Renton, Washington, on September 19, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–24650 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–CE–22–AD; Amendment 39–9774; AD 96–20–08]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft SA26, SA226, and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes AD 93–19–06, which currrently requires repetitively inspecting acrylic cabin and cockpit side windows for cracks on certain Fairchild Aircraft SA26, SA226, and SA227 series airplanes, and, if cracks are found that exceed certain limitations, replacing that window. This action maintains the requirement of repetitively inspecting the cabin and cockpit side windows, and adds a life limit for the single-pane cockpit side windows. Acrylic window failures on the affected airplanes prompted this action. The actions specified by this AD are intended to prevent acrylic cabin or cockpit side window failures, which could result in airframe damage and decompression injuries.

DATES: Effective November 14, 1996.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of November 19, 1993 (58 FR 51771, October 5, 1993).

ADDRESSES: Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 94–CE–22–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Fairchild Aircraft SA26, SA226, and SA227 series airplanes was published in the Federal Register on April 26, 1996 (61 FR 18524). The action proposed to supersede AD 93–19–06 with a new AD that would maintain the requirement of repetitively inspecting the cabin and cockpit side windows, and would add a life limit for the single-pane cockpit side windows. Accomplishment of the single-pane window installation as specified in the supplemental notice of proposed rulemaking (NPRM) would be in accordance with the applicable maintenance manual. The proposed inspections as specified in the supplemental NPRM would be accomplished in accordance with the following service bulletins (SB), as applicable:

Fairchild SB 26–56–20–042, Issued: November 28, 1988; Revised: February 7, 1991.

Fairchild SB 226–56–001, Issued: February 2, 1983; Revised: November 26, 1991.

Fairchild SB 227–56–001, Issued: February 2, 1983; Revised: November 26, 1991.

Fairchild SB 226–56–002, Issued: March 3, 1983; Revised: May 29, 1992.

Fairchild SB 227–56–002, Issued: January 5, 1984; Revised: May 29, 1992, and April 1, 1993.

Fairchild SB 226–56–003, Issued: September 13, 1984; Revised: November 2, 1989.

Fairchild SB 227–56–003, Issued: September 13, 1984; Revised: November 2, 1989.

Fairchild SB 26–56–10–038, Issued: October 8, 1984; Revised: February 7, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Disposition of the Comment

The commenter supports the proposal as written, and would like the FAA to treat this as interim action until a new improved cockpit side window defogging system is developed. The FAA basically concurs. A new window design is now going through analysis and testing. Based on the results of this analysis and testing, the FAA will determine if additional improvements are needed to assure that an acceptable level of safety (to the actions specified in this AD) can be maintained. The FAA then may initiate additional rulemaking activity to require installation of the new design window. In the meantime, the FAA has determined that the actions required by this AD will maintain the required level of safety (as it relates to cabin and cockpit side windows) until the improved design windows are approved and available. No changes have been made to the AD as a result of this comment.

No comments were received regarding the FAA's determination of the cost impact on the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, including the referenced service information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time Criteria

The compliance time for this AD is presented in both hours time-in-service (TIS) and calendar time. The referenced acrylic cabin and cockpit side windows are affected whether the airplane is in flight or on the ground. In addition, the utilization rates of the affected airplanes vary among operators. For example, operators in unscheduled service utilize their airplanes an average of approximately 200 to 300 hours TIS annually, while those in commuter service (scheduled) utilize their airplanes an average of approximately 2,000 hours TIS annually. Based on this

wide utilization rate variance and the fact that these windows are affected when the airplane is in flight and on the ground, the FAA has determined that the compliance time for this rule should be in hours TIS and calendar time.

Cost Impact

The FAA estimates that 633 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 28 workhours per airplane (14 workhours per window) to accomplish the life limit installation and that the average labor rate is approximately $60 an hour. Parts cost approximately $2,200 per airplane ($1,100 per window). Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $2,456,040. AD 93–19–06 currently requires the same inspections as this AD for all of the affected airplanes. Therefore, the cost impact of the required inspections (3 workhours × $60 × 633 airplanes = $113,940) for operators of all affected airplanes is the same as AD 93–19–06. The figure does not take into account the cost of repetitive inspections. The FAA has no way of determining how many repetitive inspections each owner/operator may incur over the life of the airplane.

In addition, Fairchild Aircraft has informed the FAA that approximately 250 of the 633 affected airplanes are equipped with cockpit side windows with inner window panes, and therefore are not subject to the single-pane window replacements (dual-pane windows will still be subject to repetitive inspections). With this in mind, the proposed cost impact upon U.S. operators would be reduced approximately $970,000 from $2,456,040 to $1,486,040.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 93–19–06, Amendment 39–8705 (58 FR 51771, October 5, 1993), and by adding a new AD to read as follows:

96–20–08 Fairchild Aircraft: Amendment 39–9774; Docket No. 94–CE–22–AD. Supersedes AD 93–19–06, Amendment 39–8705.

Applicability: Models SA26–T, SA26–AT, SA226–T, SA226–T(B), SA226–AT, SA226–TC, SA227–AT, SA227–AC, SA227–BC, and SA227–TT airplanes (all serial numbers for all models), certificated in any category.

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

Note 2: The applicability of this AD takes precedence over that specified in the service information.

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

To prevent acrylic cabin or cockpit side window failures, which could result in airframe damage and decompression injuries, accomplish the following:

(a) Upon accumulating 5,000 hours time-in-service (TIS) or within the next 1,000 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 5,000 hours TIS, replace each single-pane cockpit side window with a new window of like design in accordance with the applicable maintenance manual.

(1) Accomplish the inspection specified in paragraph (b) of this AD between 10 to 20 hours TIS after replacing each window to ensure that no damage has occurred after installation; and

(2) If cracks are found, utilize the chart in paragraph (b) of this AD to determine the applicable action necessary.

(b) Visually inspect all acrylic single-pane cockpit side windows for cracks in accordance with the service information presented in paragraph (d)(2) of this AD, as applicable. Accomplish the initial inspection, and applicable reinspection or replacement as specified in the following chart:

Condition	Initial action	Repetitive action
Upon the effectiveness of this Ad	Inspect at 150 hours TIS after the effective date of this AD.	Reinspect at intervals not to exceed 1,000 hours TIS or 12 calendar months, whichever occurs first, provided no cracks are found. Use applicable condition column entry to determine compliance times if cracks are found.

Condition	Initial action	Repetitive action
If cracks are found where the sum total of all cracks is less than 4.3 inches in combined length, but where a crack meets or exceeds .30 inches as specified in the Crack Limitations section of the service information referenced in paragraph (d)(2) of this AD.	Accomplish one of the following: 1. Prior to further flight, replace the window with a new window of like design in accordance with the applicable maintenance manual. or 2. Prior to further flight, fabricate a placard with the following words in letters at least 0.10-inch in height and install this placard within the pilot's clear view close to the pressurization controls: ''AIRPLANE MUST BE OPERATED UNPRESSURIZED'', and prior to further flight, insert a copy of this AD into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM).	Accomplish the corresponding repetitive action: 1. Reinspect initially between 10 and 20 hours TIS after replacing the window to ensure that no damage has occurred after installation, and thereafter at intervals not to exceed 1,000 hours TIS or 12 calendar months, whichever occurs first, provided no cracks are found. Use applicable condition column entry to determine compliance times if cracks are found. or 2. Repeat the inspection specified in paragraph (b) of this AD at intervals not to exceed 25 hours TIS or 30 calendar days, whichever occurs first, provided the sum total of all cracks does not exceed 4.3 inches in combined length. Use the ''If cracks are found where the sum total of all cracks meets or exceeds 4.3 inches in combined length'' condition column for replacement and inspection times if the cracks found are at that level.
If cracks are found where the sum total of all cracks meets or exceeds 4.3 inches in combined length.	Prior to further flight, replace the window with a new window of like design in accordance with the applicable maintenance manual.	Reinspect initially between 10 and 20 hours TIS after replacing the window to ensure that no damage has occurred after installation, and thereafter at intervals not to exceed 1,000 hours TIS or 12 calendar months, whichever occurs first, provided no cracks are found. Use applicable condition column entry to determine compliance times if cracks are found.
With cracks found that are less than .30 inches (as specified in the applicable service information referenced in paragraph (d)(2) of the AD) provided the sum total of all cracks does not exceed 4.3 inches in combined length.	Reinspect within 25 hours TIS or 30 calendar days, whichever occurs first.	Continue this reinspection at intervals not to exceed 25 hours TIS or 30 calendar days, whichever occurs first, provided no crack is found that is .30 inches or greater or the combined length of all cracks exceeds 4.3 inches in combined length. Use applicable condition column entry to determine compliance times if any of these crack limits are met.
With no cracks found after one of the inspections required by this AD.	Reinspect within 1,000 hours TIS and 12 calendar months after the last inspection, whichever occurs first.	Reinspect at intervals not to exceed 1,000 hours TIS or 12 calendar months, whichever occurs first, provided no cracks are found. Use applicable condition column entry to determine compliance times if cracks are found.

(c) Visually inspect all acrylic cabin and dual-pane cockpit side windows for cracks in accordance with the service information specified in paragraphs (d)(1) and (d)(2) of this AD. Accomplish the initial inspection and applicable reinspection or replacement as specified in the following chart:

Condition	Initial action	Repetitive action
Upon the effectiveness of this AD	Inspect at 150 hours TIS after the effective date of this AD, unless already accomplished within the last 1,000 hours TIS or 12 calendar months, which would put airplane in compliance with superseded AD 93–19–06. Use the results of the previous inspection under AD 93–19–06 to determine repetitive action	Reinspect at intervals not to exceed 1,000 hours TIS or 12 calendar months, whichever occurs first, provided no cracks are found. Use applicable condition column entry to determine compliance times if cracks are found. For airplane owners/operators taking ''unless already accomplished'' credit for the initial inspection, use the results of the previous inspection under AD 93–19–06 to determine the repetitive action.

Condition	Initial action	Repetitive action
If cracks are found where the sum total of all cracks is less than 4.3 inches in combined length, but where a crack meets or exceeds .30 inches as specified in the Crack Limitations section of the service information referenced in paragraph (d)(2) of this AD	Accomplish one of the following: 1. Prior to further flight, replace the window with a new window of like design in accordance with the applicable maintenance manual or 2. Prior to further flight, fabricate a placard with the following words in letters at leas 0.10-inch in height and install this placard within the pilot's clear view close to the pressurization controls: ''AIRPLANE MUST BE OPERATED UNPRESSURIZED'', and prior to further flight, insert a copy of this AD into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM)	Accomplish the corresponding repetitive action: 1. Reinspect initially between 10 and 20 hours TIS after replacing the window to ensure that no damage has occurred after installation, and thereafter at intervals not to exceed 1,000 hours TIS or 12 calendar months, whichever occurs first, provided no cracks are found. Use applicable condition column entry to determine compliance times if cracks are found. or 2. Repeat the inspection specified in paragraph (b) of this AD at intervals not to exceed 25 hours TIS or 30 calendar days, whichever occurs first, provided the sum total of all cracks does not exceed 4.3 inches in combined length. Use the ''If cracks are found where the sum total of all cracks meets or exceeds 4.3 inches in combined length'' condition column for replacement and inspection times if the cracks found are at that level.
If cracks are found where the sum total of all cracks meets or exceeds 4.3 inches in combined length	Prior to further flight, replace the window with a new window of like design in accordance with the applicable maintenance manual	Reinspect initially between 10 and 20 hours TIS after replacing the window to ensure that no damage has occurred after installation, and thereafter at intervals not to exceed 1,000 hours TIS or 12 calendar months, whichever occurs first, provided no cracks are found. Use applicable condition column entry to determine compliance times if cracks are found.
With cracks found that are less than .30 inches (as specified in the applicable service information referenced in paragraph (d)(2) of this AD) provided the sum total of all cracks does not exceed 4.3 inches in combined length	Reinspect within 25 hours TIS or 30 calendar days, whichever occurs first	Continue this reinspection at intervals not to exceed 25 hours TIS or 30 calendar days, whichever occurs first, provided no crack is found that is .30 inches or greater or the combined length of all cracks exceeds 4.3 inches in combined length. Use applicable condition column entry to determine compliance times if any of these crack limits are met.
With no cracks found after one of the inspections required by this AD	Reinspect within 1,000 hours TIS and 12 calendar months after the last inspection, whichever occurs first	Reinspect at intervals not to exceed 1,000 hours TIS or 12 calendar months, whichever occurs first, provided no cracks are found. Use applicable condition column entry to determine compliance times if cracks are found.

(d) The following specifies the service bulletins that contain the procedures to accomplish the required inspections:
(1) For acrylic cabin windows:

Models	Service bulletins
SA26–T and SA26–AT	26–56–20–042, Issued: November 28, 1988, Revised: February 7, 1991.
SA226–T and SA226–T(B)	226–56–001, Issued: February 2, 1983, Revised: November 26, 1991.
SA226–AT and SA226–TC	226–56–002, Issued: March 3, 1983, Revised: May 29, 1992.
SA227–AT, SA227–AC, and SA227–BC	227–56–002, Issued: January 5, 1984, Revised: May 29, 1992, and April 1, 1993.
SA227–TT	227–56–001, Issued: February 2, 1983, Revised: November 26, 1991.

(2) For acrylic cockpit side windows:

Models	Service bulletin
SA26–T and SA26–AT SA226–T, SA226–T(B).	26–56–10–038, Issued: October 8, 1984, Revised: February 7, 1991.
SA226–AT, and SA226–TC	226–56–003, Issued: September 13, 1984, Revised: November 2, 1989.
SA227–AT, SA227–AC, SA227–BC, and SA227–TT.	227–56–003, Issued: September 13, 1984, Revised: November 2, 1989.

Note 3: The repetitive inspections required by this AD are also referenced in the FAA-approved Fairchild Airframe Airworthiness Limitations Manual, ST–UN–M001.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO. Alternative methods of compliance approved in accordance with AD 93–19–06 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(g) The inspections required by this AD shall be done in accordance with Fairchild Service Bulletin 26–56–20–042, Issued: November 28, 1988; Revised: February 7, 1991, Fairchild Service Bulletin 226–56–001, Issued: February 2, 1983; Revised: November 26, 1991, Fairchild Service Bulletin 227–56–001, Issued: February 2, 1983; Revised: November 26, 1991, Fairchild Service Bulletin 226–56–002, Issued: March 3, 1983; Revised: May 29, 1992, Fairchild Service Bulletin 227–56–002, Issued: January 5, 1984; Revised: May 29, 1992, and April 1, 1993, Fairchild Service Bulletin 226–56–003, Issued: September 13, 1984; Revised: November 2, 1989, Fairchild Service Bulletin 227–56–003, Issued: September 13, 1984; Revised: November 2, 1989, and Fairchild Service Bulletin 26–56–10–038, Issued: October 8, 1984; Revised: February 7, 1991, as applicable. This incorporation by reference was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–9774) supersedes AD 93–19–06, Amendment 39–8705.

(i) This amendment (39–9774) becomes effective on November 14, 1996.

Issued in Kansas City, Missouri, on September 19, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–24886 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, Division of Eli Lilly and Co. The supplemental NADA provides for monensin Type A medicated articles to be used to make free-choice Type C medicated feeds for pasture cattle weighing less than 400 pounds for increased rate of weight gain.

EFFECTIVE DATE: September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1638.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, filed supplemental NADA 95–735, which provides for use of a monensin Type A medicated article to make a monensin Type C medicated feed/free-choice mineral granule containing 1620 grams monensin per ton (g/t) to be fed at 50 to 200 milligrams per head per day free-choice to pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers) for increased rate of weight gain.

The supplemental NADA provides for removal of the restriction concerning use of the product for animals weighing less than 400 pounds body weight. The supplemental NADA is approved as of September 30, 1996, and the regulations are amended in 21 CFR 558.355(f)(3)(x)(c) to reflect the approval.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), approval of this supplemental NADA does not qualify for marketing exclusivity because the supplement does not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) or new human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

Approval of this supplemental NADA does not require a freedom of information (FOI) summary because the approval relies on data and information filed to support a previously approved supplement. FOI summaries for prior approvals may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) 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.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.355 [Amended]

2. Section 558.355 *Monensin* is amended in paragraph (f)(3)(x)(*c*) in the first sentence by removing the phrase ''weighing more than 400 pounds''.

Dated: September 3, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–24965 Filed 9–27–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1313

[DEA Number 110F]

RIN 1117–AA21

Distribution of Chemical Import/Export Declaration

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: DEA is amending its regulations to clarify the distribution requirements for the Precursor and Essential Chemical Import/Export Declaration (DEA Form 486). The regulations do not specify that a copy of the form must be provided to the United States Customs Service (Customs) on or before the day of exportation, as required in the instructions on the form. This amendment to the regulations will eliminate any possibility for confusion as to when the form must be provided to Customs.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: On September 23, 1993, DEA published a notice of proposed rulemaking (NPRM) in the Federal Register (58 FR 49455) regarding the distribution of the Precursor and Essential Chemical Import/Export Declaration (DEA Form 486). The NPRM pointed out a discrepancy between the instructions contained in the DEA Form 486 and the requirements of Title 21, Code of Federal Regulations (CFR), § 1313.23(c). The instructions require that Copy 3 of the form be provided to Customs *on or before the day of exportation.* Section 1313.23(c) provides the same instructions but omits the phrase *on or before the day of exportation.* To avoid the possibility of confusion regarding when Copy 3 of the form should be provided to Customs, DEA proposed to amend § 1313.23(c) to be consistent with the instructions contained in the form. In addition, while it could not be included as a requirement, DEA also proposed to include a suggestion in the section that the exporter submit the Shipper's Export Document on or before the day of exportation, in order to facilitate the uninterrupted export of the goods.

No comments or objections were received regarding the proposed amendment to the regulations. Therefore, DEA is amending 21 CFR 1313.23(c) to include the appropriate language to be consistent with the instructions contained in the DEA Form 486.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this action will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This action does not impose any new requirements or burden on the regulated industry. This action is being taken to clarify the requirements regarding the distribution of the DEA Form 486.

This rule has been drafted and reviewed in accordance with Executive Order 12866. DEA has determined that this is not a significant regulatory action under the provisions of Executive Order 12866, section 3(f). This rule clarifies existing requirements and will prevent confusion that might cause delays in the export of chemicals.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1313

Drug traffic control, Exports, Imports, Reporting requirements.

For reasons set out above, 21 CFR part 1313 is amended as follows:

PART 1313—[AMENDED]

1. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 971

2. Section 1313.23 is amended by revising paragraph (c) to read as follows:

§ 1313.23 Distribution of export declaration.

* * * * *

(c) Copy 3 shall be presented to the U.S. Customs Service at the port of exit for each export of a listed chemical or chemicals on or before the day of exportation, and when possible, along with the Shippers Export Declaration.

Dated: September 6, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 96–24944 Filed 9–27–96; 8:45 am]

BILLING CODE 4410–09–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 505

Privacy Act Regulation

AGENCY: United States Information Agency.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule will amend the existing Privacy Act Regulation implementing the Privacy Act of 1974, as amended. Changes in the regulation are to reconcile them with changes in the law and Agency policy. The Agency expects the amended regulation will enable Privacy Act requesters to better understand how to make requests and how the Agency responds to such requests.

DATES EFFECTIVE: October 15, 1996. Comments regarding this interim final rule will be accepted until October 30, 1996.

ADDRESSES: Comments may be mailed to the FOIA/Privacy Act Officer, U.S. Information Agency, Room M–29, 301 4th Street, SW., Washington, DC. 20547.

FOR FURTHER INFORMATION CONTACT: FOIA/PA Unit, U.S. Information Agency, Room M–29, 301 4th Street, SW., Washington, DC. 20547; telephone (202) 619–5499.

SUPPLEMENTARY INFORMATION: The privacy of each individual is directly affected by the collection, maintenance, use and dissemination of personal information by Federal agencies. In order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is important to regulate the collection, maintenance, use and dissemination of such information by such agencies. Therefore it becomes paramount to ensure that regulations implementing the law are clear and readily understandable to the public.

List of Subjects in 22 CFR Part 505

Privacy.

For the reasons given in the preamble, Part 505 of Title 22 is revised to read as follows:

PART 505—PRIVACY ACT POLICIES AND PROCEDURES

Sec.

505.1 Purpose and scope.
505.2 Definitions.
505.3 Procedures for requests.
505.4 Requirements and identification for making requests.
505.5 Disclosure of information.
505.6 Medical records.
505.7 Correction or amendment of record.
505.8 Agency review of requests for changes.
505.9 Review of adverse agency determination.
505.10 Disclosure to third parties.
505.11 Fees.
505.12 Civil remedies and criminal penalties.
505.13 General exemptions (Subsection J).
505.14 Specific exemptions (Subsection K).
505.15 Exempt systems of records.

Authority: Pub. L. 93–579, 88 Stat. 1897; 5 U.S.C. 552a; 55 FR 31940, Aug. 6, 1990, as amended.

§ 505.1 Purpose and scope.

The United States Information Agency will protect individuals' privacy from

misuse of their records, and grant individuals access to records concerning them which are maintained by the Agency's domestic and overseas offices, consistent with the provisions of Pub. L. 93–579, 88 Stat. 1897; 5 U.S.C. 552a, the Privacy Act of 1974, as amended. The Agency has also established procedures to permit individuals to amend incorrect records, to limit the disclosure of personal information to third parties, and to limit the number of sources of personal information. The Agency has also established internal rules restricting requirements of individuals to provide social security account numbers.

§ 505.2 Definitions.

(a) *Access Appeal Committee (AAC)*—the body established by and responsible to the Director of USIA for reviewing appeals made by individuals to amend records held by the Agency.

(b) *Agency* or *USIA* or *USIS—The United States Information Agency, its offices, divisions, branches and its Foreign Service establishments.*

(c) *Amend*—To make a correction to or expunge any portion of a record about an individual which that individual believes is not accurate, relevant, timely or complete.

(d) *Individual*—A citizen of the United States or an alien lawfully admitted for permanent residence.

(e) *Maintain*—Collect, use, disseminate or any combination of these record-keeping functions; exercise of control over and hence responsibility and accountability for systems of records.

(f) *Record*—Any information maintained by the Agency about an individual that can be reproduced, including finger or voice prints and photographs, and which is retrieved by that particular individual's name or personal identifier, such as a social security number.

(g) *Routine use*—With respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected. The common and ordinary purposes for which records are used and all of the proper and necessary uses, even if any such uses occur infrequently.

(h) *Statistical record*—A record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided in 13 U.S.C. 8.

(i) *System of records*—A group of records under the maintenance and control of the Agency from which information is retrieved by the name or personal identifier of the individual.

(j) *Personnel record*—Any information about an individual that is maintained in a system of records by the Agency that is needed for personnel management or processes such as staffing, employee development, retirement, grievances and appeals.

(k) *Post*—Any of the foreign service branches of the Agency.

§ 505.3 Procedures for requests.

(a) The Agency will consider all written requests received from an individual for records pertaining to herself/himself as a request made under the Privacy Act of 1974, as amended (5 U.S.C. 552a) whether or not the individual specifically cites the Privacy Act when making the request.

(b) All requests under the Privacy Act should be directed to the USIA, Office of the General Counsel, FOIA/Privacy Act Unit (GC/FOI), 301 4th Street, SW., Washington, DC 20547, which will coordinate the search of all systems of records specified in the request. Requests should state name, date of birth, and social security number.

(c) Requests directed to the Agency's overseas posts which involve routine unclassified, administrative and personnel records available only at those posts may be released to the individual by the post if the post determines that such release is authorized by the Privacy Act. All other requests shall be submitted by the post to the Office of the General Counsel, FOIA/Privacy Act Unit (GC/FOI), 301 4th Street, SW., Washington, DC 20547, and the individual shall be so notified of this action in writing, when possible.

(d) In those instances where an individual requests records pertaining to herself/himself, as well as records pertaining to another individual, group, or some other category of the Agency's records, only that portion of the request which pertains to records concerning the individual will be treated as a Privacy Act request. The remaining portions of such a request will be processed as a Freedom of Information Act request by the office noted in paragraph (b) of this section.

§ 505.4 Requirements and identification for making requests.

(a) Individuals seeking access to Agency records may present their written request in person or may mail their request to the USIA, Office of General Counsel, FOI/Privacy Act (GC/FOI) Unit, 301 4th Street, SW., Washington, DC 20547. The GC/FOI Unit may be visited between the hours of 9 a.m. and 4 p.m., Monday through Friday, except for legal holidays.

(b) Individuals, seeking access to Agency records, will be requested to present some form of identification. Individuals should state their full name, date of birth and a social security number. An individual must also include her/his present mailing address and zip code, and if possible a telephone number.

(c) When signing a statement confirming one's identity, individuals should understand that knowingly and willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine of up to $5,000.

§ 505.5 Disclosure of information.

(a) In order to locate the system of records that an individual believes may contain information about herself/himself, an individual should first obtain a copy of the Agency's Notice of Systems of Records as republished in the Federal Register (Vol. 55, No. 151), on August 6, 1990. By identifying a particular record system and by furnishing all the identifying information requested by that record system, it will enable the Agency to locate those records which actually pertain to the individual. At a minimum, any request should include the information specified in § 505.4(b) above.

(b) In certain circumstances, it may be necessary for the Agency to request additional information from the individual to ensure that the retrieved record does, in fact, pertain to the individual.

(c) All requests for information on whether or not the Agency's system(s) of records contain information about the individual will be acknowledged within ten working days of receipt of the request. The requested records will be provided as soon as possible thereafter.

(d) If the Agency determines that the substance of the requested record is exceptionally sensitive, the Agency will require the individual to furnish a signed, notarized statement that she/he is in fact the person named in the file before granting access to the records.

(e) Original records will not be released from the custody of the records system manager. Copies will be furnished subject to and in accordance with fees established in § 505.11.

(f) Denial of access to records:

(1) The requirements of this section do not entitle an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(2) The Agency is not required to permit access to records if the information is not retrievable by the individual's name or other personal identifier; those requests will be processed as Freedom of Information Act requests.

(3) The Agency may deny an individual access to a record, or portion thereof, if following a review it is determined that the record or portion falls within the exemptions provided in 5 U.S.C. 552a(j) and 552a(k). See §§ 505.13 and 505.14 for a listing of general and specific exemptions.

(4) The decision to deny access to a record or a portion of the record is made by the Agency's Privacy Act Officer. Officer of the General Counsel. The denial letter will advise the individual of her/his rights to appeal the denial (See § 505.9 on Access Appeal Committee's review).

§ 505.6 Medical records.

If, in the judgment of the Agency, the release of medical information directly to the requester could have an adverse effect on the requester, the Agency will arrange an acceptable alternative to granting access of such records to the requester. This normally involves the release of the information to a doctor named by the requester. However, this special procedure provision does not in any way limit the absolute right of the individual to receive a complete copy of her or his medical record.

§ 505.7 Correction or amendment of record.

(a) An individual has the right to request that the Agency amend a record pertaining to her/him which the individual believes is not accurate, relevant, timely, or complete. At the time the Agency grants access to a record, it will furnish guidelines for requesting amendments to the record.

(b) Requests for amendments to records must be writing and mailed or delivered to the USIA Privacy Act Officer, Office of the General Counsel, 301 4th Street, SW, Washington, DC 20547, who will coordinate the review of the request to amend a record with the appropriate office(s). Such requests must contain, at a minimum, identifying information needed to locate the record, a brief description of the item or items of information to be amended, and the reason for the requested change. The requester should submit as much documentation, arguments or other data as seems warranted to support the request for amendment.

(C) The Agency will review all requests for amendments to records within 10 working days of receipt of the request and either make the changes or inform the requester of its refusal to do so and the reasons therefore.

§ 505.8 Agency review of requests for changes.

(a) In reviewing a record in response to a request to amend or correct a file, the Agency shall incorporate the criteria of accuracy, relevance timeliness, and completeness of the record in the review.

(b) If the Agency agrees with an individual's request to amend a record, it shall:

(1) Advise the individual in writing:

(2) Correct the record accordingly.

(3) And, to the extent that an accounting of disclosure was maintained, advise all previous recipients of the record of the corrections.

(C) If the Agency disagrees with all or any portion of an individual's request to amend a record, it shall:

(1) Advise the individual of the reasons for the determination;

(2) Inform the individual of her/his right to further review (see § 505.9).

§ 505.9 Review of adverse agency determination.

(a) When the Agency determines to deny a request to amend a record, or portion of the record, the individual may request further review by the Agency's Access Appeal Committee. The written request for review should be mailed to the Chairperson, Access Appeal Committee, USIA, Office of Public Liaison, 301 4th Street, SW, Washington, DC 20547. The letter should include any documentation, information or statement which substantiates the request for review.

(b) The Agency's Access Appeal Committee will review the Agency's initial denial to amend the record and the individual's documentation supporting amendment, within 30 working days. If additional time is required, the individual will be notified in writing of the reasons for the delay and the approximate date when the review is expected to be complete. Upon completion of the review, the Chairperson will notify the individual of the results.

(c) If the Committee upholds the Agency's denial to amend the record, the Chairperson will advise the individual of:

(1) The reasons for the Agency's refusal to amend the record;

(2) Her/his right and the procedure to add to the file a concise statement supporting the individual's disagreement with the decision of the Agency;

(3) Her/his right to seek judicial review of the Agency's refusal to amend the file.

(d) When an individual files a statement disagreeing with the Agency's refusal to amend a record, the Agency will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently have access to, use of, or reason to disclose the file. If information is disclosed regarding the area of dispute, the Agency will provide a copy of the individual's statement in the disclosure. Any statement which may be included by the Agency regarding the dispute will be limited to the reasons given to the individual for not amending the record. Copies of the Agency's statement shall be treated as part of the individual's record, but will not be subject to amendment by the individual under these regulations.

§ 505.10 Disclosure to third parties.

The Agency will not disclose any information about an individual to any person or another agency without the prior consent of the individual about whom the information is maintained, except as provided for in the following paragraphs.

(a) *Medical records*—May be disclosed to a doctor or other medical practitioner, named by the individual, as prescribed in § 505.6 above.

(b) *Accompanying individual*—When a requester is accompanied by any other person, the Agency will require that the requester sign a statement granting consent to the disclosure of the contents of the record to that person.

(c) *Designees*—If a person requests another person's file, she or he must present a signed statement from that person of record which authorizes and consents to the release of the file to the designated individual.

(d) *Guardians*—Parent(s) or legal guardian(s) of dependent minors or of an individual who has been declared by a court to be incompetent due to physical, mental or age incapacity, may act for and on behalf of the individual on whom the Agency maintains records.

(e) *Other disclosures*—A record may be disclosed without a request by or written consent of the individual to whom the record pertains if such disclosure conditions are authorized under the provisions of 5 U.S.C. 552a(b). These conditions are:

(1) *Disclosure within the Agency.* This condition is based upon a ''need-to-know'' concept which recognizes that Agency personnel may require access to discharge their duties.

(2) *Disclosure to the public.* No consent by an individual is necessary if

the record is required to be released under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The record may be exempt, however, under one of the nine exemptions of the FOIA.

(3) *Disclosure for a routine use.* No consent by an individual is necessary if the condition is necessary for a ''routine use'' as defined in § 505.2(g). Information may also be released to other government agencies which have statutory or other lawful authority to maintain such information. (See Appendix I—Prefatory Statement of General Routine Uses, FR 31977, Vol. 55, No. 151, Aug. 6, 1990)

(4) *Disclosure to the Bureau of the Census.* For purposes of planning or carrying out a census or survey or related activity. Title 13 U.S.C. section 8 limits the uses which may be made of these records and also makes them immune from compulsory disclosure.

(5) *Disclosure for statistical research and reporting.* The Agency will provide the statistical information requested *only* after all names and personal identifiers have been deleted from the records.

(6) *Disclosure to the National Archives.* For the preservation of records of historical value, pursuant to 44 U.S.C. 2103.

(7) *Disclosure for law enforcement purposes.* Upon receipt of a written request by another Federal agency or a State or local government describing the law enforcement purpose for which a record is required, and specifying the particular record. Blanket requests for all records pertaining to an individual are not permitted under the Privacy Act.

(8) *Disclosure under emergency circumstances.* For the safety or health of an individual (e.g., medical records on a patient undergoing emergency treatment).

(9) *Disclosure to the Congress.* For matters within the jurisdiction of any House or Senate committee or subcommittee, and/or joint committee or subcommittee.

(10) *Disclosure to the General Accounting Office (GAO).* For matters within the jurisdiction of the duties of the GAO's Comptroller General.

(11) *Disclosure pursuant to court order.* Pursuant to the order of a court of competent jurisdiction. This does not include a subpoena for records requested by counsel and issued by a clerk of the court.

§ 505.11 Fees.

(a) The first copy of any Agency record about an individual will be provided free of charge. A fee of $0.15 per page will be charged for any additional copies requested by the individual.

(b) Checks or money orders should be made payable to the United States Treasurer and mailed to the Freedom of Information Act/Privacy Act Unit, Office of the General Counsel, 301 4th Street, SW., Washington, DC 20547. The Agency will not accept cash.

§ 505.12 Civil remedies and criminal penalties.

(a) *Grounds for court action.* An individual will have a remedy in the Federal District Courts under the following circumstances:

(1) *Denial of access.* Individuals may challenge an Agency decision to deny them access to records to which they consider themselves entitled.

(2) *Refusal to amend a record.* Under conditions prescribed in 5 U.S.C. 552a(g), an individual may seek judicial review of the Agency's refusal to amend a record.

(3) *Failure to maintain a record accurately.* An individual may bring suit against the Agency for any alleged intentional and willful failure to maintain a record accurately, if it can be shown that the individual was subject to an adverse action resulting in the denial of a right, benefit, entitlement or employment the individual could reasonably have expected to be granted if the record had not been deficient.

(4) *Other failures to comply with the Act.* An individual may bring an action for any alleged failure by the Agency to comply with the requirements of the Act or failure to comply with any rule published by the Agency to implement the Act provided it can be shown that:

(i) The action was intentional or willful;

(ii) The Agency's action adversely affected the individual; and,

(iii) The adverse action was caused by the Agency's actions.

(b) *Jurisdiction and time limits.* (1) Action may be brought in the district court for the jurisdiction in which the individual resides or has a place of residence or business, or in which the Agency records are situated, or in the District of Columbia.

(2) The statute of limitations is two years from the date upon which the cause of action arises, except for cases in which the Agency has materially and willfully misrepresented any information required to be disclosed and when such misrepresentation is material to the liability of the Agency. In such cases the statute of limitations is two years from the date of discovery by the individual of the misrepresentation.

(3) A suit may not be brought on the basis of injury which may have occurred as a result of the Agency's disclosure of a record prior to September 27, 1975.

(C) *Criminal penalties.*—(1) Unauthorized disclosure. It is a criminal violation of the provisions of the Act for any officer or employee of the Agency knowingly and willfully to disclose a record in any manner to any person or agency not entitled to receive it, for failure to meet the conditions of disclosure enumerated in 5 U.S.C. 552a(b), or without the written consent or at the request of the individual to whom the record pertains. Any officer or employee of the Agency found guilty of such misconduct shall be fined not more than $5,000.

(2) *Failure to publish a public notice.* It is a criminal violation of the Act to willfully maintain a system of records and not to publish the prescribed public notice. Any officer or employee of the Agency found guilty of such misconduct shall be fined not more than $5,000.

(3) *Obtaining records under false pretenses.* The Act makes it a criminal offense to knowingly and willfully request or gain access to a record about an individual under false pretenses. Any person found guilty of such an offense may be fined not more than $5,000.

§ 505.13 General exemptions (Subsection (j)).

(a) General exemptions are available for systems of records which are maintained by the Central Intelligence Agency (Subsection (j)(1)), or maintained by an agency which performs as its principal function any activity pertaining to the enforcement of the criminal laws (Subsection (j)(2)).

(b) The Act does not permit general exemption of records compiled primarily for a noncriminal purpose, even though there are some quasi-criminal aspects to the investigation and even though the records are in a system of records to which the general exemption applies.

§ 505.14 Specific exemptions (Subsection (k)).

The specific exemptions focus more on the nature of the records in the systems of records than on the agency. The following categories of records may be exempt from disclosure:

(a) *Subsection (k)(1).* Records which are specifically authorized under criteria established under an Executive Order to be kept secret in the interest of national defense or foreign policy, and which are in fact properly classified pursuant to such Executive Order;

(b) *Subsection (k)(2).* Investigatory records compiled for law enforcement purposes (other than material within the

scope of subsection (j)(2) as discussed in § 505.13(a)). If any individual is denied any right, privilege, or benefit for which she/he would otherwise be eligible, as a result of the maintenance of such material, the material shall be provided to the individual, unless disclosure of the material would reveal the identity of a confidential source;

(c) *Subsection (k)(3).* Records maintained in connection with protection of the President and other VIPs accorded special protection by statute;

(d) *Subsection (k)(4).* Records required by statute to be maintained and used solely as statistical records;

(e) *Subsection (k)(5).* Records compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only if disclosure of the material would reveal the identity of a confidential source that furnished information to the Government;

(f) *Subsection (k)(6).* Testing or examination records used solely to determine individual qualifications for appointment or promotion in the Federal service when the disclosure of such would compromise the objectivity or fairness of the testing or examination process;

(g) *Subsection (k)(7).* Evaluation records used to determine potential for promotion in the armed services, but only if disclosure would reveal the identity of a confidential source.

(h) *Records of other agencies* Any Agency record system which contains information originated by another agency whose record system is exempt from certain provisions of the Act will not be disclosed by USIA. (See § 505.13, General Exemptions.)

§ 505.15 Exempt systems of records used.

USIA is authorized to use exemptions (k)(1), (k)(2), (k)(4), (k)(5), and (k)(6). The following Agency components currently maintain exempt systems of records under one or more of these specific exemptions: Executive Secretariat; Educational and Cultural Exchange Program; Legal Files; Privacy Act and Freedom of Information Act Files; Employee Grievance Files; Recruitment Records; Employee Master Personnel Records; Foreign Service Selection Board Files; Employee Training Files; Personnel Security and Integrity Records; International Broadcasting Bureau Director's Executive Secretariat Files; and International Broadcasting Bureau Employee Personnel Files. (See Appendix I—Prefatory Statement of General Routine Uses, 55 FR 31977, Aug. 6, 1990.)

Les Jin,

General Counsel.

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DEPARTMENT OF JUSTICE

28 CFR Part 74

[AG Order No. 2056–96]

RIN 1190–AA42

Redress Provisions for Persons of Japanese Ancestry: Guidelines for Individuals Who Relocated to Japan as Minors During World War II

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (''Department'') hereby adopts a change to the regulations governing redress provisions for persons of Japanese ancestry. This change will amend the standards of the Civil Liberties Act of 1988 to make eligible for payments of $20,000 those persons who are otherwise eligible for redress under these regulations, but who involuntarily relocated during World War II to a country with which the United States was at war. In practice, this amendment will make potentially eligible those persons who were evacuated, relocated, or interned by the United States Government; who, as minors, relocated to Japan or a country with which the United States was at war during World War II, and otherwise were unemancipated and lacked the legal capacity to leave the custody and control of their parents (or legal guardians) who chose to relocate to Japan during the war; and who did not enter active military service on behalf of the Japanese Government or another enemy government during the statutorily-defined war period.

EFFECTIVE DATE: September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Tink D. Cooper or Emlei M. Kuboyama, Office of Redress Administration, Civil Rights Division, U.S. Department of Justice, PO Box 66260, Washington, DC 20035–6260; (888) 219–6900 (voice) (toll-free) or (202) 219–4710 (TDD).

SUPPLEMENTARY INFORMATION:

I. Background

The Civil Liberties Act of 1988, Pub. L. 100–383 (codified at 50 U.S.C. app. 1989 *et. seq.*, as amended) (''the Act''), enacted into law the recommendations of the Commission on Wartime Relocation and Internment of Civilians (''Commission'') established by Congress in 1980. *See* Commission on Wartime Relocation and Internment of Civilians Act, Pub. L. 96–317 (1980). This bipartisan commission was established: (1) To review the facts and circumstances surrounding Executive Order 9066, issued February 19, 1942, and the impact of that Executive Order on American citizens and permanent resident aliens of Japanese ancestry; (2) to review directives of United States military forces requiring the relocation and, in some cases, detention in internment camps of these American citizens and permanent resident aliens; and (3) to recommend appropriate remedies. The Commission submitted to Congress in February 1983 a unanimous report, *Personal Justice Denied*, which extensively reviewed the history and circumstances of the decisions to exclude, remove, and then to detain Japanese Americans and Japanese resident aliens from the West Coast, as well as the treatment of Aleuts during World War II. Redress Provisions for Persons of Japanese Ancestry, 54 FR 34,157 (1989). The final part of the Commission's report, *Personal Justice Denied Part 2: Recommendations*, concluded that these events were influenced by racial prejudice, war hysteria, and a failure of political leadership, and recommended remedial action to be taken by Congress and the President. *Id.*

On August 10, 1988, President Ronald Reagan signed the Act into law. The purposes of the Act were to acknowledge and apologize for the fundamental injustice of the evacuation, relocation, and internment of Japanese Americans and permanent resident aliens of Japanese ancestry, to make restitution, and to fund a public education program to prevent the recurrence of any similar event in the future. 50 U.S.C. app. 1989–1989a.

Section 105 of the Act makes the Attorney General responsible for identifying, locating, and authorizing payment of redress to eligible individuals. *Id.* 1989b–4. The Attorney General delegated the responsibilities and duties assigned to her to the Assistant Attorney General for Civil Rights, who, in keeping with precedent, has designated the Office of Redress Administration (ORA) in the Civil Rights Division to carry out the execution of the responsibilities and duties under the Act. The regulations governing eligibility and restitution were drafted by ORA and published under the authority of the Justice

Department in 1989. 54 FR 34,157 (1989) (final rule) codified at 28 CFR Part 74).

ORA is charged with the responsibility of identifying and locating persons eligible for redress under the Act. To date, restitution has been paid to a total of 79,980 Japanese Americans and permanent resident aliens of Japanese ancestry.

Section 108 of the Act articulates the standards for redress eligibility. 50 U.S.C. app. 1989b–7(2). Among those excluded from eligibility under that section are persons ''who, during the period beginning on December 7, 1941, and ending on September 2, 1945, relocated to a country while the United States was at war with that country * * *'' *Id.* As part of a citizen exchange program during World War II, the United States returned formerly interned persons of Japanese ancestry to Japan on two occasions. On June 18, 1942, approximately 1,083 persons of Japanese ancestry returned to Japan aboard the M.S. *Gripsholm*, and on September 2, 1943, the *Gripsholm* returned another 1,340 persons of Japanese ancestry to Japan. A number of these persons asserted claims for redress based on their evacuation and internment by the United States Government prior to their relocation to Japan. However, based on section 108 of the Act and 28 CFR 74.4, ORA found them ineligible for redress. 54 FR 34,162 (1989). In all, 175 persons who relocated to Japan aboard the *Gripsholm* claimed compensation under the Act; approximately 124 of these claimants were persons who were under the age of 21 upon their departure from the United States. ORA's denial of redress to these claimants was upheld during the administrative appeal process set forth in 28 CFR 74.17. 54 FR 34,164–65 (1989).

It is helpful to describe the circumstances of these individuals. The West Coast voluntary evacuation period began with the issuance of Proclamation No. 1, on March 2, 1942, and ended with the issuance of Proclamation No. 4, effective on March 29, 1942. After this date, persons of Japanese ancestry were prohibited from leaving the West Coast because the Government was preparing to forcibly relocate and intern them later. Over 120,000 Japanese Americans were eventually interned. Of these 120,000, approximately 124 were minor children whose parents decided to depart the United States for Japan during the war on one of the M.S. *Gripsholm* sailings prior to September 2, 1945. The majority of the passengers on the first sailing were Japanese diplomats, while many of the passengers on the second sailing were American citizens or permanent resident aliens. Also aboard were some Japanese nationals who had left Japan to live and work in the United States and who, by law, were ineligible to apply for United States citizenship. Many of these individuals returned to Japan with their American-born children.

These American children persevered through an arduous period during which they were forcibly evacuated from their homes on the West Coast and interned with their parents. The minors were unable legally to return to their homes in the prohibited military zones on the West Coast and were required to travel to Japan with their parents on a long and difficult journey.

The loyalty of most of these American children, however, apparently never waned. According to ORA research, the vast majority of them did not enter into the active military service on behalf of an enemy government during World War II. Furthermore, almost all returned to the United States after the war. Out of the approximately 124 minors who have filed for redress, and who relocated to Japan with their parents during World War II, 108 subsequently returned to the United States, while only 16 remained in Japan.

II. Responses to Public Comments

As a result of this revised interpretation, more fully discussed below, the Civil Rights Division published a Notice of Proposed Rulemaking in the Federal Register, 61 FR 29716 (June 12, 1996), inviting the public to submit comments on this proposed category of eligible persons. The comment period expired on July 12, 1996.

By the close of the comment period, the Division had received 1,152 timely comments. Of these comments, 1,096 were based on a form letter which requested that the rulemaking process be expedited. Of the remaining comments, 51 were from individuals, 3 were from various organizations representing the interests of Japanese Americans, and 2 were from organizations that opposed this interpretation. Of these original comments, 45 were in support of the revision while 11 comments were against the revision. Also, a few comments were not timely filed as indicated by the postmark and were not considered. The Department read and analyzed each comment and considered the merits of the points of view expressed in them.

The vast majority of comments indicated support for this provision. The 1,096 form letters were favorable and requested that the regulatory process be expedited. There were also 45 comments (42 individual letters, 3 organization letters) in support of the amendment changes. Twenty-eight of the letters supported the amendments and generally asserted that the children of the internees suffered as much as their parents had during the evacuation and relocation period, since the children themselves were interned as well as being subjected to the war-time conditions in Japan following their relocation. Several letters echoed this sentiment and indicated that minors did not have the ability to freely choose to relocate to Japan during the war, and that the prisoner exchange was unjust. Several elected officials, including U.S. Senator Paul Wellstone, favorably agreed with this amendment. One person was in favor of this proposal but mistakenly believed that anyone who returned to Japan at any time would now be eligible; to the contrary, those persons who returned to Japan before the start of World War II, remained in Japan throughout the war, will remain ineligible.

In addition, there were several comments that opposed this revision and indicated that the Act's original exclusionary language in section 108 should apply to all persons, regardless of age, who relocated to Japan during World War II. There were 11 comments (9 individual letters, 2 organization letters) opposed to making this category of claimants eligible for redress. These comments raised four main issues: (1) That it was wrong to extend redress solely to Japanese Americans without extending compensation to those of German and Italian descent and their children who were similarly situated; (2) that the American children of Japanese parents were not forcibly removed from their homes, but rather their parents as their natural guardians made the decision for them; (3) that these children, American-born with Japanese parents, had dual nationality and were technically citizens of Imperial Japan under Japanese law, and were not American citizens; and (4) that, in light of the federal government's current budgetary crisis, such expensive outlays were not justified.

The Department has considered the merit of each of these comments and disagrees with the viewpoints that were expressed. First, the Department notes that it is compelled to comply with the laws established by Congress and is fulfilling its mandate. In response to the comments, the Department notes that the purpose of the Act was to provide compensation for the injustices suffered by Japanese Americans during World

War II as a result of specific Federal Government action based solely on their Japanese ancestry. A Federal appeals court has determined that Congress' decision to compensate only those of Japanese ancestry who sustained deprivations of liberty or property as a result of defined Federal Government actions during World War II survives constitutional scrutiny. *Jacobs* v. *Barr,* 959 F.2d 313 (D.C. Cir.) *cert. denied,* 113 S.Ct. 95 (1992). In *Jacobs,* an American child of German ancestry, who was detained in an internment camp during the war with his father but was ineligible for redress under the Act, challenged the Act on equal protection grounds. Jacobs argued that he was similarly situated with respect to Japanese Americans who received compensation. The court indicated that Congress found that there was no mass exclusion or detention ordered against American citizens of German or Italian descent. *Id.* at 319. It also concluded that the Act survived the strictest level of scrutiny and that Congress' decision to compensate Japanese Americans and not German Americans was ''substantially related (as well as narrowly tailored) to the important (and compelling) governmental interest of compensating those who were interned during World War II because of racial prejudice.'' *Id.* at 321.

Second, one of the threshold requirements for eligibility under the Act is U.S. citizenship or permanent residency status during the defined statutory period. In each case, minor relocatees who will be eligible for redress were American-born and meet the other criteria required by the Act. It is contrary to the law to assert that children born in the United States are not American citizens, but are technically citizens of another country. The doctrine of ''jus soli,'' incorporated into the United States Constitution through the Fourteenth Amendment, makes, with certain limited exceptions, all persons born in the United States and subject to its jurisdiction citizens at birth. *See* U.S. Const., amend. XIV, section 1; 8 U.S.C. 1401(a). (Persons born to certain foreign diplomats in the United States do not necessarily obtain U.S. citizenship at birth since their parents have diplomatic immunity and are therefore not subject to the jurisdiction of the United States.)

Third, we note that the minor relocatees did not make a knowing and voluntary decision to relocate to Japan. The Department has concluded that section 108 should not be construed to make ineligible for redress those persons who relocated involuntarily. (See Section III for a detailed legal discussion of this issue.) Finally, Congress appropriated funds to provide redress to these claimants and the Department is fulfilling its designated role.

The Department reviewed and analyzed each comment and considered the merits of the points of view expressed in them. Substantive changes were not made in the proposals, but other non-substantive changes were made in order to provide further clarification of this amendment.

III. Revised Interpretation

Following publication of the draft regulations in 1989, the Department received 61 comments concerning the eligibility of persons who, as minors, relocated to Japan aboard the *Gripsholm*. Based on the comments received at that time, however, it found no reason to differentiate between adults who returned to Japan during World War II and minors. As a result, in the preamble of the final regulation, the Department stated that ''the exclusionary language of the Act would preclude from eligibility the minors, as well as adults, who were relocated to Japan during [the relevant] time period.'' 54 FR 34,160 (1989).

The Department, based on an argument not previously presented, now revises its interpretation regarding the eligibility of persons who relocated to Japan during World War II. Specifically, it revises its determination of eligibility with regard to persons who were under the age of 21 and not emancipated as of their dates of departures from the United States, who did not participate in the active military service on behalf of an enemy government during World War II, and who are otherwise eligible for redress under these regulations.

In effecting this revision, the Department is operating within the established framework of *Chevron* versus *N.R.D.C.,* 467 U.S. 837, 842–43. Under *Chevron,* an agency must give effect to the unambiguously expressed intent of Congress when interpreting a statute. However, where an act is silent or ambiguous with respect to a specific issue, Congress has assigned to the agency the responsibility to elucidate a specific provision of the statute by regulation. *Id.* at 843–44. For the reasons set forth below, the Department believes that the proscription of section 108 is ambiguous with respect to its coverage of the class of individuals described above, and that the revision is a reasonable interpretation of the statute.

As enacted, section 108 expressly excludes from eligibility ''any individual who, during the period beginning on December 7, 1941, and ending on September 2, 1945, *relocated* to (another) country while the United States was at war with that country.'' 50 U.S.C. app. 1989b–7 (emphasis added). This language does not specifically resolve whether the exclusion applies to individuals who relocated involuntarily.

This issue is suggested on the face of the statute when it is read as a whole because, while the statute uses the active voice in section 108's exclusion clause, the eligibility clauses of the statute use the passive voice. For example, section 108 begins by defining an ''eligible individual'' as a person of Japanese ancestry ''who, during the evacuation, relocation and internment period— * * * *was* confined, held in custody, relocated, or otherwise deprived of liberty or property as a result of * * * (various Executive Orders and Acts).'' 50 U.S.C. app. 1989b–7(2) (emphasis added). Title II of the Act, which provides reparations to Aleuts evacuated from their home islands during World War II, similarly defines an eligible Aleut as a person ''who, as a civilian, *was* relocated by authority of the United States from his or her home village * * * to an internment camp * * *.'' 50 U.S.C. app. 1989c–1(5) (emphasis added). The contrasting use of the active voice in the exclusion clause suggests the possibility that section 108 might be read to exclude only those individuals who voluntarily relocated to an enemy country during the war.

This possibility is consistent with judicial decisions. The United States Courts of Appeals for the District of Columbia and the Ninth Circuit have deemed the use of the active as opposed to the passive voice relevant for purposes of statutory interpretation. *Dickson* versus *Office of Personnel Mgmt.,* 828 F.2d 32, 37 (D.C. Cir. 1987) (isolated use of passive voice in phrase defining liability is significant and allows suit against Office of Personnel Management whenever an adverse determination ''is made,'' even if by another agency); *United States* versus *Arrellano,* 812 F.2d 1209, 1212 (9th Cir. 1987) (clause of statute defining criminal intent phrased in active voice applies to conduct of the accused, while second clause phrased in passive voice applies only to the conduct of others). Thus, the statutory language creates an ambiguity as to whether eligibility decisions should distinguish between voluntary relocatees and involuntary relocatees. For the reasons that follow, we believe the better interpretation is to exclude only individuals who relocated voluntarily.

The Act's legislative history provides very little significant insight into congressional intent regarding the eligibility of involuntary relocatees. As originally introduced, neither the House nor the Senate bill included a relocation exclusion provision in the section defining eligible individuals. Entering conference, the House version of the Act contained the exclusion, while the Senate version contained no such provision. The conferees agreed to adopt the House provision, which excluded ''those individuals who, during the period from December 7, 1941, through September 2, 1945, relocated to a country at war with the United States.'' H.R. Conf. Rep. No. 785, 100th Cong., 2d Sess. 22 (1988). There is no additional discussion of the relocation exclusion in the conference report.

A discussion of whether individuals who returned to Japan should be included in the definition of ''eligible individuals'' is contained in a witness statement submitted to the House and Senate subcommittees considering the legislation. In testimony opposing the enactment of the bill, the Assistant Attorney General for the Civil Division, Richard K. Willard, noted that as then written (without the relocation exclusion), the breadth of the definition would cover any individual who had been subject to exclusion, relocation, or internment, including persons living outside of the United States. In the Department's view, this overlooked the fact that at least several hundred of the detainees were ''fanatical pro-Japanese,* * *. and (had) voluntarily sought repatriation to Japan after the end of the war.'' The Department believed that allowing these disloyal individuals to receive the benefit of the legislation would be unfair to the United States and to loyal persons of Japanese descent. To accept the Findings and to Implement the Recommendations of the Commission on Wartime Relocation and Internment of Civilians: Hearing on S. 1009 Before the Subcomm. on Federal Services, Post Office, and Civil Service of the Senate Comm. on Governmental Affairs, 100th Cong., 1st Sess. 281, 296 (1987) (Hearings). This statement, however, does not reveal or suggest an opinion that the bill ought to exclude from redress persons who *involuntarily* relocated to an enemy country.

In sum, the Department believes that section 108's exclusion of persons who relocated to an energy country during World War II is susceptible to the interpretation that it does not apply to persons who relocated involuntarily, that so interpreting the statute gives effect to the principles Congress meant to embody in the exclusionary provision, and that this interpretation is otherwise a reasonable construction of the statute.

The Department further notes that the determination of whether a person relocated voluntarily to an enemy country during World War II is extraordinarily difficult to determine at this late date, over half a century since the period during which the actions that are relevant to a determination about the state of mind of individual relocatees took place. Under these circumstances, the Department has discretion to structure the process for determining redress eligibility in a manner that avoids the inherent inaccuracy of any attempt to engage in a case-by-case inquiry into the subjective factor of state of mind, as well as the potential administrative burdens associated with case-by-case inquiry, by articulating some reasonable, objective criteria to guide the process.

To that end, the final rule adopts two bright line standards to administer section 108's exclusion provision. First, any person who was 21 years of age or older, emancipated by petition of the court or by marriage, or otherwise emancipated, as of the date of his or her departure from the United States, shall be irrebuttably presumed to have relocated voluntarily, and will be ineligible for redress under the Act. Second, any person who served in the Japanses military, or the military of another enemy country, during the statutorily-defined war period shall be irrebuttably presumed to have relocated voluntarily and, therefore, will be ineligible for redress. All otherwise eligible persons falling outside these categories, that is, persons who were minors and not otherwise emancipated as of the dates of their departures from the United States and who did not serve in the Japanese military or the military of another enemy government during the statutorily-defined war period, shall be considered involuntary relocatees and therefore eligible for redress under the Act.

The Supreme Court has affirmed the ability of agencies to employ generally applicable rules as an alternative to case-by-case adjudication. *See, e.g., American Hospital Ass'n* v. *NLRB,* 499 U.S. 606, 611 (1991) (''Prior decisions of this Court) confirm that, even if a statutory scheme requires individualized determinations, the decision-maker has the authority to rely on rulemaking to resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority.''). In particular, the Court has noted that the Congress is free to use prophylactic rules despite their ''inherent imprecision'' when it wishes to avoid ''the expense and other difficulties of individual determinations.'' *Weinberger* v. *Salfi,* 422 U.S. 749, 777 (1975).

The Department believes that under *American Hospital Ass'n* and other authorities agencies enjoy a similar latitude to that enunciated in *Weinberger.* As in *Weinberger,* justifying the use of such bright-line rules does not require determining whether the rules ''precisely filter [] out those, and only those, who are in the factual position which generated the congressional concern * * * (n) or * * * whether (they) filter [] out a substantial part of the class which caused the * * * concern, or whether (they) filter [] out more members of the class than nonmembers.'' *Id.* Rather, the question is whether the Department could ''rationally have concluded both that * * * particular (rules) would protect against (the abuse Congress sought to avoid), and that the expense and other difficulties of individualized determinations justified (their) inherent imprecision.'' *Id.* For the reasons that follow, the final rule satisfies this standard.

As stated above, the final rule applies an irrebuttable presumption that persons who were 21 years of age or older, emancipated by petition of the court or by marriage, or otherwise emancipated as of the dates of their departures from the United States, were voluntary relocatees. The Department proposes to apply this irrebuttable presumption because adult relocatees were more likely than minor relocatees to have been able to assent freely to their relocation to Japan. The age of 21 as of the date of departure was chosen because, during the period covered by the Act's relocation exclusion, the legal age of majority in most states was 21.

Noting the dearth of legislative history pertaining to the Act's exclusion clause, the United States Court of Federal Claims stated in *Suzuki* v. *United States,* 29 Fed. Cl. 688 (1993), that Congress may have enacted the exclusion clause in an effort to deny benefits to individuals who had either been disloyal to the United States or ''who, despite possible continued loyalty to the United States, had aided an energy country during war.'' *Id.* at 695. Nothing in the Department's revised interpretation of section 108 is inconsistent with this observation, since both of the possible purposes cited by the court assume volition on the part of the relocatee to leave the United States and relocate to Japan. If, by contrast, an individual relocatee was not free to

assent to his or her relocation on account of his or her minority status, it is reasonable for the Department to conclude that such individual was not the type of person against whom Congress intended to apply section 108's exclusion provision. By itself the relocation of minors during World War II does not raise doubts or inferences concerning disloyalty. In fact, most American-born minor relocatees returned to the United States following the war.

Examples of distinctions in the treatment of minors and adults abound in our law. *See Thompson* v. *Oklahoma,* 487 U.S. 815, 823 (1988) (plurality opinion). Accordingly, it is reasonable for the Department to apply such a distinction in determing whether individuals who relocated to Japan during the statutorily-defined war period did so voluntarily.

The final rule also applies an irrebuttable presumption the individuals who served in the military of an enemy government during the statutorily-defined war period relocated voluntarily because the Department believes that evidence that an individual entered into the active military service on behalf of an enemy government following his or her departure from the United States is a strong indication that the individual relocated voluntarily. In view of that reasonable belief and the fact that it is difficult at this time to determine with complete certainty the motivations of individuals who entered the active military service against the United States during World War II, and in light of the increased administrative burdens associated with individualized efforts to ascertain the 50-year old motivations of such individuals, the Department believes it is appropriate to interpret the fact that an individual served in the military of an enemy government following his or her relocation as evidence that the individual relocated voluntarily.

The Department will thus require individuals who apply for redress under the Act and who relocated to Japan during the statutorily-defined war period to provide information as to their ages and emancipation status upon their dates of departure from the United States to relocate to Japan, and to state whether or not they participated in the active military service on behalf of an enemy government, including the Japanese Government, during World War II. If such individuals state that they were 21 years of age or older, or emancipated minors, as of the dates of their departures, they will be deemed ineligible for redress under the Act. Similarly, if such individuals state that they participated in the active military service on behalf of an enemy government during World War II, they also will be deemed ineligible. In contrast, otherwise eligible relocatees who were under the age of 21 and not otherwise emancipated upon the dates of their departures from the United States, and who did not serve in the military on behalf of an enemy government during World War II, will be eligible for redress under the Act.

IV. Regulatory Matters

This rule relieves a restriction upon individuals otherwise eligible for redress under the Act and is therefore exempt from the provision of the Administrative Procedures Act pertaining to delay in effective date. 5 U.S.C. 553(d). Moreover, the Department has determined that this final rule will be effective immediately upon publication in the Federal Register for good cause shown, *i.e.*, to expedite these claims, since involuntary relocatees are some of the older claimants and at least four persons, potentially eligible under this revision, have since passed away; to process the current claims as quickly as possible because of budgetary concerns and the program's sunset date of August 10, 1998; and to resolve a pending lawsuit in the U.S. Court of Federal Claims involving 14 plaintiffs who were minor children during the war and who will be potentially eligible under this revision.

The Attorney General in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities because this rule confers a benefit on a limited group of individuals.

The Office of Management and Budget has determined that this final rule is a significant regulatory action under Executive Order No. 12866 and, accordingly, this final rule has been reviewed and approved by the Office of Management and Budget. Information collection associated with this regulation has been approved by the Office of Management and Budget, OMB No. 1190–0010.

List of Subjects in 28 CFR Part 74

Administrative practice and procedure, Aliens, Archives and records, Citizenship and naturalization, Civil rights, Indemnity payments, Minority groups, Nationality, War claims.

For the reasons set forth in the preamble and by the authority vested in me, including 28 U.S.C. 509 and 510, chapter I of title 28, part 74, of the Code of Federal Regulations is amended as follows:

PART 74—CIVIL LIBERTIES ACT REDRESS PROVISION

1. The authority citation for part 74 continues to read as follows:

Authority: 50 U.S.C. app. 1989b.

2. In Subpart B, § 74.4 is revised to read as follows:

Subpart B—Standards of Eligibility

§ 74.4 Individuals excluded from compensation pursuant to section 108(B) of the Act.

(a) The term ''eligible individual'' does not include any individual who, during the period beginning on December 7, 1941, and ending on September 2, 1945, relocated to a country while the United States was at war with that country.

(b) Nothing in paragraph (a) of this section is meant to exclude from eligibility any person who, during the period beginning on December 7, 1941, and ending on September 2, 1945, relocated to a country while the United States was at war with that country, and who had not yet reached the age of 21 and was not emancipated as of the date of departure from the United States, provided that such person is otherwise eligible for redress under these regulations and the following standards:

(1) Persons who were 21 years of age or older, or emancipated minors, on the date they departed the United States for Japan are subject to an irrebuttable presumption that they relocated to Japan voluntarily and will be ineligible.

(2) Persons who served in the active military service on behalf of the Government of Japan or an enemy government during the period beginning on December 7, 1941 and ending on September 2, 1945 are subject to an irrebuttable presumption that they departed the United States voluntarily for Japan. If such individuals served in the active military service of an enemy country, they must inform the Office of such service and, as a result, will be ineligible.

Dated: September 21, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–25027 Filed 9–27–96; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 504, 506, 507, and 508

RIN 1205–AB–13

Removal of Duplicative Immigration Regulations

AGENCIES: Wage and Hour Division, Employment Standards Administration, and Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is removing duplicative immigration regulations from the Code of Federal Regulations. These regulations will continue to appear in the Employment and Training Administration's regulations. This rulemaking is in response to the National Performance Review, which calls for the removal of obsolete and unnecessary regulations.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: Terence Finegan, Director, Division of Policy, Legislation, and Dissemination, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N5637, Washington, DC 20210; tel. (202) 219–7669 x126 (this is not a toll-free call); or Tom Shierling, Acting Team Leader, U.S Department of Labor, Employment Standards Administration, Wage and Hour Division, 200 Constitution Avenue, NW., Room S3510, Washington, DC 20210; tel. (202) 501–3884 (this is not a toll-free call).

SUPPLEMENTARY INFORMATION: In March 1995, the President issued a new directive to federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for comprehensive regulatory reform. The President directed all agencies to undertake a page-by-page review of their regulations with a goal of eliminating or modifying those that are obsolete or which are otherwise in need of reform. This notice removes duplicative regulations from the CFR as part of DOL's response to this directive. The Employment Standards Administration, Wage and Hour Division's regulations removed from Title 29, CFR, are duplicated in the Employment and Training Administration's regulations in 20 CFR Part 655, and reflect the two agencies' joint operation of various worker protection provisions related to the temporary admission to the United States of nonimmigrant foreign workers.

Removal of the duplicate regulations for the H–1A nurses labor attestation program, the D–1 foreign maritime crewmembers program, the H–1B nonimmigrant labor condition application program, and the F–1 students labor attestation program from title 29 is clearly in the Department's interest, and a savings to the public. Since their inception, the Secretary has implemented the aforementioned temporary nonimmigrant programs by delegating the administrative functions to the Employment and Training Administration (ETA) and the enforcement functions to the Wage and Hour Division of the Employment Standards Administration (ESA). ETA and ESA jointly issued the duplicative regulations governing their respective functions. Despite this division of authority, each agency published in its own program regulations *both* the administrative and enforcement provisions for the H–1A, D–1, H–1B and F–1 programs in their entirety. Thus, the ETA regulations at 20 CFR part 655, subparts D through K, and the ESA regulations at 29 CFR parts 504, 506, 507 and 508, contain duplicative provisions governing the administration and enforcement of the H–1A, D–1, H–1B and F–1 temporary nonimmigrant programs. Because this duplication is inefficient and unnecessary, the Department has elected to remove the duplicative provisions from its regulations at 29 CFR.

Additionally, ETA and ESA have explored other possibilities for eliminating the duplication of these regulations, including a proposal that each agency attempt to remove the provisions pertaining to the other's delegated functions. Under that alternative, ETA would have removed the enforcement-related provisions pertaining to the H–1A, D–1, H–1B and F–1 programs from its regulations at 20 CFR part 655, and ESA would have removed the administration-related provisions pertaining to those same temporary nonimmigrant programs from its regulations at 29 CFR parts 504, 506, 507 and 508. Upon closer scrutiny of the program provisions, the Department determined that the administration and enforcement provisions were sufficiently integrated that any attempt to separate the provisions would require substantially rewriting the regulations. Thus, removal of the duplicative administration and enforcement provisions from ESA's regulations at 29 CFR, parts 504, 506, 507 and 508, and adding a cross-reference to the still-effective joint regulations at 20 CFR part 655, subparts D through K, is the most efficient action.

Elimination of this duplication will also save the Department and the public a substantial amount in printing costs. Copies of title 20, CFR, are available widely in libraries and from the Government Printing Office, as well as on the Internet.

Accordingly, this rule revises parts 504, 506, 507, and 508, governing the administration and enforcement of the H–1A, D–1, H–1B and F–1 temporary nonimmigrant programs in title 29 of the CFR, to include only cross-references to the relevant regulations published at 20 CFR part 655, subparts D through K.

Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving the public comment on this rule. Publication of a proposed rule and solicitation of comments would be neither necessary nor fruitful, since this final rule affects only duplicative regulations governing the H–1A, D–1, H–1B and F–1 temporary nonimmigrant programs. Further, this is a rule of agency organization and procedure which requires no notice, pursuant to 5 U.S.C. 553(b)(A). Current regulations governing these programs remain in effect in title 20, part 655, subparts D through K of the CFR.

EFFECTIVE DATE: This regulation is effective October 30, 1996.

Regulatory Procedures—Executive Order 12866

This final rule has been reviewed by DOL pursuant to Executive Order 12866. Executive Order 12866 requires that regulations be reviewed for consistency with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with and furthers these priorities and principles. Specifically, it responds directly to the President's Regulatory Reinvention Initiative by eliminating duplicative regulations. It entails no increase in cost or burden on State and local governments or other entities. It is not a significant regulatory action under the Executive Order.

Small Business Regulatory Enforcement Fairness Act

The Department has determined that this final rule is not a ''major rule'' requiring prior approval by the Congress and the President pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), because it is not likely to result in

(1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

This final rule is effective 30 days after publication.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. This rule has no significant effect on a substantial number of small entities. The Final Rule removes duplicative regulations governing the H–1A, D–1, H–1B and F–1 temporary nonimmigrant programs from title 29 of the CFR, and cross-references title 20 CFR, part 655, subparts D through K, where the relevant regulations remain in effect. This Final Rule addresses issues of agency administration which do not affect the obligations of the regulated public. Thus, the Final rule does not have a significant economic impact on a substantial number of small entities. Further, since this Final Rule was not preceded by a proposed rule, it is not a regulation subject to the provisions of the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This regulation contains no information collection requirements which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3500 et seq.).

List of Subjects

29 CFR Part 504

Administrative practice and procedure, Aliens, Employment, Enforcement, Health professions, Labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Wages.

29 CFR Part 506

Administrative practice and procedure, Aliens, Crewmembers, Employment, Enforcement, Immigration, Labor, Longshore work, Penalties, Reporting and recordkeeping requirements.

29 CFR Part 507

Administrative practice and procedure, Aliens, Employment, Enforcement, Fashion models, Immigration, Labor, Penalties, Reporting and recordkeeping requirements, Specialty occupations, Wages, Working conditions.

29 CFR Part 508

Administrative practice and procedure, Aliens, Employment, Enforcement, Immigration, Labor, Penalties, Reporting and recordkeeping requirements.

Signed at Washington, DC, this 23rd day of *September,* 1996.

Robert B. Reich,

Secretary of Labor.

For the reasons set forth in the preamble, 29 CFR chapter V is amended as set forth below:

1. Part 504 is revised to read as follows:

PART 504—ATTESTATIONS BY FACILITIES USING NONIMMIGRANT ALIENS AS REGISTERED NURSES

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103; and sec. 341 (a) and (b), Pub. L. 103–182, 107 Stat. 2057.

§ 504.1 Cross-reference.

Regulations governing labor condition attestations by facilities using nonimmigrant aliens as registered nurses are found at 20 CFR part 655, subparts D and E.

2. Part 506 is revised to read as follows:

PART 506—ATTESTATIONS BY EMPLOYERS USING ALIEN CREWMEMBERS FOR LONGSHORE ACTIVITIES IN U.S. PORTS

Authority: 8 U.S.C. 1288 (c) and (d).

§ 506.1 Cross-reference.

Regulations governing attestations by employers using alien crewmembers for longshore activities in U.S. ports are found at 20 CFR part 655, subparts F and G.

3. Part 507 is revised to read as follows:

PART 507—LABOR CONDITION APPLICATIONS AND REQUIREMENTS FOR EMPLOYERS USING NONIMMIGRANTS ON H–1B SPECIALTY VISAS IN SPECIALTY OCCUPATIONS AND AS FASHION MODELS

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note); and sec. 341 (a) and (b), Pub. L. 103–182, 107 Stat. 2057.

§ 507.1 Cross-reference.

Regulations governing labor condition applications requirements for employers using nonimmigrants on H–1B specialty visas in specialty occupations and as fashion models are found at 20 CFR part 655, subparts H and I.

4. Part 508 is revised to read as follows:

PART 508—ATTESTATIONS FILED BY EMPLOYERS UTILIZING F–1 STUDENTS FOR OFF-CAMPUS WORK

Authority: 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

§ 508.1 Cross-reference.

Regulations governing attestations by employers using F–1 students in off-campus work are found at 20 CFR part 655, subparts J and K.

[FR Doc. 96–24820 Filed 9–27–96; 8:45 am]

BILLING CODE 4510–30–P; 4510–27–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT26–7–6874a; FRL–5609–8]

Clean Air Act Approval and Promulgation of State Implementation Plan for Montana; Libby Moderate PM_{10} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA approves the State implementation plan (SIP) revisions submitted by the State of Montana on March 15, 1995 to satisfy the Federal Clean Air Act requirement to submit contingency measures for the Libby moderate PM_{10} (particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers) nonattainment area. The March 15, 1995 submittal also recodified the Lincoln County regulations. In addition, EPA is approving a SIP revision submitted by the Governor of Montana on May 13,

1996, which included revisions to the Lincoln County regulations regarding open burning and other minor administrative amendments. EPA is approving these SIP revisions because they are consistent with the applicable requirements of the Clean Air Act, as amended (Act), and EPA guidance.

DATES: This action is effective on November 29, 1996 unless notice is received by October 30, 1996 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; Montana Department of Environmental Quality, Air Quality Division, 836 Front Street, Helena, Montana 59620–5520; and The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8P2–A, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Background

The Libby, Montana area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Act, upon enactment of the Clean Air Act Amendments of 1990. See 56 FR 56694 (Nov. 6, 1991); 40 CFR 81.327 (specifying designations for Montana). Those States containing initial moderate PM_{10} nonattainment areas were required to submit several provisions by November 15, 1991. These provisions, including an attainment demonstration (or demonstration that timely attainment is impracticable), are described in EPA's final rulemaking for the Libby moderate PM_{10} nonattainment area SIP (59 FR 44627, August 30, 1994). The Libby PM_{10} control measures targeted re-entrained road dust, residential wood burning, prescribed burning, and industrial sources for reductions in PM_{10} emissions to demonstrate attainment of the PM_{10} national ambient air quality standards (NAAQS). See the August 30, 1994 notice of final rulemaking and associated Technical Support Document (TSD) for further details.

Such States were also required to submit contingency measures by November 15, 1993 (see 57 FR 13543). The Governor of Montana submitted revisions to the SIP for Libby on March 15, 1995, to address this requirement.

In addition, on May 13, 1996, the Governor of Montana submitted revisions to the Lincoln County open burning rules and other minor revisions for approval into the SIP.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566).

A. Analysis Requirements for State Submissions

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. [See sections 110(a)(2) and 110(l) of the Act.] EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) of the Act and 57 FR 13565]. The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V.

To entertain public comment, the State of Montana, after providing adequate notice, held public hearings on December 16, 1994 to consider the Libby PM_{10} contingency measures and on February 1, 1996 to consider the revisions to the Lincoln County open burning rules and other minor revisions. Following the hearings, the Montana Board of Health and Environmental Sciences adopted the Libby PM_{10} contingency measures and the revisions to the Lincoln County open burning rules. The SIP revisions were formally submitted to EPA for approval on March 15, 1995 and on May 13, 1996, respectively.

The SIP revisions were reviewed by EPA to determine completeness shortly after their submittal, in accordance with the completeness criteria referenced above. The submittals were found to be complete, and letters dated April 21, 1995 and July 3, 1996 were forwarded to the Governor indicating the completeness of the submittals and the next steps to be taken.

2. PM_{10} Contingency Measures

The Clean Air Act requires States containing PM_{10} nonattainment areas to adopt contingency measures that will take effect without further action by the State or EPA upon a determination by EPA that an area failed to make reasonable further progress (RFP) or to timely attain the applicable NAAQS, as described in section 172(c)(9). See generally 57 FR 13510–13512 and 13543–13544. Pursuant to section 172(b), the Administrator has established a schedule providing that States containing initial moderate PM_{10} nonattainment areas shall submit SIP revisions containing contingency measures no later than November 15, 1993. (See 57 FR 13543, n. 3.)

The General Preamble further explains that contingency measures for PM_{10} should consist of other available control measures, beyond those necessary to meet the core moderate area control requirement to implement reasonably available control measures (see sections 172(c)(1) and 189(a)(1)(C) of the Act). Based on the statutory structure, EPA believes that contingency measures must, at a minimum, provide for continued progress toward the attainment goal during the interim period between the determination that the SIP has failed to achieve RFP or provide for timely attainment of the NAAQS and additional formal air quality planning following the determination (57 FR 13511).

Section 172(c)(9) of the Act specifies that contingency measures shall ''take effect * * * without further action by the State or the [EPA] Administrator.'' EPA has interpreted this requirement (in the General Preamble at 57 FR 13512) to mean that no further rulemaking activities by the State or EPA would be needed to implement the contingency measures. In general, EPA expects all actions needed to effect full implementation of the measures to occur within 60 days after EPA notifies the State of its failure to attain the standard or make RFP. EPA recognizes that certain actions, such as notification of sources, modification of permits, etc., may be needed before some measures could be implemented. However, States must show that their contingency measures can be implemented with minimal further administrative action on their part and with no additional rulemaking action such as public hearing or legislative review.

The provisions for selection and implementation of contingency measures for the Libby moderate PM_{10} nonattainment are in Section 75.1.103 of the Lincoln County Air Pollution Control Program. The County and State have targeted three sources of emissions for potential implementation of contingency measures: residential wood combustion, re-entrained road dust, and industry emissions. The County rule provides that, within 60 days of notification by the State or EPA that the Libby moderate PM_{10} nonattainment

area has failed to attain the PM_{10} NAAQS or to make RFP, one or more of three measures will be implemented depending on which source(s) of emissions is determined to be the significant contributor(s) to the problem. The County rule further provides that, if initially no source is determined to be the significant contributor, a comprehensive review, including chemical and microscopic analysis of exposed PM_{10} filters, will be conducted by the County and the State to determine the significant contributor. In the meantime, the County rule requires that at least one of the three available contingency measures be implemented on an interim basis. This interim contingency measure will remain in effect until the significant source is identified and a permanent contingency measure has been implemented.

The specific contingency measures adopted for the Libby moderate PM_{10} nonattainment area and their projected effectiveness are as follows:

a. Residential Wood Burning Contingency Measure

Section 75.1.206(3) of the local regulations contains the residential wood burning contingency measure. The County rule provides for early implementation of this contingency measure if needed, which is acceptable. If this measure is implemented, the County regulation provides that:

No solid fuel burning device shall be operated within the Libby Air Pollution Control District between October 1 and March 31 unless it has been permitted by the [Lincoln County Health] Department as a Class I, Class II, Low Income Exemption or Sole Source device or is operating on a validated Temporary Emergency Heating Authorization Permit.

This contingency measure goes beyond the existing control measure, which limits the use of these types of solid fuel burning devices only when an alert is called by the County (i.e., when PM_{10} levels exceed 100 $\mu g/m^3$ and conditions indicate that PM_{10} levels will remain above 100 $\mu g/m^3$).

If the residential wood burning contingency measure is implemented in the Libby nonattainment area, the State estimates that the control efficiency of the wood burning measures will be 57% in the 24-hour attainment demonstration (an increase of 5% over the control efficiency of the residential wood burning measures in the original SIP attainment demonstration). The State also estimates that the annual control efficiency of the wood burning measures would be 54% (an increase of 20% over the annual control efficiency in the original SIP). Total reduction from the contingency measure is calculated to be 256 pounds of PM_{10} reduced per day more than without the contingency measure, and 19.4 tons more per year.

b. Re-entrained Road Dust Contingency Measure

Section 75.1.303(3) of the County regulations contains the re-entrained road dust contingency measure. The County rule provides for early implementation of this contingency measure if needed, which is acceptable. If this measure is implemented, the following changes to the existing road dust control plan (which has been approved as part of the Libby PM_{10} SIP) become effective:

(1) The Area of Road Sanding and Sweeping will be extended to the boundaries of the Air Pollution Control District. Thus, the prioritized street sweeping and flushing schedule will be expanded to apply to all public roadways within the Road Sanding and Sweeping District;

(2) The use of liquid de-icing agents (which was not previously required) will be mandatory on all roads and parking lots within the expanded Road Sanding and Sweeping District. Use of sanding materials will be prohibited except in emergency situations; and

(3) Any sanding materials used in an emergency situation must meet the specifications identified in Section 75.1.303(1) of the County regulation. The City of Libby and the Department of Transportation have installed tanks and converted equipment for the use of a liquid de-icer instead of sanding material.

If the re-entrained road dust contingency measure is implemented, the State estimates that the control efficiency of the re-entrained road dust measures will be 90% in the 24-hour attainment demonstration (an increase of 42% over the control efficiency of the re-entrained road dust measures in the original SIP attainment demonstration). The State also estimates that the annual control efficiency of the re-entrained road dust contingency measure will be 71% (an increase of 33% over the original SIP attainment demonstration). Total reduction from the contingency measure is calculated to be 7421 pounds of PM_{10} per day and 403 tons of PM_{10} per year than without the contingency measure.

c. Stimson Lumber Company Contingency Measure

Section 75.1.103(2)(c) of the County regulation states that, if industrial facility emissions are determined to be one of the significant contributors to PM_{10} exceedances in the Libby PM_{10} nonattainment area, contingency measures reducing the industrial facility's emissions shall be initiated by the State. Implementation of this contingency measure was retained by the State because the authority to regulate sources governed by the Montana Clean Air Act (MCA), Title 75, Chapter 2, is not delegable to the local level. The requirements of this contingency measure are contained in the December 16, 1994 Board Order and Stipulation between Stimson Lumber Company and the State. The contingency measure consists of additional controls on fugitive dust sources.

The existing fugitive dust requirements in the permit include: chemical dust suppressant on the major haul routes to maintain compliance with the 20% opacity limitation (at least annually), and water sprays used as necessary to control dust emissions on active areas of the log yard. The contingency measures in the stipulation add the following requirements:

(1) The facility entrance and Plywood Plant access road shall be surfaced with either asphalt, concrete, or chip seal from Highway 2 to the Plywood Plant. Sweeping and flushing shall be conducted, as necessary, to maintain compliance with a 5% opacity limitation but not less than twice annually, with one application during the months of April-June and one application during the months of September-November.

(2) The chip sealed portions of the Plywood Plant access road shall consist of a double layer of oil base and chips which shall be watered, as necessary, to maintain compliance with a 5% opacity limitation. These portions shall also be maintained to avoid deterioration by evaluating the chip seal for cracking at a minimum of every 2 years, and by applying a crack sealer (e.g., rubberized asphalt) as needed. A thorough evaluation and assessment of the need to reseal the roadway shall be conducted no less than every 5 years.

(3) Chemical dust suppressant shall be applied to all remaining active unpaved areas within the facility as necessary to maintain compliance with the 5% opacity limitation, but not less than twice annually with one application during the months of April-June and one application during the months of September-November.

(4) The facility shall maintain a written record of all implemented contingency measures, which shall be made available to the Montana

Department of Environmental Quality upon request.

The stipulation provides that this contingency plan will become effective within 60 days after notification to the company and without further negotiation.

The State's March 15, 1995 SIP submittal did not contain an analysis of the effectiveness of the Stimson Lumber Company contingency measures. While this contingency measure specifically controls fugitive dust emissions in the log yard area and associated roads of Stimson Lumber Company, the main problem the State intended to address with these measures was the amount of mud and dirt carried out onto the public roads around the Plywood Plant by vehicles leaving the facility. However, the amount of PM_{10} reductions due to a reduction in mud and dirt carryout from Stimson Lumber Company are not readily quantifiable. The State did not calculate the emissions reductions due to these fugitive dust contingency measures expected on the Stimson Lumber Company property itself because they believed the calculations would not accurately reflect the overall effectiveness of this contingency measure. EPA agrees with the State that the Stimson Lumber Company contingency measures will help to reduce mud and dirt carryout onto the public roads and, consequently, will reduce re-entrained road dust emissions, as well as reducing fugitive dust emissions emitted from the Stimson Lumber Company property. Thus, this contingency measure, if implemented, will provide for additional emissions reductions in the Libby PM_{10} nonattainment area.

EPA believes the Libby contingency measures are approvable. The control measures implemented in the PM_{10} SIP are projected to achieve more emissions reductions than needed to demonstrate attainment of the PM_{10} NAAQS, as indicated by the State's predicted 24-hour attainment concentration of 135.9 $\mu g/m^3$. Since the 24-hour PM_{10} NAAQS is 150 $\mu g/m^3$, this established safety margin further supports the reasonableness of these contingency measures.

3. Revisions to Lincoln County's Open Burning Regulations

The City of Libby and Lincoln County revised the open burning rules to address newly adopted provisions to the State's open burning rules. Specifically, the Lincoln County open burning rules were revised to add new provisions addressing open burning of Christmas tree waste, for commercial film or video productions, and for firefighter training. In addition, the County rules were revised to add additional requirements for the issuance of conditional open burning permits, such as providing public notice and opportunity for public hearing. The County also added a provision stating that it could only issue a conditional open burning permit if emissions from the burn would not endanger public health or cause or contribute to a violation of the NAAQS.

The County rules were also revised to make other minor administrative changes to reflect the reorganization of the Montana Department of Environmental Quality (formerly Montana Department of Health and Environmental Sciences).

EPA believes the revisions to the County's rules submitted May 13, 1996 are consistent with the Act and will help to protect the PM_{10} NAAQS in the Libby area. Therefore, EPA finds the revisions to be approvable.

4. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). SIP provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP [see section 110(a)(2)(C)]. EPA believes the Libby PM_{10} contingency measures and the local regulations meet the SIP enforceability requirements. For further details, see the TSD accompanying this action.

III. Final Action

EPA is approving the PM_{10} contingency measures and the recodification of the local regulations submitted for the Libby moderate PM_{10} nonattainment area by the Governor of Montana on March 15, 1995. This submittal adequately addressed the PM_{10} contingency measure requirements for Libby. In addition, EPA is approving the revisions to the Lincoln County regulations submitted by the Governor of Montana on May 13, 1996 regarding open burning and other minor administrative amendments.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revisions should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 Federal Register (59 FR 24054), this action will be effective November 29, 1996 unless, by October 30, 1996, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 29, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the

Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 29, 1996.

Patricia D. Hull,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(44) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(44) The Governor of Montana submitted PM_{10} contingency measures and a recodification of the local regulations for Libby, Montana in a letter dated March 15, 1995. In addition, the Governor of Montana submitted revisions to the local open burning regulations and other minor administrative amendments on May 13, 1996.

(i) Incorporation by reference.

(A) Board order issued on December 16, 1994 by the Montana Board of Health and Environmental Sciences adopting stipulation of the Montana Department of Health and Environmental Sciences and Stimson Lumber Company.

(B) Board order issued December 16, 1994 by the Montana Board of Health and Environmental Sciences adopting the PM_{10} contingency measures as part of the Libby air pollution control program.

(C) Board order issued on February 1, 1996 by the Montana Board of Environmental Review approving amendments to the Libby Air Pollution Control Program.

(D) Lincoln Board of Commissioners Resolution No. 377, signed September 27, 1995, and Libby City Council Ordinance No. 1507, signed November 20, 1995, adopting revisions to the Lincoln County Air Pollution Control Program, Sections 75.1.103 through 75.1.719.

(E) Lincoln County Air Pollution Control Program, Sections 75.1.101 through 75.1.719, effective December 21, 1995.

[FR Doc. 96–24532 Filed 9–27–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 82

[FRL–5616–9]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of denial of petition.

SUMMARY: This action notifies the public that the Agency received a petition pursuant to section 612(d) of the Clean Air Act, under the Significant New Alternatives Policy (SNAP) Program, and that EPA is denying the petition. SNAP implements section 612 of the amended Clean Air Act of 1990, which requires EPA to evaluate substitutes for ozone-depleting Substances (ODS) and to regulate the use of substitutes where other alternatives exist that reduce overall risk to human health and the environment. Through these evaluations, EPA generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors.

In developing the March 18, 1994 final SNAP rule (59 FR 13044), EPA identified HFC–134a as a potential replacement for CFC–12. It is manufactured by several companies worldwide. In the March 18, 1994 final rule, EPA found HFC–134a to be an acceptable substitute for CFC–12 in a variety of end-uses.

OZ Technology, Inc. submitted Hydrocarbon Blend B, or HC–12a, as a CFC–12 substitute in a variety of end-uses on July 19, 1994. In the June 13, 1995 final SNAP rule (60 FR 31092), EPA found the use of Hydrocarbon Blend B unacceptable as a substitute for CFC–12 in all end-uses other than industrial process refrigeration. This determination was based on a lack of adequate data demonstrating that HC–12a could be used safely in these end-uses. In addition, numerous other acceptable alternatives exist.

On December 5, 1995, OZ Technology, Inc. petitioned EPA to remove Hydrocarbon Blend B from the unacceptable list and add it to the acceptable list, and to remove HFC–134a from the acceptable list and add it to the unacceptable list. The petition is in Air Docket A–91–42, file number VI-D–135. On August 30, 1996, EPA denied the first request in the petition on the basis that the information included in the petition did not include a scientifically valid, comprehensive risk assessment for the requested CFC–12 end-uses, and the second request on the basis that the petition did not contain sufficient evidence of a safety hazard posed by the use HFC–134a as a CFC–12 substitute in any end-use. The denial and the accompanying documentation are in Air Docket A–91–42, file number VI-C–20.

ADDRESSES: Information relevant to this notice is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Jeffrey Levy at (202) 233–9727 or fax (202) 233–9577, U.S. EPA, Stratospheric Protection Division, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: Contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday-Friday, between the hours of 10:00 a.m. and 4:00 p.m. (Eastern Standard Time) weekdays.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the Federal Register on March 18, 1994 (59 FR 13044). Federal Register notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. This notice may also be obtained on the World Wide Web at http://www.epa.gov/docs/ozone/title6/snap/.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and Recordkeeping requirements.

Dated: September 20, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 96–24892 Filed 9–27–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL 5616–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Hanford 1100–Area (USDOE) from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces the deletion of the Hanford 1100–Area (USDOE), located in Benton County, Washington, from the National Priorities List (NPL). The NPL is Appendix B to 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Washington have determined that the Site poses no significant threat to public health or the environment; and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

EFFECTIVE DATE: September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Dave Einan, U.S. EPA Region 10, 712 Swift Boulevard, Suite 5, Richland, Washington 99352, (509) 376–3883.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the Hanford 1100–Area (USDOE), which is located near the City of Richland in Benton County, Washington.

A Notice of Intent to Delete for this site was published on August 15, 1996 (61 FR 42402). The closing date for comments on the Notice of Intent to Delete was September 16, 1996. EPA received no comments.

EPA identifies sites on the NPL that appear to present a significant risk to human health or the environment. As described in Section 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action. Deletion of the Site from the NPL does not itself create, alter, or revoke any individual rights or obligations.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 19, 1996.

Charles E. Findley,

Acting Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 2 of appendix B to part 300 is amended by removing the site Hanford 1100–Area (USDOE), Benton County, Washington.

[FR Doc. 96–24854 Filed 9–27–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL 5616–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the ALCOA (Vancouver Smelter) site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces the deletion of the ALCOA (Vancouver Smelter) NPL Site, located in Vancouver (Clark County), Washington from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Washington Department of Ecology (Ecology) have determined that the Site poses no significant threat to public health or the environment and, therefore, further

remedial measures pursuant to CERCLA is not appropriate.

EFFECTIVE DATE: September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Lynda Priddy, Environmental Protection Agency, 1200 Sixth Avenue, Mail Stop ECL–113, Seattle, Washington 98101.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: ALCOA (Vancouver Smelter) Site, located in Vancouver (Clark County), Washington.

A Notice of Intent to Delete for this site was published August 15, 1996 (61 FR 42404). The closing date for comments on the Notice of Intent to Delete was September 16, 1996. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of these sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Superfund, Water pollution control, and Water supply.

Dated: September 20, 1996.

Chuck Clarke,

Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site ALCOA (Vancouver Smelter), Vancouver, Washington.

[FR Doc. 96–24853 Filed 9–27–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Parts 57 and 58

RIN 0906–AA38

Grants for Construction of Teaching Facilities, Educational Improvements, Scholarships, and Student Loans and Grants for Training of Public Health and Allied Health Personnel

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final rule that revised existing regulations that govern various Public Health Service (PHS) health professions, nursing, and allied health training grant, traineeship, scholarship, and student loan program regulations under title 42, parts 57 and 58 to bring these programs into conformity with statutory amendments made to the various sections of the PHS Act under titles VII and VIII. The final rule was published in the Federal Register on Friday, February 16, 1996 (61 FR 6118).

EFFECTIVE DATE: September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Burks at (301) 443–1590 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Need for Correction

As published on Friday, February 16, 1996, the final rule contained errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on February 16, 1996 of the final rule, which was the subject of FR Doc. 96–3054, is corrected as follows:

§ 57.711 [Corrected]

1. On page 6124, in the third column, in amendment 9 to § 57.711, in the third line, ''45 CFR part 75'' should read ''45 CFR part 74''.

§ 57.1111 [Corrected]

2. On page 6125, in the first column, in amendment 7 to § 57.1111, in the third line, ''45 CFR part 75'' should read ''45 CFR part 74''.

§ 57.1609 [Corrected]

3. On page 6125, in the second column, in amendment 6 to § 57.1609, in the third line, ''45 CFR part 75'' should read ''45 CFR part 74''.

§ 57.1810 [Corrected]

4. On page 6126, beginning in the first column, in amendment 6 to § 57.1810, in the third line, ''45 CFR part 75'' should read ''45 CFR part 74''.

§ 57.2109 [Corrected]

5. On page 6126, in the third column, in amendment 7 to § 57.2109, in the third line, ''45 CFR part 75'' should read ''45 CFR part 74''.

§ 57.2809 [Corrected]

6. On page 6127, in the third column, in amendment 7 to § 57.2809, in the third line, ''45 CFR part 75'' should read ''45 CFR part 74''.

§ 57.2909 [Corrected]

7. On page 6128, beginning in the first column, in amendment 7 to § 57.2909, paragraph (a), third line, ''45 CFR part 75'' should read ''45 CFR part 74''.

§ 57.3010 [Corrected]

8. On page 6128, in the third column, in amendment 6 to § 57.3010, in the third line, ''45 CFR part 75'' should read ''45 CFR part 74''.

§ 57.3111 [Corrected]

9. On page 6129, in the first column, in amendment 6 to § 57.3111, in the third line, ''45 CFR part 75'' should read ''45 CFR part 74''.

§ 57.4009 [Corrected]

10. On page 6129, in the second column, in amendment 4 to § 57.4009, in the third line, ''45 CFR part 75'' should read ''45 CFR part 74''.

§ 58.214 [Corrected]

11. On page 6130, beginning in the second column, in amendment 10 to § 58.214, in the third line, ''45 CFR part 75'' should read ''45 CFR part 74''.

§ 58.233 [Corrected]

12. On page 6131, in the second column, in amendment 13 to § 58.233, in the third line, ''45 CFR part 75'' should read ''45 CFR part 74''.

Dated: September 25, 1996.

Neil Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 96–25055 Filed 9–27–96; 8:45 am]

BILLING CODE 4160–15–P

Health Care Financing Administration

42 CFR Part 498

[BPD–704–CN]

Medicare and Medicaid Programs; Provider Appeals: Technical Amendments

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

ACTION: Correction notice.

SUMMARY: Federal Register document 96–13521 beginning on page 32347 of the issue of June 24, 1996, updated HCFA regulations that pertain to provider appeals from determinations that affect participation in Medicare and Medicaid.

The document contained a technical error in that it omitted a section in the nomenclature changes for Part 498. This document corrects that error.

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Julie Brown (410) 786–4669.

Correction

On page 32349, column 3, in change 2.b. for Part 498, § 498.15 is added to the list of sections affected by the nomenclature change.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 25, 1996.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 96–25056 Filed 9–27–96; 8:45 am]

BILLING CODE 4120–01–P

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 601, 605, 612, 613, 650, and 672

48 CFR Parts 2527 and 2532

Clerical Amendments to Rules on Classified Information, Individuals With Disabilities, Freedom of Information, Privacy, Patents, Antarctica, and Procurement

AGENCY: National Science Foundation.

ACTION: Final rule with a request for comments.

SUMMARY: The National Science Foundation (NSF) is amending various regulations to update citations, delete unneeded language, reflect reassignment of responsibilities, and correct clerical errors.

DATES: This rule is effective September 30, 1996. Comments, however, are welcome at any time and will be considered in making future revisions.

ADDRESSES: All comments should be addressed to: John Chester, Assistant General Counsel, Office of the General Counsel, Room 1265, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: John Chester on (703) 306–1060 (voice) and (703) 306–0149 (facsimile)—those are not toll-free numbers—or by electronic mail as jchester@nsf.gov through INTERNET.

SUPPLEMENTARY INFORMATION: The National Science Foundation's nonprocurement regulations are contained in chapter VI of title 45 of the Code of Federal Regulations and its supplement to the Federal Acquisition Regulation is contained in chapter 25 of title 48 of the CFR. Those volumes are republished as of October 1 each year. This rule makes clerical corrections, deletes unnecessary language, updates citations, and reassigns internal responsibilities to reflect organizational and nomenclature changes so the 1997 volume will be correct.

Determinations

I have determined, under the criteria set forth in Executive Order 12866, that this rule is not a significant regulatory action requiring review by the Office of Information and Regulatory Affairs. I also certify, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, that none of the clerical corrections and nomenclature and address changes made by this rule will have a significant economic impact on any small entities. Finally, I have reviewed this rule in light of section 2 of Executive Order 12778 and certify for the National Science Foundation that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects

45 CFR Part 601

Classified information.

45 CFR Part 605

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

45 CFR Part 612

Freedom of information.

45 CFR Part 613

Privacy.

45 CFR Part 650

Administrative practice and procedure, Government contracts, Grant programs—science and technology, Inventions and patents, Reporting and recordkeeping requirements, Science and technology.

45 CFR Part 672

Administrative practice and procedure, Antarctica.

48 CFR Part 2527

Government procurement, Grant programs—science and technology, Inventions and patents, Nonprofit organizations, Small businesses.

48 CFR Part 2527

Government procurement.

For the reasons set out in the preamble and under the authority of section 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)), 45 CFR Chapter VI and 48 CFR Chapter 25 are amended as follows:

45 CFR CHAPTER VI

PART 601—CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION

1. The authority citation for Part 601 is revised to read as follows:

Authority: E.O. 12958, 3 CFR, 1995 Comp. p. 333.

§§ 601.1 through 601.4 [Amended]

2. Change ''Executive Order 12356'' to ''Executive Order 12958'' in §§ 601.1, 601.2, 601.3, and 601.4.

§ 601.6 [Amended]

3. In § 601.6:

a. Change ''Executive Order 12356'' in the introductory text and paragraph (a) to ''Executive Order 12958.''

b. Change ''E.O. 12356'' in paragraph (d) to ''Executive Order 12958.''

PART 605—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

4. The authority citation for Part 605 continues to read as follows:

Authority: 29 U.S.C. 794.

§ 605.0 [Amended]

5. In § 605.0, change ''part 605'' to ''part 84.''

PART 612—AVAILABILITY OF RECORDS AND INFORMATION

6. The authority citation for Part 612 continues to read as follows:

Authority: 5 U.S.C. 552, as amended.

§ 612.3 [Amended]

7. In § 612.3:

a. Change ''writing'' to ''writing and include the requester's mailing address'' in paragraph (b).

b. Change ''Legislative and Public Affairs'' to ''General Counsel'' all three places the former appears in paragraph (c).

c. Change ''Deputy Director'' to ''General Counsel'' in paragraphs (f) and (g).

§ 612.7 [Amended]

8. In § 612.7:

a. Change ''Legislative and Public Affairs'' to ''General Counsel'' both places the former appears in paragraph (a).

b. Change ''Director of the Office of Legislative and Public Affairs'' to ''Office of General Counsel'' in paragraph (d).

PART 613—PRIVACY ACT REGULATIONS

9. The authority citation for Part 613 continues to read as follows:

Authority: 5 U.S.C. 552a(f)

§ 613.3 [Amended]

10. In § 613.3, the list of systems of records is revised to read as follows:

§ 613.3 Procedures for requests for access to or disclosure of records pertaining to an individual.

* * * * *

(b) * * *

Accident and Injury Reports (Antarctic)
Alien Applications for Consideration of Waiver of Two-Year Foreign Residence Requirements
Antarctic Conservation Act Files
Antarctic Service Records
Application and Account for Advance of Funds (SF 1038)
Debarment/Scientific Misconduct Files
Delinquent Debtors File
Dissertation Advisers File
Diving Safety Records (Polar Regions)
Doctorate Records Files
Doctorate Work History File
Earnings and Tax Statement (W–2)
Employee Grievance and Appeals File
Employee Locator Record Card
Employee Payroll Jacket
Fellowship and Other Awards
Fellowship Payroll
Frequent Traveler Profile
Individual Retirement Records
Manpower Management Subsystem
Medical Examination Records for Service in Polar Regions
National Survey of Recent College Graduates and Follow-up File
NSF Payroll System
Officer of Inspector General Investigative Files
Official Passports
P.I./Proposal File and Associated Records
Personnel Security Control Cards
Personnel Tracking System (Antarctic)
Public Transportation Subsidy Program
Radiation Safety Records (Polar Regions)
Reviewer/Fellowship and Other Award File and Associated Records
Reviewer/Proposal File and Associated Records
Science and Technology Centers (STC) Database
Telephone Call Detail Program Records
Time and Attendance Reports
EEOC/GOVT–1, Equal Employment Opportunity in the Federal Government Complaint and Appeal Records
OGE/GOVT–1, Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records
OGE/GOVT–2, Confidential Statements of Employment and Financial Interests
OPM/GOVT–1, General Personnel Records
OPM/GOVT–5, Recruiting, Examining and Placement Records
OPM/GOVT–7, Applicant Race, Sex, National Origin, and Disability Records.
OPM/GOVT–10, Employee Medical File System of Records

* * * * *

PART 650—PATENTS

11. The authority citation for Part 650 continues to read as follows:

Authority: 35 U.S.C. 200–212; 42 U.S.C. 1870(e) and 1871); and the Presidential Memorandum entitled ''Government Patent Policy'', issued February 18, 1983.

§ 650.15 [Amended]

12. In § 650.15:

a. Change ''a Grants of Contracts Officer'' in paragraph (b) to ''a Grants and Agreements Officer or Contracting Officer.''

b. Change ''Division of Grants and Contracts'' in paragraph (b) to ''Division of Contracts, Policy, and Oversight (CPO).''

c. Change ''a Grants of Contracts Officer'' in paragraph (d) to ''a Grants and Agreements Officer, a Contracting Officer.''

d. Change ''DGC Director'' in paragraph (d) to ''CPO Director.''

PART 672—ENFORCEMENT AND HEARING PROCEDURES; TOURISM GUIDELINES

13. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 2401 et seq.

§ 672.3 [Amended]

14. In § 672.3, change ''DPP'' to ''OPP'' in paragraph (f).

48 CFR Chapter 25

PART 2527—PATENTS, DATA, AND COPYRIGHTS

1. The authority citation for Part 2527 is revised to read as follows:

Authority: 35 U.S.C. 200–212; 42 U.S.C. 1870(e) and 1871); and the Presidential Memorandum entitled ''Government Patent Policy'', issued February 18, 1983.

§ 2527.7001 [Amended]

2. In § 2527.7001, change ''were published in the Federal Register on Tuesday, April 28, 1992, at 52 FR 18052 and will be'' to ''are.''

PART 2532—CONTRACT FINANCING

3. The authority citation for Part 2532 continues to read as follows:

Authority: 42 U.S.C. 1870(d).

§ 2532.401 [Amended]

4. In § 2532.401, change ''3548 Revised Statutes (31 U.S.C. 529)'' to ''3324 of Title 31 of the United States Code.''

Dated: September 23, 1996

National Science Foundation

Lawrence Rudolph,

General Counsel.

[FR Doc. 96–24943 Filed 9–27–96; 8:45 am]

BILLING CODE 7555–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA96–1614]

List of Office of Management and Budget Approved Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's list of Office of Management and Budget approved information collection requirements contained in the Commission's Rules.

This action will provide the public with a current list of Commission public information collection requirements approved by OMB under the Paperwork Reduction Act of 1995.

EFFECTIVE DATE: September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Dorothy Conway, Office of Managing Director, (202) 418–0217.

SUPPLEMENTARY INFORMATION:

Order

By the Managing Director:

Adopted September 20, 1996.
Released: September 9, 1996.

1. Section 3507(a)(3) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(3), requires agencies to display a current control number assigned by the Director of the Office of Management and Budget (''OMB'') for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the Commission's public information collection requirements that have been reviewed and approved by OMB.

3. Authority for this action is contained in Section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and Section 0.231(b) of the Commission's Rules. Since this amendment is a mater of agency organization procedure or practice, the notice and comment and effective date provisions of the Administrative Procedure Act do not apply. See 5 U.S.C. Section 553(b)(A)(d).

4. Accordingly, *it is ordered, that* Section 0.408 of the Rules is REVISED as set forth in the revised text, effective on the date of publication in the Federal Register.

5. Persons having questions on this matter should contact Dorothy Conway at (202) 418–0217.

List of Subjects in 47 CFR Part 0

Reporting and recordkeeping requirements.

Federal Communications Commission

Andrew S. Fishel,

Managing Director.

Part 0 of Chapter I of Title 47 of Code of Federal Regulations is amended as follows:

1. Part 0—The authority citation for Part 0 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as revised; 47 U.S.C. 154, 303 unless otherwise noted.

2. Section 0.408 is revised to read as follows:

§ 0.408 OMB control numbers and expiration dates assigned pursuant to the Paperwork Reduction Act.

(a) Purpose. This section collects and displays the control numbers and expiration dates for the Commission information collection requirements assigned by the Office of Management and Budget (''OMB'') pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission intends that this section comply with the requirement that agencies display current control numbers and expiration dates assigned by the Director of OMB for each approved information collection requirement. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to the Records Management Branch, Federal Communications Commission, Washington, DC 20554.

(b) Display.

OMB control No.	FCC form number or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0003	FCC 610	9/30/96
3060–0004	Sec. 1.1307, 1.1308, 1.311	11/30/96
3060–0009	FCC 316	5/31/99
3060–0010	FCC 323	7/31/98
3060–0012	Parts 21, 23, 25 and FCC 701	3/31/97
3060–0016	FCC 346	4/30/97
3060–0017	FCC 347	4/30/97
3060–0019	FCC 403	10/31/97
3060–0020	FCC 406	5/31/99
3060–0021	FCC 480	12/31/97
3060–0022	FCC 610A	8/31/98
3060–0024	Sec. 76.29	8/31/98
3060–0025	FCC 755	7/31/97
3060–0027	FCC 301	8/31/98
3060–0028	FCC 313	2/28/99
3060–0029	FCC 302–TV	1/31/97
3060–0031	FCC 314	8/31/98
3060–0032	FCC 315	8/31/98
3060–0034	FCC 340	11/30/97
3060–0035	FCC 313–R	3/31/97
3060–0040	FCC 404/404–R	7/31/97
3060–0041	FCC 301–A	3/31/97
3060–0048	FCC 704	3/31/97
3060–0049	FCC 753	5/31/97
3060–0050	FCC 801	1/31/98
3060–0051	FCC 405–B	8/31/97
3060–0053	FCC 703	10/31/96
3060–0054	FCC 820	2/28/99
3060–0055	FCC 327	2/31/96
3060–0056	FCC 730	3/31/97
3060–0057	FCC 731	9/30/96
3060–0059	FCC 740	7/31/97
3060–0061	FCC 325	10/31/96
3060–0062	FCC 330	8/31/98
3060–0064	FCC 402	6/30/98
3060–0065	FCC 422	9/30/98
3060–0066	FCC 330–R	4/30/97
3060–0068	FCC 702	8/31/97
3060–0069	FCC 756	9/30/96
3060–0072	FCC 409	8/31/98

OMB control No.	FCC form number or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0073	FCC 808	7/31/97
3060–0075	FCC 345	12/31/96
3060–0076	FCC 395	12/31/96
3060–0079	FCC 610–B	8/31/99
3060–0084	FCC 323–E	4/30/99
3060–0085	FCC 65	6/30/97
3060–0089	FCC 503	6/30/98
3060–0090	FCC 410	11/30/96
3060–0093	FCC 405	3/31/97
3060–0095	FCC 395–A, 395–AS	6/30/99
3060–0096	FCC 506, 506–A	8/31/99
3060–0099	FCC M	8/31/99
3060–0104	FCC 572	6/30/97
3060–0105	FCC 430	2/28/99
3060–0106	Sec. 43.61, FCC 43.61	8/31/98
3060–0107	FCC 405–A	12/31/96
3060–0108	FCC 201	1/31/97
3060–0110	FCC 303–S	8/31/99
3060–0113	FCC 396	12/31/96
3060–0119	Sec. 90.145	2/28/97
3060–0120	FCC 396–A	11/30/96
3060–0126	Sec. 73.1820	8/31/99
3060–0127	FCC 1046	4/30/97
3060–0128	FCC 574	6/30/98
3060–0132	FCC 1068A	12/31/97
3060–0134	FCC 574–R	5/31/99
3060–0136	FCC 574–T	3/31/98
3060–0139	FCC 854	6/30/98
3060–0141	FCC 402–R	5/31/97
3060–0147	Sec. 64.804	11/30/96
3060–0149	Part 63, Sec. 214, 63.01–63.601	6/30/98
3060–0157	Sec. 73.99	3/31/97
3060–0160	Sec. 73.158	2/28/99
3060–0161	Sec. 73.61	11/30/96
3060–0164	Sec. 25.300	5/31/97
3060–0165	Part 41 Sec. 41.31	11/30/96
3060–0166	Part 42	8/31/98
3060–0168	Sec. 43.43	10/31/96
3060–0169	Sec. 43.51, 43.53	8/31/98
3060–0170	Sec. 73.1207	1/31/96
3060–0171	Sec. 73.1125	2/28/99
3060–0173	Sec. 73.1207	12/31/97
3060–0174	Sec. 73.1212	3/31/99
3060–0175	Sec. 73.1250	11/30/96
3060–0176	Sec. 73.1510	1/31/97
3060–0178	Sec. 73.1560	1/31/97
3060–0179	Sec. 73.1590	3/31/98
3060–0180	Sec. 73.1610	1/31/99
3060–0181	Sec. 73.1615	1/31/97
3060–0182	Sec. 73.1620	12/31/97
3060–0184	Sec. 73.1740	1/31/99
3060–0185	Sec. 73.3613	5/31/98
3060–0187	Sec. 73.3594	12/31/97
3060–0188	Sec. 73.3550	7/31/97
3060–0190	Sec. 73.3544C	12/31/97
3060–0192	Sec. 87.103	11/30/97
3060–0194	Sec. 74.21	1/31/99
3060–0202	Sec. 87.37	12/31/97
3060–0204	Sec. 90.38(B)	4/30/99
3060–0206	Part 21	7/31/97
3060–0207	Sec. 73.961 & 73.932	2/28/97
3060–0208	Sec. 73.1870	12/31/96
3060–0209	Sec. 73.1920	11/30/96
3060–0210	Sec. 73.1930	3/31/98
3060–0211	Sec. 73.1943	5/31/98
3060–0212	Sec. 73.2080	11/30/96
3060–0213	Sec. 73.3525B	7/31/97
3060–0214	Sec. 73.3526	7/31/99
3060–0215	Sec. 73.3527	11/30/96
3060–0216	Sec. 73.3538	11/30/98
3060–0218	Sec. 90.41(b)	12/31/97
3060–0219	Sec. 90.49(b)	11/30/96
3060–0221	Time in which stations must be placed in operation (exceptions)	12/31/97

OMB control No.	FCC form number or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0222	Sec. 97.213	12/31/97
3060–0223	Sec. 90.129(B)	5/31/99
3060–0224	Sec. 90.151	2/28/98
3060–0225	Sec. 90.131(B)	11/30/96
3060–0226	Sec. 90.135 (d) & (e)	2/28/98
3060–0228	Sec. 80.59	8/31/98
3060–0233	Part 36	7/31/99
3060–0236	Sec. 74.703	7/31/99
3060–0240	Sec. 74.651	3/31/97
3060–0241	Sec. 74.633	3/31/97
3060–0242	Sec. 74.604	3/31/97
3060–0243	Sec. 74.551	5/31/99
3060–0245	Sec. 74.537	5/31/99
3060–0246	Sec. 74.452	7/31/97
3060–0248	Sec. 74.751	7/31/99
3060–0249	Sec. 74.781	11/30/96
3060–0250	Sec. 74.784	11/30/96
3060–0251	Sec. 74.833	11/30/96
3060–0253	Part 68 Sec. 68.106, 68.108, 68.110	2/28/98
3060–0254	Sec. 74.433	7/31/97
3060–0258	Sec. 90.176	11/30/96
3060–0259	Sec. 90.263	12/31/97
3060–0260	Sec. 90.239(D)	12/31/95
3060–0261	Sec. 90.215	12/31/97
3060–0262	Sec. 90.179	11/30/98
3060–0263	Sec. 90.177	11/30/96
3060–0264	Sec. 80.413	12/31/97
3060–0265	Sec. 80.868	8/31/98
3060–0270	Sec. 90.443	2/28/97
3060–0272	Sec. 94.31	3/31/98
3060–0274	Sec. 94.45	2/28/97
3060–0280	Sec. 90.633 (F) & (G)	5/31/99
3060–0281	Sec. 90.651	2/28/98
3060–0282	Sec. 94.17	5/31/97
3060–0284	Sec. 94.25 (F) (G) & (I)	2/28/98
3060–0286	Sec. 80.302	12/31/96
3060–0287	Sec. 78.69	8/31/98
3060–0288	Sec. 78.33	12/31/96
3060–0289	Sec. 76.60	2/28/99
3060–0290	Sec. 90.5171	5/31/99
3060–0291	Sec. 90.477	2/28/98
3060–0292	Part 69	5/31/97
3060–0295	Sec. 90.607 (b)(1) & (c)(1)	12/31/97
3060–0297	Sec. 80.503	12/31/97
3060–0298	Part 61	7/31/97
3060–0300	Sec. 94.107	2/28/98
3060–0302	Sec. 97.9	12/31/95
3060–0303	Sec. 97.5	12/31/95
3060–0307	Sec. 90.629(A)	4/30/99
3060–0308	Sec. 90.505	2/28/98
3060–0309	Sec. 74.1281	2/28/99
3060–0310	Sec. 76.12	12/31/96
3060–0311	Sec. 76.54	11/30/96
3060–0313	Sec. 76.207	5/31/98
3060–0314	Sec. 76.209	12/31/97
3060–0315	Sec. 76.221	11/30/96
3060–0316	Sec. 76.305	5/31/98
3060–0318	FCC 489	10/31/97
3060–0319	FCC 490	10/31/97
3060–0320	Sec. 73.1350	2/28/98
3060–0321	Sec. 73.68	2/28/99
3060–0325	Sec. 80.605	6/30/99
3060–0326	Sec. 73.69	11/30/96
3060–0329	Sec. 2.955	4/30/99
3060–0331	Sec. 76.615	5/31/98
3060–0332	Sec. 76.614	6/30/98
3060–0339	Sec. 78.11	1/31/97
3060–0340	Sec. 73.51	8/31/97
3060–0341	Sec. 73.1680	8/31/97
3060–0342	Sec. 74.1284	7/31/97
3060–0343	Sec. 25.140	10/31/96
3060–0344	Sec. 1.1705	8/31/97
3060–0345	Sec. 1.1709	8/31/97

OMB control No.	FCC form number or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0346	Sec. 78.27	12/31/97
3060–0347	Sec. 97.311	9/30/97
3060–0348	Sec. 76.79	12/31/97
3060–0349	Sec. 76.73 and 76.75	11/30/97
3060–0355	FCC 492 and FCC 492A	5/31/98
3060–0357	Sec. 63.701	5/31/98
3060–0360	Sec. 80.409(c)	7/31/98
3060–0361	Sec. 80.29	5/31/98
3060–0362	Sec. 80.401	8/31/99
3060–0364	Sec. 80.409 (d) and (e)	7/31/98
3060–0370	Part 32	9/30/98
3060–0374	Sec. 73.1690	11/30/98
3060–0383	Part 25	11/30/96
3060–0384	Sec. 64.904	2/28/99
3060–0386	Sec. 73.1635	5/31/99
3060–0387	Sec 15.201(d)	5/31/99
3060–0388	Sec. 80.227	6/30/99
3060–0390	FCC 395B	11/30/96
3060–0391	Monitoring Program for Impact of Federal State Joint Board	8/31/98
3060–0392	Sec. 1.1401–1.1416	2/28/97
3060–0393	Sec. 73.45	11/30/96
3060–0394	Sec. 1.420	11/30/96
3060–0395	Sec. 43.21 and 43.22 FCC 43–02, FCC 43–05 and FCC 43–07	11/30/96
3060–0397	Sec. 15.7(A)	11/30/96
3060–0398	Sec. 2.943, 15.117(G)(2), 80.1053	4/30/99
3060–0400	Tariff Review Plan	9/30/96
3060–0402	FCC 494	5/31/97
3060–0403	FCC 494–A	3/31/97
3060–0404	FCC 350	1/31/97
3060–0405	FCC 349	9/30/98
3060–0407	FCC 307	3/31/97
3060–0410	FCC 495A and FCC 495B	3/31/97
3060–0411	Sec. 1.720–1.735	3/31/98
3060–0414	Terrain Shielding Policy	6/30/97
3060–0419	Sec. 76.94, 76.95, 76.155, 76.156, 76.157, 76.159	9/30/98
3060–0421	New Service Reporting Requirements under Price Cap Regulation	2/28/99
3060–0422	Sec. 68.5	5/31/98
3060–0423	Sec. 73.3588	11/30/96
3060–0425	Sec. 74.913	8/31/98
3060–0427	Sec. 73.3523	7/31/97
3060–0430	Sec. 1.1206	5/31/98
3060–0433	FCC 320	1/30/99
3060–0434	Sec. 90.19(F)(7)	5/31/99
3060–0435	Sec. 80.361	10/31/96
3060–0436	Sec. 15.214 and 68.200	5/31/99
3060–0438	FCC 464	11/30/97
3060–0439	Regulations Concerning Indecent Communications by Telephone	2/28/98
3060–0441	Sec. 90.621(B)(4)	8/31/99
3060–0443	FCC 572C	5/31/99
3060–0444	FCC 800A	5/31/99
3060–0446	Sec. 1.402	9/30/98
3060–0447	Sec. 25.134	12/31/97
3060–0448	Sec. 63.07	11/30/96
3060–0449	Sec. 1.65(c)	1/31/99
3050–0450	Detariffing and Installation of Inside Wiring Services Reports on State Regulatory Activities	2/28/98
3060–0452	Sec. 73.3589	11/30/96
3060–0454	Regulation of International Accounting Rates	2/28/98
3060–0461	Sec. 90.173	12/31/96
3060–0463	Telecommunications Services for Individuals with Hearing and Speech Disabilities	6/30/97
3060–0465	Sec. 74.985	1/31/97
3060–0466	Sec. 74.1283	2/28/97
3060–0470	Computer III Remand Proceeding: BOC Safeguards and Tier 1 LEC Safeguards and Implementation of Further Costs, CC Docket 90–623	8/31/98
3060–0472	FCC 6027I	2/28/97
3060–0473	Sec. 74.1251	2/28/97
3060–0474	Sec. 74.1263	3/31/97
3060–0475	Sec. 90.713	12/31/98
3060–0478	Informational Tariffs	3/31/97
3060–0479	Sec. 73.661 and 73.3526(A)(11)	11/30/96
3060–0480	FCC 493	5/31/97
3060–0481	FCC 452R	8/31/97
3060–0483	Sec. 73.687	7/31/97
3060–0484	Sec. 63.100	2/28/98

OMB control No.	FCC form number or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0486	Document Index Terms	12/31/97
3060–0488	Sec. 73.30	12/31/97
3060–0489	Sec. 73.37	12/31/97
3060–0490	Sec. 74.902	12/31/97
3060–0491	Sec. 74.991	12/31/97
3060–0492	Sec. 74.992	12/31/97
3060–0493	Sec. 74.986	12/31/97
3060–0494	Sec. 74.990	12/31/97
3060–0496	FCC Report 43–08	11/30/97
3060–0497	FCC 91 FCC 92	8/31/98
3060–0498	FCC 90	8/31/98
3060–0500	Sec. 76.607	5/31/98
3060–0501	Sec. 76.206	5/31/98
3060–0502	Sec. 73.1942	5/31/98
3060–0504	Sec. 90.658	8/31/98
3060–0506	FCC 302–FM	1/31/97
3060–0508	Rewrite and Update of Part 22, of the Public Mobile Service Rules, CC Docket 92–115	10/31/97
3060–0509	FCC Reports FCC 21–01, FCC 22–01, FCC 25–01 and FCC 25–02	8/31/98
3060–0511	FCC Report 43–04	11/30/96
3060–0512	FCC Report 43–01	8/31/98
3060–0513	FCC Report 43–03	11/30/96
3060–0514	Sec. 43.21(c)	3/31/97
3060–0515	Sec. 43.21(d)	8/31/98
3060–0516	Revision of Radio Rules and Policies, Time Brokerage Ruling	11/30/98
3060–0519	Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991	9/30/98
3060–0520	Sec. 90.127(E)	2/28/99
3060–0526	Density Pricing Zone Plans, Expanded Interconnection with Local Telephone Facilities (CC Docket 91–141)	1/31/99
3060–0532	Sec. 2.975(A)(8) and 2.1033(B)(12)	5/31/99
3060–0536	FCC 431	6/30/99
3060–0537	Sec. 13.217	5/31/99
3060–0539	FCC 493, 430, and 405	2/28/97
3060–0540	Tariff Filing Requirement for Nondominant Common Carriers	2/28/99
3060–0541	FCC 464–A	2/28/99
3060–0542	Frequency Coordinator Evaluation	5/31/98
3060–0543	Part 1, 2, and 21	7/31/99
3060–0544	Sec. 76.701	6/30/99
3060–0546	Sec. 76.59	6/30/99
3060–0547	Sec. 76.61 and 76.7	9/30/98
3060–0548	Sec. 76.302 and 76.56	9/30/98
3060–0549	FCC 329	12/31/96
3060–0550	FCC 328	8/31/99
3060–0551	Sec. 76.1002	9/30/96
3060–0552	Sec. 76.1003	9/30/96
3050–0554	Section 87.199	6/30/99
3060–0556	Sec. 80.1061	6/30/99
3060–0560	Sec. 76.911	12/31/97
3060–0561	Sec. 76.913	12/31/97
3060–0562	Sec. 76.916	12/31/97
3060–0563	Sec. 76.915	6/30/97
3060–0564	Sec. 76.924	8/31/99
3060–0565	Sec. 76.944	6/30/97
3060–0567	Sec. 76.962	5/31/98
3060–0568	Sec. 76.970	7/31/99
3060–0569	Sec. 76.975	6/30/97
3060–0570	Sec. 76.982	12/31/97
3060–0571	FCC 393	7/31/99
3060–0572	Sec. 43.82	5/31/99
3060–0573	FCC 394	9/30/96
3060–0574	FCC 395–M	6/30/99
3060–0576	FCC 610R	8/31/99
3060–0577	Expanded Interconnection with Local Telephone Company Facilities	9/30/96
3060–0579	Expanded Interconnection with Local Telephone Company Facilities for Interstate Switched Transport Service	9/30/96
3060–0580	Sec. 76.504	1/31/97
3060–0581	Sec. 76.503	1/31/97
3060–0582	Sec. 76.1302	1/31/97
3060–0583	Amendment to Part 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and their Nonregulated Affiliates, CC Docket 93–251	10/31/96
3060–0584	FCC 45 FCC 44	7/31/99
3060–0589	FCC 159, and 159C	9/30/98
3060–0591	Amendment to the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610–1626.5/2483.5–2500 MHZ Frequency Bands	2/28/97
3060–0593	FCC 1215	4/30/97
3060–0594	FCC 1220	4/30/97

OMB control No.	FCC form number or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0595	FCC 1210	2/28/98
3060–0596	FCC 1225	4/30/97
3060–0597	FCC 1201	4/30/97
3060–0599	Implementation of Sections 3(n) and 322 of the Communications Act, GN 93–253	4/30/97
3060–0600	FCC 175 and 175–S	9/30/98
3060–0601	FCC 1200	4/30/97
3060–0602	Sec. 76.917	4/30/97
3060–0604	FCC 401, 489, 490, 405, 430, and 854	5/31/97
3060–0607	Sec. 76.922	2/28/98
3060–0608	Sec. 76.964(B)	8/31/97
3060–0609	Sec. 76.934(D)	8/31/97
3060–0610	Sec. 76.958	8/31/97
3060–0611	Sec. 74.783	7/31/97
3060–0613	Expanded Interconnection with Local Telephone Company Facilities, CC Docket 91–141	9/30/98
3060–0615	FCC 405S	8/31/97
3060–0621	FCC 401, 405, 430, 489, 490 and 854	10/31/97
3060–0623	FCC 600	2/28/99
3060–0624	Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, ET Docket 92–100 and GN Docket 90–314	12/31/97
3060–0625	Amendment of the Commission's Rules to Establish New Personal Communications Services, GN Docket 90–314	11/30/97
3060–0626	Implementation of Sections 3(N) and 332 of the Communications Act, GN Docket 93–252	11/30/97
3060–0627	FCC 302–AM	1/31/98
3060–0629	Sec. 76.987(G)	2/28/98
3060–0630	Sec. 73.62	2/28/98
3060–0631	Sec. 73.1300	2/28/98
3060–0632	Sec. 73.1570	2/28/98
3060–0633	Sec. 73.1230, 74.165, 74.432, 74.564, 74.664, 74.765, 74.832, 74.965 and 74.1265	2/28/98
3060–0634	Sec. 73.691	2/28/98
3060–0635	FCC 610–V	4/30/98
3060–0636	Part 2 and 18	6/30/98
3060–0638	Sec. 76.934(F)(1)	5/31/98
3060–0639	Implementation of Section 309(J) of the Communications Act Competitive Bidding, PP 93–253	4/30/98
3060–0640	FCC 800I	7/31/98
3060–0641	FCC 2181	7/31/98
3060–0642	FCC Survey of Cable Industry Costs	12/31/96
3060–0643	Part 65 and 69	8/31/98
3060–0644	FCC 1230	8/31/98
3060–0648	Sec. 21.902	9/30/98
3060–0649	Sec. 76.58	9/30/98
3060–0650	Sec. 76.502	9/30/98
3060–0651	Sec. 76.9	9/30/98
3060–0652	Sec. 76.309 and 76.964	9/30/98
3060–0653	Sec. 64.703(b)	9/30/98
3060–0654	FCC 304	9/30/98
3060–0655	Request for Waivers of Regulatory Fees Predicated on Allegations of Financial Hardship, MM Docket 94–19	9/30/98
3060–0656	FCC 175–M	9/30/98
3060–0657	Sec. 21.956	9/30/98
3060–0658	Sec. 21.960	9/30/98
3060–0660	Sec. 21.937	9/30/98
3060–0661	Sec. 21.931	9/30/98
3060–0662	Sec. 21.930	9/30/98
3060–0663	Sec. 21.934	9/30/98
3060–0664	FCC 304A	9/30/98
3060–0665	Sec. 65.707	9/30/98
3060–0666	Sec. 64.703(a)	9/30/98
3060–0667	Sec. 76.630	9/30/98
3060–0668	Sec. 76.936	9/30/98
3060–0669	Sec. 76.946	9/30/98
3060–0670	Sec. 76.986	9/30/98
3060–0672	Sec. 76.951	9/30/98
3060–0673	Sec. 76.956	9/30/98
3060–0674	Sec. 76.931 and 76.932	9/30/98
3060–0675	RAO Letter 25	9/30/98
3060–0676	Sec. 64.1100	9/30/98
3060–0678	FCC 312	8/31/99
3060–0679	Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures	9/30/98
3060–0680	FCC 43–09A, FCC 43–09B	12/31/96
3060–0681	Toll-Free Access Codes	2/28/99
3060–0682	Sec. 63.16	1/31/99
3060–0683	Direct Broadcast Satellite Service	1/31/99
3060–0684	Cost Sharing Plan for Microwave Relocation	8/31/99
3060–0685	FCC 1240	7/31/99

OMB control No.	FCC form number or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0686	Steamlining the International Section 214 Authorization Process and Tariff Requirements	6/30/99
3060–0687	Acess to Telecommunications Equipment and Services by Persons with Disabilities	2/28/99
3060–0688	FCC 1235	2/28/99
3060–0690	ET Docket 95–183	4/30/99
3060–0691	Amendment to Part 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHZ Bands Allotted to Specialized Mobile	6/30/99
3060–0692	Sec. 76.802	4/30/99
3060–0695	WT Docket No. 96–1	4/30/99
3060–0696	Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Service	4/30/97
3060–0697	Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems	4/30/99
3060–0698	Amendment of the Commission's Rules to Establish a Radio Astronomy Coordination Zone in Puerto Rico	5/31/99
3060–0699	MM Docket 96–16	5/31/99
3060–0700	FCC 1275	8/31/99
3060–0701	CC Docket 96–23	5/31/99
3060–0702	Amendment to Part 20 and 24 of the Commission's Rules Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap	5/31/99
3060–0703	CS Docket 96–57, FCC 1205	6/30/99
3060–0704	CC Docket 96–61	6/30/99
3060–0706	Order and NPRM on Cable Reform: Implementation of the Telecommunications Act of 1996	10/31/96
3060–0707	Restriction on Over-the Air Reception Devices (NPRM)	6/30/96
3060–0708	NPRM in MM Docket 96–58	7/31/99
3060–0709	Revision to Part 22 and Part 90 to Facilitate Future Development of the Pageing System and Implementation of Section 309(j) of the Communications Act	10/31/96
3060–0710	CC Docket 96–98	2/28/97
3060–0711	GC Docket 96–101	7/31/99
3060–0712	Petition for Declaratory Ruling by Inmate Calling Services Providers Task Force	7/31/99
3060–0713	Alternative Broadcast Inspection Program	7/31/99
3060–0714	Antenna Registration Number Required as Supplement to Application Forms	9/30/96
3060–0715	CC 96–115	8/31/99
3060–0716	Section 73.1630	8/31/99
3060–0719	Proposed Quarterly Report of IntraLATA Carriers Listing Pay Phone Automatic Numbering Identification	8/31/99
3060–0722	Proposed Initial Report of Bell Operating Companies of Comparably Efficient Interconnect Plans	8/31/99
3060–0723	Proposed Public Disclosure of Network Information by Bell Operating Companies	8/31/99
3060–0724	Proposed Annual Report of Interexchange Carriers Listing the Compensation Amount Paid to Pay Phone Providers and the Number of Payees	8/31/99
3060–0725	Proposed Annual Filing of Nondiscrimination Reports (On Quality of Service, Installation, and Maintenance) by BOC's	8/31/99
3060–0726	Proposed Quarterly Report of Interexchange Carriers Listing the Number of Dial-Around Calls for which Compensation is Being Paid to Pay Phone Owners	8/31/99
3060–0728	Supplemental Information Requesting Taxpayer Identifying Numbers for Debt Collection	9/30/96
3060–0729	Bell Operating Provision of Out-of-Region Interexchange Services (Affiliated Company Recordkeeping Requirements)	10/31/96
3060–0730	Toll-Free Service Access Codes, 800/888 Number Release Procedures	10/31/96
3060–0733	Implementations of Section 302 of the Telecommunications Act of 1996	10/31/96

[FR Doc. 96–24958 Filed 9–27–96; 8:45 am]
BILLING CODE 6712–01–M/P

47 CFR Part 73

[MM Docket No. 96–138; RM–8822]

Radio Broadcasting Services; Shell Knob, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 249A to Shell Knob, Missouri, in response to a petition filed by Galen Gilbert. *See* 61 FR 34407, July 2, 1996. The coordinates for Channel 249A at Shell Knob are 36–45–04 and 93–40–03. There is a site restriction 13.6 kilometers (8.4 miles) north of the community.

DATES: Effective November 4, 1996. The window period for filing applications for Channel 249A at Shell Knob, Missouri, will open on November 4, 1996, and close on December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 96–138, adopted September 13, 1996, and released September 20, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Shell Knob, Channel 249A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–24866 Filed 9–27–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 253

[DFARS Case 96–D315]

Defense Federal Acquisition Regulation Supplement; Contract Reporting for Fiscal Year 1997

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise DD Form 350 and DD Form 1057 contract action reporting requirements to comply with the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) and to enhance data collection procedures.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Mr. Michael Mutty, (703) 602–0131, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D315 in all correspondence related to this case.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule makes changes to the internal Department of Defense (DoD) contract data reporting system to enable reporting of data required by the Federal Acquisition Streamlining Act of 1994 (the Act). The Act, in part, requires DoD to report statistics on indefinite delivery type contracts, commercial financing procedures, and synopsis and solicitation procedures associated with commercial items. This final rule also revises DD Form 350 and DD Form 1057 to enhance the reporting system by identifying the agency that originated/assigned the contract number and by more precisely describing the kind of contracting action being reported.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any reporting of recordkeeping requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 204 and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 204 and 253 are amended as follows:

1. The authority citations for 48 CFR Parts 204 and 253 continue to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.670–1 is amended by revising paragraph (c) to read as follows:

204.670–1 Definitions.

* * * * *

(c) *Departmental data collection points* are—

(1) For the Army (including Corps of Engineers civil Works): U.S. Army Contracting Support Agency, Attn: SFAE–CSA–PPS, 5109 Leesburg Pike, Suite 916, Falls Church, VA 22041–3201

(2) For the Navy: Fleet Industrial Supply Center, Norfolk Detachment Washington, Attn: PMRS, Washington Navy Yard, Bldg. 200, 4th Floor, 800 M Street, SW, Washington, DC 20374–2004

(3) For the Air Force: SAF/AQCI, 1060 Air Force Pentagon, Washington, DC 20330–1060

(4) For the Defense Logistics Agency: Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3147, Attn: Directorate of Procurement (Acquisition Operations Team, Ft. Belvoir, VA 22060–6221

(5) For other DoD contracting activities: U.S. Army Contracting Support Agency, Attn: SFAE–CSA–PPS, 5109 Leesburg Pike, Suite 916, Falls Church, VA 22041–3201.

* * * * *

3. Section 204.670–2 is amended by revising the introductory text of paragraph (d) and paragraphs (d)(1) and (d)(7)(iii) to read as follows:

204.670–2 Reportable contracting actions.

* * * * *

(d) The following contracting actions shall not be reported on either the DD Form 350 or DD Form 1057:

(1) Imprest fund transactions, SF 44 purchases, and micro-purchases obtained through use of the purchase card;

* * * * *

(7) * * *

(iii) Defense Supply Center, Richmond, for petroleum products.

4. Section 204.670–3 is amended by revising paragraph (a)(1), the introductory text of paragraph (a)(2), paragraph (a)(5), the last sentence of paragraph (b)(1), and paragraph (b)(2) to read as follows:

204.670–3 Contracting office responsibilities.

(a) * * *

(1) Prepare the appropriate type of DD Form 350 (see 204.670–6), in accordance with the instructions in 253.204–70, on all reportable contracting actions (see 204.670–2(a)), including actions accomplished by contract administration offices on behalf of the contracting office.

(2) Complete the DD Form 350 in the required format within three working days after the date on which the dollars were actually obligated or deobligated (see 204.670–7). Submit all contracting actions for the calendar month to the departmental data collection point (see 204.670–1(c)) in accordance with departmental/agency procedures, except—

* * * * *

(5) Maintain a copy of the DD Form 350 in the contract file, in accordance with departmental/agency procedures.

(b) * * *

(1) * * * Each contracting office with a separate code must submit its own DD Form 1057.

(2) Complete the DD Form 1057 in the required format within three working days after the cutoff of the reporting month (see 204.670–7 for alternate formats). Contracting offices are authorized to cut off the reporting month no earlier than the 25th calendar day. For September only, the cutoff date shall not be later than September 30. Submit the DD Form 1057 to the departmental data collection point in accordance with departmental/agency procedures.

* * * * *

5. Section 204.670–5 is revised to read as follows:

204.670–5 Departmental data collection point responsibilities.

Departmental data collection points—

(a) Collect DD Forms 350 and 1057 data provided by their contracting activities;

(b) Electronically record the data in accordance with the instructions for recording and editing developed by WHS–DIOR with the majority agreement of the departments/agencies and prescribed by the Director of Defense Procurement; and

(c) Submit monthly reports (noncumulative) to Washington Headquarters Services, ATTN: DIOR, within 18 days after the close of the reporting period, except the due date for September may be extended for no more than ten days. Reports control symbols, DD–P&L(M) 1014 and DD–P&L(M) 1015, respectively, apply to reports submitted to WHS–DIOR for DD Form 350 actions and DD Form 1057.

6. Section 204.670–6 is amended by revising the section title and paragraphs (b)(1)(iii), (b)(1)(iv), (b)(1)(v), (b)(2), and (c)(1) to read as follows:

204.670–6 Types of DD Form 350 reports.

* * * * *

(b) * * *

(1) * * *

(iii) Defense Fuel Supply Center of Defense Supply Center, Richmond, indefinite delivery contracts for petroleum or petroleum supplies. The Centers, at the time of award, report the estimated value of the orders to be placed against the contract on one DD Form 350.

(iv) Order place by the Defense commissary Agency (DeCA) for resale items in excess of $25,000. DeCA consolidates the orders monthly and reports the cumulative dollar amounts and actions on one DD Form 350 in accordance with departmental/agency procedures. Defense Logistics Agency activities submit single rather than consolidated reports.

(v) Vouchers processed by the U.S. Army Contracting Command, Europe (USACCE), for the purchase of utilities from municipalities (e.g., gas, electricity, water, sewage, steam, snow removal, and garbage collection). USACCE consolidates these transactions monthly and reports the cumulative dollar amount on one DD Form 350 in accordance with departmental/agency procedures.

(2) Consolidated reports may be prepared in accordance with departmental/agency procedures for orders under communications service agreements for local dial tone services.

(c) * * *

(1) The contracting action includes foreign military sales (FMS) requirements in addition to non-FMS requirements (Block B9 on the DD Form 350). Submit one DD Form 350 report for the FMS requirements and another DD Form 350 report for the non-FMS requirements, except if either of the portions in $25,000 or less, report the $25,000 or less portion on a DD Form 1057 in lieu of a DD Form 350.

* * * * *

7. Section 204.670–8 is revised to read as follows:

204.670–8 Security classification.

Submit DD Forms 350 as unclassified documents. Classified contracts are not exempt from reporting solely because the contract is classified. Contact the appropriate departmental data collection points for special instructions if it is necessary for security reasons to modify coding of all or any individual blocks on the DD Form 350. If contact cannot be made for security reasons, obtain instructions from the Office of the Deputy to the Under Secretary of Defense for Policy Support, ATTN: Director for Special Programs. Telephone number is (703) 614–0578/9 or DSN 224–0578/9.

8. Section 204.670–9 is amended by revising the section title and paragraph (b) to read as follows:

204.670–9 Reporting of individual contracting actions of $25,000 or less.

* * * * *

(b) The following contracting actions are not subject to the additional DD Form 350 reporting, although they must still be reported on the DD Form 1057:

(1) Contracting actions of $500 or less.

(2) Foreign military sales.

(3) Orders or modifications under a Federal schedule.

(4) Actions with a government agency.

(5) Actions with non-U.S. business firms.

(6) Actions where the place of performance is other than the United States and its outlying areas.

9. Section 204.7201 is amended by revising paragraph (b) to read as follows:

204.7201 Definitions.

* * * * *

(b) *Contractor identification code* means any code required by the contracting office for the purpose of identifying the offeror. CAGE code and contractor identification numbers are two examples of contractor identification codes.

10. Section 204.7202–1 is amended by revising the second sentence of paragraph (a) to read as follows:

204.7202–1 CAGE codes.

(a) * * * Their use is prescribed by 253.204–70(b)(5)(ii)(C) and DoD 4000.25–5–M, Military Standard Contract Administration Procedures (MILSCAP).

* * * * *

11 Section 204.7202–2 is amended by revising the section title, the introductory text, paragraph (a), the introductory text of paragraph (b)(1), and paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2)(vi) to read as follows:

204.7202–2 Contractor identification number.

Use of the contractor identification number for contract data reporting is prescribed by 253.204–70(b)(5)(ii)(A). A Data Universal Numbering System (DUNS) number, which is a nine-digit number assigned by Dun and Bradstreet Information Services to an establishment, is the contractor identification number for Federal contractors. When the contractor identification number is not already available to the contracting activity, use the following procedures in the order listed:

(a) Contact the offeror and obtain the DUNS number.

(b)(1) Dun & Bradstreet Information Services for a DUNS number by—

(i) Telephone (610) 882–7741.

(ii) Facsimile (610) 882–7140.

* * * * *

(2) * * *

(vi) Total number of DUNS requests, if more than one; and

* * * * *

12. Section 204.7203 is amended by removing paragraph (e) and by revising paragraphs (a) and (b) to read as follows:

204.7203 Responsibilities of contracting officers.

(a) The contracting officer shall assist the offeror in obtaining the required contractor code(s).

(b) Prospective offerors may not be denied a solicitation or bid set because the offeror does not have a contractor code.

* * * * *

204.7204–1 [Amended]

13. Section 204.7204–1 is amended in the first sentence of paragraph (b) by revising the parenthetical phrase to read ''(see FAR subpart 42.12)''.

14. Section 204.7204–2 is amended by revising the section title to read as follows:

204.7204–2 Maintenance of contractor identification number codes.

* * * * *

15. Section 204.7206 is amended by revising the introductory text to read as follows:

204.7206 Using CAGE codes to identify agents and brokers.

Authorized agents and brokers are entities and, as such, may be assigned CAGE codes and contractor identification number codes for identification and processing purposes.

* * * * *

PART 253—FORMS

16. Section 253.204–70 is revised to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

Policy on use of a DD Form 350 is in 204.670–2. This subsection 253.204–70 contains instructions for completion of Parts A through F of the DD Form 350. Paragraph (g) of this subsection contains special instructions for completing a DD Form 350 for an action of $25,000 or less under the Small Business Competitiveness Demonstration Program.

(a) *Part A of the DD Form 350.*

Part A identifies the report and the reporting activity. Complete all four blocks.

(1) BLOCK A1, TYPE OF REPORT.

Enter one of the following codes:

(i) *Codes 0—Original.*

Enter code 0 unless code 1 or code 2 applies.

(ii) *Code 1—Cancelling.* A cancelling action cancels an existing DD Form 350 in accordance with departmental data collection point instructions.

(iii) *Code 2—Correcting.*

A correcting action corrects an existing DD Form 350 action in accordance with departmental data collection point instructions.

(2) BLOCK A2, REPORT NO.

Enter the four-digit local control number (see 204.670–3(a)(4)). If Block A1 is coded 1 or 2, use the prior report number rather than a new one.

(3) BLOCK A3, CONTRACTING OFFICE CODE.

Enter the code assigned the contracting office by the departmental data collection point in 204.670–1(c).

(4) BLOCK A4, NAME OF CONTRACTING OFFICE.

Enter sufficient detail to establish the identity of the contracting office.

(b) *Part B of the DD Form 350.*

Part B identifies the transaction.

(1) BLOCK B1, CONTRACT IDENTIFICATION INFORMATION.

Do not leave any parts of Block B1 blank.

(i) BLOCK B1A, CONTRACT NUMBER.

(A) Enter—

(1) The DoD contract number; or

(2) For orders under contracts awarded by other Federal agencies, the contract number of that Federal agency as it appears in the contractual instrument.

(B) Do not leave spaces between characters, and do not enter dashes, slants, or any other punctuation marks.

(C) The DoD contract number is the basic (13 alphanumeric character) procurement instrument identification number (PIIN) that was assigned in accordance with 204.7001 or constructed under an exception permitted by 204.7000. Do not enter any supplemental procurement instrument identification numbers as part of the contract number (these go in Block B2).

(ii) BLOCK B1B, ORIGIN OF CONTRACT.

Enter the code that indicates the agency that originated/assigned the contract number.

(A) *Code A—DoD.*

(B) *Code B—NASA.*

(C) *Code C—Other non-DoD agency.*

(2) BLOCK B2, MOD, ORDER OR OTHER ID NUMBER.

Enter the supplementary procurement instrument identification number (if there is one) that was assigned in accordance with 204.7004 or as permitted by 204.7000. It can be up to 19 characters. Usually calls and orders have a four-position number (see 204.7004–4) and modifications (including modifications of calls or orders) have a six-position modification number (see 204.7003 or 204.7004(b)).

(3) BLOCK B3, ACTION DATE.

(i) Enter the year, month, and day of the effective date for fiscal obligation purposes. When contract actions are awarded contingent on the availability of funds, enter the date funds are obligated.

(i) Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(4) BLOCK B4, COMPLETION DATE.

(i) Enter year, month, and day of the last contract delivery date or the end of the performance period. If the contract is incrementally funded, report the completion date for the entire contract. Report the completion date associated with an option quantity when the option is exercised.

(ii) Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(5) BLOCK B5, CONTRACTOR IDENTIFICATION INFORMATION.

(i) Use data that relates to the contractor whose name and address appears in the contract document (Block 7 of the SF 26, Award/Contract; Block 8 of the SF 30, Amendment of solicitation/Modification of Contract; Block 15A of the SF 33, Solicitation, Offer and Award; or Block 9 of the DD Form 1155, Order for Supplies or Services), except—

(A) For contracts placed with the Small Business Administration under Section 8(a) of the Small Business Act, use data that relates to the company that will be performing the work.

(B) For Federal schedule orders, use data that applies to the contractor whose name appears on the schedule (not the data for the agent to whom orders may be sent).

(C) For contracts with the Canadian Commercial Corporation (CCC), use data for the appropriate CCC office.

(ii) Some of the parts of Block B5 may not apply to the action being reported. Follow the instructions for each part.

(A) BLOCK B5A, CONTRACTOR IDENTIFICATION NUMBER.

Enter the contractor's 9-position Data Universal Numbering System (DUNS) number. If the DUNS number is not available to the contracting activity, use the procedures at 204.7202–2 to obtain one.

(B) BLOCK B5B, GOVERNMENT AGENCY.

Enter one of the following codes:

(1) Code Y—Yes. Enter code Y when the contractor is a Federal/State/Local government agency.

(2) *Code N—No.* Enter code N when code Y does not apply.

(C) BLOCK B5C, CAGE CODE.

Enter the 5-position commercial and Government entity (CAGE) code the identifies the contractor plant or establishment. If the CAGE code is not already available in the contracting office and the apparent awardee does not respond to the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, use the procedures at 204.7202–1 to obtain one.

(D) BLOCK B5D, CONTRACTOR NAME AND DIVISION NAME.

Enter the contractor's name as stated in the offer and resultant contract. Include its division name.

(E) BLOCK B5E, CONTRACTOR ADDRESS.

Enter the contractor's address as stated in the offer and resultant contract. Include street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable. Do not enter foreign postal codes.

(F) BLOCK B5F, TIN.

Enter the contractor's taxpayer identification number (see FAR subpart 4.9). Leave Block B5F blank if the contractor is—

(1) A nonresident alien, foreign corporation, or foreign partnership that

does not have income effectively connected with the trade or business in the United States; and does not have an office or place of business or a fiscal paying agent in the United States;

(2) An agency or instrumentality of a foreign government

(3) An agency or instrumentality of a Federal, State, or local government.

(G) BLOCK B5G, PARENT TIN.

Enter the contractor's parent company (common parent) TIN (see FAR subpart 4.9 and 52.204–3). If the contractor does not have a parent company or the parent company meets the exemption for Block B5F, leave Block B5G blank.

(H) BLOCK B5H, PARENT NAME.

If a parent company TIN is entered in Block B5G, enter in Block B5H the name of the parent company (common parent). Leave Block B5H blank if there is no parent company or the parent company is exempted from the requirement to have a TIN.

(6) BLOCK B6, PRINCIPAL PLACE OF PERFORMANCE.

(i) The place, or places, where the contract will be performed may be specified by the Government or listed by the contractor in response to the solicitation provision at FAR 42.214–14, Place of Performance—Sealed Bidding, or FAR 52.215–20, Place of Performance. Use date for the contractor's principal place of performance, which is generally the—

(A) Final assembly point for supply contracts with manufacturers.

(B) Dealer's location for supply contracts with regular dealers (FAR 22.601) where shipment is made from stock.

(C) Subcontractor's location for supply contracts with regular dealers (FAR 22.601) where shipment is made from a subcontractor's plant.

(D) Actual construction site for construction contracts.

(E) Planned construction site for architect-engineer contracts.

(F) Place of mining for mined supplies.

(G) Place (including military installations) where a service is performed for service contracts.

(ii) When there is more than one location for any of paragraphs (i) (A) through (G) (e.g., more than one construction site), use the location involving the largest dollar amount of the acquisition. Do not show more than one location in Block B6.

(iii) If places of performance are too varied or not known, or if commercial procedures were used, enter the contractor's home office location.

(iv) Follow the instructions for each part Block 6 which applies to the action being reported.

(A) BLOCK B6A, CITY OR PLACE CODE.

(1) For places in the United States and outlying areas, enter the numeric place code, which can be found in the Federal Information Processing Standards (FIPS) Publication (PUB) 55–2, (''Guideline: Codes for named Populated Places, Primary Country Divisions, and Other Locational Entities of the United States and Outlying Areas''). Leave Block B6A blank for places outside the United States and outlying areas.

(2) If the city or locality is not listed, look in FIPS PUB 55–2 for the county code of the principal place of performance. Enter that in Block B6A. Use 50000 for Washington, DC, with a State code of 11.

(3) Paragraph 5.2, Entry Selection With the Aid of the Class Code, of FIPS PUB 55–2 will help in selecting the correct code. Sometimes, a class code should be used in addition to a place code to accurately identify the place of performance. Do not use place codes when the first position of the class code is X or Z.

(B) BLOCK B6B, STATE OR COUNTRY CODE.

(1) For places in the United States and outlying areas, enter the numeric State code, which can be found in FIPS PUB 55–2 or FIPS PUB 5–2, Codes for he Identification of the States, the District of Columbia and the Outlying Areas of the United States and Associated Areas.

(2) For places outside of the United States and outlying areas, enter the alpha country code from FIPS PUB 10–3, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions.

(C) BLOCK B6C, CITY OR PLACE AND STATE OR COUNTRY NAME. Enter the name of the principal place of performance. Do not leave Block B6B blank.

(7) BLOCK B7, TYPE OBLIGATION.

Enter one of the following codes:

(i) *Code 1—Obligation.* Enter code 1 if the contracting action obligates funds.

(ii) *Code 2—Deobligation.* Enter code 2 if the contracting action deobligates funds.

(8) BLOCK B8, TOTAL DOLLARS.

Enter the net amount of funds (whole dollars only) obligated or deobligated by the contracting action. Do not leave Block B8 blank.

(9) BLOCK B9, FOREIGN MILITARY SALE.

Enter one of the following codes. If only part of the contracting action is a foreign military sale, separately report the parts (see 204.670–6(c)).

(i) *Code Y—Yes.* Enter code Y when the contracting action is under a foreign military sales arrangement, or under any other arrangement when a foreign country or international organization is bearing the cost of the acquisition.

(ii) *Code N—No.* Enter code N when code Y does not apply.

(10) BLOCK B10, MULTIYEAR CONTRACT.

Enter one of the following codes:

(i) *Code Y—Yes.* Enter code Y when the contracting action is a multiyear contract as defined at FAR 17.101. Do not report contracts containing options as multiyear unless the definition at FAR 17.101 applies to the contract.

(ii) *Code N—No.* Enter code N when code Y does not apply.

(11) BLOCK B11, TOTAL MULTIYEAR VALUE.

Enter total multiyear value only at the time of initial obligation of the multiyear funds. Therefore, enter the estimated total multiyear contract value (whole dollars only) if the contracting action is—

(i) A multiyear contract (B10 is coded Y); and

(ii) Either a new letter contract or a new definitive contract (Block B13A is coded 1 or 3 and Block B13D is blank). For all other codes in Block B13A, enter a numeric value of zero in Block B11.

(12) BLOCK B12, PRINCIPAL PRODUCT OR SERVICE.

Block B12 contains five parts. Do not leave any parts of Block B12 blank.

(i) BLOCK B12A, FSC OR SVC CODE.

Enter the 4-character federal supply classification (FSC) or service code that describes the contract effort. To find the code, look in Section I of the Department of Defense (DoD) Procurement Coding Manual (MN02). There are three categories so codes of choose from. In some cases, use a 4-character code from a list of 4-character codes; in other case, construct a code using the instructions in the Manual. If more than one category or code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value.

(A) *Supplies.* If the contracting action is for the purchase (not lease or rental) of supplies, enter an FSC code in Block B12A. FSC codes are all numeric. Look in Section I, Part C, of the DoD Procurement Coding Manual (MN02). The Department of Defense Federal Supply Classification Cataloging Handbooks H2–1, H2–2, and H2–3 may also help with the correct 4-digit code.

(B) *Services.* If the contracting action is for services (except research, development, test, and evaluation), construction, or lease or rental of equipment or facilities, enter a service code in Block B12A.

(C) *Research, Development, Test and Evaluation (RDT&E).* If the contracting

action is for RDT&E (as defined in FAR 35.001 and 234.001), enter an RDT&E code in Block B12A. Look in Section I, Part A, of the DoD Procurement Coding Manual (MN02). All RDT&E codes should begin with the letter ''A''. Do not use an RDT&E code for—

(1) Purchase, lease, or rental of equipment, supplies, or services separately purchased in support of RDT&E work, even if RDT&E funds are cited. Instead, use an FSC or Service code under the instructions in paragraphs (i) (A) or (B).

(2) Orders under Federal Schedule contracts. Instead, use an FSC or Service code under the instructions in paragraphs (i) (A) or (B).

(ii) BLOCK B12B, DOD CLAIMANT PROGRAM CODE.

Enter a code that identifies the commodity described in Block B12E. These codes are in Section III of the DoD Procurement Coding Manual (MN02). If more than one code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value. If the description in Block B12E is for—

(A) Research and development (R&D), enter the code that best represents the objective of the R&D. For example, if the objective of the research and development is a guided missile, enter code A20. If the R&D cannot be identified to any particular objective, enter code S10.

(B) Ship repair, inspect and repair as necessary (IRAN), modification of aircraft, overhaul of engines, or similar maintenance, repair or modification services, enter the code that best identifies the program.

(C) Equipment rental (including rental of automated data processing equipment), enter code S10.

(D) Utility services, enter code S10.

(E) Services that cannot be identified to any listed program, enter code S10.

(F) Supplies or equipment that cannot be identified to any listed program, enter code C9E.

(iii) BLOCK B12C PROGRAM, SYSTEM OR EQUIPMENT CODE.

(A) Enter a code that describes the program, weapons system or equipment. These codes are in Section II of the DoD Procurement Coding Manual (MN02). If there is no code that applies to the contracting action, enter three zeros. If more than one code applies to the action, enter the one that best identifies the product or service representing the largest dollar value.

(B) If the contracting action is funded by the Ballistic Missile Defense Organization, enter code CAA.

(C) If the contracting action supports environmental cleanup programs, enter one of the codes listed in Section II of the DoD Procurement Coding Manual (MN02) under the heading ''Description and Use of Program Codes—Environmental Cleanup Programs.''

(D) Defense Logistics Agency activities must use the code assigned by the sponsoring service.

(iv) BLOCK B12D, SIC CODE.

Enter the standard industrial classification (SIC) code for the acquisition (as opposed to the SIC of the manufacturer or dealer). Use the SIC code in effect at the time of award. These codes are in the OMB Standard Industrial Classification Manual. If more than one code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value.

(v) BLOCK B12E, NAME/DESCRIPTION.

Enter the name or brief description of the commodity or service. If the description is classified, enter only the work ''Classified.'' Do not, however, use ''Classified'' when a code name (e.g., Minuteman, Polaris, Trident, Pershing, etc.) or an identifying program number (e.g., WS–107A) can be used.

(13) BLOCK B13, KIND OF CONTRACTING ACTION.

Some of the parts of Block B13 may not apply to the action being reported. Follow instructions for each part. When the contracting action is a modification, complete Blocks B13A and B13D.

(i) BLOCK B13A, CONTRACT/ORDER.

Enter one of the following codes:

(A) *Code 1—Letter Contract.* Enter code 1 when the contracting action is a letter contract. When the contracting action is a modification to a letter contract that has not been definitized, enter code 1 in B13A.

(B) *Code 3—Definitive Contract.* Enter code 3 when the contracting action is the award of a definitive contract. When the contracting action definitizes a letter contract or is a modification to a definitive contract, enter code 3 in B13A. Code 3 includes the following:

(1) Definitive contract awards under the Small Business Administration 8(a) program.

(2) Notices of award.

(3) Lease agreements.

(4) Indefinite delivery-definite quantity contracts (FAR 52.216–20).

(5) Indefinite delivery-indefinite quantity contracts (FAR 52.216–22) when funds are obligated by the contract itself.

Code 3 excluded orders from the Procurement List (see codes 6 and 8).

(C) *Code 4—Order under an Agreement.* Enter code 4 when the contracting action is an order or definitization of an order under an agreement. (Examples include an order exceeding $25,000 under a basic ordering agreement or a master ship repair agreement and job order when the contract is created by issuing the order. A blanket purchase agreement call is coded 6 or 9, as appropriate. When the contracting action is a modification to an order described in Code 4 instructions, enter code 4 in B13A.

D. *Code 5—Order under Indefinite Delivery Contract (IDC).*

Enter code 5 when the contracting action is an order, including task or delivery order, under an indefinite delivery contract awarded by a Federal agency. For example, code 5 is to be entered for an order under a GSA indefinite delivery contract such as a GSA area-wide contract for utility services, which is not a Federal schedule. When the contracting action is a modification to an order described in code 5 instructions, enter code 5 in B13A.

(E) *Code 6—Order/Call under Federal Schedule.* Enter code 6 if the contracting action is a blanket purchase agreement call established with a Federal schedule contractor pursuant to FAR 13.202(c)(3), or an order under—

(*1*) Federal schedule (e.g., GSA, VA, or OPM) contract (FAR 8.401); or

(*2*) GSA ADP schedule contract.

Code 6 includes orders from the Procurement List under Federal schedules. When the contracting action is a modification to an order/call described in code 6 instructions, enter code 6 in B13A.

(F) *Code 8—Order from Procurement List.* Enter code 8 if the contracting action is an action placed with Federal Prison Industries (UNICOR) or a JWOD Participating Nonprofit Agency in accordance with FAR Subparts 8.6 or 8.7. When the contracting action is a modification to an action described in code 8 instructions, enter code 8 in B13A.

(G) *Code 9—Purchase Using Simplified Acquisition Procedures.* Enter code 9 if the contracting action, including an action in a designated industry group under the Small Business Competitiveness Demonstration Program (FAR subpart 19.10), is an award pursuant to FAR part 13 except when the contracting action is a blanket purchase agreement call pursuant to FAR 13.202(c)(3) (see code 6). When the contracting action is a modification to an order/call described in code 9 instructions, enter code 9 in B13a.

(ii) BLOCK B13B, TYPE OF INDEFINITE DELIVERY CONTRACT.

If Block B13A is coded 3 and the ninth position of B1A is coded D, complete Block B13B. If Block B13A is coded 5, complete Block B13B. Otherwise, leave blank.

(A) *Code A—Requirements Contract (FAR 52.216–21).*

(B) *Code B—Indefinite Quantity Contract (FAR 52.216–22).*

(C) *Code C—Definite Quantity Contract (FAR 52.216–20).*

(iii) BLOCK B13C, MULTIPLE/SINGLE AWARD IDC(S).

If Block B13B is coded A, B, or C, complete Block B13C. Otherwise, leave blank.

(A) *Code M—Multiple Award.* Enter code M if the contracting action is a task or delivery order under a multiple award indefinite delivery contract.

(B) *Code S—Single Award.* Enter code S if the contracting action is a task or delivery order under a single award indefinite delivery contract.

(iv) BLOCK B13D, MODIFICATION.

If this action is a modification, enter one of the following codes. Otherwise, leave blank.

(A) *Code A—Additional Work (new agreement).*

Enter code A when the contracting action is a bilateral supplemental agreement which obligates funds for additional work requiring a justification and approval (J&A).

(B) *Code B—Additional Work (other).*

Enter code B when the contracting action is a modification of an existing contract (including a letter contract) which is not covered by code A or by codes C through H. (See code H for exercise of an option.) Code B includes actions which—

(*1*) Initiate an incremental yearly buy under a multiyear contract;

(*2*) Amend a letter or other contract to add work that does not require a J&A; or

(*3*) Order under a priced exhibit or production list.

(C) *Code C—Funding Action.* Enter code C when the contracting action is a modification (to a letter or other contract) for the sole purpose of obligating or deobligating funds.

(*1*) This includes—

(*i*) Incremental funding (other than incremental yearly buys under multiyear contracts which are code B);

(*ii*) Changes to the estimated cost on cost-reimbursement contracts;

(*iii*) Repricing actions covering incentive price revisions;

(*iv*) Economic price adjustments; and

(*v*) Initial citation and obligation of funds for a contract awarded in one fiscal year but not effective until a subsequent fiscal year.

(D) *Code D—Change Order.* Enter code D if the contracting action is a change order issued under the ''Changes,'' ''Differing Site Conditions,'' or similar clauses in existing contracts.

(E) *Code E—Termination for Default.* Enter code E if the contracting action is a modification which terminates all or part of the contract for default.

(F) *Code F—Termination for Convenience.* Enter code F if the contracting action is a modification which terminates all or part of the contract for convenience.

(G) *Code G—Cancellation.* Enter code G if the contracting action is a modification which cancels the contract. Don not use code G to cancel a prior DD Form 350—see Block A1.

(H) *Code H—Exercise of an Option.* Enter code H if the contracting action is an exercise of an option.

(I) *Code J—Definitization of a Letter Contract.* Enter code J if the contracting action is the definitization of a letter contract.

(c) *Part C of the DD Form 350.*

(1) Part C gathers data concerning contracting procedures, use of competition, financing, and statutory requirements other than socioeconomic (which are in Part D).

(2) Do not complete Part C if the contracting action is an action with a government agency, i.e., Block B5B (Government Agency) is coded Y (Yes). If Block B13A is coded 6, do not complete any blocks in Part C except Blocks C13A and C13B when they apply.

(3) In completing Part C, the codes to be used describe either the contracting action being reported or the original contract, depending on the codes reported in blocks B13A and B13D.

(i) If Block B13A is coded 1, 2, 3, 4, 6, or 9 and Block B13D is coded A or is blank, code the blocks in Part C with reference to the action being reported. Otherwise, code the blocks with reference to the original contract.

(ii) If there are no codes for the original contract because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, then use codes that best describe the original contracting action.

(4) Complete Part C blocks as follows:

(i) BLOCK C1, SYSNOPSIS.

Enter one of the following codes:

(A) *Code A—Synopsis Only.* Enter code A if only a synopsis of the proposed action was prepared and transmitted to the Commerce Business Daily in accordance with FAR subpart 5.2.

(B) *Code B—Combined Synopsis/Solicitation.* Enter code B if a combined synopsis/solicitation of the proposed action was prepared and transmitted to the Commerce Business Daily in accordance with FAR subpart 5.2 and 12.603.

(C) *Code N—No.* Enter code N if a synopsis was not prepared.

(ii) BLOCK C2, REASON NOT SYNOPSIZED.

Enter one of the following codes if Block C1 is coded N. Otherwise, leave Block C2 blank.

(A) *Code A—Urgency.* Enter code A if the action was not synopsized due to urgency (see FAR 6.302–2).

(B) *Code B—Use of FACNET.* Enter code B if the action was not synopsized due to use of FACNET for the acquisition.

(C) *Code Z—Other Reason.* Enter code Z if the action was not synopsized due to some other reason.

(iii) BLOCK C3, EXTENT COMPLETED.

Enter one of the following codes:

(A) *Code A—Competed Action.* Enter code A when—

(1) The contracting action is an action under a Federal Schedule contract (Block B13A is coded 6).

(2) Competitive procedures were used to fulfill the requirement for full and open competition (FAR subpart 6.1).

(3) Full and open competition procedures after exclusion of sources were used in order to establish/maintain alternative sources, to set aside an acquisition for small business, or to compete section 8(a) awards (FAR subpart 6.2).

(4) Statutory authorities for other than full and open competition were used (FAR subpart 6.3) and more than one offer was received (if only one offer was received, use code D).

(5) Contracting action resulted from a contract awarded prior to the Competition in Contracting Act that used two-step sealed bidding or other sealed bidding, or that was negotiated competitively.

(6) Simplified acquisition procedures were used and competition was obtained.

(B) *Code B—Not Available for Competition.* Enter code B for—

(1) Awards for utilities or utility systems, excluding long distance telecommunications services, when only one supplier can furnish the service (FAR 6.302–1(b)(3)).

(2) Brand name commercial products for authorized resale.

(3) Acquisitions authorized or required by statute to be awarded to a specific source pursuant to FAR 6.3022–5(b) (2) or (4), e.g., qualified nonprofit agencies employing people who are blind or severely disabled (FAR subpart 8.7) or 8(a) program (FAR subpart 19.8).

(4) International agreements and Foreign Military Sales when the acquisition is to be reimbursed by a foreign country that requires that the product or services be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance.

(5) Other contract actions when the Director of Defense Procurement has determined that there is no opportunity for competition.

(Note: Even though Part C is not completed for actions with a government agency, the database will automatically include these actions in the category of not available for competition.)

(C) *Code C—Follow-on to Competed Action.* Enter code C when the action pertains to an acquisition placed with a particular contractor to continue or augment a specific competed program when such placement was necessitated by prior acquisition decisions.

(D) *Code D—Not Competed.* Enter code D when codes A, B, or C do not apply.

(iv) BLOCK C4, SEA TRANSPORTATION.

Enter one of the following codes when Block B1B is coded A, Block B5B is coded N, and Block B13A is coded other than 9. Otherwise, leave Block C4 blank.

(A) *Code Y—Yes—Positive Response to 252.2247–7022 or 252.212–7000(c0(2).*

Enter code Y when the contractor's response to the provision at 252.247–7022, Representation of Extent of Transportation by Sea, or 252.212–7000(c)(2), Offeror Representations and Certifications—Commercial Items, indicates the that contractor anticipates that some of the supplies being provided may be transported by sea.

(B) *Code N—No—Negative Response to 252.247–7022 or 252.212–7000(c)(2).*

Enter code N when the contractor's response to the provision at 252.247–7022 or 252.212–7000(c)(2) indicates that the contractor anticipates that none of the supplies being provided will be transported by sea.

(C) *Code U—Unknown—No Response or Provision Not Included in Solicitation.* Enter code U when the contractor did not complete the representation at 252.247–7022 or 252.212–7000(c)(2) or the solicitation did not include either provision.

(v) BLOCK C5, TYPE OF CONTRACT.

(A) If the action is a letter contract, including modifications and amendments to letter contracts, enter the code that describes the anticipated type of contract the letter contract will become when it is definitized.

(B) If there is more than one type of contract involved in the contracting action, enter the code that matches the type with the most dollars. If the type with the least dollars exceeds $500,000, fill out separate DD Forms 350 (with different report numbers) for each type.

(C) Enter one of the following codes:

(1) Code A—Fixed-Price Redetermination.

(2) Code J—Firm-Fixed-Price.

(3) Code K—Fixed-Price Economic Price Adjustment.

(4) Code L—Fixed-Price Incentive.

(5) Code R—Cost-Plus-Award-Fee.

(6) Code S—Cost Contract.

(7) Code T—Cost-Sharing.

(8) Code U—Cost-Plus-Fixed-Fee.

(9) Code V—Cost-Plus-Incentive-Fee.

(10) Code Y—Time-and-Materials.

(11) Code Z—Labor-Hour.

(vi) BLOCK C6, NUMBER OF OFFERORS SOLICITED.

(A) Leave Block C6 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985, (i.e., before the effective date of the Competition in Contracting Act);

(2) Block B1B is coded B or C and Block B13A is coded 5; or

(3) Block B13A is coded 6.

(B) Otherwise, enter—

(1) Code 1—One. Enter code 1 if only one offeror was solicited.

(2) Code 2—More than One. Enter code 2 if more than one offeror was solicited.

(vii) BLOCK C7, NUMBER OF OFFERS RECEIVED.

(A) Leave Block C7 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act); or

(2) Block B13A is coded 6, Order Under Federal Schedule.

(B) Otherwise, enter the specific number of offers received (maximum 999).

(viii) BLOCK C8, SOLICITATION PROCEDURES.

(A) Leave Block C8 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act);

(2) The action is pursuant to simplified acquisition procedures (Block B13A is coded 9); or

(3) The action is an order/call under a Federal schedule (Block B13A is coded 6.

(B) Otherwise, enter one of the following codes:

(1) Code A—Full and Open Competition—Sealed Bid. Enter code A if the action resulted from an award pursuant to FAR 6.102(a).

(2) Code B—Full and Open Competition—Competitive Proposal. Enter code B if the action resulted from an award pursuant to FAR 6.102(b).

(3) Code C—Full and Open Competition—Combination. Enter code C if the action resulted from an award using a combination of competitive procedures (e.g., two-step sealed bidding) pursuant to FAR 6.11102(c).

(4) Code D—Architect-Engineer. Enter code D if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).

(5) Code E—Basic Research. Enter code E if the action resulted from competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).

(6) Code F—Multiple Award Schedule. Enter code F is the action is an award of a multiple award schedule pursuant to FAR 6.102(d)(3) or an order against such a schedule.

(7) Code G—Alternative Sources. Enter code G if the action resulted from use of competitive procedures but excluded a particular source pursuant to FAR 6.202(a).

(8) Code K—Set-Aside. Enter code K if the action resulted from any—

(i) Set-aside for small business concerns (FAR 6.203 including small business innovation research (SBIR) actions and awards to qualified nonprofit agencies employing people who are blind or severely disabled which were participating in a set-aside for small business concerns (see FAR 19.501(h)).

(ii) Set-aside for small disadvantaged business concerns (see 206.203).

(iii) Total or partial set-asides (including portions of broad agency announcements (BAAs)) for historically black colleges and universities or minority institutions (see 206.203 and 235.016).

(iv) Competition among section 8(a) firms under FAR 19.805 (report noncompetitive 8(a) awards as code N).

(9) Code M. [Reserved.]

(10) Code N—Other Than Full and Open Competition.

Enter code N if the action resulted from use of other than full and open competition pursuant to FAR subpart 6.3. This includes awards to qualified nonprofit agencies employing people who are blind or severely disabled (see FAR subpart 8.7) or noncompetitive awards to the Small Business Administration under Section 8(a) of the Small Business Act (see FAR 6.302–5(b)).

(ix) BLOCK C9, AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION.

(A) Leave Block C9 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act).

(B) Enter one of the following codes if Block C8 is coded ''N.'' Otherwise, leave Block C9 blank.

(1) Code 1A—Unique Source. Enter code 1A if the action was justified pursuant to FAR 6.302–1(b)(1).

(2) Code 1B—Follow-on Contract. Enter code 1B if the action was justified pursuant to FAR 6.302–1(a)(2) (ii) or (iii).

(3) Code 1C—Unsolicited Research Prop. Enter code 1C if the action was justified pursuant to FAR 6.302–1(a)(2)(i).

(4) Code 1D—Patent/Data Rights. Enter code 1D if the action was justified pursuant to FAR 6.302–1(b)(2).

(5) Code 1E—Utilities. Enter code 1E if the action was justified pursuant to FAR 6.302–1(b)(3).

(6) Code 1F—Standardization. Enter code 1F if the action was justified pursuant to FAR 6.302–1(b)(4).

(7) Code 1G—Only One Source—Other. Enter code 1G if the action was justified pursuant to FAR 6.302–1 in a situation other than the examples cited in codes 1A through 1F.

(8) Code 2A—Urgency. Enter code 2A if the action was justified pursuant to FAR 6.302–2.

(9) Code 3A—Particular Source. Enter Code 3A if the action was justified pursuant to FAR 6.302–3(a)(2).

(10) Code 4A—International Agreement. Enter code 4A if the action was justified pursuant to FAR 6.302–4.

(11) Code 5A—Authorized by Statute. Enter code 5A if the action was justified pursuant to FAR 6.302–5(a)(2)(i).

(12) Code 5B—Authorized Resale. Enter code 5B if the action was justified pursuant to FAR 6.302–5(a)(2)(ii).

(13) Code 6A—National Security. Enter code 6A if the action was justified pursuant to FAR 6.302–6.

(14) Code 7A—Public Interest. Enter code 7A if the action was taken pursuant to FAR 6.302–7.

(x) BLOCK C10, SUBJECT TO LABOR STANDARDS STATUTES.

Enter one of the following codes. When Block B13A is coded 6, leave Block C10 blank.

(A) *Code A—Walsh-Healey Act.* Enter code A when the contracting action is subject to the provisions of FAR subpart 22.6.

(B) *Code C—Service Contract Act.* Enter code C when the contracting action is subject to the provisions of the Service Contract Act (see FAR part 37).

(C) *Code D—Davis-Bacon Act.* Enter code D when the contracting action is subject to the Davis-Bacon Act (see FAR 22.403–1).

(D) *Code Z—Not Applicable.* Enter code Z when codes A, C, or D do not apply.

(xi) BLOCK C11, CERTIFIED COST OR PRICING DATA.

Enter one of the following codes when Block B1B is coded A. Otherwise, leave blank.

(A) *Code Y—Yes—Obtained.* Enter code Y when certified cost or pricing data were obtained for the contracting action reported (see FAR 15.804–2).

(B) *Code N—No—Not Obtained.* Enter code N when certified cost or pricing data were not obtained because data were not required (see FAR 15.804–2) or an exemption was granted (see FAR 15.804–3(a)-(g)).

(C) *Code W—Not Obtained—Waived.* Enter code W when certified cost or pricing data were not obtained because the requirement was waived (see FAR 15.804–3(i) and DFARS 215.804–3(i)).

(xii) BLOCK C12, CONTRACT FINANCING.

Enter one of the following codes identifying whether or not progress payments (PP), advance payments (AP), or other financing methods were used.

(A) *Code A—FAR 52.232–16.* Enter code A if the contract contains the clause at FAR 52.232–16, Progress Payments.

(B) *Code B—DFARS 252.232–7003.* enter code B if the contract contains the clause at 252.232–7003, Flexible Progress Payments.

(C) *Code C—Percentage of Completion PP.* Enter code C if the contract provides for progress payments based on percentage or stage of completion, which is only permitted on contracts for construction, for shipbuilding, or for ship conversion, alteration, or repair (see 232.102(e)(2)).

(D) *Code D—Unusual PP or AP.* Enter code D if the contract provides for unusual progress payments or advance payments (see FAR subpart 32.4 and 32.501–2).

(E) *Code E—Commercial Financing.* Enter code E if the contract provides for commercial financing payments (see FAR subpart 32.2).

(F) *Code F—Performance-Based Financing.* Enter code F is the contract provides for performance-based financing payments (see FAR subpart 32.10).

(G) *Code Z—Not Applicable.* Enter code Z when codes A through F do not apply.

(xiii) BLOCK C13, FOREIGN TRADE DATA.

(A) The term ''United States'' (U.S.), as used in Block C13, excludes the Trust Territory of Palau (see 204.670–1 for definition of United States and outlying areas).

(B) BLOCK C13A, PLACE OF MANUFACTURE.

Complete Block C13A only if the contracting action is for a foreign end product or a service provided by a foreign concern. Otherwise, leave Block C13A blank.

(1) Code A—U.S. Enter code A if the contracting action is for—

(i) A foreign end product that is manufactured in the United States but still determined to be foreign because 50 percent or more of the cost of its components is not mined, produced, or manufactured inside the United States or inside qualifying countries; or

(ii) Services performed in the United States by a foreign concern.

(2) Code B—Foreign. Enter code B if the contracting action is for—

(i) Any other foreign end product; or

(ii) Services performed outside the Unites States by a foreign concern.

(C) BLOCK C13B, COUNTRY OF ORIGIN CODE.

(1) Complete Block C13B only if Block C13A is coded A or B. Otherwise, leave Block C13B blank.

(2) Enter the code from FIPS PUB 10–3 (Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions) that identifies the country where the foreign product is coming from or where the foreign company providing the services is located. If more than one foreign country is involved, enter the code of the foreign country with the largest dollar value.

(xiv) BLOCK C14, COMMERCIAL ITEMS. Enter one of the following codes:

(A) *Code Y—Yes.* Enter code Y if the contract contains the clause at FAR 52.212–4, Contract Terms and Conditions—Commercial Items.

(B) *Code N—No.* Enter code N if code Y does not apply

(d) *Part D of the DD Form 350.*

(1) Part D gathers data on the various socioeconomic programs that apply to defense acquisitions.

(2) Do Not complete Part D if the contracting action is an—

(i) Order/call under a Federal schedule, i.e., Block B13A is coded 6; or

(ii) Action with a government agency, i.e., Block B5B is coded Y.

(3) Determined the status of the concern (e.g., size and ownership) by referring to FAR party 19 and DFARS part 219.

(4) Use the codes in Blocks B13A and B13D to determine whether the codes in Part D will describes the contracting action being reported or the original contract.

(i) Code Part D to describe the contracting action being reported when—

(A) Block B13A is coded 1, 3, 4, or 9 and Block B13D is coded A or is blank; or

(B) Block B5B is coded N, Block B13A is coded 8, and Block B13D is coded A or is blank. Otherwise, code Part D to describe the original contract.

(ii) If there are no codes for the original contract because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed or a data element has been added to the system after the original contract report, then use codes that best describe the original contracting action.

(5) Complete Part D blocks as follows:

(i) BLOCK D1, TYPE OF BUSINESS.

Enter one of the following codes:

(A) *Code A—Small Disadvantaged Business Performing in U.S.* Enter code A if the contractor is an SDB concern as defined in 219.001 and the place of performance is within the United States and outlying areas.

(B) *Code B—Other Small Business Performing in U.S.* Enter code B if the contractor is a small business concern as defined in FAR 19.001, other than a small disadvantaged business concern, and the place of performance is within the United States and outlying areas.

(C) *Code C—Large Business Performing in U.S.* Enter code C if the contractor is a domestic large business concern, and the place of performance is within the United States and outlying areas.

(D) *Code D—JWOD Participating Nonprofit Agencies.* Enter code D if the contractor is a qualified nonprofit agency employing people who are blind or severely disabled (FAR 8.701), and the place of performance is within the United States and outlying areas.

(E) *Code F—Hospital.* Enter code F if the contractor is a hospital, and the place of performance is within the United States and outlying areas.

(F) *Code L—Foreign Concern/Entity.* Enter code L if the contractor is a foreign concern, the Canadian Commercial Corporation, or a non-U.S.-chartered nonprofit institution.

(G) *Code M—Domestic Firm Performing Outside U.S.* Enter code M if the contractor is a domestic concern or a domestic nonprofit institution and the place of performance is outside the United States and outlying areas.

(H) *Code U—Historically Black Colleges and Universities or Minority Institutions (HBCU/MI).* Enter code U if the contractor is an HBCU/MI as defined at 252.226–7000 and the place of performance is within the United States and outlying areas.

(I) *Code V—Other Educational.* Enter code V if the contractor is an educational institutional which does not qualify as an HBCU/MI, and the place of performance is within the United States and outlying areas.

(J) *Code Z—Other Nonprofit.* Enter code Z if the contractor is a nonprofit institution (defined in FAR 31.701) which does not meet any of the criteria in codes D, F, U, or V, and the place of performance is in the United States and outlying areas.

(ii) BLOCK D2, REASON NOT AWARDED TO SMALL DISADVANTAGED BUSINESS (SDB).

Enter one of the following codes when Block D1 is coded B or C. Otherwise, leave Block D2 blank.

(A) *Code A—No Known SDB Source.*

(B) *Code B—SDB Not Solicited.* Enter code B when there was known small business source, but it was not solicited.

(C) *Code C—SDB Solicited/No Offer.* Enter code C when an SDB was solicited but it did not submit an offer or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.

(D) *Code D—SDB Solicited/Offer Not Low.* Enter code D when an SDB offer was not the low offer or an SDB was not willing to accept award of a partial small business set-aside portion of an action at the price offered.

(E) *Code Z—Other Reason.* Enter code Z when an SDB did not receive the award for any other reason or when Block B1B is coded B or C and Block B13A is coded 5.

(iii) BLOCK D3, REASON NOT AWARDED TO SMALL BUSINESS (SB). Enter one of the following codes when Block D1 is coded C. Otherwise, leave D3 blank. (The term ''Small Business'' includes small disadvantaged businesses.)

(A) *Code A—No Known SB Source.*

(B) *Code B—SB Not Solicited.* Enter code B when there was a known small business source, but it was not solicited.

(C) *Code C—SB Solicited/No Offer.* Enter code C when a small business concern was solicited but it did not submit an offer or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.

(D) *Code D—SB Solicited/Offer Not Low.* Enter code D when a small business offer was not the low or most advantageous offer or a small business concern was not willing to accept award of a set-aside portion of an action at the price offered by the Government.

(E) *Code Other Reason.* Enter code Z when a small business did not receive the award for any reason or when Block B1B is coded B or C and Block B13A is coded 5.

(iv) BLOCK D4, PREFERENCE PROGRAM.

(A) BLOCK D4A, TYPE OF SB SET-ASIDE.

Enter one of the following codes:

(1) Code A—None. Enter code A if there was no small business set-aside (FAR 19.502). Note that set-asides for historically black colleges and universities and minority institutions (HBCUs/MIs) are not small business set-asides. Use code A for HBCU/MI set-asides and complete Block D4C.

(2) Code B—Total SB Set-Aside. Enter code B if the action was a total set-aside for small business (FAR 19.502–2), including actions reserved exclusively for small business concerns pursuant to FAR 13.105, or if the action resulted from the Small Business Innovation Research Program.

(3) Code C—Partial SB Set-Aside. Enter code C if the action was a partial set-aside for small business (219.502–3).

(4) Code E—Total SDB Set-Aside. Enter code E if the action was a total set-aside for small disadvantaged businesses (219.502–2–70).

(5) Code Y—Emerging Small Business Set-Aside. Enter code Y if the action was an emerging small business set-aside within a designated industry group under the Small Business Competitiveness Demonstration Program (FAR subpart 19.10 and DFARS 204.670–9).

(B) BLOCK D4B—TYPE OF SDB SET-ASIDE/SDB PREFERENCE.

Enter one of the following codes, even if Block D4A is coded E:

(1) Code A—None. Enter code A if no SDB preference was given or award was not to an SDB.

(2) Code B—Section 8(a). Enter code B if the contract was awarded to the Small Business Administration (SBA) under Section 8(a) of the Small Business Act (FAR subpart 19.8).

(3) Code C—Total SDB Set-Aside. Enter code C if the action was an SDB set-aside (219.502–2–70) and award was to an SDB.

(4) Code D—SDB Evaluation Preference—Unrestricted. Enter code D if the action was unrestricted but an SDB received an award as a result of an evaluation preference (subpart 219.70).

(5) Code E—SDB Preferential Consideration—Partial SB Set-Aside. Enter code E if the action was a partial set-aside for small business and preferential consideration resulted in an award to an SDB (219.502–3).

(6) Code F—SDB Evaluation Preference in Construction. Enter code F if the action was a construction acquisition and preferential consideration resulted in an award to a SDB (subpart 219.72). If code F applies and Block B13D is blank, complete Blocks E1 and E3.

(C) BLOCK D4C—HBCU/MI SET-ASIDE.

Enter one of the following codes:

(1) Code A—None. Enter code A if the action was not set aside for HBCUs or MIs.

(2) Code B—HBCU or MI—Total Set-Aside. Enter code B if the action was total set-aside for HBCUs and MIs (226.7003).

(3) Code C—HBCU or MI—Partial Set-Aside. Enter code C if the action was a partial set-aside for HBCUs or MIs under a broad agency announcement (235.016).

(D) BLOCK D4D. [Reserved.]

(E) BLOCK D4E, PREMIUM PERCENT.

(1) Complete Block D4E if [Block B1B is coded A and

(i) Block D4B is coded C, D, or E; or

(ii) Block D4C is coded B or C. Otherwise, leave blank.

(2) Calculate the premium percentage per 219.202–5 and enter it as a three-digit number rounded to the nearest tenth, e.g., enter 7.55% as 076. If no premium was paid, enter three zeros (000).

(v) BLOCK D5—ETHNIC GROUP.

(A) Complete Block D5 if the action is with an SDB. Otherwise, leave it blank.

(B) Enter the code from the following list which corresponds to the ethnic group marked by the contractor in the solicitation provision at 252.219–7000 (Small Disadvantaged Business Concern Representation (DoD Contracts)).

(1) Code A—Asian-Indian American.

(2) Code B—Asian-Pacific American.

(3) Code C—Black American.

(4) Code D—Hispanic American.

(5) Code E—Native American.

(6) Code F—Other SDB certified/determined by SBA.

(7) Code Z—No representation.

(vi) BLOCK D6, WOMEN-OWNED BUSINESS.

Enter one of the following codes:

(A) *Code Y—Yes.* Enter code Y if the response to FAR 52.204–5 or 52.212–3(c) (Women-Owned Business Representation) indicates that it is a women-owned business.

(B) *Code N—No.* Enter code N if the contractor's response to FAR 52.204–5 or 52.212–3(c) indicates that it is not a women-owned business.

(C) *Code U—Uncertified.* Enter code U if the information is not available because the contractor did not complete the representation under FAR 52.204–5 or 52.212–3(c).

(vii) BLOCK D7—SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM.

Enter one of the following codes. When Block B1B is coded B or C and Block B13A is coded 5, leave Block D7 blank.

(A) *Code A—Not an SBIR Program Phase I–II.* Enter code A if the action is not in support of a Phase I or II SBIR Program.

(B) *Code B—SBIR Program Phase I Action.* Enter code B if the action is related to a Phase I contract in support of the SBIR Program.

(C) *Code C—SBIR Program Phase II Action.* Enter code C if the action is related to a Phase II contract in support of the SBIR Program.

(viii) BLOCK D8, SUBCONTRACTING PLAN—SB, SDB, OR HBCU/MI.

Enter one of the following codes:

(A) *Code A—Plan Not Included—No Subcontracting Possibilities.* Enter code A if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (FAR 19.705–2(c)).

(C) *Code B—Plan Not Required.* Enter code B if no subcontracting plan was required (because the action did not meet the dollar thresholds in FAR 19.702(b)).

(C) *Code C—Plan Required, Incentive Not Included.* Enter code C if the action includes a subcontracting plan, but does not include additional incentives (FAR 19.708(c)).

(D) *Code D—Plan Required, Incentive Included.* Enter code D if the action includes a subcontracting plan and also includes additional incentives (FAR 19.708(c), 219.708(c)).

(ix) BLOCK D9, DEMONSTRATION TEST PROGRAM.

Enter one of the following codes. When Block B13A is coded 5 or Block B13D is coded B, C, D, E, F, or G and the original action was awarded before the program began, enter code N in Block D9. When Block B1B is coded B or C and Block B13A is coded 5, enter code N in Block D9.

(A) *Code Y—Yes.* Enter code Y if this is an action with a U.S. business concern, in either the four designated industry groups or the ten targeted industry categories under the Small Business Competitiveness Demonstration Program (FAR subpart 19.10 and DFARS subpart 219.10), where the principal place of performance is in the United States or outlying areas.

(B) *Code N—No.* Enter code N if code Y does not apply.

(x) BLOCK D10, SIZE OF SMALL BUSINESS.

(A) Complete Block D10 only when Block D9 is coded ''Y'' and the contractor is a small business (Block D1 is coded A or B). Otherwise, leave Block D10 blank.

(B) Enter one of the following codes for the size of the business (number of employees or average annual gross revenue) as represented by the contractor in the solicitation provision at FAR 52.219–19, Small Business Concern Representation for the Small Business Competiveness Demonstration Program:

(1) Code A—50 or fewer.

(2) Code B—51–100.

(3) Code C—101–250.

(4) Code D—251–500.

(5) Code E—501–750.

(6) Code F—751–1,000.

(7) Code G—Over 1,000.

(8) Code M—$1,000,000 or less.

(9) Code N—$1,000,001–2,000,000.

(10) Code P—$2,000,001–3,500,000.

(11) Code R—$3,500,001–5,000,000.

(12) Code S—$5,000,001–10,000,000.

(13) Code T—$10,000,001–17,000,000.

(14) Code U—$Over $17,000,000.

(xi) BLOCK D11, EMERGING SMALL BUSINESS.

(A) Complete this block only if Block D9 is coded ''Y'' and the contracting action is in one of the four designated industry groups, not one of the targeted industry categories. Otherwise, leave Block D11 blank.

(B) Enter one of the following codes:

(1) Code Y—Yes. Enter code Y if the contractor represents in the provision at FAR 52.219–19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, that it is an emerging small business concern.

(2) Code N—No. Enter code N if code Y does not apply.

(e) *Part E of the DD Form 350.*

Part E gathers data on specialized items that may not become permanent reporting elements.

(1) BLOCK E1, PREFERENCE AWARD VALUE.

(i) Complete Block E1 if code F was entered in Block D4B and Block B13D is blank. Otherwise, leave Block E1 blank.

(ii) Enter the dollar amount (i.e., contract face value) of the award. Use whole dollars.

(2) BLOCK E2, SET-ASIDE VALUE.

(i) Complete Block E2 only if the contracting action is with a qualified nonprofit agency employing people who are blind or severely disabled and was awarded as a result of the agency's participation in a total or partial small business set-aside (FAR 19.501(h)). Otherwise, leave Block E2 blank.

(ii) Enter the dollar amount (i.e., contract face value) of the set-aside portion of the award. Use whole dollars.

(3) BLOCK E3, NEXT LOW OFFER.

(i) Complete Block E3 only if Block E1 or E2 is completed. Otherwise, leave Block E3 blank.

(ii) If Block E1 or E2 is completed—

(A) Enter the offered price from the small business firm that would have been the low offeror if qualified

nonprofit agencies employing people who are blind or severely disabled had not participated in the acquisition; or

(B) If the evaluation preference for small disadvantaged business concerns in construction acquisitions set forth in subpart 219.72 is applied, enter the offered price from the non-SDB concern that would have been the successful offeror if the evaluation preference had not been applied. Enter the amount in whole dollars.

(4) BLOCK E4–BLOCK E8. [Reserved]

(f) *Part F of the DD Form 350.*

Part F identifies the reporting official.

(1) BLOCK F1, NAME OF CONTRACTING OFFICER OR REPRESENTATIVE.

Enter the name (Last, First, Middle Initial) of the contracting officer or representive.

(2) BLOCK F2, SIGNATURE.

The person identified in Block F1 must sign.

(3) BLOCK F3, TELEPHONE NUMBER.

Enter the telephone number (with area code) for the individual in Block F1. Installations with Defense Switched Network (DSN) must enter the DSN number.

(4) BLOCK F4, DATE.

Enter date that the DD Form 350 Report is submitted. Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(g) *Special Instructions for DD Forms 350 on Actions of $25,000 or Less Under the Small Business Competitiveness Demonstration Program.*

(1) A DD Form 350 is required on actions of $25,000 or less under the Small Business Competitiveness Demonstration Program in accordance with 204.670–9.

(2) Except as provided in paragraphs (g)(2)(i) and (ii) of this subsection, complete the DD Form 350 using the instructions in paragraphs (a) through (f) of this subsection.

(i) Enter code B in Block C3 for actions at or below the micro-purchase threshold at FAR 2.101.

(ii) Leave the following blocks blank:

BIB
B4
B5B
B5C
B5F
B5G
B5H
B9
B10
B11
B12B
B12C
C1
C2
C4
C6
C11
C12
C13A
C13B
D2
D3
D4E
D5
D7
D8
E2
E3

17. Section 253.204–71 is revised to read as follows:

253.204–71 DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less.

(a) *Scope of subsection.*

Policy on use of a DD Form 1057 is in 204.670. This subsection contains instructions on completion of the DD Form 1057.

(1) Report actions in the month they are awarded, issued, executed, or placed, except—

(i) When the price of an order or call cannot be determined when it is placed, count the action and its dollars when it is paid.

(ii) Count the following actions when the voucher is paid (count each voucher as one action):

(A) Meals and lodging.

(B) Automatic deliveries, e.g., bread, milk, and ice cream.

(iii) The Navy Facilities Engineering Command shall report vouchers it processes on Naval shore establishment contracts for electricity and gas in accordance with departmental procedures.

(2) Enter all dollar amounts in whole dollars only. Do not enter cents. If the net amount is a decrease, enter a minus sign (-) immediately preceding the amount to indicate a credit entry. Do not enter parentheses.

(3) Include actions in support of a contingency operation (see 213.000) on the DD Form 1057, as follows:

(i) Section A, complete fully.

(ii) Section B, complete only lines 5, 5a, 7, and 7a.

(iii) Section C, complete only lines 1 and 1c, 2 and 2c, or 3 and 3c, as applicable.

(iv) Sections D, E, and F, leave blank.

(v) Section G, complete fully.

(vi) Section H, complete fully.

(b) *Definitions.*

For purposes of this subsection—

All Other Orders means orders, and modifications of such orders, under basic ordering agreements (BOAs) or indefinite delivery contracts.

GSA Schedule Orders means only orders/calls, and modifications of such orders/calls, under Federal schedules awarded by GSA.

Other Contracting Actions means all actions that do not meet the definitions, in this paragraph (b), of an order.

Other Federal Schedule Orders means only orders, and modifications of such orders, under Federal schedules awarded by an agency other than GSA, e.g., awarded by VA or OPM.

Similified Acquisition Procedures means purchase orders, calls under blanket purchase agreements (BPAs) (except BPAs written under Federal schedules), and modifications to those actions.

(c) *Section A, General Information.*

(1) BLOCK A1, REPORTING FOR MONTH ENDING.

Enter the last day of the month in which the report is submitted. Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(2) BLOCK A2, CONTRACTING OFFICE.

Enter sufficient detail to establish the identity of the contracting office submitting the report in Blocks 2a and b.

(3) BLOCK A3, REPORTING OFFICE CODE.

Enter the code assigned to the contracting office by the departmental data collection point in 204.670–8.

(d) *Section B, Contracting Actions.*

(1) BLOCK B1, TARIFF OR REGULATED ACQUISITIONS.

Enter the number and dollar value of contracting actions (including modifications that will also be reported in Block B8) with tariff or regulated industries (industries with sole source and service rates which are fixed or adjusted by a Federal, State, or other public regulatory body).

(2) BLOCK B2, FOREIGN/ INTERAGENCY.

(i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported in Block B8)—

(A) For foreign military sales (FMS) or other arrangement where the foreign government or international organization is paying all or part of the cost of the action.

(B) Placed directly with foreign governments under the terms of an international agreement, e.g., base maintenance performed with the foreign government acting as the contractor (any other actions directly with foreign governments go in Block B5).

(C) With another Federal agency or Government corporation, e.g., Federal Prison Industries (UNICOR).

(ii) Enter the subtotals in Blocks B2a, b, and c for the number and dollar value of contracting actions, including modifications that will also be reported in Block B8 for—

(A) Block B2a, FMS/International Agreements. Enter subtotals for paragraphs (d)(2)(i)(A) and (B) of this subsection.

(B) Block B2b, Action with UNICOR. Enter subtotal for contracting actions with UNICOR.

(C) Block B2c, Action with Other Government Agency. Enter subtotal for action with government agencies other than UNICOR.

(3) BLOCK B3, SMALL BUSINESS.

(i) Enter the total number and total dollar value of contracting actions (including modifications which will also be reported in Block B8) where the—

(A) Contractor is a small business concern; and

(B) Place of performance is in the United States and outlying areas (see 204.670–1).

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported in Block B8) for—

(A) Block B3a, Simplified Acquisition Procedures (SAP).

(B) Block B3b, GSA Schedule Orders.

(C) Block B3c, Other Federal Schedule Orders.

(D) Block B3d, All Other Orders.

(E) Block B3e, Other Contracting Actions.

(4) BLOCK B4, LARGE BUSINESS.

(i) Enter the total number and dollar value of contracting actions (including modifications which will also be reported in Block B8) where the—

(A) Contractor is a large business concern; and

(B) Place of performance is in the United States and outlying areas.

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported in Block B8) for—

(A) Block B4a, Simplified Acquisition Procedures (SAP).

(B) Block B4b, GSA Schedule Orders.

(C) Block B4c, Other Federal Schedule Orders.

(D) Block B4d, All Other Orders.

(E) Block B4e, Other Contracting Actions.

(5) BLOCK B5, DOMESTIC OR FOREIGN ENTITIES PERFORMING OUTSIDE THE UNITED STATES.

(i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported in Block B8) where the place of performance is outside the United States and outlying areas (see 204.670–1(c)). This includes actions placed directly with a foreign government that are not under international agreements (see paragraph (d)(2)(i)(B) of this subsection). It does not matter whether the contractor is domestic or foreign.

(ii) Enter the subtotals for the number and dollar value of actions (including modifications that will also be reported in Block B8) for—

(A) Block B5a, Simplified Acquisition Procedures (SAP).

(B) Block B5b, GSA Schedule Orders.

(C) Block B5c, Other Federal Schedule Orders.

(D) Block B5d, All Other Orders.

(E) Block B5e, Other Contracting Actions.

(6) BLOCK B6, EDUCATIONAL, NONPROFIT & OTHER.

(i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported in Block B8) with—

(A) Educational institutions;

(B) Not-for-profit and nonprofit institutions (defined in FAR 31.107);

(C) Qualified nonprofit agencies employing people who are blind or severely disabled; and

(D) Any other entities not listed in Blocks B1 through B5.

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported in Block B8) for—

(A) Block B6a, Simplified Acquisition Procedures (SAP).

(B) Block B6b, GSA Schedule Orders.

(C) Block B6c, Other Federal Schedule Orders.

(D) Block B6d, All Other Orders.

(E) Block B6e, Other Contracting Actions.

(7) BLOCK B7, TOTAL CONTRACTING ACTIONS.

(i) Add Blocks B1 through B6 and enter the totals in Block B7.

(ii) If directed by data collection point procedures, also enter the subtotals for the number and dollar value of contracting actions for—

(A) Block B7a, Simplified Acquisition Procedures, sum of sub-blocks 3a+4a+5a+6a.

(B) Block B7b, GSA Schedule Orders, sum of sub-blocks 3b+4b+5b+6b.

(C) Block B7c, Other Federal Schedule Orders, sum of sub-blocks 3c+4c+5c+6c.

(D) Block B7d, All Other Orders, sum of sub-blocks 3d+4d+5d+6d.

(E) Block B7e, Other Contracting Actions, sum of sub-blocks 3e+4e+5e+6e.

(8) BLOCK B8, TOTAL MODIFICATIONS EXCLUDING SIMPLIFIED ACQUISITION PROCEDURES.

Enter the total number and dollar value of modification actions, excluding simplified acquisition procedures.

(e) *Section C, Extent Competed.*

(1) BLOCK C1, COMPETED.

(i) Enter the total number and dollar value of contracting actions which were competed.

(A) Include in Block C1—

(1) Actions not subject to Competition in Contracting Act (CICA) (see FAR 6.001) when at least two quotations or offers were received;

(2) Actions when competitive procedures were used to fulfill the requirement for full and open competition (FAR subpart 6.1);

(3) Actions when full and open competition was provided for after exclusion of source, to establish/maintain alternative sources or to set aside an acquisition exceeding the micro-purchase threshold for small business (FAR Subpart 6.2);

(4) Actions when statutory authorities for other than full and open competition (FAR subpart 6.3) were used and more than one offer was received, except as provided in paragraphs (e)(1)(i)(B) *(2)* and *(3)* of this subsection;

(5) Actions resulting from a contract awarded competitively before CICA (including two-step formal advertising);

(6) Orders/calls and modifications under a Federal schedule; and

(7) Section 8(a) awards competed under FAR 6.204.

(B) Do not include—

(1) Actions that meet the criteria for Section C, Block C2;

(2) Actions awarded under the authority of FAR 6.302–5(b) (2) or (4), authorized or required by statute (report these in Section C, Block C2); or

(3) Actions reported in Section B, Blocks B1 and B2, including actions with the Federal Prison Industries (UNICOR). These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Block C1a, Small Business Concerns;

(B) Block C1b, Large Business Concerns;

(C) Block C1c, Domestic or Foreign Entities Performing Outside the United States and Outlying Areas; and

(D) Block C1d, Educational, Nonprofit & Other.

(2) BLOCK C2, NOT AVAILABLE FOR COMPETITION.

(i) Enter the total number and dollar value of contracting actions which were not available for competition.

(A) Include in Block C2—

(1) Actions for brand name commercial products for authorized resale;

(2) Actions authorized or required by statute to be awarded to a specific source or through another agency in accordance with FAR 6.302–5(b) (2) or (4); e.g., actions with qualified nonprofit agencies employing people who are blind or severely disabled, and noncompetitive 8(a) actions;

(3) Actions (including modifications) at or below the micro-purchase threshold at FAR 2.101; and

(4) Other contract actions when the Director of Defense Procurement has determined that there is no opportunity for competition.

(B) do not include any actions reported in Section B, Blocks B1 or B2 (e.g., actions with regulated monopolies, actions under foreign military sales or international agreements, and actions with another Federal agency or Government corporation). These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Block C2a, Small Business Concerns;

(B) Block C2b, Large Business Concerns;

(C) Block C2c, Domestic or Foreign Entities Performing Outside the United States; and

(D) Block C2d, Educational, Nonprofit and Other.

(3) BLOCK C3, NOT COMPETED.

(i) Enter the total number and dollar value of contracting actions which were not competed, i.e., any actions not reported in Blocks B1 or B2. Do not include actions reported in Section B, Blocks B1 or B2. These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of actions for—

(A) Block C3a, Small Business Concerns;

(B) Block C3b, Large Business Concerns;

(C) Block C3c, Domestic or Foreign Entities Performing Outside the United States and Outlying Areas; and

(D) Block C3d, Educational, Nonprofit & Other.

(f) *Section D, Research, Development, Test, & Evaluation Actions.*

Do not include actions for supplies or services in support of RDT&E work that do not require the contractor to perform RDT&E.

(1) BLOCK D1, SMALL BUSINESS.

Enter the total number and dollar values of RDT&E actions with small business concerns.

(2) BLOCK D2, LARGE BUSINESS.

Enter the total number and dollar value of RDT&E actions with large business concerns.

(3) BLOCK D3, DOMESTIC OR FOREIGN ENTITIES PERFORMING OUTSIDE THE UNITED STATES AND OUTLYING AREAS.

Enter the total number and dollar value of RDT&E actions where the principal place of performance is outside the United States or outlying areas (see 204.670–1).

(4) BLOCK D4, HISTORICALLY BLACK COLLEGES & UNIVERSITIES OR MINORITY INSTITUTIONS (HBCU/MI).

Enter the total number and dollar value of RDT&E actions with HBCUs or MIs.

(5) BLOCK D5, OTHER ENTITIES.

Enter the total number and dollar value of RDT&E actions that were reported in Blocks D1 through D4.

(g) *Section E, Selected Socioeconomic Statistics.*

(1) BLOCK E1, SMALL BUSINESS (SB) SET-ASIDE.

(i) Enter the total number and dollar value of contracting actions which were small business set-aside actions, including awards to SDBs reported in Blocks E2c and E2d.

(ii) If the action is an emerging small business set-aside (FAR 19.1006(c)), use the most appropriate sub-block.

(iii) Enter the subtotals for the number and total dollar value of actions for—

(A) Block Ela, SB Set-aside Using Simplified Acquisition Procedures.

Enter actions pursuant to FAR 13.105(a).

(B) Block E1b, SB Set-Aside.

Enter actions pursuant to FAR 19.502.

(2) BLOCK E2, SMALL DISADVANTAGED BUSINESS (SDB) ACTIONS.

(i) Enter the total number and dollar value of actions which were small disadvantaged business actions.

(ii) Enter the subtotals for the number and dollar value for—

(A) block E2a, Through SBA-Section 8(a).

Enter actions with the Small Business Administration pursuant to Section 8(a) of the Small Business Act (FAR subpart 19.8).

(B) Block E2b, SDB Set-Aside/SDB Preference.

Enter actions resulting from—

(1) A set-aside for small disadvantaged business (SDB) (219.502–2–70);

(2) Application for an SDB evaluation preference (subpart 219.70); or

(3) SDB preferential consideration (219.502–3).

(C) Block E2c, SB Set-aside Using Simplified Acquisition Procedures.

Enter actions pursuant to FAR 13.105(a) when award is to an SDB, but a preference was not applied.

(D) Block E2d, SB Set-Aside.

Enter actions under FAR 19.502 when award is to an SDB, but a preference was not applied nor was preferential consideration given.

(E) Block E2e, Other.

Enter awards to SDB concerns when award is to an SDB not reported in Blocks E2a through E2d.

(3) BLOCK E3, WOMEN-OWNED SMALL BUSINESS.

Enter total number and dollar value of contracting actions with women-owned small businesses (see FAR 19.3304(a)).

(4) BLOCK E4, HBCU/MI.

Enter the total number and dollar value of contracting actions with NHCU/MIs pursuant to subpart 226.70.

(5) BLOCK E5, JWOD PARTICIPATING NONPROFIT AGENCIES.

Enter the total number and dollar value of contracting actions with qualified nonprofit agencies employing people who are blind or severely disabled for supplies or services from the Procurement List pursuant to FAR subpart 8.7.

(6) BLOCK E6, EXEMPT FROM SMALL BUSINESS ACT REQUIREMENTS.

Enter the total number and dollar value of contracting actions exempt from the set-aside requirements of the Small Business Act (see FAR 19.502–1).

(h) *Section F, Simplified Acquisition Procedures—Dollar Value Ranges.* Enter in each of the dollar ranges the total number and dollar value of contracting actions which used simplified acquisition procedures (FAR part 13). The total of Section F is normally the sum of Blocks B3a, B4a, B5a, and B6a.

(i) *Section G, Contingency Actions.*

BLOCK G1, TOTAL ACTIONS.

(1) Enter the total number and dollar value of actions in support of a contingency operation (see 213.000). The numbers entered here are a breakout of the numbers already entered in Sections B and C.

(2) Enter the subtotals based on the instructions for completion of Section C for the number and dollar value of contracting actions for—

(i) Block G1a, Competed;

(ii) Block G1b, Not Available for Competition; and

(iii) Block G1c, Not Competed.

(j) *Section H, Remarks and Authentication.*

(1) BLOCK H1, REMARKS.

Enter any remarks applicable to this report.

(2) Block H2, CONTRACTING OFFICER.

(i) Block H2a, Typed Name.

Enter the name (last, first, middle initial) of the contracting officer or representative.

(ii) Block H2b, Signature.

The person identified in Block H2a must sign.

(iii) Block H2c, Telephone Number.

Enter the telephone number (with area code) of the person identified in Block H2a. Installations with Defense Switched Network (DSN) must enter their DSN number.

(3) BLOCK H3, DATE REPORT SUBMITTED.

Enter the date that the DD Form 1057 is submitted. Enter four digits for the year, two digits for the month and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2,2003, as 20030102.

18. Section 253.215–70 is amended by revising paragraphs (c)(2) and (c)(6) to read as follows:

253.215–70 DD Form 1547, Record of Weighted Guidelines Application.

* * * * *

(c) * * *

(2) BLOCK 2—BASIC PROCUREMENT INSTRUMENT IDENTIFICATION NO.

Enter the identifying contract number assigned per 204.70 (Block B1A of the DD 350).

* * * * *

(6) BLOCK 6—NAME OF CONTRACTOR

Enter the contractor's name (including division name), (Block B5D of the DD 350).

* * * * *

[FR Doc. 96–24839 Filed 9–27–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. 89–8; Notice 10]

RIN 2127–AG43

Schedule of Fees Authorized by 49 U.S.C. 30141

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document adopts fees for Fiscal Year 1997 and until further notice, as authorized by 49 U.S.C. 30141, relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS).

NHTSA has adopted its proposal that the annual fee for the registration of a new importer be increased from $456 to $501, and the annual fee for renewal of registration be increased from $240 to $332. The fee required to reimburse the U.S. Customs Service for bond processing costs increases by $0.20, from $4.95 to $5.15 per bond.

The fee payable for a determination that a nonconforming vehicle is capable of conversion to meet the FMVSS is increased from $104 to $199 if the determination results from a petition arguing that the nonconforming vehicle is substantially similar to conforming vehicles. With respect to vehicles that have no substantially similar counterpart, the fee rises from $520 to $721. In addition, the fee payable by the importer of each vehicle that benefits by a determination is increased from $93 to $134, regardless of whether the determination is made pursuant to a petition or by NHTSA on its own initiative.

EFFECTIVE DATE: The effective date of the final rule is October 1, 1996.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, Office of Safety Assurance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Introduction

On June 24, 1996, NHTSA published the notice of proposed rulemaking on which this final rule is based (61 FR 32411). The reader is referred to that notice for a full discussion of the rulemaking history of part 594 and the fees authorized by the Imported Vehicle Safety Compliance Act of 1988, P.L. 100- 562. The fees applicable in any fiscal year are to be established before the beginning of such year. The statute authorizes an annual fee to cover the costs of the importer registration program, an annual fee or fees to cover the cost of making import eligibility determinations, and an annual fee or fees to cover the cost of processing the bond furnished to the Customs Service. NHTSA last amended the fee schedule in 1993; it has applied in Fiscal Years 1994–96.

As a general statement applicable to consideration of all fees, there has been a slight increase in hourly costs in the past three fiscal years attributable to the approximately 2 percent raise in salaries of employees on the General Schedule that became effective on January 1 in the years 1995, and 1996 (there was a locality raise only in 1994).

Requirements of the Fee Regulation

Section 594.6—Annual Fee for Administration of the Importer Registration Program

Section 30141(a)(3) of Title 49 U.S.C. provides that registered importers must pay ''the annual fee the Secretary of Transportation establishes * * * to pay for the costs of carrying out the registration program for importers * * *.'' The annual fee attributable to the registration program is payable both by new applicants and by registered importers seeking to renew their registration.

In accordance with the statutory directive, NHTSA reviewed the existing fees and their bases in an attempt to establish fees which would be sufficient to recover the costs of carrying out the registration program for importers for at least the next fiscal year. The initial component of the Registration Program Fee is the portion of the fee attributable to processing and acting upon registration applications. The agency has determined that this portion of the fee should be decreased from $356 to $301 for new applications, and increased from $100 to $132 for renewals. The higher initial cost is warranted because the average cost of processing a new application is substantially greater than that of its renewal.

Other costs attributable to maintenance of the registration program arise from the agency's reviewing a registrant's annual statement and verifying the continuing validity of information already submitted. These costs also include costs attributable to revocation or suspension of a registration.

The total portion of the fee attributable to maintenance of the registration program as estimated by NHTSA is approximately $200, an increase of $100. This reflects the fact that costs have been incurred for processing suspensions or revocations. When this $200 is added to the $301 representing the registration application component, the cost to an applicant equals $501, and was the fee proposed by NHTSA. It represents an increase of $45. When the $200 is added to the $132 representing the renewal component, the cost to a renewing registered importer is $332. This fee increase was also proposed. It represents an increase of $92.

Sec. 594.6(h) recounts indirect costs that have been estimated at $6.71 per

man-hour. This is raised to $7.07, as proposed.

Sections 594.7, 594.8—Fees to Cover Agency Costs in Making Importation Eligibility Determinations

Section 30141(a)(3) also requires registered importers to pay ''other fees the Secretary of Transportation establishes to pay for the costs of * * * (B) making the decisions under this subchapter.'' Pursuant to part 593, these decisions are whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for import into and sale in the United States, and certified as meeting the FMVSS, and whether it is capable of being readily altered to meet those standards. Alternatively, where there is no substantially similar U.S. motor vehicle, the decision is whether the safety features of the vehicle comply with or are capable of being altered to comply with the FMVSS. These decisions are made in response to petitions submitted by registered importers or manufacturers, or pursuant to the Administrator's initiative.

The fee for a vehicle imported under a decision pursuant to a petition is payable in part by the petitioner and in part by importers. However, the fee to be charged for a vehicle is a pro rata share of the costs in making all the eligibility determinations in the fiscal year.

As the agency noted in the final rule adopting the fees for FY94, only one petition had been granted for a vehicle which is not ''substantially similar'' to a certified model, and there was not yet an average cost figure for this category. Since that time, at least half a dozen other petitions have been received and NHTSA has found that these require noticeably more analysis and, at times, further correspondence with the petitioner in order to obtain sufficient data to reach a decision.

Inflation and the small raises under the General Schedule also must be taken into count in the computation of costs. Accordingly, NHTSA proposed that there be an increase from $104 to $199 in the fee required to accompany a ''substantially similar'' petition, and from $520 to $721 in the fee for petitions for vehicles that are not substantially similar and that have no certified counterpart. In the event that a petitioner requests an inspection of a vehicle, it was proposed that the fee remain at $550 for each of those types of petitions. The proposed fees are adopted.

The importer of each vehicle covered by a petition currently must pay $93 upon its importation, the same fee applicable to those whose vehicles covered by a determination on the agency's initiative (other than Canadian vehicles covered by code VSA–1). It was proposed that this fee be increased to $134, based upon an increase in administrative costs. This proposed fee is also adopted.

The fee for inspection of a vehicle to verify its conformance status remains unchanged.

Section 594.9—Fee to Recover the Costs of Processing the Bond

Section 30141(a)(3) also requires a registered importer to pay ''any other fees the Secretary of Transportation establishes * * * to pay for the costs of—(A) processing bonds provided to the Secretary of the Treasury'' upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time or if the vehicle is not brought into compliance within such time, that it is exported, without cost to the United States, or abandoned to the United States.

The statute contemplates that NHTSA make a reasonable determination of the cost to the United States Customs Service of processing the bond. In essence, the cost to Customs is based upon an estimate of the time that a GS 9, Step 5 employee spends on each entry, which Customs judged to be 20 minutes. Because of the modest salary and locality raises in the General Schedule that were effective at the beginning of 1994, 1995, and 1996, NHTSA proposed that the current processing fee be increased by $0.20, from $4.95 per bond to $5.15.

There were no comments on the proposed amendments. Therefore, NHTSA is adopting its proposal as a final rule.

Effective Date

The effective date of the final rule is October 1, 1996.

Rulemaking Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12886. Further, NHTSA has determined that the action is not significant under Department of Transportation regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that the costs of the final rule will be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. There will be no substantial effect upon State and local governments. There will be no substantial impact upon a major transportation safety program. Both the number of registered importers and determinations are estimated to be comparatively small. A regulatory evaluation analyzing the economic impact of the final rule adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act. I certify that this action will not have a substantial economic impact upon a substantial number of small entities. Although entities that currently modify nonconforming vehicles are small businesses within the meaning of the Regulatory Flexibility Act, the agency has no reason to believe that a substantial number of these companies cannot pay the fees adopted by this action which are only modestly increased from those now being paid, and which can be recouped through their customers. The cost to owners or purchasers of altering nonconforming vehicles to conform with the FMVSS may be expected to increase to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of carrying out the registration program and making eligibility decisions, and to compensate Customs for its bond processing costs. Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 12612 (Federalism)

The agency has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 ''Federalism'' and determined that the action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers will not vary significantly from that existing before promulgation of the rule.

E. Civil Justice

This rule will not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety

standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 594 is amended as follows:

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

1. The heading of part 594 is revised to read as set forth above.

2. The authority citation for part 594 is revised to read as follows:

Authority: 49 U.S.C. 30141, 30166; delegation of authority at 49 CFR 1.50.

3. Section 594.1 is revised to read as follows:

§ 594.1 Scope.

This part establishes the fees authorized by 49 U.S.C. 30141.

4. Section 594.4 is amended by revising the introductory text to read as follows:

§ 594.4 Definitions.

All terms used in this part that are defined in 49 U.S.C. 30102 are used as defined in that section.

* * * * *

5. Section 594.6 is amended by:

a. revising the year ''1993'' in paragraph (d) to read ''1996'';

b. revising the introductory text of paragraph (a);

c. revising paragraph (b);

d. revising the final sentence of paragraph (h); and

e. revising paragraph (i), to read as follows:

§ 594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter on or after October 1, 1996, shall pay an annual fee of $501, as calculated below, based upon the direct and indirect costs attributable to:

* * * * *

(b) That portion of the initial annual fee attributable to the processing of the application for applications file on and after October 1, 1996, is $301. The sum of $301, representing this portion, shall not be refundable if the application is denied or withdrawn.

* * * * *

(h) * * * This cost is $7.07 per man-hour for the period beginning October 1, 1996.

(i) Based upon the elements, and indirect costs in paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program, covering the period beginning October 1, 1996, is $200. When added to the costs of registration of $301, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are $501. The annual renewal registration fee for the period beginning October 1, 1996, is $332.

6. Section 594.7 is amended by revising the first two sentences of paragraph (e) to read as follows:

§ 594.7 Fee for filing petition for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed on and after October 1, 1996, the fee payable for a petition seeking a determination under paragraph (a)(1) of this section is $199. The fee payable for a petition seeking a determination under paragraph (a)(2) of this section is $721.* * *

* * * * *

7. Section 594.8 is amended by revising the first sentence in paragraphs (b) and (c) to read as follows:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

* * * * *

(b) If a determination has been made pursuant to a petition, the fee for each vehicle is $134.* * *

(c) If a determination has been made pursuant to the Administrator's initiative, the fee for each vehicle is $134. * * *

8. Section 594.9(c) is revised to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 1996, for which a certificate of conformity is furnished, is $5.15.

Issued on: September 11, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–23794 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 61, No. 190
Monday, September 30, 1996

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1215

[FV–96–706PR]

Proposed Popcorn Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture (Department) is seeking comments on a proposal for a industry-funded promotion, research, and consumer information program for popcorn. An order for the proposed program—the Popcorn Promotion, Research, and Consumer Information Order (Order)—was submitted to the Department by the Popcorn Institute. Under the proposed order, processors would pay an assessment rate of 5 cents per hundredweight of popcorn to the proposed Popcorn Board (Board). Composed of popcorn processors, the Board would use the assessments collected to conduct a generic program of promotion, research, and consumer information to maintain and expand markets for popcorn. In addition, in accordance with the Paperwork Reduction Act of 1995, this proposed rule specifies the public reporting burden for the collection of information involved in reporting the necessary information to administer the program.

DATES: Comments must be received by November 29, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed rule to: Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), USDA, PO Box 96456, Room 2535–S, Washington, DC 20090–6456, fax (202) 205–2800. Three copies of all written material should be submitted, and they will be made available for public inspection at the Research and Promotion Branch during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register. Pursuant to the Paperwork Reduction Act, also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address.

FOR FURTHER INFORMATION CONTACT: Stacey L. Bryson, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2535–S, Washington, DC 20090–6456, telephone (888) 720–9917 or (202) 720–6930.

SUPPLEMENTARY INFORMATION: This proposed order is issued under the Popcorn Promotion, Research, and Consumer Information Act,[7 U.S.C. 7481–7491], hereinafter referred to as the Act.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. Further, section 580 of the Act states that nothing in the popcorn statute preempts or supersedes any other program relating to popcorn promotion organized and operated under the laws of the United States or any State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 577 of the Act, after an Order is implemented, a person subject to the Order may file a petition with the Secretary stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency is required to examine the impact of the proposed rule on small entities.

Legislation to create a generic program of promotion and research for popcorn became effective on April 4, 1996. Congress found that this program is vital to the welfare of popcorn processors and persons concerned with marketing, using, and producing popcorn for the market, as well as to the agricultural economy of the United States.

This program is intended to develop and finance an effective and coordinated program of promotion, research, and consumer information to maintain and expand the markets for popcorn. The program was initiated by the popcorn industry, which must approve the program in a referendum in advance of its implementation, and industry members would serve on the Board that would administer the program under the Department's supervision. In addition, any person subject to the program may file with the Secretary a petition stating that the order or any provision is not in accordance with law and requesting a modification of the order or an exemption from the order. Administrative proceedings were discussed earlier in this proposed rule.

In this program, processors would submit assessments and reports to the Board. In addition, exempt processors would be required to file an exemption application. While the proposed Order would impose certain recordkeeping requirements on processors, information required under the proposed Order could be compiled from records currently maintained. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. The estimated cost in providing information

to the Board by the estimated 67 respondents would be $40.32 per respondent annually.

The Department would oversee program operations and, if the program is implemented, the Secretary may conduct referenda at the request of the Board or a representative group of processors to determine whether the popcorn industry supports continuation of the program.

There are approximately 35 processors who would pay the assessments, out of an industry of 67 processors in total.

Small agricultural service firms, which would include processors who would be covered under the Order, have been defined by the Small Business Administration (13 CFR 121.607) as those whose annual receipts are less than $5 million.

Almost 50 percent of the industry would be exempt from the program. Those processors marketing 4 million pounds of popcorn or less annually would be considered exempt from the proposed Order. It is also estimated that only 2 of the 35 eligible processors would be classified as small entities. The industry recommended the 4-million-pound exemption level because it believed compliance could be disproportionately difficult for a company marketing 4 million pounds or less annually. Those processors marketing more than 4 million pounds of popcorn annually represent the majority of the tonnage processed each year.

According to the Popcorn Institute, a trade association consisting of popcorn processors representing the industry, annual sales of popcorn were 77.240 million pounds less in 1994 than they were in 1993, when sales totaled approximately 1.156 billion pounds.

The peak period for popcorn sales for home consumption is the fall. Sales remain constant throughout the winter months and taper off during the spring and summer.

Almost all of the popcorn consumed throughout the world is grown in the United States, and Americans consume more popcorn than the citizens of any other country. Popcorn is grown in 19 states. According to the latest Census on Agriculture, the top five major popcorn-producing states in 1992 were, in descending order, Indiana (23 percent), Illinois (19 percent), Nebraska (18 percent), Ohio (10 percent), and Missouri (7 percent). This is the most recent official information on popcorn production released by the U.S. government.

U.S. exports of popcorn totaled nearly 290 million pounds in 1995, with a value of $64.7 million. According to the Snack Food Association, retail sales of popcorn in the United States totaled $1.469 billion in 1994.

The proposed popcorn Order authorizes an initial assessment on processors of 5 cents per hundredweight. The proposed Order provides that the rate of assessment may be raised or lowered as recommended by the Board and approved by the Secretary, but shall not exceed 8 cents per hundredweight in any fiscal year. At the maximum rate of assessment, it is estimated that $800,000 would be collected under the program. The promotion Board would be composed of processors, who would be knowledgeable of the impact of any proposed assessment on processors, and other small entities prior to recommending any change of the assessment rate to the Secretary.

The proposed order is necessary to accomplish the statutory objectives, to strengthen the position of the popcorn industry in the marketplace, and to maintain and expand domestic and foreign markets and uses for popcorn.

Over the past several years the popcorn industry pursued several limited efforts to promote the sales and consumption of popcorn. These were financed primarily through voluntary contributions of some, but not all, popcorn processors. Under the limited and voluntary program, the resources available were not adequate to address the issues facing the industry from a national perspective and did not allow the industry to work collectively in an industry-wide manner.

The order provides the industry with the opportunity to collectively address issues in areas such as nutrition and quality, which individual processors could not effectively accomplish due to lack of resources.

The industry considered pursuing a marketing order; however, it is believed by the industry that popcorn is not authorized under the existing marketing order statute. Furthermore, the marketing order system did not lend itself to addressing the issues that the promotion legislation clearly addresses, for example establishing the definition of a processor.

While we have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed Order on small entities, in order to obtain all the data necessary for a comprehensive analysis, we invite comments concerning potential effects of the proposed Order. In particular, we are interested in obtaining more information on the number and kind of small entities that may incur benefits or costs from implementation of the proposed Order and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that may be imposed by this proposed Order would be submitted to OMB for approval.

Those requirements would not become effective prior to OMB review.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: October 31, 1997.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act.

While the proposed Order would impose certain recordkeeping requirements on processors, information required under the proposed Order could be compiled from records currently maintained. The proposed Order's provisions have been carefully reviewed and every effort has been made to minimize any unnecessary recordkeeping costs or requirements.

Although the proposed Order would impose some additional costs and requirements, it is anticipated that the program under the proposed Order would help to increase the demand and expand markets for popcorn. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting all segments of the popcorn industry.

The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the promotion Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information less frequently would hinder the Board from effectively carrying out the provisions of its program. Collecting information monthly coincides with normal

business practices. Requiring reports less frequently than monthly would impose additional recordkeeping requirements by requiring information from several months to be consolidated prior to filling out the form rather than just copying end-of-month figures already available on to the forms. The timing and frequency of collecting information is intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual processors who are subject to or exempted from the provisions of the Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

The estimated cost in providing information to the Popcorn Board by the estimated 67 respondents would be $40.32 per respondent annually. This total has been estimated by multiplying 270.15 (total burden hours requested) by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

Information collection requirements that are included in this proposal include:

(1) *A periodic report by each person who processes popcorn.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per each processor reporting on popcorn processed.

Respondents: Processors.

Estimated Number of Respondents: 35.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 210 hours.

(2) *An exemption application for processor of popcorn processing 4 million pounds or less a year.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response for each exempt processor.

Respondents: Exempt processors.

Estimated Number of Respondents: 32.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 8 hours

(3) *A referendum ballot to be used to determine whether processors covered by the Order favor implementation or continuance of the Order.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response for each exempt processor.

Respondents: Processors.

Estimated Number of Respondents: 35.

Estimated Number of Responses per Respondent: 1 every 3 years.

Estimated Total Annual Burden on Respondents: 2.9 hours.

(4) *Nominations.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: Processors.

Estimated Number of Respondents: 35.

Estimated Number of Responses per Respondent: 1 every 3 years (.33).

Estimated Total Annual Burden on Respondents: 5.75 hours.

(5) *Nominations background statement.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: Processors.

Estimated Number of Respondents: 20 for initial Board and 6 annually thereafter.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10 hours for initial Board and 3 hours annually thereafter.

(6) *A requirement to maintain records sufficient to verify reports submitted under the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average .5 hours per recordkeeper maintaining such records.

Respondents: Processors.

Estimated Number of Recordkeepers: 67.

Estimated Total Recordkeeping Hours: 33.5 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of the AMS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information technology.

Comments should reference OMB No. 0581–0093, the docket number, and the date and page number of this issue of the Federal Register. Comments should be sent to Stacey L. Bryson, at the address listed above by November 29, 1996. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

Background

The Act authorizes the Secretary of Agriculture (Secretary) to establish a popcorn promotion, research, and consumer information program. The program would be funded by an assessment on processors not to exceed 8 cents per hundredweight of popcorn.

Assessments would be used to pay for: Promotion, research, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

Consistent with the Act, processors would be required to maintain records regarding the collection, payment, or remittance of the assessments. All information obtained through processor reports would be kept confidential.

Assessments would be collected in a manner prescribed by the Board. The collection of assessments would commence on all popcorn processed in the United States on or after the date established by the Secretary, and would continue until terminated by the Secretary.

The Act requires the Secretary to conduct a referendum during the 60-day period preceding the proposed Order's effective date. Popcorn processors of more than 4 million pounds annually would vote in the referendum to determine whether they favor the proposed Order's implementation. The proposed Order must be approved by a majority of eligible processors voting in the referendum and processors favoring approval must process more than 50 percent of the total volume of popcorn processed by persons voting in the referendum. Subsequent referenda would be conducted not earlier than three years after the effective date of the proposed Order at the request of the Board or a representative group of processors covered by the proposed Order.

A proposed rule on referendum procedures for the proposed program is published in this issue of the Federal Register.

The Act provides for the submission of proposals for a popcorn promotion, research, and consumer information

order by industry organizations or any other interested person affected by the Act. The Act requires that such a proposed Order provide for the establishment of a Popcorn Board. The Board would be composed of 9 voting members. Members would serve a three-year term of office.

The Department issued a news release on May 22, 1996, requesting proposals for an initial Order or portions of an initial Order.

An entire proposed Order was submitted by the Popcorn Institute. In addition to minor editorial changes, the Department modified the Popcorn Institute's proposed text by: Adding definitions for ''Part and subpart;'' ''Board member;'' and ''State;'' combining the nominations and appointment sections; adding the requirement that the industry submit two nominees per position and a term of office limitation; creating a section on the removal of Board members; adding the duty for the Board to investigate violations of the Act, Order, and regulations; creating a contracts section; adding four requirements for budgets and expenses; providing that the Department's user fee shall not exceed 15 percent of the Board's projected annual revenues (the Popcorn Institute had recommended a 10 percent cap, which is inconsistent with the Act); limiting the Board's borrowing authority to its first year of operation; adding a reference to federal debt collection provisions; and adding the requirement for processors to provide the Board with their Social Security Number or Employer Identification Number and the amount of assessments paid on exported popcorn. In addition, the Department drafted proposed exemption procedures. Additional modifications were also made to provide consistency with the Act.

The proposed Order submitted by the Popcorn Institute is summarized as follows:

Sections 1215.1 through 1215.20 of the proposed Order define certain terms, such as popcorn, processor, and process, which are used in the proposed Order.

Sections 1215.21 through 1215.30 include provisions relating to the establishment and membership of the Board; nominations and appointment; terms of office; vacancies; removal; procedure; compensation and reimbursement; powers; and duties of the Board. The Board would be the body organized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about popcorn, under the supervision of the Secretary. Further, the Board would be authorized to incur expenses necessary for the performance of its duties and to set a reserve fund. Sections 1215.40 through 1215.41 and 1215.50 provide information on these activities.

Sections 1215.51 through 1215.53 would authorize the collection of assessments, specify who pays them and how, and specifies individuals who would be exempt from paying the assessment. In addition, it would prohibit use of funds to influence government policy or action.

Except as otherwise provided by the Board and approved by the Secretary, the rate of assessment would be 5 cents per hundredweight of popcorn.

The assessment section also outlines the procedures to be followed by processors for remitting assessments and authorize a interest charge for unpaid or late assessments.

Sections 1215.60 thorough 1215.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information obtained from such books, records, or reports.

Sections 1215.60 through 1215.63 describe the rights of the Secretary, authorize the Secretary to suspend or terminate the Order when deemed appropriate, and prescribe proceedings after suspension or termination.

Sections 1215.64 through 1215.77 include the provisions involving personal liability of Board members and employees; handling of patents, copyrights, inventions, and others; amendments to the Order; and separability of Order provisions.

The Department will analyze all written comments received on the proposal published below before issuing a final Order.

List of Subjects in 7 CFR Part 1215

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Popcorn, Promotion, Reporting and recordkeeping requirements.

The proposal set forth below has not received the approval of the Secretary.

For the reasons set forth in the preamble, it is proposed that Title 7, chapter XI of the Code of Federal Regulations be amended as follows:

1. Part 1215 is added to read as follows:

PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Popcorn Promotion, Research, and Consumer Information Order

Definitions

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1215.2 Board.
1215.3 Board member.
1215.4 Commerce.
1215.5 Consumer information.
1215.6 Department
1215.7 Fiscal year.
1215.8 Industry information.
1215.9 Marketing.
1215.10 Part and subpart.
1215.11 Person.
1215.12 Popcorn.
1215.13 Process.
1215.14 Processor.
1215.15 Programs, plans, and projects.
1215.16 Promotion.
1215.17 Research.
1215.18 Secretary.
1215.19 State.
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Popcorn Board

1215.21 Establishment and membership.
1215.22 Nominations and appointment.
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Promotion, Research, Consumer Information, and Industry Information

1215.40 Programs, plans, and projects.
1215.41 Contracts

Expenses and Assessments

1215.50 Budget and expenses.
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Reports, Books, and Records

1215.60 Reports.
1215.61 Books and records.
1215.62 Confidential treatment.

Miscellaneous

1215.70 Right of the Secretary.
1215.71 Suspension or termination.
1215.72 Proceedings after termination.
1215.73 Effect of termination or amendment.
1215.74 Personal liability.
1215.75 Patents, copyrights, inventions, publications, and product formulations.
1215.76 Amendments.
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Subpart B—Rules and Regulations

Definitions

1215.100 Terms defined.

Exemption Procedures

1215.300 Exemption procedures.

Miscellaneous

1215.400 OMB control numbers.

Authority: 7 U.S.C. 7481–7491.

Subpart A—Popcorn Promotion, Research, and Consumer Information Order

Definitions

§ 1215.1 Act.

Act means the Popcorn Promotion, Research, and Consumer Information Act of 1995, Subtitle E of Title V of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127, 7 U.S.C. 7481–7491, and any amendments thereto.

§ 1215.2 Board.

Board means the Popcorn Board established under section 575(b) of the Act.

§ 1215.3 Board member.

Board member means an officer or employee of a processor appointed by the Secretary to serve on the Popcorn Board as a representative of that processor.

§ 1215.4 Commerce.

Commerce means interstate, foreign, or intrastate commerce.

§ 1215.5 Consumer information.

Consumer information means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of popcorn.

§ 1215.6 Department.

Department means the United States Department of Agriculture.

§ 1215.7 Fiscal year.

Fiscal year means the 12-month period from January 1 through December 31 each year, or such other period as recommended by the Board and approved by the Secretary.

§ 1215.8 Industry information.

Industry information means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the popcorn industry, or activities to enhance the image of the popcorn industry.

§ 1215.9 Marketing.

Marketing means the sale or other disposition of unpopped popcorn for human consumption in a channel of commerce but shall not include sales or disposition to or between processors.

§ 1215.10 Part and subpart.

Part means the Popcorn Promotion, Research, and Consumer Information Order and all rules and regulations and supplemental orders issued thereunder, and the term *subpart* means the Popcorn Promotion, Research, and Consumer Information Order.

§ 1215.11 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1215.12 Popcorn.

Popcorn means unpopped popcorn (Zea Mays L) that is commercially grown, processed in the United States by shelling, cleaning, or drying, and introduced into a channel of commerce.

§ 1215.13 Process.

Process means to shell, clean, dry, and prepare popcorn for the market, but does not include packaging popcorn for the market without also engaging in another activity described in this paragraph.

§ 1215.14 Processor.

Processor means a person engaged in the preparation of unpopped popcorn for the market who owns or who shares the ownership and risk of loss of such popcorn and who processes and distributes over 4 million pounds of popcorn in the market per year.

§ 1215.15 Programs, plans, and projects.

Programs, plans, and projects means promotion, research, consumer information, and industry information plans, studies, projects, or programs conducted pursuant to this part.

§ 1215.16 Promotion.

Promotion means any action, including paid advertising, to enhance the image or desirability of popcorn.

§ 1215.17 Research.

Research means any type of study to advance the image, desirability, marketability, production, product development, quality, or nutritional value of popcorn.

§ 1215.18 Secretary.

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

§ 1215.19 State.

State means each of the 50 States and the District of Columbia.

§ 1215.20 United States.

United States means all of the States.

Popcorn Board

§ 1215.21 Establishment and membership.

(a) There is hereby established a Popcorn Board of nine members. The number of members on the Board may be changed by regulation: *Provided*, That the Board consist of not fewer than four members and not more than nine members. The Board shall be composed of popcorn processors appointed by the Secretary under § 1215.24.

(b) For purposes of nominating and appointing processors to the Board, the Secretary shall, to the extent practicable, take into account the geographic distribution of popcorn production.

(c) No more than one officer or employee of a processor may serve as a Board member at the same time.

§ 1215.22 Nominations and appointment.

(a) All nominations for appointments to the Board established under § 1215.21 shall be made as follows:

(1) As soon as practicable after the effective date of this subpart, nominations for appointment to the initial Board shall be obtained from processors by the Secretary. In any subsequent year in which an appointment to the Board is to be made, nominations for positions for which the term will expire at the end of that year shall be obtained from processors at least six months prior to the expiration of terms.

(2) Except for initial Board members, whose nomination process will be initiated by the Secretary, the Board shall issue a call for nominations in each year for which an appointment to the Board is to be made. The call shall include, at a minimum, the following information:

(i) A list of the vacancies for which nominees may be submitted and qualifications for nomination; and

(ii) The date by which the names of nominees shall be submitted to the Secretary for consideration to be in compliance with paragraph (a) of this section.

(3)(i) Nominations for each position shall be made by processors. Notice shall be publicized to all processors.

(ii) All processors may participate in submitting nominations.

(4) Two nominees must be submitted for each vacancy. If processors fail to nominate a sufficient number of nominees, additional nominees shall be obtained in a manner prescribed by the Secretary.

(b) The Secretary shall appoint the members of the Board from nominations made in accordance with paragraph (a) of this section.

(1) The Secretary may reject any nominee submitted. If there is an

insufficient number of nominees from whom to appoint members to the Board as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary in a manner prescribed by the Secretary.

(2) Whenever processors cannot agree on nominees for a position on the Board under the preceding provisions of this section, or whenever they fail to nominate individuals for appointment to the Board, the Secretary may appoint members in such a manner as the Secretary determines appropriate.

(3) If a processor nominates more than one officer or employee, only one may be appointed to the Board by the Secretary.

§ 1215.23 Acceptance.

Each individual nominated for membership of the Board shall qualify by filing a written acceptance with the Secretary at the time of nomination.

§ 1215.24 Term of office.

(a) The members of the Board shall serve for terms of three years, except that members appointed to the initial Board shall serve, to the extent practicable, proportionately for terms of two, three, and four years.

(b)(1) Except with respect to terms of office of the initial Board, the term of office for each Board member shall begin on the date the member is seated at the Board's annual meeting or such other date that may be approved by the Secretary.

(2) The term of office for the initial Board member shall begin immediately following the appointment by the Secretary.

(c) Board members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified.

(d) No Board member may serve more than two consecutive three-year terms, except as provided in § 1215.25(d). Initial members serving two- or four-year terms may serve one successive three-year term.

§ 1215.25 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary may appoint a successor from the most recent nominations submitted for positions on the Board or the Secretary may obtain nominees to fill such vacancy in such a manner as the Secretary deems appropriate.

(b) Each such successor appointment shall be for the remainder of the term vacated.

(c) A vacancy will not be required to be filled if the unexpired term is less than six months.

(d) If an unexpired term is less than 1.5 years, serving the term shall not prevent the appointee from serving two successive three-year terms.

(e) A Board member shall be disqualified from serving on the Board if such individual ceases to be affiliated with the processor the member represents.

§ 1215.26 Removal.

If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board is known to be engaged in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

§ 1215.27 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum.

(b) Each member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by a simple majority of those voting. At assembled meetings of the Board, all votes will be cast in person.

(c) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action upon the concurring votes by a majority of its members by mail, telephone, facsimile, or any other means of communication. If appropriate, any such action shall be confirmed promptly in writing. In that event, all members must be given prior notice and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All votes shall be recorded in Board minutes.

(d) Meetings of the Board may be conducted by electronic communications, provided that each member is given prior notice of the meeting and has the opportunity to be present either physically or by electronic connection.

(e) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

§ 1215.28 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by such members in the performance of their responsibilities under this subpart.

§ 1215.29 Powers.

The Board shall have the following powers:

(a) To administer the Order in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of the Order;

(c) To select committees and subcommittees of Board members, including an executive committee, and to adopt such bylaws and other rules for the conduct of its business as it may deem advisable;

(d) To appoint or employ such individuals as it may deem necessary, define the duties, and determine the compensation of such individuals;

(e) To disseminate information to processors or industry organizations through programs or by direct contact using the public postal system or other systems;

(f) To propose, receive, evaluate and approve budgets, plans and projects of popcorn promotion, research, consumer information and industry information, as well as to contract with the approval of the Secretary with appropriate persons to implement plans and projects.

(g) To receive, investigate, and report to the Secretary for action any complaints of violations of the Order;

(h) To recommend to the Secretary amendments to the order;

(i) To accept or receive voluntary contributions;

(j) To invest, pending disbursement pursuant to a program, plan or project, funds collected through assessments authorized under this Act provided for in § 1215.51, and any other funds received by the Board in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest bearing account or certificate of deposit or a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

(k) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State popcorn processor organizations, or other organizations or entities, for the development and conduct of programs, plans or projects authorized under § 1215.40 and for the payment of the cost of such programs with assessments received pursuant to this subpart; and

(l) Such other powers as may be approved by the Secretary.

§ 1215.30 Duties.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson and such other officers as may be necessary;

(b) To evaluate or develop, and submit to the Secretary for approval, promotion, research, consumer information, and industry information programs, plans or projects;

(c) To prepare for each fiscal year, and submit to the Secretary for approval at least 60 days prior to the beginning of each fiscal year, a budget of its anticipated expenses and disbursements in the administration of this subpart, as provided in § 1215.50;

(d) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(e) To prepare and make public, at least annually, a report of its activities carried out, and an accounting for funds received and expended;

(f) To cause its financial statements to be prepared in conformity with generally accepted accounting principles and to be audited by an independent certified public accountant in accordance with generally accepted auditing standards at least once each fiscal year and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(g) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(h) To submit to the Secretary such information as may be requested pursuant to this subpart;

(i) To keep minutes, books and records that clearly reflect all the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(j) To act as intermediary between the Secretary and any processor;

(k) To investigate violations of the Act, order, and regulations issued under the order, conduct audits, and report the results of such investigations and audits to the Secretary for appropriate action to enforce the provisions of the Act, order, and regulations; and

(l) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the popcorn industry's position in the marketplace, maintain and expand existing markets and uses for popcorn, develop new markets and uses for popcorn, and to carry out programs, plans, and projects designed to provide maximum benefits to the popcorn industry.

Promotion, Research, Consumer Information, and Industry Information

§ 1215.40 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan or project authorized under this subpart. Such programs, plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, consumer information, and industry information with respect to popcorn; and

(2) The establishment and conduct of research with respect to the sale, distribution, marketing, and use of popcorn, and the creation of new uses thereof, to the end that the marketing and use of popcorn may be encouraged, expanded, improved, or made more acceptable.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board may take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, consumer information, or industry information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, consumer information, or industry information, then the Board shall terminate such program, plan, or project.

(d) In carrying out any program, plan, or project, no reference to a brand name, trade name, or State or regional identification of any popcorn will be made. In addition, no program, plan, or project shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

§ 1215.41 Contracts.

The Board shall not contract with any processor for the purpose of promotion or research. The Board may lease physical facilities from a processor for such promotion or research, if such an arrangement is determined to be cost effective by the Board and approved by the Secretary. Any contract or agreement shall provide that:

(a) The contractor or agreeing party shall develop and submit to the Board a program, plan or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(b) Any such program, plan, or project shall become effective upon approval by the Secretary;

(c) The contracting or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted, submit accountings for funds received and expended, and make such other reports as the Secretary or the Board may require; and the Secretary may audit the records of the contracting or agreeing party periodically; and

(d) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

Expenses and Assessments

§ 1215.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart.

(b) Each budget shall include:

(1) A rate of assessment for such fiscal year calculated, subject to § 1215.51(b), to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in paragraph (g) of this section;

(2) A statement of the objectives and strategy for each program, plan, or project;

(3) A summary of anticipated revenue, with comparative data for at least one preceding year;

(4) A summary of proposed expenditures for each program, plan, or project; and

(5) Staff and administrative expense breakdowns, with comparative data for at least one preceding year.

(c) In budgeting plans and projects of promotion, research, consumer information, and industry information, the Board shall expend assessment and contribution funds on:

(1) Plans and projects for popcorn marketed in the United States or Canada in proportion to the amount of assessments projected to be collected on domestically marketed popcorn (including Canada); and

(2) Plans and projects for exported popcorn in proportion to the amount of assessments projected to be collected on exported popcorn (excluding Canada).

(d) The Board is authorized to incur such reasonable expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects approved by the Secretary. Such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use. The Board may also receive funds provided through the Foreign Agricultural Service of the United States Department of Agriculture for foreign marketing activities.

(f) As stated in Section 575(f)(4)(A)(ii) of the Act, the Board shall reimburse the Secretary, from funds received by the Board, for costs incurred by the Secretary in implementing and administering this subpart: Provided, that the costs incurred by the Secretary to be reimbursed by the Board, excluding legal costs to defend and enforce the order, shall not exceed 15 percent of the projected annual revenues of the Board.

(g) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established, except that the funds in this reserve shall not exceed approximately one fiscal year's expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

(h) With the approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board during its first year of operation only.

§ 1215.51 Assessments.

(a) Any processor marketing popcorn in the United States or for export shall pay an assessment on such popcorn at the time of introduction to market at a rate as established in § 1215.51(c) and shall remit such assessment to the Board in such form and manner as prescribed by the Board.

(b) Any person marketing popcorn of that person's own production to consumers in the United States either directly or through retail or wholesale outlets, shall remit to the Board an assessment on such popcorn at the rate set forth in § 1215.51(c), and in such form and manner as prescribed by the Board.

(c) Except as otherwise provided, the rate of assessment shall be 5 cents per hundredweight of popcorn. The rate of assessment may be raised or lowered as recommended by the Board and approved by the Secretary, but shall not exceed 8 cents per hundredweight in any fiscal year.

(d) The collection of assessments under this section shall commence on all popcorn processed in the United States on or after the date established by the Secretary, and shall continue until terminated by the Secretary. If the Board is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Board and may hold such assessments until the Board is constituted, then remit such assessments to the Board.

(e) Each person responsible for remitting assessments under paragraphs (a) and (b) of this section shall remit the amounts due from assessments to the Board on a quarterly basis no later than the last day of the month following the last month in the previous quarter in which the popcorn was marketed, in such manner as prescribed by the Board.

(f) The Board shall impose a late payment charge on any person who fails to remit to the Board the total amount for which the person is liable on or before the payment due date established under this section. The amount of the late payment charge shall be prescribed in rules and regulations as approved by the Secretary.

(g) The Board shall impose an additional charge on any person subject to a late payment charge, in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in rules and regulations as approved by the Secretary.

(h) In addition, persons failing to remit total assessments due in a timely manner may also be subject to penalties and actions under federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36.

(i) Any assessment that is determined to be owing at a date later than the payment due established under this section, due to a person's failure to submit a report to the Board by the payment due date, shall be considered to have been payable on the payment due date. Under such a situation, paragraphs (f), (g), and (h) of this section shall be applicable.

(j) The Board, with the approval of the Secretary, may enter into agreements authorizing other organizations or entities to collect assessments on its behalf. Any such organization or entity shall be required to maintain the confidentiality of such information as is required by the Board for collection purposes. Any reimbursement by the Board for such services shall be based on reasonable charges for services rendered.

(k) The Board is hereby authorized to accept advance payment of assessments for the fiscal year by any person, that shall be credited toward any amount for which such person may become liable. The Board shall not be obligated to pay interest on any advance payment.

§ 1215.52 Exemption from assessment.

(a) Persons that process and distribute 4 million pounds or less of popcorn annually, based on the previous year, shall be exempted from assessment.

(b) To claim such exemption, such persons shall apply to the Board, in the form and manner prescribed in the rules and regulations.

§ 1215.53 Influencing governmental action.

No funds received by the Board under this subpart shall in any manner be used for the purpose of influencing legislation or governmental policy or action, except to develop and recommend to the Secretary amendments to this subpart.

Reports, Books, and Records

§ 1215.60 Reports.

(a) Each processor marketing popcorn directly to consumers, and each processor responsible for the remittance of assessments under § 1215.51, shall be required to report quarterly to the Board, on a form provided by the Board, such information as may be required under this subpart or any rule and regulations issued thereunder. Such information shall be subject to § 1215.62 and include, but not be limited to, the following:

(1) The processor's name, address, telephone number, and Social Security Number or Employer Identification Number;

(2) The date of report, which is also the date of payment to the Board;

(3) The period covered by the report;

(4) The number of pounds of popcorn marketed; initially transferred, or that in any other manner are subject to the collection of assessments;

(5) The amount of assessments remitted;

(6) The basis, if necessary, to show why the remittance is less than the number of pounds of popcorn divided by 100 and multiplied by the applicable assessment rate; and

(7) The amount of assessments remitted on exports (not including Canada).

(b) The words ''final report'' shall be shown on the last report at the end of each fiscal year.

§ 1215.61 Books and records.

Each person who is subject to this subpart shall maintain and make available for inspection by the Board or the Secretary such books and records as are deemed necessary by the Board, with the approval of the Secretary, to carry out the provisions of this subpart and any rules and regulations issued hereunder, including such books and records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal year of their applicability.

§ 1215.62 Confidential treatment.

(a) All information obtained from books, records, or reports under the Act, this subpart, and the rule and regulations issued thereunder shall be kept confidential by all persons, including all employees, agents, and former employees and agents of the Board; all officers, employees, agents, and former officers, employees, and agents of the Department; and all officers, employees, agents, and former officers, employees, and agents of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or processors. Only those persons having a specific need for such information to administer effectively the provisions of this part shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this part.

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

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

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

(2) The publication, by direction of the Secretary, of the name of any person who has violated this part, together with a statement of the particular provisions of this part violated by such person.

(d) Any person who knowingly violated the provisions of this section, on conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, or if the person is an officer, employee, or agent of the Board or the Department, that person shall be removed from office or terminated from employment as applicable.

Miscellaneous

§ 1215.70 Right of the Secretary.

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

§ 1215.71 Suspension or termination.

(a) Whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this subpart or such provision thereof.

(b) The Secretary may conduct additional referenda to determine whether processors favor termination or suspension of this subpart three years after the effective date, on the request of a representative group comprising 30 percent or more of the number of processors who have been engaged in processing during a representative period as determined by the Secretary.

(c) Whenever the Secretary determines that suspension or termination of this subpart is favored by two-thirds or more of the popcorn processors voting in a referendum under paragraph (b) of this section who, during a representative period determined by the Secretary, have been engaged in the processing, the Secretary shall:

(1) Suspend or terminate, as appropriate, collection of assessments within six months after making such determination; and

(2) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

(d) Referenda conducted under this subsection shall be conducted in such manner as the Secretary may prescribe.

§ 1215.72 Proceedings after termination.

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

(b) The trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreement entered into by it under this subpart;

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

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such other persons full title and right to all of the funds, property, and claims vested in the Board or the trustees under this subpart.

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

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information or industry information programs, plans, or projects authorized under this subpart.

§ 1215.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule and regulation issued under this subpart, or the

issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such rules or regulations;

(b) Release or extinguish any violation of this subpart or any such rules or regulations; or

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

§ 1215.74 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

§ 1215.75 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Board under this subpart shall be the property of the United States Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations inure to the benefit of the Board and be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, § 1215.72 shall apply to determine disposition of all such property.

§ 1215.76 Amendments.

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

§ 1215.77 Separability.

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

Subpart B—Rules and Regulations

Definitions

§ 1215.100 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions in Subpart A—Popcorn Promotion, Research, and Consumer Information Order of this part.

Exemption Procedures

§ 1215.300 Exemption procedures.

(a) Any processor who markets 4 million pounds or less of popcorn annually and who desires to claim an exemption from assessments during a fiscal year as provided in § 1214.52 of this part shall apply to the Board, on a form provided by the Board, for a certificate of exemption. Such processor shall certify that the processor's marketing of popcorn during the previous fiscal year was 4 million pounds or less.

(b) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board then will issue, if deemed appropriate, a certificate of exemption to each person that is eligible to receive one.

(c) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(d) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt popcorn.

Miscellaneous

§ 1215.400 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581–0093, except for the Promotion Board nominee background statement form which is assigned OMB control number 0505–0001.

Dated: September 24, 1996.

D.M. Holbrook,

Acting Administrator.

[FR Doc. 96–25003 Filed 9–27–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1215

[FV–96–709PR]

Popcorn Promotion, Research, and Consumer Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to provide procedures which the Department of Agriculture (Department) will use in conducting the referendum to determine whether the issuance of the proposed Popcorn Promotion, Research, and Consumer Information Order is favored by a majority of the processors voting in the referendum and that the majority process more than 50 percent of the popcorn certified as being processed by those voting in the referendum.

DATES: Comments must be received by October 30, 1996. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by November 29, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this purposed rule to: Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456, Fax (202) 205–2800. Three copies of all written materials should be submitted, and they will be made available for public inspection in the Research and Promotion Branch, during regular working hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register. Pursuant to the Paperwork Reduction Act, also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address.

FOR FURTHER INFORMATION CONTACT: Stacey L. Bryson, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, Room 2535–S, P.O. Box 96456, Washington, DC 20090–6456. Telephone (888) 720–9917 or (202) 720–6930.

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible popcorn processors to determine whether the issuance of the proposed Popcorn Promotion, Research, and Consumer Information Order (Order) (7 CFR part 1215) is favored by

a majority of persons voting in the referendum. The Order is authorized under the Popcorn Promotion, Research and Consumer Information Act (Act) (Pub. L. 104–427, 7 U.S.C. 7481–7491).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. In accordance with section 580 of the Act, nothing in the popcorn statute preempts or supersedes any other program relating to popcorn promotion organized and operated under the laws of the United States or any State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 577 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency is required to examine the impact of the proposed rule on small entities.

Legislation to create a generic program of promotion and research for popcorn became effective on April 4, 1996.

Section 576 of the Act provides that the Secretary shall conduct a referendum, within the 60-day period immediately preceding the effective date of the Order, to determine whether the issuance of the Order is favored by a majority of the processors voting in the referendum. Paragraph (2) of section 576 of the Act requires that the Order become effective only if favored by a majority of the processors voting in the referendum and if the majority processed more than 50 percent of the popcorn certified as having been processed during the representative period by the processors voting.

Small agricultural service firms, which would include processors who would be covered under the proposed Order, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5 million. The Department estimates that there are approximately 35 processors who would pay the assessments out of an industry of 67 processors in total. Almost 50 percent of the industry would be exempt from the program; those processors marketing 4 million pounds or less of popcorn annually would be exempt from the proposed Order. Further, only 2 of the 35 eligible processors have been identified as small entities.

According to the Popcorn Institute, a trade association consisting of popcorn processors representing the industry, annual sales of popcorn were 77.240 million pounds less in 1994 than they were in 1993, when sales totaled approximately 1.156 billion pounds.

The peak period for popcorn sales for home consumption is the fall. Sales remain constant throughout the winter months and taper off during the spring and summer.

Almost all of the popcorn consumed throughout the world is grown in the United States, and Americans consume more popcorn than the citizens of any other country. Popcorn is grown in 19 states. According to the latest Census on Agriculture, the top five major popcorn-producing states in 1992 were, in descending order, Indiana (23 percent), Illinois (19 percent), Nebraska (18 percent), Ohio (10 percent), and Missouri (7 percent). This is the most recent official information on popcorn production released by the U.S. government.

U.S. exports of popcorn totaled nearly 290 million pounds in 1995, with a value of $64.7 million. According to the Snack Food Association, retail sales of popcorn in the United States totaled $1.469 billion in 1994.

This proposed rule provides the procedures under which eligible popcorn processors may vote on whether they want the proposed popcorn promotion and research program to be implemented.

The referendum procedures provide definitions of who is eligible to vote and instructions for referendum agents regarding subagents, publicity for the referendum and the results, ballots, voting, ballot handling and tabulation, reporting, and confidentiality of referendum materials. The representative period for establishing voter eligibility for the referendum shall be determined by the Secretary. Persons who have processed over 4 million pounds of popcorn for market during the representative period will be eligible to vote; there are an estimated 35 eligible processors. The referendum will be conducted by mail ballot.

The Department would inform all eligible processors of record throughout the program implementation and referendum process to ensure awareness and participation. In addition, trade associations and related industry media would receive news releases and other information regarding the implementation and referendum process.

Voting in the referendum is optional. However, if processors choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether they want the program.

The Department considered requiring eligible voters to vote in person at various Department offices across the country. However, conducting the referendum from one central location by mail ballot is more cost effective for this program. Also, the Department would provide easy access to information for potential voters through a toll free telephone line.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, have been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: October 31, 1997.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act.

The burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information

is estimated to average .25 hours per response for each processor.

Respondents: Processors.

Estimated Number of Respondents: 35.

Estimated Number of Responses per Respondent: 1 every 3 years (.33).

Because there may be insufficient time for normal clearance procedures, AMS is seeking temporary approval from OMB for the use of the ballot for the referendum. The ballot would be added to the other information collections approved for use under OMB Number 0581–0093.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of the AMS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information technology.

Comments should reference OMB No. 0581–0093, the docket number, and the date and page number of this issue of the Federal Register. Comments should be sent to Stacey L. Bryson, at the address listed above by November 29, 1996. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

Background

The purpose of the Act is to provide an orderly procedure for developing and financing an effective and coordinated program of promotion, research, and consumer information to strengthen the markets for popcorn. The program would be funded by an assessment of no more than 8 cents per hundredweight levied on popcorn processors. Processors who process and market 4 million pounds or less of popcorn annually would be exempt from paying the assessment. Assessments would be used to pay for: Promotion, research, consumer information, and industry information; administration, maintenance, and functioning of the Popcorn Board which would operate the program under the Secretary's supervision; and expenses incurred by the Secretary in implementing and administering the program, including referendum costs.

A proposed rule on the Order is published separately in this issue of the Federal Register.

This proposed rule would add a new subpart which would establish procedures to be used in the initial referendum required by the Act. This subpart would be in effect for the referendum period only and would not be part of the Code of Federal Regulations. The proposed Order would go into effect only if the Secretary determines that the Order is approved by no less than a majority of the processors voting in the referendum and if the majority processed more than 50 percent of the popcorn certified as having been processed during the representative period by the processors voting.

The referendum procedures provide definitions of who is eligible to vote and instructions for referendum agents regarding subagents, publicity for the referendum and the results, ballots, voting, ballot handling and tabulation, reporting, and confidentiality of referendum materials. The representative period for establishing voter eligibility for the referendum shall be determined by the Secretary. Persons who have processed over 4 million pounds of popcorn for market during the representative period will be eligible to vote; there are an estimated 35 eligible processors. The referendum will be conducted by mail ballot.

All written comments received in response to this proposed rule by the date specified herein will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for popcorn processors.

List of Subjects in 7 CFR Part 1215

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Popcorn, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, chapter XI of the Code of Federal Regulations be amended as follows:

1. In proposed part 1215, subpart C is added to read as follows:

PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

* * * * *

Subpart C—Procedure for the Conduct of Referenda in Connection With the Popcorn Promotion, Research, and Consumer Information Order

Sec.
1215.500 General.
1215.501 Definitions.
1215.502 Voting.
1215.503 Instructions.
1215.504 Subagents.
1215.505 Ballots.
1215.506 Referendum report.
1215.507 Confidential information.

Authority: 7 U.S.C. 7481–7491.

Subpart C—Procedure for the Conduct of Referenda in Connection With the Popcorn Promotion, Research, and Consumer Information Order

§ 1215.500 General.

A referendum to determine whether eligible processors favor the issuance of the Order shall be conducted in accordance with these procedures.

§ 1215.501 Definitions.

Unless otherwise defined below, the definitions of terms used in these procedures shall have the same meaning as the definitions in the Order.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Popcorn Promotion, Research, and Consumer Information Order.

(c) *Referendum agent or subagent* means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, processing facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called ''joint ventures'' wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the processing of popcorn and the authority to transfer title to the popcorn so processed.

(f) *Eligible processor* means any person who processes over 4 million pounds of popcorn during the representative period and who:

(1) Owns or shares in the ownership of processing facilities and equipment resulting in the ownership of the popcorn process;

(2) Rents processing facilities and equipment resulting in the ownership of all or a portion of the popcorn processing;

(3) Owns processing facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the popcorn processing; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to process popcorn who share the risk of loss and receive a share of the popcorn processing. No other acquisition of legal title to popcorn shall be deemed to result in persons becoming eligible processors.

§ 1215.502 Voting.

(a) Each person who is an eligible processor as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each processor in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to process popcorn, in which more than one of the parties is a processor, shall be entitled to cast one ballot in the referendum covering only such processor's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate processor or an administrator, executor, or trustee of an eligible processing entity may cast a ballot on behalf of such processing entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible processor, or an administrator, executor, or trustee of an eligible processing entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail.

§ 1215.503 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedures to be followed by the referendum agent. Such agent shall:

(a) Prepare ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter, and

(2) The total volume of popcorn processed by the voting processor during the representative period.

(b) Give reasonable advance public notice of the referendum by utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio and such other means as the agent may deem advisable.

(c) Mail to each eligible processor whose name and address is known to the agent, the instructions on voting and a ballot. No person who claims to be eligible to vote shall be refused a ballot.

(d) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of the Office of Inspector General.

(e) Prepare a report on the referendum.

(f) Announce the results to the public.

§ 1215.504 Subagents.

The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any and all functions which, in the absence of such appointment, shall be performed by the agent.

§ 1215.505 Ballots.

The referendum agent and subagents shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under these procedures shall not be counted.

§ 1215.506 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1215.507 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any processor in the referendum shall be held strictly confidential and shall not be disclosed.

Dated: September 24, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–25002 Filed 9–27–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–160–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires either the application of a vapor sealant on the back of the receptacle of the auxiliary power unit (APU) power feeder cable; or a one-time visual inspection for gold-plating and evidence of damage of the connector contacts of the power feeder cable of the APU generator, and various follow-on actions. This action would add a requirement for replacement of certain connector contacts (pins/sockets) with gold-plated contacts. This proposal is prompted by reports of burning and arcing of the connector contacts of the power feeder cable of the APU generator. The actions specified by the proposed AD are intended to reduce the potential for a fire hazard as a result of such burning or arcing.

DATES: Comments must be received by November 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–

160–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration,Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5347; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–160–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–160–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 30, 1996, the FAA issued AD 96–12–10, amendment 39–9652 (61 FR 28736, June 6, 1996), applicable to certain McDonnell Douglas Model MD–11 series airplanes, to require either the application of a vapor sealant on the back of the receptacle of the auxiliary power unit (APU) power feeder cable; or a visual inspection for gold-plating and evidence of damage of the connector contacts (pins/sockets) of the power feeder cable of the APU generator, and various follow-on actions. That action was prompted by reports of burning and arcing of these connector contacts. The requirements of that AD are intended to reduce the potential for a fire hazard as a result of such burning or arcing.

Actions Since Issuance of Previous Rule

In the preamble to AD 96–12–10, the FAA indicated that it intended to require operators that install the vapor sealant to eventually accomplish the one-time visual inspection (and follow-on actions) and the replacement of nickel-plated or copper (brass) pins and sockets with gold-plated parts. This action proposes such requirements.

Explanation of Relevant Service Information

The FAA previously reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996, which describes procedures for application of a vapor sealant on the back of the receptacle of the APU power feeder cable. Applying the vapor sealant will reduce the possibility of fire or burning until the remainder of the actions specified in the alert service bulletin can be accomplished.

The alert service bulletin also describes procedures for a one-time visual inspection for color (gold plating) and evidence of damage of the connector contacts of the power feeder cable of the APU generator located in the upper left corner of the APU compartment in the forward bulkhead. It also describes procedures for replacement of damaged pins and sockets with gold-plated pins and sockets, or deactivation of the electrical operation of the APU until such replacement is accomplished. The alert service bulletin specifies that the visual inspection and replacement or deactivation (if necessary) actions eliminate the need for applying a vapor sealant.

Additionally, the alert service bulletin describes procedures for eventual replacement of undamaged pins and sockets that are nickel-plated or made of copper (brass) with gold-plated pins and sockets.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 96–12–10 to continue to require a one-time visual inspection for gold-plating and evidence of damage of the connector contacts of the power feeder cable of the APU generator, and various follow-on actions. The proposed AD would add a requirement for replacement of certain connector contacts with gold-plated contacts. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Cost Impact

There are approximately 149 McDonnell Douglas Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 45 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 96–12–10 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $5,400, or $120 per airplane.

The new action (replacement) that is proposed in this AD action would take approximately 9 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $909 per airplane. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $65,205, or $1,449 per airplane.

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

Regulatory Impact

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9652 (61 FR 28736, June 6, 1996), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 96–NM–160–AD. Supersedes AD 96–12–10, Amendment 39–9652.

Applicability: Model MD–11 series airplanes; as listed in McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

Note 2: Paragraph (a) of this AD merely restates the requirements of paragraph (a) of AD 96–12–10. As allowed by the phrase, ''unless accomplished previously,'' if those requirements of AD 96–12–10 have been accomplished previously, this AD does not require that they be repeated.

To reduce the potential for a fire hazard as a result of burning and arcing of the connector contacts of the power feeder cable of the auxiliary power unit (APU) generator, accomplish the following:

Restatement of Requirements of AD 96–12–10

(a) Within 60 days after June 21, 1996 (the effective date of AD 96–12–10, amendment 39–9652), accomplish the actions specified in either paragraph (a)(1) or (a)(2) of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996.

(1) Apply a vapor sealant on the back of the APU power feeder cable receptacle.

Or

(2) Accomplish the actions specified in both paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Perform a one-time visual inspection for color (gold-plating) and evidence of damage of the connector contacts (pins/sockets) of the power feeder cable of the APU generator located in the upper left corner of the APU compartment in the forward bulkhead. And

(ii) Replace any damaged pin or socket with a gold-plated pin or socket, or deactivate the electrical operation of the APU until the replacement required by paragraph (c) of this AD is accomplished.

New Requirements of This AD

(b) For airplanes on which the requirements of paragraph (a)(2) of this AD have not been accomplished previously: Within 60 days after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996.

(1) Perform a one-time visual inspection for color (gold-plating) and evidence of damage of the connector contacts (pins/sockets) of the power feeder cable of the APU generator located in the upper left corner of the APU compartment in the forward bulkhead. And

(2) Replace any damaged pin or socket with a gold-plated pin or socket, or deactivate the electrical operation of the APU until the replacement required by paragraph (c) of this AD is accomplished.

(c) Within 24 months after the effective date of this AD, replace any pin or socket that is nickel-plated or copper (brass) with a pin or socket that is a gold-plated. Accomplish the replacement in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996.

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

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

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

Issued in Renton, Washington, on September 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–24891 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–CE–43–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Corporation (Formerly Beech Aircraft Corporation) Model 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Corporation (Raytheon) Model 1900D airplanes. The proposed action would require replacing the right-hand exhaust stack for both the left and right engines. The proposed action results from reports of wing skin damage (with associated fuel seepage) and cabin window damage caused by the heat of the right-hand exhaust stacks on the affected airplanes. The actions specified by the proposed AD are intended to prevent wing skin de-bonding or warping of the cabin windows because of the heat generated by the engines' right-hand exhaust stacks.

DATES: Comments must be received on or before November 20, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–43–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments

may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Safety Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4146; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–43–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–43–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several reports of wing skin damage (with associated fuel seepage) and cabin window damage on Raytheon Model 1900D airplanes. Investigation reveals that the heat from the right-hand exhaust stacks is causing the damage to the wing skin and cabin windows.

Raytheon has developed new right-hand stacks for the left and right engines for certain Model 1900D airplanes. These replacement stacks are designed with a 25-degree tilt, and, when installed, should prevent heat damage to the wings, fuselage, and cabin windows.

Applicable Service Information

Raytheon has issued Service Bulletin No. 2686, dated June 1996, which introduces Kit No. 129–9013–1. This kit includes all the parts and instructions necessary to install the new right-hand exhaust stacks for the left and right engines.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent wing skin de-bonding or warping of the cabin windows because of the heat generated by the engines' right-hand exhaust stacks.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Model 1900D airplanes of the same type design, the proposed AD would require replacing the right-hand exhaust stack for both the left and right engines. Accomplishment of the proposed replacement would be in accordance with the instructions to Raytheon Kit No. 129–9013–1, as referenced in Raytheon Service Bulletin No. 2686, dated June 1996.

Cost Impact

The FAA estimates that 199 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 10 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts will be provided at no cost to the owners/operators of the affected airplanes until June 1997 (after that the cost will be $6,452). Based on these figures and utilizing the assumption that all owners/operators of the affected airplanes will obtain parts prior to June 1997, the total cost impact of the proposed AD on U.S. operators is estimated to be $119,400. This figure is based on the assumption that no owner/operator of the affected airplanes has accomplished the proposed replacement. The FAA knows of no affected airplane owner/operator that has already accomplished the proposed action.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Corporation (formerly Beech Aircraft Corporation): Docket No. 96–CE–43–AD.

Applicability: Model 1900D airplanes (serial numbers UE–1 through UE–225), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

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

Compliance: Required within the next 1,000 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent wing skin de-bonding or warping of the cabin windows because of the heat generated by the engines' right-hand exhaust stacks, accomplish the following:

(a) Replace the right-hand exhaust stack for both the left and right engines in accordance with the instructions included in Raytheon Aircraft Kit No. 129–9013–1, as referenced in Raytheon Aircraft Service Bulletin No. 2686, dated June 1996.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 20, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–24884 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–265–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all de Havilland Model DHC–7 series airplanes. This proposal would require performing a review of the airplane maintenance records to determine if any insulation blankets have been repaired or changed during service, and various follow- on actions, if necessary. This proposal is prompted by reports of corrosion forming on areas of the airplane structure where black film thermal insulation blankets are used. The actions specified by the proposed AD are intended to prevent such corrosion, which could result in degradation of the structural capability of the airplane fuselage and consequent sudden loss of cabin pressure.

DATES: Comments must be received by November 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–265–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Sol Maroof, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7522; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–265–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–265–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on all de Havilland Model DHC–7 series airplanes. Transport Canada advises that it has received reports of corrosion forming on areas of the airplane structure where black Orcon film covers the thermal insulation blankets. Investigation revealed that the black Orcon film, used to insulate the airplane, contains carbon. The cause of this corrosion has been attributed to the formation of condensation on aluminum airplane structure where the structure comes in contact with the carbon in the black Orcon film. Such corrosion, if not detected and corrected in a timely manner, could result in degradation of the strength of the airplane fuselage structure and, consequently, could lead to sudden loss of cabin pressure.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin S.B. 7–21–30, dated July 6, 1994, which describes procedures for performing the following:

1. A review of the airplane maintenance records to determine if any insulation blankets have been repaired or changed during service;

2. A visual inspection to detect black film insulation of the air conditioning system, if any insulation has been repaired or changed during service, or if a certain kit is installed;

3. A review of the airplane modification records to determine if certain kits have been installed, if no black film insulation is detected; and

4. Various follow-on actions, if any black film insulation is detected. (The follow-on actions include removal of any black film insulation, an inspection to detect corrosion, repair of any corroded structure, and installation of new silver blankets.)

Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–94–24, dated December 22, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require performing a review of the airplane maintenance records to determine if any insulation blankets have been repaired or changed during service, and various follow-on actions, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously. The repair of any corroded structure would be required to be accomplished in accordance with a method approved by the FAA.

Other Relevant Rulemaking

The FAA previously issued a proposed AD that is similar to this action. That proposed AD [reference Docket 84–NM–89–AD (61 FR 13785, March 28, 1996)] is applicable to de Havilland Model DHC–8 series airplanes and would require actions similar to those proposed in this notice.

Cost Impact

The FAA estimates that 50 de Havilland Model DHC–7 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

De Havilland, Inc.: Docket 95–NM–265–AD.

Applicability: All Model DHC–7 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural capability of the fuselage and sudden loss of cabin pressure, accomplish the following:

(a) Within six months after the effective date of this AD, perform a review of the airplane maintenance records to determine if any insulation blankets have been repaired or changed during service, in accordance with de Havilland Service Bulletin S.B. 7–21–30, dated July 6, 1994.

(b) If no insulation blanket has been repaired or changed, no further action is required by this AD.

(c) If any insulation blanket has been repaired or changed, prior to further flight, perform a visual inspection to detect black film insulation of the air conditioning system, in accordance with de Havilland Service Bulletin S.B. 7–21–30, dated July 6, 1994.

(1) If no black film insulation is detected, prior to further flight, perform a review of the airplane modification records to determine if any kit listed in ''Table 1—Modification List'' has been installed, in accordance with the service bulletin.

(i) If no kit listed in Table 1—Modification List is found to be installed, no further action is required by this AD.

(ii) If any kit listed in Table 1 is found to be installed, prior to further flight, perform the various follow-on actions in accordance with the service bulletin. (The follow-on actions include an inspection to detect black film insulation, removal of any black film insulation, an inspection to detect corrosion, repair of corroded structure, and installation of new silver blankets.) However, in lieu of repairing corroded structure in accordance with service bulletin, the repair of any corrosion shall be done in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

(2) If any black film insulation is detected, prior to further flight, perform the follow-on actions in accordance with the service bulletin. (The follow-on actions include removal of any black film insulation, an inspection to detect corrosion, repair of any corroded structure, and installation of new silver blankets.) However, in lieu of repairing corroded structure in accordance with service bulletin, the repair of any corrosion shall be done in accordance with a method approved by the Manager, New York ACO.

(d) As of the effective date of this AD, no person shall install black Orcon film insulation, part number AN46B/AN36B, on any airplane.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

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

Issued in Renton, Washington, on September 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–24890 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–158–AD]

RIN 2120–AA64

Airworthiness Directives; Beech Model 400A, 400T (Military T–1A), and 400T (Military TX) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Beech Model 400A and 400T series airplanes, that currently requires an inspection of certain flap roller retention components to detect discrepant or missing parts; replacement of those parts; and installation of new washers on the roller attach bolts. This proposed action would require the replacement of certain previously-installed washers with new and stronger washers. It would also expand the applicability of the rule to include additional airplanes. This proposal is prompted by reports indicating that some locking tab washers on the roller attach bolt could fail, due to the absence of an inner tang. The actions specified by the proposed AD are intended to prevent the loss of roller attach nuts and the flap roller, which could result in the loss of a flap when the airplane is subject to load limit conditions, and, consequently lead to reduced controllability of the airplane.

DATES: Comments must be received by November 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–158–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, or the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–115W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–158–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–158–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 23, 1994, the FAA issued AD 94–14–06, amendment 39–8958 (59 FR 35234, July 11, 1994), applicable to certain Beech Model 400A and 400T (Military T–1A) series airplanes. That AD requires a one-time inspection of the flap roller retention components to detect discrepant or missing parts; the replacement of such parts, if necessary; and the installation of new washers, tab washers, and flat washers on the roller attach bolts.

That action was prompted by reports indicating that some locking washers were missing inner tabs; such discrepancies would prevent these washers from locking. The requirements of that AD are intended to prevent loss of the main or aft flap surface, which could lead to reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received reports indicating that the locking washers that were required to be installed by AD 94–14–06 are missing tabs, have undersized tabs, or lack inner tangs; any such discrepancy would prevent a locking washer from functioning. This condition, if not corrected, could ultimately result in the loss of a flap and reduced controllability of the airplane. (No such failures have occurred, however.) Recently, improved locking washers have been developed that will preclude the new problems that have been identified.

In addition, the manufacturer has advised the FAA that additional airplanes—Model 400T (military TX) series airplanes—have been identified that are subject to the unsafe condition addressed by AD 94–14–06. These airplanes were not included in the applicability of that AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin No. 2522, Revision 1, dated May 1996. The original issue of this service bulletin was referenced in AD 94–14–06 as the appropriate source of service information. This revised service bulletin describes the following:

1. Procedures for replacement of the washers, tab washers, and flat washers on roller attach bolts of the left and right flaps that were previously installed in accordance with the original issue of the service bulletin and in accordance with the requirements of AD 94–14–06. These are to be replaced with new washers, tab washers (which are also stronger) and flat washers.

2. New procedures for inspecting and replacing, if necessary, roller attach nuts and bolts; and for installing the new washers, tab washers (which are also stronger), and flat washers on those bolts.

The revised service bulletin also includes additional airplanes in its effectivity listing that have been identified as subject to the same problems that prompted the issuance of the service bulletin (and AD 94–14–06).

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94–14–06. It would require the following actions:

1. For airplanes that have been inspected previously, and on which the washers, tab washers, and flat washers have been installed in accordance with AD 94–14–06: Those washers would be required to be replaced with new washers (including the stronger tab washers).

2. For airplanes that have not been inspected previously and have not had the washers, tab washers, and flat washers replaced; and for airplanes that were not included in the applicability of AD 94–14–06: These airplanes would be required to be inspected for discrepancies in the roller attach nuts and bolts of the flaps would be required, and discrepant parts replaced. In addition, the new washers, including the stronger tab washers, would be required to be installed on the attach bolts.

These proposed actions would be required to be accomplished in accordance with the Raytheon service bulletin described previously.

Cost Impact

There are approximately 212 Beech Model 400A and 400T series airplanes of the affected design in the worldwide fleet. The FAA estimates that 183 airplanes of U.S. registry would be affected by this proposed AD.

It is estimated that 102 of the U.S.-registered airplanes would be required to have the washers replaced with new and stronger washers. This action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $25 per airplane. Based on these figures, the cost impact of the proposed replacement action on U.S. operators of these airplanes is estimated to be $14,790, or $145 per airplane.

It is estimated that 81 of the U.S.-registered airplanes would be required to be inspected for discrepancies of the roller attach nuts and bolts, and would require the installation of new washers. Those actions would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $100 per airplane. Based on these figures, the cost impact of the proposed actions on U.S. operators of these airplanes is estimated to be $37,260, or $460 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8958 (59 FR 35234, July 11, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Beech Aircraft Corporation: Docket 96–NM–158–AD. Supersedes AD 94–14–06, Amendment 39–8958.

Applicability: Model 400A and 400T series airplanes; as listed in Beech Service Bulletin No. 2522, dated January 1994, and Raytheon Service Bulletin No. 2522, Revision 1, dated May 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of roller attach nuts and the flap roller, which could result in the loss of a flap when the airplane is subject to load limit conditions, and consequently lead to reduced controllability of the airplane; accomplish the following:

(a) For airplanes listed in Beech Service Bulletin No. 2522, dated January 1994, on which the inspection and installation of washers, tab washers, and flat washers have been accomplished prior to the effective date of this AD in accordance with that service bulletin, and in accordance with the requirements of AD 94–14–06, amendment 39–8958: Prior to the accumulation of 200 hours time-in-service or within one year after the effective date of this AD, whichever occurs first, remove the washers, tab washers, and flat washers, having part numbers specified in Table 1 of this AD, from the roller attach bolts of the left and right flaps, and replace them with new washers, tab washers, and flat washers, having part numbers specified in Table 2 of this AD, in accordance with Part I of Raytheon Service Bulletin No. 2522, Revision 1, dated May 1996.

TABLE 1.—PARTS TO BE REPLACED

Part	Beech Part Number
Tab Washers	NAS460–616 MS27111–3 168AS–06–02
Flat Washers	AN960D616L
Washers	AN960–616

TABLE 2.—NEW REPLACEMENT PARTS

Part	Beech Part Number
Tab Washers	45A16122–37
Flat Washers	AN960D616L
Washers	AN960–616

(b) For all other airplanes not subject to paragraph (a) of this AD: Prior to the accumulation of 200 hours time-in-service after the effective date of this AD, or within one year after the effective date of this AD, whichever occurs first, accomplish the actions specified in paragraphs (b) (1) and (b) (2) of this AD:

(1) Perform an inspection of the roller attach nuts and bolts for the flaps to detect discrepancies (i.e., flattened, worn or damaged threads, damaged keway of bolts, etc.), in accordance with Part II of Raytheon Service Bulletin No. 2522, Revision 1, dated May 1996. If any discrepancies are found, prior to further flight, replace the discrepant parts with new or serviceable parts, in accordance with the service bulletin. And

(2) Remove the washers, tab washers, and flat washers from the roller attachment bolts of the left and right flaps, and replace them with new washers, tab washers, and flat washers that have part numbers specified in Table 2 of this AD, in accordance with Part I of Raytheon Service Bulletin No. 2522, Revision 1, dated May 1996.

(c) As of the effective date of this AD, no person shall install on any airplane any tab washer for the roller attach bolt, having Beech part number 168AS–06–2, NAS460–616, or MS27111–3.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

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

Issued in Renton, Washington, on September 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–24889 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–70–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require a one-time inspection to verify the correct routing and tension of the flight control lock cables and the elevator control cables, and rerouting or adjustment of the tension of these cables, if necessary. This proposal is prompted by a report indicating that an inspection for routing and tension of the flight control lock cables and elevator control cables may not have been accomplished during modification of the airplanes at the factory. The actions specified by the proposed AD are intended to prevent incorrect routing and tension of the flight lock control cables and the elevator control cables, which could result in inadvertent disconnection of those cables, and consequent reduced controllability of the airplane.

DATES: Comments must be received by November 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–70–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that an inspection of the flight control lock cables and elevator control cables may have been inadvertently omitted on certain Model F28 Mark 0100 series airplanes during a modification of the horizontal stabilizer structure at the manufacturer's production facility. During accomplishment of this modification, the elevator control lock cables and flight control cables are disconnected and, later, are supposed to be reconnected. Two separate inspections are then required to verify proper routing and tension of those cables. However, investigation of aircraft records revealed that, for certain airplanes, the second required inspection may not have been accomplished. Therefore, the routing and tension of the affected cables may not have been accomplished properly.

Incorrect routing and incorrect tension of the flight lock control cables and the elevator control cables, if not corrected, could result in inadvertent disconnection of those cables, and consequent reduced controllability of the airplane during flight.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–27–064, dated September 15, 1994, which describes procedures for a one-time visual inspection to verify the correct routing and tension of the flight control lock cables and the elevator control cables, and rerouting of these cables or adjustment, if necessary. The RLD classified this service bulletin as mandatory and issued Netherlands airworthiness directive (BLA) 94–133(A), dated September 30, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time visual inspection to verify the routing of the flight lock control cables and to verify the tension of the left and right elevator control cables, and rerouting of cables or adjustment, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 5 Fokker Model F28 Mark 0100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,400, or $480 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13—[Amended]

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

Fokker: Docket 96–NM–70–AD.

Applicability: Model F28 Mark 0100 series airplanes having serial numbers 11323 through 11326 inclusive, 11423, 11429, 11431, 11441, 11444, and 11445; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent incorrect routing and incorrect tension of the flight control lock cables and elevator control cables, which could result in inadvertent disconnection of those cables, and consequent reduced controllability of the airplane; accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time visual inspection to verify the correct routing and correct tension of the flight control lock cables and elevator control cables, in accordance with Fokker Service Bulletin SBF100–27–064, dated September 15, 1994.

(1) If the routing and tension of the flight control lock cables and elevator control cables are correct, as specified in the service bulletin, no further action is required by this AD.

(2) If the routing and/or tension of the flight control lock cables or the elevator control cables is not correct, as specified in the service bulletin, prior to further flight, reroute and/or adjust the tension of those cables, as necessary, in accordance with the service bulletin.

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

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

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on September 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–24888 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–217–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes, Model MD–88 Airplanes, and Model MD–90 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9–80 series airplanes, Model MD–88 airplanes, and Model MD–90 airplanes, that currently requires revising the Airplane Flight Manual (AFM) to include limitations and procedures to address situations in which the autopilot or autothrottle fails to disengage. That AD was prompted by incidents in which the flightcrew was unable to disconnect the autopilot or autothrottle function from the engaged position, due to a discrepancy in a microswitch that is associated with the operation of those functions. This action would require an inspection of the autopilot and autothrottle engage switches located in the flight guidance control panel, and installation of improved switches. Accomplishment of these actions would terminate the previous requirement for the AFM revision. The actions specified by the proposed AD are intended to ensure that the autopilot and autothrottle disengage when commanded to do so by the flightcrew.

DATES: Comments must be received by November 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–217–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5345; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–217–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–217–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 3, 1996, the FAA issued AD 96–12–21, amendment 39–9664 (61 FR 29007, June 7, 1996), applicable to all McDonnell Douglas Model DC–9–80 series airplanes, Model MD–88 airplanes, and Model MD–90 airplanes, to require revising the FAA-approved Airplane Flight Manual (AFM) to include limitations and procedures to address situations in which the autopilot or autothrottle fails to disengage. That AD was is prompted by incidents in which the flightcrew was unable to disconnect the autopilot or autothrottle function from the engaged position, due to a discrepancy in a microswitch that is associated with the operation of those functions. The requirements of that AD are intended to ensure the flight crew's ability to control the airplane manually if the autopilot or autothrottle function fails to disengage.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, Honeywell Incorporated (the manufacturer of the microswitches) has developed improved autopilot and autothrottle switches that will preclude

the previous problems encountered with these items. Use of these improved switches will ensure that the autopilot and autothrottle disengage when commanded to do so by the flightcrew.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas MD–80 Service Bulletin MD80–22–122, dated August 6, 1996 (for Model DC–9–80 series airplanes and Model MD–88 airplanes); and McDonnell Douglas Service Bulletin MD90–22–005, dated August 6, 1996 (for Model MD–90 airplanes). Both of these bulletins describe procedures for inspecting, replacing, and functional testing the autopilot and autothrottle engage switches located in the flight guidance control panel (FGCP). Use of the improved switches will minimize the possibility of switches remaining in the ''ON'' position and preventing disengagement of the autopilot and autothrottle. (Both service bulletins refer to Honeywell Service Bulletin 4034242–22–13 for additional service instructions.)

The improved switches have been installed during production on Model DC–9–80 series airplanes and Model MD–88 airplanes having manufacturer's fuselage numbers 1326, 2145, and subsequent. They also have been installed during production on Model MD–90 series airplanes having manufacturer's fuselage numbers 2018, 2138, and subsequent.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 96–12–21 to require an inspection of the autopilot and autothrottle engage switches in the FGCP, and replacement of the switches with improved switches. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The installation of the improved switches would constitute terminating action for the AFM revision previously required by AD 96–12–21. Once the switches are installed, that revision may be removed from the AFM.

Cost Impact

There are approximately 970 Model DC–9–80 series airplanes, Model MD–88 airplanes, and Model MD–90 airplanes of the affected design in the worldwide fleet. The FAA estimates that 512 airplanes of U.S. registry would be affected by this proposed AD.

The AFM revision that is currently required by AD 96–12–21 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $30,720, or $60 per airplane.

The new actions that are proposed in this AD action would take approximately 1.5 work hours per airplane to accomplish (this figure includes inspection, removal, installation, and a functional check), at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no charge to operators. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $46,080, or $90 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9664 (61 FR 29007, June 7, 1996), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 96–NM–217–AD. Supersedes AD 96–12–21, Amendment 39–9664.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and Model MD–88 airplanes, as listed in McDonnell Douglas Service Bulletin MD80–22–122, dated August 6, 1996; and Model MD–90 airplanes, as listed in McDonnell Douglas Service Bulletin MD90–22–005, dated August 6, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure the flight crew's ability to continue to control the airplane manually if the autopilot or autothrottle function fails to disengage, accomplish the following:

(a) Within 14 days after June 24, 1996 (the effective date of AD 96–12–21, amendment 39–9664), revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''If the autopilot or autothrottle fails to disconnect normally, press and hold the autopilot release button or either autothrottle release button, as appropriate. Refer to the Abnormal Procedures section for procedures if the autopilot or autothrottle fails to disconnect.''

(b) Within 14 days after June 24, 1996 (the effective date of AD 96–12–21, amendment 39–9664), revise the Abnormal Procedures

section of the FAA-approved AFM to include the following information. This may be accomplished by inserting a copy of this AD in the AFM.

''AUTOPILOT:

If the Autopilot (A/P) disconnects when the AUTOPILOT RELEASE button on either control wheel is depressed, *and* re-engages when the AUTOPILOT RELEASE button is released, accomplish the following procedures:

PROCEDURE: Use Autopilot (as desired)

AUTOPILOT RELEASE button: PRESS AND HOLD

- Hold either yoke (yellow) Autopilot Release button while continuing to fly the aircraft manually. The A/P will remain disengaged while depressing the button.
- When the Autopilot Release button is released, the A/P will engage and all A/P functions should work normally.

TO SILENCE THE AURAL WARNING:

CAWS C/B (P–38): PULL

- Circuit breaker is located behind the Captain's seat.
- Pulling the C/B will disable the Stall Warning SSRS–1, Landing Gear, Takeoff, Cabin Altitude, Speed Brake aural warnings, in addition to the Autopilot aural warning.

Caution: Do not attempt to overpower the autopilot. When the autopilot is engaged, applying force to the column may allow the alternate trim to reposition the stabilizer. If the force is applied long enough, it will result in an out-of-trim condition.''

''AUTOTHROTTLE:

If the Autothrottle (A/T) disconnects when either throttle disconnect button is depressed, *and* re-engages when throttle disconnect button is released, accomplish the following procedures:

PROCEDURE: Use Autothrottle System (as desired)

WHEN A DISCONNECT IS NECESSARY:

AUTOTHROTTLE RELEASE BUTTON: PRESS AND HOLD

- Press and hold either button until flashing red A/T annunciation is illuminated. Flashing red light indicates autothrottle is disconnected.
- AUTOTHROTTLE RELEASE BUTTON may then be released.
- The FMA A/T window will annunciate as though the A/T is engaged.
- The flashing red A/T annunciation of the FMA cannot be extinguished with repeated depression of the autothrottle release button.
- If the throttle levers are retarded to the idle stop, the flashing red A/T annunciation will extinguish, and the A/T system will re-engage.
- If the DFGC is selected to the IAS mode and the A/T SPEED mode is selected, the A/T system will re-engage.''

(c) Within 120 days after the effective date of this AD, accomplish the inspection and replacement of the autopilot and autothrottle engage switches in the flight guidance control panel (FGCP), in accordance with the paragraphs 3., 3.A., and 3.B. of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD80–22–122, dated August 6, 1996 (for Model DC–9–80 series airplanes and Model MD–88 airplanes); and McDonnell Douglas Service Bulletin MD90–22–005, dated August 6, 1996 (for Model MD–90 airplanes). Once these actions are completed, the AFM revision required by paragraphs (a) and (b) of this AD may be removed.

Note 2: The McDonnell Douglas service bulletins referenced in this paragraph refer to Honeywell Incorporated Service Bulletin 4034242–22–13 for additional service instructions.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

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

Issued in Renton, Washington, on September 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–24887 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

[NA–003–FOR]

Navajo Nation Abandoned Mine Land Reclamation Plan

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Navajo Nation abandoned mine land reclamation (AMLR) plan (hereinafter, the ''Navajo Nation plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and additions of rules pertaining to project selection, limited liability, contractor responsibility, reports, certification of completion of coal sites, and utilities and other facilities. The amendment is intended to revise the Navajo Nation plan to meet the requirements of the corresponding Federal regulations, to incorporate the additional flexibility afforded by the revised Federal regulations, and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t., October 30, 1996. If requested, a public hearing on the proposed amendment will be held on October 25, 1996. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t., October 15, 1996.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below. Copies of the Navajo Nation plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Guy Padgett, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102

Madeline Roanhorse, Acting Director, Abandoned Mine Land Reclamation Department, Division of Natural Resources, Navajo Nation, P.O. Box 1875, Window Rock, Arizona 86515.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (505) 248–5070, Internet address: GPADGETT@CWYGW.OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the Navajo Nation Plan

On May 16, 1988, the Secretary of the Interior approved the Navajo Nation plan. General background information on the Navajo Nation plan, including the Secretary's findings and the disposition of comments, can be found in the May 16, 1988, Federal Register (53 FR 17186). Subsequent actions concerning the Navajo Nation's plan and plan amendments can be found at 30 CFR 756.14.

II. Proposed Amendment

By letter dated September 3, 1996, the Navajo Nation submitted a proposed

amendment to its plan (administrative record No. NA–245) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). The Navajo Nation submitted the proposed amendment at its own initiative and in response to a September 24, 1994, letter (administrative record No. NA–228) that OSM sent to the Navajo Nation in accordance with 30 CFR 884.15(b). The provisions of the Navajo Nation Rules of the Navajo Reclamation Plan that the Navajo Nation proposes to revise and add are: policies and procedures for the Navajo Reclamation Program at subsection II, E.1, concerning project selection; general coal reclamation requirements at (1) subsection II, L.1(h), concerning limited liability, (2) subsection II, L.1(i), concerning contractor responsibility, and (3) subsection II, L.1(j)), concerning reports; general noncoal reclamation requirements at (1) subsection II, L.2(c), concerning limited liability, (2) subsection II, L.2(d), concerning limited liability, (2) subsection II, L.2(d), concerning contractor responsibility, and (3) subsection II, L.2(e), concerning reports; certification of completion of coal sites at (1) subsection II, M.1(d), concerning coal-related problems that may occur after submission of the certification of completion and (2) subsection II, M.2 (a) and (b), concerning noncoal reclamation priorities; and utilities and other facilities at subsection II, P.1, 2, and 3, concerning submission and qualification for abandoned mine land (AML) funding and public participation.

Specifically, the Navajo Nation proposes to add new language to its rules at II, E.1 to provide that ''[r]eclamation techniques for the specified noncoal mine closure and radioactive mine wastes will ensure compliance with the in house Health Physics Standards and Guidelines in the absence of any Tribal or Federal clean up standards specific to abandoned mine lands. The mine wastes contain low level radioactivity, but the levels are such that the reclamation work can be safely conducted if the health and safety standards are strictly followed. Departmental verification of the clean up Standards will be performed at each disturbed area(s).''

The Navajo Nation proposes the addition of new language at II, L.1(h) for coal and II, L.2(c) for noncoal to provide that ''[t]he Navajo Nation shall not be liable under any provision of Federal, State, or Tribal law for any costs or damages as a result of action taken or omitted in the course of carrying out this plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the Navajo Nation. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.''

The Navajo Nation proposes to add new rule provisions at II, L.1(i) for coal and II, L.2(d) for noncoal to require that ''[t]o receive AML funds, every successful bidder for a Tribal AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by OSM's automated Applicant/Violator System.''

Additionally, the Navajo Nation proposes the new rules at II, L.1(j) for coal and II, L.2(e) for noncoal to require that ''[a] Form OSM–76, ''Abandoned Mine Land Problem Area Description,'' shall be submitted to OSM upon noncoal project completion to report the accomplishments achieved through the project.''

The Navajo Nation is proposing to delete the requirements at II, M.1(d), which provides that ''[a] description of the nation's ability or provisions to fund all potential coal related problems that may occur after submission of the certification of completion and during the life of the approved abandoned mine reclamation program,'' at II, M.2(a), which provides that ''[t]his paragraph applies to reclamation projects involving the restoration of lands and water adversely affected by past mineral mining; projects involving the protection, repair, replacement, construction, or enhancement of utilities (such as those relating to water supply, roads, and such other facilities serving the public adversely affected by mineral mining and processing practices); and the construction of public facilities in communities impacted by coal and other mineral mining and processing practices,'' and at II, M.2(b), which provides that ''[n]otwithstanding the requirements specified in paragraph (a) of this section, where the Navajo Nation President determines there is a need for activities or construction of specific public facilities related to the coal or minerals industry impacted by coal or minerals development, Part O entitled ''Utilities and Other Facilities'' of this Plan shall apply.''

The Navajo Nation is also proposing to delete section II, P. in its entirety. This section pertains to the submission of information concerning projects to be funded using AML funds and the findings to be made by OSM's Director, the qualifications that such projects must meet to be selected, and public notification and solicitation of comments.

In addition, the Navajo Nation proposes some minor editorial changes.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Navajo Nation plan.

1. Written Comments

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

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t., October 15, 1996. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the

person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of Tribe or State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe or State, not by OSM. Decisions on proposed Tribe or State AMLR plans and revisions thereof submitted by a Tribe or State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed Tribe or State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

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

6. Unfunded Mandates Reform Act

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

List of Subjects in 30 CFR Part 756

Abandoned mine reclamation programs, Indian lands, Surface mining, Underground mining.

Dated: September 20, 1996.

James F. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 96–24963 Filed 9–27–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 10

[Docket No. 960828233–6233–01]

RIN 0651–AA92

Registration Examination for Patent Practitioners and the Establishment of a Continuing Education Requirement and an Annual Fee for Registered Patent Practitioners

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Advance notice of proposed rulemaking and notice of hearings.

SUMMARY: The Patent and Trademark Office (PTO) will hold public hearings, and request comments, on issues relating to the administration and format of the Registration Examination for Patent Practitioners and to the establishment of a continuing education requirement and an annual fee for registered patent practitioners. Interested members of the public are invited to testify at public hearings and to submit written comments on the topics outlined in the supplementary information section of this notice.

DATES: Public hearings will be held on October 29, 1996, November 20, 1996, and December 3, 1996 starting at 9:00 a.m. and ending no later than 5:00 p.m.

Those wishing to present oral testimony at the hearings must request an opportunity to do so no later than October 22, 1996, for the October 29, 1996 hearing; November 13, 1996, for the November 20, 1996 hearing; or November 26, 1996 for the December 3, 1996 hearing.

Written comments will be accepted by the PTO until December 6, 1996. Written comments and transcripts of the hearings will be available for public inspection on or about December 20, 1996.

ADDRESSES: The October 29, 1996 hearing will be held in San Francisco, California. Additional information on location will be subsequently available from the PTO.

The November 20, 1996 hearing will be held in Dallas, Texas. Additional information on location will be subsequently available from the PTO.

The December 3, 1996 hearing will be held at the Crystal Forum, Crystal Mall 1, 1911 South Clark Place, Arlington, Virginia.

Requests to testify and for additional information on hearing locations should be sent to G. Lee Skillington by facsimile transmission to (703) 305–8885, by mail marked to his attention addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231 or by Internet electronic mail to oedcommt@uspto.gov.

Written comments should be sent via mail marked to the attention of G. Lee Skillington and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231 or via Internet electronic mail to oedcommt@uspto.gov. They will be maintained for public inspection in Room 902 of Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia. They will also be made available via the PTO's World Wide Web site at http://www.uspto.gov.

FOR FURTHER INFORMATION CONTACT: G. Lee Skillington by telephone at (703) 305–9300, by facsimile transmission at (703) 305–8885, by mail marked to his attention addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231, or by electronic mail at oedcommt@uspto.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 35 U.S.C. 31 and 32, and 37 CFR Part 10, the PTO's Office of Enrollment and Discipline (OED) receives and acts upon applications for registration to practice before the PTO in patent cases, prepares and grades the Registration Examination for Patent Practitioners (Registration Examination),

maintains a register of all individuals entitled to practice before the PTO in patent cases, conducts investigations into possible violations of the PTO's Disciplinary Rules by practitioners practicing before the PTO in all matters.

In recent years, the preparation and administration of the Registration Examination has taxed OED's resources. The PTO is seeking to restructure the administration and format of the Registration Examination in order to free resources needed to investigate and take appropriate action against individuals who no longer meet the qualifications necessary to represent others before the PTO. The Registration Examination restructuring should provide greater assurance to our patent applicants that registered practitioners possess the essential skills necessary to practice before the PTO in patent cases. Moreover, in furtherance of these goals, the PTO is seeking to establish continuing education requirements for registered patent practitioners and an annual registration fee. The annual fee would be used to support the costs associated with the continuing education program and with fulfilling OED's ongoing disciplinary responsibilities.

II. Issues for Public Comment

Interested members of the public are invited to testify and to present written comments on issues related to the discussion topics outlined below, including the specific issues identified in the questions following each topic.

A. Administration and Format of the Registration Examination for Patent Practitioners

The purpose of the Registration Examination is to determine whether individuals who seek to practice before the PTO in patent cases possess the necessary qualifications. At present, the Registration Examination consists of two parts: (1) a multiple-choice portion that tests knowledge of PTO practice and procedure, and (2) a portion that primarily tests claim drafting ability. OED prepares and grades the Registration Examination, regrades the Registration Examination when requested, and drafts reconsideration decisions of the regrades when requested.

The PTO is considering restructuring the PTO practice and procedure portion of the Registration Examination such that it is a computer-administered examination. At the completion of the computer-administered examination, an applicant would be immediately provided with a computer-graded score. The computer-administered examination would be offered numerous times throughout the year at various locations around the United States. Only applicants who have passed the computer-administered examination would be eligible to complete further requirements for registration.

As a further requirement for registration, the PTO is considering substituting the claim drafting portion of the Registration Examination with a comprehensive course on preparation and prosecution of patent applications, including drafting of specifications, claims, and responses to office actions. The PTO is also considering apprenticeships as alternatives to the comprehensive course.

The PTO seeks public input on these considerations and other general matters relevant to restructuring the administration and format of the Registration Examination. In addition, the PTO seeks public input on the following particular questions:

1. Should the PTO give a computer-administered examination consisting of a bank of reusable questions?
2. Should the PTO develop the comprehensive course on preparation and prosecution of patent applications or, in the alternative, should the PTO just develop criteria for the course?
3. Should the PTO teach the course or, in the alternative, should the course be taught by non-PTO entities or individuals, such as universities and professional associations?
4. What qualifications should the course instructors have?
5. If the PTO does not teach the course, should the PTO certify the available courses?
6. Should former PTO examiners be required to pass the computer-administered examination if they wish to practice before the PTO in patent cases?
7. Should former PTO examiners be required to take the course or participate in an apprenticeship if they wish to practice before the PTO in patent cases?

B. Establishment of Continuing Education Requirement for Registered Patent Practitioners

The purpose of the continuing education requirement is to provide greater assurance to the PTO's patent applicants that individuals who practice before the PTO in patent cases possess the necessary qualifications. At present, the PTO does not require registered patent practitioners to continue their legal or technical education.

The PTO seeks public input on the establishment of a continuing education requirement for registered patent practitioners and other general matters relevant to the requirement. In addition, the PTO seeks public input on the following particular questions:

1. Should the continuing education requirement mandate minimum requirements for legal, technical, and legal ethics education? Or, in the alternative, should the continuing education requirement mandate minimum requirements for continuing education that can be met with either legal, technical, or legal ethics education?
2. Should the PTO give credit to patent practitioners for relevant legal and ethics courses taken to meet a state bar's continuing education requirement?
3. What penalty should be imposed for failure to meet the continuing education requirement?
4. What is a reasonable number of required continuing education credits?
5. Should the qualifying legal education be limited to patent law?

C. Establishment of an Annual Fee To Maintain Registration

An annual fee would be used to support the costs associated with the continuing education requirement and to provide resources to OED to fulfill its ongoing disciplinary responsibilities. At present, the PTO does not require an annual registration fee for registered patent practitioners. The PTO seeks public input on the establishment of an annual fee for registered patent practitioners and other general matters relevant to an annual registration fee.

III. Guidelines for Oral Testimony

Individuals wishing to testify at the hearings must adhere to the following guidelines:

1. Requests to testify must include the speaker's name, affiliation, title, telephone number, facsimile number, mailing address, and Internet mail address (if available).
2. Speakers will be provided between five and fifteen minutes to present their remarks. The exact amount of time allocated per speaker will be determined after the final number of parties testifying has been determined. Efforts will be made to accommodate requests made before the day of the hearing for additional time for testimony.
3. Requests to testify may be accepted on the day of the hearing if sufficient time is available on the schedule. No one will be permitted to testify without prior approval.
4. A schedule including approximate times for testimony will be provided to all speakers on the morning of the day of the hearing. Speakers are advised that

the schedule for testimony may change during the course of the hearings.

IV. Guidelines for Written Comments

Written comments should include the following information:

1. Name and affiliation of individual responding.

2. If applicable, an indication of whether comments offered represent the views of the respondent's organization or are the respondent's personal views.

3. If applicable, information on the respondent's organization, including the type of organization (business, trade group, university, non-profit organization, etc.), and the general areas of interest to the organization.

If possible, respondents should include a machine-readable submission of their written comments. Machine-readable submissions can be provided via Internet electronic mail or on 3.5'' floppy disk formatted for use in either a Macintosh computer or MS–DOS based computer. The document should be formatted as either plain text, ACSII text, Microsoft Word (Macintosh, MS–DOS, or MS–Windows), or WordPerfect (Macintosh, MS–DOS, or MS–Windows).

Information that is provided pursuant to this notice will be made part of a public record and will be available via the Internet. In view of this, parties should not provide information that they do not wish to be publicly disclosed or electronically accessible. Parties who would like to rely on confidential information to illustrate a point being made are requested to summarize or otherwise provide the information in a way that will permit its public disclosure.

Dated: September 20, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–24865 Filed 9–27–96; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT26–7–6874b; FRL–5609–9]

Clean Air Act Approval and Promulgation of State Implementation Plan for Montana; Libby Moderate PM_{10} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State implementation plan (SIP) revisions submitted by the State of Montana on March 15, 1995 to satisfy the Federal Clean Air Act requirement to submit contingency measures for the Libby moderate PM_{10} (particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers) nonattainment area. The March 15, 1995 submittal also recodified the Lincoln County regulations. In addition, EPA proposes to approve a SIP revision submitted by the Governor of Montana on May 13, 1996, which included revisions to the Lincoln County regulations regarding open burning. EPA is proposing to approve these SIP revisions because they are consistent with the applicable requirements of the Clean Air Act, as amended (Act), and EPA guidance.

In the Final Rules Section of this Federal Register, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for EPA's approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated and the direct final rule will become effective. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so now.

DATES: Comments on this proposed rule must be received in writing by October 30, 1996.

ADDRESSES: Written comments on this action should be addressed to Vicki Stamper, 8P2–A, at the EPA Regional Office listed below. Copies of the State's submittals and documents relevant to this proposed rule are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; and Montana Department of Environmental Quality, Air Quality Division, Cogswell Building, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper at (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Dated: August 29, 1996.

Patricia D. Hull,

Acting Regional Administrator.

[FR Doc. 96–24531 Filed 9–27–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–194; RM–8866]

Radio Broadcasting Services; Nocatee, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mario Trevino requesting the allotment of Channel 287A to Nocatee, Florida, as that community's first local service. There is a site restriction 12.1 kilometers (7.5 miles) north of the community. The coordinates for Channel 287A at Nocatee are 27–16–07 and 81–53–41.

DATES: Comments must be filed on or before November 12, 1996, and reply comments on or before November 27, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Cary S. Tepper, Both, Freret & Imlay, P.C., 1233 - 20th Street, NW., Suite 204, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–194, adopted September 13, 1996, and released September 20, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission

consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–24868 Filed 9–27–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–196; RM–8878]

Radio Broadcasting Services; Georgetown and Garden City, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Coastline Communications of Carolina, Inc., proposing the reallotment of Channel 249C1 from Georgetown to Garden City, South Carolina, and the modification of Station WWXM(FM)'s license accordingly. Channel 249C1 can be allotted to Garden City in compliance with the Commission's minimum distance separation requirements with a site restriction of 3 kilometers (1.9 miles) northwest at petitioner's licensed site. The coordinates for Channel 249C1 at Garden City are North Latitude 33–35–27 and West Longitude 79–02–53. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 249C1 at Garden City, South Carolina.

DATES: Comments must be filed on or before November 12, 1996, and reply comments on or before November 27, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Edward W. Hummers, Jr., Esq., Holland & Knight, 2100 Pennsylvania Ave., NW., Suite 400, Washington, DC 20037–3202 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–196, adopted September 13, 1996, and released September 20, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–24869 Filed 9–27–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–195; RM–8867]

Radio Broadcasting Services; Geneseo, IL, and DeWitt, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Connoisseur Communications of Quad Cities, L.P., proposing the substitution of Channel 285C3 for Channel 285A at Geneseo, Illinois, the reallotment of Channel 285C3 from Geneseo to DeWitt, Iowa, and the modification of Station WGEN-FM's license accordingly. Channel 285C3 can be allotted to DeWitt, Iowa, in compliance with the Commission's minimum distance separation requirements with restriction of 14.0 kilometers (8.7 miles) southeast to avoid short-spacings to the licensed sites of Station WXRX(FM), Channel 285A, Belvidere, Illinois, and Station WXCL(FM), Channel 285A, Pekin, Illinois, at petitioner's requested site. The coordinates for Channel 285C3 at DeWitt are North Latitude 41–42–50 and West Longitude 90–27–20. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 285C3 at DeWitt, Iowa, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before November 12, 1996, and reply comments on or before November 27, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John C. Trent, Esq., Putbrese, Hunsaker & Trent, P.C., 100 Carpenter Drive, Suite, 100, P.O. Box 217, Sterling, Virginia 10167–0217.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–195, adopted September 13, 1996, and released September 20, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–24867 Filed 9–27–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 383

[FHWA Docket No. MC–93–12]

RIN 2125–AD05

Training of Entry-Level Drivers of Commercial Motor Vehicles

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of public outreach.

SUMMARY: The purpose of this notice is to announce an upcoming public meeting to be held on November 13, 1996, to discuss mandating entry-level training for drivers of commercial motor vehicles (CMVs). Section 4007(a)(1) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) directed the Secretary of Transportation to report to Congress on the effectiveness of the efforts of the private sector to ensure adequate training of entry-level drivers of CMVs. In response to this statutory mandate, the Federal Highway Administration (FHWA) hired a contractor to conduct a study and published a notice of availability and request for comments in the Federal Register on April 25, 1996, (61 FR 18355). The notice advised members of the general public that copies of the study entitled ''Assessing the Adequacy of Commercial Motor Vehicle Driver Training: Final Report'' and a cost-benefit analysis of requiring entry-level training for CMV drivers were available from the National Technical Information Service (NTIS) and requested public comment on both documents. The FHWA also advised the general public that the Agency was considering holding a public meeting on the issue of mandating entry-level training. With this notice, the FHWA is also announcing the extension of the closing date for comments on the final report and cost-benefit analysis to November 27, 1996.

DATES: The meeting will be held on November 13, 1996, and the comment period for the notice of availability and request for comments will be extended until November 27, 1996.

ADDRESSES: The meeting will be held at the Department of Transportation Headquarters Building, 400 Seventh Street SW., Room 3200, Washington, D.C. from 8:30 A.M. to 5 P.M.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Finn, Office of Motor Carrier Research and Standards, (202) 366–0647, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. In advance of the session, all individuals planning to present information should contact Mr. Stan Hamilton, Office of Motor Carriers, telephone (202) 366–0665. Speakers should pre-register with Mr. Hamilton. Speakers who sign up at the meeting will be permitted to speak as time permits. To allow for maximum participation, oral presentations will be limited to no more than ten minutes.

SUPPLEMENTARY INFORMATION:

Advance Notice of Proposed Rulemaking

In response to the requirement in § 4007(a)(2) of the ISTEA, Pub. L. 102–240,105 Stat. 1914 (1991), that the Secretary commence a rulemaking proceeding on the need to require training of all entry-level drivers of CMVs, the FHWA published an advance notice of proposed rulemaking (ANPRM) on entry-level training on June 21, 1993, (58 FR 33874). There were 104 comments to the ANPRM but no consensus was reached on the issue of mandated entry-level driver training. The American Trucking Associations stated that the Professional Truck Driver Institute of America's curriculum should be the standard to ensure adequate entry-level driver training. The New Mexico Tax and Revenue Department, on the other hand, stated that the commercial driver's license was the best method to determine if an applicant is qualified.

Adequacy Study

Section 4007(a)(1) of the ISTEA directed the Secretary to report to Congress on the effectiveness of private sector efforts to ensure adequate training of CMV drivers. In response, the FHWA retained a contractor to conduct such a study. In analyzing the adequacy of entry-level training, the contractor examined the training provided to entry-level drivers of heavy trucks, motor coaches, and school buses. This examination disclosed that the percentage of employers who hire entry-level drivers and provide them with adequate training was as follows: heavy truck employers (8 percent), motor coach employers (19 percent), and school bus operators (24 percent).

Consequently, the contractor concluded that neither the heavy truck, motor coach, nor school bus segments of the CMV industry provided adequate entry-level driver training.

Cost-Benefit Study

The FHWA also entered into a separate contract for a cost-benefit study. This study showed that the cost of mandating entry-level training for 360,000 drivers a year in the heavy truck industry would be $4.5 billion over a 10-year period. The societal benefits of fewer accidents, reduced health care costs, and reduced delays caused by accident-related traffic congestion over the same 10-year period were estimated to range from $5.8 to $15.3 billion.

Report to Congress

The Secretary of Transportation submitted the ''Assessing the Adequacy of Commercial Motor Vehicle Driver Training: Final Report'' and the cost-benefit analysis to the U.S. Congress on February 5, 1996.

Notice of Availability and Request for Comments

The FHWA published a notice of availability and request for comments on April 25, 1996, advising the general public that the study entitled ''Assessing the Adequacy of Commercial Motor Vehicle Driver Training: Final Report'' and a cost-benefit analysis of requiring entry-level training for CMV drivers was available. With this notice, the FHWA is announcing that a public meeting will be held on November 13, 1996, to discuss mandatory training for entry-level drivers of CMVs and that the comment period for the notice of availability and request for comments is being extended from October 22, 1996, until November 27, 1996, to allow time for a record of the meeting proceedings to be included in the docket. Copies of the adequacy study and cost-benefit analysis are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The telephone number for placing an order from NTIS is 703–487–4650. The report number is P.B. 96–141536. The domestic price per copy is $61.00 while the foreign price is $122.00 per copy. Checks or money orders should be made payable to ''NTIS.'' American Express, VISA, MasterCard, or NTIS deposit account are also accepted. As of August 6, five additional comments to the docket had been received.

Authority: § 4007 of Pub. L. 102–240; 49 CFR 1.48.

Issued on: September 23, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–24908 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–22–P

Notices

Federal Register
Vol. 61, No. 190
Monday, September 30, 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

Cooperative State Research, Education, and Extension Service

Notice of Availability of Program Description and Solicitation for Applications for Fiscal Year 1997 National Research Initiative Competitive Grants Program

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice.

Applications are invited for competitive grant awards in agricultural, forest, and related environmental sciences under the National Research Initiative Competitive Grants Program (NRICGP) administered by the Competitive Research Grants and Awards Management Division, Cooperative State Research, Education, and Extension Service (CSREES), for fiscal year 1997.

Authority

The authority for this program is contained in Section 2(b) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture (USDA). Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals submitted by non-United States organizations will not be considered for support.

Section 712 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997, Pub. L. No. 104–180, prohibits CSREES from using the funds available for the NRICGP for fiscal year 1997 to pay indirect costs exceeding 14 per centum of the total Federal funds provided under each award on competitively awarded research grants. Pursuant to section 716 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997, Pub. L. No. 104–180, recipients of grant funds are encouraged to use such funds to purchase only American-made equipment or products in the case of any equipment or product that may be authorized to be purchased with the funds provided under this program.

Applicable Regulations and Statutory Guidance

The regulations governing the NRICGP currently are found at 7 CFR part 3411. The regulations set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects.

Other regulations and statutes applicable to this program (as specified in those regulations) include, but are not limited to, the following: (a) The USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher-Education, Hospitals, and Other Non-Profit Organizations, 7 CFR Part 3019; (b) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR Part 3016; (c) the USDA Uniform Federal Assistance Regulations, 7 CFR 3015; (d) Section 1402 of the National Agricultural Research, extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101); and (e) Section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3103), which defines ''sustainable agriculture.''

Conflicts of Interest

For the purpose of determining conflicts of interest in accordance with 7 CFR 3411.12, the academic and administrative autonomy of an institution shall be determined by reference to the January 1996 issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit institutions, prepared by Quantum Research Corporation for the National Science Foundation. Copies may be obtained from Quantum Research Corporation, 7315 Wisconsin Avenue, Suite 631W, Bethesda, MD 20814.

Project Types

The project types for which proposals are solicited include:

I. Conventional Projects

(a) Standard Research Grants: Research will be supported that is fundamental or mission-linked, conducted by individual investigators, co-investigators within the same discipline, or multidisciplinary teams. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual may apply. Proposals submitted by non-United States organizations will not be considered for support.

(b) Conferences: Scientific meetings that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual is an eligible applicant in this area. Proposals submitted by non-United States organizations will not be considered for support.

II. Agricultural Research Enhancement Awards

In order to contribute to the enhancement of research capabilities in the research program areas described herein, applications are solicited for Agricultural Research Enhancement Awards. Such applications may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual; however, further eligibility requirements are defined in 7 CFR 3411.3(d) and restated in the FY 1997 NRICGP Program Description. Applications submitted by non-United States organizations will not be considered for support. Agricultural Research Enhancement Awards are available in the following categories:

(a) Postdoctoral Fellowships.

(b) New Investigator Awards.

(c) Strengthening Awards: Institutions in USDA EPSCoR states are eligible for strengthening awards. For FY 1997, USDA EPSCoR states consist of the following:

Alaska
Arkansas
Connecticut
Delaware
Hawaii
Idaho
Maine
Mississippi
Montana
Nevada
New Hampshire
New Mexico
North Dakota
Rhode Island
South Carolina
South Dakota
Utah
Vermont
West Virginia
Wyoming
All U.S. territories and possessions and the District of Columbia.

Investigators at small and mid-sized institutions (total enrollment of 15,000 or less) may also be eligible for Strengthening Awards. An institution in this instance is an organization that possesses a significant degree of autonomy, as determined by reference to the January 1996 issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions, prepared by Quantum Research Corporation for the National Science Foundation. Copies may be obtained from Quantum Research Corporation, 7315 Wisconsin Avenue, Suite 631W, Bethesda, MD 20814.

Institutions which are among the top 100 universities and colleges, except those in USDA ESPCoR states, are ineligible for strengthening awards. The top 100 institutions excluding those in USDA EPSCoR states, as listed in the table Federal obligations for science and engineering research and development to the 100 universities and colleges receiving the largest amounts, ranked by total amount received, by agency: fiscal year 1994 (National Science Foundation, accessible at www.grc.com/nsf/srs/fs92/pubs/dst94/start.htm), are as follows:

Baylor College of Medicine
Boston University
California Institute of Technology
Carnegie-Mellon University
Case Western Reserve University
Colorado State University
Columbia University
Cornell University
CUNY Mount Sinai School of Medicine
Duke University
Emory University
Florida State University
Georgia Institute of Technology
Harvard University
Indiana University
Iowa State University of Science and Technology
Johns Hopkins University
Louisiana State University
Massachusetts Institute of Technology
Medical College Wisconsin
Michigan State University
New York University
North Carolina State University at Raleigh
Northwestern University
Ohio State University
Oregon Health Sciences University
Oregon State University
Pennsylvania State University
Princeton University
Purdue University
Rockefeller University
Rutgers the State University of New Jersey
Stanford University
State University of New York Stony Brook
State University of New York at Buffalo
Texas A&M University
Thomas Jefferson University
Tufts University
Tulane University
University of Alabama Birmingham
University of Arizona
University of California Santa Barbara
University of California San Francisco
University of California Irvine
University of California San Diego
University of California Davis
University of California Los Angeles
University of California Berkeley
University of Chicago
University of Cincinnati
University of Colorado
University of Florida
University of Georgia
University of Illinois Urbana
University of Illinois Chicago
University of Iowa
University of Kansas
University of Kentucky
University of Maryland Baltimore Prof Sch
University of Maryland College Park
University of Massachusetts Amherst
University of Massachusetts Med Schl Worcester
University of Medicine and Dentistry of New Jersey
University of Miami
University of Michigan
University of Minnesota
University of North Carolina Chapel Hill
University of Pennsylvania
University of Pittsburgh
University of Rochester
University of Southern California
University of Texas at Austin
University of Texas Health Science Center Houston
University of Texas Health Sci. Center San Antonio
University of Texas MD Anderson Cancer Center
University of Texas Medical Branch Galveston
University of Texas SW Medical Center Dallas
University of Virginia
University of Washington
University of Wisconsin Madison
Vanderbilt University
Virginia Polytech Institute and State University
Virginia Commonwealth University
Wake Forest University
Washington University
Wayne State University
Woods Hole Oceanographic Institute
Yeshiva University

See the FY 1997 Program Description for complete details on programs and eligibility.

Funding Categories for Fiscal Year 1997

CSREES is soliciting proposals, subject to the availability of funds, for support of high priority research of importance to agriculture, forestry, and related environmental sciences, in the following research categories (Anticipated FY 1997 funding and Actual FY 1996 funding, rounded to the $0.1M, follows in parentheses):

- Natural Resources and the Environment (FY97: $16.6M, FY 96: $16.2M).
- Nutrition, Food Quality, and Health (FY97: $7.0M, FY96: $6.8M).
- Plant Systems (FY97: $34.7M, FY96: $33.8M).
- Animal Systems (FY97: $22.2M, FY96: $21.7M).
- Markets, Trade, and Policy (FY97: $3.8M, FY96: $3.7M).
- New Products and Processes (FY97: $6.5M, FY96: $6.4M).

Support for research areas listed below may be derived from one or more of the above funding categories based on the nature of the scientific topic to be supported.

Pursuant to the provisions of Section 2(b)(10) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)(10)), no less than 10 percent (FY97: $9.1M, FY96: $8.8M) of the available funds listed above will be made available for Agricultural Research Enhancement Awards (excluding New Investigator Awards), and no more than 2 percent (FY97: $1.8M, FY96: $1.8M) of the available funds listed above will be made available for equipment grants. Further, no less than 30 percent (FY97: $27.2M, FY96: $26.5M) of the funds listed above shall be made available for grants for research to be conducted by multidisciplinary teams, and no less than 40 percent (FY97: $36.3M) (FY96: $17.7M (20 percent of available funds)) of the funds listed above shall be made available for grants for mission-linked research.

The funds appropriated as listed above will be used to support research grants in the following areas:

Natural Resources and the Environment

Plant Responses to the Environment
Forest/Range/Crop/Aquatic Ecosystems
Soils and Soil Biology
Water Resources Assessment and Protection—not offered in FY 1997
Nutrition, Food Safety, and Health
Improving Human Nutrition for Optimal Health
Ensuring Food Safety
Animals
Enhancing Animal Reproductive Efficiency
Improving Animal Growth and Development
Identifying Animal Genetic Mechanisms and Gene Mapping
Sustaining Animal Health and Well-Being
Pest Biology, Biological Control, and Integrated Pest Management
Plant Pathology
Entomology
Nematology
Weed Science
Biologically Based Pest Management
Plants
Genomes, Genetics, and Diversity
Plant Genome
Plant Genetic Mechanisms
Plant Growth and Development
Energy and Metabolism
Photosynthesis and Respiration
Nitrogen Fixation/Nitrogen Metabolism
Markets, Trade, and Rural Development
Markets and Trade
Rural Development
Enhancing Value and Use of Agricultural and Forest Products
Value-Added Products Research
Food Characterization/Process/Product Research
Non-Food Characterization/Process/Product Research
Improved Utilization of Wood and Wood Fiber
Agricultural Systems

Application Materials

The solicitation, which contains research topic descriptions, and the NRICGP Application Kit, which contains detailed instructions on how to apply and the requisite forms, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted NRICGP proposals for fiscal year 1996 or who have recently requested placement on the list for fiscal year 1997 will automatically receive a copy of the fiscal year 1997 solicitation and any supplements. Proposal Services Unit, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Ave., SW, Washington, D.C. 20250–2245, Telephone: (202) 401–5048.

Requests for solicitations and application materials may also now be made via Internet by sending a message with your name, complete mailing address, phone number, and materials that you are requesting to psb@reeusda.gov. Materials will be mailed as quickly as possible.

Materials Available on Internet

The following materials are available on the USDA Cooperative Research, Education, and Extension Service Home Page at www.reeusda.gov:

NRICGP Program Description

This document is available for the current fiscal year, and describes all of the NRICGP funding programs. To apply for a grant, it is also necessary to obtain the NRICGP Application Kit.

NRICGP Application Kit

This document contains guidelines for proposal preparation and the requisite forms.

NRICGP Abstracts of Funded Research

The abstracts available on this searchable database are nontechnical abstracts written by the principal investigator of each individual grant, starting with fiscal year 1993. Each entry also includes the title, principal investigator(s), awardee institution, dollar amount, and proposal number for each grant. The first two digits of the proposal number indicate the fiscal year in which the proposal was submitted.

NRICGP Annual Report

The NRICGP Annual Reports starting with fiscal year 1995 are available. These reports include descriptions of the program concept, the authorization, policy, inputs to establish research needs, program execution, and outcomes, including relevant statistics. Also included are examples of recent research funded by the NRICGP.

Electronic Subscription to NRICGP Documents

The National Research Initiative Competitive Grants Program (NRICGP) has set up a mailserver which will notify subscribers when publications such as its Program Description or Abstracts of Funded Research are available electronically on the World Wide Web. Subscribers will not receive the document itself, but instead will receive an e-mail containing an announcement regarding the document's availability on the Web.

To subscribe: Send an e-mail message to: majordomo@reeusda.gov

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In the body of the message, include only the words: unsubscribe nri-epubs Please note that this is not a forum. Messages, other than those related to subscription, can not be posted to this address.

NRICGP Deadline Dates

The following fixed dates have been established for proposal submission deadlines within the National Research Initiative Competitive Grants Program, Cooperative State Research Education and Extension Service, United States Department of Agriculture. To be considered for funding in any fiscal year, proposals must be transmitted by the date listed below (as indicated by postmark or date on courier bill of lading). When the deadline date falls on a weekend or Federal holiday, transmission must be made by the following business day.

Programs offered in any fiscal year depend on availability of funds and deadlines may be delayed due to unforeseen circumstances. Consult the pertinent NRICGP solicitation in the Federal Register, the NRICGP Program Description, or the NRICGP WWW home page for up-to-date information.

Postmarked dates	Program codes	Program areas
November 15	22.1	Plant Responses to the Environment.
	23.0	Forest/Range/Crop/Aquatic Ecosystems.
	25.0	Soils and Soil Biology.
	31.0	Improving Human Nutrition for Optimal Health.
	51.4	Weed Science.
December 15	52.1	Plant Genome.
	52.2	Plant Genetic Mechanisms.
	53.0	Plant Growth and Development.

Postmarked dates	Program codes	Program areas
	54.1	Photosynthesis and Respiration.
	61.0	Markets and Trade.
	62.0	Rural Development.
	71.1	Food Characterization/Process/Product Research.
	71.2	Non-Food Characterization/Process/Product Research.
January 15	32.0	Ensuring Food Safety.
	41.0	Enhancing Animal Reproductive Efficiency.
	44.0	Sustaining Animal Health and Well-Being.
	51.1	Plant Pathology.
	51.2	Entomology.
	51.3	Nematology.
	51.7	Biologically-Based Pest Management.
	73.0	Improved Utilization of Wood and Wood Fiber.
February 15	42.0	Improving Animal Growth and Development.
	43.0	Identifying Animal Genetic Mechanisms and Gene Mapping.
	54.2	Nitrogen Fixation/Nitrogen Metabolism.
	80.1	Research Career Enhancement Awards.
	80.2	Equipment Grants.
	80.3	Seed Grants.
	100.0	Agricultural Systems.

The Water Resources Assessment and Protection program, previously announced as having a December 15 deadline, will not be offered in FY 1997.

Done at Washington, D.C., this 18th day of Sept. 1996.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 96–24883 Filed 9–27–96; 8:45 am]

BILLING CODE 3410–22–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Ohio Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 6:00 p.m. on Thursday, October 17, 1996, at the Radisson Hotel, 101 North Summitt Street, Toledo, Ohio 43604. The purpose of the meeting is to discuss civil rights issues of interest and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Grace Ramos, 614–466–6715, or Constance Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 20, 1996.

Carol-Lee Hurley

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–24880 Filed 9–27–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing proposed certifications for the automation of the following Weather Service offices at the indicated FAA Weather Observation Service level:

(1) Grand Island Weather Service Office (WSO), service level C;

(2) Beaumont/Port Arthur WSO, service level C;

(3) Bristol WSO, service level C;

(4) Columbus, GA WSO, service level C;

(5) Macon WSO, service level C;

(6) Waco WSO, service level C;

(7) Bakersfield WSO, service level C;

(8) Helena WSO, service level C;

(9) Residual Phoenix WSO, service level A;

(10) Residual Reno WSO, service level C; and

(11) Salem WSO, service level C.

In accordance with Pub. Law 102–567, the public will have 60-days in which to comment on these proposed automation certifications.

DATES: Comments are requested by November 29, 1996.

ADDRESSES: Requests for copies of the proposed automation packages should be sent to Tom Beaver, Room 12314, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1413.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. Law 102–567, the Secretary of Commerce must certify that these automations will not result in any degradation of service to the affected areas of responsibility and must publish the proposed automation certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the ASOS Commissioning Report; series of three letters between NWS and FAA confirming that weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; Surface Aviation Observation Transition Checklist documenting transfer of augmentation and backup responsibility from NWS to FAA; successful resolution of ASOS user confirmation of services complaints; and an in-place supplementary data program at the responsible future Weather Forecast Office(s).

(7) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. At their December 14, 1995 meeting the members ''* * * resolved that the MTC modify its procedure to eliminate proposed certification consultations of noncontroversial closings, consolidations, relocations, and automation certifications but will provide final consultation on certifications after public comment and before final submission to the Secretary of Commerce.''

Documentation supporting the proposed certifications is too voluminous to publish. Copies of the supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determined whether to proceed with the final certifications. If decisions to certify are made, the Secretary of Commerce must publish the final certifications in the FR and transmit the certifications to the appropriate Congressional committees prior to automating these offices.

Dated: September 24, 1996.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 96–24907 Filed 9–27–96; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 091196C]

Marine Mammals; Scientific Research Permit (P6P)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; and Fish and Wildlife Service (FWS), Interior.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the National Museum of Natural History, Smithsonian Institution, NHB 390, MRC 108, 10th & Constitution Ave., SW., Washington, D.C. 20560, 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 October 30, 1996.

ADDRESSES: The application and related documents are available for review upon written request or by appointment (see **SUPPLEMENTARY INFORMATION** for locations).

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.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23) and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests a permit to salvage and/or import/export, over a 5-year period, carcasses and/or specimen materials from an unspecified number of all species of marine mammals of any age and of both sexes, world wide. Specimen materials will be obtained from: Dead, naturally stranded animals and/or from animals legally taken (killed) in the country of origin as a result of fishery interactions, aboriginal takes, or as a part of research or management programs; biopsies from live free-ranging marine mammals taken by other individuals who have the appropriate authority; and captive animals kept in public display institutions.

The application and related documents may be viewed at the following locations:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Director, NMFS, Northwest Region, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150);

Director, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001);

Director, NMFS, Northeast Region, One Blackburn Dr., Gloucester, MA 01930–2298 (508/281–9250);

Director, NMFS, Southeast Region, 9721 Executive Center Dr. North, St. Petersburg, FL 33702–2432 (813/570–5301); and

U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 432, Arlington, VA 22203 (1–800/358–2104).

Dated: September 20, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: September 20, 1996.

Margaret Tieger,

Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 96–24882 Filed 9–27–96; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Application of the Chicago Board of Trade for Designation as a Contract Market in Eurodollar Futures Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures options contract.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in Eurodollar futures options. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before October 30, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CBT Eurodollar futures option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, Washington, DC, 20581, telephone 202–418–5277. Facsimile number: (202) 418–5527. Electronic mail: ssherrod@cftc.gov

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on September 24, 1996.

Blake Imel,

Acting Director.

[FR Doc. 96–24948 Filed 9–27–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0103]

Submission for OMB Review; Comment Request Entitled Procurement Integrity

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0103).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Procurement Integrity. A request for public comments was published at 61 FR 37049, July 16, 1996. No comments were received.

DATES: *Comment Due Date:* November 29, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0103, Procurement Integrity, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Peter O'Such, Federal Acquisition Policy Division, GSA (202) 501–1759.

SUPPLEMENTARY INFORMATION:

A. Purpose

Public Law 100–679, the Office of Federal Procurement Policy Act Amendments of 1988, as amended by section 814 of Public Law 101–189, requires that contractors certify, prior to execution of each contract, modification or extension in excess of $10,000 with respect to conduct prohibited by the Act.

The information obtained in the certification will be used by the contracting officer to ensure that prohibited conduct specified in the Act is identified and in determining the responsibility of the firm for contract award.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, 20,000; responses per respondent, 20; total annual responses, 400,000; preparation hours per response, *5 minutes;* and total response burden hours, *43,333.*

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *20,000;* hours per recordkeeper, *30* minutes; and total recordkeeping burden hours, *10,000.*

Dated: September 24, 1996.

Sharon A. Kiser

FAR Secretariat.

[FR Doc. 96–24912 Filed 9–27–96; 8:45 am]

BILLING CODE 6820–EP–P

Department of the Air Force

Community College of the Air Force Meeting

The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting on 13 November 1996 at 1:00 p.m. in the First Floor Conference Room, Community College of the Air Force, Building 836, 130 West Maxwell Blvd, Maxwell Air Force Base, Alabama. The meeting will be open to the public.

The purpose of the meeting is to review and discuss academic policies and issues relative to the operation of the CCAF. Agenda items include a review of the operations of the CCAF, reaffirmation of accreditation by the Southern Association of Colleges and Schools Commission on Colleges, update on the activities of the CCAF Policy Council, and a report on the affiliated school at Goodfellow Air Force Base, Texas.

Members of the public who wish to make oral or written statements at the meeting should contact Captain Kyle C. Monson, Designated Federal Officer for the Board, at the address below no later than 4:00 p.m. on 21 October 1996. The request may be made by mail or electronic mail. Telephone requests will not be honored. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of the presentation materials must be given to Captain Monson no later than the time of the meeting for distribution to the board and interested members of the public. Visual aids must be submitted to Captain Monson on a 3½″ computer disc in Microsoft Powerpoint 4.0 format no later than 4:00 p.m. on 21 October 1996 to allow sufficient time for virus scanning and formatting of the slides.

For further information, contact Captain Kyle Monson, (334) 953–2703, Community College of the Air Force, Maxwell Air Force Base, Alabama, 36112–6613, or through electronic mail at kmonson@ccaf.au.af.mil.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–24877 Filed 9–27–96; 8:45 am]

BILLING CODE 3910–01–W

Department of Army Corps of Engineers

Intent To Announce a Determination of Surplus Land and Buildings; CA

AGENCY: U.S. Army Corps of Engineers, Sacramento District, DoD.

ACTION: Dispose of Surplus Property.

In accordance with Public Laws 103–421; 100–526; and, 103–337, this is a Notice of Availability for Surplus Land and Buildings, located at Oakland Army Base, Oakland, California.

SUMMARY: The U.S. Army Corps of Engineers, Sacramento District, on behalf of the Department of Army, announces the availability of surplus land and buildings, located at Oakland Army Base, Oakland, California. The area available consists of approximately 322 acres of land and involves approximately 81 buildings. Approximately 189 acres is subject to the reversionary rights and interest of the City of Oakland, California.

There is approximately 54 acres of submerged lands under the control of the installation, 29 acres of which lies south of its berthing facilities, and extends into the Oakland Outer harbor. The installation contains several recreational activities, which include several recreational activities, and a full service gymnasium.

Special interest areas at Oakland Army Base consist of properties of historic significance based on importance and contribution during World War II. The historic properties consist of 2 historic districts encompassing 12 buildings and building types that are eligible for listing on the National Register of Historic Places.

Land areas of the installation are currently used for operations involving cargo handling, temporary open storage, warehousing, administrative support, troop housing, family housing, visitor housing, and community morale, welfare, and recreation facilities. This Determination of Surplus involves approximately 81 facilities, comprising approximately 1,302,619 square feet of space, which is currently used for covered storage space; open storage space; administrative space; 112 apartments (2 & 3 bedrooms); troop housing/training; and, community facilities (library, bowling alley, gymnasium, etc.). There is also an 11 mile network of roads and 26 miles of railroad tracks.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action should be directed to Mr. Robert Taylor, Real Estate Division, U.S. Army Corps of Engineers, 1325 J. Street, Sacramento, California, 95814–2922, telephone number: (916) 557–6873.

Dorothy F. Klasse,

Col, EN, Commanding.

[FR Doc. 96–24947 Filed 9–27–96; 8:45 am]

BILLING CODE 3710–EZ–M

Department of the Army Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Limited Reevaluation Study for the Deepening of the Arthur Kill/Howland Hook Navigation Channel; New York District, NY

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: In response to a House of Representatives, Committee on Public Works and Transportation Resolution dated May 9, 1979 to alleviate current and future navigation restrictions associated with the Arthur Kill/Howland Hook navigation channel, the U.S. Army Corps of Engineers, New York District prepared a feasibility report and a final environmental impact statement in October 1985 that recommended a six foot deepening (from −35 to −41 feet) for a distance of approximately 2.1 miles and five foot deepening (−35 to −40 feet) along another 1.0 mile section of the channel.

The New York District suspended work on the project in 1991 and the final environmental impact statement was no completed. The New York District has initiated a Limited Reevaluation study to reaffirm the recommended plan. A new environmental impact statement is being prepared. Public information meetings are being scheduled for the beginning of October 1996.

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Mark Burlas, ATTN: CENAN–PL–EA, Corps of Engineers, New York District, 26 Federal Plaza, New York, NY 10278–0090, Phone (212) 264–4663.

SUPPLEMENTARY INFORMATION: The Arthur Kill navigation channel a component of the New York Harbor Estuarine System connecting Raritan Bay and Newark Bay. The channel is situated between New Jersey and Staten Island, New York. The Arthur Kill/Howland Hook navigation channel's northern limit is the confluence of the Kill Van Kull and Newark Bay channels and the project area extends south for approximately 3.1 miles.

Currently, navigation in the project area is severely constrained. The existing depth of the Arthur Kill/Howland Hook channel section is not sufficient to allow the safe and efficient passage of fully loaded container and liquid bulk (tankers) vessels still willing to call on terminals in the channel. The current mode of operation calls for tankers to lighter-off in anchorages and enter the Arthur Kill/Howland Hook section of channel during high tides. Container ships calling on terminals must be loaded to less than their design capacities at their home ports and sail without a full load. This is inefficient, costly, and results in unnecessary navigational and environmental risks.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–24945 Filed 9–27–96; 8:45 am]

BILLING CODE 3710–06–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Herbert Hoover Dike Major Rehabilitation Evaluation Report (MRER); Jacksonville District, Jacksonville, FL

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), intends to prepare a Draft Environmental Impact Statement (DEIS) for the feasibility phase of the Herbert Hoover Dike Major Rehabilitation Evaluation Report (MRER).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mark Ziminske, Planning Division, U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232–0019; Telephone 904–232–1786; Fax 904–232–3442; e-mail: mark.t.ziminskeusace.army.mil.

SUPPLEMENTARY INFORMATION: a. Authorization: The Flood Control Act, approved by Congress on 30 June 1948, authorized the first phase of a comprehensive plan to provide flood protection and other water control benefits in central and south Florida. The Act included measures for improving control of Lake Okeechobee by constructing or modifying the spillways and other structures, and enlarging the water storage and water supply capacity of the lake. The authorization for levee repairs to be done under the Herbert Hoover Dike MRER, are justified as a means to provide for the authorized project purposes of this Act.

b. Study Area: The study will include the entire Herbert Hoover Dike (HHD) system, which surrounds Lake Okeechobee, Florida. The HHD system, made up of approximately 143 miles of levee, has for the purposes of the study, been divided up into nine levee segments, or ''Reachers''. The initial phase of the study will be the preparation of a Major Rehabilitation Evaluation Report (MRER) for Reach 1, a segment of levee 22.4 miles long, along the southeast shore of the lake from The Hurricane Gate Structure #4, at Belle Glade, Palm Beach County, to the St. Lucie Canal, at Port Mayaca, Martin County, Florida. The DEIS will also address, to a lesser degree, an environmental analysis of the entire dike system surrounding the lake (Reaches 2–8) in a comprehensive manner. It is anticipated that additional NEPA documents will then be tiered from the Final Environmental Impact Statement, once it is completed, for subsequent studies on the remaining Reaches.

c. Project Features and Scope: The general goal of the HHD MRER is to provide a reliable embankment system around Lake Okeechobee to contain the lake waters for water supply, flood protection, navigation, fish and wildlife, and recreation. Analysis of the existing dike system has revealed areas where the factors of safety relative to stability are less than current regulation requirements. The first report will define the extent and severity of any unstable condition within Priority Reach 1 and describe necessary remedial action to repair or manage the problem. The DEIS will evaluate the array of alternative plans, including the selected alternative plan and the no-action alternative, and determine if, and to what extent, implementation of these various plans may affect the surrounding environment. An array of alternative plans will be developed and evaluated based on economic, engineering, and environmental considerations. Preliminary alternatives may include, but are not limited to: use of drainage blankets, landside seepage berms, relief wells, sub-levees, impervious cut-off walls, slope modifications, and changes in the lake regulation schedule.

d. Scoping: The scoping process as outlined by the Council on Environmental Quality is being utilized to involve Federal, State, and local agencies, affected Indian Tribes, and other interested private organizations and parties. A Scoping Letter has been sent to interested Federal, State and local agencies, interested organizations and the public, requesting their comments and concerns regarding issues they feel should be addressed in the DEIS. Interested persons and organizations wishing to participate in the scoping process should contact the U.S. Army Corps of Engineers at the address above. Significant issues anticipated include concern for: maintenance of flood protection and water supply for the project area; maintenance of lake access routes primarily for amphibians and reptiles, historical and archeological resources in the adjacent area, effects on water based recreation, commercial fishing and certain species of plants and animals listed under the Endangered Species Act. Public meetings will be held over the course of the study, the exact location, dates, and times will be announced in public notices and local newspapers.

e. It is estimated that the DEIS will be available to the public in early 1998.

George M. Strain,

Acting Chief, Planning Division.

[FR Doc. 96–24946 Filed 9–27–96; 8:45 am]

BILLING CODE 3710–AJ–M

Department of the Navy

Revised Notice of Intent To Prepare an Environmental Impact Statement and To Open Scoping for the Disposal and Reuse of Long Beach Naval Shipyard, Long Beach, CA

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department of the Navy announced in the Federal Register (September 3, 1996) its intent to prepare an Environmental Impact Statement (EIS) and to open scoping to evaluate the environmental effects associated with the disposal and reuse of Long Beach Naval Shipyard (NSY), Long Beach, California.

This Revised Notice of Intent supersedes the previous notice and sets a new date for a scoping meeting. Long Beach NSY is located in Long Beach Harbor, immediately east of Long Beach Naval Station, and includes approximately 259 acres of real estate. Of this, approximately 4 acres will be retained as a government-owned, contractor-operated parcel, and 85 acres will revert automatically to the City of Long Beach in conformance with the original deed which transferred land from the City to the Navy. These parcels are not included as part of the disposal and reuse of the Long Beach NSY. The proposed action involves the disposal of land, buildings, and infrastructure for subsequent reuse of the remaining 170 acres.

As a result of the Defense Base Closure and Realignment Act (DBCRA) of 1990 (Public Law 101–510), and in accordance with the Base Realignment and Closure (BRAC) process of 1995, Long Beach NSY is slated for operational closure on September 30, 1997. The DBCRA, as amended by the Defense Authorization Act for Fiscal Year 1996, established procedures to minimize hardships on local communities adversely affected by base closures and to facilitate economic recovery of such communities. In this regard, job creation and economic development are given the highest priority in the reuse of closed military

bases, in accordance with objectives for disposal of federal property.

The Secretary of the Navy must consider the community's redevelopment plan proposed for the base slated for closure. The development plan is a plan approved by the Local Redevelopment Authority (LRA) which provides for the reuse or redevelopment of the closed military installation. The City of Long Beach was designated as the LRA by the Secretary of Defense. The City of Long Beach has prepared a reuse plan (July 1996) with recommendations for the reuse of surplus Long Beach Naval Shipyard property.

An Environmental Impact Statement (EIS) is being prepared by the Department of the Navy in accordance with NEPA and DBCRA requirements. The EIS will analyze the environmental effect of the disposal and reuse of the Long Beach NSY. The environmental studies will be based on the reasonably foreseeable reuse of the existing buildings and redevelopment of the site. The EIS will analyze three reuse alternatives in an equal level of detail and a ''no action'' alternative. The proposed action is the disposal of the base for reuse. Alternative 1 is consistent with the reuse plan proposed by the LRA and would involve demolition of three piers, two dry-docks (one large dry-dock would remain), and most buildings. These would be replaced by a 152-acre container terminal; an intermodal railyard; an 18-acre (one pier) shipyard facility surrounding the remaining dry-dock, with a 100,000 square-foot support building (possibly an existing building); and six 500,000-barrel tanks in a 36-acre liquid bulk facility. Alternative 2, Two-pier Shipyard, would be identical to the proposed action except that the shipyard area would be expanded to 32 acres and contain 2 piers and some additional buildings. Alternative 3, Commercial Shipyard, would involve the conversion of the existing shipyard for commercial use. Under this alternative, all the piers and dry-docks would remain and most of the buildings could be reused. The EIS will also address any alternatives that are raised during the public scoping process. Environmental issues to be addressed in the EIS include: geology, topography, and soils; hydrology; biology; noise; air quality; land use; historic and archaeological resources; socio-economic; transportation/circulation; public facilities/recreation; safety and environmental health; aesthetics; and utilities. Issue analysis will include an evaluation of the direct, indirect, short-term, and cumulative impacts associated with the proposed action. The decision to implement the proposed action will not be made until the NEPA process is complete.

ADDRESSES: The Department of the Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying significant issues relative to this action. A public meeting to allow oral comments from the public will be held at the Long Beach Public Library, Main Branch, 101 Pacific Avenue, Long Beach, California on October 17, 1996 at 7:00 P.M. This meeting will be advertised in area newspapers. Navy representatives will be available at the scoping meeting to receive comments from the public regarding issues of concern. A brief presentation describing the disposal and NEPA processes will precede request for public comments. It is important that federal, state, and local agencies, as well as interested organizations and individuals, take this opportunity to identify environmental concerns that they feel should be addressed during the preparation of the EIS.

Agencies and the public are invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the commenter believes the EIS should address. Written comments or questions regarding the scoping process and/or EIS should be postmarked no later than October 28, 1996 and sent to the following address.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie Ault (Code 232MA), BRAC Program Office, Southwest Division, Naval Facilities Engineering Command, 1420 Kettner Boulevard, Suite 507, San Diego, CA 92101–2404; telephone (619) 556–0250 Ext. 226.

Dated: September 25, 1996.

D.E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–24962 Filed 9–27–96; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; Intent To Repay to the Vermont Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under Section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h (1988), the Secretary of Education (Secretary) intends to repay to the State of Vermont Department of Education (Vermont), under a grantback arrangement, an amount equal to 75 percent of the principal amount of funds recovered by the U.S. Department of Education (Department) as a result of the final audit determination in this matter. The Department's recovery of funds followed a settlement reached between the parties under which Vermont refunded a total of $10,000 in principal to the Department in full resolution of the Department's final audit determination (ACN: 01–23119) for fiscal year (FY) 1990. This notice describes Vermont's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. This notice invites comments on the proposed grantback.

DATES: All comments must be received on or before October 30, 1996.

ADDRESSES: All written comments should be addressed to Dr. Marcel R. DuVall, Chief, Finance Branch, Division of Vocational-Technical Education, Office of Vocational and Adult Education, U.S. Department of Education, 600 Independence Avenue SW, (Mary E. Switzer Building, Room 4320, MS–7324), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Marcel R. DuVall, (202) 205–9502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday. (Internet address: Marcel__DuVall@ed.gov).

SUPPLEMENTARY INFORMATION:

A. Background

Under a settlement agreement negotiated between the Department and Vermont, the Department recovered $10,000 from Vermont in full resolution of all claims arising from an audit of the Vermont Department of Education covering FY 1990.

The Department's original claim of $36,307 was contained in a final letter of determination issued by the Assistant Secretary for Vocational and Adult Education on November 8, 1993. The claim arose from findings related to Vermont's administration of its vocational education program under provisions of the Carl D. Perkins Vocational Education Act of 1984, 20 U.S.C. § 2301 *et seq.* (1988),(Perkins I).

In the November 8, 1991 letter, the Assistant Secretary determined that Vermont had violated sections 113(b)(4) and 202(1)–(6) of Perkins I, implemented at 34 CFR 401.19(a)(4), 401.92(a)–(f) (1989) governing funds set aside for adults in need of training and retraining, single parents, and the incarcerated awarded under Title II, Parts A and B of Perkins I. Specifically, Vermont did not spend the amounts required to be set aside for adults, single parents, and incarcerated individuals.

The settlement negotiations which followed Vermont's appeal of the Assistant Secretary's November 8, 1993 determination in this matter culminated in a settlement agreement in which Vermont agreed to repay $10,000 to the Department. The settlement agreement was executed on July 25, 1994, and the Department received the final payment under the settlement agreement on January 12, 1995.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234(h), provides that whenever the Secretary has recovered funds following a final audit determination with respect to any applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay, to the State or local agency affected by that determination, an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that the:

(1) Practices and procedures of the recipient that resulted in the violation have been corrected, and that the recipient is, in all other respects, in compliance with the requirements of the applicable program;

(2) Recipient has submitted to the Secretary a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misexpenditures that resulted in the recovery of funds; and

(3) Use of the funds, in accordance with that plan, would serve to achieve the purposes of the program under which funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, Vermont has applied for a grantback of $7,500, or 75 percent of the $10,000 repaid to the Department under the settlement agreement, and has submitted a plan for use of the proposed grantback funds, consistent with the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, 20 U.S.C. § 2301 (Supp. IV 1992) (Perkins II), currently in effect.

Vermont plans to use the requested grantback funds totaling $7,500, along with State funds, to implement a career preparation plan process that was developed in fiscal year 1994. The program is designed to focus on adults on public assistance and adults with disabilities. In addition, single parents and homemakers will qualify to participate in the program.

To achieve its plan, the State will issue a Request for Proposal (RFP) to 17 secondary schools that meet the State criteria for regional technical education centers. The State plan indicates that these recipients are responsible for providing services to adults in Vermont. Of the 17 eligible regional technical education centers, the State will select 3 to receive grants in the amount of $2,500 each. According to the State's plan, each grant recipient is expected to implement a career planning process resulting in an individualized career plan for 15 eligible adults. Each grant recipient will be authorized to spend 10 percent of its grant for educational materials, 7 percent for travel expenses, and 83 percent for salaries and benefits.

The State's plan provides that participants in the program will have the opportunity to learn about the availability of jobs in their geographic regions, the wages that can be expected, and the prerequisite experience and education necessary for job entry. Participants will be referred to regional workforce development programs available at their regional technical education centers, or other workforce development programs, including programs operated under the Job Training Partnership Act, or apprenticeship programs. The participants will also be provided information about resources that are available to help them reach their career goals.

The State's plan points out that the program was successfully piloted in 4 of Vermont's 16 regional technical education regions in 1994. According to the State, the combination of Federal grantback funds with State funding will result in the continuation of the program activities at 3 of the original pilot sites, plus the extension of the project to an additional 7 sites resulting in career preparation plan processes at a total of 10 technical education service regions.

D. The Secretary's Determination

The Secretary has carefully reviewed the plan, amendment, and other relevant documentation submitted by Vermont. Based upon that review, the Secretary has determined that the conditions under section 459 of GEPA have been met.

This determination is based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action at a later date. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent to Enter into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the Federal Register a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Vermont Department of Education under a grantback arrangement. The grantback award would be in the amount of $7,500, which is 75 percent—the maximum percentage authorized by the statute—of the principal recovered to date by the Department as a result of the audit determination and the settlement in this matter.

F. Terms and Conditions Under Which Payment Under a Grantback Arrangement Would Be Made

Vermont agrees to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) Vermont will expend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that was submitted and any amendments in that plan that are approved in advance of the grantback by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1997, in accordance with section 459(c) of GEPA and Vermont's plan.

(3) Vermont will, no later than January 1, 1998, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number 84.048, Basic State Grants for Vocational Education)

Dated: September 24, 1996.

Patricia W. McNeil,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 96–24910 Filed 9–27–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following: RTD/JA(EU)–79, for the transfer of 0.043 grams of uranium containing 0.042 grams of the isotope U–233 (98 percent enrichment); and 0.0022 grams of plutonium-242 (99.9 percent enrichment); and 0.010 grams of uranium containing 0.0033 grams of the isotope U–233 (33 percent enrichment) and 0.0033 grams of the isotope U–235 (33 percent enrichment) from EURATOM to Japan for use as reference material for mass spectrometer calibration.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Dated: September 24, 1996.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 96–24975 Filed 9–27–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following: RTD/JA(EU)–78, for the transfer of 6.5 grams of enriched uranium containing 1.26 grams of the isotope U–235 (19.4 percent enrichment) and 0.26 grams of isotope plutonium-239 (97.14 percent enrichment) from EURATOM to Japan for use as reference material for mass spectrometer calibration.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Dated: September 24, 1996.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division.

[FR Doc. 96–24976 Filed 9–27–96; 8:45 am]

BILLING CODE 6450–01–P

[Docket No. EA–124]

Application to Export Electric Energy; Public Service Company of New Mexico

AGENCY: Office of Fossil Energy, DOE.

AGENCY: Notice of application.

SUMMARY: Public Service Company of New Mexico (PNM), a regulated public utility, has submitted an application to export electric energy to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before October 14, 1996.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On September 24, 1996, PNM filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to the Comision Federal de Electricidad (CFE), the Mexican national electric utility, pursuant to section 202(e) of the FPA. Specifically, PNM has proposed to engage in open-ended transactions to transmit and exchange wholesale electric energy under terms and contracts to be negotiated in the future.

PNM asserts that a series of State regulatory actions have left the utility with 170 megawatts (MW) of generating capacity that could be dedicated for the sale in the wholesale market. PNM further asserts that it will schedule all power consistent with the reliability criteria, standards, and guides of the North American Electric Reliability Council and the Western Systems Coordinating Council.

The electric energy PNM proposes to sell to CFE would be delivered to Mexico using El Paso Electric Company's (EPE) 115-kilovolt (kV) line at Ascarate, Texas, and EPE's 115-kV line at Diablo, New Mexico. The construction and operation of these international transmission lines was

previously authorized by Presidential Permit numbers PP–48 and PP–92, respectively.

Procedural Matters

Any persons desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with: John T. Stough, Jr., Long, Aldridge & Norman, 701 Pennsylvania Avenue, NW., Suite 600, Washington, D.C. 20004 (Facsimile 202-624–1298) AND Patrick T. Ortiz, Secretary and General Counsel, Public Service Company of New Mexico, Alvarado Square, Albuquerque, NM 87158 (Facsimile 505–241–2368).

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on September 25, 1996.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 96–24974 Filed 9–27–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Restricted Eligibility in Support of Advanced Coal Research at U.S. Colleges and Universities

AGENCY: U. S. Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC).

ACTION: Issuance of Financial Assistance Solicitation.

SUMMARY: The PETC announces that pursuant to 10 CFR 600.8(a)(2), and in support of advanced coal research to U.S. Colleges and Universities, it intends to conduct a competitive Program Solicitation and award financial assistance grants to qualified recipients. Proposals will be subjected to a comparative merit review by a Peer Review/DOE technical panel, and awards will be made to a limited number of proposers on the basis of the scientific merit of the proposal, application of relevant program policy factors, and the availability of funds.

FOR FURTHER INFORMATION CONTACT: Ms. Mary S. Price, U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940 (MS 921–143), Pittsburgh, PA 15236–0940; (Telephone: 412–892–6179; Facsimile: 412–892–6216; E-Mail: MPRICE@petc.doe.gov). The solicitation will be posted on the internet at PETC's Home Page (http://www.petc.doe.gov/business). The solicitation will also be available, upon request, in Wordperfect 5.1 format on 3.5'' double-sided/high-density disk. Paper copies can be obtained, upon request, only if the above two modes are not attainable. Requests can be made via letter, facsimile, or by E-mail. TELEPHONE REQUESTS WILL NOT BE ACCEPTED FOR ANY FORMAT VERSION OF THE SOLICITATION.

SUPPLEMENTARY INFORMATION: Through Program Solicitation DE–PS22–97PC97200, the DOE is interested in applications from U.S. Colleges and Universities (and university-affiliated research centers submitting applications through their respective university). Applications will be selected to compliment and enhance research being conducted in related Fossil Energy (FE) programs. Applications may be submitted individually (i.e., by only one college/university) or jointly (i.e., by ''teams'' made up of: (1) Three or more colleges/universities, or (2) a historically black college/university and at least two or more other colleges/universities, or (3) two or more colleges/universities and at least one industrial partner. Collaboration, in the form of joint proposals, is *encouraged* but not required.

Eligibility. Applications under this solicitation may be accepted in two subprogram areas: (1) University Coal Research (UCR) Core Program, and (2) University Coal Research Innovative Concepts Program.

Applications must address coal research in one of the solicitation key focus areas. Details on the UCR Core Program and the Innovative Concepts Program eligibility requirements, budget limitations, and technical topic descriptions are contained in the Program Solicitation.

Focus Areas and Technical Topic(s)

University Coal Research (UCR) Core Program

The DOE is interested in innovative and fundamental research pertinent to coal conversion and utilization *limited* to the following two (2) focus areas: (1) NO_X Control and (2) Catalysts for Coal Conversion and Utilization. The UCR Core Program is governed by these focus areas. The examples provided under each focus area are not intended to be all-encompassing. Offers on other subjects that fall within the scope of the focus areas will receive the same evaluation and consideration as the examples cited.

NO_X Control

As environmental regulations become more stringent, the restrictions placed upon emissions from coal combustion processes will require either an improved understanding of the combustion process itself or tight post-combustion control or some combination of both.

Currently, significant NO_X control can be achieved both through decreased formation of NO_X and NO_X destruction prior to its exit from the combustion chamber. Further decreases in NO_X emissions and control of the Products of Incomplete Combustion (PICs) from all combustion sources may be achieved with advances in our understanding of the combustion process and an ability to control it. Products of Incomplete Combustion includes: unburnt carbon; formation of trace, complex, organic compounds; and liberation and reaction of trace inorganics.

Additional reductions in NO_X emissions may also be sought through post-combustion control. Direct conversion of NO_X, from dilute flue gas streams, to nitrogen or a saleable/marketable product would be highly desirable. Selective Catalytic Reduction (SCR) is a commercially available post-combustion control that converts NO_X to nitrogen. One of the limitations to the widespread use of SCR is the possibility that increased toxic emissions, ammonia and carbon monoxide, will occur when NO_X removals greater than 90% (85% by some estimates) are desired. Research is necessary to identify alternate reductants, catalysts, and/or chemical pathways that will not result in the release of toxic emissions when high removals (> 95%) are required.

Examples of research areas of interest include:

- Research to develop the knowledge and understanding of the staged combustion of coal that will allow modifications to existing boilers to reduce emissions of nitrogen oxides to below 0.2 pounds per million Btu.
- Development of techniques that would allow measurements to be taken in the combustion zone, thus enhancing our understanding of the combustion process and leading to improved designs for low emissions of nitrogen oxides.

• Examination of the mechanisms of low-grade activated carbon formation under low-NO_X conditions, including the variables that affect carbon pore size distribution and practical means of controlling the pore size distribution.

• Identification of alternatives to the traditional NO_X reductants, catalysts, and/or chemical pathways that will not result in the release of toxic emissions when high NO_X removal efficiencies (>95%) are required.

• Direct conversion of NO_X from dilute flue gas streams to NO_X or a valuable byproduct.

Catalysts for Coal Conversion and Utilization

Catalysts are used in a host of coal conversion and utilization reactions. Although a vast and highly specialized literature exists for catalysts, a thorough understanding of the fundamental nature of catalytic coal conversion and utilization processes is still lacking. Systematic studies focused on understanding these fundamentals would lay the foundation for efficient development of catalysts for application in processes such as gasification, liquefaction, waste minimization, and contaminant control.

New or improved catalysts for controlling product distribution, removing pollutants, upgrading products, and reducing the severity of reaction conditions are needed. Regenerable, poisoning-resistant, and attrition-resistant catalysts for cleaving specific bonds in coals, converting cyclic saturates to branched saturates in coal-derived liquids, or promoting selective conversion of gasification products (into condensible and non-condensible hydrocarbons) and oxygenates are also of interest. Methods focused on the recovery of catalysts and the removal of catalyst-deactivating species would also be valuable.

Examples of research areas of interest include:

• Develop a structure-reactivity relationship for supported metal complexes as catalysts for applications in coal conversion and utilization reactions, including those for contaminant control.

• Develop a thorough understanding of the nature of the acidic catalysts used in hydrocarbon reactions at low temperatures and of the catalysts used in producing oxygenates for fuel applications.

• Develop a thorough scientific understanding of the dispersed/slurry catalysts used in direct coal conversion processes such as liquefaction, co-processing of coal with heavy oil and municipal wastes, and conversion of bio-waste materials, and develop new or improved catalysts that would promote conversion into liquid or distillable products, increase hydrogen content, prevent coking, and remove heteroatoms. An integrated study of the behavior of these catalysts through generation, maturation, and recovery phases would be beneficial.

• Characterization of the reacting surfaces of heterogeneous coal conversion catalysts using modern analytical and microscopic instrumentation. The characterization might include determination of active sites and surface structure change due to sintering, site blockage, or poisoning. Novel methods for studying catalyst activity in real time on a continuous basis would also be desirable.

University Coal Research (UCR) Innovative Concepts Program

The DOE is interested in innovative and fundamental research pertinent to coal conversion and utilization *limited* to the following technical topic. The UCR Innovative Concepts Program is governed by this topic area. The examples provided under the technical topic are not intended to be all-encompassing. Offers on other subjects that fall within the scope of the area will receive the same evaluation and consideration as the examples cited.

Innovative Concepts Technical Topic(s):

As the twenty-first century approaches, the challenges facing coal and the electric utility industry continue to grow. Environmental issues such as pollutant control, both criteria and trace, waste minimization, and the co-firing of coal with biomass, waste, or alternative fuels will remain important. The need for increased efficiency, improved reliability, and lower costs will be felt as an aging utility industry faces deregulation. Advanced power and environmental systems will come into play as older plants are retired and utilities explore new ways to meet the growing demand for electricity.

Innovative research in the coal conversion and utilization areas will be required if coal is to continue to play a dominant role in the generation of electric power. Questions, like the ones that follow, will need to be answered:

• How can net-zero emissions of carbon dioxide from the combustion of fossil fuels be achieved?

• What are the implications of lowering the particulate matter standards (i.e. PM–2.5)?

• How can adaptive control systems and neural networks be integrated into the electric utility industry?

• Where can the largest efficiency gains be realized in a power plant?

• How can the trace element emissions from power plants (i.e. mercury, selenium) be cost-effectively controlled?

• How do we develop and test materials for advanced power systems?

Successfully answering these and other questions in innovative ways will help us move confidently to the year 2000 and beyond.

Awards. DOE anticipates awarding financial assistance grants for each project selected. Approximately $2.8 million will be available for the Program Solicitation: $2.4 million is budgeted for the UCR Core Program and should provide funding for about 8–12 financial assistance awards. Maximum DOE funding for individual colleges/universities application varies according to the length of performance period as follows:

Performance period	Maximum funding
0–12 months	$80,000
13–24 months	140,000
25–60 months	200,000

For joint applications, the maximum DOE funding is $400,000 requiring a performance period of 36 months.

Approximately $0.4 million is budgeted for the UCR Innovative Concepts Program and should provide support for eight financial assistance awards (Maximum DOE funding, $50,000 for a 12-month period).

Solicitation Release Date. The Program Solicitation is expected to be ready for release by October 9, 1996. Applications must be prepared and submitted in accordance with the instructions and forms in the Program Solicitation and must be received by the Department of Energy by November 22, 1996. Upon receipt of the solicitation document, check for any changes (i.e. closing date of solicitation) and/or amendments, if any, prior to submittal of proposal.

William R. Mundorf,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 96–24977 Filed 9–27–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Tuesday, October 8, 1996: 6:30 pm–9:30 pm, 7:00 pm to 7:30 pm (public comment session).

ADDRESSES: Hilltop House Hotel, Taos Room, 400 Los Alamos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Los Alamos National Laboratory Citizens' Advisory Board Support, Northern New Mexico Community College, 1002 Onate Street, Espanola, NM 87352, (800)753–8970, or (505)753–8970, or (505)262–1800.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Tuesday, October 8, 1996.

6:30 pm—Call to Order and Welcome

7:00 pm—Public Comment

7:30 pm—Old Business

8:30 pm—Sub-Committee Reports

9:30 pm—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Ann DuBois, at (800) 753–8970. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday—Friday, except Federal holidays. Minutes will also be available by writing to Herman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on September 24, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–24978 Filed 9–27–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, October 3, 6:00 p.m.–9:30 p.m.

ADDRESSES: Doubletree Hotel, 8773 Yates Drive, Westminster, CO 80030, (near Highway 36 and Sheridan Boulevard).

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities. Tentative Agenda:

(1) Representatives from Rocky Flats will be discussing their cleanup goals for Fiscal Year 1997, which begins on October 1. These goals are incorporated into the contract of the companies performing the cleanup work, as well as into the legally-binding regulatory agreement for Rocky Flats.

(2) The Board will be discussing and approving a recommendation on the proposed soil cleanup levels for Rocky Flats. The Colorado Department of Public Health and Environment, the U.S. Environmental Protection Agency, and the U.S. Department of Energy have proposed specific cleanup standards for contaminated soil at Rocky Flats. These proposed standards are currently under a public review and comment period.

(3) The Board will finalize and approve its 1997 work plan, which identifies projects the Board intends to complete during the next year.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. and 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on September 19, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–24979 Filed 9–27–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Monticello Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Board Committee Meeting: Environmental Management Site-Specific Advisory Board, Monticello Site.

Date and Time: Tuesday, October 15, 1996 7:00 p.m.–9:00 p.m.

Address: San Juan County Courthouse, 2nd Floor Conference Room, 117 South Main, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO, 81502 (303) 248–7727.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Update on repository liner installation progress, Monticello surface and ground water discussion, reports from subcommittees on local training and hiring, health and safety, and future land use.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303)–248–7727.

Issued at Washington, DC on September 18, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–24980 Filed 9–27–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, October 2, 6:00 p.m.–9:00 p.m.

ADDRESSES: Oak Ridge Inn (formerly Holiday Inn), 420 South Illinois Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

October Meeting Topics

This meeting will be a business and planning meeting with no technical presentations planned.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Sandy Perkins at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 a.m. and 5:00 p.m. on Monday, Wednesday, and Friday; 8:30 a.m. and 7:00 p.m. on Tuesday and Thursday, and 9:00 a.m. and 1:00 p.m. on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC on September 24, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–24981 Filed 9–27–96; 8:45 am]

BILLING CODE 6450–01–P

Draft Nonproliferation and Arms Control Assessment of Weapons-Usable Fissile Material Storage and Plutonium Disposition Alternatives

AGENCY: Department of Energy.

ACTION: Notice of Intent; request for public comment.

SUMMARY: The Department of Energy intends to provide a final opportunity for a dialogue with and input from the public on the Draft Nonproliferation and Arms Control Assessment of Weapons-Usable Fissile Materials Storage and Plutonium Disposition Alternatives Report. The Assessment reviews the nonproliferation and arms control implications of the reasonable alternatives under evaluation by the Department as identified in the Storage and Disposition of Weapons-Usable Fissile Materials Draft Programmatic Environmental Impact Statement (Draft PEIS) February 1996, DOE/EIS–0229–D. The Draft Report assesses the relative nonproliferation and arms control benefits and vulnerabilities of each alternative and identifies potential steps that could be taken to maximize the associated benefits and minimize the associated liabilities. The report will be used by the Department, in conjunction with environmental impact analyses, analyses of the cost, schedule and technical viability assessment of each option, other reports and public comments, in making a final decision on how to store weapons-usable fissile materials and dispose of surplus plutonium.

DATES: The Draft Report will be available electronically on October 1, 1996, at http://ww2.dp.doe.gov/www.nn.doe.gov/nn/index.html. Copies will also be available in DOE Reading Rooms. On October 7, 1996, copies of the Draft Report will be mailed to interested parties identified during the Outline Review phase or who have otherwise requested copies. To request a copy, please call 1–800–835–8009.

All comments on the Draft Report are due by November 6, 1996. Written comments may be sent to: Nonproliferation Assessment, U.S. Department of Energy, NN–42 JAP, 1000

Independence Avenue, SW., Washington, DC 20585.

Electronic mail comments can be sent to assessment@hq.doe.gov.

Comments received by November 6, 1996, will be considered in the Final Report. Comments received after that date will be considered by DOE to the extent practicable.

ADDRESSES: In an effort to provide more time for review of the report and maximize the opportunity for public participation, the Department will hold meetings at the following locations:

October 28
Oakland CA
Oakland Operations Office—Oakland Federal Building, Roybal Auditorium, North Tower, 1301 Clay Street, Oakland, CA 94612

Las Vegas, NV
U.S. Department of Energy Auditorium, Las Vegas Operations Office, 2753 South Highland, Las Vegas, NV 89101

Idaho Falls, ID (Televideo)
Idaho Operations Office, Building ID/South—Room 78, 785 DOE Place, Idaho Falls, ID 83401

October 30
Hanford, WA
Richland Operations Office, Federal Building Auditorium, 825 Jadwin Avenue, Richland, WA 99352

Portland, OR
Bonneville Power Administration, Room 106–905 N.E. 11th Street, Portland, OR 97232

November 1
Washington, DC
U.S. Department of Energy, Forrestal Building Auditorium, 1000 Independence Avenue, SW, Washington, DC 20585

November 4
Pantex, Amarillo, TX
Sunset Convention Center, 3701 Plains Boulevard, Amarillo, TX 79103

Rocky Flats, CO
Arvada Center for the Arts, Banquet Hall A—6901 Wadsworth Boulevard, Arvada, CO 80003

November 6
Savannah River, SC
North Augusta Community Center, Banquet Rooms A1/A2, 495 Brookside Avenue, North Augusta, GA 29841

Oak Ridge, TN
Pollard Auditorium, 210 Badger Avenue, Oak Ridge, TN 37830

There will be two sessions at each location: 1:00 pm–4:00 pm and 5:00 pm–8:30 pm.

For additional information or to preregister for any of the meetings, please call 1–800–835–8009.

SUPPLEMENTARY INFORMATION: On July 1, 1996, the Department of Energy issued a Federal Register Notice of Intent; Request for Public Comment (61 FR 33909) regarding the outline and subsequent draft of a Nonproliferation and Arms Control Assessment to consider the nonproliferation and arms control implications of the reasonable alternatives under evaluation by the Department as identified in the Storage and Disposition of Weapons-Usable Fissile Materials Draft Programmatic Environmental Impact Statement (Draft PEIS) February 1996, DOE/EIS–0229–D.

The study, while not conducted as part of the formal National Environmental Policy Act process, was based on the outline which received public comment and was reviewed by a panel of experts. This panel was convened as a subcommittee of the Secretary of Energy's Advisory Board (SEAB).

In soliciting public participation in the review of the Draft Report, the Department of Energy does not intend to revisit the PEIS. It does, however, invite interested agencies, organizations and the general public to provide comments and/or participate in informal meetings on the Draft Report. Written and oral comments will be accepted at these meetings to be held at the times and locations listed above. Persons desiring to participate in the meetings are requested to preregister by calling the toll-free number listed no later than one week prior to the meeting.

Comments will also be accepted by mail, via electronic mail or over the toll-free number listed above.

Issue Date: September 24, 1996.

Michael V. McClary,

Executive Officer, Office of Arms Control and Nonproliferation.

[FR Doc. 96–24989 Filed 9–27–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

Basic Energy Sciences Advisory Committee; Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is given of a meeting of the Basic Energy Sciences Advisory Committee.

DATES: Thursday, October 17, 1996—9:00 a.m.–5:00 p.m.; Friday, October 18, 1996—9:00 a.m.–11:00 a.m.

ADDRESSES: The Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

FOR FURTHER INFORMATION CONTACT: Dr. Patricia M. Dehmer, Basic Energy Sciences Advisory Committee, U.S. Department of Energy, ER–10, GTN, 19901 Germantown Road, Germantown, MD 20874–1290, Telephone: (301)–903–3081.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The Committee will provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda:

October 17, 1996

Introduction of Committee Members and Guests

Discussion on the Interactions with BES Staff and BESAC Members

Overview of BES-supported Technical Areas

Review and Approval of the BESAC Summary of the Report on the Value of Basic Energy Sciences

Public Comment (10-minute rule)

October 18, 1996

Report on the Neutron Source Upgrades

Discussion of Chairman for the Subcommittee for the Synchrotron Sources

Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact Patricia Dehmer at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on September 24, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–24982 Filed 9–27–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP96–349–001]

Colorado Interstate Gas Company; Notice of Proposed Changes In FERC Gas Tariff

September 24, 1996.

Take notice that on September 10, 1996, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 12, with and effective date of September 30, 1996.

CIG states that the filing that was made on September 6, 1996, in the above referenced docket inadvertently left out Fifth Revised Sheet No. 12.

CIG states that copies of its filing has served to all of its jurisdictional customers and on the interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385,211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24906 Filed 9–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–800–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

September 24, 1996.

Take notice that on September 18, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP96–800–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate an additional point of delivery to City of Brooksville in Bracken County, Kentucky under Columbia's blanket certificate issued in Docket No. CP83–76–000 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.

Columbia proposes to construct and operate an additional point of delivery to City of Brooksville for firm transportation service of up to 150 Dth per day and an estimated 4,575 Dth annually. Columbia states that the quantities of natural gas to be provided through the new delivery point will be within Columbia's authorized level of services. Columbia state that City of Brooksville will reimburse Columbia 100% of the total cost of the proposed construction, estimated to be $58,474.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therfor, 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. 96–24897 Filed 9–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–128–000]

Eastern Shore Natural Gas Company; Notice of Technical Conference

September 24, 1996.

Take notice that a technical conference will be convened in the above-docketed proceeding on Wednesday, October, 2, 1996, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426. Any party, as defined in 18 CFR 385.102(c), any person seeking intervenor status pursuant to 18 CFR 385.214, and any participant, as defined in 18 CFR 385.102(b), is invited to participate.

For additional information, please contact Carolyn Van Der Jagt, 202–208–2246, or Tom Gooding, 202–208–1123, at the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24894 Filed 9–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–50–009]

High Island Offshore System; Notice of Refund Report

September 24, 1996.

Take notice that on September 16, 1996, High Island Offshore System (HIOS) filed with the Federal Energy Regulatory Commission (Commission) a final report of refunds made in compliance with Article III of Stipulation and Agreement (S&A) approved by the Commission order issued in Docket No. RP92–50–001, et al. on December 28, 1992.

HIOS' report covers the flowthrough of all refunds, in the amount of $425,423.00, it has received from ANR Pipeline Company and U–T Offshore Company relative to the Grand Chenier and Cameron Meadows measurement, dehydration and separation operations. As reflected in the report, interest has been calculated through the date of HIOS' flowthrough of such refunds.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24900 Filed 9–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–244–004]

Koch Gateway Pipeline Company; Notice of Compliance Filing

September 24, 1996.

Take notice that on September 20, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet to be effective June 22, 1996:

Substitute Second Revised Sheet No. 3700

Koch states that this revised tariff sheet is filed to comply with the Commission's Order Granting Rehearing issued September 17, 1996 in Docket No. RP96–244–002. As directed, Koch states that it has revised the tariff sheets to reflect that Koch may give notice of the commencement of the right of first refusal process to the customer at least 120 days but not exceeding 150 days prior to the expiration of the contract.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24903 Filed 9–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–320–001]

Koch Gateway Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

September 24, 1996.

Take notice that on September 19, 1996, Koch Gateway Pipeline company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet to be effective August 31, 1996:

Second Revised Sheet No. 103

Koch states that the revised tariff sheet is being filed to correct an administrative error. In Koch's negotiated rate filing, Docket No. RP96–320, Koch did not make its revisions to the correct tariff sheet. Koch states that it is inserting the approved language on the appropriate sheet so that the tariff will be correct and not making any other changes.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24905 Filed 9–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–30–000]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 24, 1996.

Take notice that on September 20, 1996, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of October 20, 1996:

Third Revised Sheet No. 130
Fifth Revised Sheet No. 131

Mid Louisiana states that the purpose of the filing of the Revised Tariff Sheets is to comply with § 250.16 of the Commission's regulations (18 CFR 250.16(b)(1)) to update the tariff for listing of shared personnel and facilities.

Pursuant to Section 154.7(a)(7) of the Commission's Regulations, Mid Louisiana respectfully requests waiver of any requirement of the Regulations in order to permit the tendered tariff sheets to become effective October 20, 1996, as submitted.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24899 Filed 9–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–199–000]

Mississippi River Transmission Corporation; Notice of Informal Settlement Conference

September 24, 1996.

Take notice that an informal settlement conference will be convened in this proceeding on October 2, 1996, and October 3, 1996, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, for the purposes of exploring the possible settlement of the referenced docket.

Any party, as defined by 18 CFR 385.102(c) or any participant, as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Kathleen M. Dias at (202) 208–0524 or Russell B. Mamone at (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24901 Filed 9–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–199–003]

Mississippi River Transmission Corporation; Notice of Proposed Changes In FERC Gas Tariff

September 24, 1996.

Take notice that on September 17, 1996, Mississippi River Transmission Corporation (MRT) moved into effect certain rates and revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1.

MRT states that it has moved to place into effect as of October 1, 1996 the rates set forth in tariff sheets identified as MRT's Primary Tariff Sheets. Alternatively, MRT has moved to place into effect Alternative Tariff Sheets which, should the Commission not accept MRT's Primary Tariff Sheets, MRT requests be permitted to go into effect October 1, 1996.

MRT states that both its Primary and Alternate Tariff Sheets reflect the rate mitigation the Commission ordered MRT to reinstate for two firm transportation customers and the elimination of adjustments initially proposed by MRT, but rejected by the Commission, intended to reflect MRT's projections of future firm contract demand reductions and the availability of storage capacity. *Mississippi River Transmission Corp.* 75 FERC ¶61,095 (1996) and 75 FERC ¶61,317 (1996). However, MRT's Primary Tariff Sheets

include MRT's currently effective gathering rates, as approved by the Commission in MRT's prior Section 4 rate proceeding, since the commission has acted on only one of MRT's pending requests to abandon its gathering facilities. MRT further states that its Alternate Tariff Sheets exclude all gathering charges but are being submitted with the qualification that if the Commission elects to permit the Alternate Tariff Sheets to go into effect, then the Commission provide MRT with a mechanism that will permit MRT to recover those costs for which MRT is currently awaiting abandonment authorization.

MRT states that a copy of its motion and the accompanying tariff sheets have been served on all of its customers, the State Commissions of Arkansas, Missouri, and Illinois, and all persons on the Commission's official service list in Docket No. RP96–199–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24902 Filed 9–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–788–000]

Tennessee Gas Pipeline Company; Notice of Application for Abandonment

September 24, 1996.

Take notice that on September 13, 1996, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam Street, Houston, Texas 77252–2511 filed, in Docket No. CP96–788–000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for permission and approval to abandon by sale to the Belden & Blake Corporation (Belden & Blake), the current producer, the remaining facilities, excluding a dehydration unit, associated with the Chautauqua Gas Pipeline, located in Chautauqua County, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee relates that the facilities to be sold consist of approximately 52,000 feet of 6-inch, low pressure ASDM 2513 plastic pipeline located in the towns of Ripley and Mina, Chautauqua County, together with all pumps, meters, measuring devices, valves, fittings, housings, tubing, foundations, machinery, structures, including a steel building measuring 12 feet × 13 feet × feet, personal property, fixtures and equipment, and a tract of land of approximately 1.85 acres.

Tennessee states that the Chautauqua Gas Pipeline was installed in 1984 by a third party as a New York State-jurisdictional gathering facility intended for the gathering of gas dedicated to Tennessee under a Gas Purchase and Sales Agreement between Tennessee and the producer. Further, Tennessee says that on December 31, 1991, after several changes in ownership, Tennessee acquired the facilities pursuant to Tennessee's Part 157, Subpart F, blanket certificate. Tennessee relates that on November 22, 1994, Tennessee and Belden & Blake executed a letter of intent whereby Belden & Blake would purchase, subject to FERC approval, the Chautauqua Gas Pipeline facilities, excluding a dehydration unit (to be transferred separately at a later date) and two 500 horsepower compressors. Tennessee says that on December 16, 1994, in Docket No. CP95–121–000, Tennessee filed a request for authorization to abandon, by resale to a third party for salvage, the two 500 horsepower compressors. Tennessee states that on May 23, 1995, the Commission issued its order approving Tennessee's request. Tennessee removed the two compressors and Belden & Blake subsequently installed its own compression.

Tennessee asserts that the proposed abandonment by sale to Belden & Blake of the remaining facilities is in the public interest and will not result in the loss of gas service to any existing or future transportation customer since the Chautauqua Gas Pipeline will remain in service and connected to Tennessee's interstate pipeline service.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 15, 1996, file with the Federal Energy Regulatory Commission, 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 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determing 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 in any proceeding herein 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 the jurisdiction conferred upon the 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 application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 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 Tennessee to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24895 Filed 9–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–308–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

September 24, 1996.

Take notice that on September 16, 1996, Tennessee Gas Pipeline Company (Tennessee), submitted for filing to as part of its FERC Gas Tariff, Fifth Revised Volume 1, the following revised tariff sheets, to be effective on September 1, 1996:

Substitute First Revised Sheet No. 209D
Substitute Second Revised Sheet No. 209E
Substitute First Revised Sheet No. 209F
Substitute First Revised Sheet No. 209G
Substitute First Revised Sheet No. 209H
Substitute Original Sheet No. 209I
Second Revised Sheet No. 305
Substitute Original Sheet No. 593C
Substitute Original Sheet No. 593D

Tennessee states that it is making this tariff filing in compliance with the August 30, 1996 Order of the Federal Energy Regulatory Commission issued in Docket No. RP96–308–000, approving, on a pilot basis, use of third party providers to provide a firm swing

service for delivery customers on Tennessee's system. Tennessee Gas Pipeline Company, 76 FERC ¶ 61,225 (1996).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24904 Filed 9–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–795–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

September 24, 1996.

Take notice that on September 17, 1996, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP96–795–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point in Ballard County, Kentucky to serve an existing end-use customer, Westvaco Corporation (Westvaco), under Texas Gas's blanket certificate issued in Docket No. CP82–407–000 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 Gas proposes to construct and operate a new delivery point to be known as the Westvaco No. 2 Delivery Point located on Texas Gas's Mayfield-Wickliffe 10-inch Line in Ballard County, Kentucky. Texas Gas proposes to install and operate a side valve, 3-inch orifice meter run, electronic flow measurement and related facilities on a site to be acquired. Texas Gas states that the new delivery point has been requested by Westvaco to provide natural gas service to its new chemical plant. Texas Gas states that the volumes to be delivered are within the certificated entitlements of Westvaco, that this service will have no significant effect on Texas Gas's peak day and annual deliveries, and can be accomplished without determent to Texas Gas's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed 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. 96–24896 Filed 9–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–99–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

Take notice that on September 18, 1996 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 2 and Original Volume No. 2, certain revised tariff sheets, which tariff sheets are included in Appendix A attached to the filing. The proposed effective date of such tariff sheets is November 1, 1996.

Transco states that the purpose of the instant filing is to terminate Section 7(c) firm transportation service provided to consolidated Edison of New York, Inc. (Con Ed) under Rate Schedule X–315 and to convert such service to service provided under Rate Schedule FT pursuant to Transco's blanket transportation certificate and Part 284 of the Commission's regulations effective November 1, 1996.

Transco states that the rates applicable to the converted service are the generally applicable charges under Rate Schedule FT (including fuel), plus reservation and commodity rate surcharges as set forth on Sheet No. 40B to Transco's Third Revised Volume No. 1 Tariff. Sheet No. 40B sets forth the charges applicable to Niagara Import Point Project-System Expansion annual firm transportation service which has been converted from individually certificated Section 7(c) firm transportation service to service under Transco's blanket certificate and Part 284 of the Commission's regulations.

Transco states that copies of the filing are being mailed to Con Ed and interested State Commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24898 Filed 9–27–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–24–015, et al.]

Enron Power Marketing, Inc., et al.; Electric Rate and Corporate Regulation Filings

September 23, 1996.

Take notice that the following filings have been made with the Commission:

1. Enron Power Marketing, Inc.

[Docket No. ER94–24–015]

Take notice that on August 1, 1996, Enron Power Marketing, Inc. (EPMI) tendered for filing notification of change in status. EPMI states that the filing gives notice of EPMI's purchase of interests and options in certain cogeneration facilities in California.

2. Western Resources, Inc.

[Docket No. ER96–587–000]

Take notice that on September 9, 1996, Western Resources, Inc. amended its December 13, 1995, filing in this docket and tendered for filing revised Generating Municipal Electric Service Agreements between Kansas Gas and Electric Company and the Kansas cities of Chanute, Mulvane, Neodesha, Wellington and Winfield. The changes are proposed to become effective January 1, 1996.

Copies of the filing were served upon the Kansas cities of Chanute, Mulvane, Neodesha, Wellington and Winfield and the Kansas Corporation Commission.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Edison Company

[Docket No. ER96–2200–001]

Take notice that on September 3, 1996, Commonwealth Edison Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Houston Lighting & Power Company

[Docket No. ER96–2887–000]

Take notice that on September 4, 1996, Houston Lighting & Power Company (HL&P) tendered for filing an executed transmission service agreement (TSA) with PanEnergy Power Services, Inc. for Economy Energy Transmission Service under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnection. HL&P has requested an effective date of August 23, 1996.

Copies of the filing were served on PanEnergy and the Public Utility Commission of Texas.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Public Service Company

[Docket No. ER96–2948–000]

Take notice that on September 9, 1996, Southwestern Public Service Company tendered for filing an Amendment to the Interconnection Agreement dated December 15, 1976 between WestPlains Energy and Southwestern Public Service Company.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Minnesota Power & Light Company

[Docket No. ER96–2951–000]

Take notice that on September 9, 1996, Minnesota Power & Light Company tendered for filing signed copies of the Service Agreement with Consolidated Water Power Company.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Northrop Grumman Corporation Grumman Aerospace Corporation

[Docket No. ER96–2957–000; Docket No. ER96–2958–000]

Take notice that on September 9, 1996, Northrop Grumman Corporation and Grumman Aerospace Corporation tendered for filing a joint application for authority to sell electricity at market-based rates, waiver of certain regulations and blanket approvals.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Company

[Docket No. ER96–3005–000]

Take notice that on September 16, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to TransCanada Power Corporation under the NU System Companies' Open Access Transmission Service Tariff No. 8.

NUSCO states that a copy of this filing has been mailed to TransCanada Power Corporation.

NUSCO requests that the Service Agreement become effective September 13, 1996.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER96–3014–000]

Take notice that on September 16, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Short-Term Firm Point-to-Point Transmission Service under the NU System Companies' Open Access Transmission Service Tariff No. 8.

NUSCO states that a copy of this filing has been mailed to the NU System Companies.

NUSCO requests that the Service Agreement become effective September 1, 1996.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER96–3025–000]

Take notice that on September 17, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Short-Term Firm Point-to-Point Transmission Service to the Central Maine Power Company (CMP) under the NU System Companies' Open Access Transmission Service Tariff No. 8.

NUSCO states that a copy of this filing has been mailed to CMP.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER96–3026–000]

Take notice that on September 17, 1996, Florida Power & Light Company (FPL), filed the Contract for Purchases and Sales of Power and Energy between FPL and Progress Power Marketing, Inc. FPL requests an effective date of September 20, 1996.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Public Service Company

[Docket No. ER96–3027–000]

Take notice that on September 17, 1996, Southwestern Public Service Company, submitted an agreement with the Oklahoma Municipal Power Authority.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. New York State Electric & Gas Corporation

[Docket No. ER96–3028–000]

Take notice that on September 17, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Williams Energy Service Company (Williams). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Williams and Williams will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on September 18, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Williams.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Company (Minnesota Company)

[Docket No. ER96–3029–000]

Take notice that on September 17, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Connection Agreement No. 56 for the Home Point of Connection between NSP and Cooperative Power Association (CPA). This agreement amends the Integrated Transmission Service Agreement between NSP and CPA to recognize the new point of delivery at the Home Substation.

NSP requests that the Commission accept the agreement effective September 18, 1996, and requests waiver of the Commission's notice requirements in order for the revisions to be accepted for filing on the date requested.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER96–3030–000]

Take notice that on September 17, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 13 to add one (1) new Customer to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available to Federal Energy Sales, Inc. as of a date authorized by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Pennsylvania Power & Light Company

[Docket No. ER96–3031–000]

Take notice that on September 18, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated September 6, 1996 with Ohio Edison Company under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds Ohio Edison Company as an eligible customer under the Tariff.

PP&L requests an effective date of September 18, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Ohio Edison Company and to the Pennsylvania Public Utility Commission.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Southwestern Public Service Company

[Docket No. ER96–3032–000]

Take notice that on September 18, 1996, Southwestern Public Service Company (Southwestern), submitted an executed service agreement under its point-to-point transmission tariff with WestPlains Energy-Kansas (WPE). The service agreement is for umbrella non-firm transmission service.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Pennsylvania Power & Light Company

[Docket No. ER96–3033–000]

Take notice that on September 18, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated September 10, 1996, with Western Power Services, Inc. (WPS) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds WPS as an eligible customer under the Tariff.

PP&L requests an effective date of September 18, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to WPS and to the Pennsylvania Public Utility Commission.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Northern States Power Company (Minnesota Company)

[Docket No. ER96–3034–000]

Take notice that on September 17, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Transmission Service Agreement between NSP and AES Power, Inc.

NSP requests that the Commission accept the agreement effective September 9, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: October 7, 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. 96–24971 Filed 9–27–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–2435–000, et al.]

J.D. Enterprises, et al.; Electric Rate and Corporate Regulation Filings

September 24, 1996.

Take notice that the following filings have been made with the Commission:

1. J.D. Enterprises

[Docket No. ER96–2435–000]

Take notice that on August 30, 1996, J.D. Enterprises tendered for filing an amendment in the above-referenced docket.

Comment date: October 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Virginia Electric and Power Company

[Docket No. ER96–2920–000]

Take notice that on September 11, 1996, Virginia Electric and Power Company tendered for filing an executed version of the service agreement with Allegheny Power, which it had filed in unexecuted form on September 5, 1996.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company (Minnesota Company)

[Docket No. ER96–2991–000]

Take notice that on September 12, 1996, Northern States Power Company

(Minnesota)(NSP), tendered for filing a Transmission Service Agreement between NSP and MidCon Power Services Corp.

NSP requests that the Commission accept the agreement effective August 19, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. El Paso Energy Marketing Company

[Docket No. ER96–2993–000]

Take notice that on September 12, 1996, El Paso Energy Marketing Company, tendered for filing a Notice of Succession changing its name from Eastex Power Marketing, Inc. to El Paso Energy Marketing Company, effective August 1, 1996.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER96–2994–000]

Take notice that on September 13, 1996, Northeast Utilities Service Company (NUSCO), on behalf of its operating affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire, tendered for filing a Consent of Northeast Utilities Service Company to the assignment of rights under a service agreement for firm transmission service with Suncook Energy Corporation, to Minnesota Methane, LLC. NUSCO requests an effective date of December 1, 1996.

NUSCO states that copies of its submission have been mailed or delivered to Suncook Energy Corporation.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Citizens Utilities Company

[Docket No. ER96–2995–000]

Take notice that on September 13, 1996, Citizens Utilities Company (Citizens), tendered for filing the Service Agreement for Firm Point-to-Point Backup Transmission Service (Service Agreement or Agreement) entered into on September 13, 1996 between Citizens, Vermont Electric Division (VED) and the Village of Swanton Village Electric Department (Swanton).

Citizens states that it currently offers Firm Point-to-Point Transmission service subject to the rates, terms and conditions set forth in Citizens' FERC Open Access Tariff No. 4, as amended by the rate revisions filed by Citizens on August 13, 1996 in Docket No. ER96–2703. The purpose of the Service Agreement is to allow Citizens to provide short-term back-up service to Swanton when certain facilities ordinarily used by Swanton are undergoing maintenance. An effective date of September 16, 1996 is requested by Citizens. Citizens states that the provision of service under this Agreement will not affect the existing rates or terms and conditions of service under any of Citizens' rate schedules or tariffs.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Boston Edison Company

[Docket No. ER96–2996–000]

Take notice that on September 13, 1996, Boston Edison Company (Boston Edison), tendered for filing a letter agreement between Boston Edison and Cambridge Electric Light Company (CEL). The tendered letter agreement extends the terms and conditions of the Substation 402 Agreement to and including December 31, 1996. The Substation 402 Agreement is designated as Boston Edison's FERC Rate Schedule No. 149. Boston Edison requests an effective date of September 30, 1996.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER96–2997–000]

Take notice that on September 13, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Public Service Electric and Gas Company.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–3035–000]

Take notice that on September 18, 1996, GPU Service, Inc. (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy), filed an executed Service Agreement between GPU and Sonat Power Marketing, Inc. (SPM), dated September 12, 1996. This Service Agreement specifies that SPM has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff), designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.,* Docket No. ER95–276–000 and allows GPU and SPM to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU requests waiver of the Commission's notice requirements for good cause shown and an effective date of September 12, 1996, for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of New Mexico

[Docket No. ER96–3036–000]

Take notice that on September 18, 1996, Public Service Company of New Mexico (PNM), filed a notice of cancellation of a jurisdictional rate schedule based upon Plains Electric Generation and Transmission Cooperative, Inc.'s (Plains) August 30, 1996, notice of PNM of termination of Service Schedule G to the Master Interconnection Agreement PNM and Plains, as amended (Service Schedule G), Supplement 43 to PNM Rate Schedule No. 31, requesting an effective date of December 1, 1996.

Copies of the filing have been served upon Plains and the New Mexico Public Utility Commission.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. New York State Electric & Gas Corporation

[Docket No. ER96–3037–000]

Take notice that on September 18, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Energy Transfer Group, L.L.C. (ETG). The agreement provides a

mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to ETG and ETG will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on September 19, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and ETG.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Illinois Power Company

[Docket No. ER96–3038–000]

Take notice that on September 19, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Coral Power, L.L.C. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 6, 1996.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Northern Indiana Public Service Company

[Docket No. ER96–3039–000]

Take notice that on September 19, 1996, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and The Power Company of America, L.P.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to The Power Company of America, L.P., under Northern Indiana Public Service Company's Power Sales Tariff, which was accepting for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and AIG Trading Corporation request waiver of the Commission's sixty-day notice requirement to permit an effective date of October 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER96–3040–000]

Take notice that on September 19, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Letter Agreement dated July 3, 1996, (Agreement) between PacifiCorp and Portland General Electric (PGE).

PacifiCorp requests that a waiver of prior notice be granted and that an effective date of one day after the date the Commission receives this filing be assigned to the Agreement.

Copies of this filing were supplied to PGE, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company

[Docket No. ER96–3041–000]

Take notice that on September 19, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Louisville Gas and Electric Company

[Docket No. ER96–3042–000]

Take notice that on September 19, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Koch Power Services, Inc. under Rate GSS.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas and Electric Company

[Docket No. ER96–3043–000]

Take notice that on September 19, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement between Louisville Gas and Electric Company and SCANA Energy Marketing, Inc. under Rate TS.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. San Diego Gas & Electric Company

[Docket No. ER96–3044–000]

Take notice that on September 19, 1996, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and Edison Source (Edison Source).

SDG&E requests that the Commission allow the Agreement to become effective on the 1st of October 1996 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Edison Source.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER96–3045–000]

Take notice that on September 19, 1996, PECO Energy Company (PECO), filed a Service Agreement dated September 6, 1996 with Illinois Power Marketing, Inc. (ILLINOVA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds ILLINOVA as a customer under the Tariff.

PECO requests an effective date of September 6, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to ILLINOVA and to the Pennsylvania Public Utility Commission.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Baltimore Gas and Electric Company

[Docket No. ES96–46–000]

Take notice that on September 20, 1996, Baltimore Gas and Electric Company filed an application, under § 204 of the Federal Power Act, seeking authorization to issue short-term unsecured promissory notes, commercial paper notes, and/or medium-term notes, from time to time, in an aggregate principal amount of not more than $700 million outstanding at any one time, on or before December 31, 1998 with maturities not more than twelve months after the date of issuance.

Comment date: October 18, 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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. 96–24972 Filed 9–27–96; 8:45 am]

BILLING CODE 6717–01–P

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: September 24, 1996, 61 FR 50012.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: September 25, 1996, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number has been to the Agenda scheduled for the September 25, 1996 meeting.

Item No.	Docket No. and company
CAG–31	CP94–327–002, Koch Gateway Pipeline Company.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25045 Filed 9–25–96; 8:45 am]

BILLING CODE 6717–01–M

Southwestern Power Administration

Integrated System Power Rates

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of extension.

SUMMARY: The Deputy Secretary of Energy, acting under Amendment No. 3 to Delegation Order No. 0204–108, dated November 10, 1993, 58 FR 59717, and pursuant to the implementation authorities in 10 CFR 903.22(h) and 903.23(a)(3), has approved Rate Order No. SWPA–34 which extends the existing power rates for the Integrated System. This is an interim rate action effective October 1, 1996, extending for a period of one year through September 30, 1997.

FOR FURTHER INFORMATION CONTACT: George C. Grisaffe, Assistant Administrator, Office of Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 595–6628.

SUPPLEMENTARY INFORMATION: The existing rate schedules for the Integrated System were approved on a final basis by the Federal Energy Regulatory Commission on September 18, 1991, for the period ending September 30, 1994. These rates were extended on an interim basis by the Deputy Secretary of Energy on August 24, 1994, and on August 8, 1995. The rates are scheduled to expire on September 30, 1996. On July 2, 1996, the Southwestern Power Administration (Southwestern) published notice in the Federal Register, 61 FR 34432, of its intention to seek a one-year extension of the existing power rates for the Integrated System and provided for a 15-day comment period. No comments were received. 10 CFR 903.22(h) and 903.23(a)(3) provide implementation authority for such interim extension to the Deputy Secretary.

Issued at Washington, DC, this 23rd day of September, 1996.

Charles B. Curtis,

Deputy Secretary.

Department of Energy

Deputy Secretary of Energy

In the matter of: Southwestern Power Administration—Integrated System Rates

[Rate Order No. SWPA–34]

Order Approving Extension of Power Rates on an Interim Basis

September 23, 1996.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy (DOE) Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy revised Delegation Order No. 0204–108 to delegate to the Assistant Secretary, Conservation and Renewable Energy, the authority which was previously delegated to the Deputy Secretary in that Delegation Order. By Amendment No. 3 to Delegation Order No. 0204–108, effective November 10, 1993, the Secretary of Energy re-delegated to the Deputy Secretary of Energy, the authority to confirm, approve and place into effect on an interim basis power and transmission rates of the Power Marketing Administrations. This rate order is issued by the Deputy Secretary pursuant to said Amendment to Delegation Order No. 0204–108.

This is an interim rate extension. It is made pursuant to the authorities as implemented in 10 CFR 903.22(h) and 903.23(a)(3).

Background

Southwestern Power Administration (Southwestern) currently has marketing responsibility for 2.2 million kilowatts of power from 24 multiple-purpose reservoir projects, generally in all or portions of the states of Arkansas, Kansas, Louisiana, Missouri, Oklahoma and Texas, with power facilities constructed and operated by the U.S. Army Corps of Engineers. The Integrated System, comprised of 22 of the projects, is interconnected through a transmission system presently consisting of 138- and 161-kV high-voltage transmission lines, 69-kV transmission lines, and numerous bulk power substations and switching stations. In addition, contractual transmission arrangements provide for integration of other projects into the system.

The remaining two projects, Sam Rayburn Dam and Robert Douglas Willis, are isolated hydraulically and electrically from the Southwestern transmission system, and their power is marketed under separate contracts

through which the customer purchases the entire power output of the project at the dam. A separate Power Repayment Study (PRS) is prepared for each isolated project, and each has a special rate which is not a part of this study.

The existing rate schedules for the Integrated System were confirmed and approved on a final basis by the FERC on September 18, 1991, for the period October 1, 1990, through September 30, 1994. These rates were extended on an interim basis by the Deputy Secretary of Energy on August 28, 1994, and again on August 8, 1995. The rates are scheduled to expire September 30, 1996. The FY 1996 Integrated System PRSs indicate the need for a rate adjustment of $1,239,868 annually, or 1.3 percent.

Pursuant to implementing authority in 10 CFR 903.22(h) and 903.23(a)(3), the Deputy Secretary of Energy may extend a FERC-approved rate on an interim basis. The Administrator, Southwestern, published notice in the Federal Register on July 2, 1996, 61 FR 34432, announcing a 15-day period for public review and comment concerning the proposed interim rate extension. In addition, meetings that discussed the proposal were held with customer representatives in April and July 1996. Written comments were accepted through July 17, 1996. No comments on the proposed interim extension were received.

Discussion

The existing Integrated System rates are based on the FY 1990 PRS. PRSs have been completed on the Integrated System each year since approval of the existing rates. Rate changes identified by the PRSs since that period have indicated the need for minimal rate increases or decreases. Since the revenue changes reflected by the PRSs were within the plus-or-minus two percent Rate Adjustment Threshold established by Southwestern's Administrator on June 23, 1987, these rate adjustments were deferred in the best interest of the government and provided for the next year's PRS to determine the appropriate level of revenues needed for the next rate period.

The FY 1996 PRS indicates the need for an annual revenue increase of 1.3 percent. As has been the case since the existing rates were approved, the FY 1996 rate adjustment needed falls within Southwestern's plus-or-minus two percent Rate Adjustment Threshold and would normally be deferred. However, the existing rates expire on September 30, 1996. Consequently, Southwestern proposes to extend the existing rates for a one-year period ending September 30, 1997, on an interim basis under the implementation authorities noted in 10 CFR 903.22(h) and 903.23(a)(3).

Southwestern continues to make significant progress toward repayment of the Federal investment in the Integrated System. Through FY 1995, status of repayment for the Integrated System was $355,572,353, which represents approximately 36 percent of the $982,272,106 Federal investment for the Integrated System. The status has increased almost 82 percent since the existing rates were placed in effect.

Information regarding this rate extension, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74101.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby extend on an interim basis, for the period of one year, effective October 1, 1996, the current FERC-approved Southwestern Power Administration Integrated System Rates.

Issued at Washington, DC, the 23rd day of September 1996.

Charles B. Curtis,

Deputy Secretary.

[FR Doc. 96–24984 Filed 9–27–96; 8:45 am]

BILLING CODE 6450–01–P

Southeastern Power Administration

Notice of Proposed Rate Extension

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of extension.

SUMMARY: The Deputy Secretary of the Department of Energy, confirmed and approved, on an interim basis, Rate Schedules KP–1–D, JHK–2–B, JHK–3–B, and PH–1–B for Kerr-Philpott System power. The rates were approved on an interim basis through September 30, 2001, and are subject to confirmation and approval by the Federal Regulatory Commission on a final basis.

DATES: Approval of rates on an interim basis is effective October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, 2 South Public Square, Elberton, Georgia 30635–2496, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued December 5, 1991, in Docket No. EF91–3041–000, confirmed and approved Wholesale Power Rate Schedules KP–1–D, JHK–2–B, JHK–3–B, and PH–1–B through September 30, 1996. This order extends these rate schedules to September 30, 2001.

Issued at Washington, DC, September 23, 1996.

Charles B. Curtis,

Deputy Secretary.

In the Matter of: Southeastern Power Administration—Kerr-Philpott System Power Rates.

[Rate Order No. SEPA–35]

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. On November 4, 1993, the Secretary of Energy issued Amendment No. 3 to Delegation Order No. 0203–108, granting the Deputy Secretary authority to confirm, approve, and place into effect Southeastern's rates on an interim basis. This rate is issued by the Deputy Secretary pursuant to said notice.

Background

Power from the Kerr-Philpott Projects is presently sold under Wholesale Power Rate Schedules KP–1–D, JHK–2–B, JHK–3–B, and PH–1–B. These rate schedules were approved by the FERC on December 5, 1991, for a period ending September 30, 1996 (57 FERC § 62185).

Public Notice and Comment

Southeastern prepared a Power Repayment Study dated February 1996 for the Kerr-Philpott System which

showed that revenues at current rates were adequate to meet repayment criteria, with no reserve. On February 6, 1996, by Federal Register Notice (61 F.R. 4433), Southeastern proposed to extend the current Rate Schedules five years, to September 30, 2001. The Notice also announced a Public Information and Comment Forum to be held March 14, 1996, in Raleigh, North Carolina, with a deadline for written comments on May 16, 1996. The Public Information and Comment forum was canceled after no interested party expressed an intention to attend. Southeastern received no written comments.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in February 1996, for the Kerr-Philpott System shows that with the proposed rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, 2 South Public Square, Elberton, Georgia 30635, and in the Power Marketing Liaison Office, James Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning on October 1, 1996, and ending no later than September 30, 2001.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 1996, attached Wholesale Power Rate Schedules KP–1–D, JHK–2–B, JHK–3–B, and PH–1–B. The Rate Schedules shall remain in effect on an interim basis through September 30, 2001, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis.

Issued in Washington, DC on September 23, 1996.

Charles B. Curtis,

Deputy Secretary.

[FR Doc. 96–24985 Filed 9–27–96; 8:45 am]

BILLING CODE 6450–01–P

Southwestern Power Administration

Robert D. Willis Power Rate-Order, Confirming, Approving and Placing Decreased Power Rate in Effect on an Interim Basis

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The Deputy Secretary, acting under Amendment No. 3 to Delegation Order No. 0204–108, dated November 4, 1993, 58 FR 59716, has confirmed, approved and placed in effect on an interim basis Rate Schedule RDW–96. The rate schedule supersedes the existing Rate Schedule RDW–94.

EFFECTIVE DATES: Rate Order No. SWPA–33 specifies October 1, 1996, through September 30, 2000, as the effective period for the rate schedule.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Grisaffe, Assistant Administrator, Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 595–6628.

SUPPLEMENTARY INFORMATION: Southwestern's Administrator has prepared the 1996 Current Power Repayment Study for the Robert D. Willis Project based on the annual power rate of $294,312. The study indicates that the power rate exceeds cost recovery criteria as specified in Department of Energy Order No. RA 6120.2 and Section 5 of the Flood Control Act of 1944. The Administrator prepared a 1996 Revised Power Repayment Study for the project which indicated that a reduction in annual revenue of $27,384, or 9.3 percent, is required effective October 1, 1996, to satisfy cost recovery criteria. In this regard, the Administrator has determined that the annual rate of $266,928 is the lowest possible rate to the customer consistent with sound business principles. The rate has been approved on an interim basis through September 30, 2000, or until confirmed and approved on a final basis by the Federal Energy Regulatory Commission.

Issued in Washington, D. C., this 23rd day of September 1996.

Charles B. Curtis,

Deputy Secretary.

In the matter of: Southwestern Power Administration—Robert D. Willis

[Rate Order No. SWPA–33]

Order Confirming, Approving and Placing Decreased Power Rate in Effect on an Interim Basis (September 23, 1996)

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration (Southwestern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a nonexclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy (DOE) Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy revised Delegation Order No.

0204–108 to delegate to the Assistant Secretary, Conservation and Renewable Energy, the authority which was previously delegated to the Deputy Secretary in that Delegation Order. By Amendment No. 3 to Delegation Order No. 0204–108, effective November 10, 1993, 58 FR 59717, the Secretary of Energy revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating that authority to the Deputy Secretary of Energy. This rate order is issued by the Deputy Secretary pursuant to said Amendment to Delegation Order No. 0204–108.

Background

Dam B (Town Bluff Dam), located on the Neches River in eastern Texas downstream from the Sam Rayburn Dam, was originally constructed in 1951 by the U.S. Army Corps of Engineers (Corps) and provides streamflow regulation of releases from the Sam Rayburn Dam. The Lower Neches Valley Authority contributed funds toward construction of both projects and makes established annual payments for the right to withdraw up to 2000 cubic feet of water per second from Town Bluff Dam for its own use. Power was legislatively authorized at the project, but installation of hydroelectric facilities was deferred until justified by economic conditions. A determination of feasibility was made in a 1982 Corps study. In 1983 the Sam Rayburn Municipal Power Agency (SRMA) proposed to sponsor and finance the development of hydropower at Town Bluff Dam in return for the output of the project to be delivered to its member municipalities and participating member cooperatives of the Sam Rayburn Dam Electric Cooperative. Since the hydroelectric facilities at the Town Bluff Dam have been completed, the facilities have been renamed the Robert Douglas Willis Hydropower Project (Robert D. Willis).

The Robert D. Willis rate is unique in that it excludes the costs associated with the hydropower design and construction performed by the Corps, because all funds for these costs were provided by SRMA. Under the Southwestern/SRMA power sales Contract No. DE–PM75–85SW00117, SRMA will continue to pay all annual operating and marketing costs, as well as expected capital replacement costs, through the rate paid to Southwestern, and will receive all power and energy produced at the project for a period of 50 years.

Discussion

The 1996 Current Robert D. Willis PRS tests the adequacy of the existing rate based on the latest cost evaluation period extending from FY 1996 through FY 2000, to recover annual expenses for marketing, operation and maintenance, and to amortize additions to plant and major replacements of the generating facilities. Since the project's design and construction were financed in their entirety by SRMA, no component for amortization of the original investment of some $18 million is included in the rate determination. The Current PRS for the Robert D. Willis project, using the existing annual rate of $294,312, indicates that the legal requirements to repay all costs will be exceeded and a decrease in revenue is necessary. This decrease is primarily due to the remote operation of an additional project and the resulting three- way allocation of operation and maintenance cost among Sam Rayburn, Whitney, and Robert D. Willis projects. The three-way allocation caused a decrease in estimated costs for Robert D. Willis.

The existing annual Robert D. Willis project power rate of $294,312 was confirmed and approved on a final basis by the FERC on November 21, 1994, for the period October 1, 1994, through September 30, 1998. The 1996 Robert D. Willis Current Power Repayment Study (PRS) indicates that the present rate exceeds the cost recovery criteria for the isolated project. The current rate will overpay requirements by $9,083,051. The 1996 Robert D. Willis Revised PRS indicates that an annual rate of $266,928 will satisfy repayment criteria in accordance with Department of Energy Order No. RA 6120.2 and Section 5 of the Flood Control Act of 1944. The proposed decrease in revenue amounts to $27,384 or 9.3 percent annually to begin October 1, 1996. The proposed rate of $266,928 annually would satisfy the present repayment criteria.

Pursuant to Title 10, Part 903, Subpart A of the Code of Federal Regulations (10 CFR 903), ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'', 50 FR 37837, the Administrator, Southwestern, published notice in the Federal Register (61 FR 35209), on July 5, 1996, announcing a 30-day period for public review and comment. Southwestern held several informal meetings and a Public Information Forum on July 16, 1996, where Southwestern provided copies of supporting data for the 1996 Robert D. Willis PRS to interested parties. A letter was received on behalf of SRMA, indicating no opposition to the proposed rate decrease. Southwestern did not receive any request to convene a formal Public Comment Forum and, as a result, did not convene such a meeting. Information regarding this rate proposal, including studies, comments and other supporting material, is available for public review and comment in the offices of the Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74101.

Administrator's Certification

The 1996 Revised Robert D. Willis PRS indicates that the annual power rate of $266,928 will repay all costs of the project including amortization of additions to plant and major replacements of the generating facilities consistent with provisions of DOE Order No. RA 6120.2. In accordance with Section 1 of Delegation Order No. 0204–108, as amended November 10, 1993, 58 FR 59717, and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed Robert D. Willis power rate is consistent with applicable law and is the lowest possible rate consistent with sound business principles.

Environment

The environmental impact of the rate decrease proposal was evaluated in consideration of DOE's guidelines for implementing the procedural provisions of the National Environmental Policy Act and was determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective October 1, 1996, the proposed annual rate of $266,928 for the sale of power and energy from the Robert D. Willis project to the Sam Rayburn Municipal Power Agency, under Contract No. DE–PM75–85SW00117, as amended. The rate shall remain in effect on an interim basis through September 30, 2000, or until the FERC confirms and approves the rate on a final basis.

Issued at Washington, DC, this 23rd day of September 1996.

Charles B. Curtis,

Deputy Secretary.

[FR Doc. 96–24983 Filed 9–27–96; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Boulder Canyon Project—Notice of Firm Power Service Base Charge

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of base charge.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of the Base Charge and its components for the Boulder Canyon Project (BCP) firm power service. The Fiscal Year (FY) 1997 Base Charge and its components for BCP firm power are based on an Annual Revenue Requirement of $44,437,488. The Base Charge consists of a rounded energy dollar of $22,976,823 and a rounded capacity dollar of $21,460,664. This Base Charge and its components are used for calculating the monthly charges and forecast rates pursuant to Rate Schedule BCP–F5 as approved by the Federal Energy Regulatory Commission (FERC) on April 19, 1996 (Rate Order No. WAPA–70).

DATES: The Base Charge and its components, used in calculating the monthly charges and forecast rates pursuant to Rate Schedule BCP–F5, will be effective on the first day of the first full billing period beginning on or after October 1, 1996, and will be in effect through FY 1997.

FOR FURTHER INFORMATION CONTACT:

Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2453.

Mr. Joel K. Bladow, Assistant Administrator for Power Marketing Liaison, Western Area Power Administration, Room 8G–027, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0001, (202) 586–5581.

SUPPLEMENTARY INFORMATION: The Base Charge and its components were calculated in accordance with the methodology approved under Rate Order WAPA–70. The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western Area Power Administration (Western) in determining the Base Charge and its components. The following summarizes the steps taken by Western to ensure involvement of all interested parties in the determination of the Base Charge and its components:

1. Discussion of the proposed Base Charge and its components was initiated at an informal BCP Contractor meeting held on May 9, 1996, in Phoenix, Arizona. At this informal meeting, representatives from Western and the Bureau of Reclamation (Reclamation) explained the basis for estimates used in the calculation of the Base Charge and its components. A question and answer session was convened for those persons attending.

2. A Federal Register Notice (FRN) was published on May 22, 1996 (61 FR 25664), officially announcing the proposed Base Charge adjustment process, initiating the public consultation and comment period, announcing the public information and public comment forums, and presenting procedures for public participation.

3. On June 7, 1996, a letter was mailed from Western's Desert Southwest Customer Service Regional Office to all BCP customers and other interested parties. The letter provided a copy of the BCP Proposed Rate Adjustment data, dated June 1996, which included a copy of the FRN of May 22, 1996.

4. At the public information forum held on June 13, 1996, in Phoenix, Arizona. Western and Reclamation representatives explained the proposed Base Charge and its components for Rate Year 1997 in greater detail. A question and answer session was convened for those persons attending.

5. A public comment forum was held on July 15, 1996, in Phoenix, Arizona, to give the public an opportunity to comment for the record. Five persons representing customers and customer groups made oral comments.

6. Ten comment letters were received during the 92-day consultation and comment period. The consultation and comment period ended August 22, 1996. All formally submitted comments have been considered in the preparation of this FRN.

Most of the comments received during the public meetings or in the written correspondence dealt with the Visitor Facilities, hydrology, and the BCP Initial Audit.

All comments were considered in developing the Base Charge for FY 1997. The comments and responses, paraphrased for brevity, are presented below.

Hydrology

Issue: A request was made, asking that if the Master Schedule for FY 97 is revised to reflect excess energy prior to the end of the rate process, that it be used as the final Master Schedule for determining the monthly energy ratios used to calculate the monthly energy charge.

Response: If Reclamation notifies Western of changes which result in a revision of the Master Schedule for FY 97 prior to the start of the fiscal year, Western will use the revised Master Schedule to determine the monthly energy ratios used to calculate the monthly energy charge.

Visitor Facilities

Issue: Concern was expressed regarding the potential for the BCP customers being required to pay as much as $31 million as a result of the suit filed in the Federal Claims Court by the PCL Company. Several commentors stated that they believed that the BCP rates should not be required to recover these costs.

Response: The Engineering and Operations Committee (E&OC) has agreed to include the cost of defending the Government's position regarding the PCL claim as part of the total Visitor Facilities costs. Western, Reclamation, and BCP Contractors will address the issue of any settlement or judgement costs if they are incurred by the Government.

Cost Containment

Issue: A request was made that the O&M expenses for both Western and Reclamation be thoroughly reviewed by the E&OC and the Ten Year Planning Committees. A goal of the review should be to see if high cost activities could be spread out over more than 2 years and that these costs are accounted for in the proper category (i.e., O&M, replacements, etc).

Response: Western and Reclamation are committed to working with the E&OC and the Ten Year Planning Committees to thoroughly review all O&M and replacement activities. During the review of O&M and replacement activities, Western and Reclamation will attempt to spread out the expenditure schedules for high cost activities where feasible.

Issue: Western and Reclamation were cautioned that even though the water forecasts project a water surplus condition over the next 5 years, they should not stop their efforts in cost containment and finding alternative revenues.

Response: Western and Reclamation have committed to continue with the various partnership activities with the BCP Contractors in keeping the BCP costs down.

BCP Initial Audit

Issue: Concern was expressed over when the various recommendations

from the BCP Initial Audit were going to be implemented. When was the power repayment spreadsheet study going to be modified? All parties were encouraged to accomplish this as soon as possible.

Response: Western and Reclamation are working with the BCP Contractors and the auditors to resolve and implement the recommendations from the BCP Initial Audit. There has been an on-going effort in researching and reconciling the financial records with the PRSS. Until the research is completed for such items as revenues, expenses and cash, adjustments to the PRSS and the financial records cannot be accomplished. It is Western's intent to have all research, reconciliations, adjustments to financial records, and modifications to the PRSS accomplished by the end of the FY 1997 rate process.

Project Partnership

Issue: Several commentors expressed their appreciation to Western and Reclamation for their cooperative efforts in keeping the costs as low as possible. They stated that they hoped that Western and Reclamation would continue with those efforts.

Response: Western and Reclamation reaffirmed their commitment to maintaining the cooperative spirit and partnership with the BCP customers.

Power Repayment Spreadsheet Study

Issue: A request was made, asking that supporting schedules separate Reclamation's O&M costs attributable to Hoover Dam and appurtenances, from the O&M costs attributable to the power plant.

Response: As stated in the data request response mailed July 2, 1996, Reclamation's O&M cost accounts are set up to reflect the FERC classifications. Reclamation's accounting system does not distinguish between costs associated with the dam and appurtenances, and costs associated with the power plant; therefore, this information cannot be provided.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy (Secretary) delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

These charges and rates are established pursuant to section 302(a) of the DOE Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and Reclamation under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary.

Issued in Washington, DC, September 23, 1996.

Charles B. Curtis,

Deputy Secretary.

[FR Doc. 96–24986 Filed 9–27–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5618–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Emergency Planning and Release Notification Requirements; Community Right-to-Know Reporting Requirements; Trade Secret Claims for Emergency Planning and Community Right-to-Know Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et eq.*) this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below. The ICRs are: (1) continuing ICR entitled ''Emergency Planning and Release Notification Requirements (EPCRA sections 302, 303, and 304),'' (2) continuing ICR entitled ''Community Right-to-Know Reporting Requirements (EPCRA sections 311 and 312),'' (3) continuing ICR entitled ''Trade Secret Claims for Emergency Planning and Community Right-to-Know Information.'' An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

DATES: Comments must be submitted on or before November 29, 1996.

ADDRESSES: Submit three copies of all written comments to: Lea Anne Gleason (202) 260–7387, fax (202) 260–0927, E-Mail Gleason.L@EPAMail.EPA.Gov, or John Ferris (202) 260–4043, fax (202) 260–0927, E-Mail Ferris.J@EPAMail.EPA.Gov.

The above information can also be used to obtain a copy of the ICR without charge.

FOR FURTHER INFORMATION CONTACT: Lea Anne Gleason, (202) 260–7387 or John Ferris (202) 260–4043, or as above.

SUPPLEMENTARY INFORMATION:

Information below is provided for the three Information Collection Requests (ICRs):

Affected entities: Entities potentially affected by this action are those who (1) must comply with the emergency planning and emergency release notification provisions of EPCRA sections 302, 303, and 304, (2) must comply with Right-to-Know provisions of EPCRA requiring reporting information about the presence of chemicals and there inventories (Sections 311 and 312 of EPCRA) or (3) wish to file a claim of trade secrecy of reporting requirements under Sections 322 (trade secrets).

Title: (1) Emergency Planning and Release Notification Requirements (EPCRA sections 302, 303, and 304). OMB #2050–0092, EPA ICR #1395.02, expiring 01/31/97.

Abstract: EPCRA established broad emergency planning and facility reporting requirements. Section 302 (40 CFR 355.30) requires any facility where an extremely hazardous substance (EHS) is present in an amount at or in excess of the threshold planning quantity (TPQ) to notify the state emergency response commission (SERC) by May 17, 1987. This activity has been completed; the section 302 costs and burden hours for this ICR, therefore, reflect only the estimate of the cost and burden incurred by those additional facilities who come to have an EHS in excess of the TPQ during the years 1996 through 1999.

Section 303 (40 CFR 355.30) requires local emergency planning committees (LEPCs) to prepare emergency plans. Facilities subject to section 302 are required to provide local planners with information necessary for the preparation of these emergency plans. In addition, the facilities are required to inform LEPCs of any relevant changes in

chemical use or production that may effect the emergency plans. Section 303 requires LEPCs to complete their emergency plans by October 17, 1988. This ICR therefore reflects the costs attributable to the requirement of annually updating the local emergency response plans.

Section 304 (40 CFR 355.40) requires facilities to report to SERCs and LEPCs releases of EHSs and hazardous substances in excess of reportable quantities established by EPA. In addition, facilites must provide a written follow-up report providing additional information on the release, its impacts and any actions taken in response to the release.

Title: (2) Community Right-to-Know Reporting Requirements, (EPCRA sections 311/312). OMB #2050–0072, EPA ICR #1352.03, expiring 01/31/97.

Abstract: Section 311 requires that the owner or operator of any facility which is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under OSHA regulations shall submit an MSDS for each such chemical, or list of chemicals, to the LEPC, SERC and local fire department. This submittal allows both local emergency planners/responders and the community to have information regarding the hazards of chemicals use at the facility.

Section 312 requires the same owners or operators of facilities to report annually the inventories of the chemicals reported under section 311. Section 312(g) requires EPA to publish emergency and hazardous chemical inventory forms for use by facilities subject to this section. In final rules published in the Federal Register on October 15, 1987, and July 26, 1990, EPA published the two ''formats'' required under EPCRA. Tier 1 is the minimum amount of information to comply with the section. Using Tier 1, facilities aggregate reportable chemicals by hazard type and provide the quantities and locations of the chemicals. The Tier II form provides chemical specific information, and only needs to be submitted (in lieu of Tier I) if specifically requested by the SERC or LEPC.

Section 311 allows emergency responders to know the hazards associated with the facility's chemicals before they come on-site. Local planners can use this information to supplement the emergency planning requirements under section 303 of EPCRA. Availability of the information through ''community right-to-know'' enables the public to understand the presence and hazards of chemicals in their community.

The annual inventory under section 312 of EPCRA is used in conjunction with the information provided under section 311 to link the quantity and location of chemicals with the hazards associated with the chemicals.

Title: (3) Trade Secrets under EPCRA, SARA Title III, sections 322. OMB Control # 2005–0078, EPA ICR # 1428.03, expiring 02/28/97.

Abstract: Section 322 of Title III allows a facility to withhold the specific chemical identity from Title III reports required under Sections 302, 304, 311, 312 and 313 of the statute, if the facility asserts a claim of trade secrecy for that chemical identity. The provision establishes the requirements and procedures that facilities must follow to request trade secrecy treatment of chemical identities, as well as the procedures for submitting public petitions to the Agency for review of the ''sufficiency'' of trade secrecy claims.

Congress's intent in writing trade secrecy provisions under Title III was to balance industry's concern with the protection of legitimate trade secrets with communities' right-to-know chemical identification information, by establishing procedures for asserting claims, for the public to obtain review of their validity, and for an Agency claim review process which eliminates legally invalid and frivolous claims.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

For all ICR claims listed above, the EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In particular, EPA is seeking comments on its assumption in ICR #1395.03 that 10% of facilities would contact LEPCs about changes on a yearly basis, that 5% provide additional information, and that portions of release reports are routinely provided as part of other (e.g. police) reports and thus excluded from the burden estimate as customary and usual. Also, EPA is seeking comment on (1) its assumption in ICR #1352.04 that 5% of facilities need to update their 311 submittal annually and (2) the time it takes to respond to public comments.

Burden Statement: For (1) Reporting Requirements under EPCRA Sections 302, 303, and 304, EPA estimated in 1995 that 31,556 facilities are subject to these sections. The average annual burden for all facilities together was estimated to be 175,941 hours, at a cost of $9,934,106. Associated state and local average annual burden is estimated to be 796,721 hours at a cost of $17,791,240.

Burden Statement: For (2) Reporting Requirements under EPCRA Sections 311 and 312 EPA estimates the number of manufacturing and non-manufacturing facilities covered under Sections 311 and 312 to be 866,285. The average annual burden for all facilities together was estimated in 1995 to be 2,952,765 hours, at a cost of $159,501,922, with associated State and local average annual burden to be 2,987 hours, at a cost of $48,058.

Burden Statement: For (3) Trade Secrets claims under sections 322, EPA estimated in 1993 that in 1996 there would be a total of 469 trade secret claims requiring a burden of 14,759 hours at a cost of $700,490.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 16, 1996.

Jim Makris,

Director, CEPPO.

[FR Doc. 96–25000 Filed 9–27–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5618–5]

Pesticide EUPs; Submission of EPA ICR No. 276 to OMB; Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) entitled: Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only (OMB Control No. 2070–0040; EPA ICR No. 276.08) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection, its estimated cost and burden, and includes a copy of the actual data collection instrument.

The Agency is requesting the renewal of the existing ICR, which is scheduled to expire on November 30, 1996. A Federal Register notice announcing the Agency's intent to seek the renewal of this ICR and the 60 day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on June 26, 1996 (61 FR 33114). In the final ICR submitted to OMB, EPA addressed the single comment received during the comment period.

DATES: Additional comments may be submitted on or before October 30, 1996.

FOR FURTHER INFORMATION OR A COPY CONTACT: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0276.08.

ADDRESSES: Send comments, referencing EPA ICR No. 276.08 and OMB Control No. 2070–0040, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (2137), 401 M Street, S.W., Washington, DC 20460

And to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 276.08; OMB Control No. 2070–0040.

Current Expiration Date: Current OMB approval expires on November 30, 1996.

Title: Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only.

Abstract: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, authorizes pesticide companies temporarily to ship pesticide products for experimental use for the purpose of gathering data necessary to support the application for their registration. In general, EUPs are either issued for a pesticide not registered with EPA or for a registered pesticide for a use not registered with EPA.

The information collected and reported under an EUP is a summary of what is routinely submitted in connection with registration. The EUP allows for large scale field testing, if necessary, in order to collect sufficient data to support registration. An EUP is not required if the person conducting the tests does not expect to receive benefits in pest control.

EPA Form 8570–17, *Application for an Experimental Use Permit to Ship and Use a Pesticide for Experimental Purposes Only*, associated with this ICR is filed by the applicant for a permit to generate information or data necessary to register a pesticide under Section 3 of FIFRA. This information from the applicant is necessary in order to grant and effectively monitor the EUP. Beyond the information as supplied on EPA Form 8570–17, is a final report on the results of the experimental program which includes information such as: amount of the product applied; the crops or sites treated; any observed adverse effects; any adverse weather conditions which may have inhibited the program; the goals achieved; and the disposition of containers, unused pesticide material, and affected food/feed commodities.

This ICR also contains the amendment of this ICR from September 1994 regarding the notification for small scale testing of genetically modified microbial pesticides. Title 40 CFR Part 172 includes a requirement for the submission and review of notifications prior to any introduction into the environment of certain genetically modified microbial pesticides.

This information is collected on occasion when seeking an experimental use permit or notification for small scale testing of genetically modified microbial pesticides for experimental purposes and submitting the necessary data.

There are no third party disclosures associated with this activity.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 10 hours per response for the EUP. The annual public reporting and recordkeeping burden for those who need Notifications for small-scale testing of genetically modified microbial pesticides the initial notifications are estimated to take about 33 hours and resubmission Notifications are estimated at about 20 burden hours per respondent. This estimate includes the time needed for: reading relevant legislation, regulations, and instructions; planning activities; creating and gathering information; processing, compiling, and reviewing information; completing paperwork; recording disclosing, and displaying information; and storing, maintaining, and filing information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Applicants for EUPs.

Estimated No. of Respondents: 110 per year.

Estimated Total Annual Burden on Respondents: 1303 hours.

Frequency of Collection: Once per event.

Changes in Burden Estimates: The burden hours of 10.10 hours per respondent for EUPs remains the same from the previous ICR. While the burden hours for Notifications has decreased from 818 hours per respondent to 53.4 hours per respondent. The decrease in hours comes from the one-time rule familiarization burden which is no longer needed and a recalculated burden estimate. There is an increase in number of respondents for Notifications because the program has increased and more companies are pursuing genetically modified pesticide products. In addition, the cost estimates for both EUPs and Notification has increased due to the use of updated labor rates supplied by the Bureau of Labor Statistics.

Dated: September 24, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–24998 Filed 9–27–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5618–4]

Toxic Chemicals; PMNs; Submission of EPA ICR No. 574 to OMB; Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) entitled: Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances [EPA ICR #574.09; OMB Control #2070–0012] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection, its estimated cost and burden, and includes a copy of the actual data collection instrument.

The Agency is requesting that OMB renew for 3 more years the existing approval for this ICR, which is scheduled to expire on October 31, 1996. A Federal Register notice announcing the Agency's intent to seek the renewal of this ICR and the 60 day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on June 28, 1996 (61 FR 33732). EPA did not receive any comments on this ICR during the comment period. Additional comments may be submitted on or before October 30, 1996.

FOR FURTHER INFORMATION OR A COPY CONTACT: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 574.09 or OMB Control No. 2070–0012.

ADDRESSES: Send comments, referencing EPA ICR No. 574.09 and OMB Control No. 2070–0012, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (2137), 401 M Street, S.W., Washington, DC 20460

And to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 574.09; OMB Control No. 2070–0012.

Current Expiration Date: Current OMB approval expires on October 31, 1996.

Title: Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances.

Abstract: Section 5 of the Toxic Substances Control Act (TSCA) requires manufacturers and importers of new chemical substances to submit to EPA notice of intent to manufacture or import a new chemical substance 90 days before manufacture or import begins. EPA reviews the information contained in the notice to evaluate the health and environmental effects of the new chemical substance. On the basis of the review, EPA may take further regulatory action under TSCA, if warranted. If EPA takes no action within 90 days, the submitter is free to manufacture or import the new chemical substance without restriction.

TSCA section 5 also authorizes EPA to issue Significant New Use Rules (SNURs). EPA uses this authority to take follow-up action on new or existing chemicals that may present an unreasonable risk to human health or the environment if used in a manner that may result in different and/or higher exposures of a chemical to humans or the environment. Once a use is determined to be a significant new use, persons must submit a notice to EPA 90 days before beginning manufacture, processing or importation of a chemical substance for that use. Such a notice allows EPA to receive and review information on such a use and, if necessary, regulate the use before it occurs.

Finally, TSCA § 5 also permits applications for exemption from section 5 review under certain circumstances. An applicant must provide information sufficient for EPA to make a determination that the circumstances in question qualify for an exemption. In granting an exemption, EPA may impose appropriate restrictions.

Responses to the collection of information are mandatory (see 40 CFR parts 720, 721 and 723). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA § 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average approximately 101.5 hours per response, and to require 8,100 hours of recordkeeping. This estimate includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Entities potentially affected by this action are manufacturers or importers of new chemical substances, as defined by TSCA, or manufacturers, processors or importers of a chemical substance for a use that has been determined a significant new use, as defined by TSCA.

Estimated No. of Respondents: 432.

Estimated Total Annual Burden on Respondents: 241,611 hours.

Frequency of Collection: On occasion.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted as described above.

Dated: September 24, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–24999 Filed 9–27–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5618–3]

Request for Applications for Essential Use Exemptions to the Production and Import Phaseout of Ozone Depleting Substances Under the Montreal Protocol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Through this notice, the U.S. Environmental Protection Agency is requesting applications for consideration at the Ninth Meeting of the Parties to the Montreal Protocol to be held in September 1997 for exemptions to the production and import phaseout in 1998 and subsequent years for ozone-depleting substances (including halons 1211 and

1301, CFC–11, CFC–12, CFC–113, CFC–114, CFC–115, CFC–13, CFC–111, CFC–112, CFC–211, CFC–212, CFC–213, CFC–214, CFC–215, CFC–216, CFC–217, carbon tetrachloride, and methyl chloroform).

DATES: Applications for essential use exemptions must be submitted to EPA no later than October 30, 1996 in order for the U.S. government to complete its review and to submit nominations to the United Nations Environment Programme (UNEP) and the Protocol Parties in a timely manner.

ADDRESSES: Send eight copies of application materials to: Nina Bonnelycke, Stratospheric Protection Division (6205J), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Send one copy of application materials to: Air Docket A–93–39, 401 M Street, S.W. (6102), Room M1500, Washington, D.C. 20460.

CONFIDENTIALITY: Applications should not contain confidential or proprietary information.

FOR FURTHER INFORMATION CONTACT: Nina Bonnelycke at the above address or at (202) 233–9079 ph, (202) 233–9637 fax, or bonnelycke.nina@epamail.epa.gov. General information may be obtained from the Stratospheric Ozone Hotline at 1–800–296–1996.

SUPPLEMENTARY INFORMATION:

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I. Background—The Essential Use Nomination Process
II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 1998 and Subsequent Years

I. Background—The Essential Use Nomination Process

As described in previous Federal Register notices (58 FR 29410, May 20, 1993; 59 FR 52544, October 18, 1994; and 60 FR 54349, October 23, 1995), the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (the Parties) agreed during the Fourth Meeting in Copenhagen on November 23–25, 1992, to accelerate the phaseout schedules for Class I ozone-depleting substances. Specifically, the Parties agreed to phase out the production of halons by January 1, 1994, and the production of other Class I substances, except methyl bromide, by January 1, 1996. The Parties also reached decisions and adopted resolutions on a variety of other matters, including the criteria to be used for allowing ''essential use'' exemptions from the phaseout of production and importation of controlled substances. Language regarding essential uses was added to the Protocol provisions in Article 2 governing the control measures. Decision IV/25 of the Fourth Meeting of the Protocol details the specific criteria and review process for granting essential use exemptions.

At the Fifth Meeting of the Parties in 1993, the Parties modified the timetable for nomination of essential uses. Pursuant to Decision V/18, Parties may nominate a controlled substance for an exemption from the production phaseout by January 1 of each year. The UNEP committees then review the nominations at their spring meetings and forward their recommendations for decision at the Meeting of the Parties later that year. The Parties may choose to grant the exemption for one or more of the nominated years, but each approved or pending application may be reconsidered and modified by the Parties at their annual meetings. Since the Parties in 1997 will be considering nominations for the year 1998 and beyond, today's notice solicits requests for those years. Further detail on the essential uses process is provided later in this section.

Decision IV/25 states that ''a use of a controlled substance should qualify as essential only if: (i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and (ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health''. In addition, the Parties agreed ''that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: (i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and (ii) the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances.''

Any essential use exemptions also have to comply with the provisions of the Clean Air Act Amendments (CAAA). § 604 authorizes the granting of specific exemptions from the phaseout schedules contained in the CAAA. With respect to halons, the CAAA allows exemptions from the phaseout for aviation safety [§ 604(d)(3)], national security [§ 604(f)], and fire suppression and explosion prevention [§ 604(g)]. Other exemptions specified in § 604 include essential uses of methyl chloroform [§ 604(d)(1)]; uses of Class I substances in medical devices [§ 604(d)(2)]; and uses of CFC–114 for national security [§ 604(f)]. To the extent that an accelerated phaseout schedule has been adopted under the Montreal Protocol, EPA can legally provide exemptions for uses authorized by the Protocol but not otherwise specified in the CAAA as long as any additional production does not exceed the production reduction schedule contained in § 604(a).

The first step in the process to qualify a use as essential under the Protocol is for the user to ascertain whether the use of the controlled substance meets the Decision IV/25 criteria. The user should then notify EPA of the candidate use and provide information for U.S. government agencies and the Protocol Parties to evaluate that use according to the criteria under Decision IV/25. The United Nations Environment Programme (UNEP) Technology and Economic Assessment Panel has issued a handbook entitled ''Handbook on Essential Use Nominations,'' available from EPA, to guide applicants. Applicants should follow the guidelines in the handbook when preparing their exemption requests.

Upon receipt of the exemption request, EPA reviews the application and works with other interested federal agencies to determine whether it meets the essential use criteria and as a result warrants being nominated for an exemption. Applicants should be aware that, to date, the Parties to the Montreal Protocol have only granted the U.S. essential use exemptions for CFCs for metered dose inhalers (MDIs) for asthma and chronic obstructive pulmonary disease and for methyl chloroform for the Space Shuttle.

In the case of multiple exemption requests for a single use, such as CFCs for metered dose inhalers (MDIs), EPA aggregates exemption requests received from individual entities into a single U.S. request. An important part of the EPA review is to determine that the aggregate request for a particular out-year adequately reflects the market penetration potential and expected availability of non-CFC substitutes by that point in time. If the sum of individual requests does not incorporate such assumptions, the U.S. government may adjust the aggregate request to better reflect true market needs.

Nominations submitted to the Ozone Secretariat by the U.S. and other Parties are then forwarded to the UNEP Technical and Economic Assessment Panel (TEAP) and its Technical Options Committees (TOCs), which review the submissions and make recommendations to the Parties for exemptions. Those recommendations are then considered by the Parties at

their annual meeting for final decision. If the Parties declare a specified use of a controlled substance as essential and issue the necessary exemptions from the production phaseout, EPA may propose regulatory changes to reflect the decisions by the Parties consistent with the CAAA.

The timing of the reviews is such that in any given year the Parties review nominations for exemption from the production phaseout intended for the following year and any subsequent years. This means that, if nominated, applications submitted in response to today's notice for CFC production in 1998 and beyond will be considered by the Parties in 1997 for final action at the Meeting of the Parties in September of that year.

II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 1998 and Subsequent Years

Through this notice, EPA requests applications for essential use exemptions for all class I substances for 1998 and subsequent years. All requests for exemptions submitted to EPA must present the information relevant to the application as prescribed in the TEAP Handbook mentioned in the previous section, since the U.S. government does not forward incomplete or inadequate nominations to the Ozone Secretariat. In brief, the TEAP Handbook states that applicants must present information on:

- Role of use in society.
- Alternatives to use, including education programs on alternatives.
- Steps to minimize use, including development of CFC-free alternatives.
- Steps to minimize emissions.
- Amount of substance available through recycling and stockpiling.
- Quantity of controlled substances requested by year.

EPA anticipates that the 1997 review by the Parties of MDI essential use requests will focus extensively on research efforts underway to develop alternatives to CFC MDIs, on education programs to inform patients and providers of the phaseout and the transition to alternatives, and on steps taken to minimize CFC use and emissions including efforts to recapture or reprocess the controlled substance. Accordingly, applicants are strongly advised to present detailed information on these points including the scope and cost of such efforts and the medical and patient organizations involved in the work. Applicants can strengthen their exemption requests by submitting a complete set of education materials and including copies of printed, electronic or audio-visual tools. Applicants are given notice that exemption requests without adequate information on research and education will not be considered complete.

Applicants should submit their exemption requests to EPA as noted in the Addresses section at the beginning of today's notice.

Dated: September 23, 1996.

Mary D. Nichols,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 96–25001 Filed 9–27–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5618–9]

Proposed General NPDES Permit for Log Transfer Facilities in Alaska: General NPDES Permit No. AK–G70–0000

AGENCY: Region 10, Environmental Protection Agency (EPA).

ACTION: Notice of Proposed General NPDES Permit.

SUMMARY: The Director, Office of Water, EPA Region 10, proposes to issue General National Pollutant Discharge Elimination System (NPDES) Permit No. AK–G70–0000 for marine discharges associated with log transfer facilities in Alaska. The EPA is soliciting comments on the draft general permit described in this public notice. At the end of this public comment period, the EPA will make a final determination on permit issuance.

Administrative Record. The draft general NPDES permit, fact sheet, and the draft technical report for the ''Ocean Discharge Criteria Evaluation of the NPDES General Permit for Alaskan Log Transfer Facilities'' are available for inspection and copying at the EPA office in Anchorage (Room 537) any time between 8:00 am and 4:30 pm., Monday through Friday. Copies and other information may also be requested by mail or by calling Susan Cantor at (907) 271–3413.

Public Comments. Interested persons may submit written comments on the draft general NPDES permit on or before October 30, 1996, to the attention of Susan Cantor at the address below. All comments should include the name, address, and telephone number of the commenter, a concise statement of comment and the relevant facts upon which it is based.

State Certification. Persons wishing to comment on State Certification of the proposed general NPDES permit should submit written comments within this public comment period to the State of Alaska, Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 105, Juneau, Alaska 99801–1795. Comments should be addressed to the attention of Dave Sturdevant.

State Consistency Determination. The State of Alaska, Division of Governmental Coordination requests your comments on the proposed action's consistency with the Alaska Coastal Management Program. Under Alaska Statute 46.40.100, your comments must be received within the public comment period in order to preserve your right to petition the Coastal Policy Council for a review of the proposed consistency determination. The right to petition the Coastal Policy Council is limited to the applicant, an affected coastal resource district, a State agency, or a citizen of the affected coastal resource district. The comments must address whether the proposed action is consistent with the enforceable policies of the affected coastal district's management program. For more information on the consistency review process and the comment deadline, or to submit comments, please contact the Division of Governmental Coordination, P.O. Box 110030, Juneau, Alaska 99811–0030. Comments should be addressed to the attention of Rex Blazer.

Final Determination. After the public notice period expires, the Director of the Office of Water, EPA Region 10, will make a final determination on permit issuance in accordance with 40 CFR Part 124.15. The tentative requirements contained in this draft general NPDES permit will become final conditions if no substantive comments are received during the public comment period.

Appeal. Within 120 days following service of notice of EPA's final permit decision, any interested person may appeal that decision in the appropriate Circuit Court of Appeals of the United States, in accordance with Section 509 of the Clean Water Act and 40 CFR Part 124.71. After 120 days, persons affected by a general permit may not challenge the conditions of the permit as a right of further EPA proceedings. Instead, they may either challenge the permit in court or apply for an individual NPDES permit and then request a formal hearing on the issuance or denial of an individual permit.

DATES: The public notice issuance date is September 30, 1996. The expiration date of this public notice is October 30, 1996. All comments must be submitted to EPA on or before October 30, 1996. Additional time may be granted where a commenter demonstrates the need for such time.

ADDRESSES: Please address all written comments to Susan Cantor, Environmental Protection Agency, Region 10, Alaska Office, 222 W. Seventh Avenue #19, Anchorage, Alaska 99513. Comments may be mailed or submitted via facsimile to (907) 271–3424.

FOR FURTHER INFORMATION CONTACT: Susan Cantor, of Environmental Protection Agency, Region 10, Alaska Office, at the address listed above or by telephone at (907) 271–3413. Inquiries may be submitted via facsimile to (907) 271–3424. Requests may be electronically mailed to CANTOR.SUSAN@EPAMAIL.EPA.GOV. Additional services can be made available to persons with disabilities. For those with impaired hearing or speech, please contact EPA's telecommunication device for the deaf at (206) 553–1698.

SUPPLEMENTARY INFORMATION: In the opinion of EPA, discharges associated with Alaskan log transfer facilities would be more appropriately controlled under a general permit rather than under individual permits. The proposed general permit would provide fair and uniform requirements for industry in accordance with the provisions of the Clean Water Act, and would reduce paperwork and delays in permit issuance for qualifying dischargers.

If issued, this general NPDES permit would authorize qualifying log transfer facilities to discharge bark and woody debris into both near-shore and offshore marine waters in Alaska, except in areas excluded from coverage. The permit would not authorize discharges into waters identified as critical or protected resources, waters which do not meet the siting guidelines of the Alaska Timber Task Force, and waters already exceeding Alaska Water Quality Standards for parameters relating to bark and woody debris. The state of Alaska proposes to grant a one-acre zone of deposit for those log transfer facilities authorized under this permit.

Log transfer facilities authorized under this permit would be required to minimize the introduction of bark and woody debris into marine waters through implementation of effluent limitations and best management practices. Annual underwater bark monitoring would be required for facilities where bark accumulation was likely to occur. Those permittees would also be required to develop and implement a pollution prevention plan.

In order to be authorized under this general NPDES permit, new dischargers would be required to submit a notice of intent to EPA and to receive written authorization to discharge from EPA. A notice of intent would also be required for those permitted facilities wishing to discharge after their individual NPDES permits have expired.

This general NPDES permit would modify existing permits issued under Section 404 of the Act for log transfer facilities constructed and operated prior to October 22, 1985. If this general NPDES permit is issued, the applicable Section 404 permits would be modified to incorporate the provisions of the general permit. Dischargers authorized under Section 404 prior to October 22, 1985, would be required to submit information to EPA regarding their location and discharge.

Executive Order 12866

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: September 20, 1996.

Roger K. Mochnick,

Acting Director, Office of Water.

[FR Doc. 96–24997 Filed 9–27–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10 a.m. on Tuesday, September 24, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) reports of the Office of Inspector General, (2) matters relating to the Corporation's corporate activities, and (3) a personnel matter.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(6) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: September 24, 1996.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 96–25086 Filed 9–26–96; 12:03 pm]

BILLING CODE 6714–01–M

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, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 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.: 232–011391–003

Title: TMM/Tecomar Cooperative Working Agreement

Parties:

Transportacion Maritima Mexicana, S.A. de C.V.

Tecomar, S.A. de C.V.

Synopsis: The proposed amendment would delete the authority of the parties to discuss and agree upon rates and other transportation terms and conditions. The parties have requested a shortened review period.

Dated: September 25, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–24959 Filed 9–27–96; 8:45 am]

BILLING CODE 6730–01–M

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.

Request for Additional Information

Agreement No.: 203–011550
Title: ABC Discussion Agreement
Parties:
Evergreen Marine Corp. (Taiwan) Ltd.
The members of the Aruba Bonaire Curacao Liner association
Synopsis: Notice is hereby given that the Federal Maritime Commission pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701–1720) has requested additional information from the parties to the Agreement in order to complete the statutory review of Agreement No. 203–011550 as required by the Act. This action extends the review period as provided in section 6(c) the Act.

Dated: September 25, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–24960 Filed 9–27–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 3654.
Name: Arubex International Services Corp.
Address: 2315 N.W. 107th Ave., Box 15, Miami, FL 33172.
Date Revoked: June 19, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 3151.
Name: Freight International Services, Ltd.
Address: 4702 Lucerne Valley Rd., Lilburn, GA 30247.
Date Revoked: August 14, 1996.
Reason: Failed to maintain surety bond.

License Number: 3694.
Name: GIC Infolog, Inc.
Address: 621 West Spain Street, Sonoma, CA 95476.
Date Revoked: July 18, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 3859.
Name: Gunnic Port Services, Inc.
Address: 7301 Swan Point Way, Columbia, MD 21045.
Date Revoked: July 24, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 1721.
Name: Inter-Harbor Forwarding Company, Inc.
Address: 2325 249th Street, Lomita, CA 90717.
Date Revoked: July 19, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 307.
Name: Kurz-Allen, Inc.
Address: One Bala Plaza East, Suite 600, Bala Cynwyd, PA 19004–1496.
Date Revoked: August 12, 1996.
Reason: Surrendered license voluntarily.

License Number: 2597.
Name: Maritime Connections Corp.
Address: 2625 N.W. 82nd Avenue, Suite 308, Miami, FL 33166.
Date Revoked: July 31, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 2903.
Name: Wolinski and Company.
Address: 175 West Jackson Blvd., Suite A–1422, Chicago, IL 60604.
Date Revoked: July 30, 1996.
Reason: Surrendered License voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 96–24961 Filed 9–27–96; 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 October 15, 1996.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Palm Desert Investments Employee Stock Ownership Plan and Trust, Palm Desert, California; to acquire an additional 2.31 percent, for a total of 24.42 percent, of the voting shares of Palm Desert Investments, Palm Desert, California, and thereby indirectly acquire Palm Desert National Bank, Palm Desert, California.

Board of Governors of the Federal Reserve System, September 24, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–24915 Filed 9-27-96; 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 October 25, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Iroquois Bancorp, Inc., Auburn, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Cayuga Bank, a *de novo* bank, Auburn, New York, and Cayuga Savings Bank, Auburn, New York.

In connection with this application, Applicant also has applied to acquire Homestead Savings, F.A., Utica, New York; Cayuga Financial Services, Inc., Auburn, New York; H.S. Service Corporation, Waterville, New York; and Cayuga Financial Services, Inc., Auburn, New York, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y; in insurance agency activities in a town with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y; in securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y; and *de novo* indirectly in investment and financial advisory service activities, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Ida Grove Bancshares, Inc., Ida Grove, Iowa, and American Bancshares, Inc., Holstein, Iowa, to acquire 100 percent of the voting shares of Pierson Bancorporation, Inc., Pierson, Iowa, and thereby indirectly acquire Farmers Savings Bank, Pierson, Iowa.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. MNB Bancshares, Inc., Malvern, Arkansas; to acquire 100 percent of the voting shares of The Malvern National Interim Bank, Malvern, Arkansas, and thereby indirectly acquire First National Interim Bank of Sheridan, Sheridan, Arkansas, upon consummation. The interim banks will be merged into The Malvern National Bank, Malvern, Arkansas, and First National Bank of Sheridan, Sheridan, Arkansas.

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Sankovitz Family Limited Partnership, Waseca, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Franksen Investment Corporation, Waseca, Minnesota, and thereby indirectly acquire First National Bank of Waseca, Waseca, Minnesota.

Board of Governors of the Federal Reserve System, September 24, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–24914 Filed 9-27-96; 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 October 15, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Bank Austria AG, Vienna, Austria; to engage *de novo* through its subsidiary, Bank Austria Mortgage Corp., New York, New York, in mortgage banking activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Haviland Bancshares, Inc., Haviland, Kansas; to engage *de novo* directly as Signature Investments, Haviland, Kansas, in securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 24, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–24913 Filed 9-27-96; 8:45 am]

BILLING CODE 6210-01-F

Agency Information Collection Activities: Submission to OMB Under Delegated Authority

Background: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR § 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860)

Final Approval Under OMB Delegated Authority of the Extension, Without Revision, of the Following Reports

1. *Report title*: Report of Broker Carrying Margin Accounts.
Agency form number: FR 2240.
OMB Control number: 7100–0001.
Frequency: annual.
Reporters: Securities brokers and dealers that carry margin accounts.
Annual reporting hours: 246.
Estimated average hours per response: 2.7.
Number of respondents: 91.
Small businesses are affected.
General description of report: This information collection is mandatory (15 U.S.C. § 78q(g)) and is given confidential treatment (5 U.S.C. § 552(b)(4)).
Abstract: In order to fulfill the Board's responsibility to regulate margin credit under the Securities Exchange Act of 1934, the FR 2240 collects certain balance sheet information required from securities brokers and dealers carrying margin accounts.

2. *Report title:* OTC Margin Stock Report.
Agency form number: FR 2048.
OMB Control number: 7100–0004.
Frequency: quarterly.
Reporters: Corporations with over-the-counter stock traded on the NASDAQ SmallCap market.
Annual reporting hours: 75.
Estimated average hours per response: 0.25.
Number of respondents: 75.
Small businesses are not affected.
General description of report: This information collection is voluntary (15 U.S.C. 78g and 78w) and is not considered confidential under the Freedom of Information Act (5 U.S.C. 552).
Abstract: The FR 2048 is used to survey corporations with over-the-counter (OTC) stock traded on the National Association of Securities Dealers Automated Quotations System's (NASDAQ) SmallCap Market. These securities are being considered for initial and continued inclusion on the Board's List of Marginable OTC Stocks published each February, May, August, and November. The OTC List is part of the information the Federal Reserve uses in fulfilling its statutory obligation to regulate margin credit as mandated by the Securities Exchange Act of 1934.

3. *Report title:* Consumer Satisfaction Questionnaire.
Agency form number: FR 1379.
OMB Control number: 7100–0135.
Frequency: On occasion.
Reporters: Individuals.
Annual reporting hours: 8.
Estimated average hours per response: .25.
Number of respondents: 30.
Small businesses are not affected.
General description of report: This information collection is voluntary (15 U.S.C. 57a) and is not generally given confidential treatment, however, some respondents may provide information not specifically solicited on the form which may be exempt from disclosure (5 U.S.C. 552(b)(4), (b)(6), or (b7)) upon specific request from the respondent.
Abstract: The FR 1379 is used to determine whether complainants are satisfied with the way the Federal Reserve System handled their complaints and to solicit suggestions for improving the complaint-handling process. The questionnaire is sent to consumers whose complaints against state member banks were referred by the Board of Governors to the appropriate Federal Reserve Bank for resolution.

4. *Report title:* Application for a Foreign Organization to Become a Bank Holding Company.
Agency form number: FR Y–1f.
OMB control number: 7100–0119.
Frequency: On occasion.
Reporters: Foreign organizations seeking initial entry into the United States through the acquisition of a domestic bank.
Annual reporting hours: 154.
Estimated average hours per response: 77.
Number of respondents: 2.
Small businesses are not affected.
General description of report: This information collection is mandatory for any foreign organization seeking to become a U.S. bank holding company, and is authorized by the Bank Holding Company Act (12 U.S.C. 1842(a) and 1844 (a) through (c)) and by Regulation Y (12 CFR §§ 225.5(a) and 225.11(f)). The FR Y–1f is not confidential unless the applicant specifically requests confidential treatment and the Board approves the request. For the Board to grant confidentiality, the applicant must demonstrate that disclosure of certain information would likely result in substantial harm to the competitive position of the bank holding company, its substitutes, or the bank to be acquired, or that disclosure of personal information would result in clearly unwarranted invasion of personal privacy.
Abstract: The application is filed by any company that is organized under the laws of a foreign country and that is seeking initial entry into the United States via establishment or acquisition of a U.S. subsidiary bank. The application must contain the most recent information available so that the staff can analyze the applicant's current competitive position, its financial condition, and its compliance with relevant statutory factors. While the application collects the minimum amount of information needed, the instructions explicitly state that the applicant may submit any additional information that it wants the Federal Reserve to consider; thus the applicant has latitude to present its best case. No other supervisory information is collected.

Final Approval Under OMB Delegated Authority to Discontinue the Following Reports

1. *Report title:* Survey of Debits to Selected Deposit Accounts.
Agency form number: FR 2573.
OMB control number: 7100–0081.
Frequency: Monthly.
Reporters: Selected commercial banks.
Annual reporting hours: 3,000.
Estimated average hours per response: 1.0.
Number of respondents: 250.
Small businesses are affected.
General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2)) and is given confidential treatment (5 U.S.C. § 552(b)(4)).
Abstract: The report collects the amount of debits (withdrawals during

the month) for three deposit categories, which cover the major types of deposits that money stock holders can use directly or indirectly for transaction purposes: (1) demand deposits of individuals, partnerships, corporations, and of states and political subdivisions; (2) other checkable deposits (ATS, NOW, and telephone and preauthorized transfer accounts); and (3) savings deposits (including money market deposit accounts). The Federal Reserve has used the FR 2573 data, together with deposit balance data obtained in large part from weekly deposits reports, in constructing universe estimates of bank debits and in calculating deposit turnover rates, which are published in the Federal Reserve's monthly statistical release, ''Debits and Deposit Turnover at Commercial Banks (G.6).'' These data have aided in explaining the behavior of the transaction accounts component of the monetary aggregates.

The usefulness of the FR 2573 data in understanding the behavior of the monetary aggregates has diminished in recent years as the distinction between transaction accounts and savings accounts has become increasingly blurred. Further, the emphasis on monetary aggregates as policy targets has decreased. In addition, respondent participation has declined over the last several years. For these reasons, the Federal Reserve will discontinue the survey and the related statistical release effective following the collection of the August 1996 survey and publication of the related statistical data.

2. *Report title:* Quarterly Report of Condition for a New York State Investment Company and Its Domestic Subsidiaries.

Agency form number: FR 2886a.

OMB control number: 7100–0207.

Frequency: quarterly.

Reporters: New York State investment companies

Annual reporting hours: 360.

Estimated average hours per response: 18.

Number of respondents: 5.

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 3105(b)(1)) and is authorized by state law (New York State Banking Law § 513). Data from Schedule M, ''Due to/Due from Related Banking Institutions in the U.S. and in Foreign Countries,'' is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This report collects selected balance sheet items from New York State investment companies chartered under Article XII of New York state banking law that are engaged in banking and that are majority owned by foreign banks. The Federal Reserve uses data from the FR 2886a to construct various banking statistics, including money stock, bank credit aggregates, and nondeposit sources of funds for commercial banks. The New York State Banking Department uses data from the FR 2886a for supervisory purposes.

Over the last few years the number of respondents required to file this report has declined with asset coverage shrinking significantly. Because of the very small number of respondents and the diminished importance that they represent in the construction of the Board's various banking statistics, the Federal Reserve will discontinue the collection of this report effective following the September 30, 1996 reporting date. The New York State Banking Department will continue to collect the FR 2886a on their own behalf for supervisory purposes.

Board of Governors of the Federal Reserve System, September 24, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–24916 Filed 9–27–96; 8:45 am]

BILLING CODE 6210–01–P

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer will hold its Fall 1996 meeting on Monday, October 21, 1996, through Thursday, October 24, 1996, in Salt Lake City, Utah. The meeting sessions will take place from 8:30 a.m. until 5 p.m. on Monday, Tuesday, and Wednesday and from 8:30 a.m. until 10:30 a.m. on Thursday. The sessions will be held at the Quality Inn City Center, 154 West 600 South, Salt Lake City, Utah. The purpose of this meeting is to discuss the Federal Depository Library Program. The meeting is open to the public.

A limited number of hotel rooms have been reserved at the Quality Inn City Center for anyone needing hotel accommodations (telephone: 800–521–9997, 801–521–2930; FAX: 801–355–0733). Please specify the Depository Library Council when you contact the hotel. Room cost per night is $59.

Michael F. DiMario,

Public Printer.

[FR Doc. 96–24969 Filed 9–27–96; 8:45 am]

BILLING CODE 1530–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Commission on Dietary Supplement Labels; Meeting.

AGENCY: Office of Disease Prevention and Health Promotion, HHS.

ACTION: Commission on Dietary Supplement Labels: Notice of Meeting #6.

SUMMARY: The Department of Health and Human Services (HHS) is providing notice of the sixth meeting of the Commission on Dietary Supplement Labels.

DATES: The Commission intends to hold its meeting on October 24, 1996 from 9 a.m. to approximately 12 noon, E.D.T., and October 25, 1996 from 9 a.m. to 12 noon, E.D.T. at the Sheraton City Centre, 1143 New Hampshire Street NW., Washington, DC 20037. The meeting is open to the public; seating is limited.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Ph.D., Executive Director, Commission on Dietary Supplement Labels, Office of Disease Prevention and Health Promotion, Room 738G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC 20201, (202) 690–7102.

SUPPLEMENTARY INFORMATION: Public Law 103–417, Section 12, authorized the establishment of a Commission on Dietary Supplement Labels whose seven members have been appointed by the President. The appointments to the Commission by the President and the establishment of the Commission by the Secretary of Health and Human Services reflect the commitment of the President and the Secretary to the development of a sound and consistent regulatory policy on labeling of dietary supplements.

The Commission is charged with conducting a study and providing recommendations for regulation of label claims and statements for dietary supplements, including the use of supplemental literature in connection with their sale and, in addition, procedures for evaluation of label claims. The Commission is expected to evaluate how best to provide truthful, scientifically valid, and non-misleading information to consumers in order that they may make informed health care choices for themselves and their families. The Commission's study report may include recommendations on legislation, if appropriate and necessary.

The Commission meeting agenda will include receipt and discussion of ad hoc Subcommittee reports and continuation of discussion of key issues related to labeling of dietary supplements that

may be included in the Commission's forthcoming report.

The meeting is open to the public. If you require a sign language interpreter, please call Sandra Saunders (202) 690–7102 by 4:30 p.m. E.D.T. on October 16, 1996.

Dated: September 24, 1996.

Linda D. Meyers,

Acting Deputy Director, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services.

[FR Doc. 96–24973 Filed 9–27–96; 8:45 am]

BILLING CODE 4160–17–M

Food and Drug Administration

[Docket No. 96F–0341]

MacMillan Bloedel, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that MacMillan Bloedel, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of diethylene glycol as a pulp bleaching agent for paper and paperboard intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by October 30, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: 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: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4517) has been filed by MacMillan Bloedel, Ltd., c/o Camplong & Associates, Inc., P.O. Box 238, Schomberg, Ontario L0G 1T0, Canada. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of diethylene glycol as a pulp bleaching agent for paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before October 30, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: September 13, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–24966 Filed 9–27–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting, Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke, Division of Intramural Research on November 11–13, 1996, at the National Institutes of Health, Building 31, Rm. 6C6, 31 Center Drive, Bethesda, Maryland, 20892.

This meeting will be open to the public from 8:15 a.m. to 12:00 p.m. and from 1:30 p.m. to 5:00 p.m. on November 12th, and from 9:00 a.m. to 9:30 a.m. on November 13th, to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 8:00 p.m. to 10:00 p.m. on November 11th, and from 9:30 a.m. until adjournment on November 13th, for the review, discussion and evaluation of individual programs and projects conducted by the NINDS. The programs and discussion includes consideration of personnel qualifications and performances, the competence of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of person a privacy.

The Freedom of Information Coordinator, Mr. John Seachrist, Federal Building, Room 1012, 7550 Wisconsin Avenue, Bethesda, MD 20892, telephone (301) 496–9231 or the Executive Secretary, Dr. Story Landis, Director, Division of Intramural Research, NINDS, Building 36, Room 5A05, National Institutes of Health, Bethesda, MD 20892, telephone (301) 435–2232, will furnish a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: September 24, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–25014 Filed 9–27–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse Special Emphasis Panel meeting:

Name of Committee: Special Emphasis Panel.

Date: October 10, 1996.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20850.

Contact Person: Mary C. Custer, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Purpose Agenda: To evaluate and review grant applications.

This notice is being published less than 15 days prior to the meeting due to the urgent

need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with provisions set forth in secs 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Scientist Development, Research Scientist Development, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institute of Health)

Dated: September 25, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–25015 Filed 9–27–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; 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 on Drug Abuse Initial Review Group.

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Basic Behavioral Science Research Subcommittee.

Date: October 8–10, 1996.

Time: 8:30 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: William C. Grace, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Epidemiology and Prevention Research Subcommittee.

Date: October 8–10, 1996.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Raquel Crider, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: Human Development Research Subcommittee.

Date: October 15–16, 1996.

Time: 8:30 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Molecular, Cellular and Chemical Neurobiology Research Subcommittee.

Date: October 15–17, 1996.

Time: 8:30 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Rita Liu, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: Neuropharmacology Research Subcommittee.

Date: October 15–17, 1996.

Time: 8:30 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Syed Husain, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: Neurophysiology and Neuroanatomy Research Subcommittee.

Date: October 15–17, 1996.

Time: 8:30 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Gamil Debbas, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

The meetings will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: September 25, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–25016 Filed 9–27–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), November 13–15, 1996, National Institutes of Health, Building 5, Room 127, Bethesda, Maryland 20892.

In accordance with the provisions set forth in secs. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 13 from 7:00 p.m. to 10:00 p.m.; November 14 from 8:00 a.m. to 6:00 p.m. and on November 15 from 8:00 a.m. to ajournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and roster of members will be provided, upon request, by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Natcher Building, Room 6AS–37J, Bethesda, Maryland 20892, (301) 594–8892. For any further information and for individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Allen Spiegel, Scientific Review Administrator, Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128, at least two weeks prior to the meeting date.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: September 24, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–25017 Filed 9–27–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Communication Disorders Review Committee.

Date: October 23–25, 1996.

Time: 8 a.m.–5:30 p.m., October 23, 8 a.m.–5:30 p.m., October 24, 8 a.m.–adjournment, October 25.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mary V. Nekola, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 24, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–25018 Filed 9–27–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of Conf. Grant (97–09).

Dates: October 15, 1996.

Time: 1:00 p.m.

Place: National Institute of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).

Contact person: Dr. Yong Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of Conf. Grants (97–04).

Dates: October 16, 1996.

Time: 1:30 p.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).

Contact person: Dr. Yong Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of Conf. Grant (97–10).

Dates: October 16, 1996.

Time: 12:00 noon.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).

Contact person: Dr. Yong Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of Conf. Grant (97–02).

Dates: October 18, 1996.

Time: 8:00 a.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).

Contact person: Dr. Yong Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in 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.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: September 24, 1996.

Paula N. Hayes,

Acting Committee Management Specialist, NIH.

[FR Doc. 96–25019 Filed 9–27–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Division of Extramural Activities; Notice of Closed Meeting

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 meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: October 15–16, 1996.

Time: Beginning October 15, 7 p.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dr. Howard Weinstein, Scientific Review Administrator, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate a grant application.

The meeting 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 meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: September 24, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–25020 Filed 9–27–96; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Synthesis of Medical Opiate Compounds

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in: U.S. Patent No. 4,410,700, issued October 18, 1983 (U.S. Patent Application Serial No. 06/265,469, filed May 20, 1981), entitled ''Preparation of Chiral 1-Benzyl-1,2,3,4-Tetrahydroisoquinolines by Optical Resolution''; U.S. Patent No. 4,521,601, issued June 4, 1985 (U.S. Patent Application Serial No. 06/477,970, filed March 23, 1983), entitled ''Practical Total Synthesis Unnatural Enantiomers of Opium Derived Morphinans''; U.S. Patent No. 4,556,712, issued December 3, 1985 (U.S. Patent Application Serial No. 06/476,830, filed March 18, 1983), entitled ''Preparation and Racemization of Chiral 1-Benzyl-1,2,3,4-Tetrahydroisoquinolines''; U.S. Patent No. 4,613,668, issued September 23, 1986 (U.S. Patent Application Serial No. 06/564,515, filed December 22, 1983), entitled ''Short Total Synthesis of Morphinan Compounds Which Uses Cyclization of a Cycloalkylcarbonyl Compound Selected from Cyclopropylcarbonyl Cyclobutylcarbonyl''; U.S. Patent No. 4,727,146, issued February 23, 1988 (U.S. Patent Application Serial No. 06/

748,854, filed June 26, 1985), entitled ''Synthesis of Chiral 1-Benzyl-1,2,3,4-Hydroisoquinolines by Asymmetric Reduction''; U.S. Patent No. 5,008,449, issued April 16, 1991 (U.S. Patent Application Serial No. 07/318,590, filed March 3, 1989), entitled ''Method of Synthesis of Hydrozy-Substituted-4-Alkoxyphenylacetic Acids''; and U.S. Patent Application Serial No. 07/851,672, filed March 12, 1992, entitled ''Total Synthesis of Northebaine, Normorphine, Noroxymorphone Enantiomers and Derivatives via N-Nor Intermediates''; to Mallinckrodt Chemical, Inc., having a place of business in Chesterfield, Missouri. The patent rights in these inventions have been assigned to the United States of America.

The patents and patent applications claim material compositions and synthetic methods for a class of compounds used as cough suppressants, narcotic analgesics, and potential therapeutic treatments of psychoses, epilepsy, phencyclidine intoxication, and as other yet undiscovered clinical applications. The portfolio of inventions relates to the synthesis of medical opiate compounds that are independent of the natural and sole commercial source of these drugs (i.e., the opium poppy). It also includes the synthesis of the racemic compound for which certain isoforms do not produce narcotic side effects.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Leopold J. Luberecki, Jr., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Box 13, Rockville, MD 20852–3804. Telephone: (301) 496–7735, ext. 223; Facsimile: (301) 402–0220. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before November 29, 1996 will be considered.

Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 9, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–25022 Filed 9–27–96; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Novel Method of O-Demethylation and N-Deprotection of Opioid Compounds

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in: U.S. Patent Application Serial No. 60/018,027, filed May 21, 1996, entitled, ''Novel Method of O-Demethylation of Opium Alkaloids and Derivatives''; and U.S. Patent Application Serial No. 60/020,215, filed June 21, 1996, entitled, ''Novel Method of O-Demethylation and N-Deprotection of Opioid Compounds''; to Mallinckrodt Chemical, Inc., having a place of business in Chesterfield, Missouri. The patent rights in these inventions have been assigned to the United States of America.

The patents and patent applications claim improvements to the synthesis method for synthetic medicinal opiates that produce high yields. O-demethylation and N-deprotection are key steps in the synthesis of opioid compounds. The methods of these inventions accomplish these procedures without the use of toxic or carcinogenic reagents.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 90 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Leopold J. Luberecki, Jr., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Box 13, Rockville, MD 20852–3804. Telephone: (301) 496–7735, ext. 223; Facsimile: (301) 402–0220. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before December 30, 1996 will be considered.

Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 9, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–25023 Filed 9–27–96; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Therapeutic Polyamines

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice is in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.8(a)(1)(I) that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent No. 5,541,230 and a divisional thereto (U.S. Patent Application No. to be assigned) to S'LIL Pharmaceuticals of Madison, Wisconsin.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

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. U.S. Patent No. 5,541,230 is directed towards synthetic polyamines which bind DNA, but do not function as natural polyamines and, indeed, cause almost complete depletion of intracellular stores of these compounds. These compounds have shown great promise in vitro and in vivo against tumors. Additionally, these synthetic polyamines sensitize tumors in conjunction with other conventional chemotherapeutics in vivo.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Allan M. Kiang, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7735 ext. 270; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Only written comments and/or applications for a license which are received by NIH on or before November 29, 1996 will be considered. Comments and objections submitted to this notice will not be made available for public inspections and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 18, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–25021 Filed 9–27–96; 8:45 am]

BILLING CODE 4140–01–M

Notice of Listing of Members of the National Institutes of Health's Senior Executive Service Performance Review Board (PRB)

The National Institutes of Health (NIH) announces the persons who will serve on the National Institutes of Health's Senior Executive Service Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the Federal Register.

The following persons will serve on the NIH Performance Review Board, which oversees the evaluation of performance appraisals of NIH Senior Executive Service (SES) members:

Ruth L. Kirschstein, M.D., Chairperson
Wendy Baldwin, Ph.D.
J. Carl Barrett, Ph.D.
Naomi Churchill, Esq.
William Fitzsimmons
Michael M. Gottesman, M.D.
Anthony L. Itteilag
William Fitzsimmons
Michael M. Gottesman, M.D.
Anthony L. Itteilag
Stephen Katz, M.D., Ph.D.
Claude J. Lenfant, M.D.
Louise Ramm, Ph.D.
Laura Rosenthal
W. Sue Shafer, Ph.D.
Story C. Landis, Ph.D.

For further information about the NIH Performance Review Board, contact the Office of Human Resource Management, Division of Senior Systems, National Institutes of Health, Building 31/B3C12, Bethesda, Maryland 20892, telephone (310) 496–1443 (not a toll-free number).

Dated: September 19, 1996.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 96–25024 Filed 9–27–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Multi-Island Plant Cluster for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the Draft Recovery Plan for the Multi-Island Plant Cluster. There are 12 taxa of plants included in this plan. These 12 taxa are currently found on one or more of the following Hawaiian Islands: Laysan, Necker, Nihoa, Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii.

DATE: Comments on the draft recovery plan must be received on or before December 30, 1996.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Ecoregion Office, 300 Ala Moana Boulevard, room 3108, P.O. Box 50088, Honolulu, Hawaii 96850 (phone 808/541–3441); U.S. Fish and Wildlife Service, Regional Office, Ecological Services, 911 N.E. 11th Ave., Eastside Federal Complex, Portland Oregon 97232–4181 (phone 503/231–6131); the Molokai Public Library, 15 Ala Malama Street, Kaunakakai, Hawaii 96748; Kailua-Kona Public Library, 75–138 Hualalai Road, Kailua-Kona, HI 96740; Hilo Public Library, 300 Waianuenue Avenue, Hilo, HI, 96720; Kauai Regional Library, 4344 Hardy Avenue, Lihue, HI, 96766; and, the Wailuku Public Library, 251 High Street, Wailuku, Maui. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Brooks Harper, Field Supervisor, Ecological Services, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

Individualized responses to comments will not be provided.

The 12 taxa being considered in this recovery plan are: *Adenophorus periens* (pendant kihi fern), *Bonamia menziesii* (no common name (NCN)), *Diellia erecta* (NCN), *Flueggea neowawraea* (mehamehame), *Hibiscus brackenridgei* (ma'o hau hele), *Mariscus pennatiformis* (NCN), *Neraudia sericea* (ma'aloa), *Plantago princeps* (ale), *Sesbania tomentosa* ('ohai), *Solanum incompletum* (thorny popolo), *Spermolepis hawaiiensis* (NCN), and *Vigna o-wahuensis* (Oahu vigna).

These 12 taxa are all Federally listed as endangered and are currently found on one or more of the following Hawaiian Islands: Laysan, Necker, Nihoa, Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii. They are found in a wide range of vegetation communities (grasslands, shrublands, and forests), elevational zones (coastal to subalpine), and moisture regimes (dry to wet). They have been variously affected or are currently threatened by: habitat degradation and/or predation by pigs, goats, deer, and cattle; invasion and competition from naturalized, introduced vegetation; habitat loss from fires; human impacts from recreational activities; insect infestations; and the potential for extinction from stochastic events because of small population size and/or limited distribution.

The objective of this plan is to provide a framework for the recovery of these 12 taxa so that their protection by the Endangered Species Act (ESA) is no longer necessary. Immediate actions necessary for the prevention of extinction of these taxa include fencing for exclusion of ungulates, alien plant control, protection from fire, population and plant community monitoring and management, ex situ propagation, and augmentation of populations, as appropriate. Long-term activities necessary for the perpetuation of these taxa in their natural habitats additionally include public education, maintenance of fenced areas, long-term monitoring and management of populations and communities, and re-establishment of populations within the historic ranges of some taxa. Further research regarding current range, reproduction and reproductive status, pollinators, life history, limiting factors, habitat requirements, and minimum viable population sizes is needed to facilitate appropriate management decisions regarding the long-term perpetuation of each of these taxa.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of these plans.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 23, 1996.

Donald V. Friberg

Acting Regional Director, U.S. Fish and Wildlife Service, Pacific Region.

[FR Doc. 96–24795 Filed 9–27–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[CA–026–1020–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Susanville Resource Advisory Council Susanville California.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management's Susanville Resource Advisory Council will hold a business meeting Friday, October 25, 1996, at the Bureau of Land Management's Alturas Resource Area Office, 708 West 12th Street, Alturas, CA. The meeting begins at 10 a.m. and ends at 4 p.m. Public comments will be taken at 1 p.m. The council will hear an update report on development of standards for healthy rangelands and guidelines for livestock grazing, elect a new chair and vice chair, hear status reports from the BLM's Alturas, Eagle Lake and Surprise Resource Areas, and determine work priorities for the coming year. Summary minutes of the meeting will be maintained in the BLM'—s Eagle Lake Resource Area Office, 2950 Riverside Drive, Susanville, CA, and will be available for public inspection and reproduction within 30 days following the meeting.

Linda D. Hansen,

Eagle Lake Resource Area Manager,

[FR Doc. 96–24941 Filed 9–27–96; 8:45 am]

BILLING CODE 4310–40–P

[AZ–980–0777–52]

Relocation/Change of Address/Office Closure; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On October 29, 1996, the Bureau of Land Management's (BLM) Arizona State Office will move to a new location. This notice provides information regarding that move.

EFFECTIVE DATE: September 30, 1996.

FOR FURTHER INFORMATION, CONTACT: Carol Burger, BLM Arizona State Office (AZ–952), 3707 North 7th Street, Phoenix, Arizona 85014; telephone number (602) 650–0526.

SUPPLEMENTARY INFORMATION: Beginning on October 29, 1996, BLM's Arizona State Office will be moving to a new location. The move will affect the following activities or considerations as follows:

(a) Public Access to Records

During the period of October 21 through November 8, 1996, some of the paper records maintained by the BLM Arizona State Office will be unavailable for public inspection. Our automated records will be unavailable from October 25 thru October 29. The Public Room will be closed on October 28 and October 29 during the actual move.

(b) New Street Address and New Mailing Address

The BLM State Office will be located at 222 North Central, Phoenix, Arizona 85004. Please address all correspondence to the new address beginning on October 30, 1996.

(c) Telephone Numbers

The new telephone number will be (602) 417–9200.

Dated: September 24, 1996.

Margo Fitts,

Acting Deputy State Director, Business and Fiscal Services.

[FR Doc. 96–24942 Filed 9–27–96; 8:45 am]

BILLING CODE 4310–32–P

Minerals Management Service

Alaska OCS Region, Beaufort Sea, Oil and Gas Lease Sale 170; Call for Information and Nominations (Responses Due in 30 Days)

In accordance with the Proposed Final Outer Continental Shelf (OCS) Oil and Gas Leasing Program 1997 to 2002, the Minerals Management Service (MMS), Alaska OCS Region, is proceeding with the Call for Information and Nominations (Call) for Beaufort Sea Sale 170.

Purpose of Call

The purpose of the Call is to gather information for the proposed OSC Oil and Gas Lease Sale 170. This proposed sale, located in the Beaufort Sea Planning Area, is tentatively scheduled for early 1998.

Information and nominations on oil and gas leasing, exploration, and development and production within the Beaufort Sea Planning Area are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act, as amended (43 U.S.C. 1331–1356 (1994), and regulations at 30 CFR Part 256. This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the area for possible leasing will be made at a later date and in compliance with all applicable laws including requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), as amended, and with established departmental procedures.

Description of Area

The area of this Call, located offshore the State of Alaska in the Beaufort Sea Planning Area as identified on the attached map, extends offshore from about 3 miles to approximately 25 miles, in water depths from approximately 25 feet to 120 feet. The area available for nominations and comments consists of 362 whole and partial blocks (about 1.7 million acres). A large-scale map of the Beaufort Sea Planning Area (hereinafter referred to as the Call map) showing boundaries of the area on a block-by-block basis and copies of Official Protraction Diagrams (OPD's) are available from the Records Manager, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska, 99508–4302, telephone (907) 271–6621. The OPD's may be purchased for $2 each.

Instructions on Call

Respondents are requested to nominate blocks within the Call area that they would like considered for inclusion in proposed OCS Lease Sale 170. Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Nominators are asked to submit a list of whole and partial blocks nominated (by OPD and block number) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information.

Nominators also are requested to rank blocks nominated according to priority of interest (e.g., priority 1 (high), 2 (medium), or 3 (low)). Blocks nominated that do not indicate priorities will be considered priority 3. Nominators are encouraged to be specific in indicating blocks by priority. Blanket priorities on large areas are not useful in the analysis of industry interest. The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response.

Comments are sought from all interested parties about particular geologic, environmental, biological, archaeological, or social and economic conditions, conflicts, or other information that might bear upon potential leasing and development in the Call area. Comments also are sought on potential conflicts with approved local coastal management plans (CMP's) that may result from the proposed sale and future OCS oil and gas activities. These comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be expressed in terms of broad areas or restricted to particular blocks of concern. Commenters are requested to list block numbers or outline the subject area on the large-scale Call map.

Nominations and comments must be received no later than 30 days following publication of this document in the Federal Register in envelopes labeled ''Nominations for Proposed Beaufort Sea Lease Sale 170,'' or ''Comments on the Call for Information and Nominations for Proposed Beaufort Sea Lease Sale 170,'' as appropriate. The original Call map with indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska, 99508–4302.

Use of Information From Call

The final Environmental Impact Statement (EIS) for Beaufort Sea Sale 144, MMS 96–0012, May 1996, and the Beaufort Sea Natural Gas and Oil Lease Sale 144 Final Notice of Sale, 61 FR 42682, August 16, 1996, will be used as a foundation for the analysis of potential environmental effects and use conflicts, and for identifying mitigating measures for the Sale 170 area.

Information submitted in response to this Call will be used for several purposes. First, responses, will be used to help identify the areas for potential oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. A third purpose for this Call is to assist in the scoping of the EIS and the development of alternatives to the proposed action for analysis. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore oil and gas activities. Fifth, comments may be used to identify out potential conflicts between offshore oil and gas activities and State's CMP.

Existing Information

An extensive environmental, social, and economic studies program has been underway in this area since 1975. The emphasis has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies may be obtained from the Records Manager, Alaska OCS Region, at the address stated under Description of Area. The reports also may be ordered directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161, or by telephone at (703) 487–4650.

In addition, a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, at the address stated under Instructions on Call or by telephone at (907) 271–6617.

Summary Reports and Indices and technical and geologic reports are available for review at the MMS Alaska OCS Region (see address under Description of Area). Copies of the Alaska OCS Regional Summary Reports also may be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 381 Elden Street, Herndon, Virginia, 20170.

Tentative Schedule

Approximate dates for actions and decision and consultation points in the planning process for Sale 170, Beaufort Sea, are:

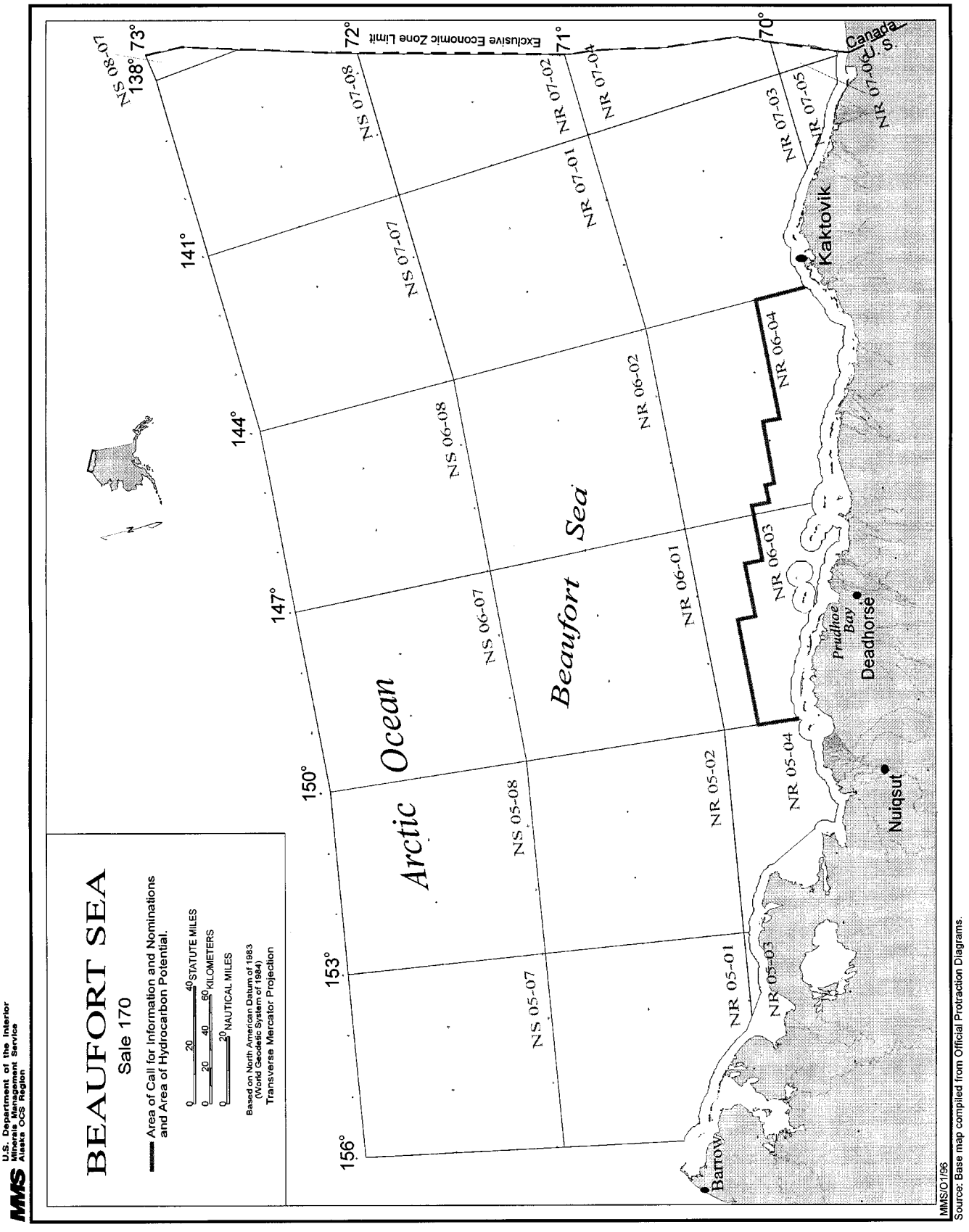
Milestones	Dates
Comments Due on the Call.	October 1996.
Area Identification and Notice of Intent to Prepare an EIS.	November 1996.
Draft EIS Filed with EPA	May 1997.
Hearings on Draft EIS Held.	June 1997.
Comments Due on Draft EIS.	July 1997.
Consistency Determination.	December 1997.
FInal EIS Filed with EPA and Proposed Notice of Sale available.	December 1997.
Governor's Comments Due on Proposed Notice of Sale.	February 1998.
Final Notice of Sale Published.	March 1998.
Sale	April 1998.

Dated: September 24, 1996

Robert E. Brown,

Acting Director, Minerals Management Service.

BILLING CODE 4310–MR–M



[FR Doc. 96–24911 Filed 9–27–96; 8:45 am]

BILLING CODE 4310MR–C

National Park Service

60-Day Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: National Park Service, The Department of Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's (NPS) intention to request an extension for a currently approved information collection used in the Historic Preservation Tax Incentives Program administered by the NPS.

DATES: Comments on this notice must be received by November 29, 1996 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Terry Tesar, Information Collection Clearance Officer, Audit and Accountability Team Office, National Park Service, P.O. Box 37127, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION:

Title: Historic Preservation Certification Application.

OMB Number: 1024–0009.

Expiration Date of Approval: December 31, 1996.

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

Abstract: Section 47 of the Internal Revenue Code requires that the Secretary of the Interior certify to the Secretary of the Treasury upon application by owners of historic properties for Federal tax benefits, (a) the historic character of the property, and (b) that the rehabilitation work is consistent with that historic character. The National Park Service administers the program in partnership with the Internal Revenue Service. The Historic Preservation Certification Application is used by the National Park Service to evaluate the condition and historic significance of buildings undergoing rehabilitation for continued use, and to evaluate whether the rehabilitation work meets the Secretary of the Interior's Standards for Rehabilitation.

Respondents: Individuals or households, businesses or other for-profit entities.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 7,500 hours.

Copies of this information collection can be obtained from Terry Tesar, the Agency Information Collection Clearance Officer, at (202) 523–5092.

Send comments regarding the accuracy of the burden estimate ways to minimize the burden, or any other aspect of this information collection, to:

Charles E. Fisher, III, Acting Chief, Technical Preservation Services Branch, Heritage Preservation Services Program, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127.

All response to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 25, 1996.

Terry N. Tesar,

Information Collection Clearance Officer.

[FR Doc. 96–25032 Filed 9–27–96; 8:45 am]

BILLING CODE 4310–70–P

National Park Service

Final Environmental Impact Statement on the Development Concept Plan for the Brooks River Area, Katmai National Park and Preserve, Alaska

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a final environmental impact statement (EIS) on the development concept plan for the Brooks River Area of Katmai National Park and Preserve.

DATES: A Record of Decision will be made no sooner than October 30, 1996.

ADDRESSES: Public reading copies of the final EIS will be available for review in the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 1849 C Street NW., Room 3424, Washington DC 20240, (telephone 202–208–6843).

Alaska System Support Office, National Park Service, 2525 Gambell Street, Room 404, Anchorage, Alaska 99503–2892, (telephone 907–257–2647).

Superintendent, Katmai National Park and Preserve, 4230 University Drive, Suite 311, Anchorage, Alaska 99613, (telephone 907–271–3751).

Katmai National Park and Preserve, King Salmon, Alaska (telephone 907–246–3305).

A limited number of copies of the statement are available on request from: Bill Pierce, Superintendent, Katmai National Park and Preserve, 4230 University Drive, Suite 311, Anchorage, Alaska 99613, phone (907) 271–3751 or Alaska System Support Office, National Park Service, 2525 Gambell Street, Room 404, Anchorage, Alaska 99503–2892, phone (907) 257–2647.

SUPPLEMENTARY INFORMATION: The development concept plan proposes to reorient management, use and development of the Brooks River Area in Katmai National Park and Preserve to more adequately preserve and interpret the area's critical brown bear habitat and globally significant brown bear viewing opportunities, nationally significant cultural resources and scenic values, and world-class sport fishing opportunities. Major features of the proposal (alternative 5) include removal of all NPS and concessions' facilities north of the river and relocating them about ¾ mile south of the river, away from the prime resource area. The immediate area of Brooks River would become a day use area only; overnight facilities would be above the Beaver Pond Terrace and along the Valley Road. By removing facilities north of the river, the local bear population would experience less disturbance from humans, and incremental impacts on cultural resources would cease. All new structures would be sited to avoid impacts on cultural resources at the Beaver Pond Terrace site. The river would be managed for quality bear viewing, wildlife photography, and sportfishing. Improvements would be made to support these activities, including a lodge and campground. A management support facility would be built along the Valley Road near the new public facilities to provide employee housing that includes bathrooms and cooking facilities for NPS and concession staff and an expanded maintenance area. All facilities would be designed and built to minimize costs as reasonable. Day-use limits would be established at levels somewhat higher than the July 1992 average to allow more people to access the area. Access to the area would be by float plane and boat, and would be east of the Beaver Pond away from critical bear habitat. Partnerships would be emphasized to implement DCP recommendations. Efforts would be made to plan for dispersed visitor use throughout the park.

Alternatives to the proposal include the no-action alternative, alternative 1 (minimum requirements), alternative 2 (the former NPS Proposal in the Draft DCP/EIS for the Beaver Pond Terrace), alternative 3 (Iliuk Moraine Terrace), and alternative 4 (day use only). The no action alternative would continue the status quo visitation and management of the Brooks River Area. Alternative 1 would retain the present Brooks Camp facilities while upgrading existing resource protection programs, add four significant structures north of Brooks

River, and establish day use limits slightly below the 1992 average. Alternative 2 would remove all facilities north of Brooks River and locate a new lodge, campground and support facilities above the Beaver Pond Terrace, about ¾ mile from Brooks River. Brooks River would become a day-use area only, with day-use limits significantly below the July 1992 average. Alternative 3 would remove all facilities north of Brooks River and relocate Brooks Camp on a larger scale to the terrace above Iliuk Moraine, two miles south of Brooks River. Brooks River would become a day use area only. Alternative 4 would remove all facilities north of the river, and no overnight facilities would be available at Brooks River. Brooks River would become a day use area only.

The responsible official for a Record of Decision on the proposed action is the Alaska Field Director, National Park Service, 2525 Gambell Street, Room 401, Anchorage, Alaska 99503 (telephone 907–257–2690).

Robert D. Barbee,

Alaska Field Area Director.

[FR Doc. 96–25031 Filed 9–27–96; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

[FES 96–48]

Southern Nevada Water Authority Treatment and Transmission Facility, Clark County, Nevada

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability on the final environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) and the Southern Nevada Water Authority (SNWA) have prepared a final environmental impact statement (FEIS) on a new water treatment and transmission facility proposed by SNWA. The SNWA proposes to construct and operate a system of regional water supply facilities known as the Treatment and Transmission Facility (TTF). The new TTF would be used in conjunction with the existing Southern Nevada Water System to treat Colorado River water and transmit it to the Las Vegas Valley, Nevada.

ADDRESSES: Copies of the FEIS are available for public review at the following locations:

- Bureau of Reclamation, Lower Colorado Regional Liaison, 1849 C Street NW., Washington, DC 20240, telephone: (202) 208–6269.
- Bureau of Reclamation, Regional Director, Lower Colorado Regional Office, Attn: EIS Lead, LC–2206 Mead Building, P.O. Box 61470, Boulder City, NV 89006–1470, telephone: (702) 293–8519.
- Southern Nevada Water Authority, Attn: EIS Manager, 1850 East Flamingo Road, Suite 234, Las Vegas, NV 89119, telephone: (702) 862–3446.
- Bureau of Land Management, Las Vegas District, Attn: Environmental Coordinator, 4765 Vegas Drive, Las Vegas, NV 89108, telephone: (702) 647–5097.
- National Park Service, Lake Mead Recreation Area, Attn: EIS Coordinator, 601 Nevada Highway, Boulder City, NV 89005, telephone: (702) 239–8935.
- Department of the Army, Corps of Engineers, Attn: EIS Coordinator, 300 Booth St., Reno, NV 89509, telephone: (702) 784–5304.
- Libraries: Copies will also be available for review at public libraries located in Boulder City, Henderson, Las Vegas, and North Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Mr. James Green, LC–2206, Bureau of Reclamation, Lower Colorado Regional Office, Environmental Compliance Group, P.O. Box 61470, Boulder City, NV 89006–1470, telephone: (702) 293–8519.

SUPPLEMENTARY INFORMATION: The FEIS addresses the impacts of a new TTF to withdraw existing State of Nevada allocation of Colorado River water from Lake Mead, treat it, and convey it to the Las Vegas Valley, Nevada. Three critical issues are related to water-facility infrastructure in the Las Vegas Valley: (1) The Valley is dependent on a single water treatment and delivery facility, the existing Southern Nevada Water System (SNWS), for 85 percent of its water supply; (2) the capacity of the existing facilities which deliver Colorado River water, including those of the expanded SNWS, will be insufficient to meet projected peak daily water demands by the year 1999; and (3) the existing water facility infrastructure cannot provide full access to SNWA's Colorado River water entitlement and the entitlements of its purveyor members under the current typical pattern of seasonal water demand. With these considerations in mind, the SNWA conceived the TTF as a supplemental facility to treat and transmit Colorado River water to the Valley.

The proposed TTF would be comprised of three main components: a new untreated water intake; new transmission facilities including belowground pipelines, tunnels, and aboveground booster pumping stations; and a water treatment facility. Six alternatives, including no action, are analyzed in the FEIS. Five action alternatives analyze varying combinations of these main components. The preferred alternative comprises an intake at Saddle Island, use of the existing River Mountains tunnel, and a treatment facility on the western slope of the River Mountains. Additional water transmission and storage facilities would be constructed in Las Vegas Valley. The TTF has been developed as a reliable and demand-responsive system that will supplement and function integrally with the existing SNWS. The TTF would be locally financed, and does not involve any Federal funding for construction, operation or maintenance. The TTF would follow a community endorsed phasing plan under which facilities are constructed only as needed.

Federal actions required for the proposed action would be the issuance of permits, rights-of-way, and modification of existing water delivery/service contracts. These actions would allow the SNWA to construct new facilities on Federal lands adjacent to Lake Mead, withdraw existing State of Nevada Allocation of Colorado River water from Lake Mead and convey it to the Las Vegas Valley.

The draft environmental impact statement (DEIS) was issued on November 8, 1995. Responses to comments received from interested organizations and individuals on the DEIS during the 90-day comment period are addressed in the FEIS. No decision will be made on the proposed action until 30 days after release of the FEIS. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

Dated: September 20, 1996.

William E. Rinne,

Director, Resource Management and Technical Services.

[FR Doc. 96–24993 Filed 9–27–96; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Agencies are required to publish a Notice in the Federal Register notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first Federal Register Notice on this information collection request on July 9, 1996, in 61 FR 36094, at which time a 60-calendar day comment period was announced. This comment period ended on September 7, 1996.

No comments were received in response to this Notice.

This information collection submission has been submitted to OMB for review.

Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before October 30, 1996.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8565.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, N.W., Washington, D.C. 20503, 202/395-5871.

SUMMARY OF FORM UNDER REVIEW:

Type of Request: Renewal of an existing form.

Title: Foreign Shareholder Disclosure Report in Support of an OPIC Application for Financing.

Form Number: OPIC 139.

Frequency of Use: Once per each non-U.S. sponsor per project.

Type of Respondents: Individuals, business, or other institutions.

Standard Industrial Classification Codes: All.

Description of Affected Public: Non-U.S. companies or individuals investing in any project financing by OPIC.

Reporting Hours: Two hours per response.

Number of Responses: 70 per year.

Federal Cost: $2,625.

Authority for Information Collection: Sections 231, and 234 (b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Foreign Shareholder Disclosure Report In Support of an OPIC Application for Financing requests information as required by OPIC's governing legislation. Such information is needed to determine whether a project and its non-U.S. sponsor meet eligibility criteria for OPIC financing, specifically with regard to effects on the U.S. economy.

Dated: September 24, 1996

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 96–24909 Filed 9–27–96; 8:45 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–96–20]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 4, 1996 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–751 (Preliminary) (Open-End Spun Rayon Singles Yarn from Austria)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, my be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: September 25, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–25085 Filed 9–26–96; 12:03 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR § 50.7, please be advised that a proposed Consent Decree was lodged on September 23, 1996, in *United States* v. *Atlantic Refining and Marketing Co., Inc., and Sun Co., Inc., (R&M)*, C.A. No. 94–5482, with the United States District Court for the Eastern District of Pennsylvania (''District Court''). On the same date, the United States withdrew a proposed consent decree for this case which had been lodged with the District Court on September 22, 1994. *See* Notice of Lodging, 59 FR 48640.

The proposed consent decree addresses alleged violations of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, which occurred at the Philadelphia, Pennsylvania oil refinery owned by Atlantic Refining and operated by Sun Co., Inc., R&M. Both entities are subsidiaries of Sun Company, Inc. Specifically, the defendants allegedly violated several parameters of the National Pollutant Discharge Elimination System (''NPDES'') permit for the Philadelphia refinery. The parameters allegedly violated include those for total suspended solids, oil and grease, total chromium, hexavelant chromium, biochemical oxygen demand, phenolics, ammonia (as nitrogen), zinc, and pH. The violations included eleven bypasses of untreated water to the Schuylkill River.

The proposed consent decree requires defendants to undertake extensive injunctive relief to ensure compliance with the NPDES permit, to implement two supplemental environmental projects (''SEPs''), and to pay a civil penalty of $600,000. The injunctive relief provisions of the proposed decree include upgrading the refinery's wastewater treatment plant, stormwater conveyance, and operating and maintenance practices. The proposed consent decree also imposes substantial stipulated penalties in the event of bypasses, violations of effluent limitations, violations of monitoring, sampling and reporting requirements, and delays in meeting the compliance schedule for the injunctive requirements of the Decree. The SEPs will include (1)

The rehabilitation of a rare freshwater tidal wetland in the Schuylkill River (across the river from defendants' Philadelphia oil refinery) and (2) the purchase of a hazardous materials response and command vehicle to be housed in the vicinity of defendants' refinery and used for emergency response by the City of Philadelphia. It is anticipated that the SEPs will cost defendants in excess of $700,000 to complete.

Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Atlantic Refining and Marketing Co., et al.,* DOJ Ref. #90–5–1–1–5056. The proposed consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street, 13th Floor, Suite 1300, Philadelphia, Pennsylvania 19106 and the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. The proposed decree contains 40 pages, without attachments. The attachments constitute an additional 109 pages. To obtain a copy of the decree without attachments, please enclose a check in the amount of $8.00 (25 cents per page reproduction costs). To obtain the decree including the attachments, please enclose a check for $35.25. Please make the check payable to the Consent Decree Library, and refer to the case by its title and DOJ Ref. #90–5–1–1–5056.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–25029 Filed 9–27–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree

Notice is hereby given that two proposed Consent Decrees in *United States* v. *Sanitary District of Hammond, et al.,* Case No. 2:93 CV 225 JM, were lodged with the United States District Court for the Northern District of Indiana, on September 17, 1996. One Consent Decree resolves claims of the United States and the State of Indiana against Cerestar USA, Inc. (formerly American Maize-Products Company), Ferro Corporation (Keil Chemical Division), and Lever Brothers Company. The United States' Compliant alleged that the three defendants violated the Clean Water Act, 33 U.S.C. § 1251 et seq., and the Rivers and Harbors Act, 33 U.S.C. § 403 and 407. The Consent Decree requires each of the three defendants to achieve and maintain compliance with the Clean Water Act and to pay a civil penalty of $200,000 each to the United States, and the three defendants together to pay a total of $4.7 million to a trust fund to be used for remediation and restoration of the Grand Calumet River. The proposed Consent Decree includes covenants not to sue from the United States pursuant to Sections 309 and 311 of the Clean Water Act, 33 U.S.C. §§ 1319 and 1321, the Rivers and Harbors Act, 33 U.S.C. § 401 *et seq.*; Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9606 and 9607; Oil Pollution Act Section 1002(b)(2), 33 U.S.C. § 2702(B)((2); and Section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973.

The second Consent Decree resolves claims of the United States and the State of Indiana in the above captioned matter against Tenneco Packaging (formerly Packaging Corporation of America). The United States' Complaint alleged that Tenneco Packaging violated the Clean Water Act, 33 U.S.C. § 1251 et seq. The Consent Decree requires Tenneco Packaging to achieve and maintain compliance with the Clean Water Act, undertake measures to reduce water usage at its facility in Griffith, Indiana, pay a civil penalty of $200,000 to the United States, and a civil penalty of $50,000 to the State of Indiana.

The Department of Justice will receive comments relating to the proposed Consent Decrees for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *Sanitary District of Hammond, et al.,* D.J. Ref. 90–5–1–1–3308A. Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA, regarding the Consent Decree involving Cerestar USA, Inc., Ferro Corporation, and Lever Brothers Company.

The proposed Consent Decrees may be examined at the office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and at the Consent Decree Library, 1120 G Street, N.W., 4th floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $12.00 for the Consent Decree involving Cerestar USA, Inc., Lever Brothers Company and Ferro Corporation, and $6.75 for the Consent Decree concerning Tenneco Packaging (25 cents per page reproduction costs). Checks should be made payable to the Consent Decree Library. When requesting a copy, please refer to *United States* v. *Sanitary District of Hammond, et al.,* D.J. Ref. 90–5–1–1–3308A, and specify which decree you are requesting.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–25028 Filed 9–27–96; 8:45 am]

BILLING CODE 4410–01–M

LIBRARY OF CONGRESS

[Docket No. 96–3]

Notice of Competition and Request for Applications

AGENCY: Library of Congress.

ACTION: Notice of competition.

SUMMARY: This Notice of Competition announces that the Library of Congress, with a gift from Ameritech, is sponsoring an open competition to enable United States public, research, and academic libraries, museums, historical societies and archival institutions (except Federal institutions) to create digital collections of primary resource material for distribution on the Internet. In the 1996–97 competition, applications will be limited to collections of textual and graphic materials that illuminate the period 1850–1920 and that complement and enhance the American Memory collections already mounted in the National Digital Library.

DATES: Applications must be postmarked by November 1, 1996.

ADDRESSES: Applications should be submitted as follows: If sent by mail: Library of Congress, Scholarly Programs Office, Washington DC 20540–4860. If delivered by hand: Library of Congress Scholarly Programs Office, James Madison Memorial Building, Room LM 225 M, First and Independence Avenue, S.E., Washington, DC 20540–4860.

FOR FURTHER INFORMATION CONTACT: Barbara A. Paulson. Tel: (202) 707–1087. Fax: (202) 707–6336. E-mail: bpau@loc.gov. Http://lcweb2.loc.gov/ammem/award/

SUPPLEMENTARY INFORMATION: The National Digital Library is conceived as a distributed collection of converted

library materials and digital originals to which many American institutions will contribute. The Library of Congress' contribution to this World Wide Web-based virtual library is called American Memory and is created by the Library's National Digital Library Program.

Notice of Competition and Request for Applications

Repositories in the United States with collections of primary resource material that are significant for education and research in United States history and culture are encouraged to apply to the Library of Congress/Ameritech National Digital Library competition. Awards will range from $50,000 to $75,000 for projects that can be accomplished in twelve to eighteen months. Each award will result in a cooperative agreement with the Library of Congress based upon the representations in the applications. The intention of the competition is to solicit applications from a variety of institutions, large and small, public and private. In the final selection among meritorious projects some consideration will be given to the type and size of institution and its geographical location. The Library of Congress will acknowledge the receipt of each application no later than December 1, 1996.

The principal criteria will be:

- The historical significance of the collection's content, as well as its breadth of interest and utility to students and the general public.
- The availability and usability of aids to intellectual access.
- The technical and administrative viability of the project's plan of work.

Applications will be evaluated in a three-stage process. They will first be reviewed for the historical significance of the collection's content, as well as its breadth of interest and utility to students and the general public. The second stage of review will be directed to the bibliographic, technical, and administrative viability of the project's plan of work. Evaluators for these two phases of the competition will be convened by the Division of Preservation and Access of the National Endowment for the Humanities. There will be a final panel convened in the third stage of the review by Dr. Deanna Marcum, which will evaluate the most highly recommended projects and make a final selection.

While the Library of Congress is aware that a number of critical activities are necessary to ready a collection for digitization and to ensure the quality and future maintenance of digital files, in this competition the award may be used only for the process of digitization. The Library has designed the competition to provide an impetus to projects that will enhance the collections of a distributed National Digital Library, while realizing that there will be a substantial contribution on the part of institutions that receive awards. Detailed Guidelines and Application Instructions are available, upon request, from the contact person listed above.

Dated: September 23, 1996.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 96–24879 Filed 9–27–96; 8:45 am]

BILLING CODE 1410–04–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[96–115]

NASA Advisory Council; Life and Microgravity Sciences and Applications Advisory Committee; Life and Biomedical Sciences and Applications Advisory Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting Change.

Federal Register Citation of Previous Announcement: 61 FR 47773, Notice Number 96–108, September 10, 1996.

Previously Announced Dates and Addresses of Meeting: Wednesday, September 25, 1996, 8:30 a.m. to 5:30 p.m.; National Aeronautics and Space Administration Headquarters, 300 E Street, SW., MIC 3 A & B, Washington, DC 20546.

Changes in the Meeting: The meeting will be closed to the public on Wednesday, September 25, 1996, 1:00 p.m. to 2:00 p.m. in accordance with 5 U.S.C. 552b (c)(6), to allow for a discussion on Committee membership. The remainder of the meeting will be open to the public up to the seating capacity of the room.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald White, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2530.

Dated: September 24, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–24988 Filed 9–27–96; 8:45 am]

BILLING CODE 7510–01–M

[96–116]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that The Institute for Research, Inc., of 8330 Westglen Drive, Houston, Texas 77063, has requested a partially exclusive license to practice the invention disclosed in NASA Case No. MSC–22489–1, entitled ''Microcapsules and Methods for Making,'' for which a U.S. Patent Application was filed on December 2, 1994, and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. James M. Cate, Patent Attorney, Johnson Space Center.

DATES: Responses to this notice must be received by November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Cate, Patent Attorney, Johnson Space Center, Mail Code HA, Houston, TX 77058–3696; telephone (713) 483–1001.

Dated: September 23, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–24870 Filed 9–27–96; 8:45 am]

BILLING CODE 7510–01–M

[NOTICE 96–117]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Scientific Instruments, Inc. of West Palm Beach, Florida has applied for an exclusive license to practice the invention described and claimed in a pending U.S. Patent, entitled ''Flame Director,'' KSC–11775, which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license to Scientific Instruments, Inc. should be sent to Beth Vrioni, John F. Kennedy Space Center, Mail Code: DE–TPO, Kennedy Space Center, FL 32899.

DATES: Responses to this Notice must be received on or before November 29, 1996. For further information contact: Beth Vrioni at (407) 867–2544.

Dated: September 20, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–24871 Filed 9–27–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on October 17–18 (Universal A Room) and October 19 (Somerset Room), 1996, at the Royal Sonesta Hotel, 5 Cambridge Parkway, Cambridge, Massachusetts.

The entire meeting will be open to public attendance with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Thursday, October 17, 1996—8:30 a.m. until the conclusion of business
Friday, October 18, 1996—8:30 a.m. until the conclusion of business
Saturday, October 19, 1996—8:30 a.m. until 12:00 Noon

The Subcommittee will discuss issues associated with the risk-informed, performance-based regulatory approach, requirements for defense-in-depth, use of PRA in the regulatory process, annual ACRS report to Congress on the NRC Safety Research Program, effectiveness of Committee process in dealing with its activities, rebaselining of Committee activities for FY 1997, and other activities related to the conduct of ACRS business. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. John T. Larkins (telephone 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: September 24, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–24970 Filed 9–27–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

DATE: Weeks of September 23, 30, October 7, 14, and 21, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Wednesday of September 23

There are no meetings scheduled for the Week of September 23.

Week of September 30—Tentative

Wednesday, October 2

11:00 a.m. Affirmation Session (Public Meeting) (tentative)

a. Final Amendments to 10 CFR Parts 20 and 35 on Criteria for the Release of Individuals Administered Radioactive Material.

b. Amendments to 10 CFR Parts 50, 52, and 100, and Issuance of a New Appendix S to Part 50.

c. Amendments to 10 CFR Parts 60 on Disposal of High-Level Radioactive Wastes in Geologic Repository Operations Area—Final Rulemaking.

d. Final Rulemaking—Revision to 10 CFR Part 34, Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations and Revision to the NRC Enforcement Policy.

e. Louisiana Energy Services (Clairborne Enrichment Center); Atomic Safety and Licensing Board Partial Initial Decision (Resolving Contentions H, L, and M), LBP–96–7.

Week of October 7—Tentative

Monday, October 7

2:00 p.m., Briefing on Site Decommissioning Management Plan (SDMP), (Public Meeting), (Contact: Mike Webber, 301–415–7297).

Wednesday, October 9

11:30 a.m., Affirmation Session (Public Meeting), (if needed).

Week of October 14—Tentative

Tuesday, October 15

1:00 p.m., Briefing by Executive Branch (CLOSED—Ex. 1).

Wednesday, October 16

9:00 a.m., Briefing on Containment Degradation (PUBLIC MEETING), (Contact: Gary Holahan, 301–415–2884).

2:00 p.m., Briefing PRA Implementation Plan (PUBLIC MEETING), (Contact: Gary Holahan, 301–415–2884).

3:30 p.m., Affirmation Session (PUBLIC MEETING), (if needed).

Friday, October 18

9:00 a.m., Briefing on Integrated Safety Assessment Team Inspection (ISAT) at Maine Yankee (PUBLIC MEETING), (Contact: Ed Jordan, 301–415–7472.

Week of October 21

There are no meetings scheduled for the Week of October 21.

*The Schedule for Commission Meetings is Subject to Change on Short Notice to Verify the Status of Meetings Call (Recording)—(301) 415–1292. Contact Person for More Information: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

http:/www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers: if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: September 25, 1996

William M. Hill, Jr.

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–25069 Filed 9–26–96; 11:24 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Approval:

Rule 10b–18, SEC File No. 270–416, OMB Control No. 3235—new

Rule 15c1–5, SEC File No. 270–422, OMB Control No. 3235—new

Rule 15c1–6, SEC File No. 270–423, OMB Control No. 3235—new

Rule 17Ad–3(b), SEC File No. 270–424, OMB Control No. 3235—new

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for approval on the following:

Rule 10b–18 under the Securities Exchange Act of 1934 (''Exchange Act'') provides that an issuer or any affiliated purchaser of an issuer will not incur liability under Section 9(a)(2) of the Exchange Act, or Rule 10b–5 under the Exchange Act, if its purchases of the issuer's common stock are effected in compliance with the manner, timing, price, and volume limitations of the rule.

The rule implicitly requires an issuer or any affiliated purchaser seeking to avail itself of the safe harbor to collect information regarding the manner, time, price, and volume of its purchases of the issuer's common stock, on a transaction by transaction basis, in order to verify compliance with the rule's safe harbor conditions. Each year there are approximately 820 share repurchase programs conducted in accordance with Rule 10b–18.

For each such repurchase program, an average of approximately 8 hours is spent collecting the requisite information. Thus, the total compliance burden per year is approximately 6,560 burden hours.

Rule 15c1–5 requires that broker-dealers, who are under the control of the issuer of any security, shall disclose, in writing, the existence of such control to customers before entering into any contract for the purchase or sale of such security. The information required by the rule is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

For Rule 15c1–5 there are approximately 425 respondents (5% of the approximately 8500 registered broker-dealers), each response takes approximately 10 hours to complete for an aggregate total of 4,250 burden hours.

Rule 15c1–6 requires that broker-dealers, who are participating in the primary or secondary distribution of a security, shall disclose their interests in the distribution, in writing, at or before the completion of any transaction when entering into a contract for the purchase or sale of such security. The information required by the rule is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

For Rule 15c1–6 there are approximately 850 respondents (10% of the registered broker-dealers), each response takes approximately 10 hours to complete for an aggregate total of 8,500 hours to comply with this rule.

Rule 17Ad–3(b) requires registered transfer agents, which for each of two consecutive months fails to turn around at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) or to process at least 75% of all items in accordance with the requirements of Rule 17Ad–2(b) to send to the chief executive officer of each issuer for which such registered transfer agents acts a copy of the written notice required under Rule 17Ad–2 (c), (d), and (h). The issuer may use the information contained in the notices in several ways: (1) To provide an early warning to the issuer of the transfer agent's non-compliance with the Commission's minimum performance standards regarding registered transfer agents, and (2) to assure that issuers are aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's securities. If the issuer does not receive notice of a registered transfer agent's failure to comply with the Commission's minimum performance standards then the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. The Commission estimates that the annual cost to respondents is minimal. Pursuant to Rule 17Ad–3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad–2 will only be required to send a copy of that notice to issuers for which it acts when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items. The Commission estimates that of the 8 transfer agents that file the Notice of Non-Compliance pursuant to Rule 17Ad–2, only 2 transfer agents will meet the requirements of Rule 17Ad–3(b). If a transfer agent fails to meet the minimum requirements under 17Ad–3(b), such transfer agent is simply sending a copy of a form that had already been produced for the Commission. The Commission estimates a cost of approximately $30.00 for each half hour; therefore, each year transfer agents will spend approximately 2 hours and $120 complying with the provisions of the rule.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 23, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24991 Filed 9–27–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37714; File No. SR–NYSE–96–20]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Retroactive Reduction of the Odd-Lot Equity Transaction Charges and the Specialist Odd-Lot Charge

On July 23, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to retroactively reduce its odd-lot equity transaction charges and its specialist odd-lot charge.

The proposed rule change was published for comment in the Federal Register on August 6, 1996.[3] No comments were received on the proposal. This order approves the proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 37499 (July 30, 1996), 61 FR 40870.

The proposed amendment would make retroactive, from January 1, 1996, the reduced fee schedule for Odd-Lot Equity Transaction Charges and the Specialist Odd-Lot Charge that was published by the commission on July 12, 1996.[4] In that proposal, the NYSE incorporated odd-lot orders into its ''no charge'' policy for SuperDot equity public agency transactions, but excluded odd-lot orders of nonmember competing market makers from this policy. In addition, the NYSE lowered the Specialist Odd-Lot Charge from $0.004 per share to $0.00135 per share.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(4),[5] Section 6(b)(5),[6] and Section 6(b)(8).[7]

The Commission notes that the effect of the current proposal is to retroactively apply, from January 1, 1996, a fee schedule that has been in place since June 13, 1996.[8] Implementation of the fee will result in a rebate of fees to certain NYSE members. No additional fees will be collected as a result of this proposal. The Commission believes that rebating the covered charges in the manner provided is consistent with the Commission's findings and analysis articulated in the order approving a NYSE proposal to exclude orders of nonmember competing market makers from its ''no charge'' policy for orders of 100 to 2,099 shares.[9]

In addition, the Commission believes that rebating the Specialist Odd-Lot Charge reduction is consistent with the Act because it will infuse capital into these specialist firms. This capital, in turn, could be used for increasing the depth and liquidity of the market.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–96–20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24992 Filed 9–27–96; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* Securities Exchange Act Release No. 37430 (July 12, 1996), 61 FR 37784 (publishing the notice and immediate effectiveness of File No. SR–NYSE–96–14).

[5] 15 U.S.C. 78f(b)(4) (requiring, in short, that an exchange's rules provide for the equitable allocation of reasonable fees).

[6] 15 U.S.C. 78f(b)(5) (requiring, in pertinent part, an exchange's rules be designed to promote just an equitable principles of trade, perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers).

[7] 15 U.S.C. 78f(b)(8) (requiring the rules of an exchange not to impose unnecessary burdens on competition).

[8] *See* Securities Exchange Act Release No. 37430 (July 12, 1996), 61 FR 37784 (publishing the notice and immediate effectiveness of File No. SR–NYSE–96–14). The Commission notes that it did not receive any comment letters concerning this fee change.

[9] *See* Securities Exchange Act Release No. 37273 (June 4, 1996), 61 FR 29438 (approving File No. SR–NYSE–95–47). Hence, the Commission's views and conclusions contained in Securities Exchange Act Release No. 37273 are incorporated by reference into this order.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2901]

Arizona (And Contiguous County in California); Declaration of Disaster Loan Area

Maricopa and Yuma Counties and the contiguous counties of Gila, La Paz, Pima, Pinal, and Yavapai in the State of Arizona, and Imperial County in the State of California constitute a disaster area as a result of damages caused by monsoon rain and storm activity which occurred on August 14 and 15, 1996. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 21, 1996 and for economic injury until the close of business on June 20, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, 1825 Bell Street, Suite 208, Sacramento, CA 95825 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
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 290111 for Arizona and 290211 for California. For economic injury the numbers are 919200 for Arizona and 919300 for California.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 20, 1996.

Philip Lader,

Administrator.

[FR Doc. 96–25008 Filed 9–27–96; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Renewal of Treatment on Government Procurement of Products From Countries Designated Under the Caribbean Basin Economic Recovery Act

Under the authority delegated to me by the President in section 1–201 of Executive Order 12269 of December 31, 1980, I hearby direct that products of countries listed below, designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et. Seq.), shall continue to be treated as eligible products for purposes of section 1–101 of Executive Order 12260 until September 30, 1997. That the products of Panama shall continue to be treated as eligible products for purposes of section 1–101 of Executive order 12260 until September 30, 1998. Such treatment shall not apply to products originating in these countries that are excluded from duty free treatment under 19 U.S.C. 2703(b). Subsequent renewal of this treatment beyond September 30, 1997, will be subject to beneficiaries' support for the United States' WTO Singapore Ministerial initiative on an interim agreement on government procurement and efforts they make to accede to the GPA or to support continuing multilateral negotiations in the WTO in the future. Panama will be granted a two-year renewal in recognition of its commitment to accede to the GPA in its WTO protocol of accession. Countries making significant efforts to comply with these conditions will considered for future multiple-year renewals of preferential procurement status.

Charlene Barshefsky,

Acting United States Trade Representative.

List of Countries Designated as Beneficiary Countries for Purposes of the Caribbean Basin Economic Recovery Act (CBERA)

Antigua and Barbuda
Aruba

Bahamas, The
Barbados
Belize
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Nicaragua
Panama
Saint Lucia
Saint Vincent and the Grenadines
Trinidad and Tobago
Montserrat
Netherland Antilles
Saint Kitts-Nevis
Virgin Islands, British

[FR Doc. 96–25010 Filed 9–27–96; 8:45 am]

BILLING CODE 3190–01–M

1996–97 Allocation of the Tariff-rate Quotas for Raw and Refined Sugar

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the allocation among supplying countries and customs areas for the period that begins October 1, 1996 and ends September 30, 1997, of the in-quota quantity of the tariff-rate quotas for imported raw cane and refined sugar.

EFFECTIVE DATE: October 1, 1996.

ADDRESSES: Inquiries may be mailed or delivered to Audrae Erickson, Senior Economist, Office of Agricultural Affairs (Room 421), Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Audrae Erickson, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains tariff-rate quotas for imports of raw cane and refined sugar. For the period October 1, 1996-September 30, 1997, the Secretary of Agriculture has initially established the in-quota quantity of the raw cane sugar tariff-rate quota at 1,700,000 metric tons, raw value (1,873,929 short tons) and has established the in-quota quantity of the refined sugar tariff-rate quota at 47,000 metric tons, raw value (51,808 short tons), of which the Secretary has reserved 1,656 metric tons for speciality sugars. The Secretary of Agriculture has also proved for potential increases in the amount of raw cane sugar made available under the tariff-rate quota based on a determination by the Secretary of a certain stocks-to-use ratio for sugar. In the event of such an increase, USTR will provide notice of any allocation of that amount.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601 (d)(3) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under paragraph (3) of Presidential Proclamation No. 6763 (60 FR 1007).

Raw Cane Sugar Allocation

Accordingly, USTR is allocating the 1,700,000 metric tons for raw cane sugar currently available to the following countries or areas in metric tons, raw value:

Country	FY 1997 allocation
Argentina	69,774
Australia	134,681
Barbados	11,359
Belize	17,849
Bolivia	12,981
Brazil	235,286
Columbia	38,944
Congo	7,258
Cote d'Ivoire	7,258
Costa Rica	24,340
Dominican Republic	285,588
Ecuador	17,849
El Salvador	42,189
Fiji	14,604
Gabon	7,258
Guatemala	77,888
Guyana	19,472
Haiti	7,258
Honduras	16,227
India	12,981
Jamaica	17,849
Madagascar	7,258
Malawi	16,227
Mauritius	19,472
Mexico	25,000
Mozambique	21,095
Nicaragua	34,076
Panama	47,057
Papua New Guinea	7,258
Paraguay	7,258
Peru	66,529
Philippines	219,059
South Africa	37,321
St. Kitts & Nevis	7,258
Swaziland	25,963
Taiwan	19,472
Thailand	22,717
Trinidad-Tobago	11,359
Uruguay	7,258
Zimbabwe	19,472
Total	1,700,000

This allocation includes the following minimum-quota countries: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Papua New Guinea, Paraguary, St. Kitts & Nevis, and Uruguay.

The 25,000 metric ton allocation to Mexico is subject to the condition that the total imports of raw and refined sugar from Mexico, combined, is not to exceed 25,000 metric tons, raw values. Furthermore, each allocation to a country that is a net importer of sugar is conditioned on compliance with the requirements of section 902(c)(1) of the Food Security Act of 1985 (7 U.S.C. 1446g note).

Refined Sugar Allocation

With respect to the in-quota quantity of the refined sugar tariff-rate quota, USTR is allocating 25,000 metric tons to Mexico to fulfill obligations pursuant to the North American Free Trade Agreement (NAFTA). This allocation is subject to the condition that the total imports of raw and refined sugar from Mexico, combined, is not to exceed 25,000 metric tons raw value. Under the NAFTA, the United States is to provide total access for raw and refined sugar from Mexico of 25,00 metric tons, raw value, for this quota period because the United States and Mexico have jointly determined that Mexico is projected to be a net surplus producer of at least 25,000 metric tons, raw value, of sugar for the 1996–7 marketing year.

USTR is not allocating among supplying countries or customs areas the remainder of the in-quota quantity of the refined sugar tariff-rate quota, including the amount reserved for specialty sugars, for the period October 1, 1996 through September 30, 1997.

Charlene Barshefsky,

Acting United States Trade Representative.

[FR Doc. 96–25011 Filed 9–27–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Hardy County, West Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed Moorefield Bypass project in Hardy County, West Virginia.

FOR FURTHER INFORMATION CONTACT:

David A. Leighow, Division Environmental Coordinator, Federal Highway Administration, 550 Eagan Street, Suite 300, Charleston, West Virginia 25301, Telephone (304) 347–5268; or, Mr. Ben L. Hark, West Virginia Department of Transportation, Division of Highways, Building 5, Room A–464, 1900 Kanawha Boulevard East, Charleston, West Virginia 25305–0430, Telephone (304) 558–2885.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the West Virginia Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to construct an approximately 3-mile bypass with partially controlled access on US 220 around Moorefield, Hardy County, West Virginia. The Moorefield Bypass is proposed to relieve traffic congestion associated with heavily industrialized areas within and surrounding the downtown area of Moorefield.

Alternatives under consideration include: (1) The No-Build Alternative, which consists of taking no action; and (2) the Build Alternatives, which include improving existing roadways and the construction of a bypass with partially controlled access on various new locations.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this project. Public meetings will be held in the study area prior to the public hearings. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: September 19, 1996.

David A. Leighow,

Environmental Coordinator Charleston, West Virginia.

[FR Doc. 96–24878 Filed 9–27–96; 8:45 am]

BILLING CODE 4910–22–M

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Zuckert, Scoutt & Rasenberger, L.L.P. (The Texas Mexican Railway Company) for permission to use certain data from the Board's 1992 through 1995 Carload Waybill Samples. A copy of the request (WB500 - 9/18/96) may be obtained from the Office of Economics, Environmental Analysis and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Secretary.

[FR Doc. 96–24987 Filed 9–27–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Liquors and Articles From Puerto Rico or the Virgin Islands.

DATES: Written comments should be received on or before November 29, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tami Light, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Liquors and Articles from Puerto Rico or the Virgin Islands.

OMB Number: 1512–0494.

Recordkeeping Requirement ID Number: ATF REC 5530/3.

Abstract: This information collection applies to persons bringing nonbeverage products into the United States from Puerto Rico and the Virgin Islands. Recordkeeping requirements are necessary for the verification of claims for drawback of distilled spirits excise taxes paid on such products. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 120.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing this information collection.

Dated: September 24, 1996
John W. Magaw
Director
[FR Doc. 96–24951 Filed 9–27–96; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Alcohol, Tobacco and Firearms Tax Returns, Claims and Related Documents.

DATES: Written comments should be received on or before November 29, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Tax Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Alcohol, Tobacco and Firearms Tax Returns, Claims and Related Documents.

OMB Number: 1512–0492.

Recordkeeping Requirement ID Number: ATF REC 5000/24.

Abstract: ATF is responsible for the collection of excise taxes on distilled spirits, wine, beer, cigars, cigarettes, chewing tobacco, snuff, cigarette papers, tubes and pipe tobacco. Alcohol and tobacco excise taxes plus alcohol and tobacco special occupational taxes are required to be collected on the basis of a return. 26 U.S.C. 5555 authorizes the Secretary to prescribe the regulations requiring every person liable for tax to prepare any records, statements or returns as necessary to protect the revenue. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 506,189.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1 hour.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: September 24, 1996.
John W. Magaw,
Director.
[FR Doc. 96–24952 Filed 9–27–96; 8:45 am]
BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Wholesale Dealers Applications, Letterheads and Notices Relating to Operations (Variations in Format or Preparation of Records).

DATES: Written comments should be received on or before November 29, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to David Brokaw, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Wholesale Dealers Applications, Letterheads, and Notices Relating to Operations (Variations in Format or Preparation of Records).

OMB Number: 1512–0357

Recordkeeping Requirement ID Number: ATF REC 5170/6.

Abstract: This recordkeeping requirement pertains only to those wholesale liquor and beer dealers submitting applications for a variance from the regulations dealing with preparation, format, type, or place of retention of records of receipt or disposition for alcoholic beverages. The record retention requirement for this information collection is 6 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,029.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 515.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information

regarding any monetary expenses you may incur while completing this collection.

Dated: September 24, 1996.

John W. Magaw

Director.

[FR Doc. 96–24953 Filed 9–27–96; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application to Establish and Operate Wine Premises and Wine Bond.

DATES: Written comments should be received on or before November 29, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tom Busey, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8290.

SUPPLEMENTARY INFORMATION:

Title: Application to Establish and Operate Wine Premises and Wine Bond.

OMB Number: 1512–0058.

Form Number: ATF F 5120.25 and ATF F 5120.36.

Abstract: ATF F 5120.25 is used to establish the qualifications of an applicant for a wine premises. The applicant certifies the intention to produce and/or store a specified amount of wine and take certain precautions to protect it from unauthorized use. ATF F 5120.36 is used by the proprietor and a surety company as a contract to ensure the payment of the wine excise tax.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1720.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 810.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing these forms.

Dated: September 24, 1996.

John W. Magaw,

Director.

[FR Doc. 96–24954 Filed 9–27–96; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Airlines Withdrawing Stock From Customs Custody.

DATES: Written comments should be received on or before November 29, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Jim Ficaretta, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Arlines Withdrawing Stock From Customs Custody.

OMB Number: 1512–0384.

Recordkeeping Requirement ID Number: ATF REC 5620/2.

Abstract: Airlines may withdraw tax exempt distilled spirits, wine, and beer from Customs custody for foreign flights. Required record shows amount of spirits and wine withdrawn and flight identification, also shows Customs certification. Enables ATF to vertify that tax is not due, allows spirits and wines to be traced and maintains accountability. The record retention period for this information collection is 2 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 25.

Estimated Time Per Respondent: 100 annually.

Estimated Total Annual Burden Hours: 2500.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or

other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing this information collection.

Dated: September 24, 1996.

John W. Magaw,

Director.

[FR Doc. 96–24955 Filed 9–27–96; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.

DATES: Written comments should be received on or before November 29, 1996, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Jim Ficaretta, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.

OMB Number: 1512–0354.

Recordkeeping Requirement ID Number: ATF REC 5170/3.

Abstract: The primary objective of this recordkeeping requirement is revenue protection by establishment of accountability data available for audit purposes. A second objective, consumer protection, is afforded by subject record traceability of alcoholic beverages to the retail liquor dealer level of distribution in the event of defective products. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents: 455,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 455,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing this information collection.

Dated: September 24, 1996.

John W. Magaw,

Director.

[FR Doc. 96–24956 Filed 9–27–96; 8:45 am]

BILLING CODE 4810–31–P

Internal Revenue Service

Proposed Collection; Comment Request for Forms 4461, 4461–A, and 4461–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 4461, 4461–A, and 4461–B.

DATES: Written comments should be received on or before November 29, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 4461, Application for Approval of Master or Prototype and Regional Prototype Defined Contribution Plan; Form 4461–A, Application for Approval of Master or Prototype and Regional Prototype Defined Benefit Plan; and Form 4461–B, Application for Approval of Master or Prototype Plan or Regional Prototype Plan.

OMB Number: 1545–0169.

Form Number: Forms 4461, 4461–A, and 4461–B.

Abstract: The IRS uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application is also used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

Current Actions: There are no changes being made to these forms.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 118 hr., 22 min.

Estimated Total Annual Burden Hours: 142,034.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 16, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–25025 Filed 9–27–96; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Cultural Property Advisory Committee; Meeting

AGENCY: United States Information Agency.

ACTION: Notice of Meeting of the Cultural Property Advisory Committee.

SUMMARY: The Cultural Property Advisory Committee will meet on Wednesday, October 9, 1996, from approximately 8:30 a.m. to 5:00 p.m., and on Thursday, October 10, 1996, from approximately 10:45 a.m. to 12:30 p.m., at The Getty Conservation Institute, 1200 Getty Center Drive, Los Angeles, California. The meeting on October 9 will be held jointly with ministers of culture from Central America.

Pursuant to the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 et seq. Pub. L. 97–446) the agenda will include a statutorily mandated review of the effectiveness of U.S. action to protect archaeological resources in certain countries of Central America; a review of steps taken internally in the Central American region to restrict the unauthorized movement of cultural objects and to advance scientific, cultural and educational opportunities associated with the protection of objects representing the Mesoamerican cultures. The Committee will also review new draft guidelines for countries submitting requests to the U.S. for cultural property protection and will discuss internal operating procedures. Since discussion of these matters will involve information the premature disclosure of which would be likely to significantly frustrate implementation of proposed actions, this portion of the meeting will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Dated: September 24, 1996.

Joseph Duffey,

Director, United States Information Agency.

Determination to Close the Meeting of the Cultural Property Advisory Committee October 9 and 10, 1996

In accordance with 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h), I hereby determined that the Cultural Property Advisory Committee meeting on October 9 and 10, 1996, at which there will be discussions concerning the effectiveness of U.S. protection of pre-Hispanic archaeological material originating in certain countries in Central America as well as discussions about internal operating procedures, may be closed to the public.

Dated: September 24, 1996.

Joseph Duffey,

Director, United States Information Agency.

[FR Doc. 96–24950 Filed 9–27–96; 8:45 am]

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Federal Register

Monday
September 30, 1996

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 1385, 1386, 1387, and 1388 Developmental Disabilities Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1385, 1386, 1387, and 1388

RIN: 0970–AB11

Developmental Disabilities Program

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, HHS.

ACTION: Final rule.

SUMMARY: The Department is issuing this final rule for the Developmental Disabilities Program which implements the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990 and the 1994 Amendments. The rule includes: Requirements clarifying redesignation of the Protection and Advocacy system and the appeal process; requirements on the Protection and Advocacy annual statement of objectives; State Developmental Disabilities Council responsibilities and those of the Designated State Agency; and new program standards for the University Affiliated Programs.

EFFECTIVE DATE: The effective date of these regulations is October 30, 1996. However, affected parties do not have to comply with the information requirements in §§ 1386.23(a), 1386.30(c), 1386.32(a), and 1386.32(b) until the Administration for Children and Families publishes in the Federal Register the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. (Please note that these sections had been previously approved by OMB but the control numbers for them have expired.) Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Elsbeth Wyatt, Administration on Developmental Disabilities; Telephone: (202) 690–5841 (Voice), (202) 690–6415 (TDD). These are not toll-free numbers. This document will be made available in accessible formats upon request.

SUPPLEMENTARY INFORMATION:

I. Program History

In 1963, the Mental Retardation Facilities and Construction Act (Pub.L. 88–164) was enacted to plan activities and construct facilities to provide services to persons with mental retardation. This legislation was subsequently amended by the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (Pub.L. 91–517) which constituted the first Congressional effort to address the needs of a group of persons with disabilities designated as developmental disabilities. The 1970 Amendments defined developmental disabilities to include individuals with mental retardation, cerebral palsy, epilepsy and other neurological conditions closely related to mental retardation which originated prior to age 18 and constituted a substantial disability. It also created State Planning Councils to advocate for, plan, monitor and evaluate services for persons with developmental disabilities; and authorized grants for constructing, administering and operating University Affiliated Facilities. The legislation authorizing the Developmental Disabilities program has been revised periodically. The major changes of note included the following:

(1) The 1975 Amendments (Pub.L. 94–103) deleted the construction authority, authorized studies to determine the feasibility of having University Affiliated Facilities establish Satellite Centers, established the Protection and Advocacy System and added a section on ''Rights of the Developmentally Disabled;''

(2) The 1978 Amendments (Pub.L. 95–602) included a functional definition of developmental disabilities;

(3) The Developmental Disabilities Amendments of 1984 (Pub.L. 98–527) added a new emphasis regarding the purpose of the program, to assist States to assure that persons with developmental disabilities receive the care, treatment and other services necessary to enable them to achieve their maximum potential through increased independence, productivity and integration into the community; and

(4) The 1987 Amendments (Pub.L. 100–146) established an annual report to Congress on the Developmental Disabilities program. The Administration on Developmental Disabilities (ADD) compiles this report using information received from the State Planning Councils, the Protection and Advocacy Systems, the University Affiliated Programs and grantees of the Projects of National Significance. Also included in the 1987 Amendments was a special 1990 Report to Congress on the scope and effectiveness of services provided to persons with developmental disabilities by State agencies and an analysis of consumer satisfaction. The State Planning Councils prepared the State Reports to ADD and this information was used as a basis for the Report to Congress.

The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990, Pub.L. 101–496, (the Act), extended authorization of appropriations for programs under the Act through Fiscal Year 1993 and made revisions that:

(1) Add to the purpose of the Act the commitment toward enabling all people with developmental disabilities, including those with severe disabilities, to achieve interdependence and inclusion into society;

(2) Strengthen the independence of State Protection and Advocacy systems;

(3) Establish core awards for University Affiliated Programs training projects; and

(4) Broaden the purpose of Projects of National Significance to include supportive living and quality of life opportunities.

The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994, Pub. L. 103–230, (the Act), extended authorization of appropriations for programs under the Act through Fiscal Year 1996 and made revisions that:

(1) Include findings that emphasize respect for individual dignity, personal preferences, and cultural differences in the provision of services, supports and other assistance, and recognize that individuals with developmental disabilities and their families are the primary decision-makers regarding services, supports, and other assistance they receive;

(2) Ensure that individuals from diverse racial and ethnic backgrounds are fully included at all levels and in all activities authorized under this Act. This includes language regarding unserved and underserved populations and ''culturally competent'' services, supports and other assistance;

(3) Require State Developmental Disabilities Council activities to promote systemic change, capacity building and advocacy;

(4) Clarify the responsibilities of the State Developmental Disabilities Council and the Designated State Agency;

(5) Require the Protection and Advocacy System (P&A) to hire and maintain sufficient numbers and types of qualified staff to carry out the P&A's function;

(6) Protect the confidentiality of client records;

(7) Require development of new program standards for University Affiliated Programs; and

(8) Direct the Secretary to support grants to conduct an investigation on the expansion of part B programs (State Developmental Disabilities Councils) to individuals with severe disabilities other than developmental disabilities.

Public Law 104–183 extends for three years the authorization of appropriations for programs under the Act through Fiscal Years 1997, 1998, and 1999.

II. Developmental Disabilities Program

A. Federal Assistance to State Developmental Disabilities Councils

Formula grants are made to each State to support State Developmental Disabilities Councils. The responsibilities of the Councils are to promote, through systemic change, capacity building and advocacy activities; the development of a consumer and family-centered, comprehensive system; and, a coordinated array of services, supports and other assistance. These activities are designed to achieve independence, productivity, integration and inclusion into the community for individuals with developmental disabilities.

B. Protection and Advocacy of the Rights of Individuals With Developmental Disabilities

Formula grants are made to States for the establishment of a system to protect and advocate for the rights of individuals with developmental disabilities. This system must have the authority to pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of individuals with developmental disabilities who are receiving, or who are eligible to receive, treatment or habilitation services.

C. University Affiliated Programs

Grants are made to universities, or to public or nonprofit entities associated with a college or university, to establish University Affiliated Programs (UAPs). Activities of University Affiliated Programs are to be conducted in a culturally competent manner and include: interdisciplinary pre-service preparation of students and fellows; community service activities which include community training and technical assistance; and the dissemination of subsequent information and research findings.

D. Projects of National Significance

This program provides funding through grants and contracts to public or nonprofit private entities for projects which support national initiatives. Such initiatives include the collection of necessary data; provision of technical assistance to State Developmental Disabilities Councils, protection and advocacy systems and university affiliated programs; and support to other nationally significant activities, such as employment and housing.

III. Notice of Proposed Rulemaking

The Department published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on May 18, 1995, (60 FR 26774–26793). Interested persons were given sixty days in which to send written comments regarding the proposed rules. During the sixty (60) day comment period 35 letters were received. The comments were sent from: 20 Protection and Advocacy Systems and the National Association of Protection and Advocacy Systems (NAPAS); 11 Developmental Disabilities State Councils and the National Association of Developmental Disabilities Councils (NADDC); and one University Affiliated Program and the American Association of University Affiliated Programs (AAUAP).

All written comments were analyzed and form the basis for changes which the Department has made in these final rules.

Part 1385 contains provisions which apply to all of the Developmental Disabilities Programs. Part 1386 regulates the two formula grant programs: Federal Assistance to State Developmental Disabilities Councils (Part B of the Act) and the Protection and Advocacy System (Part C of the Act). Part 1387 applies to Projects of National Significance (Part E of the Act); and Part 1388 applies to University Affiliated Programs (Part D of the Act).

Summary of Comments and the Department Response

The discussion which follows includes a summary of all comments, our responses to those comments, and a description of the changes that have been made in the final rule as a result of the comments. It should be noted for purposes of these regulations that when the concept of ''days'' is indicated we are considering these as ''calendar days'' unless otherwise specified as ''work days.'' It should be noted further that we use the initials ''P&A and ''P&As'' frequently in this preamble for the ease of the reader and the initials stand for protection and advocacy. The context in which these initials are used lets the reader know whether it is the system or the agency under discussion. However, for the most part the ''P&A'' initials refer to the system.

A number of sections of the NPRM were not changed in the final rule and therefore are not referenced in this preamble. Minor technical changes were made in some areas for clarification purposes but are not significant enough to highlight. In addition, we have worked with the National Center for Mental Health Services, Substance Abuse and Mental Health Services (SAMHSA), to ensure that as permitted by the Developmental Disabilities Assistance and Bill of Rights Act, our requirements are identical or consistent with the SAMHSA requirements that implement the provisions of the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act.

Part 1385—Requirements Applicable to the Developmental Disabilities Program

Section 1385.1 General

Comments: Some commenters asked that this section be revised to reflect the fact that the regulations, in addition to governing protection and advocacy (P&A) activities, impose obligations on service providers, e.g., access to premises, individuals with developmental disabilities and their records. It was recommended that requirements in this part be applicable not only to the Developmental Disabilities Program components but also to ''facilities, and other entities, that provide treatment or habilitative services to persons with developmental disabilities.''

Response: We did not make this change because the purpose of part 1385 is to cover administrative requirements for ADD grantees (Protection and Advocacy Systems, Developmental Disabilities State Councils, University Affiliated Programs and Projects of National Significance).

Section 1385.3 Definitions

Comments: Some commenters fully supported the addition of a definition of the term ''Protection and Advocacy System''. It was recommended that a sentence be added to the proposed definition to state what the specific P&A authority was in regards to the P&A System under the Developmental Disabilities Act.

Response: We concur with this recommendation. However, in preparing the final regulation we became concerned that defining the ''Protection and Advocacy System'' in this way would lead to some confusion. The Act makes a distinction between the P&A Agency, and the ''Protection and Advocacy System.'' In order to preserve this distinction, we have reformulated the provision as the definition ''Protection and Advocacy Agency'' and have included the suggestion

concerning the System's authority. In addition, we have included a definition for ''developmental disabilities''. The reason for adding the definition is addressed in the discussion for § 1386.19.

Section 1385.9 Grants administration

Comments: Some commenters fully supported the revision to paragraph (e)(1) of § 1385.9, recommending that the phrase the Secretary ''does not require'' P&As to make disclosures should read ''shall not require.'' Also, they recommended that we apply this prohibition to state and other federal agencies.

Response: We concur with the word change suggestion for paragraph (e)(1). In addition, after carefully reviewing this paragraph again, we have reworded it and included statutory citations for greater clarity. Applying these provisions to other state and Federal agencies in all instances is beyond the authority of the Developmental Disabilities Act and these regulations. However, ADD will work with other Federal agencies and state governments on the issue of access to P&A system client records.

Comments: Some commenters fully supported either omitting or revising the proposed language of paragraph (e)(2) of § 1385.9. They indicated that as written the regulation provides that the P&A shall have the burden of proving compliance with the Act or regulations where HHS has found, during an audit or other investigation, any evidence of noncompliance. The proposal's imposition on the P&A of the burden of proof regarding the agency's compliance was viewed as being at odds with federal due process protection. Another commenter indicated that if (e)(2) remains, then the rule contain assurances that those individuals who, in their official capacity, have access to personally identifiable client information, be required to keep such information confidential. Further, commenters suggested a requirement that such personally identifiable information be destroyed once the audit, monitoring review, evaluation or other investigation process is completed.

Response: We revised the proposed language. The regulations reiterate that the purpose of obtaining personally identifiable client information is solely to determine that P&As are spending their grant funds awarded through Part 142 of the Developmental Disabilities Act on serving exclusively individuals with developmental disabilities. We have included language indicating that officials who have access to such information must keep it confidential to the maximum extent permitted by law and regulations. We did not change the requirement on burden of proof because we do not agree with the comment that making the P&A system bear the ultimate burden of proof regarding their compliance raises due process issues. It is customary that grantees bear exactly that burden, because usually only they are in possession of the information necessary to establish compliance.

Part 1386–Formula Grant Programs

Subpart B—State System for Protection and Advocacy of the Rights of Individuals with Developmental Disabilities

A majority of the comments received by the Administration on Developmental Disabilities were on this subpart. The following is a summary of key comments on this subpart and our response:

Although most commenters were supportive of the regulations, many had specific suggestions, regarding the authority of the P&A systems to conduct investigations and to gain access to records, facilities and individuals receiving treatment or habilitation services. ADD has developed a new section, § 1386.22 Access to Records, Facilities and Individuals with Developmental Disabilities to address many of these concerns. The NPRM had this section as Public notice of Federal onsite review which we have now incorporated in § 1386.21, Requirements of the Protection and Advocacy System.

Commenters also requested that the regulations be revised to incorporate similar provisions as those found in the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act regulations.

Commenters indicated that the Developmental Disabilities regulations should be as closely coordinated with the Protection and Advocacy for Individual with Mental Illness (PAIMI) Act regulations as possible. ADD concurs with this recommendation and has incorporated provisions as appropriate.

Many commenters believed it would be useful to repeat the law in the regulations in order to present a complete picture of all the requirements rather that just cite the relevant sections of the Act. ADD recognizes that such information would be operationally helpful but is not appropriate to include in regulations.

Comments were also received to include additional case law opinions in the regulations to assist P&As. Such information would be appropriate for the preamble, however, such language is not included into the Code of Federal Regulations.

Also, it was suggested that the regulations (or appendix to the regulations) should list all authorized P&As by name, address, telephone number and spell out their authority. Comments indicated that facilities serving individuals with developmental disabilities attempt to obstruct P&A advocacy efforts by asserting that particular agencies lack authority. The regulations already cover the issue of P&A authority and such a listing is not appropriate in regulations. P&As have a Notice of Grant Award which could be used for this purpose and a listing of all authorized P&As is available from ADD.

Section 1386.19 Definitions

Comment: A commenter recommended that the proposed definitions of ''full investigations,'' ''probable cause,'' and ''record of an individual with a developmental disability'' be transferred to new regulatory sections dealing with facilities and records access. Also recommended was the inclusion of other definitions for key terms applied under the statute.

Response: ADD does not concur with these recommendations. Therefore, the final rule does not incorporate these changes. Section 1386.19 Definitions was developed to cover terms unique to the P&A system (part 1386). Section 1385.3 contains other definitions of key terms applied under the statute. To reissue such definitions in § 1386.19 is duplicative.

Comments: We received several comments to include a definition of ''complaint'' as the receipt of a complaint is one of the bases for obtaining access to the records of an individual with developmental disabilities (see sections 142(a)(2)(I) (ii) and (iii)). Recommended language was also included.

Response: We have included a definition of ''complaint''. This definition includes media accounts and newspaper articles because, while such reports are not specifically directed at the P&A system, they are published with the expectation that public officials responsible for conditions will act to stop abuse.

Comments: We received comments to include a definition of ''developmental disabilities'' as there is inconsistency from state to state in determining whether individuals are eligible for the P&A program. It was recommended that the regulations include an interpretation on the application of the functional definition of the Act (section 102(8)) to assist P&As in making eligibility

determinations, especially for school age children (e.g., attention deficit problems, learning disabilities and emotional disturbance).

Response: We have included a definition of ''developmental disabilities'' to reiterate that the P&A system receiving funds under the Developmental Disabilities Act must use the functional definition in section 102(8) to determine who they will serve. This determination shall be done on a case-by-case basis. For example, the diagnosis of learning disability or attention deficit disorder, like any other diagnosis, would not in itself be considered a developmental disability unless it meets the functional definition of the legislation. Any State eligibility definition of developmental disability or policy statement which is more restrictive than that of the Act does not apply as the Act takes precedence. The definition of ''developmental disabilities'' has been placed in § 1385.3 because we believe it is more appropriate in a section with definitions for words found in all parts of this rule.

Comments: On the proposed definition of ''probable cause'', commenters indicated general support but requested that additional language be included to reiterate that the P&A has exclusive authority to make probable cause determinations, and that a judicial or other third party determination is prohibited. Also, commenters requested language regarding the issue of disclosure on the basis of the P&As probable cause finding.

Response: We have revised the final rule for greater clarification. However, we could not make the specific type of edits recommended above as the context of the Act does not support such interpretations.

Comments: We received several comments to include a definition for ''legal guardian, conservator and legal representative'' and recommended language was included.

Response: We have included a definition of ''legal guardian, conservator and legal representative''. The definition follows the wording of a statement in the Congressional Report on the PAIMI legislation. ACF adopted it because the protection and advocacy requirements in the Act parallel Congressional intent.

Comments: Commenters asked that we include definitions for ''abuse'' and ''neglect''.

Response: We concur with this recommendation and have included these definitions.

Comments: Several commenters recommended changing the proposed definition of ''full investigations'' and recommended language for this.

Response: We have revised the definition in accordance with the recommended language.

Comments: Several commenters recommended that the definition of record go beyond the transmittal of final reports, that a record also include discharge plans and the records of a variety of service providers.

Response: We have deleted this definition in the final rule as we have now included other definitions (see complaint and facility) and regulations (new § 1386.22) to reiterate that a record goes beyond a final report and have clarified the types of facilities involved in investigations.

Section 1386.20 Designated State Protection and Advocacy System

Comments: We received comments on the proposed P&A redesignation process, paragraphs (d), (e), and (f) of this section. Commenters suggested that we provide additional guidance on what constitutes ''good cause'' and that such evidence used to make a redesignation decision should be presented to the P&A at the time of issuance of both the initial notice of intent to redesignate and the final redesignation decision. Commenters also indicated that P&As should be provided access to information upon which a final redesignation decision was based and a full opportunity to analyze the information prior to submitting its appeal to such a decision.

Response: Because there is no formulation which encompasses all of the possible variations of circumstances serious enough to justify redesignations, we decided not to attempt to define ''good cause'' in this regulation. We have modified the guidance we included in the NPRM to explain that ''good cause'' may include, but is not limited to, eliminating longstanding or pervasive inefficiency or a substantial breach of section 142 of the Act, or violations of other State and Federal requirements, such as 45 CFR part 74.

Comment: Comments were offered on the preamble discussion regarding governors and P&As consulting and seeking resolution before involving the public in the redesignation process. Commenters recommended that such a process should be included in the regulations as this may result in a much quicker amicable resolution and could obviate resource intensive battles over redesignation. They further recommended that the regulations should specify that in the event such attempts at voluntary resolution was unsuccessful, the designating official must provide a clarification in writing to this effect, as part of the redesignation notice. This certification would provide official verification that the designating official did indeed attempt to resolve the matter through negotiation.

Response: ADD agrees in concept with the points being raised and reiterates that consultation between the governors and P&As on the responsibilities and requirements of the system should be the first step before initiating the redesignation process. Through such a meeting, resolution may occur as the State would have an opportunity to apprise the current P&A system of its actions which constitute ''good cause'' and remedial steps could be established, possibly negating the need for the redesignation. However, the determination of such a meeting being held must be made at the State level. In § 1386.20(d)(2)(v) language has been included that the public notice must provide a clear and detailed explanation of the good cause for the proposed redesignation, including failure to take remedial steps suggested in consultation(s) with the State, if applicable.

Comment: One commenter recommended that in the initial public notice the name of the proposed new P&A agency not be included (see paragraph (d)(2)(vii)).

Response: Such information is considered valuable for the public input process so the community is aware of who is being considered as the new P&A agency and can provide comments early on regarding this organization. Therefore, no such change has been made in the final rule.

Comment: A commenter recommended that the public notice on a P&A redesignation must include a statement of assurance that the proposed new designated State P&A System will continue to serve existing clients and cases of the current P&A system or refer them to other sources of legal advocacy as appropriate, without disruption or impairment of the legal or constitutional rights of clients affected by such redesignation.

Response: We concur and such language has been included in § 1386.20(d)(2)(x).

Comment: A commenter indicated that the proposed regulation failed to provide the current P&A system adequate time to develop and submit an appeal of redesignation.

Response: We concur and have changed the timeframe from 10 to 20 days in § 1386.20(e)(1).

Comment: A commenter wanted the final phrase of paragraph (e)(3), ''and may provide any additional relevant

information,'' removed from the regulation.

Response: We do not concur with this recommendation because we believe it is important to allow submittal of information of relevance to the situation.

Section 1386.21 Requirements and Authority of the Protection and Advocacy System

Comments: It was recommended that the title of § 1386.21 be modified to include the word ''authority'' in support of the goals of the new regulations to provide guidance to assist P&As to advocate for, and protect, when required, individuals with developmental disabilities.

Response: We concur and have revised the title.

Comments: Many commenters recommended that regulatory language be included in the final rule concerning allotments being used to supplement and not to supplant the level of non-federal funds available in the State to investigate and remedy incidents of abuse or neglect or other rights violations affecting individuals with developmental disabilities, or which are available to otherwise protect and advocate the rights of such individuals.

Response: We concur with this recommendation and have included regulatory language in paragraph (b) of this section of the final rule. Paragraphs (b)(1), (2), and (3) of the NPRM are now covered in § 1386.22.

Comments: Commenters recommended that regulatory language be included in the final rule stipulating that allotments not be used to support lobbying activities to influence proposed or pending Federal legislation or appropriations. Suggested language also included instances in which P&As can perform certain activities which do not constitute lobbying.

Response: We plan to study this issue in more detail in cooperation with all interested parties (Federal and Non-Federal) to find the best approach for addressing concerns about lobbying activities. We will issue further guidance following these discussions. Paragraph (c) (1), (3) and (4) of the NPRM are now covered in § 1386.22. Paragraph (c)(2) is now covered in § 1386.21(e).

Comments: Comments were received on § 1386.21, paragraph (c)(2) of the NPRM, with recommendations to define ''trained staff'' and include language regarding training and experience to carry out the responsibility of the system in accordance with the priorities of the system.

Response: The determination of trained staff must be made by individual P&As. Language has been included in § 1386.21(e) to indicate the P&A system shall have sufficient staff, qualified by training and experience, to carry out the responsibilities of the system in accordance with the priorities of the system. Since the investigation of allegations of abuse, neglect or rights violations is a priority of the system, the system must have staff appropriately trained or access to expert consultants to conduct full investigations of abuse, neglect or rights violations upon the System's determination of probable cause or if the incidents are reported to the System.

Comments: Comments were received on paragraph (d) of this section, acknowledging the validity that a P&A system should not implement a policy or practice restricting the remedies which may be sought on the behalf of individuals with developmental disabilities. However, opinions were expressed that P&As should be allowed to choose what level of remedy to pursue on a case-by-case basis. Such determinations would be made for such reasons as: (1) Resources; (2) the factual circumstances of a particular case; and (3) priorities established through the annual P&A Statement of Objectives and Priorities.

Response: We recognize the concerns expressed and therefore have revised the regulation at paragraph (c) by using recommended language to add a final sentence to the regulation which indicates that the requirement does not prevent the P&A from developing case or client acceptance criteria as part of the annual priorities identified by the P&A system as described in § 1386.23(c) of the final rule. The regulation also indicates that clients must be informed at the outset of such criteria.

Comments: The comments received on paragraph (e) of this section, concerned State's interfering with the administration of the Protection and Advocacy System, e.g., hiring freezes, reductions in force, prohibitions on staff travel, or other policies which impact staff or functions funded with Federal funds and would prevent the system from carrying out its mandates under the Act. It was recommended that the regulations should clarify that it is the P&A that has the sole authority to make the determination whether a proposed state policy or practice would improperly interfere with its operation. Language should indicate that pending resolution of the matter by appropriate Federal officials, the P&A need not comply with such a policy or practice. Also, regulations should be established which outline an expedient resolution process for such disputes, placing the burden on the State to establish that the policy in issue does not conflict with the P&A mandates.

Response: We recognize that P&As administered by state agencies have had difficulties in spending their Federal money to carry out the requirements of the P&A system due to state budget policies restricting the use of funds. On the other hand, to include a provision designating the P&A the sole authority to make the determinations as to whether a proposed State policy or practice would improperly interfere with its operation, would conflict with the intent of Congress evident in the Act that States play a role in monitoring P&As. (See section 142(a)(4) and (c)(3)). We have modified this provision (now found at paragraph (d)) to more clearly cover the States's situation. Regulations on compliance procedures are covered in part 1386—subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance with Developmental Disabilities Plans, Reports, and Federal Requirements.

The language of the NPRM for paragraph (g) of this § 1386.21, is now found at paragraph (f) unchanged.

Comments: Commenters recommended that regulatory language be included concerning the issue of ''standing'' which would allow the system to bring lawsuits in its own right to redress incidents of abuse or neglect, discrimination and other rights violations impacting on individuals with developmental disabilities; such individuals need not be joined as a party to such actions.

Response: We understand the concern with regard to P&A standing and have addressed this concern in a new § 1386.25 Allowable Litigation Costs.

Comment: A comment was received to incorporate provisions for an Advisory Council.

Response: Language has been included in paragraph (g) of this section regarding P&As that are a public system without a multimember governing or advisory board. These P&As must establish an advisory council in order to provide a voice for individuals with developmental disabilities. The Advisory Council shall advise the P&A on program policies and priorities and a majority of the membership (including the chair) shall be comprised of individuals with developmental disabilities who are eligible for services, or have received or are receiving services or parents, family members, (including those representing individuals with developmental disabilities who live in institutions and

home and community based settings), guardians, advocates, or authorized representatives of such individuals.

As noted earlier, the regulation in the NPRM, § 1386.22 Public notice of Federal onsite review has now been incorporated as paragraph (h) of this section, 1386.21.

Paragraph (b)(3) of the NPRM of § 1386.21 is now paragraph (i). The regulation requires the P&A to obtain written consent of the client requesting assistance or from his or her guardian before releasing information to individuals not authorized to receive it.

Section 1386.22 Access to Records, Facilities and Individuals with Developmental Disabilities

Comments: Commenters recommended including a new section on Access to Records, Facilities and Residents, incorporating PAIMI regulations as appropriate, and including relevant ADD program regulations from § 1386.21 of the NPRM.

Response: We concur with this recommendation and have established § 1386.22 entitled Access to Records, Facilities and Individuals with Developmental Disabilities. Language has been included based on the PAIMI regulations. We have included as many points as possible.

In adapting the language of the PAIMI final rule in this section, we had to make some modifications. We had to separate the provisions dealing with access to records, access to individuals and the authority to investigate abuse and neglect. This was necessary because the scope of authority of P&A Systems under the DD Act is different in each of these areas; and, in the case of access to facilities, is different than the PAIMI Act. Under the PAIMI statute, 42 U.S.C. 10805(a)(3), the P&As ''must have access to *facilities* in the State providing care or treatment * * *'' (Emphasis added.) There is no equivalent provision of the DD Act. That statute provides authority under section 142(a)(2)(H) to ''have access at reasonable times and locations to *any resident* who is an individual with a developmental disability in a facility that is providing services, support and other assistance to such a resident.'' (Emphasis added.) However, under the DD Act, P&As have authority, under section 142(a)(2)(B), ''to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred * * *.'' We have reasonably interpreted this provision as authorizing access to facilities when necessary to complete an investigation of alleged or suspected abuse or neglect.

With respect to § 1386.22(a)(1) and (2), we are interpreting reference to client to include all those individuals with developmental disabilities who request assistance from the system or who have died or whose whereabouts are unknown.

In § 1386.21, paragraph (c)(1) of the NPRM, regulations were proposed regarding access to records of deceased individuals and the authority to conduct abuse and neglect investigations. These regulations have been deleted as this topic is now covered in § 1386.22 Access to Records, Facilities and Individuals with Developmental Disabilities, paragraph (a)(2).

Comments: A few comments were received regarding § 1386.21, paragraph (c)(3) requesting that further guidance be provided in relation to P&As having access at reasonable times and locations to individuals with developmental disabilities who reside in public and private facilities, especially when P&As are investigating incidents of abuse and neglect.

Response: This regulation is now covered in § 1386.22, paragraphs (f), (g) and (h). P&As shall have reasonable unaccompanied access to service recipients at all times necessary to conduct a full investigation of an incident of abuse, neglect, or violation of rights.

Comments: Several commenters indicated support for the proposed regulatory language in § 1386.21, paragraph (c)(4), (see § 1386.22(e) of the final rule) on keeping confidential the names and identity of individuals who report incidents of abuse and neglect. A commenter suggested additional requirements regarding confidentiality.

Response: We did not include the additional language regarding confidentiality as the language suggested went beyond the authority of the Developmental Disabilities Act and the Protection and Advocacy System.

Comments: Several commenters requested including regulations to indicate that the provisions regarding access of records under the Developmental Disabilities Act and regulations take precedence over other Federal statutes and regulations. If that was not possible, commenters wanted language to specifically reference the Federal Education Rights and Privacy Act (FERPA) which sets out certain restrictions on the release of records by educational institutions (20 U.S.C. 1232(g)); 34 CFR part 99.

Response: We did not include such a provision because such a requirement goes beyond the authority of the Developmental Disabilities Act and these regulations. However, we have included language comparable to PAIMI provisions at § 1386.22(i) on Delay or Denial of Access. If a system is denied access to facilities and its programs, individuals with developmental disabilities, or records covered by the Act or these regulations, it shall be provided promptly with a written statement of reasons, including, in the case of a denial for alleged lack of authorization, the name and address of the legal guardian, conservator, or other legal representative of an individual with developmental disabilities.

Section 1386.23 Periodic Reports: Protection and Advocacy System

Comments: Commenters requested that P&As be allowed to submit the Statement of Objectives and Priorities (SOP) Report (paragraph (c)) and the Program Performance Report (paragraph (a)) at the same timeframe, by January 1 of each year.

Response: We concur with this recommendation and the final rule has been revised accordingly.

Comment: A comment was received on paragraph (c)(5) of the NPRM now (c)(2) regarding the requirement for the P&As to report on how the system operates and coordinates with other Federal Protection and Advocacy programs. It was recommended that such a requirement may not be appropriate for an individual P&A system based on the State's priorities.

Response: We concur with this recommendation and have deleted the lengthy list of programs indicating that where applicable, the SOP provide such information on other Federal advocacy programs. We have also deleted the references to the Council and UAPs as such information on advocacy activities will be obtained through the requirements of paragraph (d) (3), (4), and (5).

Comment: A comment was received on the structure of paragraph (c) in relation to the SOP and the level and type of administrative information required for the public input process. A recommendation was also made that regulatory language be included to reiterate that one of the critical functions of the SOP and the public comment process was to establish caseload priorities unique to each State and as such the P&As have the authority to turn down a request for assistance when it is outside the scope of the SOP.

Response: We concur with these recommendations and have restructured the final rule accordingly. We have included regulatory language that when a P&A turns down a request for

assistance because it is outside the scope of the SOP, they must inform individuals that this is the basis for turning them down.

Comments: We received a few comments that the language of the phrase ''publication of general distribution'' in paragraph (d)(2) on the public review process for the Statement of Objectives and Priorities (SOP) was too prescriptive.

Response: We have deleted the word ''publication'' and have revised the language to indicate that the P&As provide for a broad distribution of the proposed SOP.

Section 1386.24 Non-Allowable Costs for the Protection and Advocacy System

Comment: A comment was received on § 1386.24 paragraph (a)(1) regarding allowable costs for the P&As on issues which relate to a disability but also may be faced by the general population.

Response: We have included language to cite examples of such activities which would not be considered allowable costs for the P&As, such as the preparation of wills, divorce decrees and real estate proceedings. Language has been included on allowable costs in cases which relate to an individual with a disability but may also be faced by the general population. In such cases P&As may provide disability related technical assistance information and referral to appropriate programs and services.

We made additional edits for clarification purposes concerning attorney fees that must be considered as income, by adding to the last sentence of paragraph (b) ''earned by contractors''.

Section 1386.25 Allowable Litigation Costs. (New)

Comments: A number of the commenters urged that the regulations clarify whether or not a P&A has standing to take legal action in its own name.

Response: The legislative history of the 1994 Developmental Disability Act Amendments (S. Rep. 120, 103rd Cong., 1st Sess. 39–40 (1993) supports the conclusion that, without showing injury to itself, a P&A does have standing to bring suit on behalf of persons with disabilities. Although Congress has not amended the Developmental Disability Act to insert a right of standing, the Committee commented that ''the current statute is clear that P&A systems have standing to pursue legal remedies to ensure the protection of and advocacy for the rights of individuals with developmental disabilities within the State.'' Additionally, we note that the following courts have affirmed the P&A's independent standing: Goldstein v. Coughlin, 83 F.R.D. 613 (W.D.N.Y. 1979); and *Hershberger* v. *Missouri Protection and Advocacy Services, Inc.,* No 48169 (MO Ct. of Appeals, August 2, 1994).

We wish to make it clear through these regulations that allotments may be used to pay the otherwise allowable costs incurred by a Protection and Advocacy System in bringing lawsuits in its own right to redress incidents of abuse or neglect, discrimination and other rights violations impacting on individuals with developmental disabilities.

Subpart C—State Plan for Assisting in the Development of a Comprehensive System of Services and Supports for Individuals With Developmental Disabilities

Comments: Several commenters stated that the wording of the title of subpart C should be consistent with the language of the statute.

Response: We concur and have revised the title of subpart C to read, ''Subpart C—Federal Assistance to State Developmental Disabilities Councils''.

Section 1386.30 State Plan Requirements

Comments: We received several comments regarding paragraph (a) of § 1386.30, State Plan requirements. Overall, commenters approved of the proposed language which emphasized that the State Plan is the responsibility of the Council. However, commenters indicated that the regulations should reflect that DD Councils approve the State Plan for submission to ADD.

Response: The final rule indicates that the annual development of the State Plan and applicable annual amendments are responsibilities of the State Developmental Disabilities Council. The Council will provide opportunities for public input during the planning and development of the State plan, and will consult with the Designated State Agency to determine that the plan is not in conflict with applicable State laws and to obtain appropriate State Plan assurances. Requirements regarding State Plan submission and approval are covered in § 1386.31, State Plan submittal and approval.

Comments: A commenter indicated that the last sentence of the proposed rule at § 1386.30(a) should be moved to § 1386.30(c) where other regulations pertaining to the Designated State Agency are covered in relation to the State Plan. This sentence addressed the area of the Designated State Agency providing support services as requested by and negotiated with the Council.

Response: We have developed regulatory language to address this issue in paragraph (a), § 1386.34, Designated State Agency. The Designated State Agency shall provide the assistance required under section 124(d)(3) of the Act in developing the State Plan.

Comments: We received several comments on paragraph (c)(1) of § 1386.30. Commenters approved of the proposed regulations on identification of program unit(s), as written. However, a commenter indicated that requiring the identity of the program unit(s) within the Designated State Agency or office within the State went beyond the Act and was burdensome on the State. We also received recommended language to address the fact that in some States, State agencies other than the Designated State Agency provide services. Also, Councils are now allowed to use other organizations, including private ones, to provide fiscal and other support services.

Response: Because administration ties to more than one State agency are possible, we have not changed the proposed regulatory language to identify the program unit(s) within the Designated State Agency responsible for providing assurances and fiscal and other support services. We have included language pursuant to section 124(d)(4)(C) of the Act to address the fact that Councils may use or contract with State agencies other than the Designated State agency in securing support services. This language was inserted in § 1386.34(e) as this section on the Designated State Agency is more appropriate for this requirement. We did not include language covering the use of private agencies as we could not find any such reference in the statute or conference report language.

Comments: Several comments were received on paragraph (c)(3).

A commenter supported the proposed regulation which focused on the Council reporting through the State Plan on the collaborative efforts of the Council, the Protection and Advocacy Systems and the University Affiliated Programs to bring about systems change to benefit individuals with developmental disabilities, and, where appropriate, individuals with other disabilities.

Other commenters did not agree with the proposed regulation. Primarily, the concern was that there was no legislative basis for this State Plan reporting requirement to be prepared by the Councils. While it was viewed as a worthwhile goal to encourage collaboration and cooperation between

the Councils, Protection and Advocacy Systems and the University Affiliated Programs, commenters did not believe that this should be added as a requirement for the State Plan. One suggestion was to make this discretionary by adding the phrase ''where applicable'' to the regulation. Also, a few commenters indicated the phrase ''Developmental Disabilities Network'' should not be used as there was no statutory definition.

Response: Recognizing the concerns raised by the comments received we revised the final rule to include the phrase ''where applicable'' and have deleted the phrase ''Developmental Disabilities Network''. Commenters indicated that there was no legislative basis for this State Plan reporting requirement to be prepared by the Councils. Please note section 122(c)(5)(N) of the Act provides ''* * * the plan shall contain such additional information and assurances as the Secretary may find necessary to carry out the provisions and purposes of this part.'' We want to reiterate that though Protection and Advocacy Systems and University Affiliated Programs have individual roles and responsibilities that are separate and distinct from each other and the Developmental Disabilities Council, the Act requires their membership on the Council. Council reporting of collaborative efforts through the State Plan highlights the systems change role of the Council. It should also be noted that these final rules contain requirements for both the Protection and Advocacy Systems and the University Affiliated Programs to document collaborative efforts with the Developmental Disabilities Council (see § 1386.23 Periodic Reports, Statement of Objectives and Priorities, (c) and (d) (3), (4), and (5); § 1388.1 Definitions, collaboration and § 1388.4 Program criteria-governance and administration, paragraph (k)).

Comments: Comments on the proposed language regarding short-term demonstrations, paragraph (e), § 1386.30 State Plan requirements, concerned the specific time-frame limitation of three years. Commenters recognized that Councils should not be in the service delivery business, however, Councils indicated that they needed more flexibility to fund systems change projects such as advocacy training for longer periods of time. Adding the phrase ''direct care projects'' and ''direct services'' were recommended to address these points.

Also, language was recommended to include information on estimated project duration and a description of how the services will be continued without Developmental Disabilities program funds in the State Plan.

Response: In the final rule, we used language from ADD-IM–95–2, issued February 20, 1995, Use of Part B Funds in Funding Time-Limited Demonstrations and Other Projects in which we addressed the issue of Council funds supporting on-going direct services. We appreciate the commenters reaffirmation that Councils should not be in the service delivery business. We also recognize the concerns raised through the comments so we have included the reference to ''direct services'' and have deleted the time-frame of three-years to allow for greater Council flexibility (see paragraph (e)(1)). The final rule also reflects the comments on the State Plan information regarding such demonstration projects (see paragraph (e)(2)).

Comments: Several comments were received on paragraph (f)(4) of § 1386.30 State Plan requirements, which addressed budgeting, staff hiring and supervision and staff assignment. Commenters indicated that there continues to be State interference regarding the work of the Councils. The commenters overall concern with the proposed language was that in our attempts to clarify ''consistent with State law'' we went beyond the intent of the statutory change, which was to provide Councils with more flexibility than most States provide in their budgeting and personnel activities.

Response: We have not revised the proposed language of the NPRM in the final rule. Such language reiterates that the State Developmental Disabilities Council shall follow the requirements of section 124(c) (8), (9), and (10) regarding budgeting, staff hiring and supervision and staff assignment. In relation to the concerns about State interference, we have included regulations to cover this issue, in paragraph (a) of § 1386.34, Designated State Agency.

Section 1386.31 State Plan Submittal and Approval

Comments: We received comments on paragraphs (a) and (b) of the proposed regulations for § 1386.31 State Plan submittal and approval. Overall, the comments indicated that two rounds of public hearings were overly complex and burdensome and created too long a timeframe for the State Plan preparation. An issue was raised as to why public notices would be from the Governor or the Governor's designee as the development/preparation of the State Plan is the responsibility of the Council. Also, comments expressed concern as to why the Governor was still referenced as approving the State Plan.

Response: We concur with the comments that the process should be simplified and that the Council should perform all requirements tied to the preparation and submission of the State Plan. Paragraph (a) of the final rule has been revised to indicate that the Council shall issue a public notice about the availability of the proposed State Plan or State Plan amendment(s) for comment and that there is only one 45 day review period. The notice shall be published in accessible formats. The Council would then take into account the comments received and respond in the State Plan to significant comments and suggestions. The rule then indicates that a summary of the Council's response to the State Plan comments shall be submitted with the State Plan and made available for public review. This document shall be made available in accessible formats upon request. We recognize that the 1994 amendments greatly increase the independence of Councils but it seems questionable whether the amendments were meant to deprive the Governor of his or her authority to give the plan final approval. Upon further review, we decided to delete paragraph (b) of the NPRM and to keep the language of the paragraph in the current regulation on this matter, which is now paragraph (a) in the current regulations but will be renumbered paragraph (b) when this final rule is codified.

Section 1386.32 Periodic Reports: Federal Assistance to State Developmental Disabilities Councils

Comments: We received comments on paragraph (b) of this section opposing the Program Performance Report being in a mandated format.

Response: We concur with the comments on the Council Program Performance Report and have revised paragraph (b) of the final rule to indicate that pursuant to section 107(a) of the Act (42 U.S.C 6006a), the State Developmental Disabilities Council shall submit an Annual Program Performance Report in a form that facilitates Council reporting of results of activities required under sections 122 and 124 of the Act. The report shall be submitted to the appropriate Regional Office, by January 1 of each year. At this time ADD is working with Councils on the development of reporting guidelines that will result in program performance measures as required by the Government Performance Results Act (GPRA) and such guidelines will also be used as part of an ADD Management

Information System where reporting could be done electronically.

Section 1386.33 Protection of Employee's Interests

Comments: We received several comments on this section. One commenter asked that we include the term ''assurance'' to highlight that this is an assurance tied to the State Plan. Two other commenters wanted the current regulation to stand. One commenter wanted significant policy changes made to the current regulation.

Response: We included the term ''assure'' in this section as requested. However, we have not changed the rest of the proposed section as it is current policy based on section 122(c)(5)(K) of the Act (42 U.S.C. 6022).

Section 1386.34 Designated State Agency

Comment: A comment was received regarding the responsibilities of the Designated State Agency and the State Plan as included in § 1386.30.

Response: Paragraph (a) of this section reiterates that the Designated State Agency shall provide the assistance required under section 124(d)(3)(C) of the Act in developing the State Plan. Paragraphs (b), (c), and (d) reflect the appeals process. Only editorial changes were made in the final rule. It should be noted that ADD, for purposes of convenience in drafting this section, has referred to the appeal by ''a majority'' of the non-State agency members of the Council as an appeal by the ''Council''.

Section 1386.35 Allowable and Non-Allowable Costs for Federal Assistance to State Developmental Disabilities Councils

Comment: Comments were received with suggested language to revise paragraph (d) (2) and (3) of this section regarding variable match on an activity by activity basis.

Response: We have modified the language of the NPRM as follows: In paragraph (d)(1) we have revised the phrase ''priority area'' to ''projects or activities'', in relation to expenditures which require no non-Federal aggregate participation. Paragraph (d)(2) indicates that expenditures for ''priority areas'' now reads ''projects with activities or products targeted to urban or rural'' poverty areas but not carried out directly by the Council and Council staff, as described in section 125A(a)(2) of the Act, shall have non-Federal participation of at least 10% in the aggregate. The suggested language to include the phrase ''The Council may elect to have a lower, or no match, for such priority area activities'' was not included, see paragraph (d)(4). Paragraph (d)(3) has been edited to provide that all other activities not directly carried out by the Council and Council staff shall have non-Federal participation of 25% in the aggregate. In accordance with comments, a new paragraph (d)(4) has been added to indicate that the Council may vary the non-Federal participation required on a project by project or activity by activity basis (both poverty and non-poverty activities), including allowing no non-Federal participation from particular projects or activities as the Council deems appropriate so long as the requirement for aggregate non-Federal participation is met.

Section 1386.37 Public Notice of Federal Onsite Review

Comments: We received a few comments indicating that this requirement is not statutorily based for State Developmental Disabilities Councils and that these reviews would place an inappropriate burden on grantees for an activity that is the Administration on Developmental Disabilities responsibility.

Response: We concur with the comments. This requirement has been dropped.

Additional Comment: We received a comment to include language in regulation to clarify that Councils may provide information to policymakers pursuant to section 124(c)(4)(I) of the Act and that such activities do not constitute lobbying.

Response: We plan to study this issue in more detail in cooperation with all interested parties (Federal and Non-Federal) to find the best approach for addressing concerns about lobbying activities. We will issue further guidance following these discussions.

Part 1387—Projects of National Significance

Section 1387.1 General Requirements

Comments: A few comments were received on paragraph (d) of this section. One commenter supported the language but indicated that some national projects such as national surveys of program costs may not be appropriate for local replication. The other commenter indicated that all Projects of National Significance should be exemplary and innovative, including all technical and data collection projects.

Response: We concur with the comment regarding local replication, which is why the NPRM language included a reference to projects which ''otherwise meet the goals of part E of the Act''. Therefore no language change is necessary with respect to local replication. We also concur with the comment regarding all projects being exemplary and innovative and we have revised the final rule accordingly.

Part 1388—University Affiliated Programs

Section 1388.1 Definitions

Comment: A commenter wanted the first example included in the definition of ''capacity building'' to be revised to delete the reference to the dental school and add language on the recruitment of individuals with developmental disabilities and their families, local community leaders, additional faculty and students to participate in the UAP.

Response: We concur with this recommendation and have revised the definition of capacity building accordingly.

Comment: A few commenters wanted to add the term ''cultural diversity'' to the definition section. The language would read, ''Cultural diversity means that UAPs are characterized by their commitment to involve individuals with disabilities, family members and trainees from diverse cultural backgrounds in all levels of their activities. This commitment to cultural diversity means that each UAP must assure that individuals from racial and ethnic minority backgrounds are fully included; that efforts are made to recruit individuals from minority backgrounds into the field of developmental disabilities; that specific efforts must be made to ensure that individuals from minority backgrounds have effective and meaningful opportunities for full participation in the developmental disabilities service system; and that recruitment efforts at the levels of preservice training, community training, practice, administration and policymaking must focus on bringing larger numbers of racial and ethnic minorities into the field in order to provide appropriate skills, knowledge, role models, and sufficient personnel to address the growing needs of an increasingly diverse population.''

Response: We concur with the addition of this term and the language as written. Therefore, ''cultural diversity'' has been included in the final rule.

Comment: A comment was received on the definition of ''culturally competent manner'' with the request to drop the word ''manner''.

Response: We concur with this edit and have revised the final rule accordingly.

Comment: A comment was received on the definition of ''lifespan approach'' with the request to revise the language that UAP activities address the needs of individuals with disabilities who are ''all'' ages rather than ''various'' ages.

Response: We concur with this wording and the final rule has been revised.

Comment: A commenter wanted to include the term ''research and evaluation'' to the definition section. The language would read, ''Research and evaluation means the UAP refines its activities on the basis of evaluation results. As members of the university community, involvement in program-relevant research and development of new knowledge are important components of UAPs.''

Response: We concur with the addition of this term and the language as written. Therefore, ''research and evaluation'' has been included into the final rules.

Section 1388.2 Program Criteria—Purpose

The program criteria of the final rule are considered as the standards for the UAPs and include performance standards (see section 153(b) of the Act).

Comments: A few commenters requested that the regulations include language that the program criteria are one part of the Quality Enhancement System (QES) and provide a structure for self-assessment and peer review of each UAP.

Response: We concur with these recommendations and have changed the final rule to reflect these points. The QES was developed by ADD in response to amendments to the Act. These amendments include a series of quality assurance provisions for the UAP network. The QES is a holistic approach to the development and maintenance of programs and services to enable persons with developmental disabilities and their families to achieve maximum potential. All UAPs use the QES.

Section 1388.3 Program Criteria—Mission

Comments: A few commenters wanted the language of the NPRM regarding the Introduction to mission, § 1388.3(a) revised to: (1) Add language that the UAP is guided by the values of independence, productivity, integration and inclusion of individuals with developmental disabilities and their families and (2) include ''research and evaluation'' in the listing of activities to be performed by UAPs. Also, the commenters recommended that the language concerning the ''mission statement'' be removed.

Response: We concur with the recommended text and have incorporated such language in the final regulation.

Comment: A comment was received on paragraph (b) of this section requesting the word ''promotes'' be included before the phrase ''goals of the university'' and that a listing of such goals be included, ''training, the development of new knowledge, and service.''

Response: We concur with this language and have changed the final rule accordingly.

Comment: In paragraph (e) of this section we received a comment requesting that we use the term ''mission'' rather than the phrase goals, objectives, and activities and delete the word ''services'' and replace it with the word ''attitudes''.

Response: We concur with these recommendations and have incorporated this change in the final rule.

Comment: In paragraph (g) of this section we received a comment to include the phrase ''be consistent with the mission statement'' in relation to the UAP's goals, objectives, and activities.

Response: We agree with the recommended language and the final rule has been revised.

Section 1388.4 Program Criteria—Governance and Administration

Comment: A commenter wanted the language of the NPRM revised regarding the Introduction to governance and administration, § 1388.4(a). The revision centered around the inclusion of the phrase independence, productivity, integration and inclusion of individuals with developmental disabilities and their families.

Response: We concur with the recommended text and have incorporated such language in the final regulation.

Comment: A commenter wanted the proposed language in paragraph (f) expanded to include language indicating UAP senior professional staff contribute to the university by participation on university committees, collaboration with other university departments, and other university community activities.

Response: We concur with the added language and have revised the final regulation accordingly.

Comment: A comment was received on paragraph (q) regarding the use of the phrase ''strategic planning''. This phrase is viewed as a trademark so the phrase ''long range planning'' was suggested as a more useful term.

Response: We agree with the recommended language and the final rule has been changed.

Comment: A comment was received regarding paragraph (r) requesting that ''UAP'' be inserted for clarification on which programs and services are being evaluated.

Response: We concur with this edit and have modified the final rule.

Comment: We received a recommendation for two additional program criteria for this section regarding (1) UAP activities, programs, and products being accessible to individuals with developmental disabilities, families and the community and (2) commitment of the UAP Director to the field of developmental disabilities.

Response: Regarding the comment on additional program criteria on accessibility, this is adequately covered in § 1385.9 of the current regulation, Grants Administration Requirements, which cross references to 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Program and Activities Receiving or Benefiting from Federal Financial Assistance. With respect to the comment on adding program criteria for the commitment of the UAP program Director, we have added paragraph (s) which states that the UAP Director must demonstrate commitment to the field of developmental disabilities and leadership and vision in carrying out the mission of the UAP. There have been instances where the current UAP Director has been replaced by the University with someone who has experience in the health/medical field but none in the social services field. It is important that the director know all aspects of the field of developmental disabilities because UAPs must develop and execute inter-disciplinary training for people going into the field of developmentally disabilities which includes, social workers, teachers, paraprofessionals, etc., not just medical personnel.

Section 1388.5 Program Criteria—Preparation of Personnel

Comment: In relation to paragraph (a), program criteria on UAP interdisciplinary training programs, a commenter wanted the phrase ''at the preservice level'' deleted and the phrase ''reflect state-of-the-art practices'' be used in its place. Also, it was recommended that the phrase ''to promote the independence, productivity, integration and inclusion of individuals with developmental disabilities and their families'' be referenced.

Response: We concur with these recommendations and have made these changes to the final regulations.

Comment: A commenter recommended revised language for paragraph (b). That paragraph read as follows with the added language in quotes: (b) Interdisciplinary training programs must be based on identified personnel preparation needs ''and have identified outcomes that are consistent with the mission and goals of the UAP.''

Response: We concur with the recommended language and have modified the final regulation accordingly.

Comment: A comment was received regarding paragraph (c) with the suggestion being made that the term ''academic'' be included in relation to trainees receiving credit for participation in UAP training programs.

Response: We concur with this change and have added this word to the final language.

Comments: A few commenters requested that paragraph (e) be revised to include language that the UAP must encourage graduates to work in ''situations where they promote the independence, productivity, integration and inclusion of people with developmental disabilities and their families.''

Response: We agree with this recommendation and have revised the regulation accordingly.

Comment: A commenter wanted a new program criteria regarding training and research and dissemination efforts added to this section.

Response. We have reviewed the suggested language and concur with most of the ideas presented but have edited the language. We did not include the phrase ''trainees may become active participants in the creation of new knowledge throughout their careers'' as this language does not relate to the compliance of the UAP and training requirements under the Act. We have included this criteria as paragraph (h) of § 1388.5 in the final rule. It reads: (h) The UAP core curriculum must prepare trainees to be active participants in research and dissemination efforts. In addition, the curriculum must prepare trainees to be consumers of research as it informs practice and policy.

Section 1388.6 Program Criteria—Services and Supports

Comment: We received several comments on paragraph (a) of this section, Introduction to services and supports. It was recommended that we include language that the UAP engage in a variety of system interventions and may also engage in a variety of individual interventions ''to promote independence, productivity, integration and inclusion of individuals with developmental disabilities and their families.''

Response: We concur with this recommendation and have changed the regulation accordingly.

Comment: We received a comment on paragraph (b) of this section requesting significant changes to the NPRM language.

Response: We concur with the recommended language for § 1388.6(b) and have incorporated the language into the final rule. The revised language indicates that UAP community training and technical assistance activities must: (1) Use capacity building strategies to strengthen the capability of communities, systems and service providers; (2) plan collaboratively; (3) target to a wide range of audiences, including individuals with disabilities, family members, service and support personnel, and community members; (4) plan and be structured in a manner that facilitates the participation of targeted audiences; and (5) address the unique needs of individuals with developmental disabilities and their families from diverse cultural and ethnic groups.

Comment: A commenter requested the addition of a sentence to the language proposed in paragraph (c)(1) of this section indicating that ''the UAP must maintain cooperative relationships with other community service providers, including specialized state and local providers, including specialized state and local provider agencies.''

Response: We concur with the recommended language and have incorporated it into the final rule.

Section 1388.7 Program Criteria—Dissemination

Comment: In paragraph (a) of this section, a commenter recommended that the phrase ''best practices'' be added to the criteria regarding dissemination of information. Also, two comments were received requesting the addition of the following language. ''Dissemination activities promote the independence, productivity, integration and inclusion of individuals with developmental disabilities and their families.''

Response: We concur with these recommendations and have revised the final rule accordingly.

Comment: A commenter asked that we include in paragraph (b) reference to the fact that the UAP must be identified ''by individuals with developmental disabilities and their families, community members, state agencies and other provider and advocacy organizations'' as a resource for information, produce a variety of products to promote public awareness and visibility of the UAP, and facilitate replication of best practices.

Response: We agree with the suggested addition and have included it in the final rule with some modification for clarification purposes.

Comment: A commenter requested another program criteria for this section.

Response: We concur and have placed the following language in paragraph (i) of this section: (i) The UAP must contribute to the development of knowledge base through publications and presentations, including those based on research and evaluation conducted at the UAP.

Section 1388.9 Peer Review

Comment: A commenter requested that we include language in paragraph (a) of this section which indicates that the peer review process is ''to provide the UAP with technical assistance and other recommendations to improve program quality and enhance response to program mandates.''

Response: We do not concur with this language to be included in the final regulation. The provision of technical assistance is an administrative function of the Administration on Developmental Disabilities and is provided on an as needed basis. The Program Criteria are requirements for the University Affiliated Program, not the administering agency.

Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

The final rule amends current regulation to implement changes made by the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990 (Pub. L. 101–496 and by the 1994 Amendments (Pub. L. 103–230). The regulations provide guidance on redesignation of the Protection and Advocacy agency and the appeal process; include regulations on the Protection and Advocacy annual statement of objectives; address State

Developmental Disabilities Council responsibilities and those of the Designated State Agency; set new program standards for the University Affiliated Program; and make other clarifying, technical, and conforming changes.

We estimate that these regulations will not result in additional costs to the Federal government, the States, universities and any other organizations to which they may apply.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act (5 U.S.C. Ch.6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant economic impact on a substantial number of small entities'', we prepare an analysis describing the rule's impact on small entities. The primary impact of these regulations is on the States, which are not ''small entities'' within the meaning of the Act. However, they will affect small private institutions providing services to individuals with developmental disabilities. This impact will be minimal in that the institutions will simply be subject to review at no cost when a complaint is made against them. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulations.

This rule contains a new information collection requirement at § 1386.23(c), an annual statement of objectives and priorities of the Protection and Advocacy system pursuant to section 142(a)(2)(C) of the Act (42 U.S.C. 6042(a)(2)(C)). OMB cleared this requirement, under control number 0970–0132 with an expiration date of August 31, 1998. This final rule also contains an information collection requirement at § 1386.23(b) for which there is a current OMB control number 0348–0039 (Standard Form 69). With regard to the remaining requirements highlighted in the NPRM, for which OMB control numbers have expired, ADD will submit them to OMB for reapproval in accordance with the requirements of the Paperwork Reduction Act of 1995. The requirements to be submitted for OMB reapproval are:

(1) Section 1386.23.(a), Protection and Advocacy Annual Program Performance Report pursuant to Section 107(b) of the Act (42 U.S.C. 6006(b)) (expired OMB control number 0980–0160);

(2) Section 1386.30(c), State Plan for Federal Assistance for Planning Priority Area Activities for Persons with Developmental Disabilities pursuant to section 122 of the Act (42 U.S.C.6022) (expired OMB control number 0980–0162);

(3) Section 13286.32(a) Deviation—Standard Form 269 Federal Financial Assistance—State Developmental Disabilities Councils (expired OMB control number 0980–0212); and

(4) Section 1386.32(b), State Developmental Disabilities Councils Annual Program Performance Report pursuant to Section 107(a) of the Act (42 U.S.C. 6006(a)) (expired OMB control number 0980–0172).

The Administration on Developmental Disabilities, (ADD) is working with the State Developmental Councils and the Protection and Advocacy agencies in the development of these reports. Such reports will include information on the requirements of the Act and also will result in program performance measures as required by the Government Performance Results Act of 1993 (GPRA). Additionally, such reports are for use as part of an ADD Management Information System where reporting could be done electronically. Expected outcomes of the system include: Verifiable progress in enhancing the quality of life for individuals with developmental disabilities through improved program planning and performance; improved data integrity; and the production of a more efficient data collection and reporting mechanism.

In relation to the collection of information included in the NPRM, we received seven comments from a national organization and six State Developmental Disabilities Councils opposing the Program Performance Report being in a mandated format (§ 1386.32(b)). Commenters indicated that they must have the opportunity to review and comment on the report before OMB approval. We concur with the comments on the Council Program Performance Report and have revised the final rule accordingly.

List of Subjects

45 CFR Part 1385

Disabled, Grant programs/education, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 1386

Administrative practice and procedure, Disabled, Grant programs/education, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 1387

Disabled, Grant programs/education, Grant programs/social programs.

45 CFR Part 1388

Colleges and universities, Grant programs/education, Grant programs/social programs, Satellite center, University affiliated program.

(Catalog of Federal Domestic Assistance Program, Nos. 93.630 Developmental Disabilities Basic Support and 93.631 Developmental Disabilities—Projects of National Significance, and 93.632 Developmental Disabilities—University Affiliated Program)

Approved: September 4, 1996.

Mary Jo Bane,

Assistant Secretary for Children and Families.

For the reasons set forth in the preamble, 45 CFR chapter XIII, subchapter I is amended as follows:

Subchapter I—The Administration on Developmental Disabilities, Developmental Disabilities Program

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

1. The authority citation for part 1385 continues to read as follows:

Authority: 42 U.S.C. 6000 *et seq.*

2. Section 1385.1 is amended by revising paragraphs (a) and (b) and republishing the introductory text to read as follows:

§ 1385.1 General.

Except as specified in § 1385.4, the requirements in this part are applicable to the following programs and projects:

(a) Federal Assistance to State Developmental Disabilities Councils;

(b) Protection and Advocacy of the Rights of Individuals with Developmental Disabilities;

* * * * *

3. Section 1385.3 is amended by revising the definitions of *ADD* and *Commissioner* and adding alphabetically a definition for *ACF*, *Developmental Disability*, and *Protection and Advocacy Agency* to read as follows:

§ 1385.3 Definitions.

* * * * *

ACF means the Administration for Children and Families within the Department of Health and Human Services.

* * * * *

ADD means the Administration on Developmental Disabilities, within the Administration for Children and Families.

Commissioner means the Commissioner of the Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services or his or her designee.

* * * * *

Developmental disability shall have the same meaning in 45 CFR parts 1385, 1386, 1387, and 1388 as it does in the Developmental Disabilities Act, section 102(8), which reads ''the term 'developmental disability' means a severe, chronic disability of an individual 5 years of age or older that—

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the individual attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity—

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living; and

(vii) Economic self-sufficiency.

(5) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated, except that such term, when applied to infants and young children means individual from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.'' Such determination shall be made on a case-by-case basis and any State eligibility definition of developmental disability or policy statement which is more restrictive than that of the Act does not apply as the Act takes precedence.

Protection and Advocacy Agency means the organization or agency designated in a State to administer and operate a protection and advocacy (P&A) system for individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act, as amended (A P&A System under part C is authorized to investigate incidents of abuse and neglect regarding persons with developmental disabilities; pursue administrative, legal and appropriate remedies or approaches to ensure protection of, and advocacy for, the rights of such individuals; and provide information on and referral to programs and services addressing the needs of such individuals (section 142(a)(2)(A).); and advocacy programs under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (PAIMI Act), as amended, (42 U.S.C. 10801 *et seq.*) the Protection and Advocacy of Individual Rights Program (PAIR), (29 U.S.C. 794(e); and the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as amended (29 U.S.C. 2212(e)). The Protection and Advocacy agency also may be designated by the Governor of a State to conduct the Client Assistance Program (CAP) authorized by section 112 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 732). Finally, the Protection and Advocacy agency may provide advocacy services under other Federal programs.

* * * * *

4. Section 1385.4 is revised to read as follows:

§ 1385.4 Rights of individuals with developmental disabilities.

(a) Section 110 of the Act, Rights of Individuals with Developmental Disabilities (42 U.S.C. 6009) is applicable to the programs authorized under the Act, except for the Protection and Advocacy System.

(b) In order to comply with section 122(c)(5)(G) of the Act (42 U.S.C. 6022(c)(5)(G)), regarding the rights of individuals with developmental disabilities, the State must meet the requirements of 45 CFR 1386.30(f)(2).

(c) Applications from university affiliated programs or for projects of national significance grants must also contain an assurance that the human rights of individuals assisted by these programs will be protected consistent with section 110 (see section 153(c)(3) and section 162(c)(3) of the Act).

§ 1385.5 [Removed and reserved]

5. Section 1385.5, Recovery of Federal funds used for construction of facilities is removed and reserved.

6. Section 1385.6 is revised to read as follows:

§ 1385.6 Employment of individuals with disabilities.

Each grantee which receives Federal funding under the Act must meet the requirements of section 109 of the Act (42 U.S.C. 6008) regarding affirmative action. The grantee must take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as the following: Advertising, recruitment, employment, rates of pay or other forms of compensation, selection for training, including apprenticeship, upgrading, demotion or transfer, and layoff or termination. This obligation is in addition to the requirements of 45 CFR part 84, subpart B, prohibiting discrimination in employment practices on the basis of disability in programs receiving assistance from the Department. Recipients of funds under the Act also may be bound by the provisions of the Americans with Disabilities Act (Pub. L. 101–336, 42 U.S.C. 12101 *et seq.*) with respect to employment of individuals with disabilities. Failure to comply with section 109 of the Act may result in loss of Federal funds under the Act. If a compliance action is taken, the State will be given reasonable notice and an opportunity for a hearing as provided in Subpart D of 45 CFR part 1386.

§ 1385.7 [Reserved]

7. Section 1385.7 Waivers, is removed and reserved.

8. Section 1385.8 is amended by revising the introductory text to read as follows:

§ 1385.8 Formula for determining allotments.

The Commissioner will allocate funds appropriated under the Act for the State Developmental Disabilities Councils and the Protection and Advocacy Systems on the following basis:

* * * * *

9. Section 1385.9 is amended by revising the first sentence of paragraph (a); revising paragraphs (b), (c), and (d) and adding a new paragraph (e) to read as follows:

§ 1385.9 Grants administration requirements.

(a) The following parts of title 45 CFR apply to grants funded under parts 1386 and 1388 of this chapter and to grants for Projects of National Significance under section 162 of the Act (42 U.S.C. 6082).

* * * * *

(b) The Departmental Appeals Board also has jurisdiction over appeals by grantees which have received grants under the University Affiliated program or for Projects of National Significance. The scope of the Board's jurisdiction concerning these appeals is described in 45 CFR part 16.

(c) The Departmental Appeals Board also has jurisdiction to decide appeals brought by the States concerning any disallowances taken by the Commissioner with respect to specific expenditures incurred by the States or by contractors or subgrantees of States. This jurisdiction relates to funds provided under the two formula programs—Part B of the Act—Federal Assistance to State Developmental Disabilities Councils and Part C of the Act—Protection and Advocacy of the Rights of Individuals with Developmental Disabilities. Appeals filed by States shall be decided in accordance with 45 CFR part 16.

(d) In making audits and examinations to any books, documents, papers, and transcripts of records of State Developmental Disabilities Councils, the University Affiliated Programs, and the Projects of National Significance grantees and subgrantees, as provided for in 45 CFR part 74 and part 92, the Department will keep information about individual clients confidential to the maximum extent permitted by law and regulations.

(e) (1) The Department or other authorized Federal officials may access client and case eligibility records or other records of the Protection and Advocacy system for audit purposes and for purposes of monitoring system compliance pursuant to section 104(b) of the Act. However, such information will be limited pursuant to section 142(j) of the Act. No personal identifying information such as name, address, and social security number will be obtained. Only eligibility information will be obtained regarding type and level of disability of individuals being served by the P&A and the nature of the issue concerning which the System represented an individual.

(2) Notwithstanding paragraph (e)(1)of this section, if an audit, monitoring review, evaluation, or other investigation by the Department produces evidence that the system has violated the Act or the regulations, the system will bear the burden of proving its compliance. The system's inability to establish compliance because of the confidentiality of records will not relieve it of this responsibility. The system may elect to obtain a release from all individuals requesting or receiving services at the time of intake or application. The release shall state only information directly related to client and case eligibility will be subject to disclosure to officials of the Department.

PART 1386—FORMULA GRANT PROGRAMS

10. The authority citation for Part 1386 continues to read as follows:

Authority: 42 U.S.C. 6000 et seq.

Subpart A—Basic Requirements

11. Section 1386.1 is revised to read as follows:

§ 1386.1 General.

All rules under this subpart are applicable to both the State Developmental Disabilities Councils and the Protection and Advocacy Agencies.

12. Section 1386.2 is amended by revising paragraphs (b)(1), (c) to read as follows:

§ 1386.2 Obligation of funds.

* * * * *

(b) (1) A State incurs an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment, or when the State Developmental Disabilities Council enters into an Interagency Agreement with an agency of State government for acquisition of personal property or for the performance of work.

* * * * *

(c) (1) The Protection and Advocacy System may elect to treat entry of an appearance in judicial and administrative proceedings on behalf of an individual with a developmental disability as a basis for obligating funds for the litigation costs. The amount of the funds obligated must not exceed a reasonable estimate of the costs, and the way the estimate was calculated must be documented.

(2) For the purpose of this paragraph, *litigation costs* mean expenses for court costs, depositions, expert witness fees, travel in connection with a case and similar costs and costs resulting from litigation in which the agency has represented an individual with developmental disabilities (e.g. monitoring court orders, consent decrees), but not for salaries of employees of the Protection and Advocacy agency. All funds made available for Federal Assistance to State Developmental Disabilities Councils and to the Protection and Advocacy System obligated under this paragraph are subject to the requirement of paragraph (a) of this section. These funds, if reobligated, may be reobligated only within a two year period beginning with the first day of the Federal fiscal year in which the funds were originally awarded.

§ 1386.4 [Reserved]

13. § 1386.4, Eligibility for services is removed and reserved.

14. The heading of subpart B is revised to read as follows:

Subpart B— State System for Protection and Advocacy of the Rights of Individuals with Developmental Disabilities

15. A new section 1386.19 is added to include definitions to read as follows:

§ 1386.19 Definitions.

As used in §§ 1386.20, 1386.21, 1386.22 and 1386.25 of this part the following definitions apply:

Abuse means any act or failure to act which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with developmental disabilities, and includes such acts as: Verbal, nonverbal, mental and emotional harassment; rape or sexual assault; striking; the use of excessive force when placing such an individual in bodily restraints; the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations or any other practice which is likely to cause immediate physical or psychological harm or result in long term harm if such practices continue.

Complaint includes, but is not limited to any report or communication, whether formal or informal, written or oral, received by the system including media accounts, newspaper articles, telephone calls (including anonymous calls), from any source alleging abuse or neglect of an individual with a developmental disability.

Designating Official means the Governor or other State official, who is empowered by the Governor or State legislature to designate the State official or public or private agency to be accountable for the proper use of funds by and conduct of the State Protection and Advocacy agency.

Facility includes any setting that provides care, treatment, services and habilitation, even if only ''as needed'' or under a contractual arrangement. Facilities include, but are not limited to the following:

Community living arrangements (e.g., group homes, board and care homes, individual residences and apartments), day programs, juvenile detention

centers, hospitals, nursing homes, homeless shelters, jails and prisons.

Full Investigation means access to facilities, clients and records authorized under these regulations, that is necessary for a protection and advocacy (P&A) system to make a determination about whether alleged or suspected instances of abuse and neglect are taking place or have taken place. Full investigations may be conducted independently or in cooperation with other agencies authorized to conduct similar investigations.

Legal Guardian, conservator and legal representative all mean an individual appointed and regularly reviewed by a State court or agency empowered under State law to appoint and review such officers and having authority to make all decisions on behalf of individuals with developmental disabilities. It does not include persons acting only as a representative payee, person acting only to handle financial payments, attorneys or other persons acting on behalf of an individual with developmental disabilities only in individual legal matters, or officials responsible for the provision of treatment or habilitation services to an individual with developmental disabilities or their designees.

Neglect means a negligent act or omission by an individual responsible for providing treatment or habilitation services which caused or may have caused injury or death to an individual with developmental disabilities or which placed an individual with developmental disabilities at risk of injury or death, and includes acts or omissions such as failure to: establish or carry out an appropriate individual program plan or treatment plan (including a discharge plan); provide adequate nutrition, clothing, or health care to an individual with developmental disabilities; provide a safe environment which also includes failure to maintain adequate numbers of trained staff.

Probable cause means a reasonable ground for belief that an individual with developmental disabilities has been, or may be, subject to abuse or neglect. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect.

16. Section 1386.20 is amended by revising the heading; revising paragraphs (a), (d), and (e); and adding a new paragraph (f) to read as follows:

§ 1386.20 Designated State Protection and Advocacy agency.

(a) The designating official must designate the State official or public or private agency to be accountable for proper use of funds and conduct of the Protection and Advocacy agency.

* * * * *

(d) (1) Prior to any redesignation of the agency which administers and operates the State Protection and Advocacy (P&A) System, the designating official must give written notice of the intention to make the redesignation to the agency currently administering and operating the State Protection and Advocacy System by registered or certified mail. The notice must indicate that the proposed redesignation is being made for good cause. The designating official must also publish a public notice of the proposed action. The agency and the public shall have a reasonable period of time, but not less than 45 days to respond to the notice.

(2) The public notice must include:

(i) The Federal requirements for the Protection and Advocacy system for individuals with developmental disabilities (section 142 of the Act); and, where applicable, the requirements of other Federal advocacy programs administered by the State Protection and Advocacy System.

(ii) The goals and function of the State's Protection and Advocacy System including the current Statement of Objectives and Priorities;

(iii) The name and address of the agency currently designated to administer and operate the Protection and Advocacy system; and an indication of whether the agency also operates other Federal advocacy programs;

(iv) A description of the current Protection and Advocacy agency and the system it administers and operates including, as applicable, descriptions of other Federal advocacy programs it operates;

(v) A clear and detailed explanation of the good cause for the proposed redesignation;

(vi) A statement suggesting that interested persons may wish to write the current State Protection and Advocacy agency at the address provided in paragraph (d)(2)(iii) of this section to obtain a copy of its response to the notice required by paragraph (d)(1)of this section. Copies shall be provided in accessible formats to individuals with disabilities upon request;

(vii) The name of the new agency proposed to administer and operate the Protection and Advocacy System under the Developmental Disabilities program. This agency will be eligible to administer other Federal advocacy programs;

(viii) A description of the system which the new agency would administer and operate, including a description of all other Federal advocacy programs the agency would operate;

(ix) The timetable for assumption of operations by the new agency and the estimated costs of any transfer and start-up operations; and

(x) A statement of assurance that the proposed new designated State P&A System will continue to serve existing clients and cases of the current P&A system or refer them to other sources of legal advocacy as appropriate, without disruption.

(3) The public notice as required by paragraph (d)(1) of this section, must be in a format accessible to individuals with developmental disabilities or their representatives, e.g., tape, diskette. The designating official must provide for publication of the notice of the proposed redesignation using the State register, State-wide newspapers, public service announcements on radio and television, or any other legally equivalent process. Copies of the notice must be made generally available to individuals with developmental disabilities and mental illness who live in residential facilities through posting or some other means.

(4) After the expiration of the public comment period required in paragraph (d)(1) of this section, the designating official must conduct a public hearing on the redesignation proposal. After consideration of all public and agency comments, the designating official must give notice of the final decision to the currently designated agency and the public through the same means used under paragraph (d)(3) of this section. This notice must include a clear and detailed explanation of the good cause finding. If the notice to the currently designated agency states that the redesignation will take place, it also must inform the agency of its right to appeal this decision to the Assistant Secretary, Administration for Children and Families and provide a summary of the public comments received in regard to the notice of intent to redesignate and the results of the public hearing and its responses to those comments. The redesignation shall not be effective until 10 working days after notifying the current Protection and Advocacy agency or, if the agency appeals, until the Assistant Secretary has considered the appeal.

(e) (1) Following notification pursuant to paragraph (d)(4) of this section, the

Protection and Advocacy agency which is the subject of such action, may appeal the redesignation to the Assistant Secretary. To do so, the Protection and Advocacy agency must submit an appeal in writing to the Assistant Secretary within 20 days of receiving official notification under paragraph (d)(4) of this section, with a separate copy sent by registered or certified mail to the designating official who made the decision concerning redesignation.

(2) In the event that the agency subject to redesignation does exercise its right to appeal under paragraph (e)(1) of this section, the designating official must give public notice of the Assistant Secretary's final decision regarding the appeal through the same means utilized under paragraph (d)(3) of this section within 10 working days of receipt of the Assistant Secretary's final decision under paragraph (e)(6) of this section.

(3) The designating official within 10 working days from the receipt of a copy of the appeal must provide written comments to the Assistant Secretary (with a copy sent by registered or certified mail to the Protection and Advocacy agency appealing under paragraph (e)(1) of this section), or withdraw the redesignation. The comments must include a summary of the public comments received in regard to the notice of intent to redesignate and the results of the public hearing and its responses to those comments.

(4) In the event that the designating official withdraws the redesignation while under appeal pursuant to paragraph (e)(1) of this section, the designating official must notify the Assistant Secretary, and the current agency, and must give public notice of his or her decision through the same means utilized under paragraph (d)(3) of this section.

(5) As part of their submission under paragraph (e)(1) or (e)(3) of this section, either party may request, and the Assistant Secretary may grant, an opportunity for an informal meeting with the Assistant Secretary at which representatives of both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the designating official under paragraph (e)(2) of this section. The Assistant Secretary will promptly notify the parties of the date and place of the meeting.

(6) Within 30 days of the informal meeting under paragraph (e)(5) of this section, or, if there is no informal meeting under paragraph (e)(5) of this section, within 30 days of the submission under paragraph (e)(3) of this section, the Assistant Secretary will issue to the parties a final written decision on whether the redesignation was for good cause as defined in paragraph (d)(1) of this section. The Assistant Secretary will consult with Federal advocacy programs that will be directly affected by the proposed redesignation in making a final decision on the appeal.

(f) (1) Within 30 days after the redesignation becomes effective under paragraph (d)(4) of this section, the designating official must submit an assurance to the Assistant Secretary that the newly designated Protection and Advocacy agency meets the requirements of the statute and the regulations.

(2) In the event that the Protection and Advocacy agency subject to redesignation does not exercise its rights to appeal within the period provided under paragraph (e)(1) of this section, the designating official must provide to the Assistant Secretary documentation that the agency was redesignated for good cause. Such documentation must clearly demonstrate that the Protection and Advocacy agency subject to redesignation was not redesignated for any actions or activities which were carried out under section 142 of the Act, these regulations or any other Federal advocacy program's legislation or regulations.

17. Section 1386.21 is revised to read as follows:

§ 1386.21 Requirements and authority of the Protection and Advocacy System.

(a) In order for a State to receive Federal financial participation for Protection and Advocacy activities under this subpart, as well as the State Developmental Disabilities Council activities (subpart C of this part), the Protection and Advocacy System must meet the requirements of section 142 of the Act (42 U.S.C. 6042) and that system must be operational.

(b) Allotments must be used to supplement and not to supplant the level of non-federal funds available in the State for activities under the Act, which shall include activities on behalf of individuals with developmental disabilities to remedy abuse, neglect and violations of rights as well and information and referral activities.

(c) A Protection and Advocacy System shall not implement a policy or practice restricting the remedies which may be sought on the behalf of individuals with developmental disabilities or compromising the authority of the Protection and Advocacy System (P&A) to pursue such remedies through litigation, legal action or other forms of advocacy. However, the above requirement does not prevent the P&A from developing case or client acceptance criteria as part of the annual priorities identified by the P&A system as described in § 1386.23(c) of this part. Clients must be informed at the time they apply for services of such criteria.

(d) A P&A system shall be free from hiring freezes, reductions in force, prohibitions on staff travel, or other policies, imposed by the State, to the extent that such policies would impact system program staff or functions funded with Federal funds and would prevent the system from carrying out its mandates under the Act.

(e) A Protection and Advocacy System shall have sufficient staff, qualified by training and experience, to carry out the responsibilities of the system in accordance with the priorities of the system and requirements of the Act, including the investigation of allegations of abuse, neglect and representations of individuals with developmental disabilities regarding rights violations.

(f) A Protection and Advocacy System may exercise its authority under State law where the authority exceeds the authority required by the Developmental Disabilities Assistance and Bill of Rights Act, as amended. However, State law must not diminish the required authority of the Protection and Advocacy System.

(g) Each P&A system that is a public system without a multimember governing or advisory board must establish an advisory council in order to provide a voice for individuals with developmental disabilities. The Advisory Council shall advise the P&A on program policies and priorities and shall be comprised of a majority of individuals with developmental disabilities who are eligible for services, or have received or are receiving services or parents or family members, (including those representing individuals with developmental disabilities who live in institutions and home and community based settings), guardians, advocates, or authorized representatives of such individuals.

(h) Prior to any Federal review of the State program, a 30 day notice and an opportunity for public comment must be provided. Reasonable effort shall be made by the appropriate Regional Office to seek comments through notification to major disability advocacy groups, the State Bar, other disability law resources, the State Developmental Disabilities Council and the University Affiliated Program, for example, through newsletters and publications of those organizations. The findings of public comments may be consolidated if

sufficiently similar issues are raised and they shall be included in the report of the onsite visit.

(i) Before the P&A system releases information to individuals not otherwise authorized to receive it, the P&A must obtain written consent from the client requesting assistance, if competent, or his or her guardian.

18. Section 1386.22 is added to read as follows:

§ 1386.22 Access to records, facilities and individuals with developmental disabilities.

(a) Access to records—A protection and advocacy (P&A) system shall have access to the records of any of the following individuals with developmental disabilities:

(1) An individual who is a client of the system, including any person who has requested assistance from the system, if authorized by that individual or their legal guardian, conservator or other legal representative.

(2) An individual, including an individual who has died or whose whereabouts is unknown, to whom all of the following conditions apply:

(i) The individual, due to his or her mental or physical condition is unable to authorize the system to have access;

(ii) The individual does not have a legal guardian, conservator or other legal representative, or the individual's guardian is the State (or one of its political subdivisions); and

(iii) With respect to whom a complaint has been received by the system or the system has probable cause (which can be the result of monitoring or other activities including media reports and newspaper articles) to believe that such individual has been subject to abuse or neglect.

(3) An individual who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint has been received by the system or with respect to whom the system has determined that there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy, whenever all the following conditions exist:

(i) The system has made a good faith effort to contact the representative upon receipt of the representative's name and address;

(ii) The system has offered assistance to the representative to resolve the situation; and

(iii) The representative has failed or refused to act on behalf of the individual.

(b) Individual records to which P&A systems must have access under section 142(A)(2)(I) (whether written or in another medium, draft or final, including handwritten notes, electronic files, photographs or video or audio tape records) shall include, but shall not be limited to:

(1) Records prepared or received in the course of providing intake, assessment, evaluation, education, training and other supportive services, including medical records, financial records, and monitoring and other reports prepared or received by a member of the staff of a facility that is providing care or treatment;

(2) Reports prepared by an agency charged with investigating incidents of abuse or neglect, injury or death occurring at a facility or while the individual with a developmental disability is under the care of a member of the staff of a facility, or by or for such facility, that describe any or all of the following:

(i) Abuse, neglect, injury, death;

(ii) The steps taken to investigate the incidents;

(iii) Reports and records, including personnel records, prepared or maintained by the facility in connection with such reports of incidents; or,

(iv) Supporting information that was relied upon in creating a report, including all information and records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings; and

(3) Discharge planning records.

(c) Information in the possession of a facility which must be available to P&A systems in investigating instances of abuse and neglect under section 142(a)(2)(B) (whether written or in another medium, draft or final, including hand written notes, electronic files, photographs or video or audio tape records) shall include, but not be limited to:

(1) Information in reports prepared by individuals and entities performing certification or licensure reviews, or by professional accreditation organizations, as well as related assessments prepared for a facility by its staff, contractors or related entities, except that nothing in this section is intended to preempt State law protection records produced by medical care evaluation or peer review committees.

(2) Information in professional, performance, building or other safety standards, demographic and statistical information relating to a facility.

(d) A system shall be permitted to inspect and copy information and records, subject to a reasonable charge to offset duplicating costs.

(e) The client's record is the property of the Protection and Advocacy System which must protect it from loss, damage, tampering, or use by unauthorized individuals. The Protection and Advocacy System must:

(1) Keep confidential all information contained in a client's records, which includes, but is not limited to, information contained in an automated data bank. This regulation does not limit access by parents or legal guardians of minors unless prohibited by State or Federal law, court order or the rules of attorney-client privilege;

(2) Have written policies governing access to, storage of, duplication of, and release of information from the client's record; and

(3) Be authorized to keep confidential the names and identity of individuals who report incidents of abuse and neglect and individuls who furnish information that forms the basis for a determination that probable cause exists.

(f) Access to Facilities and Individuals with Developmental Disabilities—A system shall have reasonable unaccompanied access to public and private facilities which provide services, supports, and other assistance for individuals with developmental disabilities in the State when necessary to conduct a full investigation of an incident of abuse or neglect under section 142(a)(2)(B) of the Act. This authority shall include the opportunity: to interview any facility service recipient, employee, or other person, including the person thought to be the victim of such abuse, who might be reasonably believed by the system to have knowledge of the incident under investigation; and to inspect, view and photograph all areas of the facility's premises that might be reasonably believed by the system to have been connected with the incident under investigation.

(g) Under section 142(a)(2)(H) of the Act, the system and all of its authorized agents shall have unaccompanied access to all residents of a facility at reasonable times, which at a minimum shall include normal working hours and visiting hours, for the purpose of:

(1) Providing information and training on, and referral to, programs addressing the needs of individuals with developmental disabilities, and the protection and advocacy services available from the system, including the name, address, and telephone number of the system and other information and training about individual rights; and

(2) Monitoring compliance with respect to the rights and safety of service recipients.

(h) Unaccompanied access to residents of a facility shall include the opportunity to meet and communicate

privately with such individuals regularly, both formally and informally, by telephone, mail and in person.

(i) If a system is denied access to facilities and its programs, individuals with developmental disabilities, or records covered by the Act it shall be provided promptly with a written statement of reasons, including, in the case of a denial for alleged lack of authorization, the name and address of the legal guardian, conservator, or other legal representative of an individual with developmental disabilities.

19. Section 1386.23 is revised to read as follows:

§ 1386.23 Periodic reports: Protection and Advocacy System.

(a) By January 1 of each year the Protection and Advocacy System shall submit an Annual Program Performance Report as required in section 107(b) of the Act, in a format designated by the Secretary.

(b) Financial status reports must be submitted by the Protection and Advocacy Agency according to a frequency interval specified by the Administration for Children and Families. In no case will such reports be required more frequently than quarterly.

(c) By January 1 of each year, the Protection and Advocacy System shall submit an Annual Statement of Objectives and Priorities, (SOP) for the coming fiscal year as required under section 142(a)(2)(C) of the Act.

(1) The SOP is a description and explanation of the priorities and selection criteria for the system's individual advocacy caseload; systemic advocacy work and training activities, and the outcomes which it strives to accomplish.

(2) Where applicable, the SOP must include a description of how the Protection and Advocacy System operates and how it coordinates the Protection and Advocacy program for individuals with developmental disabilities with other Protection and Advocacy (P&A) programs administered by the State Protection and Advocacy System. This description must address the System's intake process, internal and external referrals of eligible clients, duplication and overlap of services and eligibility, streamlining of advocacy services, collaboration and sharing of information on service needs and development of Statements of Objectives and Priorities for the various advocacy programs.

(3) Priorities as established through the SOP serve as the basis for P&As to determine which cases are selected in a given fiscal year. P&As have the authority to turn down a request for assistance when it is outside the scope of the SOP but they must inform individuals that this is the basis for turning them down.

(d) Each fiscal year, the Protection and Advocacy Agency shall:

(1) Obtain formal public input on its Statement of Objectives and Priorities;

(2) At a minimum, provide for a broad distribution of the proposed Statement of Objectives and Priorities for the next fiscal year in a manner accessible to individuals with developmental disabilities and their representatives, allowing at least 45 days from the date of distribution for comment;

(3) Provide to the State Developmental Disabilities Council and the University Affiliated Program a copy of the proposed Statement of Objectives and Priorities for comments concurrently with the public notice;

(4) Incorporate or address any comments received through the public input and any input received from the State Developmental Disabilities Council and the University Affiliated Program in the final Statement submitted to the Department; and

(5) Address how the Protection and Advocacy System; State Developmental Disabilities Council; and the University Affiliated Program will collaborate with each other and with other public and private entities.

(The requirements under paragraph (b) are approved under control number 0348–0039 by the Office of Management and Budget (OMB). Information collection requirements contained in paragraph (c) are approved under OMB control number 0970–0132 pursuant to sections 142(a)(2) (C) and (D) and section 107(b) of the Act.)

20. Section 1386.24 is amended by redesignating the introductory text, paragraphs (a) and (b) as paragraphs (a) introductory text, (a)(1) and (a)(2); revising newly redesignated paragraphs (a), introductory text, and (a)(1); and adding a new paragraph (b) to read as follows:

§ 1386.24 Non-allowable costs for the Protection and Advocacy System.

(a) Federal financial participation is not allowable for:

(1) Costs incurred for activities on behalf of individuals with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace. Such activities include but are not limited to: Preparation of wills, divorce decrees, and real estate proceedings. Allowable costs in such cases would include the Protection and Advocacy System providing disability related technical assistance information and referral to appropriate programs and services; and

(2) * * *

(b) Attorneys fees are considered program income pursuant to Part 74–Administration of Grants and Part 92–Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and must be added to the funds committed to the program and used to further the objectives of the program. This requirement shall apply to all attorneys fees, including those earned by contractors and those received after the project period in which they were earned.

21. A new § 1386.25 is added to read as follows:

§ 1386.25 Allowable litigation costs.

Allotments may be used to pay the otherwise allowable costs incurred by a Protection and Advocacy System in bringing lawsuits in its own right to redress incidents of abuse or neglect, discrimination and other rights violations impacting on individuals with developmental disabilities to obtain access to records and when it appears on behalf of named plaintiffs or a class of plaintiff for such purposes.

22. The heading of subpart C is revised to read as follows:

Subpart C—Federal Assistance to State Developmental Disabilities Councils

23. Section 1386.30 is amended by revising paragraphs (a) and (c)(1); redesignating paragraph (e) as (f); revising the newly redesignated paragraphs (f) republishing newly redesignated paragraph (f), introductory text; (2) and (3) ; and adding new paragraphs (c)(3) and (e) to read as follows:

§ 1386.30 State Plan requirements.

(a) In order to receive Federal financial assistance under this subpart, each State Developmental Disabilities Council must prepare and submit to the Secretary, and have in effect, a State Plan which meets the requirements of sections 122 and 124 of the Act (42 U.S.C. 6022 and 6024) and these regulations. Development of the State Plan and applicable annual amendments are responsibilities of the State Developmental Disabilities Council. The Council will provide opportunities for public input during the planning and development of the State Plan and will consult with the Designated State Agency to determine that the plan is not in conflict with

applicable State laws and to obtain appropriate State Plan assurances.

* * * * *

(c) * * *

(1) Identify the program unit(s) within the Designated State Agency responsible for helping the Council to obtain assurances and fiscal and other support services.

* * * * *

(3) Where applicable, describe activities in which the State's Developmental Disabilities Council, Protection and Advocacy System agency, and University Affiliated Program(s) collaborate to remove barriers or address critical issues within the State and bring about broad systems changes to benefit individuals with developmental disabilities and, as appropriate, individuals with other disabilities.

* * * * *

(e) (1) The State Plan may provide for funding projects to demonstrate new approaches to direct services which enhance the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities. Direct service demonstrations must be short-term and include a strategy to locate on-going funding from other sources. For each demonstration funded, the State Plan must include an estimated period of the project's duration and a brief description of how the services will be continued without Federal developmental disabilities program funds. Council funds may not be used to fund on-going services which should be paid for by the State or other sources.

(2) The State plan may provide for funding of other projects or activities, including but not limited to, studies, evaluation, outreach, advocacy, self-advocacy, training, community supports, public education, and prevention. Where extended periods of time are needed to achieve desired results, these projects and activities need not be time-limited.

(f) The State Plan must contain assurances that:

* * * * *

(2) The human rights of individuals with developmental disabilities will be protected consistent with section 110 of the Act (42 U.S.C. 6009).

(3) Buildings used in connection with activities assisted under the Plan must meet all applicable provisions of Federal and State laws pertaining to accessibility, fire, health and safety standards.

(4) The State Developmental Disabilities Council shall follow the requirements of section 124(c) (8), (9) and (10) of the Act regarding budgeting, staff hiring and supervision and staff assignment. Budget expenditures must be consistent with applicable State laws and policies regarding grants and contracts and proper accounting and bookkeeping practices and procedures. In relation to staff hiring, the clause ''consistent with State law'' in section 124(c)(9) means that the hiring of State Developmental Disabilities Council staff must be done in accordance with State personnel policies and procedures except that a State shall not apply hiring freezes, reductions in force, prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the Council from carrying out its functions under the Act.

24. Section 1386.31 is amended by revising the section heading, redesignating the current paragraphs (a), (b), (c), and (d) as (b), (c), (d), and (e), and adding a new paragraph (a) to read as follows:

§ 1386.31 State Plan submittal and approval.

(a) The Council shall issue a public notice about the availability of the proposed State Plan or State Plan amendment(s) for comment. The Notice shall be published in formats accessible to individuals with developmental disabilities and the general public (e.g., tape, diskette, public forums, newspapers) and shall provide a 45 day period for public review and comment. The Council shall take into account comments submitted within that period and respond in the State Plan to significant comments and suggestions. A summary of the Council's response to State Plan comments shall be submitted with the State Plan and made available for public review. This document shall be made available in accessible formats upon request.

* * * * *

25. Section 1386.32 is revised to read as follows:

§ 1386.32 Periodic reports: Federal assistance to State Developmental Disabilities Councils.

(a) The Governor or appropriate State financial officer must submit financial status reports on the programs funded under this subpart according to a frequency interval which will be specified by the Administration for Children and Families. In no case will such reports be required more frequently than quarterly.

(b) Pursuant to section 107(a) of the Act (U.S.C. 6006a), the State Developmental Disabilities Council shall submit an Annual Program Performance Report in a form that facilitates Council reporting of results of activities required under sections 122 and 124 of the Act. The report shall be submitted to the appropriate Regional ACF office, by January 1 of each year.

26. Section 1386.33 is amended by revising paragraph (a) as follows:

§ 1386.33 Protection of employee's interests.

(a) Based on section 122(c)(5)(K) of the Act (42 U.S.C. 6022(c)(5)(K), the State plan must assure fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide community living activities. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's decision to provide for community living activities.

* * * * *

27. Section 1386.34 is added to read as follows:

§ 1386.34 Designated State Agency.

(a) The Designated State Agency shall provide the required assurances and other support services as requested by and negotiated with the Council. These include:

(1) Provision of financial reporting and other services as provided under section 124(d)(3)(C) of the Act; and

(2) Information and direction, as appropriate, on procedures on the hiring, supervision and assignment of staff in accordance with State law.

(b) If the State Developmental Disabilities Council requests a review by the Governor (or legislature) of the Designated State Agency, the Council must provide documentation of the reason for change and recommend a preferred Designated State Agency.

(c) After the review is completed, a majority of the non-State agency members of the Council may appeal to the Assistant Secretary for a review of the designation of the designated State agency if the Council's independence as an advocate is not assured because of the actions or inactions of the designated State agency.

(d) The following steps apply to the appeal of the Governor's (or

legislature's) designation of the Designated State Agency.

(1) Prior to an appeal to the Assistant Secretary, Administration for Children and Families, the State Developmental Disabilities Council, must give a 30 day written notice, by certified mail, to the Governor (or legislature) of the majority of non-State members' intention to appeal the designation of the Designated State Agency.

(2) The appeal must clearly identify the grounds for the claim that the Council's independence as an advocate is not assured because of the actions or inactions of the designated State agency.

(3) Upon receipt of the appeal from the State Developmental Disabilities Council, the Assistant Secretary will notify the State Developmental Disabilities Council and the Governor (or legislature), by certified mail, that the appeal has been received and will be acted upon within 60 days. The Governor (or legislature) shall within 10 working days from the receipt of the Assistant Secretary's notification provide written comments to the Assistant Secretary (with a copy sent by registered or certified mail to the Council) on the claims in the Council's appeal. Either party may request, and the Assistant Secretary may grant, an opportunity for an informal meeting with the Assistant Secretary at which representatives of both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the Governor (or legislature). The Assistant Secretary will promptly notify the parties of the date and place of the meeting.

(4) The Assistant Secretary will review the issue(s) and provide a final written decision within 60 days following receipt of the State Developmental Disabilities Council's appeal. If the determination is made that the Designated State Agency should be redesignated, the Governor (or legislature) must provide written assurance of compliance within 45 days from receipt of the decision.

(5) During any time of this appeals process the State Developmental Disabilities Council may withdraw such request if resolution has been reached with the Governor (or legislature) on the designation of the Designated State Agency. The Governor (or legislature) must notify the Assistant Secretary in writing of such an occurrence.

(e) The designated State agency may authorize the Council use or contract with State agencies other than the designated State agency to perform functions of the designated State agency.

28. Section 1386.35 is amended by revising the heading and paragraph (b)(1) and adding new paragraphs (d), (e), and (f) to read as follows:

§ 1386.35 Allowable and non-allowable costs for Federal Assistance to State Developmental Disabilities Councils.

* * * * *

(b) * * *

(1) Costs incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to the rights of individuals with developmental disabilities in section 110 of the Act (42 U.S.C. 6009).

* * * * *

(d) For purposes of determining aggregate minimum State share of expenditures, there are three categories of expenditures:

(1) Expenditures for projects or activities carried out directly by the Council and Council staff, as described in section 125A(a)(2) of the Act, require no non-Federal aggregate participation.

(2) Expenditures for projects with activities or products targeted to urban or rural poverty areas but not carried out directly by the Council and Council staff, as described in section 125A(a)(2) of the Act, shall have non-Federal participation of at least 10% in the aggregate.

(3) All other activities not directly carried out by the Council and Council staff, shall have non-Federal participation of at least 25% in the aggregate.

(e) The Council may vary the non-Federal participation required on a project by project, activity by activity basis (both poverty and non-poverty activities), including requiring no non-Federal participation from particular projects or activities as the Council deems appropriate so long as the requirement for aggregate non-Federal participation is met.

29. Section 1386.36 is amended by revising the section heading and paragraph (e) to read as follows:

§ 1386.36 Final disapproval of the State plan or plan amendments.

* * * * *

(e) A State has filed its request for a hearing with the Assistant Secretary within 21 days of the receipt of the decision. The request for a hearing must be sent by certified mail to the Assistant Secretary. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing, otherwise the date of receipt shall be considered the date of filing.

Subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance With Developmental Disabilities State Plans, Reports and Federal Requirements

30. Section 1386.80 is revised to read as follows:

§ 1386.80 Definitions.

For purposes of this subpart:

Assistant Secretary means the Assistant Secretary for Children and Families (ACF).

ADD means Administration on Developmental Disabilities, Administration for Children and Families.

Presiding officer means anyone designated by the Assistant Secretary to conduct any hearing held under this subpart. The term includes the Assistant Secretary if the Assistant Secretary presides over the hearing.

Payment or Allotment means an amount provided under Part B or C of the Developmental Disabilities Assistance and Bill of Rights Act. This term includes Federal funds provided under the Act irrespective of whether the State must match the Federal portion of the expenditure. This term shall include funds previously covered by the terms ''Federal financial participation,'' ''the State's total allotment,'' ''further payments,'' ''payments,'' ''allotment'' and ''Federal funds.''

31. Section 1386.85 is amended by revising paragraph (a) to read as follows:

§ 1386.85 Filing and service of papers.

(a) All papers in the proceedings must be filed with the designated individual in an original and two copies. Only the originals of exhibits and transcripts of testimony need be filed.

* * * * *

32. Section 1386.90 is revised to read as follows:

§ 1386.90 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Assistant Secretary to the State Developmental Disabilities Council and the Designated State Agency, or to the State Protection and Advocacy System or designating official. The notice must state the time and place for the hearing, and the issues which will be considered. The notice must be published in the Federal Register.

33. Section 1386.92 is revised to read as follows:

§ 1386.92 Place.

The hearing must be held on a date and at a time and place determined by the Assistant Secretary with due regard for convenience, and necessity of the parties or their representatives. The site of the hearing shall be accessible to individuals with disabilities.

34. Section 1386.93 is amended by revising paragraphs (c)(2) and (d) to read as follows:

§ 1386.93 Issues at hearing.

* * * * *

(c) * * *

(2) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity with Federal requirements under Part B of the Act, of the State plan or the activities of the State's Protection and Advocacy System, the Assistant Secretary must provide all parties other than the Department and the State (see § 1386.94(b)) with the statement of his or her intention to remove an issue from the hearings and the reasons for that decision. A copy of the proposed State plan provision or document explaining changes in the activities of the State's protection and advocacy system on which the State and the Assistant Secretary have settled must be sent to the parties. The parties must have an opportunity to submit in writing within 15 days their views as to, or any information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(d) In hearings involving questions of noncompliance of a State's operation of its program under Part B of the Act with the State plan or with Federal requirements or compliance of the State's Protection and Advocacy System with Federal requirements, the same procedure set forth in paragraph (c)(2) of this section must be followed with respect to any report or evidence resulting in a conclusion by the Assistant Secretary that a State has achieved compliance.

* * * * *

35. Section 1386.94 is amended by revising paragraphs (a), (b)(2), and (c) to read as follows:

§ 1386.94 Request to participate in hearing.

(a) The Department, the State, the State Developmental Disabilities Council, the Designated State Agency, and the State Protection and Advocacy System, as appropriate, are parties to the hearing without making a specific request to participate.

(b) * * *

(2) Any individual or group wishing to participate as a party must file a petition with the designated individual within 15 days after notice of the hearing has been published in the Federal Register, and must serve a copy on each party of record at that time in accordance with § 1386.85(b). The petition must concisely state:

(i) Petitioner's interest in the proceeding;

(ii) Who will appear for petitioner;

(iii) The issues the petitioner wishes to address; and

(iv) Whether the petitioner intends to present witnesses.

* * * * *

(c) (1) Any interested person or organization wishing to participate as amicus curiae must file a petition with the designated individual before the commencement of the hearing. The petition must concisely state:

(i) The petitioner's interest in the hearing;

(ii) Who will represent the petitioner, and

(iii) The issues on which the petitioner intends to present argument.

(2) The presiding officer may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues.

(3) An amicus curiae may present a brief oral statement at the hearing at the point in the proceedings specified by the presiding officer. It may submit a written statement of position to the presiding officer prior to the beginning of a hearing and must serve a copy on each party. It also may submit a brief or written statement at such time as the parties submit briefs and must serve a copy on each party.

36. Section 1386.101 is amended by revising paragraphs (a)(11) and (c) to read as follows:

§ 1386.101 Authority of presiding officer.

(a) * * *

(11) If the presiding officer is a person other than the Assistant Secretary, he or she shall certify the entire record, including recommended findings and proposed decision, to the Assistant Secretary;

* * * * *

(c) If the presiding officer is a person other than the Assistant Secretary, his or her authority is to render a recommended decision with respect to program requirements which are to be considered at the hearing. In case of any noncompliance, he or she shall recommend whether payments or allotments should be withheld with respect to the entire State plan or the activities of the State's Protection and Advocacy System, or whether the payments or allotments should be withheld only with respect to those parts of the program affected by such noncompliance.

37. Section 1386.111 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1386.111 Decisions following hearing.

* * * * *

(c) If the Assistant Secretary concludes:

(1) In the case of a hearing pursuant to sections 122, 127, or 142 of the Act, that a State plan or the activities of the State's Protection and Advocacy System does not comply with Federal requirements, he or she shall also specify whether the State's payment or allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan or the activities of the State's Protection and Advocacy System not affected by the noncompliance.

(2) In the case of a hearing pursuant to section 127 of the Act that the State is not complying with the requirements of the State plan, he or she must also specify whether the State's payment or allotment will not be made available to the State or whether, in the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan not affected by such noncompliance. The Assistant Secretary may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Assistant Secretary under this section is the final decision of the Secretary and constitutes ''final agency action'' within the meaning of 5 U.S.C. 704 and the ''Secretary's action'' within the meaning of Section 129 of the Act (42 U.S.C. 6029). The Assistant Secretary's decision must be promptly served on all parties and amici.

38. Section 1386.112 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1386.112 Effective date of decision by the Assistant Secretary.

(a) If, in the case of a hearing pursuant to section 122 of the Act, the Assistant Secretary concludes that a State plan does not comply with Federal requirements, and the decision provides that the payment or allotment will be authorized but limited to parts of the

State plan not affected by such noncompliance, the decision must specify the effective date for the authorization of the payment or allotment.

(b) In the case of a hearing pursuant to sections 127 or 142 of the Act, if the Assistant Secretary concludes that the State is not complying with the requirements of the State plan or the activities of the State's Protection and Advocacy System do not comply with Federal requirements, the decision that further payments or allotments will not be made to the State, or will be limited to the parts of the State plan or activities of the State's Protection and Advocacy System not affected, must specify the effective date for withholding payments of allotments.

* * * * *

PART 1387—PROJECTS OF NATIONAL SIGNIFICANCE

39. The authority citation for part 1387 continues to read as follows:

Authority: 42 U.S.C. 6000 *et seq.*

40. Section 1387.1 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 1387.1 General requirements.

(a) All projects funded under this part must be of national significance and serve or relate to individuals with developmental disabilities to comply with section 162 of the Act.

(b) Based on section 162(d), proposed priorities for grants and contracts will be published in the Federal Register and a 60 day period for public comments will be allowed.

* * * * *

(d) Projects of National Significance, including technical assistance and data collection grants, must be exemplary and innovative models and have potential for dissemination or knowledge utilization at the local level as well as nationally or otherwise meet the goals of part E of the Act.

41. Part 1388 is revised to read as follows:

PART 1388—THE UNIVERSITY AFFILIATED PROGRAMS

Sec.

1388.1 Definitions.
1388.2 Program criteria—purpose.
1388.3 Program criteria—mission.
1388.4 Program criteria—governance and administration.
1388.5 Program criteria—preparation of personnel.
1388.6 Program criteria—services and supports.
1388.7 Program criteria—dissemination.
1388.8 [Reserved].
1388.9 Peer review.

Authority 42 U.S.C. 6063 *et seq.*

§ 1388.1 Definitions.

For purposes of this part:

Accessible means UAPs are characterized by their program and physical accommodation and their demonstrated commitment to the goals of the Americans with Disabilities Act.

Capacity Building means that UAPs utilize a variety of approaches to strengthen their university and their local, State, regional and National communities. These approaches include, but are not limited to such activities as:

(1) Enriching program depth and breadth, for example, recruiting individuals with developmental disabilities and their families, local community leaders, additional faculty and students to participate in the UAP;

(2) Acquiring additional resources, for example, grants, space, and volunteer manpower; and

(3) Carrying out systems changes, for example, promoting inclusive programming for persons with developmental disabilities across all ages.

Collaboration means that the UAP cooperates with a wide range of persons, systems, and agencies, whether they utilize services of the UAP or are involved in UAP planning and programs. These entities include individuals with developmental disabilities and family members, as well as the State Developmental Disabilities Councils, the Protection and Advocacy agencies, other advocacy and disability groups, university components, generic and specialized human service agencies, State agencies and citizen and community groups. An example of this cooperation is the Consumer Advisory Committee, a required element in each UAP.

Cultural Diversity means that UAPs are characterized by their commitment to involve individuals with disabilities, family members and trainees from diverse cultural backgrounds in all levels of their activities. This commitment to cultural diversity means that each UAP must assure that individuals from racial and ethnic minority background are fully included; that efforts are made to recruit individuals from minority backgrounds into the field of developmental disabilities; that specific efforts must be made to ensure that individuals from minority backgrounds have effective and meaningful opportunities for full participation in the developmental disabilities service system; and that recruitment efforts at the levels of preservice training, community training, practice, administration and policymaking must focus on bringing large numbers of racial ethnic minorities into the field in order to provide appropriate skills, knowledge, role models, and sufficient personnel to address the growing needs of an increasingly diverse population.

Culturally competent means provision of services, supports, or other assistance in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language and behaviors of individuals who are receiving services, and that has the greatest likelihood of ensuring their maximum participation in the program.

Diverse Network means that although each UAP has the same mandates under the Act, the expression of these common mandates differs across programs. Each UAP must implement these mandates within the context of their host university, their location within the university, the needs of the local and State community, the cultural composition of their State, their resources and funding sources, and their institutional history. These factors converge to create a network of unique and distinct programs, bound together by common mandates but enriched by diverse composition.

Interdisciplinary Training means the use of individuals from different professional specialties for UAP training and service delivery.

Lifespan Approach means that UAP activities address the needs of individuals with disabilities who are of all ages.

Mandated Core Functions means the UAP must perform:

(1) Interdisciplinary preservice preparation;

(2) Community service activities (community training and technical assistance); and

(3) Activities related to dissemination of information and research findings.

Program Criteria means a statement of the Department's expectation regarding the direction and desired outcome of the University Affiliated Program's operation.

Research and evaluation means that the UAP refines its activities on the basis of evaluation results. As members of the university community, involvement in program-relevant research and development of new knowledge are important components of UAPs.

State-of-the-art means that UAP activities are of high quality (using the latest technology), worthy of replication (consistent with available resources), and systemically evaluated.

§ 1388.2 Program criteria—purpose.

The program criteria will be used to assess the quality of the University Affiliated Programs (UAP). The overall purpose of the program criteria is to assure the promotion of independence, productivity, integration and inclusion of individuals with developmental disabilities. Compliance with the program criteria is a prerequisite for a UAP to receive the minimum funding level of a UAP. However, compliance with the program criteria does not, by itself, assure funding. The Program Criteria are one part of the Quality Enhancement System (QES), and provide a structure for self-assessment and peer review of each UAP. (The QES is a holistic approach to enable persons with developmental disabilities and their families to achieve maximum potential. All UAPs use the QES.)

§ 1388.3 Program criteria—mission.

(a) Introduction to mission: The UAP is guided by values of independence, productivity, integration and inclusion of individuals with developmental disabilities and their families. The purpose and scope of the activities must be consistent with the Act as amended and include the provision of training, service, research and evaluation, technical assistance and dissemination of information in a culturally competent manner, including the meaningful participation of individuals from diverse racial and ethnic backgrounds. (The concept of ''diverse network'' as defined in § 1388.1 of this part applies to paragraphs (b), (f), (g), and (h) of this section.)

(b) The UAP must develop a written mission statement that reflects its values and promotes the goals of the university in which it is located, including training, the development of new knowledge and service. The UAP's goals, objectives and activities must be consistent with the mission statement.

(c) The UAP's mission and programs must reflect a life span approach, incorporate an interdisciplinary approach and include the active participation of individuals with developmental disabilities and their families.

(d) The UAP programs must address the needs of individuals with developmental disabilities, including individuals with developmental disabilities who are unserved or underserved, in institutions, and on waiting lists.

(e) The UAP's mission must reflect a commitment to culturally competent attitudes and practices, which are in response to local culture and needs.

(f) The UAP's mission must reflect its unique role as a bridge between university programs, individuals with developmental disabilities and their families, service agencies and the larger community.

(g) The UAP's goals, objectives, and activities must be consistent with the mission statement and use capacity building strategies to address State's needs.

(h) The UAP's goals, objectives, and activities must reflect interagency collaborations and strategies to effect systemic change within the university and in State and local communities and service systems.

§ 1388.4 Program criteria—governance and administration.

(a) Introduction to governance and administration: The UAP must be associated with, or an integral part of, a university and promote the independence, productivity, integration, and inclusion of individuals with developmental disabilities and their families. (The concept of ''diverse network'' as defined in § 1388.1 of this part applies to paragraphs (b), (c), (d), (i), and (l) of this section.)

(b) The UAP must have a written agreement or charter with the university that specifies the UAP designation as an official university component, the relationships between the UAP and other university components, the university commitment to the UAP, and the UAP commitment to the university.

(c) Within the university, the UAP must maintain the autonomy and organizational structure required to carry out the UAP mission and provide for the mandated activities.

(d) The UAP must report directly to a University administrator who will represent the interests of the UAP within the University.

(e) The University must demonstrate its support for the UAP through the commitment of financial and other resources.

(f) UAP senior professional staff must hold faculty appointments in appropriate academic departments of the host or an affiliated university, consistent with university policy. UAP senior professional staff contribute to the university by participation on university committees, collaboration with other university departments, and other university community activities.

(g) UAP faculty and staff must represent the broad range of disciplines and backgrounds necessary to implement the full inclusion of individuals with developmental disabilities in all aspects of society, consonant with the spirit of the Americans with Disabilities Act (ADA).

(h) The UAP must meet the requirements of section 109 of the Act [42 U.S.C. 6008] regarding affirmative action. The UAP must take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices.

(i) The management practices of the UAP, as well as the organizational structure, must promote the role of the UAP as a bridge between the University and the community. The UAP must actively participate in community networks and include a range of collaborating partners.

(j) The UAP's Consumer Advisory Committee must meet regularly. The membership of the Consumer Advisory Committee must reflect the racial and ethnic diversity of the State or community in which the UAP is located. The deliberations of the Consumer Advisory Committee must be reflected in UAP policies and programs.

(k) The UAP must maintain collaborative relationships with the State Developmental Disabilities Council and the Protection and Advocacy agency. In addition, the UAP must be a member of the State Developmental Disabilities Council and participate in Council meetings and activities, as prescribed by the Act.

(l) The UAP must maintain collaborative relationships and be an active participant with the UAP network and individuals, organizations, State agencies and Universities.

(m) The UAP must demonstrate the ability to leverage resources.

(n) The UAP must have adequate space to carry out the mandated activities.

(o) The UAP physical facility and all program initiatives conducted by the UAP must be accessible to individuals with disabilities as provided for by section 504 of the Rehabilitation Act and Titles II and III of the Americans with Disabilities Act.

(p) The UAP must integrate the mandated core functions into its activities and programs and must have a written plan for each core function area.

(q) The UAP must have in place a long range planning capability to enable the UAP to respond to emergent and future developments in the field.

(r) The UAP must utilize state-of-the-art methods, including the active participation of individuals, families and other consumers of UAP programs and services to evaluate programs. The

UAP must refine and strengthen its programs based on evaluation findings.

(s) The UAP Director must demonstrate commitment to the field of developmental disabilities and leadership and vision in carrying out the mission of the UAP.

§ 1388.5 Program criteria—preparation of personnel.

(a) Introduction to preparation of personnel: UAP interdisciplinary training programs reflect state-of-the-art practices and prepare personnel concerned with developmental disabilities to promote the independence, productivity, integration and inclusion of individuals with developmental disabilities and their families.

(b) UAP interdisciplinary training programs must be based on identified personnel preparation needs and have identified outcomes that are consistent with the mission and goals of the UAP.

(c) The interdisciplinary training process, as defined by the UAP, must reflect a mix of students from diverse academic disciplines/academic programs and cultures that reflect the diversity of the community. Faculty represent a variety of backgrounds and specialties, including individuals with disabilities and family members, and a variety of learning experiences, as well as reflecting the cultural diversity of the community. Trainees must receive academic credit as appropriate for participation in UAP training programs.

(d) Preservice training must be integrated into all aspects of the UAP, including community training and technical assistance, direct services (if provided), and dissemination.

(e) Trainees must be prepared to serve in a variety of roles, including advocacy and systems change. The UAP must encourage graduates to work in situations where they will promote the independence, productivity, integration and inclusion of individuals with developmental disabilities and their families.

(f) The UAP must influence University curricula to prepare personnel who, in their future career in a broad range of social and community roles, will contribute to the accommodation and inclusion of individuals with developmental disabilities, as mandated in the Americans with Disabilities Act.

(g) The UAP core curriculum must incorporate cultural diversity and demonstrate cultural competence. Trainees must be prepared to address the needs of individuals with developmental disabilities and their families in a culturally competent manner.

(h) The UAP core curriculum must prepare trainees to be active participants in research and dissemination efforts. In addition, the curriculum must prepare trainees to be consumers of research as it informs practice and policy.

§ 1388.6 Program criteria—services and supports.

(a) Introduction to services and supports: The UAP engages in a variety of system interventions and may also engage in a variety of individual interventions to promote independence, productivity, integration and inclusion of individuals with developmental disabilities and their families.

(b) UAP community training and technical assistance activities must:

(1) Use capacity building strategies to strengthen the capability of communities, systems and service providers;

(2) Plan collaboratively, including the participation of individuals with developmental disabilities and their families;

(3) Target to a wide range of audiences, including individuals with disabilities, family members, service and support personnel, and community members;

(4) Plan and be structured in a manner that facilitates the participation of targeted audiences; and

(5) Address the unique needs of individuals with developmental disabilities and their families from diverse cultural and ethnic groups who reside within the geographic locale.

(c) Direct Services. These requirements apply only where direct services are offered.

(1) A UAP must integrate direct services and projects into community settings. These services may be provided in a service delivery site or training setting within the community including the university. Direct service projects may involve interdisciplinary student trainees, professionals from various disciplines, service providers, families and/or administrators. Direct services must be extended, as appropriate, to include adult and elderly individuals with developmental disabilities. The UAP must maintain cooperative relationships with other community service providers, including specialized state and local provider agencies.

(2) Services and projects provided in community-integrated settings are to:

(i) Be scheduled at times and in places that are consistent with routine activities within the local community; and

(ii) Interact with and involve community members, agencies, and organizations.

(3) The bases for the services or project development must be:

(i) A local or universal need that reflects critical problems in the field of developmental disabilities; or

(ii) An emerging, critical problem that reflects current trends or anticipated developments in the field of developmental disabilities.

(4) State-of-the-art and innovative practices include:

(i) Services and project concepts and practices that facilitate and demonstrate independence for the individual, community integration, productivity, and human rights;

(ii) Practices that are economical, accepted by various disciplines, and highly beneficial to individuals with developmental disabilities, and that are integrated within services and projects;

(iii) Innovative cost-effective concepts and practices that are evaluated according to accepted practices of scientific evaluation;

(iv) Research methods that are used to test hypotheses, validate procedures, and field test projects; and

(v) Direct service and project practices and models that are evaluated, packaged for replication and disseminated through the information dissemination component.

§ 1388.7 Program criteria—dissemination.

(a) Introduction to dissemination: The UAP disseminates information and research findings, including the empirical validation of activities related to training, best practices, services and supports, and contributes to the development of new knowledge. Dissemination activities promote the independence, productivity, integration and inclusion of individuals with developmental disabilities and their families.

(b) The UAP must be a resource for information for individuals with developmental disabilities and their families, community members, State agencies and other provider and advocacy organizations, produce a variety of products to promote public awareness and visibility of the UAP, and facilitate replication of best practices.

(c) Specific target audiences must be identified for dissemination activities and include individuals with developmental disabilities, family members, service providers, administrators, policy makers, university faculty, researchers, and the general public.

(d) UAP dissemination activities must be responsive to community requests for

information and must utilize a variety of networks, including State Developmental Disabilities Councils, Protection and Advocacy agencies, other University Affiliated Programs, and State service systems to disseminate information to target audiences.

(e) The process of developing and evaluating materials must utilize the input of individuals with developmental disabilities and their families.

(f) The values of the UAP must be reflected in the language and images used in UAP products.

(g) Dissemination products must reflect the cultural diversity of the community.

(h) Materials disseminated by the UAP must be available in formats accessible to individuals with a wide range of disabilities, and appropriate target audiences.

(i) The UAP must contribute to the development of the knowledge base through publications and presentations, including those based on research and evaluation conducted at the UAP.

§ 1388.8 [Reserved]

§ 1388.9 Peer review.

(a) The purpose of the peer review process is to provide the Commissioner, ADD, with technical and qualitative evaluation of UAP applications, including on-site visits or inspections as necessary.

(b) Applications for funding opportunities under part D, Section 152 of the Act, must be evaluated through the peer review process.

(c) Panels must be composed of non-Federal individuals who, by experience and training, are highly qualified to assess the comparative quality of applications for assistance.

[FR Doc. 96–24508 Filed 9–27–96; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Part 582

Shelter Plus Care Program: Streamlining; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development; Shelter Plus Care Program; Streamlining

24 CFR Part 582

[Docket No. FR–4091–F–01]

RIN 2506–AB86

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations for the Shelter Plus Care Housing Program. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline the Shelter Plus Care regulations by removing provisions that are redundant of statutes or are otherwise unnecessary. This final rule will make the Shelter Plus Care regulations clearer and more concise.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: David Pollack, Program Development Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7260, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–1234. (This is not a toll-free number.) Hearing- or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. The regulations in 24 CFR part 582 implement the Department's Shelter Plus Care Program, which provides rental assistance that is matched with supportive services for hard-to-serve homeless persons with disabilities. In developing the regulations for the Shelter Plus Care, the Department has always attempted to codify only those requirements that are necessary to the proper administration of the program, and to allow the recipients as much discretion and flexibility as possible. See, for example, the interim rule, published on May 10, 1994 (59 FR 24252). The Department has determined that it can further improve and streamline the regulations for the Shelter Plus Care program.

This final rule makes the following specific amendments to part 582:

(1) Amends the first sentence of § 582.1 regarding the authorizing statute—the Stewart B. McKinney Homeless Assistance Act—in order to facilitate references to the statute throughout the regulations;

(2) Replaces many of the definitions in § 582.5 that are redundant of the statute with references to the pertinent statutory sections;

(3) Removes the rating criteria for applications in § 582.200(b) that repeat statute and adds cross-reference to the statute;

(4) Revises § 582.230 to add provisions on nonrecipient responsible entities assuming HUD environmental review responsibilities under the SRO component of the program. These revisions conform § 582.230 to 24 CFR part 58 as revised at 60 FR 13518, March 13, 1995, and at 60 FR 48610, September 19, 1995;

(5) Removes provisions in § 582.310 that repeat the text of section 3(a)(1) of the United States Housing Act of 1937; and

(6) Makes several conforming amendments to §§ 582.105, 582.300, 582.305, and 582.340.

Justification for Final Rulemaking

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule streamlines the Shelter Plus Care regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rule does not have an environmental impact. This rule simply amends existing regulations by consolidating and streamlining provisions; it does not alter the environmental effect of the regulations being amended. As the Department developed the regulations in part 582, Findings of No Significant Impact with respect to the environment were made in accordance with regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Those findings remain applicable to this rule, and are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the order. No significant change in the Department's policies or programs will result from promulgation of this rule.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This rule is

limited to removing those unnecessary provisions in the Shelter Plus Care Program regulations.

Catalog

The Catalog of Federal Domestic Assistance number is 14.238, Shelter Plus Care.

List of Subjects in 24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

Accordingly, for the reasons set forth in the preamble, 24 CFR part 582 is amended as follows:

PART 582—SHELTER PLUS CARE

1. The authority citation for 24 CFR part 582 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 11403–11407b.

2. Section 582.1 is amended by revising the first sentence in paragraph (a) and by revising paragraph (b), to read as follows:

§ 582.1 Purpose and scope.

(a) *General.* The Shelter Plus Care program (S+C) is authorized by title IV, subtitle F, of the Stewart B. McKinney Homeless Assistance Act (the McKinney Act) (42 U.S.C. 11403–11407b). * * * * * * * * * *

(b) *Components.* Rental assistance is provided through four components described in § 582.100. Applicants may apply for assistance under any one of the four components, or a combination.

3. Section 582.5 is revised to read as follows:

§ 582.5 Definitions.

The terms *Fair Market Rent (FMR), HUD, Public Housing Agency (PHA), Indian Housing Authority (IHA),* and *Secretary* are defined in 24 CFR part 5.

As used in this part:

Acquired immunodeficiency syndrome (AIDS) and related diseases has the meaning given in section 853 of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

Applicant has the meaning given in section 462 of the McKinney Act (42 U.S.C. 11403g).

Eligible person means a homeless person with disabilities (primarily persons who are seriously mentally ill; have chronic problems with alcohol, drugs, or both; or have AIDS and related diseases) and, if also homeless, the family of such a person. To be eligible for assistance, persons must be very low income, except that low-income individuals may be assisted under the SRO component in accordance with 24 CFR 813.105(b).

Homeless or *homeless individual* has the meaning given in section 103 of the McKinney Act (42 U.S.C. 11302).

Indian tribe has the meaning given in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

Low-income means an annual income not in excess of 80 percent of the median income for the area, as determined by HUD. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

Nonprofit organization has the meaning given in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704). The term nonprofit organization also includes a community mental health center established as a public nonprofit organization.

Participant means an eligible person who has been selected to participate in S+C.

Person with disabilities means a household composed of one or more persons at least one of whom is an adult who has a disability.

(1) A person shall be considered to have a disability if such person has a physical, mental, or emotional impairment which is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently; and is of such a nature that such ability could be improved by more suitable housing conditions.

(2) A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living; and

(G) Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(3) Notwithstanding the preceding provisions of this definition, the term *person with disabilities* includes, except in the case of the SRO component, two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted under this part, with the deceased member of the household at the time of his or her death. (In any event, with respect to the surviving member or members of a household, the right to rental assistance under this part will terminate at the end of the grant period under which the deceased member was a participant.

Recipient means an applicant approved to receive a S+C grant.

Seriously mentally ill has the meaning given in section 462 of the McKinney Act (42 U.S.C. 11403g).

Single room occupancy (SRO) housing means a unit for occupancy by one person, which need not but may contain food preparation or sanitary facilities, or both.

Sponsor means a nonprofit organization which owns or leases dwelling units and has contracts with a recipient to make such units available to eligible homeless persons and receives rental assistance payments under the SRA component.

State has the meaning given in section 462 of the McKinney Act (42 U.S.C. 11403g).

Supportive service provider, or *service provider*, means a person or organization licensed or otherwise qualified to provide supportive services, either for profit or not for profit.

Supportive services means assistance that—

(1) Addresses the special needs of eligible persons; and

(2) Provides appropriate services or assists such persons in obtaining appropriate services, including health care, mental health treatment, alcohol and other substance abuse services, child care services, case management services, counseling, supervision, education, job training, and other services essential for achieving and maintaining independent living. (Inpatient acute hospital care does not qualify as a supportive service.).

Unit of general local government has the meaning given in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

Very low-income means an annual income not in excess of 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

§ 582.105 [Amended]

4. In § 582.105, paragraph (a) is amended by removing the words ''paragraph (f)'' and adding, in their place, the words ''paragraph (e)''; and paragraph (d)(2) is amended by removing the word ''paragraph'' and adding, in its place, the words ''paragraph (d)''.

5. Section 582.200 is revised to read as follows:

§ 582.200 Application and grant award.

(a) *Review.* When funds are made available for assistance, HUD will publish a notice of fund availability in the Federal Register in accordance with the requirements of 24 CFR part 4. Applications will be reviewed and screened in accordance with the guidelines, rating criteria and procedures published in the notice.

(b) *Rating criteria.* HUD will award funds based on the criteria specified in section 455(a)(1) through (8) of the McKinney Act (42 U.S.C. 11403d(1)—11403d(8)) and on the following criteria authorized by section 455(a)(9) of the McKinney Act (42 U.S.C. 11403d(9)):

(1) The extent to which the applicant has demonstrated coordination with other Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project, to the extent practicable;

(2) Extent to which the project targets homeless persons living in emergency shelters, supportive housing for homeless persons, or in places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;

(3) Quality of the project; and

(4) Extent to which the program will serve homeless persons who are seriously mentally ill, have chronic alcohol and/or drug abuse problems, or have AIDS and related diseases.

(Approved by the Office of Management and Budget under control number 2506–0118)

6. Section 582.230 is revised to read as follows:

§ 582.230 Environmental review requirements.

(a) *Responsibility for review.* (1) HUD will perform the environmental review, in accordance with part 50 of this title, for conditionally selected applications received from PHA applicants and from IHA applicants. HUD is not permitted to approve such applications prior to its completion of this review, nor is the PHA or IHA permitted to enter into a contract for, or otherwise commit HUD or local funds for, acquisition, rehabilitation, conversion, lease, repair, or construction of property to provide housing under the program, prior to HUD's completion of this review and approval of the application, except under the SRO component.

(2) Applicants that are States, units of general local government, or Indian tribes must assume responsibility as ''responsible entities'' for environmental review, decisionmaking, and action for each application for assistance in accordance with part 58 of this title. In addition, for PHA projects and IHA projects under the SRO component, environmental reviews will be performed by State, local government, Indian tribe, or Alaska native village ''nonrecipient responsible entities'' as provided under part 58 of this title. HUD is permitted to approve such applications subject to the completion of reviews by the applicant in accordance with part 58 of this title. Applicants performing these reviews may adopt relevant and adequate prior reviews conducted by HUD or another governmental entity if the reviews meet the particular requirements of the Federal environmental law or authority under which they would be adopted, and only under certain conditions (e.g., a determination that no environmentally significant changes have occurred since the review was done). Applicants who adopt such relevant and adequate prior reviews may include the environmental certification and Request for Release of Funds with their applications.

(b) *Environmental review by HUD.* With regard to the environmental effects of applications for which HUD performs the review, HUD will undertake its review in accordance with the provisions of NEPA and the related authorities listed in 24 CFR 50.4. HUD may eliminate an application from consideration where the application would require an Environmental Impact Statement (EIS). PHA applicants and IHA applicants (other than under the SRO component) must include in their application an assurance that the applicant will:

(1) Not enter into a contract for, or otherwise commit HUD or local funds for, acquisition, rehabilitation, conversion, lease, repair, or construction of property to provide housing under the program, prior to HUD's completion of the review and approval of the application;

(2) Supply HUD with information necessary for HUD to perform any applicable environmental review when requested under § 582.225(a); and

(3) Carry out mitigating measures required by HUD or ensure that alternate sites are utilized.

(c) *Environmental review by applicants or nonrecipient responsible entities.* (1) An applicant that is required under paragraph (a)(2) of this section to assume environmental review responsibility must include in its application an assurance that the applicant will assume all the environmental review responsibility that would otherwise be performed by HUD as the responsible Federal official under NEPA and related authorities listed in 24 CFR 58.5. A PHA or IHA applicant under the SRO component must include in its application an assurance by the nonrecipient responsible entity that the entity will assume all the environmental review responsibility that would otherwise be performed by HUD as the responsible Federal official under NEPA and related authorities listed in 24 CFR 58.5.

(2) For applicants required to assume environmental review responsibility and for PHAs and IHAs under the SRO component, the award of funding is subject to completion of the environmental responsibilities set out in 24 CFR part 58 within a reasonable time period after notification of the award. (This provision does not preclude the applicant from enclosing its environmental certification and Request for Release of Funds with its application.)

(i) Upon completion of the requirements in 24 CFR part 58:

(A) Applicants required to assume environmental review responsibility must certify the completion;

(B) PHA and IHA applicants under the SRO component must submit the nonrecipient responsible entities' certification of completion; and

(C) All applicants must submit a Request for Release of Funds. This submission is not required in cases in which the applicant determines, in accordance with part 58 that its program components are totally exempt.

(ii) HUD will not release grant funds if the recipient or any other party commits grant funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the grantee submits and HUD approves its Request for Release of Funds (when such submission is required).

§ 582.300 [Amended]

6. In § 582.300, paragraph (a)(1) is amended by removing the words ''§ 582.340(e)'' and adding, in their place, the words ''§ 582.340(b)''.

§ 582.305 [Amended]

7. In § 582.305, paragraph (a) is amended by removing the words ''882.109'' and adding, in their place, the words ''982.401''.

8. In § 582.310, paragraph (a) is revised to read as follows:

§ 582.310 Resident rent.

(a) *Amount of rent.* Each participant must pay rent in accordance with section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(3)(1)), except that the gross income of a person occupying an intermediate care facility assisted under title XIX of the Social Security Act is the same as if the person were being assisted under title XVI of the Social Security Act.

* * * * *

9. Section 582.340 is amended by:

a. Revising paragraph (a)(1);

b. In paragraphs (b)(2) and (b)(3)(iv), removing the words ''paragraph (e)(1)'', each place they appear and adding in each place, the words ''paragraph (b)(1)'';

c. Revising paragraph (b)(2)(i); and

d. In the introductory text of paragraph (b)(3), removing the words ''paragraph (e)(2)'' and adding, in their place, the words ''paragraph (b)(2)'', to read as follows:

§ 582.340 Other Federal requirements.

(a) * * *

(1) The policies, guidelines, and requirements of OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 apply to the acceptance and use of assistance under the program by governmental entities, and OMB Circular Nos. A–110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) and 24 CFR part 84 and A–122 (Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Institutions) apply to the acceptance and use of assistance by private nonprofit organizations, except where inconsistent with provisions of the McKinney Act, other Federal statutes, or this part. (OMB Circulars are available from the Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G–2200, Washington, DC 20503, Telephone 202–395–7332.)

(b) * * *

(2) * * *

(i) For States, units of general local governments, PHAs and IHAs, a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

* * * * *

Dated: September 23, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–24875 Filed 9–27–96; 8:45 am]

BILLING CODE 4210–29–P

Federal Register

Monday
September 30, 1996

Part IV

Department of Housing and Urban Development

24 CFR Part 583

Supportive Housing Program: Streamlining; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 583

RIN 2506–AB85

[Docket No. FR–4089–F–01]

Office of the Assistant Secretary for Community Planning and Development; Supportive Housing Program; Streamlining

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations for the Supportive Housing Program. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline the Supportive Housing regulations by eliminating provisions that are redundant of statutes or are otherwise unnecessary. This final rule will make the Supportive Housing regulations clearer and more concise.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: Maggie H. Taylor, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; telephone (202) 708–4300 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. The regulations in 24 CFR part 583 implement the Department's Supportive Housing Program, which provides assistance for housing and supportive services for homeless persons, as authorized by title IV, subtitle C of the Stewart B. McKinney Homeless Assistance Act of 1987, as amended (the McKinney Act) (42 U.S.C. 11381–11389). In developing the regulations for the Supportive Housing Program, the Department has always attempted to codify only those requirements that are necessary to the proper administration of the program, and to allow the recipients the flexibility to carry out projects that benefit homeless persons (see, e.g., the preamble to the Supportive Housing final rule, published on July 19, 1994 (59 FR 36886)). However, the Department has determined that it can further improve and streamline the regulations for the Supportive Housing Program by eliminating unnecessary provisions.

For example, many of the provisions in part 583 come directly from the McKinney Act. It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this final rule will remove repetitious statutory language and replace it with a citation to the specific statutory section for easy reference.

This final rule will make the following specific amendments to part 583:

(1) Amend the first sentence of § 583.1 regarding the authorizing statute—the Stewart B. McKinney Homeless Assistance Act—in order to facilitate references to the statute throughout the regulations;

(2) Replace many of the definitions in § 583.5 that are redundant of the statute with references to the pertinent statutory sections. For the definition of ''Operating costs'', this rule will also amend §§ 583.125 and 583.135 to include regulatory guidance that is not redundant of the statute. This rule also updates § 583.5 to refer to the consolidated plan, rather than the Comprehensive Housing Affordability Strategy, according to HUD's Consolidated Plan final rule, published on January 5, 1995 (60 FR 1878);

(3) Remove the provision regarding the rating criteria for applications in § 583.200(b). This information is repetitive of the statute, and can more appropriately be provided in the annual notice of funding availability (NOFA);

(4) Streamline the language in § 583.230 regarding environmental review. The substance of this language is redundant of the environmental review regulations in 24 CFR parts 50 and 58;

(5) Replace language from § 583.300(f) regarding the participation of homeless individuals that is redundant of the statute with a reference to the statutory section;

(6) Replace much of § 583.305, which is redundant of the statute, with statutory references;

(7) Remove the nondiscrimination requirements in § 583.325(b)(2). The Department issued a final rule on February 9, 1996 (61 FR 5198) creating a new 24 CFR part 5, subpart A of which contains certain definitions, Federal requirements, and a waiver provision that are generally applicable to all HUD programs. The February 9, 1996 final rule removed the duplicative nondiscrimination requirements that were in § 583.325(b)(1); this final rule will remove the duplicative requirements from paragraph (b)(2) of that section;

(8) Remove the outdated reference to the Comprehensive Housing Affordability Strategy (CHAS) in § 583.405(a)(1), and replace it with a reference to the consolidated plan, in accordance with the Consolidated Plan final rule published on January 5, 1995 (60 FR 1878).

This rule will result in the elimination of approximately four pages of unnecessary regulations.

Justification for Final Rulemaking

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule primarily removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule primarily streamlines the Supportive Housing regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rule does not have an environmental impact. This rule simply amends existing regulations by consolidating and streamlining provisions; it does not alter the environmental effect of the regulations being amended. As the Department

developed the regulations in part 583, Findings of No Significant Impact with respect to the environment were made in accordance with regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Those findings remain applicable to this rule, and are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the order. No significant change in the Department's policies or programs will result from promulgation of this rule.

List of Subjects in 24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

PART 583—SUPPORTIVE HOUSING PROGRAM

Accordingly, for the reasons set forth in the preamble, 24 CFR part 583 is amended as follows:

1. The authority citation for 24 CFR part 583 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11389.

2. In § 583.1, paragraph (a) is amended by revising the first sentence to read as follows:

§ 583.1 Purpose and scope.

(a) *General.* The Supportive Housing Program is authorized by title IV of the Stewart B. McKinney Homeless Assistance Act (the McKinney Act) (42 U.S.C. 11381–11389). * * *

* * * * *

3. Section 583.5 is revised to read as follows:

§ 583.5 Definitions.

As used in this part:

Applicant is defined in section 422(1) of the McKinney Act (42 U.S.C. 11382(1)). For purposes of this definition, governmental entities include those that have general governmental powers (such as a city or county), as well as those that have limited or special powers (such as public housing agencies).

Consolidated plan means the plan that a jurisdiction prepares and submits to HUD in accordance with 24 CFR part 91.

Date of initial occupancy means the date that the supportive housing is initially occupied by a homeless person for whom HUD provides assistance under this part. If the assistance is for an existing homeless facility, the ''*date of initial occupancy*'' is the date that services are first provided to the residents of supportive housing with funding under this part.

Date of initial service provision means the date that supportive services are initially provided with funds under this part to homeless persons who do not reside in supportive housing. This definition applies only to projects funded under this part that do not provide supportive housing.

Disability is defined in section 422(2) of the McKinney Act (42 U.S.C. 11382(2)).

Homeless person means an individual or family that is described in section 103 of the McKinney Act (42 U.S.C. 11302).

Metropolitan city is defined in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)). In general, metropolitan cities are those cities that are eligible for an entitlement grant under 24 CFR part 570, subpart D.

New construction means the building of a structure where none existed or an addition to an existing structure that increases the floor area by more than 100 percent.

Operating costs is defined in section 422(5) of the McKinney Act (42 U.S.C. 11382(5)).

Outpatient health services is defined in section 422(6) of the McKinney Act (42 U.S.C. 11382(6)).

Permanent housing for homeless persons with disabilities is defined in section 424(c) of the McKinney Act (42 U.S.C. 11384(c)).

Private nonprofit organization is defined in section 422(7) (A), (B), and (D) of the McKinney Act (42 U.S.C. 11382(7) (A), (B), and (D)). The organization must also have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles.

Project is defined in sections 422(8) and 424(d) of the McKinney Act (42 U.S.C. 11382(8), 11384(d)).

Recipient is defined in section 422(9) of the McKinney Act (42 U.S.C. 11382(9)).

Rehabilitation means the improvement or repair of an existing structure or an addition to an existing structure that does not increase the floor area by more than 100 percent. Rehabilitation does not include minor or routine repairs.

State is defined in section 422(11) of the McKinney Act (42 U.S.C. 11382(11)).

Supportive housing is defined in section 424(a) of the McKinney Act (42 U.S.C. 11384(a)).

Supportive services is defined in section 425 of the McKinney Act (42 U.S.C. 11385).

Transitional housing is defined in section 424(b) of the McKinney Act (42 U.S.C. 11384(b)). See also § 583.300(j).

Tribe is defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

Urban county is defined in section 102(a)(6) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(6)). In general, urban counties are those counties that are eligible for an entitlement grant under 24 CFR part 570, subpart D.

4. Section 583.125 is amended by revising paragraph (b) to read as follows:

§ 583.125 Grants for operating costs.

* * * * *

(b) *Operating costs.* Operating costs are those associated with the day-to-day operation of the supportive housing. They also include the actual expenses that a recipient incurs for conducting on-going assessments of the supportive services needed by residents and the availability of such services; relocation assistance under § 583.310, including payments and services; and insurance.

* * * * *

5. Section 583.135 is amended by revising paragraph (b) to read as follows:

§ 583.135 Administrative costs.

* * * * *

(b) *Administrative costs.* Administrative costs include the costs associated with accounting for the use of grant funds, preparing reports for submission to HUD, obtaining program audits, similar costs related to administering the grant after the award, and staff salaries associated with these administrative costs. They do not include the costs of carrying out eligible activities under §§ 583.105 through 583.125.

6. Section 583.200 is revised to read as follows:

§ 583.200 Application and grant award.

When funds are made available for assistance, HUD will publish a notice of funding availability (NOFA) in the Federal Register, in accordance with the requirements of 24 CFR part 4. HUD will review and screen applications in accordance with the requirements in section 426 of the McKinney Act (42 U.S.C. 11386) and the guidelines, rating criteria, and procedures published in the NOFA.

7. Section 583.230 is revised to read as follows:

§ 583.230 Environmental review.

(a) *Generally.* Project selection is subject to completion of an environmental review of the proposed site, and the project may be modified or the site rejected as a result of that review. The environmental effects must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4320) (NEPA) and the related environmental laws and authorities listed in HUD's implementing regulations at 24 CFR parts 50 or 58, depending on who is responsible for environmental review.

(b) *Environmental review by HUD.* HUD will perform an environmental review, in accordance with part 50 of this title, before approval of conditionally selected applications received directly from private nonprofit organizations and governmental entities with special or limited purpose powers. Any application subject to environmental review by HUD that requires an Environmental Impact Statement (EIS) in accordance with the procedures in 24 CFR part 50, subpart E, will not be eligible for assistance under this part.

(c) *Environmental review by applicants.* Applicants that are States, metropolitan cities, urban counties, tribes, or other governmental entities with general purpose powers must assume responsibility for environmental review, decisionmaking, and action for each application for assistance in accordance with part 58 of this title. These applicants must include in their applications an assurance that they will assume all the environmental review responsibility that would otherwise be performed by HUD as the responsible Federal official under NEPA and related authorities listed in 24 CFR part 58. The grant award is subject to completion of the environmental responsibilities set out in 24 CFR part 58 within a reasonable time period after notification of the award. Applicants may, however, enclose an environmental certification and Request for Release of Funds with their applications.

8. Section 583.300 is amended by revising paragraph (f) to read as follows:

§ 583.300 General operation.

* * * * *

(f) *Participation of homeless persons.* (1) Each recipient must provide for the participation of homeless persons as required in section 426(g) of the McKinney Act (42 U.S.C. 11386(g)). This requirement is waived if an applicant is unable to meet it and presents a plan for HUD approval to otherwise consult with homeless or formerly homeless persons in considering and making policies and decisions. See also § 583.330(e).

(2) Each recipient of assistance under this part must, to the maximum extent practicable, involve homeless individuals and families, through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project and in providing supportive services for the project.

* * * * *

9. Section 583.305 is revised to read as follows:

§ 583.305 Term of commitment; repayment of grants; prevention of undue benefits.

(a) *Term of commitment and conversion.* Recipients must agree to operate the housing or provide supportive services in accordance with this part and with sections 423 (b)(1) and (b)(3) of the McKinney Act (42 U.S.C. 11383(b)(1), 11383(b)(3)).

(b) *Repayment of grant and prevention of undue benefits.* In accordance with section 423(c) of the McKinney Act (42 U.S.C. 11383(c)), HUD will require recipients to repay the grant unless HUD has authorized conversion of the project under section 423(b)(3) of the McKinney Act (42 U.S.C. 11383(b)(3)).

10. Section 583.325 is amended by revising paragraph (b) to read as follows:

§ 583.325 Nondiscrimination and equal opportunity requirements.

* * * * *

(b) *Nondiscrimination and equal opportunity requirements.* The nondiscrimination and equal opportunity requirements set forth at part 5 of this title apply to this program. The Indian Civil Rights Act (25 U.S.C. 1301 et seq.) applies to tribes when they exercise their powers of self-government, and to Indian housing authorities (IHAs) when established by the exercise of such powers. When an IHA is established under State law, the applicability of the Indian Civil Rights Act will be determined on a case-by-case basis. Projects subject to the Indian Civil Rights Act must be developed and operated in compliance with its provisions and all implementing HUD requirements, instead of title VI and the Fair Housing Act and their implementing regulations.

* * * * *

§ 583.405 [Amended]

11. In § 583.405, paragraph (a)(1) is amended by removing the term ''CHAS'', and by adding in its place the term ''consolidated plan''.

Dated: September 23, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–24873 Filed 9–27–96; 8:45 am]

BILLING CODE 4210–29–P

Federal Register

Monday
September 30, 1996

Part V

Department of Housing and Urban Development

24 CFR Parts 950 and 990

Public and Indian Housing Performance Funding System: Incentives; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 950 and 990

[Docket No. FR–4072–I–01]

RIN 2577–AB65

Public and Indian Housing Performance Funding System: Incentives

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends HUD's regulations for the Performance Funding System that governs payment of operating subsidy to Public Housing Agencies and Indian Housing Authorities (collectively called Housing Agencies or HAs). It makes four principal changes: it codifies incentive adjustments that were made for Federal Fiscal Years 1996 through 1998 via a Notice to Housing Agencies; it adds a provision to gradually phase down operating subsidies provided to Housing Agencies when they obtain HUD approval to demolish units; it clarifies how combining two efficiency units into a one-bedroom unit is to be treated for operating subsidy eligibility; and it removes a limitation on the time period that applies to an HA's eligibility to benefit from certain utility savings efforts.

A rule is necessary because the incentives that were contained in the referenced Notice were based on legislation that expires after September 30, 1996. Without action by HUD to continue these incentives beyond that date, HAs may be reluctant to adopt and implement worthwhile practices based solely on the provisions of the Notice. Since the Secretary has authority to regulate in this area, promulgation of this interim rule will give HAs a regulatory basis for adopting worthy changes. The change with respect to utility savings is to conform the regulation to the statute, since a six-year limitation was just removed from the authorizing statute.

DATES: *Effective date:* October 30, 1996, except that §§ 950.725(b), 950.756, 950.757, 990.109(b), 990.114, and 990.116 shall not become effective until the OMB approval of the information collections contained in those sections are announced by a separate publication in the Federal Register.

Comment due date: Comments must be submitted by November 29, 1996.

The deadline for comments on the information collection requirements is November 29, 1996, although commenters are advised that a comment is best assured of having its full effect if it is received by the Office of Management and Budget (OMB) within 30 days of publication. See the Public Reporting Burden heading under the Findings and Certifications section of this preamble regarding the information collection burden.

ADDRESSES: Interested persons are invited to submit comments regarding this 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. Comments should refer to the above docket number and title of the rule. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address.

Comments on the information collections contained in the rule, which are described in detail in the section, Findings and Certifications, must refer to the docket number and title of the rule and be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503
and
Reports Liaison Officer, Room 4238, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: For the public housing program, contact Joan DeWitt, Director, Finance and Budget Division, Office of Public and Assisted Housing Operations, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (voice): (202) 708–1872, ext. 4035. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1–800–877–8339.

For the Indian housing programs, contact Deborah Lalancette, Director, Housing Management Division, Office of Native American Programs, Department of Housing and Urban Development, Room B–133, 451 Seventh Street, SW., Washington, DC 20410, telephone (voice): (202) 755–0088. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Changes to Encourage HAs to Facilitate Resident Employment and Undertake Entrepreneurial Initiatives

Congress enacted the Balanced Budget Downpayment Act I on January 26, 1996 (Pub. L. No. 104–99), effective only for Federal Fiscal Year 1996. This legislation permitted housing agencies to take actions to attract and retain working families in occupancy such as the adoption of ceiling rents, adoption of earned income adjustments that would make work attractive to tenants, and adoption of local preferences. The legislation also repealed Federal admissions preferences.

HUD issued a Notice to housing agencies (PIH 96–24) in the spring of 1996, providing an incentive under the Performance Funding System (PFS) for HAs that make significant efforts to utilize the new optional earned income adjustments for existing residents or that undertake entrepreneurial activities. The Notice made the incentive effective for the shorter of the period of three Federal Fiscal Years (FFYs), 1996–1998, or the period during which there is a shortfall in the availability of funds to pay full operating subsidy eligibility to all HAs. Specifically, the Notice permitted HAs that implement the optional earned income exclusion for existing residents to offset performance funding system (PFS) funding shortfalls by retaining increases in dwelling rental income that result from increases in residents' earned incomes. The Notice also provided an incentive related to other income earned by the HAs through entrepreneurial activities. This rule adopts similar changes.

The Secretary has authority under section 3 of the United States Housing Act of 1937, 42 U.S.C. 1437a, to define the term ''income,'' as it used for purposes of determining eligibility and rental payment in the public and Indian housing programs. Although the Appropriations Act provision expires at the end of the current fiscal year (September 30, 1996), a change made by the Secretary in the definition of income permitting HAs to adopt an exclusion for earned income can have longer lasting effect. The Secretary is exercising this authority in another pending rulemaking, but this rule specifies the impact of adoption of such an exclusion by an HA.

Under this new policy, HAs have the authority to establish their own earned income exclusion, as a means of attracting and retaining more tenants with earned income. PFS subsidies, however, will be calculated without respect to either decreases in rental income resulting from the exclusion, or increases resulting from higher rents received from households with earned income. In general, HAs that opt to adopt earned income exclusions will increase their total income if they are successful in obtaining more and/or higher income working tenants but will lose income if their policies do not produce a net increase in rent revenues.

To permit proper determination of operating subsidy eligibility, in accordance with the principle stated above, a housing agency that adopts an earned income exclusion will have to calculate and document the following:

(1) Per unit rental income from resident earned income in the April 1, 1996 rent roll;

(2) A future month's per unit rental income from resident earned income (see §§ 950.757(b) and 990.116(b)); and

(3) A future month's rent roll adjusted so that it does not reflect decreases resulting from the HA's implementation of an optional earned income exclusion (see §§ 950.725(b)(1)(ii) and 990.109(b)(1)(ii)).

In addition to the change with respect to an earned income adjustment, the Department's recent Notice suspended a three percent change factor applied to project an HA's dwelling rental income. In recent years this assumption of an increase in the dwelling rental income has not been realized. In order to ensure that all HAs receive a level of funding that most nearly reflects their final eligibility based on actual experience, without requiring them to request a year end adjustment, the Department suspended use of the change factor for the same period of time as applies to the earned income exclusion. This rule codifies that change, as well.

The rationale for incorporating these changes in the PFS regulation is to ensure some degree of continuity in Departmental policy on which HAs may rely. The Department believes that these measures can significantly improve the stability of HAs by permitting HAs to improve the income mix in their developments, and thus increase dwelling rental income. The retention by HAs of additional rental income—and other income—above that permitted under the current PFS formula, up to 100 percent of their PFS eligibility, will directly allow these HAs to provide better housing services in their communities.

There is statutory authority for these changes under section 9 of the United States Housing Act of 1937, 42 U.S.C. 1437g. That provision authorizes HUD to base operating subsidy to housing agencies on a performance funding system that is substantially based on the system defined in regulations and in effect on February 5, 1988. These changes to the PFS are not substantial changes. They deal only with the matter of how to cope with a subsidy shortfall during the three-year period of FY 1996 through FY 1998, but they do not apply during any FFY during which there is not an overall PFS shortfall.

II. Transition Funding for Units Approved for Demolition

This rule also contains a change to the PFS regulations to provide a short transition period of funding for HAs that have received approval to demolish HA-owned public or Indian housing units. The purpose of the change is to encourage and support efforts by an HA to reduce its overhead costs in a planned and orderly manner when its inventory of units is reduced by demolition.

Under the current PFS regulations, units are no longer eligible for operating subsidy when the Department approves the unit for deprogramming (including approval to demolish the unit) and the unit is vacant. The only funding provided after that point is funding for direct costs relating to preserving and protecting the unit pending actual demolition or disposition.

This abrupt cut-off in subsidy does not provide an opportunity for affected HAs to reduce their overhead costs in a planned and orderly way. An HA that undertakes a significant reduction to its inventory will need to rethink and possibly restructure the way it does business. This is especially true if the units are not going to be replaced or if some different type of development management is contemplated. Some HAs are contemplating the demolition of up to 20% of their inventory.

Faced with the prospect of a sudden and sharp decrease in subsidy funding, some HAs may decide to postpone the decision to seek HUD approval to demolish units that clearly meet the criteria for such an action, especially where the units are not being replaced by tenant-based subsidy, such as Section 8 Certificates or Vouchers. By retaining these units in its inventory, an HA continues to receive some level of operating subsidy support.

This proposed rule strikes a balance between the need to eliminate disincentives and the need to achieve a reduction in operating subsidy as a result of demolition activity. Subsidy funding will be continued to units approved by HUD for demolition under the following conditions:

(1) Units replaced with Section 8 Certificates or Vouchers will not be eligible for phase-down subsidy;

(2) Units that have been continuously vacant for the twelve-month period immediately preceding HUD approval for the demolition will be eligible for subsidy funding based on 20% of the Allowable Expense Level (AEL) for 12 months beginning with the month that the demolition request was approved by HUD; and

(3) For units that have not been continuously vacant for twelve months, the rule phases out the subsidy over a three-year period, starting with the month in which the unit is approved for demolition and is vacant. For the initial 12-month period, the unit will be eligible for subsidy funding based on 100% of AEL. For the next 12-month period, the unit will be eligible for subsidy funding based on 66% of the AEL. For the third 12-month period, the unit will be eligible for funding based on 33% of the AEL.

(4) Units that are approved for demolition and are replaced with conventional public or Indian housing units will not be eligible for phase-down subsidy when the replacement units become eligible for subsidy.

(5) Units that are removed from the inventory as a result of being combined with other units are not considered to be demolished units for this purpose.

The intent of this change is to maintain the momentum that has been achieved to demolish the worst parts of the public housing inventory. The Department is concerned that if it does not address the legitimate transitional funding need problems of HAs undergoing inventory and funding reductions, this momentum will be lost.

This change to the PFS regulations falls within the authority of the Secretary to define the PFS for payment of operating subsidy. The change merely removes some of the obstacles to demolishing seriously deteriorated or obsolete housing stock, while coping with an operating subsidy shortfall.

One limitation on the Department's ability to issue rules on the subject of PFS is the statutory requirement that ''any proposed regulation providing for amendment, alteration, adjustment, or other change in the performance funding system relating to vacant units shall be issued pursuant to a negotiated rule making procedure * * *.''

This rule will provide additional operating subsidy to certain HAs that had or will have (vacant) units approved

for demolition in 1995 or later. The additional costs to the PFS are estimated as follows: $17.6 million in FY 1997 (including $1.3 million for FY 1995, $6 million for FY 1996, and $10.3 million for FY 1997); $19.6 million in FY 1998; and $25.5 million in FY 1999. The corresponding savings for the PFS resulting from the demolitions are as follows: $4.9 million in FY 1996; $10.8 million in FY 1997; $44.1 million in FY 1998; and $81.9 million in FY 1999. When the savings are compared with the cost, the results are a net cost of $1.9 million for FYs 1995 through 1997, but a net savings of $24.5 million and $56.4 million, respectively, for FYs 1998 and 1999. Thus, the net effect of this rule on PFS during the period is a savings in total operating subsidy eligibility amount.

Moreover, compared to the magnitude of the PFS in its entirety, this phase-down funding is minimal in scale. The $1,900,000 of net cost in FYs 1996 and 1997 can be contrasted with the amount provided in the FY 1997 HUD appropriations bill as passed by the House of $2,850,000,000. In addition, it should be noted that most HAs that are demolishing public or Indian housing units are receiving certificates as replacement for those lost units. Those HAs are not eligible for phase-down of subsidy under this rule, and so are not affected by this provision.

The purpose to be served by a negotiated rulemaking is to assure that all interested parties have an opportunity to advance their interests during the development of a proposal that will affect them. Since the phase-down of subsidy for units approved for demolition produces an overall savings to the PFS and is minimal in effect when compared with the overall level of PFS funding, the impact on HAs and tenants of this rule does not rise to the level to necessitate participation in a negotiated rulemaking. Therefore, the Department has determined that the phase-down provision does not constitute the type of change in PFS relating to vacant units for which a negotiated rulemaking is required.

III. Treatment of Combination of Two Efficiency Units Into a One Bedroom Unit

In recognition of the marketing problem HAs have regarding efficiency apartments and the resulting high vacancy rates in these units, the Department wants to support HAs which make the decision to convert efficiency units into one bedroom units. This rule amends §§ 990.108(d) and 950.720(e), *Costs resulting from combination of two or more units,* to treat the conversion of two efficiency units into a one-bedroom unit as eligible for funding under this section.

IV. Changes to Utility Savings Retention Period

In enacting the 1996 Omnibus Appropriations Act, Congress removed the statutory restriction of six years imposed after the first year of utility rate savings that an HA is permitted to share. Therefore, this rule removes the language from the rule that enforced that time limit. Now, the utility rate savings can continue to be shared for as long as the actions of the HA continue to be cost-effective.

This change is being made not only for public housing but also for Indian housing. Section 201(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437aa(b)(2), ''the 1937 Act'') provides that amendments to provisions found in title II of the 1937 Act do not apply to Indian housing unless the amendment so states. Nevertheless, when the statutory authority to extend the period of permitted rate savings sharing from one year to seven years was implemented, the extension was made applicable to Indian housing despite the absence of specific mention of Indian housing in the statutory amendment. The preamble of the rule implementing the extension stated (at 59 FR 33653) that, ''Not to do so would frustrate the goals of providing incentives to undertake energy conservation activities.'' That policy still governs, and therefore this change to extend the period during which utility rate savings can continue is being applied to Indian housing, as well.

V. Findings and Certifications

A. Justification for Interim Rule

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1).

The change made by this interim rule merely adds an optional exclusion to the definition of income used by Housing Agencies, which supports the statutory policy of obtaining a broad range of income levels in public housing and Indian housing developments and the Secretary's policy of encouraging HAs to increase the number of working families residing in these developments. As noted earlier, the Department has already authorized the use of such income exclusions for a limited period of time, based on the Balanced Budget Downpayment Act I, in a Notice. Authorization of such an optional exclusion in this rule is expected to increase the number of HAs using it, helping to encourage the participation of working families in these programs.

Implementation of the rule's provisions is needed as soon as possible to facilitate the adoption of this type of exclusion to realize the benefits of increasing the incentives for working families to participate and to prevent HAs who are now excluding earned income from having to change their policy starting on October 1, 1996, only to re-institute it later. Therefore, the Department has determined that good cause exists to omit prior public procedure for this final rule because such delay would be contrary to the public interest and unnecessary.

In the interest of obtaining the fullest participation possible in determining the factors that should be considered in an HA's determination to adopt an earned income exclusion and to assure that other changes made are well-tailored to HA operations, the Department does invite public comment on the rule. The comments received within the 60-day comment period will be considered during development of a final rule that will supersede this interim rule.

B. Impact on the Environment

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(o) of the HUD regulations, the policies and procedures contained in this interim rule relate only to operating costs that do not affect a physical structure or property and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4332).

C. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The rule adds some incentives to the formula under which operating subsidies are paid on HUD-assisted housing owned and operated by HAs, but will not interfere with State or local government functions.

D. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. Therefore, the rule is not subject to review under the Order. No significant change in existing HUD policies or programs results from promulgation of this rule, as those policies and programs relate to family concerns. The rule merely involves the amount of funding that a HA should receive under a refinement of an existing procedure.

E. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities. This rule will permit some modest increase in subsidy eligibility for HAs that take advantage of the incentives. The rule would be unlikely to have any significant impact on small HAs.

F. Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

G. Regulatory Review

This interim rule was reviewed by the Office of Management and Budget under Executive Order 12866. Any changes made in this interim rule as a result of that review are clearly identified in the docket file for this interim rule, which is available for public inspection in the HUD's Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

H. Public Reporting Burden

The information collection requirements contained in this rule, as described in §§ 950.725(b), 950.756, 950.757, 990.109(b), 990.114, and 990.116 have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501–3520).

1. In accordance with 5 CFR 1320.5(a)(1)(iv), the Department is setting forth the following concerning the proposed collection of information:

(a) Title of the information collection proposal: Performance Funding System Incentives.

(b) Summary of the collection of information: The information collected is alternate information about rental income that would have been collected if the HA had not adopted an earned income exclusion, information about vacant units that have been approved for demolition and would not otherwise be eligible for operating subsidy, and identifying increases in earned income so as to exclude some of that income.

(c) Description of the need for the information and its proposed use: The information is needed to permit calculation of operating subsidy eligibility for HAs that want to take advantage of incentives to facilitate resident employment and to encourage demolition of seriously deteriorated vacant units.

(d) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information: The likely respondents are the approximately 700 HAs that are estimated to take advantage of the incentives.

(e) Estimate of the total reporting and recordkeeping burden that will result from the collection of information: The total number of burden hours for this collection of information is estimated to be 16,120 hours, including the time for reviewing instructions, gathering and maintaining the data, and calculating and requesting the incentive adjustment. The information will be collected as part of the annual calculation of eligibility for operating subsidy. The 700 HAs will determine the effect of the incentives, at a cost of about $15 per hour, for a total cost of $241,800. This amount is expected to be more than offset by the resulting increase in operating subsidy payments. These estimates were developed by consulting with eight housing agencies.

Reporting Burden:

Type of collection	Proposed section of 24 CFR affected	Number of respondents	Frequency of response	Est. ave. response time (hrs.)	Annual burden (hrs.)
Addition to PFS rent roll of Earned Income Exclusions.	950.725& 990.109 (b)(1)(ii).	700	1	3	2,100
Phase-down for demolished units	950.756, 990.114	20	1	1	20
Incentive for increases in earned income	950.757, 990.116	700	1	20	14,000
Total Burden					16,120

2. In accordance with 5 CFR 1320.8(b)(3), the Department makes the following statement:

The reason for collecting the information is to give HUD the basis for approving a request for a PFS incentive adjustment in operating subsidy. The information will be used by HUD to approve an adjustment based on the adoption of an earned income exclusion and/or based on a phase-down of operating subsidy in connection with demolition of units. The information collected is public information and does not lend itself to confidentiality. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

3. In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies (see DATES and ADDRESSES sections above) concerning the proposed collection of information to:

(a) 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;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who

are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Catalog

The Catalog of Federal Domestic Assistance number for the programs affected by this rule is 14.850.

List of Subjects

24 CFR Part 950

Aged, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 990

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, parts 950 and 990 of title 24 of the Code of Federal Regulations are amended as follows:

PART 950—INDIAN HOUSING PROGRAMS

1. The authority citation for part 950 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa–1437ee and 3535(d).

2. In § 950.705, a new paragraph (c) is added, to read as follows:

§ 950.705 Determination of amount of operating subsidy under PFS.

* * * * *

(c) A special phase-down of subsidy to IHAs is applicable when demolition of units is approved by HUD in Federal Fiscal Year 1995 and later. See § 950.756.

§ 950.715 [Amended]

3. In § 950.715, paragraph (b)(2) is amended by removing the phrase ''for an additional period not to exceed six years''.

4. In § 950.720, paragraph (e) is amended by redesignating the text as paragraph (e)(1), and by adding a new paragraph (e)(2), to read as follows:

§ 950.720 Other costs.

* * * * *

(e) * * *

(2) An exception to paragraph (e)(1) of this section is made when an IHA combines two efficiency units into a one-bedroom unit. In these cases, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year.

* * * * *

5. In § 950.725, paragraph (b) is amended by redesignating paragraph (b)(1) as paragraph (b)(1)(i), by adding a new paragraph (b)(1)(ii), and by revising paragraph (b)(2), to read as follows:

§ 950.725 Projected operating income level.

* * * * *

(b) * * *

(1) * * *

(ii) The Rent Roll used for calculating the projected operating income level will not reflect decreases resulting from the IHA's implementation of an optional earned income exclusion authorized by the definition of ''annual income'' in § 950.102. But see § 950.757 for the earned income incentive adjustment.

(2) *Three percent increase.* The average monthly dwelling rental charge per unit, computed under paragraph (b)(1) of this section, is increased by 3 percent to obtain the projected average monthly dwelling rental charge per unit of the IHA for the Requested Budget Year, except that for the shorter of Federal Fiscal Years 1996 through 1998 or the period during which HUD has an operating subsidy shortfall, no increase factor will be used.

* * * * *

§ 950.730 [Amended]

6. In § 950.730, paragraph (c)(1)(i) is amended by removing the phrase, ''up to an additional six years,''.

7. A new § 950.756 is added to read as follows:

§ 950.756 Phase-down of subsidy for units approved for demolition.

(a) *General.* Units that have both been approved by HUD for demolition and been vacated in FFY 1995 and after will be excluded from an IHA's determination of Unit Months Available when vacated, but they will remain eligible for subsidy in the following way:

(1) For the first twelve months beginning with the month that a unit meets both conditions of being approved for demolition and vacant, the full AEL will be allowed for the unit.

(2) During the second twelve-month period after meeting both conditions, 66 percent of the AEL will be allowed for the unit.

(3) During the third twelve-month period after meeting both conditions, 33 percent of the AEL will be allowed for the unit.

(b) *Special case for long-term vacant units.* Units that have been vacant for longer than 12 months when they are approved for demolition are eligible for funding equal to 20% of the AEL for a 12-month period.

(c) *Treatment of units replaced with Section 8 Certificates or Vouchers.* Units that are replaced with Section 8 Certificates or Vouchers are not subject to the provisions of this section.

(d) *Treatment of units replaced with Indian housing units.* When replacement conventional Indian housing units become eligible for operating subsidy, the demolished unit is no longer eligible for any funding under this section.

(e) *Determination of what units are ''replaced.''* For purposes of this section, replacements are applied first against units that otherwise would fall in paragraph (a) of this section; any remaining replacements should be used to reduce the number of units qualifying under paragraph (b) of this section.

(f) *Treatment of units combined with other units.* Units that are removed from the inventory as a result of being combined with other units are not considered to be demolished units for this purpose.

(g) *Retroactive effect.* This section is to be applied retroactively for units approved for demolition during Federal Fiscal Years 1995 and 1996. IHAs affected by this provision may submit a revised calculation of operating subsidy eligibility for the subject fiscal year(s).

8. A new § 950.757 is added to read as follows:

§ 950.757 Three-year incentive adjustments.

(a) *Applicability.* For the period of Federal Fiscal Year 1996 through Federal Fiscal Year 1998, the provisions of this section apply to permit IHAs to retain certain sources of income that would otherwise be offset by a reduction of subsidy. The combined amount retained in accordance with the provisions of this section may not exceed the amount of the PFS subsidy shortfall applicable to an IHA in the subject fiscal year.

(b) *Increases in earned income.* IHAs are permitted to retain any increase in dwelling rental income realized after April 1, 1996 as a result of increased resident earned income, where the governing body of the IHA has certified that the IHA is making significant efforts to increase the earned income of existing residents by adopting the optional earned income exclusion and not just taking actions regarding new admissions. To implement this paragraph (b), the IHA will compare the rental income per occupied unit from earned income from April 1, 1996 to the

rental income per occupied unit from earned income on the date of the rent roll used for PFS calculation. If an IHA does not have the April 1, 1996 data available, HUD may approve the use of data from a later month.

(c) *Increases in other income.* IHAs are permitted to retain any increase in ''other income'' based on using the definition provided in this section, as compared with using the definition found in § 950.102. For purposes of this section, the amount of ''other income'' is limited to the following three sources:

(1) *Excess Utilities:* charges to tenants for excess utility consumption for IHA-supplied utilities.

(2) *Nondwelling Rental Income:* Rent billed to lessees of dwelling units rented for nondwelling purposes. Rent billed to lessees of nondwelling facilities will not be included except for rent billed to other HUD programs (e.g.; Section 8, congregate housing, family investment centers).

(3) *Other Income:* Only charges to other HUD programs (e.g.; Section 8, congregate housing, family investment centers) for use of community space, central office management and maintenance space will be taken into consideration. IHAs will calculate the amount of ''other income'' to be retained in a manner prescribed by HUD.

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

9. The authority citation for part 990 continues to read as follows:

Authority: 42 U.S.C. 1437(g) and 3535(g).

10. In § 990.104, a new paragraph (c) is added, to read as follows:

§ 990.104 Determination of amount of operating subsidy under PFS.

* * * * *

(c) A special phase-down of subsidy to HAs is applicable when demolition of units is approved by HUD in Federal Fiscal Year 1995 and later. See § 990.114.

§ 990.107 [Amended]

11. In § 990.107, paragraph (b)(2) is amended by removing the phrase ''for an additional period not to exceed six years''.

12. In § 990.108, paragraph (d) is amended by redesignating the text as paragraph (d)(1), and by adding a new paragraph (d)(2), to read as follows:

§ 990.108 Other costs.

* * * * *

(d) * * *

(2) An exception to paragraph (d)(1) of this section is made when an HA combines two efficiency units into a one-bedroom unit. In these cases, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year.

* * * * *

13. In § 990.109, paragraph (b) is amended by redesignating paragraph (b)(1) as paragraph (b)(1)(i), by adding a new paragraph (b)(1)(ii), and by revising paragraph (b)(2), to read as follows:

§ 990.109 Projected operating income level.

* * * * *

(b) * * *

(1) * * *

(ii) The Rent Roll used for calculating the projected operating income level will not reflect decreases resulting from the HA's implementation of an optional earned income exclusion authorized by the definition of ''annual income'' in 24 CFR 913.106(d). But see § 990.116 for the earned income incentive adjustment.

(2) *Three percent increase.* The average monthly dwelling rental charge per unit, computed under paragraph (b)(1) of this section, is increased by 3 percent to obtain the projected average monthly dwelling rental charge per unit of the HA for the Requested Budget Year, except that for the shorter of Federal Fiscal Years 1996 through 1998 or the period during which HUD has an operating subsidy shortfall, no increase factor will be used.

* * * * *

§ 990.110 [Amended]

14. In § 990.110, paragraph (c)(1) is amended by removing the phrase, ''up to an additional six years,''.

15. A new § 990.114 is added to read as follows:

§ 990.114 Phase-down of subsidy for units approved for demolition.

(a) *General.* Units that have both been approved by HUD for demolition and been vacated in FFY 1995 and after will be excluded from an HA's determination of Unit Months Available when vacated, but they will remain eligible for subsidy in the following way:

(1) For the first twelve months beginning with the month that a unit meets both conditions of being approved for demolition and vacant, the full AEL will be allowed for the unit.

(2) During the second twelve-month period after meeting both conditions, 66 percent of the AEL will be allowed for the unit.

(3) During the third twelve-month period after meeting both conditions, 33 percent of the AEL will be allowed for the unit.

(b) *Special case for long-term vacant units.* Units that have been vacant for longer than 12 months when they are approved for demolition are eligible for funding equal to 20% of the AEL for a 12-month period.

(c) *Treatment of units replaced with Section 8 Certificates or Vouchers.* Units that are replaced with Section 8 Certificates or Vouchers are not subject to the provisions of this section.

(d) *Treatment of units replaced with public housing units.* When replacement conventional public housing units become eligible for operating subsidy, the demolished unit is no longer eligible for any funding under this section.

(e) *Determination of what units are ''replaced.''* For purposes of this section, replacements are applied first against units that otherwise would fall in paragraph (a) of this section; any remaining replacements should be used to reduce the number of units qualifying under paragraph (b) of this section.

(f) *Treatment of units combined with other units.* Units that are removed from the inventory as a result of being combined with other units are not considered to be demolished units for this purpose.

(g) *Retroactive effect.* This section is to be applied retroactively for units approved for demolition during Federal Fiscal Years 1995 and 1996. HAs affected by this provision may submit a revised calculation of operating subsidy eligibility for the subject fiscal year(s).

16. A new § 990.116 is added to read as follows:

§ 990.116 Three-year incentive adjustments.

(a) *Applicability.* For the period of Federal Fiscal Year 1996 through Federal Fiscal Year 1998, the provisions of this section apply to permit HAs to retain certain sources of income that would otherwise be offset by a reduction of subsidy. The combined amount retained in accordance with the provisions of this section may not exceed the amount of the PFS subsidy shortfall applicable to an HA in the subject fiscal year.

(b) *Increases in earned income.* HAs are permitted to retain any increase in dwelling rental income realized after April 1, 1996 as a result of increased resident earned income, where the Board of Commissioners of the HA has certified that the HA is making significant efforts to increase the earned income of existing residents by adopting the optional earned income exclusion and not just taking actions regarding new admissions. To implement this

paragraph (b), the HA will compare the rental income per occupied unit resulting from earned income from April 1, 1996 to the rental income per occupied unit resulting from earned income on the date of the rent roll used for PFS calculation. If an HA does not have the April 1, 1996 data available, HUD may approve the use of data from a later month.

(c) *Increases in other income.* HAs are permitted to retain any increase in ''other income'' based on using the definition provided in this section, as compared with using the definition found in § 990.102. For purposes of this section, the amount of ''other income'' is limited to the following three sources:

(1) *Excess Utilities:* charges to tenants for excess utility consumption for HA supplied utilities.

(2) *Nondwelling Rental Income:* rent billed to lessees of dwelling units rented for nondwelling purposes. Rent billed to lessees of nondwelling facilities will not be included except for rent billed to other HUD programs (e.g.; Section 8, congregate housing, family investment centers).

(3) *Other Income:* Only charges to other HUD programs (e.g.; Section 8, congregate housing, family investment centers) for use of community space, central office management and maintenance space will be taken into consideration. HAs will calculate the amount of ''other income'' to be retained in a manner prescribed by HUD.

Dated: July 29, 1996.

Christopher Hornig,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–24874 Filed 9–27–96; 8:45 am]

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Federal Register

Monday
September 30, 1996

Part VI

Department of the Treasury

Fiscal Service

31 CFR Part 203

Treasury Tax and Loan Depositaries and Payment of Federal Taxes; Proposed Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 203

RIN 1510–AA37

Treasury Tax and Loan Depositaries and Payment of Federal Taxes

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Internal Revenue Code mandates that certain taxpayers use electronic funds transfer (EFT) for the payment of Federal taxes. Temporary regulations published by the Internal Revenue Service (IRS) implement this requirement, providing guidance to taxpayers relating to the deposit of taxes using EFT mechanisms. These proposed regulations are necessary for the operation of the Electronic Federal Tax Payment System (EFTPS). The EFTPS is projected to begin operation in the fall of 1996. These regulations provide rules for financial institutions and Federal Reserve Banks that use EFT mechanisms to process Federal tax payments through the EFTPS. The regulations also update the rules governing Treasury's investment program. The Small Business Job Protection Act of 1996 provides that certain taxpayers are not required to begin using EFT until July 1, 1997 (rather than, as originally scheduled, on January 1, 1997). This change does not affect and is not addressed in these regulations.

DATES: Comments must be received on or before November 29, 1996.

ADDRESSES: Comments or inquiries may be mailed to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, Room 420, 401 14th Street, S.W., Washington, DC 20227. A copy of this proposed rule is being made available for downloading from the Financial Management Service home page at the following address: http://www.ustreas.gov/treasury/bureaus/finman/.

FOR FURTHER INFORMATION CONTACT: Mark Matolak, Financial Program Specialist; Donald E. Clark, Financial Program Specialist; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, 401 14th Street, S.W., Washington, D.C. 20227, (202) 874–6590; or Margaret Roy, Principal Attorney, at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

Background

Currently, 31 CFR Part 203 governs the designation of certain financial institutions as Treasury tax and loan (TT&L) depositaries; TT&L depositary participation in the paper-based Federal Tax Deposit (FTD) system; and investment of Treasury's excess operating cash in TT&L investments. This document proposes use of five new electronic methods of paying taxes, and proposes slight changes to the investment program.

Tax Payment Methods

Pursuant to section 6302(h) of the Internal Revenue Code, the Secretary of the Treasury is to develop and implement an electronic funds transfer (EFT) system to be used for the collection of depository taxes, so that the taxes are credited to the General Account of the Treasury on the tax due date. See Pub. L. No. 103–182, § 523, 107 Stat. 2057, 2161 (1993); codified at 26 U.S.C. 6302(h). The Act mandates that a certain percentage of certain types of taxes be collected using EFT methods each year. To meet these requirements, the Financial Management Service (FMS) has, in conjunction with the Internal Revenue Service (IRS) and Federal Reserve Banks (FRB), devised the Electronic Federal Tax Payment System (EFTPS), which is an electronic system for reporting and paying Federal taxes. The EFTPS will benefit both taxpayers and the Federal Government by providing greater payment and reporting efficiencies and by expediting the availability of funds and investment decision-making information. These revisions will govern the processing of tax payments through the EFTPS by financial institutions and the FRBs.

Currently, most depository taxes are paid using the paper-based FTD system, which requires the taxpayer to present its tax payment and a paper coupon to a financial institution designated by the Treasury Department (Treasury) as a TT&L depositary. The depositary stamps the coupon, forwards it to Treasury, and credits the payment to a non-interest bearing TT&L account. The depositary retains the funds overnight. The next day the TT&L account is debited and the funds are either invested in obligations of the TT&L depositary or are transferred to Treasury's General Account (TGA) at the FRB.

The effort to convert the current paper-based FTD system to an electronic system has been underway since 1990 with the use of the prototype ADEPT and TAXLINK systems. Most recently, TAXLINK was developed to test two methods of electronic payment: Automated Clearing House (ACH) debit and credit entries. These two methods are well established in both the Federal and private sectors. Using the ACH debit method, Treasury, through a financial agent and with the authorization of the taxpayer, sends an electronic debit entry to a taxpayer's account at the taxpayer's financial institution. Using the ACH credit method, the taxpayer authorizes its financial institution to send an electronic credit entry from the taxpayer's account to Treasury. After the initial authorization process, the financial institution must begin the ACH payment process at least one business day before the tax due date. Thus, ACH debit and credit entries are ''future-day'' entries. These methods have proved successful in the TAXLINK program, and are incorporated into the EFTPS system.

The EFTPS program also offers three other payment methods. These methods, Fedwire value, Fedwire non-value, and Direct Access, are different from ACH methods in that Treasury gains the value of the payment the same day that the payment is initiated. Thus, these three methods are called ''same-day'' payment methods. They are considered exception processing and are offered to accommodate the needs of certain taxpayers that do not have information available to initiate the transaction one business day prior to the tax due date, or to correct a deficiency in an ACH payment.

Fedwire value is a funds transfer system owned and operated by the FRBs and currently is used by the FMS for collections. Fedwire non-value is a new method of collection, which involves sending information and authorization to make payments over the FRBs' Fedwire system. The Direct Access method also involves sending information to the Federal Reserve, but uses a computer interface or a new application called the ''Fedline Taxpayer Deposit Application.'' The FMS reserves the right to add additional methods of electronic funds transfer in the future, as appropriate.

Financial Institution Participation and Responsibilities

The EFTPS will increase the ability of all financial institutions to participate in processing Federal tax payments. Currently, financial institutions must be designated as TT&L depositaries to process FTD payments, and must pledge collateral to secure the tax collections they process. In contrast, financial institutions processing tax payments under the EFTPS need not be designated as TT&L depositaries and need not pledge collateral, unless they elect to participate in Treasury's investment program.

In order to provide maximum flexibility to taxpayers and financial institutions, the FTD system is not being eliminated at this time. However, the FMS anticipates that by 1999, it will transition those taxpayers using the FTD system to another form of payment, such as a lockbox arrangement. The proposed regulations governing the FTD system are not substantially changed from the current rule.

Financial institutions which process EFTPS payments for their taxpayer customers have the following responsibilities: assisting taxpayers in enrolling in the system; initiating and responding to ACH prenotification entries; processing both ACH and/or same-day transactions; and providing a transaction trace number to the taxpayer as evidence that the taxpayer has completed those actions necessary to initiate a tax payment. By contract with the taxpayers, financial institutions may impose conditions to making payments, consistent with these regulations and applicable law.

To assist in the processing of the tax payments and tax information, the FMS has designated two financial institutions as Treasury's financial agents. These two institutions will enroll all mandated and voluntary EFT taxpayers in the EFTPS, compile payment information for Treasury, and in the case of the ACH debit method, originate the debit entries to the taxpayer's financial institution. In addition, the FRBs, in their capacity as fiscal agents for Treasury, play a role in the system by providing same-day reporting and payment mechanisms.

In general, this rulemaking proposes to place liability for errors on the party making the errors. If the taxpayer properly instructs the financial institution and complies with all requirements of its financial institution, and the financial institution is late in transmitting the tax payment to Treasury, then the FMS will charge the financial institution for the lost value of funds.

The regulations provide that, by processing these transactions, the financial institution authorizes the FRB to charge the interest to the financial institution's reserve account. This interest provision serves the dual purposes of encouraging financial institutions to follow efficient procedures, and of recovering the value of the funds for the Government.

The two financial institutions designated as Treasury's financial agents to perform services such as compiling payment information, and originating ACH debit entries, are prohibited from charging taxpayers for these services.

Treasury's Investment Program

In addition to providing guidance for financial institutions in processing tax payments, these regulations also govern Treasury's investment program. Under that program, Treasury invests in open-ended, interest-bearing obligations of the financial institution held in a ''note balance.'' To receive investments, a financial institution must be designated as a TT&L depositary and must post collateral.

Currently, funds for investment are derived from FTD payments. With the implementation of the EFTPS, electronic payments also will be a source of funds.

For TT&L note option depositaries processing EFTPS payments, an important consideration in selecting an electronic payment mechanism is the availability of funds to Treasury's investment program. Of the five EFT methods, Fedwire value is the least appealing to both Treasury and TT&L note option depositaries. Under Fedwire value, monies collected are not directly invested in interest-bearing obligations of TT&L note option depositaries, but instead are credited first to the TGA at the FRB. Use of Fedwire value thus not only diverts funds from the banking system, but also delays Treasury's investment opportunities.

Related Rules

Regulations promulgated by the IRS govern the rights and responsibilities of taxpayers using the EFTPS. *See* temporary regulations published at 59 FR 35,414 and 61 FR 11548. The ACH debit and credit entries covered by this Part also will be subject to 31 CFR Part 210. The FMS published for comment proposed revisions to Part 210 on September 30, 1995. (See 59 FR 50,112). The FMS anticipates issuing a revised notice of proposed rulemaking for Part 210 in the near future. Publication of the revisions to 31 CFR Part 203 at this time is important because of the dramatic increase in volume of EFT tax payments expected as the EFTPS is implemented. Procedural instructions for financial institutions on the EFTPS will be found in the Treasury Financial Manual, and FRB Operating Circulars.

Comments

The FMS invites comments on all aspects of these proposed regulations. The FMS is interested in how these rule changes may affect the banks' participation in this program and their relationships with their customers. In particular, comments are requested on the following:

1. Section 203.13 of the proposed regulations provides that the FMS may establish that ACH credit entries made at the direction of taxpayers be delivered to the FRB by a deadline that is different from that currently required for ACH credit entries.

The FMS anticipates that if a different deadline is required, it would be approximately 11:00 p.m. on the day before the entry is to settle. This potential deadline ensures sufficient time for the transfer of credit entry information to Treasury for purposes of maximizing the timely investment of tax receipts.

2. In § 203.13(c)(1) of the proposed regulations, financial institutions are required to send an ACH prenotification entry for each new taxpayer paying taxes using the ACH credit entry method. This entry may be in the form of a zero dollar ACH entry.

This requirement is to validate taxpayer data to ensure that future payments can be posted to the credit of the correct taxpayer.

3. Section 203.6(a) of the proposed regulations allows depositaries the option of either electing to continue to process paper-based FTDs, or choosing not to process such FTDs. This section affords financial institutions maximum flexibility to determine the services they wish to offer, and relies on market forces to provide sufficient services.

4. The FMS is contemplating restricting the use of the same-day options (Fedwire non-value and Direct Access) to TT&L note option depositaries. This action will ensure that tax payments will remain within the commercial banking system by flowing directly to TT&L note option depositaries, thereby maximizing Treasury's investment opportunities.

5. What effects, if any, these changes have on the business relationships of financial institutions with taxpayer/customers and/or with the Government?

Section by Section Analysis

The following lists the proposed sections, and notes the changes from the current regulation.

1. Subpart A—General Information—§§ 203.1–203.9 generally update the current rule, with no substantive changes.

Several new definitions are added to § 203.2 (*Definitions*) to reflect the new methods of payment; other definitions are updated and clarified. Sections 203.3 and 203.4, regarding financial institution eligibility and application for depositary status, are revised, with minor nonsubstantive changes, from § 203.3 of the current rule. Section 203.5 regarding the depositary agreement, is based on current § 203.6. Section 203.6, regarding the obligations of the

depositary, updates current § 203.7 and adds a provision regarding the obligation of a depositary which only processes electronic payments.

Section 203.7 (*Compensation for Services*) retains the intent of current § 203.13, and adds that the Federal Government may decide not to compensate financial institutions for processing tax payments. Section 203.8 combines the information in current §§ 203.11 and 203.15 regarding termination of depositary status and change of options. Section 203.9 (*Additional Instructions*) combines references to procedural instructions and Federal Reserve instructions.

2. Subpart B—Electronic Federal Tax Payments—§§ 203.10–203.17 are entirely new; the current rule provides only for paper tax payments. Section 203.10 defines the scope of the subpart and states that financial institutions which process electronic tax payments shall adhere to the provisions of Part 203.

Section 203.11 describes the financial institution's responsibility in processing taxpayer enrollments. Financial institutions shall verify enrollment information and sign the enrollment form. The enrollment information must be transmitted to Treasury's financial agent in paper form and may also be transmitted electronically.

Section 203.12 describes generally the five types of electronic payment methods.

Section 203.13 lists the responsibilities of financial institutions in originating and receiving ACH credit and debit entries. Financial institutions are required to verify the accuracy of the first entry sent to or from Treasury, in order to ensure that the taxpayer's payment will be credited correctly. This section also states that credits sent by financial institutions can only be reversed with the approval of the IRS.

Section 203.14 lists the responsibilities of the financial institutions in originating same-day payments. Same-day payments must be received by 2:00 p.m. FRB head office local zone time. If not received by that time, the FRB will return the payments to the financial institution. A financial institution may obtain a reversal of a payment prior to 2:00 p.m., but, after that time, the financial institution may obtain a reversal only in certain circumstances and only with the assent of the IRS. Further, the financial institution must be prepared to supply the taxpayer with a transaction trace number, in case of questions regarding the payment.

Section 203.15 imposes late fees on financial institutions which delay the transmission of the tax payment. These late fees are similar to those currently imposed by § 203.10. Generally, the regulations attempt to recover the value of funds lost due to late payments. Financial institutions will not be charged late fees when the delay or non-payment is due to the taxpayer failing to satisfy financial institution conditions.

Section 203.16 explains that all debit entries to the Treasury are examined for prior authorization. In the unlikely event that such an unauthorized entry is posted to the TGA, this section imposes a higher rate of interest on the financial institution originating the entry.

Section 203.17 provides an administrative appeal process for financial institutions which are assessed late fees or interest charges.

3. Subpart C—Federal Tax Deposits—§§ 203.18–203.20 are modeled on current §§ 203.5, 203.9 and 203.10, governing the acceptance and processing of FTD coupons. Definitions of classes of depositaries in current §§ 203.9(a) and 203.10(a) are deleted and will be contained in procedural instructions.

4. Subpart D—*Investment Program*—§§ 203.22–203.25 describe Treasury's investment program and collateral security requirements. This is the program in which Treasury invests in obligations of the TT&L note option depositary using tax payments transmitted by the depositary; and/or makes direct or special direct investments, which are additional funds invested in depositary obligations.

Section 203.25(f) is modeled on existing § 203.14(f)(1). The FMS has in the past received inquiries regarding its interpretation of existing § 203.14(f)(1). The existing provision provides that in the event of a depositary's insolvency, the pledged collateral is available to satisfy any claim of the United States. The FMS interprets this provision broadly. Specifically, in the event a depositary is placed in receivership, existing § 203.14(f)(1) authorizes the FMS to apply the collateral to satisfy any claim of the United States, including, but not limited to, claims arising out of the depositary relationship for which the collateral was originally pledged. This position is consistent with the FMS' longstanding interpretation of Part 203.

Proposed § 203.25(f) expands Treasury's authority to liquidate collateral pledged by TT&L depositaries in the event the depositary fails to pay timely amounts owed to the United States. This provision is calculated to protect the Federal Government from loss.

The list of acceptable securities found at current § 203.14(d) is deleted and will be contained in procedural instructions.

Regulatory Analysis

The regulations are not a significant regulatory action as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required. It is hereby certified that this revision will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required. This change will not impose significant costs on small businesses. It is expected that costs, if any, associated with electronic tax processing will be offset by cost savings resulting from reductions in the paperwork burden and the availability of a user-friendly electronic tax collection system.

List of Subjects in 31 CFR Part 203

Banks, Banking, Electronic Funds Transfers, Taxes.

For the reasons set out in the preamble, 31 CFR part 203 is proposed to be revised to read as follows:

PART 203—TREASURY TAX AND LOAN DEPOSITARIES AND PAYMENT OF FEDERAL TAXES

Subpart A—General Information

Sec.

203.1 Scope.
203.2 Definitions.
203.3 Financial institution eligibility for designation as a Treasury tax and loan depositary.
203.4 Designation of financial institutions as Treasury tax and loan depositaries.
203.5 Parties to the agreement.
203.6 Obligations of the depositary.
203.7 Compensation for services.
203.8 Termination of agreement or change of election or option.
203.9 Additional instructions.

Subpart B—Electronic Federal Tax Payments

203.10 Scope of the subpart.
203.11 Enrollment.
203.12 Electronic payment methods.
203.13 Future-day reporting and payment mechanisms.
203.14 Same-day reporting and payment mechanisms.
203.15 Electronic Federal Tax Payment System late fees.
203.16 Prohibited Automated Clearing House debits.
203.17 Appeal and dispute resolution.

Subpart C—Federal Tax Deposits

203.18 Scope of the subpart.
203.19 Tax deposits using Federal tax deposit coupons.
203.20 Note option.
203.21 Remittance option.

Subpart D—Investment Program and Collateral Security Requirements for Treasury Tax and Loan Depositaries

203.22 Scope of the subpart.
203.23 Sources of balances.
203.24 Note balance.
203.25 Collateral security requirements.

Authority: 12 U.S.C. 90, 265–266, 332, 391, 1452(d), 1464(k), 1767, 1789a, 2013, 2122, and 3102; 26 U.S.C. 6302; 31 U.S.C. 321, 323 and 3301–3304.

Subpart A—General Information

§ 203.1 Scope.

The regulations in this part govern the processing of Federal tax payments by financial institutions and the Federal Reserve Banks (FRB) using electronic payment or paper methods; the designation of Treasury tax and loan (TT&L) depositaries; and the operation of the Treasury Department's (Treasury) investment program.

§ 203.2 Definitions.

As used in this part:

Advice of credit means the Treasury form (Standard Form 2284) used in the Federal Tax Deposit (FTD) system which is supplied to depositaries to use in summarizing and reporting deposits. Advice of credit information also may be delivered electronically.

Automated Clearing House (ACH) credit entry means a transaction originated by a financial institution in accordance with applicable ACH association formats and applicable laws, regulations, and procedural instructions.

Automated Clearing House (ACH) debit entry means a transaction originated by Treasury's financial agent, in accordance with applicable ACH association formats and applicable laws, regulations, and instructions.

Business day means any day on which the FRB of the district is open to the public.

Direct Access transaction means same-day Federal tax payment information transmitted by a financial institution directly to the Electronic Tax Application at a FRB using computer interface or the Fedline Taxpayer Deposit Application.

Direct investment means placement of Treasury funds with a depositary and a corresponding increase in a depositary's note balance.

Electronic Federal Tax Payment System (EFTPS) means that system through which taxpayers remit Federal tax payments electronically.

Electronic Tax Application (ETA) means a subsystem of EFTPS that receives, processes, and transmits Federal tax payment information for taxpayers. ETA activity is comprised of Fedwire value transfers, Fedwire non-value transactions, and Direct Access transactions.

Electronic Tax Application (ETA) reference number means the unique number assigned to each ETA transaction by a FRB.

Federal funds rate means the Federal funds rate published weekly by the Board of Governors of the Federal Reserve System.

Federal Reserve account means a reserve or clearing account held by a financial institution with an FRB.

Federal Reserve Bank (FRB) head office local zone time (head office LZT) means the local time of the FRB head office through which a financial institution, or its authorized correspondent bank, sends a same-day payment to an FRB.

Federal Reserve Bank of the district means the FRB that services the geographical area in which the depositary is located, or such other FRB that may be designated in an FRB operating circular.

Federal tax deposit (FTD) means a tax deposit made using an FTD coupon.

Federal tax deposit coupon (FTD coupon) means a paper form (form 8109) supplied to a taxpayer by the Treasury for use in the FTD system to accompany deposits of Federal taxes.

Federal Tax Deposit system (FTD system) means the paper-based system in which taxpayers present an FTD coupon (form 8109) and payment to a depositary or an FRB, which prepares an advice of credit listing the FTDs.

Federal taxes means those Federal taxes or other payments specified by the Secretary as eligible for payment through the procedures prescribed in this part.

Fedwire means the funds transfer system owned and operated by the FRBs.

Fedwire non-value transaction means the same-day Federal tax payment information transmitted by a financial institution to an FRB using a Fedwire type 1090 message to authorize a payment.

Fedwire value transfer means a Federal tax payment made by a financial institution using a Fedwire entry.

Financial institution means any bank, savings bank, savings and loan association, credit union, or similar institution.

Input Message Accountability Data (IMAD) means a unique number assigned to each Fedwire transaction by the financial institution sending the transaction to an FRB.

Note option means that program available to a depositary under which Treasury invests in obligations of the depositary. The amount of such investments will be evidenced by an open-ended interest-bearing note balance maintained at the FRB of the district.

Procedural instructions are the procedures contained in the Treasury Financial Manual, Volume IV (IV TFM). The FRBs may issue operating circulars consistent with the regulations in this part.

Recognized insurance coverage means the insurance provided by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or insurance organizations specifically qualified by the Secretary.

Remittance option means that program available to a depositary that processes FTD payments, under which the amount of deposits credited by the depositary to the TT&L account will be withdrawn by the FRB for deposit to the Treasury's General Account on the day that the FRB receives the advices of credit supporting such deposits.

Same-day payment means the following ETA payment options: (1) Direct Access transaction; (2) Fedwire non-value transaction; and (3) Fedwire value transfer.

Secretary means the Secretary of the Treasury, or the Secretary's delegate.

Special direct investment means the placement of Treasury funds with a depositary and a corresponding increase in a depositary's note balance, where the investment specifically is identified as a ''special direct investment'' and may be secured by collateral retained in the possession of the depositary pursuant to the terms of § 203.25(c)(2)(i).

Tax due date means the day on which a tax payment is due to Treasury, as determined by statute and IRS regulations.

Transaction trace number means a unique number assigned by the taxpayer's financial institution to each ACH credit transaction and by Treasury's Financial Agent to each ACH debit transaction.

Treasury's Financial Agent (TFA) means a financial institution designated as an agent of Treasury for processing EFTPS enrollments, receiving EFTPS tax payment information, and originating ACH debit entries on behalf of Treasury.

Treasury's General Account (TGA) means an account maintained in the name of the United States Treasury at an FRB.

Treasury tax and loan (TT&L) account means the Treasury account maintained by a depositary in which funds are credited by the depositary after receiving and collateralizing FTDs.

Treasury tax and loan depositary (depositary) means a financial institution designated as a depositary by the FRB of the district for the purpose of maintaining a TT&L account and/or note balance.

Treasury tax & loan (TT&L) rate of interest means the Federal funds rate less twenty-five basis points (i.e., 1/4 of 1 percent).

§ 203.3 Financial institution eligibility for designation as a Treasury tax and loan depositary.

(a) To be designated as a TT&L depositary, a financial institution must be an FRB, or insured as a national banking association, state bank, savings bank, savings and loan, building and loan, homestead association, Federal home loan bank, credit union, trust company, or a U.S. branch of a foreign banking corporation, the establishment of which has been approved by the Comptroller of the Currency.

(b) A financial institution shall possess the authority to pledge collateral to secure TT&L account balances and/or a note balance.

(c) In order to be designated as a TT&L depositary for the purposes of processing tax deposits in the FTD system, a financial institution shall possess under its charter either general or specific authority permitting the maintenance of the TT&L account, the balance of which is payable on demand without previous notice of intended withdrawal and either general or specific authority permitting the maintenance of a note balance, which is payable on demand without previous notice of intended withdrawal.

§ 203.4 Designation of financial institutions as Treasury tax and loan depositaries.

(a) *Application procedures.* An eligible financial institution seeking designation as a depositary and, thereby, the authority to maintain a TT&L account and/or a note balance shall file with the FRB Financial Management Service Form 458 ''Financial Institution Agreement and Application for Designation as a TT&L depositary,'' and Financial Management Service Form 459, ''Resolutions Authorizing the Financial Institution Agreement and Application for Designation as a TT&L depositary,'' certified by its board of directors. Financial Management Service Forms 458 and 459 are available upon request from the FRB.

(b) *Designation.* Each financial institution satisfying the eligibility requirements and the application procedures will receive from the FRB notification of its specific designation as a TT&L depositary. A financial institution is not authorized to maintain a TT&L account or note balance until it has been designated as a TT&L depositary by the FRB. Depositaries processing tax payments in the FTD System are required to elect either the remittance or the note option.

§ 203.5 Parties to the agreement.

To be designated as a TT&L depositary, a financial institution shall enter into a depositary agreement with Treasury's fiscal agent, the FRB. By entering into this agreement, the financial institution agrees to be bound by this part, and instructions issued pursuant to this part.

§ 203.6 Obligations of the depositary.

A depositary shall:

(a) Administer a note balance, if not participating in the FTD System.

(b) Administer a TT&L account and, if applicable, a note balance, if participating in the FTD System.

(c) Comply with the requirements of Section 202 of Executive Order 11246, entitled ''Equal Employment Opportunity'' as amended by Executive Orders 11375 and 12086, and the regulations issued thereunder at 41 CFR Chapter 60.

(d) Comply with the requirements of Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations issued thereunder at 41 CFR part 60–741, requiring Government contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities.

(e) Comply with the requirements of Section 503 of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, 38 U.S.C. 4212, Executive Order 11701, and the regulations issued thereunder at 41 CFR parts 60–250 and 61–250 requiring contractors to take affirmative action to employ and advance in employment qualified special disabled veterans and Vietnam Era veterans.

§ 203.7 Compensation for services.

Except as provided in the procedural instructions, Treasury will notcompensate financial institutions for servicing and maintaining the TT&L account, or for processing tax payments.

§ 203.8 Termination of agreement or change of election or option.

(a) *Termination by Treasury.* The Secretary may terminate the agreement of a depositary at any time upon notice to that effect to that depositary, effective on the date set forth in the notice.

(b) *Termination or change of election or option by the depositary.* A depositary may terminate its depositary agreement, or change its option or election, consistent with this part, by submitting notice to that effect in writing to the FRB effective at a prospective date set forth in the notice.

§ 203.9 Additional instructions.

Procedural instructions on this part are found in the Treasury Financial Manual, Volume IV (IV TFM). In addition, each FRB may issue operating circulars and other instructions not inconsistent with this part or the Treasury Financial Manual, governing the handling of tax payments and TT&L accounts, and containing such provisions as are required or permitted by this part. These instructions and the terms of this part shall be binding on financial institutions that process tax payments and/or maintain a TT&L account or note balance under this part. By accepting or originating Federal tax payments, the financial institution agrees to be bound by this part, and instructions issued pursuant to this part.

Subpart B—Electronic Federal Tax Payments.

§ 203.10 Scope of the subpart.

This subpart prescribes the rules by which financial institutions shall process Federal tax payment transactions electronically.

§ 203.11 Enrollment.

(a) *General.* Taxpayers shall complete an enrollment process with the TFA prior to making their first electronic Federal tax payment. Taxpayers may enroll using either a paper-based or an electronic method.

(b) *Types of enrollment.* (1) *Paper.* The TFA shall provide financial institutions and taxpayers with enrollment forms upon request. The taxpayer is responsible for completing the enrollment form, obtaining the required financial institution verification and signature, and returning the enrollment form to the TFA.

(2) *Electronic.* A financial institution may choose to assist its customers with the enrollment process by offering electronic enrollment. If a financial institution chooses to offer electronic enrollment, the financial institution shall follow the procedural instructions and the instructions provided by the TFA. An authorized financial institution representative shall verify and sign the enrollment form and provide a paper copy of the completed enrollment form to the taxpayer for submission to the TFA.

(c) *Verification.* If the taxpayer elects the ACH debit entry method of paying

taxes, either through the paper or electronic enrollment process, an authorized representative of the financial institution shall verify the accuracy of the financial institution routing number, taxpayer account number, and taxpayer account type. The authorized financial institution representative shall sign the enrollment form attesting to the accuracy of the financial institution information.

§ 203.12 Electronic payment methods.

(a) *General.* Electronic payment methods for Federal tax payments available under this subpart include ACH credit entries, ACH debit entries, and same-day payments. Any financial institution that is capable of originating and/or receiving transactions for these payment methods by itself or through a correspondent, may do so on behalf of a taxpayer.

(b) *Conditions to making an electronic payment.* Nothing contained in this part shall affect the authority of financial institutions to enter into contracts with their customers regarding the terms and conditions for processing payments, provided that such terms and conditions are not inconsistent with this subpart and applicable law governing the particular transaction type.

(c) *Payment of interest for time value of funds held.* Treasury will not pay interest on any payments erroneously paid to Treasury and subsequently refunded to the financial institution.

§ 203.13 Future-day reporting and payment mechanisms.

(a) *General.* A financial institution may receive an ACH debit entry, originated by the TFA at the direction of the taxpayer; or, a financial institution may originate an ACH credit entry, at the direction of the taxpayer. Taxpayers will be credited for the actual amount received by Treasury. Treasury will not credit taxpayers for any amount deducted for system charges.

(b) *ACH debit.* A financial institution receiving an ACH debit entry originated by the TFA shall, as applicable:

(1) Timely verify the information contained in the ACH prenotification entry;

(2) Timely return to the FRB or other ACH processor a prenotification entry that contains an invalid account number or is otherwise erroneous or unprocessable;

(3) Properly notify the TFA of incorrect information on entries received, using a Notification of Change entry; and

(4) Timely return an entry not posted, e.g., a return or a contested dishonored return for acceptable return reasons, as set forth in the procedural instructions.

(c) *ACH credit.* A financial institution originating an ACH credit entry at the direction of a taxpayer, by itself or through a correspondent, shall:

(1) Originate an ACH prenotification that may be in the form of a zero dollar ACH entry. The originator may initiate an ACH credit entry no earlier than 10 calendar days after the date the prenotification was transmitted to an FRB or other ACH processor;

(2) Format the ACH credit entry in the ACH format approved by Treasury for Federal tax payments;

(3) Originate and deliver an ACH credit entry to the FRB or other ACH processor by the deadline, as specified by the FRB or Treasury, whichever is earlier, in order to meet the tax due date specified by the taxpayer;

(4) Provide the taxpayer, upon request, a transaction trace number;

(5) Process all ACH entries received from the FRB or other ACH processor on a timely basis.

(d) *ACH credit corrections.* Correction of ACH credit entries must be approved in advance by the IRS. The financial institution will find procedures for requesting corrections in the procedural instructions. Once approval is received, corrections will be processed by the TFA.

§ 203.14 Same-day reporting and payment mechanisms.

(a) *General.* A financial institution or its authorized correspondent may initiate same-day reporting and payment transactions on behalf of taxpayers. A same-day payment must be received by the FRB by 2:00 p.m., FRB head office LZT. Taxpayers will be credited for the actual amount received by Treasury. Treasury will not credit taxpayers for any amount deducted for system charges.

(b) *Fedwire Value transfer.* To initiate a Fedwire value tax payment, the financial institution shall be a Fedwire participant and shall comply with the FRB's Fedwire format for tax payments. The taxpayer's financial institution shall provide, upon request by the taxpayer, the IMAD and the ETA reference numbers for a Fedwire value transfer. The financial institution may obtain the ETA reference number for Fedwire value transfers from its FRB by supplying the related IMAD number. Fedwire value transfers settle immediately to the TGA and thus are not credited to a depositary's note balance.

(c) *Fedwire non-value transaction.* To initiate a Fedwire non-value tax payment, the financial institution shall be a Fedwire participant and shall comply with the FRB's Fedwire format for tax payments. The taxpayer's financial institution shall provide the taxpayer, upon request, the IMAD and ETA reference number for the Fedwire non-value transaction. The financial institution may obtain the ETA reference number for Fedwire non-value transactions from its FRB by supplying the related IMAD number.

(1) For a note option depositary, tax payments made using the Fedwire non-value method will be credited to the depositary's note balance.

(2) For a financial institution that is not a note option depositary, tax payments made using the Fedwire non-value method will be debited from the financial institution's Federal Reserve account and credited to the TGA on the day of the transaction. By initiating a Fedwire non-value transaction, a financial institution authorizes the FRB to debit its Federal Reserve account in the amount of the tax payment specified in the transaction.

(d) *Direct Access transaction.* By initiating a Direct Access transaction, a financial institution authorizes the FRB to debit its Federal Reserve account or the Federal Reserve account of its designated correspondent in the amount of the tax payment specified in the transaction. The taxpayer's financial institution shall provide, upon request of the taxpayer, the ETA reference number for a Direct Access transaction.

(1) For a note option depositary, tax payments made using Direct Access will be credited to the depositary's note balance.

(2) For a financial institution that is not a note option depositary, tax payments made using Direct Access will be debited from the financial institution's Federal Reserve account, or the Federal Reserve account of its designated correspondent, and credited to the TGA on the day of the transaction.

(e) *Cancellations and reversals.* The FRB may reverse a same-day transaction:

(1) If the transaction:

(i) Is originated by a financial institution after 2:00 p.m. FRB head office LZT;

(ii) Has an unenrolled taxpayer identification number;

(iii) Does not meet the edit and format requirements set forth in the procedural instructions;

(2) At the direction of the IRS, for the following reasons:

(i) Incorrect taxpayer name;

(ii) Overpayment;

(iii) Unidentified payment; or,

(3) At the request of the financial institution that sent the same-day transaction, if the request is made prior

to 2:00 p.m. FRB head office LZT on the day the payment was made.

(f) Other than as stated in paragraph (e) of this section, Treasury is not obligated to reverse all or any part of a payment.

§ 203.15 Electronic Federal Tax Payment System late fees.

(a) *Circumstances subject to late fees.* Treasury may assess a late fee on a financial institution in instances where a taxpayer that failed to meet a tax due date proves to the IRS that the delivery of tax payment instructions to the financial institution was timely and that the taxpayer satisfied the conditions imposed by the financial institution pursuant to § 203.12(b).

(b) *Calculation of late fees.* Any late fee assessed under this section shall be in the form of interest at the TT&L rate. The late fee will be assessed from the day the taxpayer specified that its payment should settle to Treasury until the receipt of the payment by Treasury.

(c) *Authorization to assess late fees.* A financial institution that processes Federal tax payments made by electronic payment methods under this subpart is deemed to authorize the FRB to debit its Federal Reserve account or the account of its designated correspondent for any late fee assessed under this section. Upon the direction of Treasury, the FRB shall debit the Federal Reserve account of the financial institution or the account of its designated correspondent for the amount of the late fee.

(d) *Circumstances not subject to late fees.* Treasury will not assess a late fee on a taxpayer's financial institution if a taxpayer fails to meet a tax due date because the taxpayer has not satisfied conditions imposed by the financial institution pursuant to § 203.12(b). The burden is on the financial institution to establish the taxpayer has not satisfied the conditions.

§ 203.16 Prohibited Automated Clearing House debits.

(a) *General.* The Treasury has instituted operational safeguards to scrutinize all debit entries sent to the Treasury. In the unlikely event an unauthorized debit entry is posted to the TGA, this section sets forth the liability of financial institutions originating such debits. Accordingly, a financial institution shall not originate an ACH debit to the TGA without the prior written permission of Treasury.

(b) *Liability.* A financial institution that originates an unauthorized ACH debit entry that is posted to the TGA shall be liable to Treasury for the amount of the transaction and shall be liable for interest charges as specified in paragraph (d) of this section.

(c) *Authorization to recover principal and assess interest charge.* By initiating an unauthorized ACH debit entry, a financial institution is deemed to authorize the FRB to debit its Federal Reserve account or the account of its designated correspondent for any principal and, if applicable, interest charge assessed by Treasury under this section.

(d) *Interest charge calculation.* The interest charge shall be at a rate equal to the Federal funds rate plus two percent. The interest charge shall be assessed for each calendar day, from the day the TGA was debited to the day the TGA is recredited with the full amount due.

§ 203.17 Appeal and dispute resolution.

(a) *Appeal.* A financial institution may appeal any late fee or interest charge assessed under either § 203.15 or § 203.16. An appeal must be received, in writing, by the Treasury officer identified in the procedural instructions, no later than 90 calendar days after the date of the charge. The financial institution shall submit information supporting its position and the relief sought.

(b) *Decision.* Treasury will decide to: uphold the fee or charge; reverse the fee or charge; or mandate another action. Treasury's decision will be final.

(c) *Recoveries.* In the event of an over or under recovery of late fees or interest charges, Treasury will reimburse, or instruct the FRB to credit or debit the Federal Reserve account of the financial institution or its designated correspondent, as appropriate.

Subpart C—Federal Tax Deposits

§ 203.18 Scope of the subpart.

This subpart applies to all depositaries that accept FTD coupons and governs the acceptance and processing of those coupons.

§ 203.19 Tax deposits using Federal tax deposit coupons.

(a) *FTD coupons.* A depositary that accepts FTD coupons shall, through any of its offices that accept demand and/or savings deposits:

(1) Accept from a taxpayer, cash, a postal money order drawn to the order of the depositary, or a check or draft drawn on and to the order of the depositary, covering an amount to be deposited as Federal taxes when accompanied by an FTD coupon on which the amount of the deposit has been properly entered in the space provided. A depositary may accept, at its discretion, a check drawn on another financial institution, but it does so at its option and absorbs for its own account any float and other costs involved.

(2) Issue a counter receipt when requested to do so by a taxpayer that makes an FTD deposit over the counter.

(3) Place a stamp impression on the face of each FTD coupon in the space provided. The stamp shall reflect the date on which the tax deposit was received and the name and location of the depositary. The timeliness of the tax payment will be determined by reference to the date stamped by the depositary on the FTD coupon.

(4) Credit, on the date of receipt, all FTD deposits to the TT&L account and administer that account pursuant to the provisions of this part.

(5) Forward, each day, to the IRS Center servicing the geographical area in which the depositary is located, the FTD coupons for all FTD deposits received that day. The FTD coupons shall be accompanied by an advice of credit reflecting the total amount of all FTD coupons.

(6) Establish an adequate record of all FTD deposits prior to transmittal to the IRS Center so that the depositary will be able to identify deposits in the event tax deposit coupons are lost in shipment. For tracking purposes, a record shall be made of each FTD deposit showing, at a minimum, the date of deposit, the taxpayer identification number, and the amount of the deposit. The depositary's copy of the advice of credit may be used to provide the necessary information if individual deposits are listed separately, showing date, taxpayer identification number, and amount.

(7) Deliver its advices of credit to the FRB by the cutoff hour designated by the FRB for receipt of advices.

(8) Not accept compensation from taxpayers for accepting deposits of Federal taxes and handling them as required by this section.

(b) *FTD deposits with Federal Reserve Banks.* An FRB shall:

(1) Accept an FTD deposit directly from a taxpayer when such tax deposit is:

(i) Mailed or delivered by a taxpayer; and

(ii) Provided in the form of cash or a check or postal money order payable to the order of that FRB: and,

(iii) Accompanied by an FTD coupon on which the amount of the tax deposit has been properly entered in the space provided.

(2) Issue a counter receipt, when requested to do so by a taxpayer that makes an FTD deposit over the counter; and,

(3) Place, in the space provided on the face of each FTD coupon accepted

directly from a taxpayer, a stamp impression reflecting the name of the FRB and the date on which the tax deposit will be credited to the TGA. Timeliness of the Federal tax payment will be determined by this date. However, if such a deposit is mailed to an FRB, it shall be subject to the ''Timely mailing treated as timely filing and paying'' clause of the Internal Revenue Code (26 U.S.C. 7502); and,

(4) Credit the TGA with the amount of the tax payment;

(i) On the date the payment is received, if payment is made in cash; or,

(ii) On the date the proceeds of the tax payment are collected, if payment is made by postal money order or check.

§ 203.20 Note option.

(a) *Late delivery of advices of credit.* If an advice of credit does not arrive at the FRB before the designated cutoff hour for receipt of such advices, the FRB will post the funds to the note balance as of the next business day after the date on the advice of credit. This is the date on which funds will begin to earn interest for Treasury.

(b) *Transfer of funds from TT&L account to the note balance.* For a depositary selecting the note option, funds equivalent to the amount of deposits credited by a depositary to the TT&L account shall be withdrawn by the depositary and credited to the note balance on the business day following the receipt of the tax payment.

§ 203.21 Remittance option.

(a) *FTD late fee.* If an advice of credit does not arrive at the FRB before the designated cutoff hour for receipt of such advices, an FTD late fee in the form of interest at the TT&L rate will be assessed for each day's delay in receipt of such advice. Upon the direction of Treasury, the FRB shall debit the Federal Reserve account of the financial institution or the account of its designated correspondent for the amount of the late fee.

(b) *Withdrawals.* For a depositary selecting the Remittance Option, the amount of deposits credited by a depositary to the TT&L account will be withdrawn upon receipt by the FRB of the advices of credit. The FRB will charge the depositary's Federal Reserve account or the account of the depositary's designated correspondent.

Subpart D—Investment Program and Collateral Security Requirements for Treasury Tax and Loan Depositaries

§ 203.22 Scope of the subpart.

This subpart provides rules for TT&L depositaries on crediting note balances under the various payment methods; debiting note balances; and pledging collateral security.

§ 203.23 Sources of balances.

Depositaries electing to participate in the investment program can receive Treasury's investments in obligations of the depositary from the following sources:

(a) FTD deposits that have been credited to the TT&L account pursuant to subpart C of this part;

(b) EFTPS ACH credit and ACH debit transactions, Fedwire non-value transactions, and Direct Access transactions pursuant to subpart B of this part; and

(c) Direct investments and special direct investments pursuant to subpart D of this part.

§ 203.24 Note balance.

(a) *Additions.* Treasury will invest funds in obligations of depositaries selecting the note option. Such obligations shall be in the form of open-ended, interest-bearing notes; and additions and reductions will be reflected on the books of the FRB of the district.

(1) *FTD system.* A depositary processing tax deposits using the FTD system and electing the note option shall debit the TT&L account and credit its note balance as stated in 203.20(b).

(2) *EFTPS.* (i) *ACH credit and ACH debit.* A note option depositary processing EFTPS ACH debit entries and/or ACH credit entries shall credit its note balance for the value of the transactions on the settlement day. Financial institutions may refer to the procedural instructions for information on how to ascertain the amount of the credit to the note balance;

(ii) *Fedwire non-value and Direct Access.* A note option depositary processing Fedwire non-value and/or Direct Access transactions pursuant to subpart B of this part shall credit its note balance and debit its customer's account for the value of the transactions on the transaction date.

(b) *Other additions.* Other funds from Treasury may be offered from time to time to certain note option depositaries through direct investments, special direct investments or other investment programs.

(c) *Note balance withdrawals.* The amount of the note balance shall be payable on demand without previous notice. Calls for payment on the note will be by direction of the Secretary through the FRBs. On behalf of Treasury, the FRB shall charge the reserve account of the depositary or the depositary's designated correspondent on the day specified in the call for payment.

(d) *Interest.* A note shall bear interest at the TT&L rate. Such interest is payable monthly by a charge to the Federal Reserve account of the depositary or its designated correspondent.

(e) *Maximum balance.*

(1) *Note depositaries.* A depositary selecting the note option shall establish a maximum balance for its note by providing notice to that effect in writing to the FRB. The maximum balance is the amount of funds for which a note option depositary is willing to provide collateral in accordance with § 203.25(c)(1). That portion of any advice of credit or EFTPS tax payment, which, when posted at the FRB, would cause the note balance to exceed the maximum balance amount specified by the depositary, will be withdrawn by the FRB that day.

(2) *Direct investment depositaries.* A note depositary that participates in the direct investment program will set a maximum balance for direct investment purposes which is higher than its peak balance normally generated by the depositary's advices of credit and EFTPS tax payment inflow.

(3) *Special direct investment depositaries.* Special direct investments, while credited to the note balance, shall not be considered in setting the amount of the maximum balance or in determining the amounts to be withdrawn where a depositary's maximum balance is exceeded.

§ 203.25 Collateral security requirements.

Financial institutions that process EFTPS tax payments, but are not TT&L depositaries, have no collateral requirements under this part. Financial institutions that are note option depositaries or remittance option depositaries have collateral security requirements, as follows:

(a) *Note option.* (1) *FTD deposits and EFTPS tax payments.* A depositary shall pledge collateral security in accordance with the requirements of paragraphs (c)(1), (d), and (e) of this section in an amount that is sufficient to cover the pre-established maximum balance for the note, and, if applicable, the closing balance in the TT&L account which exceeds recognized insurance coverage. Depositaries shall pledge collateral for the full amount of the maximum balance at the time the maximum balance is established. If the depositary maintains a TT&L account, the depositary shall pledge collateral security before crediting deposits to the TT&L account.

(2) *Direct investments.* A note option depositary that participates in Treasury's direct investment program is not required to pledge collateral continuously in the amount of the pre-established maximum balance. However, each direct investment depositary shall pledge, no later than the day the direct investment is placed, the additional collateral in accordance with paragraphs (c)(1), (d), and (e) of this section to cover the total note balance including those funds received through the direct investment program. If a direct investment depositary has a history of frequent collateral deficiencies, it shall fully collateralize its maximum balance at all times.

(3) *Special direct investments.* Before special direct investments are credited to a depositary's note balance, the note option depositary shall pledge collateral security in accordance with the requirements of paragraphs (c)(2) and (e) of this section, to cover 100 percent of the amount of the special direct investments to be received.

(b) *Remittance option.* Prior to crediting FTD deposits to the TT&L account, a remittance option depositary shall pledge collateral security in accordance with the requirements of paragraph (c)(1), (d), and (e) of this section in an amount which is sufficient to cover the balance in the tax and loan account at the close of business each day, less recognized insurance coverage.

(c) *Deposits of securities.* (1) Collateral security required under paragraphs (a)(1), (2), and (b) of this section shall be deposited with the FRB of the district, or with a custodian or custodians within the United States designated by the FRB, under terms and conditions prescribed by the FRB.

(2)(i) Collateral security required under paragraph (a)(3) of this section shall be pledged under a written security agreement on a form provided by the FRB of the district. The collateral security pledged to satisfy the requirements of paragraph (a)(3) of this section may remain in the pledging depositary's possession and the fact that it has been pledged shall be evidenced by advices of custody to be incorporated by reference in the written security agreement. The written security agreement and all advices of custody covering collateral security pledged under that agreement shall be provided by the depositary to the FRB of the district. Collateral security pledged under the agreement shall not be substituted for or released without the advance written approval of the FRB of the district, and any collateral security subject to the security agreement shall remain so subject until an approved substitution is made. No substitution or release shall be approved until an advice of custody containing the description required by the written security agreement is received by the FRB of the district.

(ii) Treasury's security interest in collateral security pledged by a depositary in accordance with paragraph (c)(2)(i) of this section to secure special direct investments is perfected without Treasury taking possession of the collateral security for a period not to exceed 21 days from the day of the depositary's receipt of the special direct investment.

(d) *Acceptable securities.* Unless otherwise specified by the Secretary, collateral security pledged under this section may be transferable securities, owned by the depositary free and clear of all liens, charges, or claims, of any of the classes listed in the procedural instructions. Collateral will be accepted at values assigned by the FRB of the district.

(e) *Assignment of securities.* A TT&L depositary that pledges acceptable securities which are not negotiable without its endorsement or assignment may furnish, in lieu of placing its unqualified endorsement on each security, an appropriate resolution and irrevocable power of attorney authorizing the FRB to assign the securities. The resolution and power of attorney shall conform to such terms and conditions as the FRB shall prescribe.

(f) *Effecting payments of principal and interest on securities pledged as collateral.* (1) *General.* If the depositary fails to pay, when due, the whole or any part of the funds received by it for credit to the TT&L account, and/or if applicable, its note balance; or otherwise violates or fails to perform any of the terms of this part, or fails to pay when due amounts owed to the United States or the United States Treasury; or if the depositary is closed for business by regulatory action or by proper corporate action, or in the event that a receiver, conservator, liquidator or any other officer is appointed; then the Treasury, without notice or demand, may sell, or otherwise collect the proceeds of all or part of the collateral, including additions and substitutions; and apply the proceeds, to satisfy any claims of the United States against the depositary. All principal and interest payments on any security pledged to protect the note balance (if applicable) and/or the TT&L account (if applicable), due as of the date of the insolvency or closure, or thereafter becoming due, shall be held separate and apart from any other assets and shall constitute a part of the pledged security available to satisfy any claim of the United States.

(2) *Payment procedures.* (i) Subject to the waiver in paragraph (f)(2)(iii) of this section, each depositary (including, with respect to such depositary, an assignee for the benefit of creditors, a trustee in bankruptcy, or a receiver in equity) shall immediately remit each payment of principal and/or interest received by it with respect to collateral pledged pursuant to this section to the FRB of the district, as fiscal agent of the United States, and in any event shall so remit no later than 10 days after receipt of such a payment.

(ii) Subject to the waiver in paragraph (f)(2)(iii) of this section, each obligor on a security pledged by a depositary pursuant to this section shall make each payment of principal and/or interest due with respect to such security directly to the FRB of the district, as fiscal agent of the United States.

(iii) The requirements of paragraphs (f)(2)(i) and (ii) of this section are hereby waived for only so long as a pledging depositary avoids both termination from the program under § 203.8; and also, those circumstances identified in paragraph (f)(1) which may lead to the collection of the proceeds of collateral or the waiver is otherwise terminated by Treasury.

Dated: September 25, 1996.

Russell D. Morris,

Commissioner.

[FR Doc. 96–24949 Filed 9–27–96; 8:45 am]

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Federal Register

Monday
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Part VII

Environmental Protection Agency

40 CFR Part 227

Ocean Dumping Testing Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 227

[FRL–5617–6]

RIN 2040–AC81

Testing Requirements for Ocean Dumping

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today is issuing a final rule clarifying portions of the Agency's ocean dumping regulations regarding the number of species to be used in bioassay testing of the solid phase (that part of the material that would settle rapidly to the bottom after dumping). The purpose of today's rule is to clarify regulatory language that was interpreted by the U.S. Court of Appeals for the Third Circuit in a different manner than EPA intended. Today's rule confirms the validity of existing solid phase testing practices under which the use of two species is permissible, provided the two species tested together represent the three categories of organisms specified in the regulations, and will maintain current safeguards for protection of the marine environment. The proposed rulemaking (February 29, 1996) included proposed changes that would have addressed liquid and suspended particulate phase test species, as well as other aspects of the testing requirements. The Agency has limited the scope of today's final rule to clarify only the number of species to be used in solid phase bioassay tests, in a manner consistent with current testing practices and scientific guidance. The Agency has determined that this final rule will provide protection of our ocean waters, without requiring unnecessary tests.

EFFECTIVE DATE: This final regulation becomes effective on September 30, 1996.

ADDRESSES: A copy of the supporting documents for this rule are available for review at EPA's Water Docket, Room 2616, 401 M Street, SW, Washington, DC 20460. For access to the docket materials, call 202/ 260–3027 between 9:00 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: John Lishman, Chief, Marine Pollution Control Branch, Oceans and Coastal Protection Division (4504F), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, Telephone 202/260–1952.

SUPPLEMENTARY INFORMATION:

A. Regulated Entities

Entities potentially regulated by this action are persons or entities seeking permits to dump material into ocean waters under the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401 et seq. That statute currently bans the ocean dumping of industrial wastes (with the exception of waste from tuna cannery operations in American Samoa or Puerto Rico) and also bans ocean dumping of sewage sludge. As a result, the rule would primarily be of relevance to parties seeking permits from the U.S. Army Corps of Engineers for the ocean dumping of dredged material as well as the U.S. Army Corps of Engineers itself. Potentially regulated categories and entities include:

Category	Examples of potentially regulated entities
Industry	* Ports seeking dredged material ocean dumping permits. * Marinas seeking dredged material ocean dumping permits. * Shipyards seeking dredged material ocean dumping permits. * Berth owners seeking dredged material ocean dumping permits. * Tuna canneries in American Samoa seeking fish waste ocean dumping permits.
State/local/tribal governments	* Local governments owning ports or berths seeking dredged material ocean dumping permits.
Federal Government	* US Army Corps of Engineers. * Federal agencies seeking dredged material ocean dumping permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the action. This table lists types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your organization is potentially regulated by this action, you should carefully consider whether your organization is subject to the requirement to obtain an ocean dumping permit in accordance with the Purpose and Scope provisions of Section 220.1 of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION, CONTACT** section.

B. Background

On February 29, 1996, the Agency issued a proposal in the Federal Register to clarify certain provisions of the Agency's ocean dumping regulations relating to bioassay testing requirements (61 FR 7765) under the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401 et seq.) (hereinafter ''the Act'' or ''the MPRSA''). The original deadline for receipt of comments on the proposed rule was April 1, 1996; however, in response to requests from the public for extension of the comment period, the Agency extended the comment period an additional 30 days, resulting in a final deadline for receipt of comments of May 1, 1996 (61 *FR* 13794, March 28, 1996).

The purpose of the proposal was to clarify regulatory language that was interpreted by the United States Court of Appeals for the Third Circuit in a different manner than EPA intended. See, Clean Ocean Action v. York, 57 F.3d 328 (3d Cir. 1995). That opinion raised a degree of uncertainty about the number of species that had been used in the tests conducted on the solid phase of the material in issue before the court, and the degree to which the Agency retained flexibility to determine when laboratory bioassay testing is required. The proposed rule addressed both the number of test species to be used under the regulations and issues related to when bioassay testing is required. It was not intended to change the evaluative procedures currently used and set out in program guidance, or the substantive criteria used to evaluate ocean dumping permit applications. The proposal was intended to clarify the regulations in a manner consistent with the Agency's longstanding interpretation of the regulations and existing testing practices. For further information on the statutory and regulatory background of the proposal, the reader is referred to the preamble at 61 *FR* 7766–7767.

The Agency received a number of comments on the proposed rule, some of which expressed support for the proposal and some of which expressed opposition. A summary of all comments received and the Agency's response is

set out in Section D below. The complete text of all comments received and the Agency's response may be found in ''Response to Individual Comments Received on the Proposed Rulemaking on Testing Requirements for Ocean Dumping.'' This document is included as part of the rulemaking record, and can be inspected at the Agency's Water Docket, the location of which is in the ADDRESSES section above.

C. Description of Final Rule

The Agency has elected to limit the scope of today's final rule to only the issue of the number of species to be used in solid phase tests. Today's rule does not take final action on the parts of the proposal that addressed other testing issues. Although a number of commenters supported proceeding with the entire scope of the proposed rule, as is discussed further below, a number of other commenters were concerned about the potential implications of the other aspects of the proposal. EPA will be investing at least nine months in a process for all affected groups to help the Agency review the ocean disposal testing requirements and ensure that any further revision reflects both sound policy and science.

Accordingly, today's final rule is limited to amending § 227.27(d) of the regulations, which addresses the number of test species to be used in solid phase testing by defining ''appropriate sensitive benthic marine organisms'' for use in solid phase laboratory bioassay tests. The organisms to be used are defined in existing § 227.27(d) as ''at least one species each representing filter-feeding, deposit-feeding, and burrowing species chosen from among the most sensitive species accepted by EPA as being reliable test organisms....'' By describing a range of characteristics that the test species must represent for different exposure pathways, the regulations protect the marine environment by considering the different sensitivities to environmental contaminants exhibited by marine organisms with these different characteristics [Reference 1].

The Agency's approved testing procedures provide for the use of no fewer than two different species that together cover the three characteristics specified in 40 CFR 227.27(d). For example, the marine worm, *Nephtys incisa,* is both a deposit-feeder and a burrower [Reference 2], and the amphipod crustacean, *Ampelisca abdita,* is both a filter-feeder and a deposit-feeder [Reference 3]. Because the Third Circuit opinion, however, could be construed to indicate that 40 CFR 227.27(d) requires the use of three different test species for the solid phase (See, 57 F. 3d 328, 333 n. 2), the proposal would have amended 40 CFR 227.27(d) to reflect more clearly EPA's longstanding interpretation of that provision, i.e., that at least two species may be used in solid phase bioassay testing, provided that together they are representative of the three categories of organisms specified in the regulations. The proposal would have done this by removing the words ''one species each'' from Section 227.27(d) where they modified the three groups of characteristics, and replaced them with ''at least two.'' The proposal would not have changed the requirement that the test species be ''chosen from among the most sensitive species'' accepted as reliable test organisms.

In addition, although the issue of the number of test species that may be used was addressed by the Third Circuit in the context of the solid phase testing provisions of § 227.27(d), the proposed rule would have made similar changes in 40 CFR 227.27(c) with regard to liquid and suspended particulate phase testing. This was because § 227.27(c) similarly defines ''appropriate sensitive marine organisms'' to be used in such testing as ''at least one species each representative of phytoplankton or zooplankton, crustacean or mollusk, and fish species chosen from among the most sensitive species documented in the scientific literature or accepted by EPA as being reliable test organisms * * *.''

As is discussed below, some commenters preferred the use of three species, and expressed concern that allowing the use of multi-characteristic organisms might result in under-estimation of the potential effects of material proposed for disposal. As explained in the discussion of comments below, however, EPA has determined that for the solid phase, the use of two appropriately sensitive species that together are representative of the three categories of organisms specified in the regulations is technically appropriate for use in the ocean dumping regulatory program, and that the regulations should unambiguously allow for such a solid phase testing approach. At the same time, the regulations do not restrict the Corps' and EPA's ability to require testing of more than two species where appropriate.

However, because as described below, the current testing guidance calls for the use of three species for liquid and suspended particulate phase testing, and in light of the concerns expressed over the proposed rule, the Agency has elected not to include changes to § 227.27(c) as part of today's final rule. That section of the regulations was not specifically at issue before the Third Circuit or addressed in its opinion. The Agency continues to stand by its longstanding interpretation of the existing regulatory language. However, given that the existing practice and guidance for liquid and suspended phase testing currently employ three species testing, that § 227.27(c) was not addressed in the Third Circuit opinion, and the overall concerns expressed by some commenters on the proposed rule, the Agency does not believe it is necessary to include clarifying changes to § 227.27(c) in today's final rule. The remainder of the test species discussion in today's preamble thus focuses on solid phase issues.

While the ocean dumping regulations provide for a comprehensive assessment of the potential environmental impacts of disposal, evaluation of the material to be disposed plays an important role in environmental assessments. The use of laboratory tests forms a major part of the regulatory evaluations of the potential impacts of discharges of material into the aquatic environment [Reference 1]. It is generally recognized that there is no one ''white rat'' that can predict the potential impact of the disposal of all material on all organisms in all marine ecosystems. This difficulty can be addressed by conducting multiple laboratory tests. However, simply conducting more tests may provide redundant data and may waste resources [Reference 4]. Decisions regarding how many and what kinds of organisms to test are a matter of complex scientific judgment. Experience gained from conducting multiple laboratory tests with a large number of species can be used to determine the relative sensitivity of testing organisms [Reference 5]. In addition, species sensitivity must be understood within the context of the exposure of the organism to the material during the test [Reference 5]. With information about the relative sensitivity of a large number of organisms for different exposures to a material, an optimum suite of testing organisms can be identified. These factors were all thoroughly evaluated by the Agency during the development of the current guidance for testing, and the species recommended for use by that guidance reflects this analysis.

The current recommendations of EPA and the U. S. Army Corps of Engineers for testing organisms are contained in the guidance manual entitled, *Evaluation of Dredged Material Proposed for Ocean Disposal—Testing*

Manual [Reference 6], commonly known as the ''Green Book.'' To assess the potential water column impacts associated with the liquid and suspended particulate phase, the Green Book recommends that toxicity tests be conducted on three appropriately sensitive water column species representing phytoplankton or zooplankton, crustacean or mollusk, and fish [Reference 6]. To assess benthic impacts (impacts to organisms that live on the sea bottom), the Green Book recommends that a 10-day acute toxicity test and a 28-day bioaccumulation test be conducted on the solid phase with at least two ''appropriately sensitive marine benthic species'' for the type of test conducted (i.e., two acute toxicity organisms for acute toxicity tests and two bioaccumulation organisms for bioaccumulation tests). Thus, current guidance recommends that a total of three species be tested for water column effects, and at least two ''appropriate sensitive marine benthic species'' be tested for both bioaccumulation and toxicity in the solid phase of the dumped material. Thus, more than two species are tested in the solid phase, and all three species characteristics identified in the regulations are represented in each of the two types of solid phase testing. All three water column species characteristics (phytoplankton or zooplankton, crustacean or mollusk, and fish) and all three solid phase species characteristics (filter-feeding, deposit-feeding, and burrowing) are therefore represented in these tests. The species used are all selected from among the most sensitive and reliable for the type of test in which they are used (acute toxicity or bioaccumulation).

For a particular type of test (e.g., acute toxicity or bioaccumulation tests), the scientific community has generally arrived at a consensus on the most appropriate organisms for testing [References 2, 3, 7, and 8]. For solid phase acute toxicity tests, the amphipods *Ampelisca abdita, Eohaustorius estuarius, Leptocheirus plumulosus, and Rhepoxynius abronius* are documented in the scientific literature as being reliable and sensitive test organisms, and are currently the only organisms subject to an EPA standard method for sediment acute toxicity tests [Reference 3]. Standard methods are desirable because they promote consistency among the different laboratories running the tests. These organisms have been used extensively in the study of aquatic sediment contamination, and have been shown to be good indicators of adverse ecological effects to benthic communities [References 9–17]. All four of these amphipods share similar sensitivity to contaminants [Reference 3]. However, all four amphipods are not equally appropriate for all sediments; each organism has particular tolerances for sediment grain size, salinity, and other natural characteristics of sediment [Reference 3]. The Agency is not currently aware of reliable infaunal organisms (i.e., organisms living in the sediment and thus in direct contact with sediment contaminants) that are more sensitive than these amphipods for solid phase acute toxicity testing. Nevertheless, the Agency currently recommends that, in addition to the testing of at least one amphipod, at least one additional appropriate sensitive benthic marine organisms (e.g., a mysid shrimp, or a marine polychaete) be tested in the solid phase [Reference 6]. The Green Book has made this recommendation to provide additional assurance that potential interspecies variability is addressed, and also to ensure that the three characteristics listed in Section 227.27(d) are covered. The Agency is not aware of any information to suggest that the regulations need to mandate testing on a third organism to provide adequate information on the potential acute toxicity of organisms exposed to the solid phase of the material.

Where two species are used in acute toxicity testing of the solid phase, two species are used in bioaccumulation testing of the solid phase, and the results of these tests are assessed collectively with other tests and assessments, there is ample information to ensure environmental protection, and the requirements of the Act are fully met. This is particularly true because the number of species used in biological tests is only one of several criteria used to satisfy the ocean dumping regulations before material may be disposed of in marine waters.

The regulations address the protection of marine ecosystems not only through permitting criteria contained in 40 CFR Part 227, but also by selecting disposal sites so as to minimize the effects of disposal activities on the marine environment (*See* 40 CFR Part 228). The Part 227 criteria include the testing provision being clarified in today's rule, which is used in assessing whether the material is suitable for ocean disposal and will not cause significant undesirable effects on the environment. Direct measurement of the effects of pollution on complex ecosystems is very difficult. While laboratory testing of the potential effects of pollutants on marine organisms does not directly provide information about ecosystem responses, it can integrate the additive and interactive effects of complex mixtures of chemicals, and examine a variety of endpoints over different exposure periods to predict potential impact at several levels of biological organization for sensitive surrogate species [Reference 9]. Moreover, the species used in testing under the current guidance (e.g., amphipods and polychaetes) play significant roles in the food chain and are ecologically important.

EPA has determined that the variety of appropriately sensitive test organisms used to determine suitability of material proposed for ocean dumping, through water column and solid phase tests that evaluate acute toxicity and potential bioaccumulation, provide sufficient information to determine whether the material proposed for dumping meets the statutory standard of no unreasonable degradation of human health or the marine environment. The final evaluation is a conservative integration of the results from all these tests. In order for a material to be found suitable for dumping, all of the tests performed must indicate that the criteria are met. For instance, if only one of the species used is determined to fail acute toxicity testing, the material is deemed unsuitable for ocean dumping. Given the total testing and site selection process, the use of two appropriately sensitive species for solid phase testing will generally be more than sufficient to protect the environment.

However, given the concern expressed by several commenters, today's final rule is further clarified in two aspects, while still allowing for the use of two species. The first sentence in proposed § 227.27(d) has been revised to delete the phrase ''at least two'' species, and instead to substitute the phrase ''two or more'' species. This change is made to make it perfectly clear that the regulations are not intended to limit testing to only two species, and that the Agency retains the authority to require the use of more than two species. In addition, the second sentence of proposed § 227.27(d) is revised from the proposal by adding language to clarify that the species are to be ''chosen from among the species that are most sensitive for each type they represent * * *.'' This change is made in response to concerns expressed by some commenters that some multi-characteristic organisms might not be sensitive for each characteristic they represent. These commenters expressed concern that an organism that was both a filter-feeder and a deposit-feeder might not be among the most sensitive

filter-feeders and among the most sensitive deposit-feeders. As is discussed below, the multi-characteristic organisms identified in the current testing guidance, such as the amphipod, are among the most sensitive and reliable organisms for all the feeding types they are used to represent, and fully comport with this revised provision.

D. Summary of Comments and Agency Response

The comments on the proposed rule generally fell into four broad categories. These categories and the Agency responses are set out below.

(1) *Comment period deadline:* A number of commenters requested additional time to consider the proposal, and submitted requests to extend the public comment period by a certain number of days, or requests that the Agency indefinitely suspend work on the rule. Other commenters took a different view and requested that the Agency not extend the comment period at all, urging the Agency to act expeditiously to complete the rulemaking.

As explained in the preamble to the proposed rule, the Agency originally believed that a 30-day comment period was appropriate because the proposed rulemaking was intended to clarify, not substantively change, the Agency's longstanding interpretation and implementation of the ocean dumping regulations. After carefully considering the comments received prior to the close of the original 30-day comment period, the Agency acted to extend the comment period for an additional 30 days (61 FR 13794). The Agency believes that allowing a 60-day comment period is reasonable and appropriate, since the proposal was intended to clarify the regulations in a manner consistent with the Agency's longstanding interpretation and its current testing manuals. The Agency has further responded to the concern expressed by some commenters regarding the need for additional time by limiting the scope of today's final rule to the number of species to be used in solid phase bioassay testing. The Agency intends to invest at least nine months in a process for all affected groups—industry, labor, and environmental groups—to help the Agency review the ocean disposal testing requirements and ensure that any further revision reflects both sound policy and science. See, letters of July 24, 1996, from EPA Administrator Browner, Transportation Secretary Peña, and Army Secretary West, to Congressmen Frank Pallone, Robert Menendez, and Robert Torricelli, which are included in the rulemaking record. EPA believes that such an approach, under which issues related to the number of solid phase test species to be used are expeditiously resolved, while remaining issues are included in a review of ocean disposal testing requirements that will involve further discussion among stakeholders, appropriately addresses the range of comments received related to the deadline for public comments. EPA expects that the issues to be addressed in this review, as well as their relative priority, will be identified as part of the definition of this process.

(2) *Effect of proposed rule on environmental protection of the oceans:* A number of commenters expressed concern that the proposed rule would result in a weakening of the existing regulations' protection of the oceans. Other commenters disagreed with this view, agreeing with EPA's position that the proposal was a clarification of the regulations in a manner consistent with Agency practice. Unlike the proposal, today's final rule is limited to the issue of the number of solid phase test species to be used. Thus, those concerns unrelated to the number of species used are not at issue in today's final rule.

To the extent that some commenters raised general concerns about reduced protection of the oceans resulting from the use of two rather than three species in bioassay tests, the Agency notes that the use of two species for solid phase testing does not reflect a change from existing practice, and is fully consistent with the most recent testing manual, the Green Book [Reference 6]. In addition, as is explained elsewhere in this preamble, the Agency has determined that allowing the use of two appropriately sensitive species that together represent the three categories of organisms specified by the regulations, permits a sufficient evaluation of the solid phase of the material proposed for disposal, and is fully protective of the marine environment. Furthermore, under the regulations, the Agency retains the authority to require solid phase testing on more than two species, whenever it believes two species would not provide for an adequate evaluation of the potential impacts to the marine environment. Finally, to the extent these commenters were concerned about the number of species used in liquid or suspended particulate phase testing, as previously discussed, the Agency does in fact include three species for such tests in the national guidance, and today's final rule makes no changes to the relevant regulatory provision.

(3) *Comments unrelated to the number of test species to be used:* A number of specific comments were received on testing issues unrelated to the number of test species, including concerns about the use of models, the use of alternatives to laboratory bioassays, and concerns that the proposal gave the Agency too much discretion with regard to what tests to require. Today's final rule addresses only the number of test species to be used in the solid phase. As stated above, the Agency will be investing at least nine months in a process with affected stakeholders to review the ocean dumping testing requirements. To the extent such issues are raised in that process, EPA will carefully consider those comments.

(4) *Comments on number of species to be used:* One of the comments on the number of species to be used pointed to language in § 102(a) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) addressing the effect of dumping on plankton, shellfish, and wildlife; another comment pointed to similar language addressing the effect of dumping on marine ecosystems. These commenters suggested that the use of two species would be contrary to the specified statutory provisions. The Agency does not agree with this comment. MPRSA § 102(a) does *not* require that tests be conducted on each of the organisms enumerated, or on marine ecosystems as part of the permitting process, but rather requires that the potential effects of dumping are factors to be considered by EPA *in developing the ocean dumping criteria.* The Agency has considered the § 102(a) requirements in developing the ocean dumping regulations. For example, 40 CFR § 227.27(a) requires the use of marine water quality criteria in evaluating the suitability of material for dumping. Those criteria were developed after examination of contaminant effects on a wide range of organisms, including fish, shellfish, and plankton [Reference 20]. In addition, testing manuals developed for the ocean dumping regulations identify a range of species for testing, including fish, shellfish, zooplankton, crustaceans and worms [Reference 6]. Finally, the regulations address not only the evaluation of material proposed for disposal as part of the permitting process, but also the selection of ocean disposal sites. The site selection criteria contain provisions protective of marine ecosystems that seek to localize potential impacts, and to avoid locating disposal sites in sensitive areas of the marine

environment. 40 CFR Sections 228.5 and 228.6.

Other commenters questioned whether two species alone were representative of complex marine ecosystems. These commenters did not specifically assert that three species would be fully representative of entire marine ecosystems; however, the commenters appeared to believe that the more species tested, the better the representation of entire marine ecosystems. Depending upon the sensitivity and types of organisms chosen, the Agency agrees with the principle that the greater the diversity of species tested, the more likely they are to be representative of complete ecosystems. The reason so much emphasis is placed on selecting organisms for testing from among the most sensitive, is that in so doing one is assured of protecting the majority of species in the ecosystem. Although the two species may not react to contaminants the same way as all the species in a marine ecosystem, if they are selected from among the most sensitive species they will represent the potential impacts to the marine ecosystem. Furthermore, in implementing a nationwide regulatory program, the Agency also must take into account the difficulty and expense of performing bioassay tests, potential variability in results if non-standardized test species are used, and the large number of tests that may need to be run for large volumes of spatially heterogenous material, such as dredged material. As explained elsewhere in this preamble, the Agency has determined that for the solid phase, the use of two appropriately sensitive organisms representing three characteristics specified in the regulations normally is sufficient to determine the potential for a dumped material to unreasonably degrade the marine environment, or to endanger human health. Moreover, the regulations do *not* limit the authority to require testing of additional species when warranted.

The Agency's ocean dumping regulations address the protection of marine ecosystems both through permitting criteria contained in 40 CFR Part 227, and site selection criteria contained in 40 CFR Part 228, and not solely through the number of species to be tested. These criteria provide for a thorough assessment of the physical and chemical characteristics of the material, and a thorough evaluation of the suitability of placing that material at a specific location, which is selected after careful assessment of the surrounding environment. In addition, the testing regulations themselves require the selection of appropriately sensitive and reliable test organisms to predict potential impacts at the disposal site. By requiring that appropriately sensitive organisms are used, the regulations assure that species used in tests will detect potential effects of dumped material on marine life. The organisms recommended for use are identified in the testing manual that implements the regulations [Reference 6]. The organisms recommended are among the most sensitive suitable for use in a regulatory testing program; these organisms include amphipods, shrimp, marine polychaetes, and molluscs. These animals are recognized in the scientific literature as being sensitive predictors of impacts [References 2, 3, 6, and 8]. Using these organisms further protects the ecosystem because these organisms are ecologically important, based on abundance in the environment and their role in the structure of the marine community.

Some commenters supporting the use of three species pointed to EPA's Technical Support Document for Water Quality-based Toxics Control [Reference 21] (hereafter referred to as ''the TSD''), which addresses bioassay testing in the Clean Water Act's (CWA) Section 402 point source discharge permitting program. These commenters believe that the TSD called for the use of at least three species in bioassay testing. However, although that manual does generally recommend the use of three species, it also specifically recognizes that the optimum number of species may be fewer, and the relevant CWA regulations (40 CFR § 136.3) do not specify a particular number of species to be used. It also should be noted that the TSD addresses water column bioassays, that the Green Book for the ocean dumping program also recommends the use of three water column species for such tests, and that today's final rule does not address water column testing. Finally, the Agency also notes that for the solid phase of the dumped material, the Green Book recommends use of both a 10-day acute toxicity test and 28-day bioaccumulation test [Reference 6, p. 3–12]. Each of these two tests is conducted with at least two ''appropriate sensitive marine benthic species'' for the type of test conducted [Reference 6, pp. 11–10 and 12–2]. Thus, more than two species are tested in the solid phase, and all three species characteristics identified in the regulations are represented in each of the two types of solid phase testing.

Other commenters raised concerns that allowing one of the species used to represent two of the three characteristics specified in the regulations might result in under-estimation of potential effects. These commenters indicated that organisms that are both filter- and deposit-feeders would not represent how organisms that are primarily filter-feeders would respond. The Agency agrees with the commenter that organisms can alter their behavior in response to environmental conditions, including food availability; this point is supported in the literature [Reference 22]. The bioavailability, and ultimately the toxicity, of a contaminant in a sediment may depend upon factors related to how closely an organism is in contact with the sediment, e.g., whether it ingests sediment, or whether it is in contact with the sediment or interstitial water [Reference 18, p. 120]. Behavior that minimizes contact by the organism with the sediment, such as filtering overlying water, will significantly reduce an organism's exposure to contaminants, and will significantly minimize the potential for observing an effect in the organism due to contaminants in the sediment [References 18 and 19]. The Green Book emphasizes that organisms tested in solid phase bioassays should be in intimate contact with the sediment or should ingest sediment [Reference 6, pp. 11–10 and 12–2]. Because an exclusively filter-feeding organism need not be in intimate contact with the sediments, and would have to be fed during the test since there would be nothing to filter (decreasing sediment exposure due to ingestion), the Agency has determined that solid phase testing of such organisms would not yield significant additional results.

The Agency is not aware of, nor do the commenters offer, documentation to explain their belief that true filter-feeders may be more sensitive than species that represent both filter-feeding and deposit-feeding modes. Moreover, based on over twenty years of experience using toxicity tests in the ocean dumping program, the Green Book strongly recommends use of infaunal amphipods as appropriate sensitive benthic marine organisms [Reference 6, p. 11–10]. These organisms represent both filter-feeding and deposit-feeding modes, and are extensively used in the scientific community to study the effects of sediment contamination. They are also among the most sensitive species documented in the scientific literature as being reliable test organisms [References 9–17]. Because of widespread use within the scientific community, a number of standardized protocols have been developed for the amphipod toxicity test [References 3, 7,

8, and 23], and EPA recognizes amphipods as a recommended species for solid phase acute toxicity testing in the Green Book [Reference 6, p. 11–10].

In summary, EPA has determined that the variety of appropriately sensitive test organisms used to determine suitability through water column and solid phase tests that evaluate acute toxicity and potential bioaccumulation provide an adequate basis to determine if a material proposed for dumping will unreasonably degrade the marine environment or endanger human health. The final evaluation is a conservative integration of the results from all these tests. In order for a dredged material to be found suitable for dumping, all of the tests performed must indicate that the criteria are met. For instance, if one of the species used is determined to fail acute toxicity testing, the material is deemed unsuitable for ocean dumping. Given the overall testing and site selection process, the use of two appropriately sensitive species for solid phase testing will generally be more than sufficient to protect the environment.

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Compliance With Other Laws and Executive Orders

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking should have minimal impact on permittees. The rulemaking merely clarifies ocean dumping testing requirements in a manner consistent with current testing practices, under which the use of two solid phase test species is permissible, provided that the two species together represent the three categories of organisms specified in the regulation. It thus has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

B. Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. § 553, an agency must prepare a regulatory flexibility analysis (RFA)

unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. §§ 604 & 605. EPA has determined that today's rule will not have a significant economic impact on small entities because the rule does not change current procedures for testing dredged material in order to evaluate its suitability for ocean dumping. The rule merely clarifies these testing requirements in a manner consistent with the Agency's longstanding interpretation of its own regulations. Consequently, EPA's action will not impose any additional economic burden on small entities such as small private dredging operations that seek authorization for the dumping of dredged materials. In fact, to the extent that it relieves small entities of any potential for testing more species than required by Agency practice, the rule reduces any potential economic impact on small private dredgers. For this reason, the Administrator certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, that the rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 et seq., is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget. Since today's rule would not establish or modify any information or record-keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

D. The Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or sections 202 and 205 of the UMRA. As is explained elsewhere in this preamble, the rule does not change current procedures for testing dredged material in order to evaluate its suitability for ocean dumping. The rule merely clarifies these testing requirements in a manner consistent with the Agency's longstanding interpretation of its own regulations. Accordingly, it imposes no new enforceable duty on any State, local or tribal governments or the private sector. Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the foregoing reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus the requirements of Section 203 of UMRA do not apply to today's rule.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

F. Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., generally requires that substantive rules be published 30 days prior to their effective date except:

''(1) A substantive rule which grants or recognizes an exemption or relieves a restriction; * * *

or (3) as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d).

EPA is issuing today's final rule as immediately effective under the provisions of 5 U.S.C. 553(d). As is explained elsewhere in this preamble, today's final rule is intended to clarify the ocean dumping regulations' testing requirements in a manner consistent with the Agency's longstanding interpretation, existing testing guidance, and current program practice. In the absence of an effective rule clarifying the number of species to be used in ocean dumping testing, Federal projects and permit applicants affected by the Third Circuit opinion in Clean Ocean Action v. York, supra, will face uncertainties in developing their future testing plans, and projects for which testing has been completed will remain clouded by the uncertainties stemming from the Third Circuit opinion. Because today's rule is intended to confirm, not alter, the status quo, the Agency believes that there is ''good cause'' under 5 U.S.C. 553(d)(3) to issue today's rule as immediately effective. Moreover, today's rule confirms that the ocean dumping regulations in fact allow the use of two species, not three, in solid phase bioassay testing. The effect of today's rule is to resolve uncertainties resulting from the opinion of the Third Circuit in a manner that avoids unnecessary testing; thus, the immediate effectiveness of today's rule also is warranted under 5 U.S.C. 553(d)(1).

List of Subjects in 40 CFR Part 227

Environmental impact statements, Environmental protection, Water pollution control.

Dated: September 23, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in this preamble, part 227 of title 40 of the Code of Federal Regulations is amended as follows:

PART 227—[AMENDED]

1. The authority citation for part 227 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

§ 227.27 [Amended]

2. Section 227.27 is amended in paragraph (d) by removing the words ''at least one species each representing'' and adding, in their place, the words ''two or more species that together represent'' and by removing the words ''species chosen from among the most sensitive species'' and adding, in their place, the words ''characteristics. These organisms shall be chosen from among the species that are most sensitive for each type they represent, and that are documented in the scientific literature and''.

[FR Doc. 96–24995 Filed 9–26–96; 11:20 am]

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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.

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LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

S. 1669/P.L. 104–202

To name the Department of Veterans Affairs medical center in Jackson, Mississippi, as the ''G.V. (Sonny) Montgomery Department of Veterans Affairs Medical Center''. (Sept. 24, 1996; 110 Stat. 2871)

H.R. 1642/P.L. 104–203

To extend nondiscriminatory treatment (most-favored-nation treatment) to the products of Cambodia, and for other purposes. (Sept. 25, 1996; 110 Stat. 2872)

H.R. 3666/P.L. 104–204

Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Sept. 26, 1996; 110 Stat. 2874)

Last List September 25, 1996

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–028–00001–1)	$4.25	Feb. 1, 1996
3 (1995 Compilation and Parts 100 and 101)	(869–028–00002–9)	22.00	[1] Jan. 1, 1996
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

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