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Rules and Regulations

Federal Register

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Wednesday, November 27, 1996

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–0945]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to decrease the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act, from $52.0 million to $49.3 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board is increasing from $4.3 million to $4.4 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent. This action is required by section 19(b)(11)(B) of the Federal Reserve Act, and the adjustment is known as the reservable liabilities exemption adjustment. The Board is also increasing the deposit cutoff levels that are used in conjunction with the reservable liabilities exemption to determine the frequency of deposit reporting from $57.0 million to $59.3 million for nonexempt depository institutions and from $46.4 million to $48.2 million for exempt institutions. (Nonexempt institutions are those with total reservable liabilities exceeding the amount exempted from reserve requirements ($4.4 million) while exempt institutions are those with total reservable liabilities not exceeding the amount exempted from reserve requirements.) Thus nonexempt institutions with total deposits of $59.3 million or more will be required to report weekly while nonexempt institutions with total deposits less than $59.3 million may report quarterly, in both cases on form FR 2900. Similarly, exempt institutions with total deposits of $48.2 million or more will be required to report quarterly on form FR 2910q while exempt institutions with total deposits less than $48.2 million may report annually on form FR 2910a.

DATES: Effective date. December 17, 1996.

Compliance dates. For depository institutions that report weekly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 31, 1996, and the corresponding reserve maintenance period that begins Thursday, January 2, 1997. For institutions that report quarterly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 17, 1996, and the corresponding reserve maintenance period that begins Thursday, January 16, 1997. For all depository institutions, the deposit cutoff levels will be used to screen institutions in the second quarter of 1997 to determine the reporting frequency for the twelve month period that begins in September 1997.

FOR FURTHER INFORMATION CONTACT: J. Ericson Heyke III, Attorney (202/452–3688), Legal Division, or June O'Brien, Economist (202/452–3790), Division of Monetary Affairs; for users of the Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for net transaction accounts of $25 million or less and at 12 percent on net transaction accounts above $25 million for each depository institution. Effective April 2, 1992, the Board lowered the required reserve ratio applicable to transaction account balances exceeding the low reserve tranche from 12 percent to 10 percent. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the total dollar amount of the transaction account tranche against which reserves must be maintained at a ratio of three percent. The adjustment in the tranche is to be 80 percent of the percentage increase or decrease in net transaction accounts at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche on net transaction accounts is $52.0 million. Net transaction accounts of all depository institutions decreased by 6.5 percent (from $789.2 billion to $737.7 billion) from June 30, 1995, to June 30, 1996. In accordance with section 19(b)(2), the Board is amending Regulation D (12 CFR Part 204) to decrease the low reserve tranche for transaction accounts for 1997 by $2.7 million to $49.3 million.

Section 19(b)(11)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(B)) provides that $2 million of reservable liabilities [1] of each depository institution shall be subject to a zero percent reserve requirement. Each depository institution may, in accordance with the rules and regulations of the Board, designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if net transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (i.e., net transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for the low reserve tranche on net transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increase from one year to the next. The percentage

[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act. The reserve ratio on nonpersonal time deposits and Eurocurrency liabilities is zero percent.

increase in the exemption is to be 80 percent of the increase in total reservable liabilities of all depository institutions as of the year ending June 30. Total reservable liabilities of all depository institutions increased by 3.6 percent (from $1,632.3 billion to $1,691.8 billion) from June 30, 1995, to June 30, 1996. Consequently, the reservable liabilities exemption amount for 1997 under section 19(b)(11)(B) will be increased by $0.1 million to $4.4 million.[2] The effect of the application of section 19(b) of the Federal Reserve Act to the change in the total net transaction accounts and the change in the total reservable liabilities from June 30, 1995, to June 30, 1996, is to decrease the low reserve tranche to $49.3 million, to apply a zero percent reserve requirement on the first $4.4 million of transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche.

The tranche adjustment and the reservable liabilities exemption adjustment for weekly reporting institutions will be effective on the reserve computation period beginning Tuesday, December 31, 1996, and on the corresponding reserve maintenance period beginning Thursday, January 2, 1997. For institutions that report quarterly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective on the computation period beginning Tuesday, December 17, 1996, and on the reserve maintenance period beginning Thursday, January 16, 1997. In addition, all institutions currently submitting form FR 2900 must continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board has established deposit reporting cutoff levels to determine deposit reporting frequency. Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September. In July of 1988 the Board set a single cutoff level for all depository institutions of $40 million plus an amount equal to 80 percent of the annual rate of increase of total deposits.[3] In August of 1994, the Board replaced the single deposit cutoff level that had applied to both nonexempt and exempt institutions with separate cutoff levels. The cutoff level for nonexempt institutions, which determines whether they report (on FR 2900) quarterly or weekly, was raised from the indexed level of $44.8 million to $55.0 million. The deposit cutoff level for exempt institutions, which determines whether they report annually (on FR 2910a) or quarterly (on FR 2910q), remained at the indexed level of $44.8 million. In 1996, these levels were increased to $57.0 million and $46.4 million, respectively.

From June 30, 1995, to June 30, 1996, total deposits increased 4.9 percent, from $3,975.5 billion to $4,172.0 billion. Accordingly, the nonexempt deposit cutoff level will increase by $2.3 million to $59.3 million and the exempt deposit cutoff level will increase by $1.8 million to $48.2 million. Based on the indexation of the reservable liabilities exemption, the cutoff level for total deposits above which reports of deposits must be filed will rise from $4.3 million to $4.4 million. Institutions with total deposits below $4.4 million will be excused from reporting if their deposits can be estimated from other data sources. The $59.3 million cutoff level for weekly versus quarterly FR 2900 reporting for nonexempt institutions, the $48.2 million cutoff level for quarterly FR 2910q versus annual FR 2910a reporting for exempt institutions, and the $4.4 million level threshold for reporting will be used in the second quarter 1997 deposits report screening process, and the adjustments will be made when the new deposit reporting panels are implemented in September 1997.

All U.S. branches and agencies of foreign banks and all Edge and agreement corporations, regardless of size, are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). After the indexations become effective in 1997, all other institutions that have reservable liabilities in excess of the exemption level of $4.4 million prescribed by section 19(b)(11) of the Federal Reserve Act (known as ''nonexempt institutions'') and total deposits at least equal to the nonexempt deposit cutoff level ($59.3 million) will be required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900) for the twelve month period starting September 1997. However, nonexempt institutions with total deposits less than the nonexempt deposit cutoff level ($59.3 million), will be able to file the FR 2900 quarterly. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950/2951) at the same frequency as they file the FR 2900.

Institutions with reservable liabilities at or below the exemption level ($4.4 million) (known as exempt institutions) will be required to file the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (FR 2910q) if their total deposits equal or exceed the exempt deposit cutoff level ($48.2 million). Exempt institutions with total deposits less than the exempt deposit cutoff level ($48.2 million) but at least equal to the exemption amount ($4.4 million) will be able to file the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a). Institutions that have total deposits less than the exemption amount ($4.4 million) are not required to file deposit reports if their deposits can be estimated from other data sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or overstates the deductions allowed in computing required reserve balances.

Notice and public participation. The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve expected, ministerial adjustments prescribed by statute and by an interpretative statement reaffirming the Board's policy concerning reporting practices. Moreover, the low reserve tranche adjustment and the reservable liabilities exemption adjustment are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities exemption adjustment and the increases for reporting purposes in the deposit cutoff levels reduce regulatory burdens on depository institutions, and the low reserve tranche adjustment will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $49.3 million. Accordingly, the Board finds good cause for determining, and so determines, that notice and public participation is unnecessary, impracticable, or contrary to the public interest.

[2] Consistent with Board practice, the tranche and exemption amounts have been rounded to the nearest $0.1 million.

[3] ''Total deposits'' as used in determining the cutoff level includes not only gross transaction deposits, savings accounts, and time deposits, but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

The provisions of 5 U.S.C. 553(d) relating to notice of the effective date of a rule have not been followed in connection with the adoption of these amendments because the low reserve tranche adjustment and the reservable liabilities adjustment are expected, ministerial amendments prescribed by statute. Moreover, they are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities adjustment and the increase in deposit cutoff levels for reporting purposes relieve a restriction on depository institutions, and the low reserve tranche will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $49.3 million. Accordingly, there is good cause to determine, and the Board so determines, that such notice is impracticable or unnecessary.

Regulatory Flexibility Analysis

The Board certifies that these amendments will not have a substantial economic impact on small depository institutions. *See* ''Notice and public participation'' above.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR Part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for Part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. In § 204.9 paragraph (a) is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement [1]
Net transaction accounts:	
$0 to $49.3 million	3 percent of amount.
Over $49.3 million	$1,479,000 plus 10 percent of amount over $49.3 million.
Nonpersonal time deposits.	0 percent.
Eurocurrency liabilities.	0 percent.

[1] Before deducting the adjustment to be made by the paragraph (a)(2) of this section.

(2) *Exemption from reserve requirements.* Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a)(1) of this section not in excess of $4.4 million determined in accordance with § 204.3(a)(3).

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 21, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–30148 Filed 11–26–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

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

[No. 96–111]

RIN 1550–AA89

Conflicts of Interest, Corporate Opportunity and Hazard Insurance

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS or agency) is today issuing a final rule updating and substantially streamlining its regulations and policy statements concerning conflicts of interest, usurpation of corporate opportunity and hazard insurance. 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 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: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Robyn Dennis, Manager, Thrift Policy, (202) 906–5751; or Francis Raue, Policy Analyst, (202) 906–5750, Supervision Policy; Deborah Dakin, Assistant Chief Counsel, (202) 906–6445, Regulations and Legislation Division, Chief Counsel's Office.

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 conflicts of interest, corporate opportunity and hazard insurance regulations and policy statements as an important area for updating and streamlining. Each conflicts of interest, corporate opportunity and hazard insurance regulation and policy statement was reviewed to determine whether it was current and understandable; imposed the least possible burden consistent with safety and soundness and statutory requirements; addressed subject matter more suited for handbook guidance; and was written in a clear, straightforward manner. OTS also sought industry input regarding staff's initial recommendations through an industry focus group consisting of five thrift representatives, an industry trade association and OTS staff. As a result of this review, OTS identified a number of ways in which its conflicts of interest, corporate opportunity and hazard insurance regulations and policy statements could be revised to reduce regulatory burden. On June 14, 1996, OTS issued a notice of proposed rulemaking.[2]

Today's final rule is substantially similar to the June proposal. The conflicts of interest rule has been clarified to give more specificity on what conflicts are prohibited. The conflicts of interest provisions apply if there is disclosure to the board of directors, the interested person refrains from participation in discussion of the

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

[2] 61 FR 30190 (June 14, 1996).

transaction and recuses himself or herself from voting on the transaction. In addition, the final rule on corporate opportunity incorporates a safe harbor. The corporate opportunity safe harbor applies if there is disclosure to the board of directors, and a disinterested and independent majority of the board rejects the proposed business opportunity.

The final rule reduces the number of conflicts of interest, corporate opportunity and hazard insurance regulations and policy statements from eight to three and results in a net reduction of more than five pages of CFR text. As proposed, OTS has removed in their entirety five unnecessary, duplicative and outdated regulations and policy statements: § 545.126 (referral of insurance business), § 556.16 (insurance agencies—usurpation of corporate opportunity), § 563.35 (restrictions involving loan services), § 563.44 (loans involving mortgage insurance) and § 571.4 (hazard insurance). The remaining three provisions—loan procurement fees, conflicts of interest, and corporate opportunity—will be retained in the form of regulations, but streamlined and clarified.

OTS's objective is to reduce regulatory burden on savings associations to the greatest extent possible consistent with statutory requirements and safety and soundness. In the context of conflicts of interest, corporate opportunity and hazard insurance, we believe maximum burden reduction can be achieved by pursuing three specific objectives.

First, we are attempting to eliminate duplication and overlap. For example, the policy statement regarding hazard insurance (§ 571.4) has been largely superseded by the Interagency Real Estate Lending Guidelines.[3] Similarly, the regulatory provisions prohibiting a savings association from conditioning the extension of credit on the borrower obtaining certain other services from the institution (tying arrangements) (§ 563.35) have been superseded by tying prohibitions in section 5(q) of the Home Owners' Loan Act of 1933, as amended (HOLA).[4] Additionally, the regulatory provisions governing kick-backs and unearned fees for loans (§ 563.40) are largely duplicative of the Real Estate Settlement Practice Act of 1974 (RESPA).[5].

[3] Formerly, Appendix A to Subpart D of Part 563, recodified without change as, Appendix to § 560.101 (61 FR 50951, 50978–81 (September 30, 1996)).

[4] 12 U.S.C. 1461, *et seq.*

[5] Pub. L. 93–533, 88 Stat. 1724 (1974).

Second, as part of its reinvention effort, OTS is seeking to move away from regulations that micromanage thrift operations. Accordingly, today OTS is repealing in their entirety detailed regulations concerning when federal thrifts can refer customers to affiliates that sell insurance, leaving insurance referrals to be handled in the same way as other corporate opportunity issues.

Third, in its reinvention effort, OTS is seeking to enhance the conciseness and clarity of its regulations. Accordingly, each of the three final rules has been redrafted using plain language techniques pioneered by the Department of Interior and promoted by the Reinvention Initiative.

In summary, OTS believes that regulations should generally be limited to essential safety and soundness requirements. 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 key safety and soundness requirements in binding regulations and putting more expansive guidance on prudent practices in the Thrift Activities Regulatory Handbook.

II. Summary of Comments and Description of the Final Rule

A. General Discussion of the Comments

The public comment period on the June 14 proposal closed on August 13, 1996. Ten commenters responded to the notice of proposed rulemaking. Four state and national trade associations, three federal savings associations, one law firm, one dual bank and savings and loan holding company, and one mortgage insurance corporation submitted comments.

All but three of the commenters generally supported OTS efforts to update and streamline its conflicts of interest, corporate opportunity and hazard insurance regulations and policy statements. Commenters commended OTS's proposed elimination of duplicative, overlapping and burdensome restrictions and indicated that the proposed modifications would give institutions greater flexibility in structuring their operations. Commenters believed that the proposed changes would significantly reduce regulatory burden on the thrift industry and promote operational flexibility.

Several commenters raised concerns, however, that the proposed conflicts of interest and corporate opportunity regulations were unclear and failed to give meaningful guidance about what practices were prohibited. Commenters also expressed concern that OTS's intended approach for dealing with corporate opportunity within a holding company structure was only to be part of guidance and not included in the regulatory text. In response, OTS has refined the language of the rules and provided examples in the preamble to clarify the scope of the provisions. These concerns and OTS's responses are addressed in detail in the description of the final rules.

A few commenters expressed concern over the elimination of the hazard insurance provision allowing thrifts to force-place insurance and to reject policies that would provide inadequate protection to the institution. They agreed with OTS's view that these were matters of general safety and soundness principles with respect to lending practices, but believe that thrifts would be in a weaker bargaining position with borrowers if these provisions were removed. These concerns are discussed in detail below in the section-by-section analysis in reference to §§ 563.35 and 571.4.

B. Section-by-Section Analysis

1. Conflicts of Interest

Section 563.35 Restrictions Involving Loan Services

OTS proposed deleting paragraph (a) of § 563.35, which enumerates specific services typically involved in real estate lending that cannot be ''tied'' to the granting of a loan. OTS received no comments on this paragraph, which is duplicative of HOLA section 5(q). The paragraph is deleted as proposed.

OTS proposed to remove paragraph (b) of § 563.35, which requires a savings association to inform borrowers of their right to freely select providers of insurance services (*e.g.*, hazard and mortgage insurance) and paragraph (c), which provides that a savings association may refuse to make a loan if the borrower's choice of insurance services would provide insufficient coverage.

OTS received no comments on paragraph (b). One commenter urged OTS to retain paragraph (c) to protect thrifts from having to accept insurance that provided insufficient coverage. OTS's significantly streamlined and revised lending rule[6] sets forth the basic rules governing lending practices. Federal savings associations have the authority under these rules to refuse to make loans in the absence of adequate insurance coverage, with or without paragraph (c) of § 563.35. Coincident

[6] 61 FR 50951, 50971 (September 30, 1996), to be codified at 12 CFR Part 560.

with this authority, borrowers must be provided the right to freely select insurance carriers, within the parameters established by the savings associations as necessary to meet their legitimate business needs and consistent with applicable law. Although the commenter noted that legislation had been proposed in at least one state that would prohibit a lender from refusing to accept a hazard insurance policy from any insurer admitted in the state and selected by the borrower, OTS's revised lending rules contain a detailed provision addressing preemption of state laws relating to lending practices.[7] The states cannot force federal savings associations to accept insurance coverage that the associations deem inadequate. Accordingly, for the reasons set forth above and in the preamble to the proposed rule, paragraphs (b) and (c) are deleted as proposed.

OTS proposed to delete paragraph (d) of § 563.35, which provides that a savings association must give residential borrowers a written itemization of fees in excess of $100 to be paid by the borrower for the lender's attorney. OTS received no comments on this paragraph, which is removed as proposed. Instead these settlement practices of savings associations will be governed by RESPA.

Section 563.40 Restrictions on Loan Procurement Fees, Kickbacks and Unearned Fees

OTS proposed retaining in modified form paragraph (a) of § 563.40, which prohibits certain persons from receiving any fee in connection with the procurement of a loan from the association or a subsidiary of the association. After considering the comments received, which are discussed below in Part II.C., OTS has decided to retain this paragraph with some technical corrections from the proposed rule, as new § 560.130.

OTS proposed deleting paragraph (b) of § 563.40, which prohibits the payment of unearned fees for loan origination and settlement services. This provision overlaps RESPA. OTS received no comments on this paragraph, which is removed as proposed.

Section 563.44 Mortgage Insurance

OTS proposed to repeal § 563.44, which prohibits a savings association (or service corporation affiliate) from insuring any loan with a mortgage insurance company if certain affiliations are present.

One commenter noted that it is appropriate to eliminate this provision because consumers are adequately protected by RESPA and the regulations promulgated thereunder, and conflicts of interests would be covered by existing law. Another commenter asserted that allowing thrifts to invest in mortgage insurance companies would create a conflict of interest that poses a risk to the safety and soundness of the thrift.

As indicated in the preamble to the proposed rule, OTS believes that common law fiduciary duties, the statutory rules governing transactions with affiliates, and OTS's new conflicts of interest regulation are adequate to address any conflicts of interest relating to the mortgage insurance business. OTS also notes that, under RESPA, a lender must disclose its interest in an affiliated mortgage company and give borrowers a choice of insurance providers.

For these reasons and those set forth in the preamble to the proposed rule, § 563.44 is removed, as proposed.

Section 571.7 Conflicts of Interest Policy Statement

OTS proposed codifying this policy statement as a regulation, after making modifications to clarify and simplify the language. OTS received two comments urging the agency not to adopt a conflicts of interest regulation. As indicated in the preamble to the proposed rule, fiduciary duties lie at the heart of safety and soundness. OTS believes a regulation will serve as an important reminder to thrift insiders of their fiduciary duties to avoid conflicts of interest. Therefore, OTS is promulgating a conflicts of interest regulation, with some modifications from the proposal, as described below in Part II.C.

2. Corporate Opportunity

Section 545.126 Referral of Insurance Business

OTS proposed removing § 545.126, which prohibits a federal savings association from referring any insurance business to an agency owned by officers or directors of the association, or by individuals having the power to direct its management, subject to certain exceptions. This section is removed, as proposed. General corporate opportunity principles will govern insurance referrals.

OTS also notes that the Department of Housing and Urban Development recently issued regulations that *inter alia,* govern fee payments for settlement service referrals.[8] Savings associations are advised to review these rules for applicability to their operations.

Section 556.16 Insurance Agencies—Usurpation of Corporate Opportunities

OTS proposed to eliminate § 556.16, which substantially duplicates § 545.126, and provides that a federal savings association's corporate opportunity to engage in the insurance business is usurped if it refers any insurance business to an agency owned by officers or directors of the association, or by individuals having the power to direct its management, subject to certain exceptions. OTS received no comments on this section, which is removed as proposed. As noted above, general corporate opportunity principles will govern insurance referrals.

Section 571.9 Corporate Opportunity in Savings Associations

OTS proposed retaining in modified form, and codifying as a regulation, paragraph (a) of § 571.9, which states that it is a breach of fiduciary duty for officers, directors and certain other persons to take advantage of a business opportunity for his or her own or another person's personal profit or benefit when the opportunity is within the corporate powers of the association or its service corporation and when the opportunity is of present or potential practical advantage to the association.

OTS received two comments urging the agency not to adopt a corporate usurpation regulation. OTS believes that avoiding corporate usurpation is as essential to safety and soundness as avoiding conflicts of interest. Therefore, it is adopting the regulation, with modifications from the proposal, as described below in Part II.C.

OTS proposed removing paragraph (b) of § 571.9, which provides that a usurpation of corporate opportunity to engage in the insurance business is an unsafe and unsound practice. OTS received no comments on this provision, which is removed as proposed. As noted above, OTS believes that the general prohibition on usurpation of corporate opportunity will be sufficient to address any usurpation of insurance opportunities.

3. Hazard Insurance

Section 571.4 Hazard Insurance

OTS proposed removing § 571.4, which contains detailed provisions

[7] 61 FR at 50972, to be codified at 12 CFR 560.2.

[8] 61 FR 29239 (June 7, 1996). The effective date of these rules was delayed until July 31, 1997 by section 2103(f) of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. No. 104–208, 110 Stat. 3009 (1996).

concerning a savings association's obligation to require borrowers to maintain hazard insurance in a sufficient amount to protect the savings association from loss in the event of damage to or destruction of the real estate securing the savings association's loans.

OTS received two comments urging the agency to retain the provision as a protection to thrifts from law suits by borrowers relating to ''force placing'' insurance [9] and to modify the rule to specifically cover ''force placing'' insurance.

OTS disagrees that a specific provision on hazard insurance is necessary for several reasons. First, details regarding hazard insurance are unnecessary in light of the general safety and soundness requirements set forth in OTS's revised lending regulations and Interagency Real Estate Lending Guidelines as well as standard business practices in the mortgage lending industry. Second, savings associations clearly have the right to contract with borrowers to include whatever terms they deem appropriate in loan agreements (when not in contravention of law), including provisions governing force placing insurance. OTS's elimination of its hazard insurance policy statement does not alter this right.

For the reasons set forth above and in the preamble to the proposed rule, this section is removed as proposed.

C. Description of Final Rule

1. New § 560.130 Prohibition on Loan Procurement Fees

OTS is moving the prohibition on loan procurement fees (§ 563.40(a)) to a new section (§ 560.130) in its Part 560 on Lending and Investment and is narrowing the scope of the rule. OTS is promulgating new § 560.130 substantially as proposed, with some technical corrections.

The rule prohibits directors, officers and natural persons having the power to control the management or policies of savings associations from receiving, directly or indirectly, any commission, fee or other compensation in connection with the procurement of any loan by the savings association or a subsidiary of the savings association.

The current rule applies to affiliated persons. This has been changed to natural persons. As OTS noted in the preamble to the proposed loan procurement rule, the revised regulation would not apply to holding companies and holding company affiliates of savings associations. Therefore, affiliates of thrifts that are mortgage brokers will be able to receive an arms-length fee when acting as agent soliciting loans for affiliated thrifts. It is OTS's belief that loan procurement fees paid to corporate affiliates pose less risk than those paid to individuals because these fees will be subject to section 23B of the FRA and corporate affiliates will generally have less ability than officers and directors to influence the daily workings of an institution's loan approval process. OTS wants to clarify here that the revised rule is not intended to cover payments made in the ordinary course of business in the form of dividends or capital gains received by shareholders of the holding company who are also officers or directors of the savings association. In addition, it is OTS's view that to ''receive'' a prohibited payment, a person must have accepted that payment. For example, it is not enough that a payment is made to the person's account without his or her knowledge or consent.

OTS received one comment urging the agency to eliminate the loan procurement rule. This commenter believed that the proposed rule was too vague and that the common law duties of loyalty and care, other OTS guidance and RESPA are sufficient to address the subject matter of the regulation.

OTS disagrees. As indicated in the preamble to the proposed rule, the regulation has been amended from current § 563.40 to more precisely tailor the scope of the regulation to the persons the agency believes should be covered and the practices the agency wishes to prohibit. While OTS agrees that the subject matter of this rule is generally covered by common law fiduciary duties and other OTS guidance, OTS continues to believe that loan procurement fees paid to the persons enumerated in the rule pose a particular threat to the safety and soundness of savings associations. Such fees provide incentives to these individuals to bring loans into the association and to press for their approval, without giving proper consideration to whether they are a good investment for the institution. Therefore, OTS believes that a specific rule addressing loan procurement fees is appropriate.

Accordingly, § 563.40(a) is amended and moved to new § 560.130, as proposed, with technical corrections.

2. New § 563.200 Conflicts of Interest

OTS proposed codifying its conflicts of interest policy statement (§ 571.7) as a regulation in new § 563.200 and clarifying and simplifying the text of the rule. OTS's proposed conflicts of interest regulation prohibited directors, officers, employees, persons having the power to control the management or policies of savings associations, and other persons who owe fiduciary duties to savings associations from advancing their own personal or business interests, or those of others, at the expense of the institutions they serve.

OTS is making two changes in the final rule from the proposal after considering issues raised in the comment letters. First, two commenters pointed out that the phrase ''or those of others'' was vague. OTS agrees and is therefore modifying this phrase to read ''or those of others with whom you have a personal or business relationship.'' This language more precisely identifies those related interests that would give rise to a conflict of interest.

Second, one commenter suggested that OTS include in the regulation a safe harbor to provide greater certainty about what transactions are excluded from the rule. OTS is sympathetic to the commenter's desire for greater certainty in this area; however, OTS is not including a safe harbor provision in its regulation. To give greater guidance regarding what transactions may be excluded, OTS is adding a paragraph to the end of its conflicts of interest rule that provides that if a person with a fiduciary duty to a savings association has an interest in a matter or transaction before the board of directors, he or she must do three things. First, the person must disclose to the board of directors all material non-privileged information relevant to the board's decision. This includes the existence, nature and extent of his or her conflicting interest and the facts known to the person as to the matter or transaction under consideration. Second, the interested person may not participate in the board discussion of the matter. Third, if the person with the conflict is a director, he or she must recuse himself or herself from voting on the matter.[10] Absent unusual circumstances, OTS will not take enforcement action against a person who has complied with these requirements.

[9] ''Force placing'' insurance is when the savings association exercises its right under a contract with a borrower to purchase insurance coverage at the borrower's expense in the event the borrower fails to purchase or provide insurance.

[10] *See In the Matter of Neil M. Bush*, ERC 90–30 (Decision and Order) at 21–22 (April 18, 1991); *In the Matter of Simpson*, OTS Order No. AP 92–123 (November 18, 1992), *upheld on appeal*, 29 F.3d 1418 (9th Cir. 1994), *cert. denied*, 115 S. Ct. 1096 (1995).

Several comments sought additional clarification of the types of conduct that would be acceptable or impermissible under the rule. OTS wants to emphasize that the regulation is a reformulation of the current policy statement, written more concisely, and is intended to encompass the common law of conflicts of interest as it has been articulated in Director's Orders. The regulation does not impose any new requirements on persons covered by the rule but reiterates general common law standards on the fiduciary duty officers, directors and others owe to the institutions they serve. Prior OTS interpretations of the policy statement will continue to provide guidance as to the scope of the rule.

To further clarify the type of conduct OTS intends to include and exclude from the coverage of the rule, the following examples are provided. A person who owes a fiduciary duty to a savings association and receives money or other benefits (*e.g.*, a loan, forgiveness of debt, goods or services) from a third party in return for the savings association granting a loan to or purchasing property from the third party would be receiving a benefit that is covered by the rule. Similarly, payments by the third party to a spouse, child, parent, sibling or business partner of a person identified in the rule would generally provide a benefit to the person because of the personal or business relationship and would likewise be covered by the rule. In addition, a person who owes a fiduciary duty to a savings association may not advance a transaction between the savings association and companies in which that persons owns shares, is on the board of directors or is an officer, at the expense of the institution.

Generally, a person will not be deemed to be advancing his, her or its interests at the expense of the institution if the transaction complies with sections 23A and 23B of the Federal Reserve Act (FRA),[11] Federal Reserve Board Regulation O, and the safe harbor described above.[12] Likewise, the rule does not prohibit an executive officer, director or principal shareholder from receiving a loan from the association in accordance with 12 CFR 563.43.

Section 571.7 is amended, codified as a regulation, and moved to new § 563.200, with changes from the proposal, as indicated above.

[11] 12 U.S.C. 371c and 371c–1.

[12] 12 CFR Part 215.

3. New § 563.201 Corporate Opportunity

Paragraph (a) of OTS's proposed corporate opportunity regulation prohibits directors or officers of savings associations, persons having the power to control the management or policies of savings associations and other persons who owe a fiduciary duty to savings associations from taking advantage of corporate opportunities belonging to their savings association or its subsidiaries. Paragraph (b) of the proposed rule indicates that a corporate opportunity will be deemed to belong to the savings association if: (i) it is within the corporate powers of the savings association or its subsidiary; and (ii) the opportunity is of present or potential practical advantage to the savings association, directly or through its subsidiary.

OTS indicated in the preamble to the proposed rule and reiterates here, that the agency intends for common law standards governing usurpation of corporate opportunity to be applied in determining when an opportunity would be of present or potential practical advantage to an institution. Examples of the types of issues that should be considered under this standard include, without limitation, an institution's financial condition and management resources, the level of risk presented by the business, and potential profit from the business weighed against any profits that might arise from transfer of the business. Prior OTS interpretations have indicated that a usurpation of corporate opportunity does not occur when an institution receives fair market value consideration for transfer of a line of business. By definition, an institution that receives fair market value receives as much as it conveys.

OTS received several comments on its proposed corporate opportunity regulation. OTS is making one change to the final rule to reflect the comments received. One commenter urged OTS to include a provision in the regulation recognizing the role of the board of directors in determining whether an opportunity is advantageous to the institution. OTS agrees with this suggestion. OTS is adding a paragraph to the new regulation which provides that OTS will not deem a person to have taken advantage of a corporate opportunity belonging to the savings association if a disinterested and independent majority of the savings association's board of directors, after receiving a full and fair presentation of the matter, rejected the opportunity as a matter of sound business judgment. This safe harbor is not intended to affect the rights of others, for example the Federal Deposit Insurance Corporation or shareholders, to bring actions alleging usurpation of corporate opportunity under applicable provisions of law.

A ''disinterested'' director is one without an interest in the matter or transaction before the board of directors. This determination will vary with the facts and circumstances of each case. The examples set forth above in the discussion of the conflicts of interest rule provide some guidance on whether a director has an interest in a transaction. An ''independent'' director for purposes of this rule is: (i) One who is not a salaried officer or employee of the savings association, any subsidiary, or any holding company affiliate; [13] and (ii) one who is not dominated or controlled by an interested director. What will be considered ''a full and fair presentation of the facts relating to a given matter'' will vary depending upon the transaction. At a minimum, the interested director must disclose the nature and extent of his or her interest in the transaction.

Several commenters addressed the language in the preamble concerning OTS's intended treatment of business allocation within a holding company structure. OTS indicated that under the proposed regulation, the dealings of holding companies with their subsidiary thrifts will be subject to the doctrine of usurpation of corporate opportunity to the same extent as provided by common law. OTS noted, however, that other provisions of law generally provide an adequate basis for regulating dealings between thrifts and their holding companies. Thus, barring egregious circumstances or instances where a thrift is undercapitalized or unprofitable, OTS supervisors and examiners will generally defer to holding company decisions regarding where to allocate lines of business within a holding company structure, provided there is no violation of sections 23A and 23B of the FRA or general principles of safety and soundness.

Two commenters asked that this language be specifically included in the regulation or in handbook guidance. OTS has determined not to incorporate this language in the regulation for several reasons. First, it is the agency's view that the standard it has enunciated for the treatment of holding companies is not specific enough to be included in regulatory text. Second, holding companies are covered by the rule and OTS reserves the right to take action against holding companies for

[13] *See* 12 CFR 563.33 (1996).

usurpation of corporate opportunity in the special circumstances described above. However, OTS reiterates that it will generally defer to holding company business allocation decisions. OTS's decision not to put this standard in the regulation in no way reflects a departure from this stated position. OTS intends to incorporate this language into the Thrift Activities Regulatory Handbook.

One commenter asked OTS to amend the general prohibition paragraph to provide that usurpation of corporate opportunity was only actionable if it was ''for [a person's] personal profit or benefit.'' Usurpation of corporate opportunity is prohibited based on fiduciary principles, not whether a benefit accrues to an individual. It is enough that an opportunity belongs to the institution and is usurped from the institution. The concept of personal gain is more appropriate to a conflicts of interest analysis than a corporate opportunity analysis.

OTS notes that depending on the circumstances relating to a given matter or transaction, the conflicts of interest regulation (new § 563.200) may apply in addition to the corporate opportunity rule.

Section 571.9(a) is amended, codified as a regulation and moved to new § 563.201, with changes from the proposal, as indicated above.

III. Disposition of Existing Conflicts of Interest, Corporate Opportunity and Hazard Insurance Regulations and Policy Statements

Original provision	New provision	Comment
§ 545.126	.....	Removed.
§ 556.16	.....	Removed.
§ 563.35	.....	Removed.
§ 563.40(a) ...	§ 560.130	Modified.
§ 563.40(b) ...	.....	Removed.
§ 563.44	.....	Removed.
§ 571.4	.....	Removed.
§ 571.7	§ 563.200	Modified.
§ 571.9(a)	§ 563.201	Modified.
§ 571.9(b)	.....	Removed.

IV. 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.

V. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VI. 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. As discussed in the preamble, this final rule reduces regulatory burden and clarifies the fiduciary duties that directors, officers and other fiduciaries owe to savings associations. It does not create new standards but reiterates the common law duty that directors, officers and other fiduciaries owe to the institutions they serve.

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, Conflicts of interest, Corporate opportunity, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 571

Accounting, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, 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.

§ 545.126 [Removed]

2. Section 545.126 is removed.

PART 556—STATEMENTS OF POLICY

3. 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.

§ 556.16 [Removed]

4. Section 556.16 is removed.

PART 560—LENDING AND INVESTMENT

5. The authority citation for part 560 continues to read as follows:

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

6. Section 560.130 is added to read as follows:

§ 560.130 Prohibition on loan procurement fees.

If you are a director, officer, or other natural person having the power to direct the management or policies of a savings association, you must not receive, directly or indirectly, any commission, fee, or other compensation in connection with the procurement of any loan made by the savings association or a subsidiary of the savings association.

PART 563—OPERATIONS

7. 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.

§ 563.35 [Removed]

8. Section 563.35 is removed.

§ 563.40 [Removed]

9. Section 563.40 is removed.

§ 563.44 [Removed]

10. Section 563.44 is removed.

11. Section 563.200 is added to read as follows:

§ 563.200 Conflicts of interest.

If you are a director, officer, or employee of a savings association, or have the power to direct its management or policies, or otherwise owe a fiduciary duty to a savings association:

(a) You must not advance your own personal or business interests, or those of others with whom you have a

personal or business relationship, at the expense of the savings association; and

(b) You must, if you have an interest in a matter or transaction before the board of directors:

(1) Disclose to the board all material nonprivileged information relevant to the board's decision on the matter or transaction, including:

(i) The existence, nature and extent of your interests; and

(ii) The facts known to you as to the matter or transaction under consideration;

(2) Refrain from participating in the board's discussion of the matter or transaction; and

(3) Recuse yourself from voting on the matter or transaction (if you are a director).

12. Section 563.201 is added to read as follows:

§ 563.201 Corporate opportunity.

(a) If you are a director or officer of a savings association, or have the power to direct its management or policies, or otherwise owe a fiduciary duty to a savings association, you must not take advantage of corporate opportunities belonging to the savings association.

(b) A corporate opportunity belongs to a savings association if:

(1) The opportunity is within the corporate powers of the savings association or a subsidiary of the savings association; and

(2) The opportunity is of present or potential practical advantage to the savings association, either directly or through its subsidiary.

(c) OTS will not deem you to have taken advantage of a corporate opportunity belonging to the savings association if a disinterested and independent majority of the savings association's board of directors, after receiving a full and fair presentation of the matter, rejected the opportunity as a matter of sound business judgment.

PART 571—STATEMENTS OF POLICY

13. 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.

§§ 571.4, 571.7, 571.9 [Removed]

14. Sections 571.4, 571.7 and 571.9 are removed.

Dated: November 18, 1996.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 96–30031 Filed 11–26–96; 8:45 am]

BILLING CODE 6720–01–P

12 CFR Parts 560, 563, 574, 575, 583, 584

[No. 96–113]

RIN 1550–AB05

Amendments Implementing Economic Growth and Regulatory Paperwork Reduction Act

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim final rule.

SUMMARY: The Office of Thrift Supervision (OTS or Office) is issuing this interim final rule to implement provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Among other actions, EGRPRA expanded and clarified federal thrifts' lending and investment authority, amended the Qualified Thrift Lender (QTL) test, authorized OTS to grant antitying exceptions to savings associations that conform to those granted to banks by the Board of Governors of the Federal Reserve System (FRB), and modified OTS's oversight authority over bank holding companies that own savings associations. Today's interim final rule implements these statutory changes. OTS is making today's rule effective immediately to enable thrifts to take advantage of the expanded flexibility and burden reduction afforded by EGRPRA. However, OTS will be accepting comment on any issues raised by these newly implemented regulations for the next sixty days.

DATES: This interim rule is effective on November 27, 1996. Comments must be received by January 27, 1997.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552. Attention Docket No. 96–113. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER 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 holding company or branching issues, contact Kevin A. Corcoran, Assistant Chief Counsel, (202) 906–6962, Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Summary of Relevant Statutory Changes

Credit card and education lending: Section 2303(b) of the EGRPRA [1] amended section 5 of the Home Owners'' Loan Act (HOLA),[2] to confirm and clarify that federal savings associations may engage in credit card lending without a percentage of assets investment limitation, as OTS has long maintained. Section 2303(b) also amended HOLA section 5 to permit federal thrifts to make education loans without investment restriction. Previously, education loans were limited to 5% of a thrift's total assets.[3]

Commercial lending: Section 2303(c) of EGRPRA also expanded the small business and agricultural lending authority of federal thrifts. Federal thrifts have long been authorized to make loans secured by business or agricultural real estate in amounts up to 400% of capital,[4] and to make additional secured and unsecured loans to businesses and farms in amounts up to 10% of total assets.[5] EGRPRA left the 400% non-residential real estate lending cap intact, but increased the 10% of assets limit to 20% of assets, provided that amounts in excess of 10% of assets may only be used for ''small business loans'' as that term is defined by the Director of OTS.

Qualified Thrift Lender test: Section 2303(e) and (g) of EGRPRA amended the QTL test in section 10(m) of the HOLA [6] to provide that investments in educational, small business, credit card, and credit card account loans are includable without limit for purposes of satisfying the QTL test. Under the QTL test, savings associations must hold ''qualified thrift investments'' equal to at least 65% of their ''portfolio assets'' as defined by statute.[7] Before EGRPRA, ''qualified thrift investments'' (QTI) were defined in a manner that required every savings association to hold a

[1] Pub. L. 104–208, tit. 12, 110 Stat. 3009 (September 30, 1996).

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

[3] 12 U.S.C. 1464(c)(3)(A). Federal thrifts continue to be authorized to make other consumer loans in an amount up to 35% of total assets. Credit card loans and education loans do not count against this 35% cap. 12 U.S.C. 1464(c)(2)(D).

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

[5] 12 U.S.C. 1464(c)(2)(A).

[6] 12 U.S.C. 1467a(m).

[7] *Id.*, and 12 CFR 563.50–563.52.

substantial percentage of its assets in mortgage loans and mortgage-related securities. Section 2303 of EGRPRA expanded the definition of QTI . Small business loans, credit card loans, and education loans now count as QTI without restriction.[8] Consumer loans (other than credit cards and education loans) now count as QTI in an amount up to 20% of portfolio assets.[9]

Section 2303(e) of EGRPRA also amended the QTL test to give savings associations the option of substituting compliance with the tax code ''domestic building and loan association'' (DBLA) test for compliance with the amended QTL requirements. (The DBLA test appears to be much more stringent than the amended QTL test.)

As a result of the foregoing statutory reforms, savings associations will now be able to engage in substantial small business, agricultural, credit card, educational, and other consumer lending and remain in QTL compliance. In order to implement these changes, section 2303 of EGRPRA requires the Director of OTS to issue regulations defining the terms ''credit card'' and ''small business.''

Anti-tying exceptions: Section 2216 of EGRPRA amends HOLA section 5(q)[10] to authorize the OTS Director to issue regulations or orders permitting exceptions to the antitying prohibitions established in section 5(q) so long as such exceptions are consistent with the purposes of section 5(q) and conform to exceptions granted by the FRB to banks pursuant to section 106(b) of the Bank Holding Company Act (BHCA) Amendments of 1970.[11] HOLA section 5(q) prohibits, *inter alia*, a savings association from varying the price charged for a product or service (the tying product) based on whether the customer obtains an additional product or service (the tied product) offered by the association or its service corporation or affiliate unless the additional product or service is a loan, discount, deposit or trust service (''traditional bank products'). The BHCA contains a similar anti-tying provision applicable to banks and authorizes the FRB to grant exemptions by regulation or order for commercial banks and their affiliates. The FRB has issued various regulatory exceptions in recent years. Prior to EGRPRA, the HOLA did not grant similar exemptive authority to the OTS.

Bank holding companies: Section 2203 of EGRPRA amends HOLA section 10[12] to eliminate OTS supervision of holding companies that control both a bank and a savings association and are registered as bank holding companies with the FRB under the BHCA of 1956.[13] Previously bank holding companies that controlled a savings association were supervised by the FRB under the BHCA and also by the OTS under the Savings and Loan Holding Company Act. Dual holding companies are no longer required to file periodic holding company reports with OTS and are no longer subject to OTS examination. OTS, however, will continue to regulate the subsidiary savings association, and the FRB must consult with the OTS on certain specified matters including a bank holding company's acquisition of a savings association, the scope of examination of a bank holding company that controls a savings association, and the coordination of some enforcement actions.

Branching: Section 2303(f) of EGRPRA amended HOLA section 5(r)(1)[14] to give federal thrifts greater flexibility in branching by allowing federal associations that are not excepted from the requirements of section 5(r)(1) pursuant to section 5(r)(2) to meet either the Internal Revenue Service's (IRS's) domestic building and loan association (DBLA) test[15] or the amended QTL test in order to establish, retain, or operate out-of-state branches. Previously, non-excepted federal savings associations were required to qualify under the IRS DBLA test or at least meet the asset composition requirement of that test in order to operate out-of-state branches. Section 2303(f) also clarifies the scope of the exemption from the foregoing requirements, set forth at section 5(r)(2)(C), when the law of the state where the branch is located, or is to be located, would permit establishment of the branch if the association was either a savings association or savings bank chartered by the state in which its home office is located. EGRPRA's branching amendments are self-implementing and do not require any regulatory revisions.

II. Description of Final Interim Rule

Section 560.3 Definitions of credit card, credit card account.[16]

Section 2303 of EGRPRA requires the OTS Director to issue regulations defining the term ''credit card'' in order to enable thrifts to apply the newly modified QTL test which permits credit card loans to be counted as QTI without restriction pursuant to HOLA section 10(m). Defining ''credit card'' and ''credit card account'' will also give thrifts guidance in exercising their authority to ''invest in, sell, or otherwise deal in * * * loans made through credit cards or credit card accounts'' pursuant to HOLA section 5(c). As noted above, this provision authorizes federal thrifts to engage in credit card lending without any percentage of assets investment limitation.[17] It is a well settled principle of statutory construction that generally ''each part or section [of a statute] should be construed with every other part or section so as to produce a harmonious whole.''[18] Accordingly, it is appropriate for OTS to consistently define ''credit card'' and ''credit card account'' for both section 5(c) and section 10(m) of the HOLA.

According to Black's Law Dictionary, a ''credit card'' is ''[a]ny card, plate, or other like credit device existing for the purpose of obtaining money, property, labor or services on credit.''[19] The regulatory definition of credit card established in today's interim rule is based on this plain language definition. OTS seeks comment on whether a different definition would be more appropriate.

OTS has already received some questions regarding whether securities backed by credit card accounts and products such as credit card debt consolidation loans would fall within

[8] Previously, small business loans counted as QTI only if originated in areas where the credit needs of low and moderate income persons were not being met. As discussed above, HOLA section 5 now imposes a 20%-of-assets cap on small business loans. HOLA section 5 does not limit a federal savings association's credit card and education loans.

[9] The previous limit was 10% of portfolio assets and included credit card and educational loans. When computing the new 20% cap, consumer loans must still be aggregated with certain other categories of loans and investments that are also subject to the 20% cap, *e.g.*, loans for the purchase of community service facilities, home loans sold into the secondary market, Fannie Mae and Freddie Mac stock, and so forth. 12 U.S.C. 1467a(m)(4)(C)(iii) and (iv).

[10] 12 U.S.C. 1464(q).

[11] 12 U.S.C. 1972.

[12] 12 U.S.C. 1467a.

[13] 12 U.S.C. 1841 *et seq.*

[14] 12 U.S.C. 1464(r).

[15] 26 U.S.C. 7701(a)(19).

[16] OTS's lending and investment regulations contain a table that provides an overview of HOLA's investment authorities. 61 FR 50951, 50973 (September 30, 1996) (to be codified as 12 CFR 560.30). OTS plans to supplement the table in its subsidiaries and equity investment rulemaking, which will be published before the end of the year. The table also needs to be updated to reflect EGRPRA's amendments to the investment limits of HOLA. Rather than amending and restating the table twice in several weeks, OTS will restate the table once in the subsidiaries rulemaking. At that time, the EGRPRA amendments will be reflected in the table. The changes being made today, however, are sufficient to authorize savings associations to begin using the EGRPRA authorities. Savings associations need not await restatement of the table in Part 560.

[17] EGRPRA, section 2303(b), amending HOLA section 5(c), to be codified at 5 U.S.C. 1464(c)(1)(T).

[18] 2A Sutherland Statutory Construction section 46.05 (5th ed. 1992).

[19] Black's Law Dictionary 367 (6th ed. 1990).

the confines of ''loans made through credit cards or credit card accounts.'' As for securities backed by credit cards, the HOLA itself specifies that ''any reference to a loan [herein] * * * includes an interest in such a loan. * * *'' [20] Thus, the authorization to invest in ''loans made through credit cards'' encompasses investments in loan pools that issue securities backed by credit card loans.[21] As for credit card debt consolidation loans, OTS believes that, because these loans are made for the purpose of funding credit card receivables, they are in economic substance ''credit card loans.'' Today's definition of ''credit card account'' therefore includes credit card debt consolidation loans and securities backed by credit-card accounts and receivables.

We note that § 560.30 of OTS's regulations, which implements the statutory credit card authority, permits federal thrifts to engage in the full range of credit card operations authorized by HOLA, but provides that OTS reserves the right to establish investment limits on a case-by-case basis if an institution's concentration in credit-card-related loans presents a safety and soundness concern.[22]

Institutions that expand their credit card lending (or their consumer, small business, or agricultural lending) pursuant to today's rule must do so in a safe and sound manner. Institutions planning any significant increase in these types of loans should prepare thorough business plans, acquire the necessary personnel and expertise, and establish adequate systems to identify and control risks associated with these products. OTS will monitor these lending activities, utilizing off-site surveillance and the on-site examination process.

Section 560.3 Definitions of Small Business, Small Business Loans

Section 2303(g) of EGRPRA requires the OTS Director to issue regulations defining the term ''small business'' in order to enable savings associations to apply the newly modified QTL test which permits small business loans to be counted as QTI without restriction pursuant to HOLA section 10(m). Section 2303(c) of EGRPRA also directs the OTS Director to define the term ''small business loans'' in connection with newly amended HOLA section 5(c) which expands federal thrifts'' commercial lending authority from 10% to 20% of assets so long as the amount in excess of 10% of assets is used solely for small business loans. Once again, OTS believes that a consistent definition of small business for application of both sections of the HOLA is appropriate to promote a harmonious interpretation of the statute.

In this interim final regulation, OTS is tying its definitions of small business and small business loans to the eligibility criteria established by the Small Business Administration (SBA) under section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as implemented by SBA's regulations at 13 CFR Part 121. Most lenders and small businesses are already familiar with SBA's size eligibility standards. However, OTS specifically solicits comment as to whether these SBA standards are the most appropriate basis for OTS's definition of small business or small business loans for HOLA purposes. OTS specifically solicits comment on whether it should, for the sake of simplicity, include a *de minimis* safe harbor providing that any loan to a business with annual sales of less than a specified amount will be deemed a small business loan, regardless what line of business the borrower conducts.[23]

Sections 563.50, 563.51, 563.52 Revisions to the QTL Test.

As discussed above, section 2303 (e) and (g) of EGRPRA amended the QTL test in a number of ways to give thrifts greater lending flexibility. Investments in educational loans, small business loans, and loans made through credit cards and credit card accounts are includable as QTI without limit. Consumer loans now count as QTI in an amount up to 20% of portfolio assets.

Rather than codifying these amendments in the existing QTL regulations, OTS is removing the QTL provisions from its regulations at 12 CFR 563.50–52 and relying directly on the provisions of HOLA section 10(m) to govern this area, except for the two definitions described above. These definitions will appear at 12 CFR 560.3.

This approach is consistent with OTS's effort to streamline its regulations and remove duplicative requirements pursuant to section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA).[24] The QTL provisions of HOLA section 10(m) are very detailed, and OTS provides additional QTL guidance in its Thrift Activities Handbook (Handbook). OTS believes it is unnecessary to reiterate HOLA's statutory QTL provisions in a regulatory format, because the combination of HOLA's statutory requirements and relevant handbook guidance provide adequate direction to the thrift industry and OTS examination staff with respect to QTL compliance. Thus, the only regulatory provisions that address QTL will be the two definitions described above.

Section 563.36 Tying Restrictions

Section 2216 of EGRPRA authorizes the OTS Director to issue regulations or orders permitting exceptions to the anti-tying prohibitions established in HOLA section 5(q) provided that such exceptions are not contrary to the purposes of that section and conform to exceptions granted by the FRB to banks pursuant to section 106(b) of the BHCA Amendments. The FRB, by regulation, has created four exceptions from the anti-tying provisions of the BHCA Amendments.

The first FRB regulatory exception provides that a bank holding company, bank, or nonbank subsidiary thereof, may vary the consideration charged for a traditional bank product on the condition or requirement that a customer also obtain a traditional bank product from an affiliate.[25] HOLA section 5(q) excepts this type of activity for savings associations, savings and loan holding companies, and their affiliates.[26] Accordingly, OTS has determined that a regulatory exception for traditional bank products would be duplicative of the HOLA and is unnecessary.

The second FRB regulatory exception provides that a bank holding company, bank or nonbank subsidiary may vary the consideration charged for securities brokerage services on the condition or requirement that a customer also obtain a traditional bank product from that

[20] 12 U.S.C. 1464(c)(6)(B).

[21] *Cf.* 12 CFR 560.31(c).

[22] 12 CFR 560.30, n. 5, 61 FR 50951, 50973 (September 30, 1996).

[23] The SBA Reauthorization Act of 1994, 15 U.S.C. 632(a)(C), provides that unless specifically authorized by statute, no federal agency may prescribe a size standard for categorizing a business concern as a small business unless such size standard is made subject to public notice and comment, makes certain size determinations, and is approved by the SBA Administrator. OTS solicits comment regarding whether EGRPRA section 2303(g) constitutes a specific authorization within the meaning of 15 U.S.C. 632(a)(C).

[24] 12 U.S.C. 4803.

[25] 12 CFR 225.7(b)(1) (1996).

[26] HOLA section 5(q)(1)(A) explicitly provides that the tying restriction does not apply where the tied product is a traditional bank product of the savings association, a service corporation, or an affiliate. Section 10(n) of HOLA makes that anti-tying exclusion applicable to savings and loan holding companies and affiliates thereof. In contrast, the BHCA Amendments provide an exception in the case of traditional bank products offered by the bank, but do not address traditional bank products offered by bank holding companies or nonbank affiliates. *See,* 12 U.S.C. 1972(1)(B).

bank holding company or bank or nonbank subsidiary, or from any affiliate of such company.[27] Once again, HOLA section 5(q) does not prohibit this type of activity under any circumstances for savings associations, savings and loan holding companies, and their affiliates.[28] Accordingly, OTS has determined that it is unnecessary to adopt this second regulatory exception.

The third FRB regulatory exception relates to tying arrangements that do not involve banks. The exception permits bank holding companies or nonbank subsidiaries to vary the consideration for any extension of credit, lease or sale of property of any kind, or service, on the condition or requirement that the customer obtain some additional credit, property or service from itself or a nonbank affiliate.[29] This provision is an exception not from any statutory requirement but from the FRB's regulation that generally applies the tying restrictions applicable to banks to bank holding companies and other affiliates. The language applying tying restrictions to savings and loan holding companies and their non-thrift affiliates, which appears in HOLA section 10(n), differs somewhat from the wording of the FRB's tying regulation for bank holding companies and their nonbank affiliates. Section 10(n) of the HOLA applies only when a tying arrangement involves products of a savings and loan holding company or affiliate, *and* those of an affiliated savings association. Accordingly, tying arrangements involving savings and loan holding companies and/or non-thrift affiliates, but not a savings association, are not restricted under HOLA section 10(n). Therefore, OTS has determined that there is no need to adopt a regulatory exception that is comparable to the third FRB exception.

The fourth FRB regulatory exception permits banks, bank holding companies, or nonbank affiliates to vary the consideration for any product or package of products based on a customer's maintenance of a combined minimum balance in certain products specified by the company varying the consideration (defined as ''eligible products'), if (i) that company (if it is a bank) or a bank affiliate of the company offers deposits, and all such deposits are eligible products, and (ii) balances in deposits count at least as much as non-deposit products toward the minimum balance.[30]

This fourth FRB regulatory exception permits banks to offer discounts to customers maintaining a combined minimum balance in deposit and non-deposit accounts, including brokerage and mutual fund accounts. As such, this regulatory ''safe harbor'' authorizes tying arrangements that are currently prohibited for savings associations, because the tied products would not necessarily be traditional bank products. In addition, savings and loan holding companies or affiliates thereof would be prohibited from offering such arrangements where one of the products involved was a savings association product (other than a traditional bank product).

Having reviewed this fourth FRB exception, OTS has determined that it should promulgate a regulation adopting a comparable ''safe harbor'' for savings associations, savings and loan holding companies, and affiliates [31] OTS believes that this exception is not contrary to the purposes of HOLA section 5(q), because it would not present the anti-competitive effects which the HOLA's antitying provisions were intended to eliminate. Rather, this safe harbor would enable savings associations and their affiliates to offer a greater variety of banking products and services to their customers and could potentially enhance competition in the market place. Such an exception would also ensure parity between savings associations and banks, enabling savings associations and banks to offer a comparable range of products and services and further enhance competition among financial institutions consistent with the purposes of HOLA section 5(q) and the BHCA Amendments.

Accordingly OTS is adding a new regulatory antitying exception at 12 CFR 563.36 that conforms to the FRB's ''safe harbor'' for combined balance discounts. This safe harbor permits savings associations and their affiliates to offer discounts to customers maintaining certain combined minimum balance accounts.[32] In addition to this exception, OTS may permit other exceptions under HOLA section 5(q) on a case-by-case basis upon determination that the exception is not contrary to the purposes of HOLA section 5(q), it conforms to an exception granted by the FRB, and it is consistent with safe and sound practices.

OTS also solicits comment as to whether the agency should adopt regulatory revisions parallel to those proposed, but not yet adopted, by the FRB on September 6, 1996.[33] The FRB proposal would rescind the provision in its current regulations that extends the tying prohibitions to bank holding companies and their nonbank affiliates.[34] As noted above, the FRB already permits bank holding companies and their nonbank affiliates to offer discounts on products conditioned on a customer's purchase of another product, provided none of the tied products are those of a bank affiliate. The FRB proposal would, in effect, rescind this proviso, allowing bank holding companies to tie their discounts to the purchase of bank products, provided no anti-trust violations result. The proposal would also enable bank holding companies and their nonbank affiliates to engage in tying practices other than discounting. For example, the availability of a product could be conditioned on the purchase of another product, again provided no anti-trust violation occurs.

OTS requests comment on whether savings and loan holding companies and their non-bank affiliates should also be completely exempted from the tying restrictions. As noted above, the provision of law applying the tying restriction to savings and loan holding companies is statutory, not regulatory (as is the case for bank holding companies). Thus, OTS also requests comment on whether it would have legal authority to grant a complete exemption from HOLA section 10(n).

Sections 574.1, 574.2, 574.3, 575.2, 583.20, 584.2a Holding Company Regulatory Revisions

Section 2203 of EGRPRA exempts bank holding companies that control savings associations from HOLA section 10, thereby eliminating OTS supervision of holding companies that control both

[27] 12 CFR 225.7(b)(2) (1996).

[28] As noted in the discussion of the first FRB exception, a tying arrangement is not prohibited under HOLA section 5(q) or 10(n) where the tied product is a traditional bank product. There is no requirement that the tying product be a traditional bank product.

[29] 12 CFR 225.7(b)(3) (1996).

[30] 12 CFR 225.7(b)(4) (1996).

[31] The exception authority granted to OTS by amended HOLA section 5(q) is indirectly applicable to savings and loan holding companies and affiliates, because HOLA section 10(n) provides that, in connection with transactions involving the products or services of a savings and loan holding company or affiliate and those of an affiliated savings association, section 5(q) shall apply to savings and loan holding companies and their affiliates in the same manner as if they were a savings association.

[32] The interim final rule does *not* require that all products offered pursuant to the safe harbor must be separately available for purchase. Although this condition currently appears in the FRB safe harbor, 12 CFR 225.7(c)(1)(1996), the FRB has specifically proposed to eliminate this condition. 61 FR at 47264. OTS will reexamine this issue if the FRB's final rule does not eliminate the condition.

[33] *See*, 61 FR 47242 (September 6, 1996).

[34] Other aspects of the FRB's proposal need not be discussed here because they concern practices not prohibited for savings associations and their affiliates.

a bank and a thrift and are registered as a bank holding company with the FRB under the BHCA of 1956. OTS is making technical changes to its acquisition of control and holding company regulations to conform to EGRPRA's amendments to the Savings and Loan Holding Company Act. OTS has added an exception to its acquisition of control regulations to clarify that where a person acquires control of a bank holding company and the person is required to file a change of control notice with the FRB, no change of control notice is required to be filed with OTS. In addition, OTS is making minor revisions to the Mutual Holding Company regulations to reflect its position that section 2203 of EGRPRA does not affect OTS's authority to regulate mutual holding companies, including mutual holding companies that have acquired a bank. OTS has reached this conclusion for two reasons. First, although section 2203 of EGRPRA excepts bank holding companies from the definition of ''savings and loan holding company'' in section 10 of HOLA, section 10(o) of the HOLA, pertaining to mutual holding companies, refers to ''mutual holding companies'' rather than mutual savings and loan holding companies. Second, OTS is the chartering authority for federal mutual holding companies under section 10(o), and section 10(o) provides for a unique relationship between depositors of the subsidiary association and the mutual holding company.

III. Administrative Procedure Act

OTS has determined that advance notice and comment ordinarily mandated by the Administrative Procedure Act (APA), 5 U.S.C. 553(b), are not required in this interim final rulemaking. The APA authorizes agencies to waive notice and comment procedures when the agency ''for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [35] OTS for good cause finds that notice and comment procedures for this rulemaking are impracticable and contrary to the public interest because they would delay implementation of EGRPRA's expanded lending, investment, and other authorities for thrifts. In addition, advance public notice and comment are unnecessary and contrary to the public interest because the interim rule substantially restates the provisions of the statute or makes technical revisions to OTS regulations and reduces regulatory burden.

OTS also has determined that the 30-day delay of effectiveness provisions of the APA may be waived in this rulemaking. Section 553(d) of the APA permits waiver of the 30 day delayed effective date requirement for, *inter alia*, good cause or where a rule relieves a restriction. OTS finds that good cause exists for the same reasons stated above. OTS further finds that the 30-day delayed effective date requirement may be waived because this interim final rule relieves various lending, investment, and tying restrictions for thrifts and merely conforms OTS regulations to EGRPRA's statutory changes.

Accordingly, the interim final rule will be immediately effective upon publication in the Federal Register. Nevertheless, OTS seeks the benefit of public comment. Accordingly, OTS invites interested persons to submit comments during the 60-day comment period. OTS will revise the interim final rule as appropriate based on these comments.

IV. Paperwork Reduction Act of 1995

This interim final rule does not impose any collections of information on savings associations. As such, the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) does not apply.

V. Executive Order 12866

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

VI. Regulatory Flexibility Act Analysis

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* do not apply. The interim final rule does not impose any additional burdens or requirements upon small entities and reduces burdens on all savings associations. The regulatory amendments implement statutory changes to the HOLA that relieve various lending, investment, and tying restrictions on thrifts and otherwise conform OTS regulations to EGRPRA. Accordingly, a regulatory flexibility analysis is not required.

VII. Unfunded Mandates Act of 1995

OTS has determined that the requirements of this interim 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, Pub. L. 104–4, 109 Stat. 48 (1995).

VIII. Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), 12 U.S.C. 4802, requires that new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements take effect on the first date of the calendar quarter following publication of the rule unless, among other things, the agency determines, for good cause, that the regulations should become effective on a day other than the first day of the next quarter. OTS believes that an immediate effective date is appropriate since the interim rule relieves regulatory burden on savings associations. This immediate effective date will permit savings associations to begin exercising their expanding lending, investment, and other authorities pursuant to the amended HOLA. OTS does not anticipate that the immediate application of the rules will present a hardship to institutions. Indeed OTS believes that CDRIA does not apply to this interim rule because it imposes no new burden on thrifts. For these reasons, OTS has determined that an immediate effective date is appropriate for this interim final rule.

List of Subjects

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 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 583

Holding companies, Savings associations.

[35] 5 U.S.C. 553(b)(B).

12 CFR Part 584

Administrative practice and procedure, holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends title 12, chapter V of the Code of Federal Regulations as set forth below.

PART 560—LENDING AND INVESTMENT

1. The authority citation for part 560 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

2. Section 560.3 is amended by revising the introductory text and by adding four definitions in alphabetical order to read as follows:

§ 560.3 Definitions.

For purposes of this part and any determination under 12 U.S.C. 1467a:

* * * * *

Credit card is a card, plate or other credit device that allows the holder to purchase goods or obtain services or cash by charging them to a previously established line of credit with the issuer of the card, plate or device.

Credit card account is a credit account established in conjunction with the issuance of, or the extension of credit through, a credit card. This term includes loans made to consolidate credit card debt, including credit card debt held by other lenders, and participation certificates, securities and similar instruments secured by credit card receivables.

* * * * *

Small business includes a small business concern or entity as defined by section 3(a) of the Small Business Act, 15 U.S.C. 632(a), and implemented by the regulations of the Small Business Administration at 13 CFR Part 121.

Small business loans includes any loan to a small business concern or entity as defined by section 3(a) of the Small Business Act, 15 U.S.C. 632(a), and implemented by the regulations of the Small Business Administration at 13 CFR Part 121.

PART 563—OPERATIONS

3. 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.

4. Section 563.36 is added to read as follows:

§ 563.36 Tying restriction exception.

(a) *Safe harbor for combined-balance discounts.* A savings and loan holding company or any savings association or any affiliate of either may vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the company varying the consideration (eligible products), if:

(1) That company (if it is a savings association) or a savings association affiliate of that company (if it is not a savings association) offers deposits, and all such deposits are eligible products; and

(2) Balances in deposits count at least as much as non-deposit products toward the minimum balance.

(b) *Limitations on exception.* This exception shall terminate upon a finding by the OTS that the arrangement is resulting in anti-competitive practices. The eligibility of a savings and loan holding company or savings association or affiliate of either to operate under this exception shall terminate upon a finding by the OTS that its exercise of this authority is resulting in anti-competitive practices.

§§ 563.50, 563.51, 563.52 [Removed]

5. Sections 563.50, 563.51, and 563.52 are removed.

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

6. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 1831i.

7. Section 574.1 is revised to read as follows:

§ 574.1 Scope of part.

The purpose of this part is to implement the provisions of the Change in Bank Control Act, 12 U.S.C.1817(j) (''Control Act'), and the Savings and Loan Holding Company Act, 12 U.S.C. 1467a (''Holding Company Act''), relating to acquisitions and changes in control of savings associations that are organized in stock form and savings and loan holding companies thereof.

§ 574.2 [Amended]

8. Section 574.2 is amended by revising paragraph (q)(2)(ii) and by adding paragraph (q)(3) to read as follows:

§ 574.2 Definitions.

* * * * *

(q) * * *

(2) * * *

(ii) Is a testamentary trust; and

(3) A bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or any company directly or indirectly controlled by such company (other than a savings association).

* * * * *

9. Section 574.3 is amended by:

a. In paragraph (c)(1)(ii), removing the period at the end of the paragraph and adding a semicolon in its place;

b. Redesignating paragraphs (c)(1)(iii) through (c)(1)(vii) as paragraphs (c)(1)(iv) through (c)(1)(viii);

c. Adding paragraph (c)(1)(iii);

d. Revising paragraph (c)(2)(i);

e. Redesignating paragraphs (c)(2)(iv) and (c)(2)(v) as paragraphs (c)(2)(v) and (c)(2)(vi) and by adding a new paragraph (c)(2)(iv); and

f. In newly designated paragraph (c)(2)(v), removing the period at the end of the paragraph and adding ''; and'' in its place.

The additions and revisions read as follows:

§ 574.3 Acquisition of control of savings associations.

* * * * *

(c) *Exempt transactions.* (1) * * *

(iii) Control of a savings association acquired by a bank holding company that is registered under and subject to, the Bank Holding Company Act of 1956, or any company controlled by such bank holding company;

* * * * *

(2) * * *

(i) Transactions which are exempt pursuant to paragraphs (c)(1)(iii), (c)(1)(iv), (c)(1)(v), and (c)(1)(vi) of this section;

* * * * *

(iv) Transactions for which a change of control notice must be submitted to the Board of Governors of the Federal Reserve System pursuant to the Change in Bank Control Act, 12 U.S.C. 1817(j);

* * * * *

PART 575—MUTUAL HOLDING COMPANIES

10. The heading for part 575 is revised as set forth above.

11. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

12. Section 575.2 is amended by revising paragraph (h) to read as follows:

§ 575.2 Definitions.

* * * * *

(h) The term *mutual holding company* means a mutual holding company organized under this part.

* * * * *

PART 583—DEFINITIONS

13. The authority citation for part 583 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

14. Section 583.20 is amended by revising paragraph (b)(2) and by adding paragraph (c) to read as follows:

§ 583.20 Savings and loan holding company.

* * * * *

(b) * * *

(2) Is a testamentary trust; and

(c) A bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or any company directly or indirectly controlled by such company (other than a savings association).

PART 584—REGULATED ACTIVITIES

15. The authority citation for part 584 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

§ 584.2a [Amended]

16. Section 584.2a is amended by removing paragraph (e).

Dated: November 20, 1996.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 96–30112 Filed 11–26–96; 8:45 am]

BILLING CODE 6720–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

Share Insurance and Appendix

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Currently, the NCUA Rules and Regulations include dividends accrued and posted to share accounts for any prior accounting period as principal for determining the amount of share insurance on insured accounts. To provide equitable treatment, the NCUA Board is amending the regulations to provide authority for the liquidating agent to include dividends earned or accrued in the normal course of business but not posted in the determination of the amount of share insurance on insured accounts. An outdated reference in the Regulations regarding time computation is updated.

DATES: The rule is effective on November 27, 1996.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Jerry L. Courson, Special Assistant to the President, Asset Management and Assistance Center, National Credit Union Administration, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759 or telephone (512) 795–0999 or Allan H. Meltzer, Associate General Counsel, National Credit Union Administration, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

Subpart B of Part 745 of the NCUA Rules and Regulations deals with the payment of share insurance and appeals. Specifically, § 745.200(b) provides that in determining the amount of share insurance, no dividends shall be paid on shares if sufficient undivided and current earnings are not available for such purpose. However, dividends accrued and posted to share accounts for prior accounting periods are considered as principal (regardless of earnings).

In a small number of liquidations, it has been necessary to reconstruct and correct the credit union records. In these liquidation cases, the reconstruction process disclosed situations where dividends were posted to some member accounts and not posted to other member accounts. Under the current regulation, to properly reconstruct these accounts and the dividends that were miscalculated or omitted, the liquidating agent obtained authority from the NCUA Board.

On July 9, 1996, the NCUA Board issued a Notice of Proposed Rulemaking, 61 FR 36663 (July 12, 1996), proposing to amend § 745.200(b) to provide the liquidating agent authority to record unposted dividends to provide for a more equitable treatment of all members. The proposed rule provides discretion for the liquidating agent to correct share accounts by recording dividend payments that were not posted or were incorrectly posted by credit union personnel due to fraud, embezzlement, or accounting errors. Under the proposed rule, dividends not earned in the normal course of business, would not be included in the determination of insured shares. In addition, the proposed rule provides flexibility in dealing with sufficient earnings. Under the current regulation, dividend payments cannot be considered as principal for insurance purposes if sufficient earnings were not available. The proposed rule is silent on sufficient earnings, but a credit union's earnings could be a factor used by the liquidating agent in determining insured shares.

Under the proposed rule, decisions on unposted dividends can be made without specific NCUA Board action.

In addition to the issue of unposted dividends, the proposed rule also noted a needed change to the reference in § 745.200(d) to § 747.119 of the NCUA Rules and Regulations. This is a reference to the Section in the Regulations on time computation. Section 747.119 no longer exists and the reference is updated to read § 747.12(a).

The Notice of Proposed Rulemaking included a Request for Comments seeking public comment on the proposed changes to Part 745 of the NCUA Rules and Regulations. Five comment letters were received, one from a federal credit union and four from national and state credit union leagues. All commenters expressed unqualified support for the proposed regulation.

Analysis

The final rule is unchanged from the proposed rule that was published on July 12, 1996.

Immediate Effective Date

Since the rule relieves a restriction in that the liquidating agent can pay certain unposted dividends without specific NCUA Board action, the thirty day delay in effective date is not applicable. 5 U.S.C. 553(d)(1).

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that this rule will not have a significant economic impact on a substantial number of small credit unions (those under $1 million in assets). Accordingly, a Regulatory Flexibility Act analysis is not required.

Paperwork Reduction Act

The rule does not impose any new paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The changes to § 745.200 will apply to both federal credit unions and federally-insured, state chartered credit unions. The

NCUA Board, pursuant to Executive Order 12612, has determined that the amendment will not have substantial direct effect 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. Further, the rule will not preempt provisions of state law or regulation.

List of Subjects in 12 CFR Part 745

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions.

By the National Credit Union Administration Board on November 20, 1996.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 745 as follows:

PART 745—SHARE INSURANCE AND APPENDIX

1. The authority citation for part 745 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1789.

2. Section 745.200 is amended by revising paragraphs (b) and (d) to read as follows:

§ 745.200 General.

* * * * *

(b) *Amount of insurance.* The amount of insurance on an insured account shall be determined in accordance with the provisions of Subpart A of this part and the Federal Credit Union Act. For the purpose of determining insurance coverage, dividends earned in the ordinary course of business and posted to share accounts for any prior accounting or dividend period shall be deemed to be principal under this part. Dividends earned or accrued in the ordinary course of business, but not posted to share accounts, may be paid at the discretion of the liquidating agent. In making such determination, the liquidating agent will take into consideration whether the failure to post dividends earned or accrued was due to the fraud, embezzlement or accounting errors of credit union personnel. The liquidating agent may require an accountholder to submit documentation supporting any claim for unposted dividends not otherwise evidenced in the credit union records. However, in no event will dividend amounts be considered as principal for insurance purposes pursuant to this section if not consistent with the amounts paid on similar classes of shares.

* * * * *

(d) *Computing time.* In computing any period of time prescribed by this subpart, the provisions of § 747.12(a) shall apply.

[FR Doc. 96–30287 Filed 11–26–96; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AEA–10]

Amendment to Class E Airspace; Penn Yan, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace at Penn Yan, NY, to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 01 at Penn Yan Airport. This amendment also includes the correct geographic position of Penn Yan Airport published in the Notice Of Proposed Rulemaking in the Federal Register October 24, 1996 (61 FR 55121). The intended effect of this action is to provide adequate controlled airspace for instrument flight rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Frances Jordan, Airspace Specialist, Operations Branch, AEA–530, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 24, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Penn Yan, NY, (61 FR 55121). This action would provide adequate Class E airspace for IFR operations at Penn Yan Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Class E airspace areas designations are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) modifies Class E airspace area at Penn Yan, NY, to accommodate a GPS RWY 01 SIAP and for IFR operations at Penn Yan Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AEA NY E5 Penn Yan, NY [Revised]

Penn Yan Airport, NY

(Lat. 42°38′17″ N, Long. 77°03′11″ W)

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of the Penn Yan Airport, excluding

that portion within the Romulus, NY Class E airspace area.

* * * * *

Issued in Jamaica, New York on November 15, 1996.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96–30206 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AEA–09]

Establishment of Class E Airspace; Montauk, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Montauk, NY. The development of a Very High Frequency Omni-Directional Range (VOR) and Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Montauk Airport, Montauk, NY has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Montauk Airport.

EFFECTIVE DATE: 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Frances T. Jordan, Airspace Specialist, Operations Branch, AEA–530, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 7, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a Class E airspace at Montauk Airport, Montauk, NY (61 FR 52399). The development of a VOR/GPS RWY 6 SIAP at Montauk Airport has made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas designations are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes a Class E airspace area at Montauk, NY. The development of a VOR/GPS RWY 6 SIAP at Montauk Airport has made this action necessary. The intended effect of this action is to provide adequate Class E airspace for aircraft executing the VOR/GPS RWY 6 SIAP at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significantly regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AEA NY E5 Montauk, NY [New]

Montauk Airport, NY
(Lat. 41°04′35″ N, Long. 71°55′15″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Montauk Airport and within 4 miles each side of the 062° bearing from the Hampton VORTAC extending from the 6.5-mile radius to 10 miles northeast of the VORTAC and excluding that portion within the Block Island, RI 700 foot Class E Airspace Area and that portion within the East Hampton, NY 700 foot Class E Airspace Area.

* * * * *

Issued in Jamaica, New York on November 15, 1996.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96–30207 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANE–23]

Establishment of Class E Airspace; Dexter, ME; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction.

SUMMARY: This action corrects the longitude and latitude coordinates for Dexter Regional Airport (K1B0) in the description of new Class E airspace established to provide for adequate controlled airspace for those aircraft using the new GPS RWY 34 Instrument Approach Procedure.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, Operations Branch, ANE–530.6, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7536; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION:

History

On August 19, 1996, the FAA published in the Federal Register (61 FR 42784) a direct final rule establishing Class E airspace at Dexter, ME. That action was necessary to provide adequate controlled airspace for aircraft using the new GPS RWY 34 Instrument Approach Procedure to Dexter Regional Airport (K8B0). The FAA uses the direct final rulemaking procedure for noncontroversial rules when the FAA believes that no adverse public comment will be received. On October 28, 1996, the FAA published in the Federal Register (61 FR 55563) confirmation that the FAA received no adverse comments to this direct final rule, and notice that the original effective date of the rule was extended to December 5, 1996, to allow additional time to coordinate the establishment of

the new instrument approach procedure with other agencies. As a result of that coordination, the FAA finds that this action is necessary to correct the longitude and latitude coordinates for the Dexter Regional Airport that appear in the description of the new Class E airspace at Dexter, ME.

Correction to the Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates of Dexter Regional Airport contained in the description of Class E airspace at Dexter, ME, as published in the Federal Register on August 19, 1996 (61 FR 42784), Federal Register document 96–21093: page 42785, column 1; and the description in FAA Order 7400.9D, dated September 16, 1996, which is incorporated by reference in 14 CFR 71.1; are corrected as follows:

§ 71.71 [Corrected]

Subpart E—Class E Airspace

* * * * *

ANE ME E5 Dexter, ME [Corrected]

Dexter Regional Airport

By removing ''(lat. 45°00′16″N, long. 69°14′12″W)'' and substituting ''(lat. 45°00′30″N, long. 69°14′23″W).''

* * * * *

Issued in Burlington, MA, on November 19, 1996.

John J. Boyce,

Assistant Manager, Air Traffic Division, New England Region.

[FR Doc. 96–30216 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Deocket No. 96–AGL–10

Establishment of Class E Airspace; Hazen, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Mercer County Regional Airport, Hazen, ND, to accommodate a Non-Directional Radio Beacon (NDB) approach procedure for Runway 32, a Global Positioning System (GPS) approach procedure for Runway 32 and a GPS approach procedure for Runway 14. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, January 30, 1997.

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

SUPPLEMENTARY INFORMATION:

History

On September 9, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Mercer County Regional Airport, Hazen, ND (61 FR 47466). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Mercer County Regional Airport, Hazen, ND, to accommodate a NDB approach procedure for Runway 32, a GPS approach procedure for Runway 32 and a GPS approach procedure for Runway 14. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AGL ND E5 Hazen, ND [New]

Mercer County Regional Airport, ND
(Lat. 47°17′23″N., long. 101°34′50″W.)
Dickinson VORTAC
(Lat. 46°51′36″ N., long. 102°46′25″W.)
Minot Air Force Base
(Lat. 48°24′56″N., long. 101°21′27″W.)
Bismarck VOR/DME
(Lat. 46°45′43″N., long. 100°39′55″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Mercer County Regional Airport, and that airspace extending upward from 1,200 feet above the surface bounded on the northwest by V–491, on the south by V–510, on the east by V–15, on the southwest by the 25.2-mile arc of the Dickinson VORTAC, on the north by the 47-mile radius of the Minot AFB, and on the southeast by the 36-mile arc of the Bismarck VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on November 13, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–30369 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AGL–14]

Establishment of Class E Airspace; Tomahawk, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Tomahawk Regional Airport, Tomahawk, WI, to accommodate a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME–A). Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

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

SUPPLEMENTARY INFORMATION:

History

On September 17, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Class E at Tomahawk Regional Airport, Tomahawk, WI (61 FR 48868). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 200 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.7. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Tomahawk Regional Airport, Tomahawk, WI, to accommodate a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME–A). Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AGL WI E5 Tomahawk, WI [New]

Tomahawk Regional Airport, WI
(Lat. 45°28′10″N., long. 89°48′16″S.)

That airspace extending upward from 700 feet above the surface within a 6.4 mile radius of Tomahawk Regional Airport.

* * * * *

Issued in Des Plaines, Illinois on November 13, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–30371 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 157

[CGD 91–045]

RIN 2115–AE01

Operational Measures To Reduce Oil Spills From Existing Tank Vessels Without Double Hulls; Partial Suspension of Regulation

AGENCY: Coast Guard, DOT.

ACTION: Final rule; partial suspension of regulation with request for comments.

SUMMARY: On July 30, 1996, the Coast Guard published a final rule requiring the owners, master, or operators of tank vessels of 5,000 gross tons or more that do not have double hulls and that carry oil in bulk as cargo to comply with certain operational measures. This final rule included a provision requiring owner notification of the vessel's calculated under-keel clearance which is scheduled to go into effect on November 27, 1996. Following issuance of the final rule, the Coast Guard received comments expressing concern on how the owner notification portion of the under-keel clearance provision will be implemented and seeking an additional comment period before the provision is fully enforced. Because the Coast Guard is still developing its own internal guidance on acceptable forms of owner notification and because the public has concerns about how this provision will be implemented, the Coast Guard is suspending the effective date of the owner notification part of this final rule. The Coast Guard requests comments on the under-keel clearance provision.

DATES: 33 CFR 157.455(a) (5) and (6) scheduled to become effective on November 27, 1996, in the final rule published at 61 FR 39770, July 30, 1996,

is suspended as of November 27, 1996. Comments must be received on or before January 27, 1997.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–045), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to Room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal Holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Suzanne Englebert, Project Manager, Project Development Division, at (202) 267–1492.

SUPPLEMENTARY INFORMATION:

Regulatory History

The regulatory history for this rulemaking is recounted in the preamble of the final rule entitled ''Operational Measures to Reduce Oil Spills from Existing Tank Vessels without Double Hulls'' (61 FR 39770; July 30, 1996).

Reason for Suspension of Effectiveness

After publication of the final rule, the Coast Guard received comments and petitions for reconsideration from the International Association of Independent Tanker Owners, the International Chamber of Shipping, and the Baltic and International Maritime Council expressing concern about the implementation of certain minimum under-keel clearance requirements in Section 157.455. The provision relates to owner notification of the calculated anticipated under-keel clearance contained in Section 157.455(a) (5) and (6) of the final rule. The regulated community has requested an additional opportunity to comment on the owner notification provision of the under-keel clearance requirement. The Coast Guard is therefore delaying implementation of 33 CFR 157.455(a) (5) and (6) until further notice and is opening a 60 day comment period on the provision. In addition, the Coast Guard is opening an additional 60 day comment period on the under-keel clearance calculation requirements in Section 157.455(a) (1) through (4).

Request for Comments

The Coast Guard encourages interested persons to submit specific comments limited to the requirements of 33 CFR 157.455(a). The Coast Guard particularly seeks comments on the owner's responsibility to provide guidance to the master on under-keel clearance or make a determination of adequate under-keel clearance based on input from the vessel's master. The Coast Guard is currently developing implementation guidance on all of the operational measures in the final rule, including examples of company guidance on under-keel clearance. This guidance will be published in a Navigation and Vessel Inspection Circular (NVIC) in the near future. Suggestions on the implementation guidance in the NVIC should be submitted to the Office of Compliance (G–MOC) at 2100 Second Street SW., Washington, DC 20593–0001. The Coast Guard will consider all comments received during the comment period. It may change 33 CFR 157.455(a) based on the comments.

Regulatory Process Considerations

Although the final rule is a significant regulatory action under section 3(f) of Executive Order 12866, the Office of Management and Budget (OMB) does not consider this partial suspension of the final rule as a significant action. This action 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.*) and 1996 amendments (enacted as Chapter 8 of Title 5, U.S. Code).

Any final response to petitions for reconsideration on this final rule will address any economic impacts, including impacts on small businesses.

Dated: November 25, 1996.

R.D. Herr,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 96–30489 Filed 11–25–96; 2:08 pm]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document describes the numerous amendments consolidated in the Transmittal Letter for Issue 50 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1 These amendments reflect changes in mail preparation standards and other miscellaneous mailing requirements.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Neil Berger, (202) 268–2859.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual (DMM), incorporated by reference in title 39, Code of Federal Regulations, part 111, contains the basic standards of the U.S. Postal Service governing its domestic mail services; describes the mail classes and special services and conditions governing their use; and provides detailed instructions on the standards for rate eligibility and mail preparation. The document is amended and republished about every 6 months, with each issue sequentially numbered.

DMM Issue 50, the current edition of the DMM, was released on July 1, 1996. That issue contains substantive changes to mail preparation standards and mail classification as published in the Federal Register on March 12, 1996 (61 FR 10068–10217). These standards were approved on March 4, 1996, by the Postal Service to implement the Decision of the Governors of the Postal Service in Postal Rate Commission Docket No. MC 95–1, Classification Reform I. These standards took effect at 12:01 a.m., July 1, 1996. The following excerpt from the Summary of Changes section of the transmittal for DMM Issue 50 covers the minor changes not previously described in that final rule or in other interim or final rules published in the Federal Register. These changes were first announced in various issues of the Postal Bulletin, a biweekly document published by the Postal Service to state or to revise policy and procedure.

Domestic Mail Manual Issue 50 Summary of Changes

Barcoded Mail Preparation

M812.4.2, M812.4.3, and M812.4.4 (renumbered as M891.4); M813.5.3, M813.5.4, and M813.5.5 (M892.5); M814.3.2, M814.3.3, and M814.3.4 (M893.3); M815.4.3, M815.4.4, and M815.4.5 (M894.4); M816.6.3, M816.6.4, and M816.6.5 (M895.6); and M823.5.4 (M897.5) revise preparation of Barcoded rate mail. Effective November 23, 1995; mandatory January 20, 1996 (PB 21907 (11–23–95)).

Delivery Statistics

A930.5.0 includes all post offices with rural delivery, highway contract delivery, and post office box delivery. Effective October 12, 1995 (PB 21904 (10–12–95)).

Expedited Markings

C010.8.2 eliminates the use of markings such as (''RUSH'' that improperly imply expedited service. Effective April 25, 1996 (PB 21918 (4–25–96)).

Heavy Letter Mail

C810.1.5. (renumbered as C810.2.3), C810.1.6 (C810.2.3), C810.2.3 (C810.7.5), C840.2.2, M814.1.9 (removed), M815.1.7 (removed), M816.1.7 (removed) provides standards for heavy letter mail. Effective February 15, 1996 (PB 21913 (2–15–96)).

Labeling Lists

L002, L101 (renumbered as L004), L102, L707 (L604), L801 (L897), L802 (L898), L803 (L899), and L804 (L801) reflect changes in mail processing. New L806 (L803) concentrates originating volumes not entered at BMCs or ASFs. Effective November 23, 1995; mandatory January 20, 1996 (PB 21907 (11–23–95)). L707 (L604) shows the change to ''MXD HARTFORD CT 060.'' Effective November 23, 1995; mandatory January 20, 1996 (PB 21908 (12–07–95)). L806 (L803) adds ZIP Codes 420–426 for ''MXD LOUISVILLE KY 400.'' Effective November 23, 1995; mandatory March 23, 1996 (PB 21910 (1–4–96)).

Meter Indicia

Exhibit P030.4.1 adds a new Pitney Bowes meter indicia. Effective March 18, 1996 (PB 21916 (3–28–96)).

Nonprofit Products

E370.5.10 (renumbered as E670.5.10) increases the value of low-cost products mailable at nonprofit rates. Effective January 1, 1996 (PB 21913 (2–15–96)).

Permit Applications

E060.8.1, E060.11.2, E060.12.3, P023.2.0, P023.3.0, P030.5.1 (new), P040.1.5, S922.2.1, S922.5.14, and S923.2.0 require new Form 3615 for four forms previously used for permit authorizations. Effective October 26, 1995 (PB 21905 (10–26–95)).

Return Receipts

S915.1.4 clarifies that the weight of a return receipt is not included when computing the postage weight of a mailpiece. Effective February 15, 1996 (PB 21913 (2–15–96)).

Stamp Exchanges

P014.1.7 eliminates the postage stamp conversion fee. Effective November 23, 1995 (PB 21907 (11–23–95)).

Tabbing

C810.9.0 (renumbered as C810.7.3) provides an alternative placement of tabs on booklet-type mailpieces. Effective April 25, 1996 (PB 21918 (4–25–96)).

USPS Mail

E060.16 is removed to reflect the discontinuance of the standard penalty (eagle) indicia on USPS official mail. Effective January 1, 1996 (PB 21907 (11–23–95)).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. In consideration of the foregoing, the table at the end of 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	Federal Register publication
* * * *	* *	
50	July 1, 1996	61 FR [insert page number]

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–30073 Filed 11–26–96; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5644–2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; SO_2: New Manchester-Grant Magisterial District, Hancock County Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State implementation plan (SIP) revision submitted by the State of West Virginia. This revision provides for, and demonstrates, the attainment of the national ambient air quality standards (NAAQS) for sulfur oxides, measured as sulfur dioxide (SO_2), in the New Manchester-Grant Magisterial District, Hancock County nonattainment area. The implementation plan was submitted by West Virginia to satisfy the requirements of the Clean Air Act (CAA) pertaining to nonattainment areas. This action is being taken under section 110 of the Clean Air Act.

DATES: This action is effective January 27, 1997 unless notice is received on or before December 27, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Section (3AT22), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and, West Virginia Division of Environmental Protection, 1558 Washington Street, East, Charleston, West Virginia 25311.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, Technical Assessment Section (3AT22), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, phone: 215 566–2196.

SUPPLEMENTARY INFORMATION: On February 17, 1995, as amended on May 3, 1996, the State of West Virginia submitted a revision to its State implementation plan (SIP) for sulfur dioxide (SO_2). The revision pertains to the SO_2 nonattainment area in New Manchester-Grant Magisterial District, Hancock County, West Virginia.

Background

The Clean Air Act, as amended in 1977, required EPA to establish the attainment status of areas with respect to the national ambient air quality standards (NAAQS). On March 3, 1978 (43 FR 8962), as amended on September 12, 1978 (43 FR 40502), EPA published the initial attainment designations for each State in Region III. Areas within each State were designated as nonattainment, attainment, or unclassifiable and these designations are depicted in 40 CFR part 81.

As part of EPA Region III's initial designations, the New Manchester-Grant Magisterial District, Hancock County, West Virginia was designated as nonattainment for the primary NAAQS for SO_2. EPA acted on the recommendation of West Virginia to designate this area as nonattainment for SO_2. The basis of the recommendation was ambient air quality monitoring data collected at the New Manchester monitor located in Hancock County that indicated violations of the primary NAAQS for SO_2 in the northern portion of the County.

The cause of the violations of the NAAQS was primarily attributed to Ohio Edison Company's W. H. Sammis Power Plant in nearby Jefferson County, Ohio. On July 24, 1979 (44 FR 43298) and August 14, 1980 (45 FR 54042), EPA proposed and finalized, respectively, a revision to the West Virginia State Implementation Plan (SIP) for SO_2. The revision contained a control strategy and attainment demonstration for the New Manchester-Grant area.

The control strategy indicated that the New Manchester-Grant Magisterial District nonattainment area would attain the NAAQS when the Sammis Power Plant complies with the applicable SO_2 emission limitations of the Ohio SIP. This strategy did not require West Virginia to revise its SO_2 regulations. The control strategy was supported by a modeling demonstration and air quality data which showed that the area would attain the NAAQS if the Sammis Power Plant complied with its SIP emission limitation. Although a SIP revision for the nonattainment area was approved, the State did not submit a request for redesignation to attainment.

On February 5, 1990, EPA issued a SIP call to West Virginia which, in part, required the submission of a SIP revision to attain and maintain the NAAQS for SO_2 in all of Hancock County, including the New Manchester-Grant nonattainment area. The SIP call was issued because monitored violations of the NAAQS in Hancock County indicated that the current SIP was inadequate. Later that year, the Clean Air Act was amended and provided that any area designated with respect to the NAAQS, as in effect immediately before November 15, 1990, shall retain that designation ''by operation of law'' (section 107(d)(1)(C)). Therefore, the New Manchester-Grant Magisterial District, Hancock County, West Virginia remained classified as nonattainment for SO_2 by operation of law after November 15, 1990.

Initially, EPA misinterpreted the new requirements of the Clean Air Act as they applied to the New Manchester-Grant nonattainment area. EPA had erroneously informed the State that a SIP revision for the nonattainment area was due by May 15, 1992. On June 13, 1994, EPA informed West Virginia of its misinterpretation of the Act and established, via the SIP call authorities outlined in section 110(k), a SIP submittal due date of December 1, 1994. EPA also explained that section 192(c) is applicable in this situation and it mandates the attainment of the NAAQS within five (5) years from the determination of SIP inadequacy. Therefore, the required SIP must provide for attainment by February 5, 1995.

On February 17, 1995, West Virginia submitted a formal SIP revision for the New Manchester-Grant Magisterial District nonattainment area. The SIP revision contains, among other things, individual consent orders between West Virginia and Quaker State Refinery and Weirton Steel Corporation limiting their SO_2 emissions and allowing for the demonstration of attainment in the New Manchester-Grant nonattainment area. EPA determined that the submittal was administratively and technically complete. Subsequent to this determination, West Virginia identified potential minor errors with regard to the emissions inventory for a number of sources located in Ohio and the possible amendment of emission limits for two other Ohio sources. On May 3, 1996, West Virginia submitted an amended attainment demonstration that accounts for the identified changes in the Ohio emissions inventory. The consent orders between the State and principle sources did not require revision in order to demonstrate attainment.

It should be noted that the remainder of Hancock County, Clay and Butler Magisterial Districts and the City of Weirton (the ''Weirton Area'), was redesignated as nonattainment for SO_2 on December 21, 1993 (58 FR 67334). This action required the State to submit a SIP revision for the Weirton Area by July 20, 1995. On July 21, 1995, EPA received a SIP revision submittal for the Weirton Area and that submittal is currently under Agency review.

Summary of SIP Revision

On February 17, 1995, as amended on May 3, 1996, Mr. Laidley Eli McCoy, Ph.D., Director, West Virginia Division of Environmental Protection submitted to EPA Region III a SIP revision for the New Manchester-Grant Magisterial District, Hancock County SO_2 nonattainment area. The SIP revision consists primarily of consent orders entered into by and between the State of West Virginia and the Quaker State Refinery in Congo, West Virginia and the Weirton Steel Corporation in Weirton, West Virginia. The consent orders establish SO_2 emission limits for numerous emission points at both facilities. The submittal contains an air quality dispersion modeling demonstration that indicates that the allowable emission limits will provide for the attainment of the NAAQS for SO_2 in the New Manchester-Grant area.

The consent orders stipulate the following emission limitations for the Quaker State Corporation refinery and the Weirton Steel Corporation facility:

QUAKER STATE CORPORATION, CONGO REFINERY SO_2 Emission Limits

SO_2 emission unit	SO_2 emission limit
Coal-fired, Fluidized-bed Boiler No. 1	1.2 lbs-SO_2/MMBtu of heat input, at any time.
Coal-fired, Fluidized-bed Boiler No. 2	1.2 lbs-SO_2/MMBtu of heat input, at any time.
Oil-fired Package Boiler A	1.2 lbs-SO_2/MMBtu of heat input, at any time.
Oil-fired Package Boiler B	1.2 lbs-SO_2/MMBtu of heat input, at any time.
Simultaneous operation of Coal-fired, Fluidized-bed Boilers Nos.1 and 2	192 lbs-SO_2/hour, each boiler.
Simultaneous operation of Oil-fired Package Boilers A and B	264 lbs-SO_2/hour, combined.
Simultaneous operation of one Coal-fired, Fluidized-bed Boiler and one Oil-fired Package Boiler.	264 lbs-SO_2/hour, combined.

QUAKER STATE CORPORATION, CONGO REFINERY SO_2 Emission Limits—Continued

SO_2 emission unit	SO_2 emission limit
Process Heaters H–101 and H–102	1.1 lbs-SO_2/MMBtu.
Process Heaters H–501/6 and H–601/4	0.8 lbs-SO_2/MMBtu.
Vacuum Fractionator Heater H–701	Shall burn natural gas and/or treated refinery gas that contains ≤10 grains of hydrogen sulfide per 100 dry standard cubic feet of gas, and 0.8 lbs-SO_2/MMBtu.
Process Heater H–201	Shall burn fuel oil, desulfurized fuel gas and/or natural gas, and 1.1 lbs-SO_2/MMBtu.
Hydrogen Unit Heater H–605	Shall burn natural gas only.

WEIRTON STEEL CORPORATION, WEIRTON FACILITY SO_2 Emission Limits

SO_2 Emission Unit	SO_2 Emission Limit
High Pressure Boilers 1, 2, 3, 4	1.6 lbs-SO_2/MMBtu and 864 lbs-SO_2/hour, per boiler. No more than three boilers may be operated simultaneously.
High Pressure Boiler 5	0.8 lbs-SO_2/MMBtu and 480 lbs-SO_2/hour.
Sinter Plant	250 lbs-SO_2/hour.
Slag Granulator	100 lbs-SO_2/hour.
Basic Oxygen Process Waste Heat Boilers	300 lbs-SO_2/hour.
Hot Mill Reheat Furnaces, Foster-Wheeler Boilers and combustion sources at the Hydrochloric Acid Regeneration Plant, Continuous Annealing Facility, Jumbo Annealing Facility, and Blast Furnace Stoves.	Shall burn blast furnace gas, mixed gas (approximately 70 percent natural gas and 30 percent air), or natural gas.
Low Pressure Boilers LP1, LP2, LP3, LP4 and LP15	Shall be permanently shut down.

Evaluation of State Submittal

The Clean Air Act requires States to submit implementation plans that indicate how each State intends to attain and maintain the NAAQS. The 1977 Amendments established specific requirements for implementation plans in nonattainment areas in part D, sections 171–178. The 1990 Amendments did not change these requirements in any significant way with regard to SO_2 nonattainment areas and existing guidance remains valid. On April 16, 1992 (57 FR 13498), EPA issued ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' describing EPA's preliminary views on how it intends to interpret various provisions of title I, primarily those concerning revisions required for nonattainment areas.

In order to approve the SIP revision, each of the part D requirements must be evaluated and the revision must ensure that (1) the revised allowable emission limitations demonstrate attainment and maintenance of the NAAQS for SO_2 in the nonattainment area; (2) the emission limitations are clearly enforceable; and (3) that all applicable procedural and substantive requirements of 40 CFR part 51 are met. The following is an evaluation of the part D requirements as described in the ''General Preamble''; a more detailed evaluation is provided in a Technical Support Document available upon request from the Regional EPA office listed in the **ADDRESSES** section of this document:

1. Reasonably Available Control Technology (RACT)

West Virginia's SIP revision provides for reasonably available control technology (RACT). The SIP revision indicates that SO_2 emissions are controlled at the Quaker State Corporations facility in Congo, West Virginia and the Weirton Steel Corporation facility in Weirton, West Virginia largely through fuel specification and operations modifications. The revision establishes allowable SO_2 emission limitations at both plants and also defines allowable fuel usage for a number of processes. With regard to Quaker State, the revision includes a schedule for the construction of taller smokestakes for emissions from a number of boilers at the facility. The limits contained in the revision were effective upon execution of the individual consent orders entered into with West Virginia by Quaker State and Weirton Steel on January 9, 1995. The SIP revision provides a demonstration that these limits will provide for the attainment of the NAAQS in the nonattainment area by the statutory attainment date.

2. Reasonable Further Progress (RFP)

West Virginia's SIP revision provides for reasonable further progress (RFP). The SIP revision provides that the allowable emission rates are achievable by the required attainment date.

3. Contingency Measures

West Virginia's SIP revision provides for adequate contingency measures. The SIP revision contains a comprehensive action plan to quickly identify and address SO_2 impacts that may affect attainment of the NAAQS in the New Manchester-Grant area. The State's plan includes the continuous review of air quality monitoring data in the area of concern, including the two monitors located in the nonattainment area. In the event of a certified violation, West Virginia intends to contact all potential contributors to the violations both locally and in neighboring Ohio and Pennsylvania. West Virginia has provided assurances that appropriate mitigation measures will be pursued to remedy the causes of any violations.

4. Stack Height Issues and Remand

West Virginia has adequately addressed any potential stack height issues. The only stack height issues contained in the SIP revision pertain to the construction of new smokestacks at the Quaker State facility. In the consent order with Quaker State, West Virginia requires that any modifications to the existing stacks or replacement of those stacks shall comply with the provisions of federally-approved West Virginia regulation 45CSR20 ''Good Engineering Practice as Applicable to Stack Heights''. There are no stack height issues at the Weirton Steel facility.

5. Existing Modeling Protocols

West Virginia's SIP revision is supported by a modeling demonstration using regulatory air dispersion models as defined by 40 CFR part 51, appendix W—''Guideline on Air Quality Models (Revised),'' (hereinafter, the Guideline). The model protocol employed by West Virginia to perform the attainment demonstration was developed by an EPA contractor. The model protocol was amended and refined by West Virginia and EPA as necessary. As mentioned, the allowable emission limitations established by the SIP revision are supported by Guideline modeling which indicates that the limits are adequate to attain and maintain the NAAQS for SO_2 in the nonattainment area by the statutory attainment date. West Virginia employed the Guideline models Integrated Gaussian Model (IGM) and CTSCREEN, the screening mode of Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS). The IGM modeling analysis relied on the predictions of Industrial Source Complex Short Term (ISCST2) for simple terrain and COMPLEX1 and Rough Terrain Diffusion Model (RTDM) for complex terrain predictions. The results of this demonstration will be discussed below.

6. Test Methods and Averaging Times

West Virginia's SIP revision principally relies on the use of continuous emissions monitoring (CEM) as the means of monitoring compliance at the Quaker State and Weirton Steel facilities. The revision stipulates short-term averaging times for determining compliance with the allowable emission limits.

The SIP revision requires the Quaker State facility to operate continuous emissions monitoring (CEM) systems to test for compliance with the applicable SO_2 emission limitations at each of its coal- and oil-fired boilers. The SIP revision stipulates averaging times based on rolling, 3-hour averages for the boilers. For Quaker State's process heaters, fuel sampling and analysis is required to determine compliance. The revision also requires that all refinery fuel gas streams be monitored for hydrogen sulfide concentrations using a CEM system. The SIP revision further stipulates that in the event of CEM malfunction or outage, certain fuel specification requirements and alternative compliance test methodologies must be employed to ensure compliance. All CEM systems must be operated according to the relevant portions of 40 CFR part 60.

At the Weirton Steel facility, the SIP revision also relies heavily on CEM systems as the main test method. The principal emission sources at the plant, the boilers, must operate CEM systems and must assure compliance of the relevant emission limitations based on a rolling, three-hour average. The SIP also provides contingency test methods in the event that the CEM systems are inoperable. For the other emission sources at the facility, the sinter plant and the slag granulator, Weirton Steel must conduct a specified number of emissions tests in accordance with the reference test procedures detailed at 40 CFR part 60, appendix A. Specifically, compliance testing should be conducted according to Methods 6, 6A, 6B, 6C, and 19.

7. Emission Inventory

West Virginia's SIP revision provides an adequate actual emissions inventory from all relevant sources of SO_2 in the nonattainment area. The revision contains a current inventory of actual emissions data and stack parameter information for the Quaker State and Weirton Steel facilities as well as numerous nearby emission sources in West Virginia, Pennsylvania, and Ohio.

Shortly after submitting the February 17, 1995 SIP revision, West Virginia identified what it believed to be erroneous data contained in the emission inventory for certain Ohio emission sources. At this same time, the State of Ohio was pursuing a revision to its SIP with regard to the Sammis Power Plant. The Sammis Power Plant significantly impacts the New Manchester-Grant area. As a result of these two factors, West Virginia acknowledged that the emission inventory for the attainment demonstration would require revision to correct the errors and to reflect any changes to the Ohio SIP with regard to the Sammis Plant and/or any other relevant sources. As part of the May 3, 1996 SIP revision amendment, West Virginia provided the appropriate corrections and amendments to the emission inventory.

8. Attainment Demonstration

West Virginia's SIP revision provides an adequate attainment demonstration, including appropriate air quality dispersion modeling. EPA regulations, 40 CFR 51.112, require nonattainment plans to include a demonstration of the adequacy of the plan's control strategy. The demonstration must employ the applicable air quality models, data bases, and other requirements specified at 40 CFR part 51, appendix W—''Guideline on Air Quality Models (Revised)''. This demonstration must include the following information: model selection and descriptions; model application and assumptions made during application of selected models; receptor grids; meteorological data; ambient air monitoring data and background concentration; model source input; and modeling results.

Model Descriptions—The air quality dispersion modeling analysis performed for this demonstration employed the Integrated Gaussian Model (IGM) and screening mode of the Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS) named CTSCREEN. Both models are considered recommended models according to Appendix W. IGM is capable of calculating emission concentrations for simple, intermediate and complex terrain situations. IGM is able to execute algorithms from four other Guideline models to predict concentrations: Industrial Source Complex Short Term (ISCST2) for simple terrain and COMPLEX1, Rough Terrain Dispersion Model (RTDM), and SHORTZ for complex terrain. CTSCREEN is a Gaussian model that requires actual terrain feature data as input. CTSCREEN is able to calculate concentrations estimations using a data set of predetermined meteorological conditions as input in lieu of recorded meteorological data.

Model Application—The area contained within the modeling domain, comprising most of Hancock County, can be characterized as primarily rural terrain with some intermediate terrain features. Three model analyses were performed in the modeling domain. A domain-wide application of IGM was used to characterize all non-Quaker State emission sources in the inventory. In this IGM analysis, ISCST2 was employed as the simple terrain model and RTDM or COMPLEX1, as appropriate, was used as the complex terrain model. CTSCREEN was applied in the complex terrain surrounding the Quaker State facility to describe that source's impacts on the domain in complex terrain. CTSCREEN does not predict concentrations at receptors located below stack top, therefore, ISCST2 was run to determine concentrations at those receptors. There were no intermediate terrain receptors in the two Quaker State specific analyses.

Receptor Grids—The principal receptor grid covers the New Manchester-Grant Magisterial District nonattainment area with one-kilometer spacing between each receptor. A more refined receptor grid was developed for the area surrounding the only

significant source located in the defined nonattainment area, Quaker State. This refined grid augmented the one-kilometer grid by using 200-meter receptor spacing. The entire receptor grid consisted of 245 receptors. The overall grid was developed to adequately assess the impacts of the Quaker State facility as well as the other nearby emission sources. The demonstration also included the required terrain arrays employed by RTDM (within IGM) and the digitized terrain profiles required as input for CTSCREEN. West Virginia developed these arrays and profiles according to the appropriate procedures.

Meteorological Data—On-site meteorological data was not available within the modeling domain, therefore, West Virginia relied on data collected at the National Weather Service (NWS) meteorological site located at Pittsburgh International Airport. Appendix W recommends that the five most recent years of NWS data be employed if on-site data is unavailable. West Virginia used data collected from 1989 through 1993. A portion of the data collected in 1988 and 1991 were determined incomplete by EPA. West Virginia replaced the missing data using a substitution procedure approved by EPA.

Background Concentration—The demonstration uses monitored air quality data for determining that portion of the background concentrations attributable to sources other than those nearby that are to be explicitly modeled. Seventeen SO_2 monitoring sites in and around the nonattainment area were available for evaluation. West Virginia employed an appropriate methodology for using the data collected at those monitors for developing hourly background concentration values to be used as model input.

Source Inputs—The source inventory for the demonstration consists of the two major sources of SO_2 located in Hancock County, Quaker State and Weirton Steel, as well as other significant sources located in West Virginia, Ohio, and Pennsylvania. West Virginia explicitly modeled all significant sources of SO_2 located within 50 kilometers of nonattainment area. For all 20 sources included in the emission inventory, model input data were developed for parameters such as stack height, stack temperature, exit velocity, etc. Maximum allowable emission rates were used for each source with continuous operation assumed for evaluation of the short-term standards and actual operation data was used to adjust the emission rates for evaluation of the annual standard.

As mentioned above, certain changes were made to the emission inventory relevant to a number of Ohio sources after initial submittal of the SIP revision on February 17, 1995. Ohio Edison operates the Sammis and Toronto Power Plants in nearby Jefferson County, Ohio. The State of Ohio has recently proposed approval of a revision to its SIP as it applies to these two plants to allow for new allowable SO_2 emission limitations. Ohio has proposed to change the Sammis Plant's allowable emission limits for units 1–4 from 1.61 lbs-SO_2/mmBtu and units 5–7 from 4.46 lbs-SO_2/mmBtu to a single, plant-wide emission rate of 2.91 lbs-SO_2/mmBtu. For the Toronto Power Plant, Ohio has proposed an emission limit reduction from 8.1 lbs-SO_2/mmBtu to 2.0 lbs-SO_2/mmBtu. While both changes represent gross emission reductions, the change in operating conditions at the Sammis Plant considering the variable stack parameters at each unit requires that the new emission limits be examined for their expected impacts on the New Manchester-Grant nonattainment area. West Virginia re-visited its original attainment demonstration to evaluate these revised conditions. West Virginia provides modeling results that reflect both the current SIP allowable conditions and the proposed conditions at the Sammis and Toronto Plants.

Modeling Results—The results of the modeling analyses indicate that no exceedances of the NAAQS for SO_2 are expected in the New Manchester-Grant nonattainment area when the Quaker State and Weirton Steel Corporation facilities are operating at the emission rates contained in their respective consent orders and the other significant sources comply with their allowable emission rates.

The demonstration present results of analyses examining both the current SIP situation for the Sammis and Toronto Power Plants and for the proposed conditions. The emission inventory for all of the other modeled sources remained constant for each scenario. Under both scenarios, the demonstration indicates that the primary NAAQS, the annual [80 $\mu g/m^3$] and 24-hour [365 $\mu g/m^3$] standards will be attained under the terms of the SIP revision. The three-hour [1300 $\mu g/m^3$] standard will also be protected at all receptors under both scenarios.

Discussion of Weirton Area Nonattainment Area

On December 21, 1993, EPA promulgated the redesignation of areas as nonattainment for SO_2 and particulate matter (PM–10). The Federal Register (58 FR 67334) document identifies the Clay and Butler Magisterial Districts and the City of Weirton in Hancock County, West Virginia, the ''Weirton Area'', as being redesignated as nonattainment for SO_2 under section 107 of the Clean Air Act. Pursuant to section 191(a) of the Act, the State of West Virginia was required to submit to EPA an implementation plan for this area within 18 months of the effective date of the redesignation to nonattainment. The State submitted a SIP revision for the Weirton Area on July 21, 1995 and the revision is currently under Agency review.

As discussed briefly above, the basis of EPA's determination to redesignate this area as nonattainment for SO_2 was air quality monitor data collected in the late 1980's and early 1990's that indicated violations of the primary and secondary standards in Hancock County. West Virginia and EPA were aware of the air quality issues in the Weirton Area for some time and considered completing a County-wide attainment demonstration and SIP revision. However, certain logistical and technical issues arose such that it was determined that individual SIP revisions for each nonattainment area would be the most prudent course.

It is recognized that many of the sources that influence air quality in the New Manchester-Grant nonattainment area will play a significant role in the Weirton Area. This is particularly true for the Weirton Steel Corporation's facility in Weirton, as well as, the Sammis and Toronto Power Plants. Therefore, the contribution of these sources on the Weirton Area nonattainment area will have to be closely assessed in any attainment demonstration for the Weirton Area. There is a strong potential that emission reductions above and beyond those contained in the consent order in the New Manchester-Grant SIP revision may be required from Weirton Steel in order to demonstrate attainment of the NAAQS in the Weirton Area. It should also be noted that the currently proposed emission limits for the Sammis and Toronto Plants may need to be reconsidered if it is determined that these sources must play a role in any control strategy for the Weirton Area. Based on the modeling that is included in the New Manchester-Grant SIP revision, it is doubtful that the Quaker State facility causes significant impact in the Weirton Area and it is therefore unlikely that its emission limitations will require future amendment. However, all sources in the emission inventory that significantly impact the Weirton Area nonattainment area

should not be excluded from consideration for control strategy purposes. All of these issues will be more fully discussed during the formal review of the Weirton Area SIP revision.

EPA's review of the entire submittal indicates that West Virginia's SIP revision provides for the attainment of the NAAQS for SO_2 in New Manchester-Grant Magisterial District, Hancock County and satisfies the requirements of part D of the Clean Air Act. The revision is supported by a modeling analysis which clearly demonstrates the adequacy of emission limits in providing for the attainment and maintenance of NAAQS for SO_2 in the nonattainment area. The consent orders between West Virginia and Quaker State Corporation and Weirton Steel Corporation at the center of the SIP revision establish enforceable SO_2 emission limits at these two facilities. The submittal clearly fulfills the procedural and substantive requirements of 40 CFR part 51. Therefore, EPA is approving the West Virginia SIP revision for the New Manchester-Grant Magisterial District, Hancock County SO_2 nonattainment area.

EPA is approving this SIP revision 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 revision should adverse or critical comments be filed. This action will be effective January 27, 1997 unless, by December 27, 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 document 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 January 27, 1997.

Final Action

EPA is approving the West Virginia SIP revision for the New Manchester-Grant Magisterial District, Hancock County SO_2 nonattainment area.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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 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 Regional 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 CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air 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 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 proposed/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 January 27, 1997. Filing a petition for reconsideration by the Regional 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 may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve a revision to West Virginia's SIP for SO_2 in New Manchester-Grant Magisterial District, Hancock County 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 17, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart XX of chapter I, title 40, 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 XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(35) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(35) Revisions to the West Virginia implementation plan for sulfur dioxide (SO_2) in New Manchester Grant-Magisterial District, Hancock County submitted on February 17, 1995, as amended on May 3, 1996 by West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of February 17, 1995 from Mr. David C. Callaghan, Director, West Virginia Division of Environmental Protection transmitting a SIP revision for the New Manchester-Grant Magisterial District, Hancock County SO_2 nonattainment area.

(B) Letter of May 3, 1996 from Mr. Laidley Eli McCoy, Ph.D., Director, West Virginia Division of Environmental Protection transmitting an amendment to the February 17, 1995 SIP revision submittal for the New Manchester-Grant Magisterial District, Hancock County SO_2 nonattainment area.

(C) Implementation plan document (as amended, May 3, 1996), entitled ''Revision to the West Virginia State Implementation Plan to Achieve and Maintain the National Ambient Air Quality Standards for Sulfur Dioxide in the New Manchester-Grant Magisterial District''.

(D) Consent order entered into by and between the State of West Virginia and the Quaker State Corporation on January 9, 1995. The consent order was effective on January 9, 1995.

(E) Consent order entered into by and between the State of West Virginia and the Weirton Steel Corporation on January 9, 1995. The consent order was effective on January 9, 1995.

(ii) Additional material.

(A) Remainder of West Virginia's February 17, 1995 submittal, as amended on May 3, 1996.

[FR Doc. 96–30324 Filed 11–26–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5654–1]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Partial Deletion of the Lakewood Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces the deletion of a portion of the Lakewood Site, located in Lakewood, Pierce County, Washington from the National Priorities List (NPL). The portion of the site to be deleted is the soil unit and includes all contaminated soil/sludge related to the site. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA and the State of Washington Department of Ecology have determined that no further cleanup under CERCLA is required and that the selected remedy has been protective of public health, welfare, and the environment.

EFFECTIVE DATE: November 27, 1996.

FOR FURTHER INFORMATION CONTACT: Ann Williamson, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, ECL–113, Seattle, WA 98101; (206) 553–2739.

SUPPLEMENTARY INFORMATION: The site to be partially deleted from the NPL is the Lakewood Site located in Lakewood, Pierce County, Washington.

This partial deletion pertains only to the soil unit and includes all contaminated soil/sludge on the Plaza Cleaners property. The soil unit is confined to an area on the Plaza Cleaners property. The Lakewood Site, including the plume of contaminated ground water, is predominantly residential to the north of the Burlington Northern Railroad tracks and commercial/light industrial along Pacific Highway Southwest. Lakewood Water District's two production wells are located within a fenced area immediately across Interstate 5. Residential property lies to the east and McChord Air Force Base to the southeast of the wells.

A plume of contaminated ground water, resulting from former disposal practices at Plaza Cleaners, continues to require treatment via air stripping at the Lakewood Water District production wells. Therefore, the ground-water unit will remain on the NPL and is not the subject of this partial deletion.

This partial deletion is in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55466 (Nov. 1, 1995). A Notice of Intent for Partial Deletion was published September 27, 1996 (61 FR 50788). The closing date for comments on the Notice of Intent to Delete was October 26, 1996. EPA did not receive any comments on the proposed partial deletion and has not prepared a Responsiveness Summary.

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 those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site, or portion of a 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 recordkeeping requirements, Superfund, Water pollution control.

Dated: November 14, 1996.

Chuck Clarke,

Regional Administrator, U.S. Environmental Protection Agency, 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 entry for Lakewood Site, Lakewood County, Washington, and adding in its place an entry for Lakewood, Lakewood/Pierce County, Washington, to read as follows:

Table 1.—General Superfund Section

State	Site name	City/county	Notes
	* * * * *		
WA	Lakewood	Lakewood/ Pierce	P
	* * * * *		

P=Sites with partial deletion(s).

* * * * *

[FR Doc. 96–29926 Filed 11–26–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[PP Docket No. 93–253; FCC 96–447]

Interactive Video and Data Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Tenth Report and Order* modifies the competitive bidding rules for the upcoming auction of Interactive Video and Data Service (IVDS) licenses as proposed by the *Sixth Memorandum Opinion and Order and Further Notice of Proposed Rule Making,* In the Matter of Implementation of Section 309(j) of the Communications Act—Competitive Bidding. Specifically, the rule amendments include eliminating the bidding credits available to women- and minority-owned IVDS applicants and extending bidding credits to small businesses based upon a revised two-tiered small business definition, *i.e.*, providing varying bidding credit amounts to small businesses of different sizes. The *Tenth Report and Order* also clarifies the attribution rules for affiliates of IVDS applicants, and amends the competitive bidding rules to increase the amount of the upfront payments required to participate in the IVDS auction. The intended effect of this action is to establish the competitive bidding rules for the upcoming auction of IVDS licenses.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Howard Griboff or Christina Eads Clearwater, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Tenth Report and Order* in PP Docket No. 93–253; FCC 96–447, adopted November 15, 1996 and released November 21, 1996. The complete text of the *Tenth Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Title: In the Matter of Implementation of Section 309(j) of the Communications Act—Competitive Bidding

Tenth Report and Order

I. Introduction and Executive Summary

1. In this *Tenth Report and Order,* the Commission modifies its competitive bidding rules for the upcoming auction of Interactive Video and Data Service (IVDS) licenses.[1] Specifically, the Commission amends certain provisions concerning the treatment of small businesses, businesses owned by members of minority groups and women, and rural telephone companies (collectively, ''designated entities''), in order to address the legal requirements of the Supreme Court's decisions in *Adarand Constructors, Inc. v. Pena* (*Adarand*)[2] and *United States* v. *Virginia* (*VMI*).[3] The Commission also increases the upfront payment amounts for bidding on IVDS licenses in order to encourage sincere bidding. By implementing these modifications, the Commission reiterates that it is committed to fulfilling its statutory obligation to ensure that designated entities are afforded opportunities to participate in the provision of spectrum-based services.[4]

2. As it explained in the *Sixth Memorandum Opinion and Order and Further Notice of Proposed Rule Making* (FNPRM),[5] the Commission was prompted to reexamine its race- and gender-based IVDS auction rules by the Supreme Court's decisions in *Adarand* and *VMI.* The Commission initially adopted these race- and gender-based rules in the *Fourth Report and Order* in this docket in order to fulfill its mandate under Section 309(j) of the Communications Act of 1934, as amended (''Communications Act''), to provide opportunities for businesses owned by members of minority groups and women to participate in the provision of spectrum-based services.[6] After the Commission adopted these rules, however, the Supreme Court held in *Adarand* that any federal program that makes distinctions on the basis of race must satisfy the strict scrutiny standard of judicial review.[7] More recently, the Supreme Court held in *VMI* that a state program that makes distinctions on the basis of gender must be supported by an ''exceedingly persuasive justification'' in order to withstand constitutional scrutiny.[8] Based on the analysis of *VMI* in conjunction with *Adarand,* the Commission concludes that any gender-based preference maintained in the IVDS auction rules must meet the VMI intermediate scrutiny standard of judicial review.

3. Based upon review of the comments submitted in response to the *FNPRM,* the Commission also concludes that the present record is insufficient to support either the race-based IVDS auction rules under the strict scrutiny standard or the gender-based rules under the ''exceedingly persuasive justification'' standard of intermediate scrutiny. The Commission has considered the need to award the remaining IVDS licenses expeditiously and to promote the rapid deployment of new services to the public without judicial delays,[9] as well as the statutory objective of disseminating licenses among a wide variety of applicants, including designated entities.[10] Bearing these factors in mind, the Commission concluded that in order to avoid uncertainty and delay that would likely result from legal challenges to the special provisions for minority- and women-owned businesses in its current

[1] IVDS is a point-to-multipoint, multipoint-to-point, short distance communications service. IVDS licensees may provide information, products, or services to individual subscribers located within a service area and subscribers may provide responses. 47 CFR Section 95.803(a).

[2] _____ U.S. _____, 115 S. Ct. 2097, 132 L.Ed.2d 158 (1995).

[3] _____ U.S. _____, 116 S. Ct. 2264, 135 L.Ed.2d 735 (1996).

[4] 47 U.S.C. Section 309(j)(4)(D).

[5] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Sixth Memorandum Opinion and Order and Further Notice of Proposed Rule Making,* PP Docket No. 93–253, FCC 96–330, 61 FR 49103 (September 18, 1996). In response to the *FNPRM,* comments were filed by (1) ITV, Inc. and IVDS Affiliates, LLC (ITV/IALC); (2) Interactive America Corporation, Inc. (IAC); (3) Loli, Inc., Trans Pacific Interactive, Wireless Interactive Return Path, L.L.C., and IVDS On-Line Partnership (collectively, ''IVDS Licensees''); and (4) Progressive Communications, Inc. (Progressive). Reply comments were filed by IAC.

[6] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fourth Report and Order,* PP Docket No. 93–253, 59 FR 24947 (May 13, 1994), 9 FCC Rcd 2330, 2336–40 (1994) (*Fourth Report and Order*).

[7] *Adarand,* 115 S. Ct. at 2113. *Adarand* explicitly overruled the intermediate scrutiny standard for racial classifications set by the Supreme Court in *Metro Broadcasting, Inc.* v. *FCC,* 497 U.S. 547, 564–65 (1990), which was the standard of review at the time the IVDS rules were adopted. *See Fourth Report and Order,* 9 FCC Rcd at 2338 n.73.

[8] *VMI,* 116 S. Ct. at 2274–76.

[9] 47 U.S.C. Section 309(j)(3)(A).

[10] *Id.* Section 309(j)(3)(B).

IVDS rules, it is appropriate to make the IVDS rules race- and gender-neutral.[11] The Commission believes that its action here is consistent with its obligations under Section 309(j)(3).[12]

4. As explained in the *FNPRM*, the Commission's experience in conducting the initial IVDS auction also led it to examine other aspects of its rules, and the Commission has determined that it should take certain steps to minimize the possibility of insincere bidding and bidder default. To achieve these goals, the Commission amends its rules to raise the initial upfront payment for participation in the IVDS auction to $9,000 per Metropolitan Statistical Area (MSA) license and $2,500 per license for Rural Service Area (RSA) markets, for the maximum number of licenses on which the applicant wishes to bid.

5. Finally, a number of the comments addressed other issues which are not within the scope of this proceeding. The Commission defers decisions on those matters until they can be addressed in the appropriate context.

II. Rules Affecting Designated Entities

A. Meeting the Constitutional Standards

6. *Background.* In the *FNPRM*, the Commission explained the history of its race-and gender-based IVDS rules, the statutory objectives they were designed to promote, and the impact of the Supreme Court's decisions in *Adarand* and *VMI.* As discussed, an intermediate scrutiny standard of review was applied to federal race- and gender-based programs at the time the IVDS rules were adopted.

7. In *Adarand*, the Supreme Court held that all racial classifications, whether imposed at the federal, state or local government level, must be analyzed by a reviewing court under a strict scrutiny standard of review. This standard requires such classifications to be narrowly tailored to further a compelling governmental interest.[13] In *VMI*, the Supreme Court reviewed a state program containing gender classification and held it was unconstitutional under an intermediate scrutiny standard of review. This standard requires that ''[p]arties who seek to defend gender-based government action must demonstrate an 'exceedingly persuasive justification' for that action.'' [14] Under this test, the government must show ''at least that the [challenged] classification serves 'important governmental objectives and that the discriminatory means employed' are 'substantially related to the achievement of those objectives.' '' [15] While the Supreme Court has not directly addressed constitutional challenges to federal gender-based programs since *Adarand* and *VMI*,[16] a review of the relevant broad language in *VMI* indicates that the Court does not differentiate between federal and state official actions in its equal protection analysis.[17] Similarly, the *Adarand* decision definitively eliminated any distinction between federal and state race-based programs in setting its strict scrutiny standard of judicial review.[18] Therefore, the Commission concludes that any gender-based preference maintained in the IVDS auction rules would need to meet the *VMI* intermediate scrutiny standard of review.

8. In the *FNPRM*, the Commission noted that judicial precedent indicates that only a record of discrimination against a particular racial group would support remedial measures designed to benefit that group and that generalized assertions of discriminations are inadequate.[19] The Commission tentatively concluded that, although it has some general evidence of discrimination against certain racial groups, the evidence in the record to date does not appear adequate to satisfy the strict scrutiny standard of review. The Commission requested comment on this tentative conclusion. The Commission also requested comment on a number of questions related to this analysis, including whether compensating for discrimination in lending practices in the communications industry constitutes a compelling government interest. The Commission also asked interested parties to comment on other objectives that could be furthered by the minority-based provisions and whether they could be considered compelling governmental interests, such as increased diversity in ownership and employment in the communications industry or increased industry competition. The Commission asked commenters to submit statistical data, personal accounts, studies, or any other data relevant to the entry of specific racial groups into the field of telecommunications, and whether its race-based provisions are narrowly tailored to serve the interests that commenters assert to be compelling governmental interests. In the *FNPRM*, the Commission also tentatively concluded that the present record in support of its gender-based IVDS rules may be insufficient to satisfy the intermediate scrutiny standard and asked commenters to submit evidence relating to the entry of women into the field of telecommunications. The Commission asked interested parties to comment on whether there are any other goals that would satisfy the ''important government objective'' requirement of the intermediate scrutiny standard, such as increased participation of women in the FCC-licensing process for auction spectrum, and whether its gender-based IVDS rules are ''substantially related'' to the achievement of such objectives.

9. In the *FNPRM*, the Commission also tentatively concluded that it should not delay the IVDS auction for the amount of time it would take to adduce sufficient evidence to support the race- and gender-based IVDS provisions. The Commission also concluded that proceeding with the IVDS auction with these rules intact would not serve the public interest because it might result in litigation that ultimately would further

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[11] *See* Amendment of Parts 20 and 24 of the Commission's Rules, *Report and Order*, WT Docket No. 96–59, 61 FR 51233 (October 1, 1996), 11 FCC Rcd 7824 (1996) (*DEF Report and Order*), which modified the designated entity provisions of the broadband Personal Communications Services (PCS) F block rules to make them race- and gender-neutral; Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Sixth Report and Order*, PP Docket No. 93–253, 60 FR 37786 (July 21, 1995), 11 FCC Rcd 136 (1995), *aff'd sub nom. Omnipoint Corp.* v. *FCC*, 78 F.3d 620 (D.C. Cir. 1996), which modified the designated entity provisions of the broadband PCS C block rules to make them race- and gender-neutral.

[12] 47 U.S.C. Section 309(j)(3).

[13] *Adarand*, 115 S. Ct. at 2113.

[14] *VMI*, 116 S. Ct. at 2274 (citing *J.E.B.* v. *Alabama ex rel. T. B.*, 511 U.S. 127, 136–37 & n.6 (1994) and *Mississippi Univ. for Women* v. *Hogan*, 458 U.S. 718, 724 (1982)).

[15] *Id.* at 2275 (quoting *Mississippi Univ. for Women*, 458 U.S. at 724 (quoting *Wengler* v. *Druggists Mutual Ins. Co.*, 446 U.S. 142, 150 (1980))).

[16] *But see Lamprecht* v. *FCC*, 958 F.2d 382, 391, 393 n.3 (D.C. Cir. 1992), a pre-*Adarand/VMI* decision in which Justice Thomas (a member of the D.C. Circuit panel to which the case was presented) invokes the ''exceedingly persuasive justification'' standard in striking down a federal gender-preference policy. As the dissent in *Lamprecht* confirmed, Justice Thomas applied ''the more exacting scrutiny of Justice O'Connor's dissent [in *Metro*, 497 U.S. at 602–31],'' *id.* at 404 (Mikva, C.J., dissenting), which formed the core of Justice O'Connor's majority opinion in *Adarand*.

[17] ''Since [*Reed* v. *Reed*, 404 U.S. 71 (1971)], the Court has repeatedly recognized that *neither federal nor state government* acts compatibly with the equal protection principle when a law or official policy denies * * * equal opportunity * * *.'' *VMI*, 116 S. Ct. at 2275 (emphasis added); ''To summarize the Court's current directions for cases of *official* classification based on gender: * * * the reviewing court must determine whether the proffered justification is 'exceedingly persuasive.' '' *Id.* (emphasis added). *See also Heckler* v. *Mathews*, 465 U.S. 728, 744–45 (1984) (reviewing a federal statute containing gender classification under the same standard the Court used to review the state statute in *Mississippi Univ. for Women*); *Califano* v. *Westcott*, 443 U.S. 76, 85 (1979) (same).

[18] *Adarand*, 115 S. Ct. at 2113.

[19] *FNPRM* (citing *Richmond* v. *J.A. Croson Co.*, 488 U.S. 469, 498 (1989) (quoting *Wygant* v. *Jackson Bd. of Educ.*, 476 U.S. 267, 275 (1986))).

delay the award of the IVDS licenses and postpone the introduction of new competition to the marketplace.[20] The Commission tentatively concluded that in order to meet its Congressional mandate and expeditiously proceed to auction the remaining IVDS licenses, it should adopt race- and gender-neutral IVDS auction provisions, but continue to maintain the provisions for small businesses which it believes adequately benefit most of the businesses owned by minorities and/or women.

10. *Discussion.* Upon review of the record before it, the Commission revises the IVDS rules to make them race- and gender-neutral, particularly since most of the commenters support this action.[21] The other commenters failed to provide any specific anecdotal or statistical evidence to supplement the record supporting race-based or gender-based IVDS auction rules. IAC takes the position that, because there is a lack of available equipment for constructing IVDS systems, the Commission is moving too quickly in eliminating minority- and gender-based preferences.[22] IAC proposes that the Commission allow parties additional time to establish a full record upon which to decide whether the race- and gender-based preferences should be eliminated.[23] However, IAC does not present any support for the proposition that a record could be developed in this proceeding if more time was available, nor do any of the other commenters. Accordingly, the Commission concludes that making the IVDS auction rules race- and gender-neutral will serve the public interest by enabling it to expeditiously auction the remaining IVDS licenses. Other commenters also requested that the Commission delay the IVDS auction, but not for the purpose of establishing a record to support race- and gender-based rules.[24] The Commission denies these requests to delay the auction, and notes that applicants should factor the obligations and uncertainties attendant to the auction process into their decision to participate and the amount to bid.[25]

11. While the Commission eliminates the race- and gender-based provisions of the IVDS auction rules, it will retain provisions for small businesses, as agreed to by all commenters.[26] The Commission concludes that nothing in the *Adarand* or *VMI* decisions calls its small business provisions into question. Moreover, by retaining small business preferences, the Commission believes it will continue to fulfill the mandate under Section 309(j) to provide increased opportunities for minority- and women-owned businesses,[27] because many minority- and women-owned entities are small businesses who therefore will qualify for the same special provisions that would have applied to them under the previous rules.[28]

12. The Commission also has initiated a comprehensive rule making proceeding to gather evidence regarding market barriers to entry faced by minority- and women-owned firms as well as small businesses.[29] If a sufficient record is adduced that will support race- and gender-based provisions that will satisfy judicial scrutiny, it will consider race- and gender-based provisions for future auctions. Toward this end, the Commission will continue to request bidder information on the IVDS short-form filings as to minority and/or women-owned status. In analyzing the applicant pool and the auction results, the Commission will monitor whether it has accomplished substantial participation by minorities and women through the broad provisions available to small businesses. This will also assist the Commission in preparing its report to Congress on the success of designated entities in auctions.[30]

B. Special Provisions for Designated Entities

1. Small Business Definition

13. *Background.* In the current IVDS rules, the Commission adopted a definition of ''small business,'' that requires an entity to demonstrate that, together with its affiliates, its net worth is not more than $6 million, and its annual profits are not more than $2 million for the previous two years. In the *FNPRM,* the Commission stated its belief that the gross revenues of the applicant and its affiliates is a more accurate indicator of its size than is its net worth or annual profits, and the Commission proposed to revise the IVDS definition of small business to match the three-year gross revenues test that it has used to define ''small business'' for other auctions.[31] The Commission further stated that, because it expects that the capital requirements for IVDS will be relatively low (as compared to, for example, broadband PCS), IVDS may attract greater participation by smaller businesses who lack access to capital. The potential in IVDS for greater participation by smaller businesses also justifies special provisions based on the size of the bidding entity, such as a tiered bidding credits. Therefore, the Commission proposed to redefine a ''small business'' as an entity with average gross revenues not to exceed $15 million for each of the preceding three years. The Commission also proposed to add a second tier of small businesses, referred to as ''very small businesses,'' and defined as entities with average gross revenues of not more than $3 million for each of the preceding three years. The Commission requested comment on these revised definitions. It also requested comment on whether to implement a five percent

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[20] Id. The Commission observes that the D.C. Circuit Court of Appeals stayed the C block auction under an intermediate scrutiny standard on the basis of race- and gender-based provisions similar to those adopted in the IVDS rules. *Telephone Electronics Corp.* v. *FCC,* No. 95–1015 (D.C. Cir. Mar. 15, 1995) (order granting stay).

[21] *See, e.g.,* Progressive Comments at 1; ITV/IALC Comments at 4.

[22] IAC Comments at 5–7.

[23] *Id.*; IAC Reply Comments at 1–2.

[24] IVDS Licensees request that the Commission delay the auction until certain technical, regulatory, and administrative issues are resolved. IVDS Licensees Comments at 4–6. ITV/IALC request that the auction not be held until resolution of all auction default issues and action has been taken on the petitions for reconsideration of the Commission's decision in Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Service to Subscribers, *Report and Order,* WT Docket No. 95–47, 61 FR 32710–01 (June 25, 1996), 11 FCC Rcd 6610 (1996). ITV/IALC Comments at 7–9. *See* also IAC Reply Comments at 4–5 (agreeing with IVDS Licensees and ITV/IALC on these points).

[25] *See* Requests for Waivers in the First Auction of Interactive Video and Data Service (IVDS) Licenses, *Memorandum Opinion and Order,* 11 FCC Rcd 8211, 8213 (1996).

[26] IVDS Licensees Comments at 2 (in light of the elimination of race- and gender-based provisions, the small business preferences provide ''one of the few avenues remaining for minority- and women-owned businesses to enter the communications industry''); IAC Comments at 8 (preferences for small businesses should be retained to fulfill the Commission's statutory obligations under Section 309(j)); ITV/IALC Comments at 4 (preferences should be based on a party's lack of economic strength); Progressive Comments at 1 (small business provisions will give ''equal status to all small business enterprises'').

[27] 47 U.S.C. Section 309(j)(3).

[28] *See generally 1992 Survey of Minority-Owned Business Enterprises,* Agriculture and Financial Statistics Division, Bureau of the Census, U.S. Department of Commerce (December 11, 1995); 1992 Survey of Women-Owned Businesses, Agriculture and Financial Statistics Division, Bureau of the Census, U.S. Department of Commerce (January 29, 1996).

[29] *See* Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, *Notice of Inquiry,* GN Docket No. 96–113, 61 FR 33066 (June 26, 1996), 11 FCC Rcd 6280 (1996)(*Section 257 Notice of Inquiry*). *See also* 47 U.S.C. Section 257.

[30] *See* 47 U.S.C. Section 309(j)(12)(D).

[31] *FNPRM* (citing 47 CFR Sections 24.320, 24.720, 90.912(b), 90.814(b)(1)). *See also* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Order on Reconsideration and Seventh Report and Order,* PR Docket No. 89–553, PP Docket No. 93–253, GN Docket No. 93–252, 60 FR 48913 (September 21, 1996), 11 FCC Rcd 2639, 2700–01 & n.320 (1995) (*900 SMR Auction Report and Order*).

attribution threshold for purposes of determining an entity's eligibility as a small business. Alternatively, the Commission sought comment on whether it should only count the gross revenues of the controlling principals in the applicant and its affiliates for purposes of determining small business status. Finally, the Commission sought comment on its tentative conclusion to use a multiplier similar to the one adopted in the *CMRS Third Report and Order* for the spectrum aggregation cap to determine attribution when IVDS licensees are held indirectly through intervening corporate entities.[32]

14. *Discussion.* Based upon its experience with spectrum auctions, the Commission believes that gross revenues-based definitions are a more accurate indicator of an entity's size than the net worth/annual profit definition which was previously used. Therefore, the Commission will redefine a ''small business'' as an entity with average gross revenues not exceeding $15 million for each of the preceding three years, and a ''very small business'' as an entity with average gross revenues not exceeding $3 million for each of the preceding three years. IVDS Licensees and ITV/IALC support small business definitions based upon gross revenues,[33] and only Progressive takes the position that the Commission should retain the previous small business definition.[34] The Commission further notes that the creation of a subcategory of very small businesses enables it to tailor benefits to better meet the needs of the smaller business entities likely to participate in the IVDS auction. As discussed below, the Commission finds that its goals can best be served by offering varying bidding credits tailored to the applicant's size. The Commission also believes that the $15 million/$3 million gross revenue financial thresholds are appropriate and are consistent with the carefully-analyzed approach it took in the auction of 900 MHz Specialized Mobile Radio (SMR) licenses.[35] Indeed, in this auction, the Commission expects participation by a comparable group of smaller businesses that participated in the 900 MHz SMR auction. Because the Commission believes these are appropriate thresholds, it declines to adopt the higher thresholds proposed by ITV/IALC.[36]

15. In determining whether an entity qualifies as a small business at either threshold, the Commission will consider the gross revenues of the small business applicant, its affiliates, and certain investors in the applicant. Specifically, the Commission will attribute the gross revenues of all controlling principals in the small business applicant as well as the gross revenues of affiliates of the applicant.[37] At ITV/IALC's request,[38] the Commission clarifies that personal net worth is not included in the determination of eligibility for bidding as a small business.[39] In addition, the Commission will use the multiplier adopted in the *CMRS Third Report and Order* for the spectrum aggregation cap to determine when IVDS licensees are indirectly held through intervening corporate entities.[40] The Commission thus chooses not to impose specific equity requirements on the controlling principals that meet the small business definition.[41] However, the Commission will still require that, in order for an applicant to qualify as a small business, qualifying small business principals must maintain ''control'' of the applicant. The term ''control'' would include both *de jure* and *de facto* control of the applicant.[42] While the Commission is not imposing specific equity requirements on the small business principals, the absence of significant equity could raise questions about whether the applicant qualifies as a *bona fide* small business.

16. On a related matter, ITV/IALC seeks clarification in its comments that once an entity qualifies as a small business, it would not lose its status through financial growth in subsequent years,[43] and thereby lose its ability to make installment payments as a small business under 47 CFR Section 95.816(d)(2). The Commission addressed this concern in its broadband PCS rules. There it emphasized its strong interest in seeing small businesses grow and succeed in the wireless marketplace and stated that growth of the licensee's gross revenues and assets, or growth as a result of a licensee acquiring additional licenses, generally would not jeopardize continued eligibility for designated entity preferences.[44] The Commission believes this policy equally should apply to IVDS licensees and, therefore, incorporates this concept into its IVDS rules.[45]

2. Bidding Credits

17. *Background.* Under the current IVDS rules, businesses owned by members of minority groups or women are granted a 25 percent bidding credit. In the *FNPRM*, the Commission proposed to eliminate race-and gender-based bidding credits in its IVDS rules and sought comment on whether it should extend a single bidding credit to all small businesses and, if so, the magnitude of that credit. The Commission asked whether it should offer tiered bidding credits for small businesses of different sizes, *e.g.*, a 15 percent bidding credit for very small businesses and a 10 percent bidding credit for small businesses. The Commission tentatively concluded that given the relatively low bids that IVDS garnered in the July 1994 auction, IVDS may attract smaller businesses, thus justifying tiered bidding credits.

[32] *Id.* (citing Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services, *Third Report and Order*, GN Docket No. 93–252, PR Docket No. 93–144, PR Docket No. 89–553, 59 FR 59945 (November 21, 1996), 9 FCC Rcd 7988, 8114–15 (1994) (*CMRS Third Report and Order*)).

[33] *See, e.g.*, IVDS Licensees Comments at 1–2; ITV/IALC Comments at 4–5.

[34] Progressive Comments at 1 (contending that differing categories of small businesses will create problems for the Commission in the future).

[35] *900 SMR Auction Report and Order*, 11 FCC Rcd at 2700.

[36] ITV/IALC Comments at 4–5 (proposing small business average gross revenues eligibility threshold of $18 million and very small business average gross revenues eligibility threshold of $5 million because IVDS licensees will more likely be financing their systems from equity sources rather than debt).

[37] Both commenters addressing this issue supported the use of gross revenues of controlling principals as the determinant of small business status. *See* IVDS Licensees Comments at 2; ITV/IALC Comments at 5 n.5.

[38] ITV/IALC Comments at 5 n.5.

[39] *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fifth Memorandum Opinion and Order*, PP Docket No. 93–253, 59 FR 63210 (December 7, 1994), 10 FCC Rcd 403, 421 (1994) (*Competitive Bidding Fifth Memorandum Opinion and Order*).

[40] *CMRS Third Report and Order*, 9 FCC Rcd 7988, 8114–15. IVDS Licensees supports this proposal. IVDS Licensees Comments at 2.

[41] IVDS Licensees alternatively proposes a twenty-five percent equity exception similar to that adopted in the Commission's broadband PCS rules. 47 CFR Section 24.709(b)(3). IVDS Licensees Comments at 2.

[42] Typically, *de jure* control is evidenced by ownership of 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. An entity must demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant: (1) the entity constitutes or appoints more than 50 percent of the board of directors or partnership management committee; (2) the entity has authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensees; and (3) the entity plays an integral role in all major management decisions. *See Competitive Bidding Fifth Memorandum Opinion and Order*, 10 FCC Rcd at 447.

[43] ITV/IALC Comments at 5 n.4.

[44] *Competitive Bidding Fifth Memorandum Opinion and Order*, 10 FCC Rcd at 420. *See also* 47 CFR Section 24.711(c)(2) (''A licensee (or other attributable entity's) increased *gross revenues* or increased *total assets* due to *nonattributable equity investments* * * *, debt financing, revenue from operations or other investments , business development or expanded service shall not be considered to result in the licensee losing eligibility for installment payments.'').

[45] 47 CFR Section 95.816(e)(2) (as revised).

18. *Discussion.* The Commission will maintain bidding credits for small businesses and will adopt a tiered bidding credit approach, as supported by several commenters.[46] The Commission agrees with IVDS Licensees that preservation of the bidding credit is consistent with its obligations under Section 309(j) to ''promote economic opportunity for a wide variety of applicants, including small businesses and businesses owned by minorities and women.'' [47] Furthermore, the Commission believes that a tiered approach, which enhances the discounting effect of bidding credits because not all entities receive the same benefit, will encourage smaller businesses to participate in the provision of IVDS services.[48] The Commission also believes that the 15 percent bidding credit for very small businesses and a 10 percent bidding credit for small businesses are appropriate and consistent with the thresholds used in the 900 MHz SMR auctions.[49] As noted above, the Commission expects auction participation by a group of smaller businesses comparable to those that participated in the 900 MHz SMR auction. Moreover, the Commission does not believe a greater bidding credit is justified here as it was for certain highly capital intensive services, like broadband PCS. Therefore, the Commission declines to adopt the higher bidding credits proposed by IVDS Licensees and ITV/IALC.[50] The two tiered approach and the magnitude of the bidding credits the Commission adopts here are reasonable and equitable and meet the concerns of the commenters. These credits are narrowly tailored to the varying abilities of businesses to access capital and also take into account that different small businesses will pursue different strategies.

III. Upfront Payments

19. *Background.* The Commission recognized in the *FNPRM* that in order to deter insincere, speculative bidding and guard against the substantial number of defaults that occurred after the July 1994 auction, it needs to obtain a higher upfront payment from IVDS bidders than the upfront payment currently required by the rules (*i.e.*, $2,500 for every five licenses a bidder desires to win). In response to several *ex parte* filings from IVDS bidders supporting increased upfront payments, the Commission proposed to increase the initial upfront payment to $9,000 per MSA license and $2,500 per RSA license, for the maximum number of licenses on which the applicant wishes to bid.

20. *Discussion.* Based upon the record regarding IVDS upfront payment amounts,[51] the Commission adopts the proposed upfront payment amounts and will amend Section 95.816(c)(3) of the Commission's Rules. Specifically, the Commission raises the initial upfront payments for participation in the IVDS auction to $9,000 per MSA license and $2,500 per RSA license, for the maximum number of licenses on which an entity wishes to bid. The Commission believes that this action is consistent with the underlying purpose for upfront payments—to deter insincere and speculative bidding and to ensure that bidders have the financial capability to build out their systems.[52] The Commission also believes that the revised upfront payments will continue to attract as many qualified bidders, while providing an adequate deterrent against frivolous bidding. Thus, the Commission declines to adjust the upfront payment amounts as proposed by ITV/IALC.[53]

IV. Other Issues

21. Several commenters raise issues beyond the scope of the *FNPRM.* For example, Progressive and IAC request that the Commission revise the length of the IVDS license terms from 5 to 10 years.[54] This proposal requires formal rule making procedures and is beyond the scope of this proceeding. Similarly, ITV/IALC seeks an exception to the cross-ownership rule.[55] Again, this type of relief falls outside the scope of this proceeding. Finally, a number of policy questions were raised in the comments regarding default issues.[56] The Commission notes that it will be addressing default issues in a future proceeding regarding the general competitive bidding rules.

V. Procedural Matters and Ordering Clauses

22. As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. Section 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *FNPRM.* The Commission sought written public comments on the expected impact of the rule changes proposed in the *FNPRM* on small entities, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Tenth Report and Order* conforms to the RFA, 5 U.S.C. Section 604, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847 (1996).[57]

A. Need for and Objective of the Rules

23. This *Tenth Report and Order* adopts rule changes regarding the Commission's auction of IVDS licenses. The rule changes are appropriate because laws have changed since the rules were originally adopted. The Supreme Court's decisions in *Adarand* [58] and *VMI* [59] raised questions about the level of legal scrutiny that must be met by some of the designated entity provisions in the Commission's rules which take race and gender into account. The objective of the rule changes in the *Tenth Report and Order* primarily is to ensure that the competitive bidding rules comply with the appropriate legal standards by making the rules race- and gender-neutral, while at the same time instituting further rule changes that continue to promote participation of small businesses in auctions for licenses to provide spectrum services. Further, a secondary objective of some of the rule changes, such as the small business definition, availability of bidding credits, and increased upfront payments, is to apply the benefit of the

[46] *See* IVDS Licensees Comments at 2–3; ITV/IALC Comments at 6.

[47] *See* IVDS Licensees Comments at 3 (quoting 47 U.S.C. Section 309(j)(4)(C)(ii)).

[48] *See id.* (quoting *DEF Report and Order,* 11 FCC Rcd at 7849).

[49] *900 SMR Auction Report and Order,* 11 FCC Rcd at 2700.

[50] IVDS Licensees Comments at 3; ITV/IALC Comments at 6 (suggesting a 25 percent bidding credit for very small businesses and a 15 percent credit for small businesses).

[51] IVDS Licensees Comments at 3; IAC Comments at 9; ITV/IALC Comments at 6–7; *FNPRM* at n.140 (list of *ex parte* filings supporting increased upfront payments).

[52] *See, e.g., DEF Report and Order,* 11 FCC Rcd at 7860.

[53] ITV/IALC Comments at 6–7 (proposing that the MSA payment be an even multiple of the RSA payment, *e.g.,* per-market payments of $7,500.00 for MSA's and $2,500.00 for RSA's, to reduce computational complexity in figuring bidding eligibility as the auction proceeds and to avoid ''stranding'' MSA upfront payments with no ability to apply the entire amount to an RSA license).

[54] Progressive Comments at 1; IAC Reply Comments at 4.

[55] ITV/IALC Comments at 3–5.

[56] IAC Comments at 7–8 (request not to reauction defaulted licenses before the defaulting party's administrative and judicial remedies are exhausted); *id.* at 9 (request the Commission clarify how it evaluates requests for waiver of payment deadlines and other IVDS auction-related rules); ITV/IALC Comments at 2 (request that defaulting parties should not be eligible for future IVDS auctions); IAC Reply Comments at 2–4 (opposition to ITV/IALC's request).

[57] Subtitle II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA), codified at 5 U.S.C. Section 601, *et seq.*

[58] 115 S. Ct. 2097.

[59] 116 S. Ct. 2264.

Commission's experience from the first IVDS auction to subsequent IVDS auctions, and to increase the flexibility and opportunities available to small businesses to participate in the provision of the services.

B. Summary of Issues Raised by Public Comment on the Initial Regulatory Flexibility Analysis

24. There were no petitions or comments which solely discussed or addressed the IRFA. However, a number of commenters raised and discussed issues effecting small businesses in their comments on the *Tenth Report and Order*. Those comments are addressed and discussed, where applicable, in the detailed sections below.

C. Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules

25. The small businesses which choose to participate in these services will be required to demonstrate that they meet the criteria set forth to qualify as small businesses (or very small businesses), just as was required by the prior rules. The changed rules will include more businesses in the category of small businesses, which will be eligible for designated entity preferences such as bidding credits and installment payment plans. Any small business applicant wishing to avail itself of those provisions will need to make the general financial disclosures, as well as applicant and affiliate disclosures, necessary to establish that the small business is in fact small (or very small). The changed rules have eliminated the requirements that small businesses owned by women or minorities demonstrate that their owners are women or minorities. However, the Commission requests voluntary reporting of minority and women ownership to comply with its mandate to report its efforts to Congress. Accordingly, there are no additional reporting or recordkeeping requirements being imposed by these rules.

D. Description and Estimate of Small Entities Subject to the Rules

26. The Commission is directed by the Communications Act of 1934, 47 U.S.C. section 309(j), to make provisions to ensure that smaller businesses, and other designated entities, have an opportunity to participate in the auction process. To fulfill this statutory mandate and comply with the current legal standards, these rule changes are designed to ensure compliance with the new legal standards while promoting participation by small entities, including minorities, women, and rural telephone companies. The small businesses who will be subject to the rules would be those which choose to operate IVDS, a class of wireless communications services with a wide variety of uses. The services will generally be offered to consumers who wish to subscribe to those services.

27. IVDS is a communications-based service subject to regulation as a wireless provider of pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services.[60] The U.S. Small Business Administration (SBA) defines small businesses in SIC 4841 as businesses with annual gross revenues of $11 million or less. 13 CFR section 121.201. In this *Tenth Report and Order,* the Commission extends special provisions to small businesses with annual gross revenues of $15 million or less and additional benefits to very small businesses with annual gross revenues of $3 million or less. The Commission observes that this rule change is consistent with its approach in other wireless services, *e.g.*, the 900 MHz specialized mobile radio service, and is narrowly tailored to address the lower capital requirements for IVDS. SBA approval for the small business definitions is pending for this and other auctionable services.

28. The Commission's estimate of the number of small business entities subject to the rules begins with the Bureau of Census report on businesses listed under SIC 4841, subscription television services. The total number of entities under this category is 1,788.[61] There are 1,463 companies in the 1992 Census Bureau report which are categorized as small businesses providing cable and pay TV services.[62] The Commission knows that many of these businesses are cable and television service businesses, rather than IVDS licensees. Therefore, the number of small entities currently in this business which will be subject to the rules will be less than 1,463.

29. The first IVDS auction resulted in 170 entities winning licenses for 594 MSA licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the Commission defined a small business as an entity, together with its affiliates, that has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[63] In the upcoming IVDS re-auction of approximately 100 licenses in MSA markets and auction of 856 licenses in RSA markets (two licenses in each of 428 markets), while the Commission makes the rules race and gender-neutral, it also modifies its definition of small business to include a second tier of very small businesses, adopts tiered bidding credits, and continues to include provisions for installment payments in its rules to encourage participation by small and very small businesses. The Commission cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under the rules. Given the success of small businesses in past IVDS auctions, and that small businesses comprise over 80 percent of firms in the subscription television services industry, the Commission assumes for purposes of this FRFA that all of the licenses may be awarded to small businesses, which would be affected by the rule changes it has made. Some companies may win more than one license, as was the situation in the earlier IVDS auction.

30. Applicants seeking to participate in the auction also will be subject to these rule changes. It is impossible to accurately predict how many small businesses will apply to participate in the auction. In the last IVDS auction, there were 289 qualified applicants. The Commission does not anticipate that there will be significantly more participants in the subsequent IVDS auction. However, because of the lower capital requirements for IVDS in general, there may be a greater number of very small businesses participating.

E. Steps Taken to Minimize the Burdens on Small Entities

31. The changes made in the *Tenth Report and Order* are designed to ensure compliance with the current legal standards applicable to federal programs implemented to benefit minority and women-owned businesses, while minimizing burdens on small

[60] Generally, IVDS services will be subscriber-based services providing video communications which could be described as a form of subscription television service.

[61] U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC Code 4841 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[62] The Census table divides those companies by the amount of annual receipts. There is a dividing point at companies with annual receipts of $10 million. The next increment is annual receipts of $17 million, a category that greatly exceeds the SBA definition of small businesses that provide subscription television services. However, there are 17 firms in this category, with revenues between $10–$17 million. Approximately 1,480 SIC 4841 category firms have annual gross receipts of $15 million or less. Only a small fraction of those 1,480 firms provide interactive video and data services.

[63] *Fourth Report and Order,* 9 FCC Rcd at 2336.

businesses and promoting participation of small businesses in spectrum auctions. The extension of a two-tiered definition for small businesses, as well as the provision for tiered bidding credits will assist businesses owned by women and minorities. Based upon experience to date, most of the businesses owned by women and minorities which have participated in the Commission's auctions are small businesses or very small businesses which, in the end, will benefit from these rule changes. As discussed below, the Commission considered and rejected alternatives, such as providing parties additional time to supplement the record or to afford the industry more time to develop technology and equipment, because there is no evidence that, given additional time, the record will be sufficiently supplemented or the industry will develop the technology any faster. While some may argue that the increase in upfront payments may raise some entry barriers, such concerns are outweighed by the need to maintain the integrity of the auction process to ensure sincere bidders and, thus, create increased opportunities for sincere small business bidders. Furthermore, the rule change increasing the upfront payment amounts will ultimately benefit the entities participating in the IVDS auctions, by ensuring that the participants have the financial ability to pay for the licenses for which they bid.

F. Significant Alternatives Considered and Rejected

Eliminating the Race and Gender-Based Provisions

32. In the *Tenth Report and Order,* the Commission concludes that the possibility of legal challenges to the rules due to the race and gender-based provisions could cause lengthy delays in issuing licenses in this service and, therefore, revises those provisions in its competitive bidding rules to make them race and gender-neutral. The Commission has not been able to consider other alternatives to the rule changes given that no alternatives were proposed by any of the commenters, and the record was not supplemented during this proceeding with any additional evidence of market entry barriers, anecdotal or statistical evidence or any other factors which directly adversely effect small businesses owned by minorities and/or women. Although one commenter requested that the Commission provide parties with additional time to supplement the record, and another requested that the Commission delay any rule making determinations to afford the industry additional time to develop equipment and technology for implementing IVDS, the Commission rejected these requests, because there is no evidence the record will be sufficiently supplemented or the industry will develop the technology any faster. The Commission notes that it is currently gathering evidence, through a *Notice of Inquiry* proceeding pursuant to the Telecommunications Act of 1996, on barriers to market entry for small businesses, including those owned by women and minorities.[64] The Commission believes that the rule changes discussed below (for example, offering bidding credits based upon an entity's size) will more than adequately benefit small businesses that are owned by minorities or women.

Adoption of Two-Tiered Definition for Small Businesses

33. The *Tenth Report and Order* adopts a two-tiered definition to define small businesses: (1) a small business is a business with average gross revenues for each of the preceding three years that do not exceed $15 million, and (2) a very small business is one which has less than an average of $3 million in gross revenues in each of the last three years. The Commission adopts this two-tiered definition because its ongoing experience with spectrum auctions has affirmed its belief that gross revenues-based definitions are a more accurate indicator of size than a net worth/annual profit definition. Also, this definition is consistent with the carefully-analyzed approach used in other auctionable mobile radio services such as 900 MHz SMR services.[65] Although one commenter suggested altering the financial thresholds for determining whether an entity is a ''small business'' or ''very small business'' under the proposed definition, the Commission believes that the adopted two-tiered definition is appropriate given the likely participants in this auction and the Commission's desire to maintain consistency between auctions. In determining whether an entity qualifies as a small business under either tier, the Commission will attribute the gross revenues of all controlling principals, as well as the gross revenues of affiliates of the applicant. Also, the Commission will use the multiplier adopted in the *CMRS Third Report and Order* for the spectrum aggregation cap to determine when IVDS licensees are indirectly held through corporate entities. While the Commission chose not to impose specific equity requirements on the controlling principals of qualifying small businesses, it will still require that qualifying small businesses are actually ''controlled'' by their principals.

Adoption of Tiered Bidding Credits

34. The Commission adopted tiered small business bidding credits for the upcoming IVDS auction as follows: (1) 10 percent bidding credits for small businesses and (2) 15 percent for very small businesses. Although a few commenters proposed higher percentages for each tier of bidding credits offered (for example, 15 percent for small businesses and 25 percent for very small businesses), the Commission declines to adopt their proposals because it does not believe a greater bidding credit is justified here as it was for certain highly capital intensive services, like broadband PCS. The Commission believes the extent, magnitude and range of the bidding credits adopted meet the varying needs of small and very small businesses who will participate in the IVDS auctions.

Increase in Upfront Payment Amounts

35. The *Tenth Report and Order* adopts increased upfront payment amounts of $9,000 per MSA license and $2,500 per RSA license for businesses participating in IVDS auctions. These increased amounts are designed to maintain the integrity of the auction by minimizing the adverse impact of participation by speculators and other frivolous bidders in the IVDS auction. Commenters agree that the previous upfront payment was too low, and no other alternatives were suggested to deter speculative or frivolous bidders who do not meet the commitments they make in bidding in IVDS auctions. Based upon the record regarding IVDS upfront payment values, the Commission believes that the revised upfront payment values are set at appropriate levels and provide an adequate deterrent against frivolous bidding, and therefore, the Commission declined to adopt the approach of one commenter who suggested it modify the multiplier for the MSA payment to an even multiplier of the RSA payment. Moreover, the impact that increased upfront payments may have on designated entities will be offset by the fact that eligible entities may elect to make payments for their licenses via installment payments, which eligibility shall not be jeopardized due to normal projected growth of gross revenues and assets.

[64] *Section 257 Notice of Inquiry.*

[65] *900 SMR Auction Report and Order.*

G. Commission's Outreach Efforts to Learn of and Respond to the Views of Small Entities Pursuant to 5 U.S.C. Section 609

36. The Commission sought specific comments regarding the views of small entities with respect to the changes being made through solicitation of comments and reply comments to its *FNPRM*, and the IRFA that was contained therein. Although there were no comments on the IRFA, there were a number of comments received in connection with the *FNPRM* as noted herein. Further, the Commission's Office of Communications and Business Opportunities has undertaken additional outreach efforts through newsletters and other mailings to learn of the views of, and respond to, small entities.

H. Report to Congress

37. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Tenth Report and Order,* in a report to Congress pursuant to the SBREFA, 5 U.S.C. Section 801(a)(1)(A). A copy of this Final Regulatory Flexibility Analysis will also be published in the Federal Register.

38. Authority for issuance of this *Tenth Report and Order* is contained in Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 303(r) and 309(j).

39. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 303(r), and 309(j), this *Tenth Report and Order* is adopted, and Part 95 of the Commission's Rules IS AMENDED as set forth below.

40. IT IS FURTHER ORDERED that the rule changes made herein WILL BECOME EFFECTIVE December 27, 1996.

41. For further information concerning this proceeding, contact Howard Griboff or Christina Eads Clearwater at (202) 418–0660 (Auctions Division, Wireless Telecommunications Bureau).

List of Subjects in 47 CFR Part 95

Communications equipment, Radio.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rule Changes

Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 95—PERSONAL RADIO SERVICES

1. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 95.816 is amended by revising paragraphs (c)(3) and (d)(1), adding new paragraph (d)(4), redesignating paragraph (e) as paragraph (e)(1) and revising it, and adding new paragraph (e)(2) to read as follows:

§ 95.816 Competitive bidding proceedings.

* * * * *

(c) * * *

(3) *Upfront payments.* Each eligible bidder in the IVDS auction will be required to submit an upfront payment of $9,000 per MSA license and $2,500 per RSA license for the maximum number of licenses on which it intends to bid pursuant to section 1.2106 of this chapter and procedures specified by Public Notice.

* * * * *

(d) * * *

(1) *Bidding credits.*

(i) A winning bidder that qualifies as a small business (as defined in 95.816(d)(4)(i) of this section) may use a bidding credit of 10 percent to lower the cost of its winning bid.

(ii) A winning bidder that qualifies as a very small business (as defined in 95.816(d)(4)(ii) of this section) may use a bidding credit of 15 percent to lower the cost of its winning bid.

* * * * *

(4) Definitions.

(i) *Small business.* A small business is an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average annual gross revenues that are not more than $15 million for the preceding three years.

(ii) *Very small business.* A very small business is an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average annual gross revenues that are not more than $3 million for the preceding three years.

(iii) *Gross revenues.* Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.*, cost of goods sold), as evidenced by audited financial statements for the relevant number of most recently completed calendar years, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

(iv) *Controlling interest shall be attributable.* Controlling interest means majority voting equity ownership, any general partnership interest, or any means of actual working control (including negative control) over the operation of the licensee, in whatever manner exercised.

(v) *Multiplier.* Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(e) *Unjust enrichment.*

(1) Any business owned by minorities and/or women that has obtained a IVDS license in the IVDS auction held in July 1994 through the benefit of tax certificates shall not assign or transfer control of its license within one year of its license grant date. If the assignee or transferee is a business owned by minorities and/or women, this paragraph shall not apply; provided, however, that the assignee or transferee shall not assign or transfer control of the license within one year of the grant date of the assignment or transfer.

(2) A licensee's (or other attributable entity's) increased gross revenues due to nonattributable equity investments (*i.e.*, from sources whose gross revenues are not considered under 95.816(d)(4)(iv) of this section), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered to result in the licensee losing eligibility for preferences as a small business or very small business under this section.

[FR Doc. 96–30358 Filed 11–26–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket PS–150, Notice No. 6]

Control of Drug Use and Alcohol Misuse in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations Alcohol Misuse Prevention Program

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

ACTION: Notice of lower random drug testing rate.

SUMMARY: RSPA has received and evaluated the 1995 Management Information System(MIS) Data Collection forms for the drug testing of pipeline industry personnel. The RSPA determined that the random positive drug testing rate for pipeline industry for the period of January 1, 1995, through December 31, 1995, was 0.8 percent. Since this is the second year that data has been collected and the random positive rate for the second year is less than 1 percent, the random testing rate for RSPA is being reduced from 50 percent to 25 percent for calendar year 1997. This means that for calendar year 1997, the operator must randomly select a minimum 25 percent of their covered employees to be tested.

EFFECTIVE DATE: January 1, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Catrina M. Pavlik, Office of Pipeline Safety, Compliance and State Programs, (DPS–23), Research and Special Programs Administration, 400 7th Street SW., Washington, DC 20590, telephone (202) 366–6199.

SUPPLEMENTARY INFORMATION: In a final rule published on December 23, 1993 (58 FR 68257), RSPA announced that it would require operators of gas, hazardous liquid and carbon dioxide pipelines and liquefied natural gas facilities, who are subject to 49 CFR parts 192, 193, and 195, to implement, maintain, and submit an annual report on drug testing program data. Any operator with 51 or more covered employees must submit this information on an annual basis. Operators with 50 or fewer covered employees must maintain this information, and RSPA randomly selected 100 operators in this category to submit their data. The drug testing statistical data is essential for RSPA to analyze its current approach to deterring and detecting illegal drug abuse in the pipeline industry, and, as appropriate, to plan a more efficient and effective approach. The data collected in 1995 was the second year that the data was submitted. Now that RSPA has received two consecutive years of MIS Data Collection forms and the positive random testing rate has been less than 1 percent industry-wide, RSPA announces that in accordance with § 199.11(c)(3) the minimum random drug testing rate is lowered to 25 percent of covered pipeline employees for the period of January 1, 1997, through December 31, 1997.

MIS reports must be submitted to the Office of Pipeline Safety, Research and Special Programs Administration, DPS–23, Room 2335, 400 7th Street SW., Washington, DC 20590, not later than March 15 of each calendar year. A notice of statistical data will be published in the future to report results of each calendar year's MIS Data Collection results. RSPA will also publish whether or not the random rate will be reduced or increased for the pipeline industry pursuant to § 199.11.

Issued in Washington, DC on November 21, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 96–30317 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–60–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 103]

RIN 2127–AG14

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: As one method of reducing the adverse effects of air bags, especially for children, NHTSA is requiring new, attention getting labels. This rule requires vehicles with air bags to bear three new warning labels. Two of the labels replace existing labels on the sun visor. The third is a temporary label on the dash. These new labels would not be required on vehicles having a ''smart'' passenger-side air bag, i.e., an air bag that would automatically shut off or adjust its deployment so as not to adversely affect children. This rule also requires rear-facing child seats to bear a new, enhanced warning label to replace the existing label. The labels will help reduce the adverse effects by increasing the number of people who read and understand the message of the warning labels.

DATES: Effective Date: The amendments made in this rule are effective December 27, 1996.

Compliance Dates: Passenger cars, light trucks, and vans that are equipped with passenger air bags that do not qualify as ''smart'' air bags that are manufactured on or after February 25, 1997 must include the new, attention-getting labels specified in this rule.

Child restraint systems that can be used in a rear-facing position and are manufactured on or after May 27, 1997 must include the new, attention-getting label specified in this rule.

Manufacturers may voluntarily substitute the new labels for the currently required labels prior to these dates.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than Janaury 13, 1997.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For non-legal issues: Mary Versailles, Office of Safety Performance Standards, NPS–31, telephone (202) 366–2057, facsimile (202) 366–4329, electronic mail ''mversailles@nhtsa.dot.gov''.

For legal issues: J. Edward Glancy, Office of Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820, electronic mail ''eglancy@nhtsa.dot.gov''.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

On August 6, 1996, NHTSA published a notice of proposed rulemaking (NPRM) on Standard No. 208, ''Occupant Crash Protection,'' (49 CFR 571.208) and Standard No. 213, ''Child Restraint Systems,'' (49 CFR 571.213). The NPRM proposed several amendments to these standards to reduce the adverse effects of air bags, especially those on children. One of the proposed steps involved new, attention-getting warning labels for vehicles without smart passenger-side air bags [1] and for rear-facing child seats.

II. Current and Proposed Vehicle Labels

NHTSA's current vehicle labeling requirements for vehicles with air bags require the following information, coupled with the signal phrase ''CAUTION, TO AVOID SERIOUS INJURY:,'' to be labeled on the sun visors:

For maximum safety protection in all types of crashes, you must always wear your safety belt.
Do not install rearward-facing child restraints in any front passenger seat position.
Do not sit or lean unnecessarily close to the air bag.
Do not place any objects over the air bag or between the air bag and yourself.
See the owner's manual for further information and explanations.

The standard allows the word ''WARNING'' to be used in lieu of ''CAUTION.'' In addition, the owner's manual must include appropriate additional information in each of these areas. The coloring of the lettering must contrast with the background of the label. No minimum size dimensions are specified.

In addition, NHTSA requires an ''air bag alert label'' if the sun visor warning label is not visible when the sun visor is in its stowed position. The air bag alert label can either be on the air bag cover or on the side of the sun visor visible when the visor is in the stowed position. To the best of the agency's knowledge, to date, all manufacturers have placed the alert label on the visible side of the sun visor. This alert label must read, ''Air bag. See other side.'' Again, the coloring of the lettering must contrast with the background of the label. No minimum size dimensions are specified.

NHTSA proposed four new labels for vehicles without smart passenger-side air bags. Two of the proposed labels would replace the currently required labels. One of the new labels would be a permanent label on the passenger-side end of the vehicle dash or on the adjacent area of the door panel. The other new label would be a temporary label on the middle of the vehicle dash.

A. Labels on Sun Visor

NHTSA proposed to enhance the warning labels currently required on sun visors for vehicles which lack smart passenger-side air bags. The current warning labels on sun visors would no longer be required. In their place, enhanced alert labels and warning labels would be required. Manufacturers would continue to be permitted to provide a warning label only, if that label is visible when the sun visor is in its stowed position.

For the alert label, NHTSA proposed to require that a new permanent label be affixed to the side of the visor that is visible when the visor is in its stowed position. The label would be required on that side of the visor above every seating position equipped with an air bag. The label would have a black background. On the left side of the proposed alert label would be a pictogram showing an inflating air bag striking a rear-facing child seat, with a red slash through that. On the right side of the proposed alert label would be yellow letters reading ''AIR BAG WARNING.'' Underneath that warning, in much smaller yellow letters, would appear text reading ''FLIP VISOR OVER.'' The agency proposed that all the new labels, including the alert label, be at least at least 140 mm long and 65 mm high. However, NHTSA asked for comments on labels that were 75 percent, 50 percent, and 25 percent of the proposed size.

For the warning label to be permanently affixed on the side of the visor visible when the visor was turned down in the deployed position (unless the manufacturer chooses to place the warning label on the side of the visor visible in its stowed position), NHTSA proposed there would be a white pictogram on a black background in the lower left corner of this label. The pictogram would be a representation of a belted adult occupant in front of a deploying air bag. The background for the rest of the proposed label would be yellow. In red across the top of the label would appear a triangle with an exclamation mark inside it followed by the word ''WARNING'' in large type. In smaller red type beneath that heading, the phrase ''Severe injury or death can occur'' would appear. Beneath that, in black type, would appear the phrase ''Air bags need room to inflate.'' Beneath that, the proposed label would have had four bullets in black type reading:

- Never put a rear-facing child seat in the front.
- Unbelted children can be killed by the air bag.
- Don't sit close to the air bag.
- Always use seat belts.

For vehicles with a manual cutoff switch, the first bullet on the label for the stowed side of the sun visor would be modified to read ''Never put a rear-facing child seat in the front UNLESS the air bag is off.''

The agency also proposed to carry forward the current prohibition against sun visors showing any other information about air bags or the need to wear seat belts, except for air bag maintenance information and the utility vehicle label required by NHTSA's consumer information regulations. Finally, the agency asked whether a sun visor label should be required for vehicles with smart passenger-side air bags.

B. Label on Passenger-Side End of Vehicle Dash or on Door Panel

NHTSA currently has no requirements for any safety labels in these locations. However, the International Organization for Standardization (ISO) has a proposed label featuring a pictogram showing a rear-facing child seat positioned in front of an air bag, with a red slash through the visual. The proposed location is on the passenger-side end of the dash, which is visible only when the passenger door is opened. An alternative location is on the door panel in a location that is also visible only when the door is opened.

NHTSA proposed to require a label either on the passenger-side end of the dash or on the door panel, for vehicles which lack smart passenger-side air bags. The proposed label would have

[1] The NPRM identified three types of smart passenger-side air bags: (1) systems that provide an automatic means to ensure that the air bag does not deploy when a child seat or a child with a total mass of 30 kg or less is present on the front outboard passenger seat, (2) systems using sensors, other than or in addition to weight sensors, which automatically prevent the air bag from deploying in situations where it might have an adverse effect on children, and (3) systems designed to deploy in a manner that does not create a risk of serious injury to children very near the bag.

been identical to the label proposed for child seats (see below in section III). It would be a permanent label with the same minimum dimensions, the same yellow and red colors, and the same content, including the visual with the red slash through it. If the vehicle had a manual cutoff switch for the passenger air bag, the label would be modified to read ''Danger! Do not place rear-facing child seat on front seat with air bag UNLESS the air bag is off.''

C. Label in the Middle of the Dash Panel

NHTSA currently has no requirements for a safety label in this location. The label NHTSA proposed was a very visible label to be placed in the middle of the dash of all new vehicles equipped with air bags, if they lack smart passenger-side air bags. However, this label would have been permitted to be readily removable. If removable, the label would have been required on new vehicles when they are delivered to consumers, but could have then been removed by consumers after they have had a chance to read it. As proposed, the top half of this label would have a yellow background with the phrase ''Make sure all children wear seat belts'' in red type. The bottom half of this label would have a white background. In black type, the bottom half of the proposed label would say, ''Unbelted children and children in rear-facing child seats may be KILLED or INJURED by passenger-side air bag.'' To make the proposed label as effective as possible, the signal word ''WARNING'' would be placed at the beginning of the label to highlight the importance of the message.

III. Current and Proposed Labels on Rear-Facing Child Seats

NHTSA currently requires a warning to be labeled on each child restraint that can be used in a rear-facing position. Specifically, S5.5.2(k)(ii) of Standard No. 213, *Child Restraint Systems* (49 CFR 571.213) requires:

> Either of the following statements, as appropriate, on a red, orange, or yellow contrasting background, and placed on the restraint so that it is on the side of the restraint designed to be adjacent to the front passenger door of a vehicle and is visible to a person installing the rear-facing child restraint system in the front passenger seat:
>
> *WARNING:* WHEN YOUR BABY'S SIZE REQUIRES THAT THIS RESTRAINT BE USED SO THAT YOUR BABY FACES THE REAR OF THE VEHICLE, PLACE THE RESTRAINT IN A VEHICLE SEAT THAT DOES *NOT* HAVE AN AIR BAG, or
>
> *WARNING:* PLACE THIS RESTRAINT IN A VEHICLE SEAT THAT DOES *NOT* HAVE AN AIR BAG.

NHTSA proposed to move and enhance the warning label currently required on child restraint systems that can be used in a rear-facing position. As proposed, a new permanent label would be affixed to each child restraint system that can be used in a rear-facing position. The label would be located in the area where a child's head would rest. This new label would have a yellow background for the text portion. On that yellow background, there would first appear a heading in red that said ''DANGER!'' Under that heading, the text of the proposed label would appear in black as:

> DO NOT place rear-facing child seat on a vehicle seat with air bag.
>
> DEATH or SERIOUS INJURY can occur.

Opposite the text, this warning label would have a pictogram showing an inflating air bag striking a rear-facing child seat, with a red slash through that.

IV. Summary of Comments on Proposal

Over 50 of the comments received in response to the NPRM addressed labeling issues. Except for General Motors (GM), vehicle manufacturers were not strongly opposed to the concept of labels. However, nearly all manufacturers asked NHTSA to specify the exact language and content of labels, but to allow flexibility in other areas. Manufacturers also raised concerns about adhesive residue from the temporary label and leadtime.

In general, child seat manufacturers had stronger objections to the labeling proposal, feeling that they and child seat purchasers would bear a disproportionate share of the economic burden when the air bag, not the child seat, was the hazard. Some child seat manufacturers expressed concerns with the proposed location for the label, citing visibility, durability, and child comfort concerns. Some child seat manufacturers also were concerned that the proposed format and location might falsely lead users to conclude that this warning was more important than other warnings.

Insurance groups, consumer advocacy groups, and parents generally supported more conspicuous labels. Some of these commenters felt the proposed labels were not conspicuous enough. Some of these commenters also were concerned that proposed labels did not make it clear that all children should be in the rear seat.

Finally, comments were received concerning harmonization with a proposed symbol from the International Organization for Standardization (ISO) and with the series of Z535 standards from the American National Standards Institute (ANSI).

V. Focus Groups

The labels proposed in the NPRM were developed in part based on the results of six focus groups the agency conducted in March 1996. GM in particular criticized the agency's reliance on the results of focus groups. GM requested an analysis of the proposed labels from Dr. Jane T. Welch, a human factors and communications consultant, and attached a copy of her report to the GM comment. The report states, ''NHTSA has seen fit to toss aside 20 years of research in favor of the opinions of 54 naive lay people.''

Much of GM's criticism of the labeling proposal is an incorrect impression that NHTSA believes improved labels guarantee that all people would act correctly in response to the warning. Dr. Welch referred to 20 years of human factors studies reportedly demonstrating that warning labels on products have produced ''very little reduction in accident rates.'' NHTSA does not believe that labels by themselves will solve the adverse effects of air bags. In its August 6 proposal, NHTSA acknowledged that no label works perfectly for all people and that different people prefer different label concepts. However, even if GM and Dr. Welch are correct in their assertion that labels will produce only a ''very little'' reduction in fatalities and injuries, NHTSA believes it should do all it can to present a ''warning'' message frequently and prominently so as to achieve whatever reduction is possible.

Further, the agency stated in the August 6 proposal that it had used the ''focus groups with the aim of designing a label which would improve substantially the likelihood that people will read the label and understand its message.'' NHTSA recognized that even if motorists received the message, there was not any assurance that people would act on the message. GM and Dr. Welch concede that *some* people will act on the message. The agency has used focus groups to help ensure the label will be conspicuous enough to attract more people's attention and the message will be clear and powerful enough to increase the likelihood that more people will act in accordance with the message.

Finally, NHTSA appreciates the inputs from GM and other commenters about the content of the labels. The agency has used the public's inputs to help it modify and better define the message these labels will convey. NHTSA agrees that human factors knowledge is extremely valuable in deciding whether a label can be used to

help address a problem and what the message and purpose of the label should be. However, once these decisions have been made, NHTSA believes that focus groups are a valid and helpful technique to see if a proposed label design is effective; i.e., whether the label design succeeds in attracting the user's attention and whether the label clearly conveys the intended message.

Consistent with this belief, NHTSA has conducted six more focus groups in three cities to test consumer reaction to fine tuning changes suggested by the comments on the proposed labels. The contractor's final report on the second focus group study has been placed in the docket for this rulemaking. What follows is a brief overview of the second study.

Focus groups were conducted in San Diego, CA on October 29, 1996, in Chicago, IL on October 30, 1996, and in Baltimore, MD on November 4, 1996. The study involved six focus groups. The Baltimore, MD groups each had eight participants, the San Diego groups each had nine participants, and the Chicago groups had nine and ten participants, for a total of 53 participants. The composition of the groups reflected the population as a whole in terms of gender, ethnic background, and level of education. All participants had at least one child under 13, made several trips per week with one or more children in the car, drove at least 7,500 miles per year, were 25–45 years of age, had no connection with the automotive industry or with market research, and had not participated in a focus group during the preceding six months.

The focus groups lasted approximately two hours. The first half-hour of each focus group was spent discussing their current actions and beliefs regarding children riding in cars, use of seat belts, air bags, and awareness of any warning labels currently in vehicles. Most of the remaining time was devoted to evaluating three different sets of prototype labels. The San Diego and Chicago groups evaluated a total of 12 labels, while the Baltimore groups evaluated a total of 15 labels.

For the sun visor warning label, the San Diego and Chicago groups evaluated the currently required label, the proposed label, and three new labels based on the comments. The new labels used the proposed pictogram, the ISO pictogram, and a pictogram included in Chrysler's comments. The colors tested were the colors specified in the ANSI standards (see below), except that both yellow and orange headings were tested. The text of the new labels was also revised from the proposal. The Baltimore group also evaluated two additional labels, based on results from the first two focus groups. One of the these labels had the heading in red on a yellow background. This color combination was preferred by both the San Diego and Chicago focus groups instead of the heading in black on the yellow background, as specified by ANSI labeling guidelines. Both of these additional labels had new, more specific text.

For the temporary label on the middle of the dash, the groups evaluated the proposed label and three new labels. The colors of the new labels were those specified in the ANSI standards, except that both yellow and orange headings were tested. The text of the new labels was also revised. The text of one of the new labels was further modified for the Baltimore group to give more specific advice concerning the age below which children are at special risk from deploying air bags.

For the child seat label, the San Diego and Chicago groups evaluated the proposed label and two new labels. The new labels include the new pictograms and the new color combinations of the previous labels, and revised text. The Baltimore group tested an additional new label with an all yellow background.

In general, there were not major differences among the six groups. Generally, the members were well-informed and very interested in automobile safety. Every group had heard that the rear seat was the safest place for children. Almost every participant had heard of the dangers to children from air bags. However, the groups did indicate that most of their information was from the media and that they were interested in obtaining information from the government and the motor vehicle industry. The participants indicated that they would be very interested in receiving clear, unambiguous statements of the risks from the government and industry, along with guidance on how to minimize those risks. The reactions of the focus groups to specific labels or label features are discussed later in this notice.

VI. General Issues Applicable to all Labels

A. Vehicles With Smart Passenger-Side Air Bags or Manual Cutoff Switches for Passenger-Side Air Bags

As an incentive for vehicle manufacturers to equip their vehicles with smart passenger-side air bags, the agency proposed to limit the requirement for the new labels to vehicles lacking such air bags.

The public comments focused on the proposed definition for ''smart passenger air bag.'' A definition is needed if the labeling requirement is to be limited to vehicles without smart bags. Many commenters argued that the proposed definition was not specific enough, and that test procedures should be specified. IIHS, however, stated that the agency should not develop a definition so as not to restrict developments in technology. Commenters raised a variety of concerns about the portion of the definition associated with weight suppression, which specified that the air bag be suppressed ''when a child seat or child with a total mass of 30 kg or less is present on the front outboard passenger seat.'' GM, for example, argued that the definition is ambiguous and does not provide sufficient information. That company stated that some child seats and booster seats with children would exceed the 30 kg minimum and that, assuming a 20 percent sensor error, a person with a standing weight of 152 pounds could suppress the air bag. Various commenters addressed the different levels of effectiveness that might occur for simpler versus more advanced smart systems, and limitations associated with simpler systems. AAMA expressed concern that use of the term ''smart air bag'' could mislead the public into believing they have no responsibility in the performance of restraint systems.

In the absence of significant adverse comments about excepting vehicles with smart passenger-side air bags from the requirements for new labels, the agency is adopting that exception. Absent any evidence that warnings are necessary for vehicles with smart air bags, or what those warnings would be, NHTSA is not specifying any warning labels for vehicles with smart passenger-side air bags. Manufacturers may provide any information or warnings that would be appropriate for their smart air bag designs. NHTSA recognizes that the term ''smart air bag'' is still very general. The issue of more specific criteria and other issues relating to smart air bags will be addressed in a rulemaking in the near future.

In recognition of the fact that some vehicles are currently permitted to have manual cutoff switches for the passenger-side air bag, NHTSA is specifying optional label language for those vehicles. The absolute language about never placing a rear-facing child restraint in the front seat is not necessary for a vehicle in which the passenger-side air bag can be turned off.

The optional language for those vehicles is as follows: ''NEVER put a rear-facing child seat in the front unless air bag is off.''

B. Flexibility

NHTSA's proposal would have required labels to conform in content, format, size, and color to the proposed labels. Manufacturers agreed that NHTSA should specify the label content and prohibit additional labels. However, they asked for more flexibility in the areas of format and size. Manufacturers also asked to be allowed to present the label text not only in English, but also in other languages.

Generally, manufacturers asked for flexibility to rearrange the information to fit tight spaces in the vehicle interior. For example, manufacturers asked to be able to make the label vertical rather than horizontal, with the pictogram above the message, or to round the corners and make the label oval.

The purpose of the enhanced labels is to make them more noticeable and more explicit. NHTSA believes that arrangement and shape of the labels is irrelevant to these purposes, and therefore, is amending the regulatory language to allow such changes.

The proposal specified rectangular labels with a minimum size of 140 × 65 mm. The NPRM asked for comments on labels that were 75%, 50%, and 25% of the proposed size. Most commenters said the proposed labels were larger than needed to be more conspicuous than existing labels, and larger than practicable, given space considerations at some locations. A visor supplier and some vehicle manufacturers asked NHTSA to specify a 75% label. One manufacturer asked for a 50% label. Other manufacturers asked NHTSA to specify a minimum area for the pictogram and a minimum area for text, to allow the manufacturer flexibility in the overall shape and layout of the label.

NHTSA has re-examined the labels, and the proposed vehicle locations for the labels, and agrees that there would be issues at some locations about the sufficiency of the space for the placement of labels of the proposed size. With the exception of the air bag alert label discussed below, NHTSA has decided to reduce the size of the labels to 75% of the proposed size because this size is still conspicuous. Consistent with the above decision on format, NHTSA has also decided to adopt the suggestion to specify the minimum areas of the message text and pictogram only. To determine the size, NHTSA measured the size of these areas on a label that was 75% of the proposed size. Based on these measurements, NHTSA is specifying that the pictogram must be a minimum of 30 mm in diameter, and the English text must be minimum of 30 square cm.

With respect to the size of the text, NHTSA learned from the focus groups that the public generally prefers larger fonts in label text because it is easier to read. This helps ensure the labels will effectively convey the message to the reader. NHTSA considered mandating a minimum font size for the text, but has not done so for two reasons. First, it is hard to specify a single font size that would assure ease of reading with all possible typefaces. Second, NHTSA does not think it is necessary to specify a regulatory requirement for font size to assure that manufacturers will make the message large enough to be easily read. The agency expects that manufacturers will ensure the English text of each label fills the 30 square cm text area, instead of using smaller font size and leaving most of the text area blank (white).

NHTSA did not intend to reverse its current policy of allowing a required message to be stated in additional languages once the required English language message was provided. In a March 10, 1994 notice, NHTSA stated:

> NHTSA interprets the labeling requirements * * * as requiring manufacturers to supply the information in English. Once this requirement is met, manufacturers may supply the same information in other languages, so long as it does not confuse consumers. As long as the non-English language label is a translation of the required information, NHTSA does not interpret it to be ''other information.'' (59 FR 11200, at 11201–202).

The proposed sun visor label language also included the prohibition about ''other information.'' NHTSA would again not consider translations of the required label message to be ''other information.'' However, all the requirements for the English label message must be met, including size. The proposed provisions regarding the other proposed labels did not include a prohibition against other information; therefore, it would be permitted.

C. Headings

As proposed, three of the labels would use the word ''warning,'' while two (the label for the child seat and the end of the dash) would use the word ''danger.'' Commenters pointed out that the labels should use only one of these words. Other commenters asked to be allowed the option to continue using either ''warning'' or ''caution.'' Two commenters also asked for the agency to harmonize the proposed labels with ANSI standards.

The ANSI standards specify the use of various words in the heading of a label based on the degree of hazard and risk (ANSI Z535.4–1991, section 4.15). The word ''danger'' should be used when there is an imminent hazard that could result in death or serious injury. The word ''warning'' should be used when there is a potential hazard that could result in death or serious injury. The word ''caution'' should be used when there is a potential hazard that could result in minor or moderate injury. The ANSI standards also specify that, when multiple hazards are being addressed by a label, the word for the highest level of hazard among those hazards should be used (ANSI Z535.4–1991, section 5.3). Finally, the ANSI standards allow the use of an ''alert symbol'' in the heading (ANSI Z535.4–1991, section 7.2). The symbol is a triangle with an exclamation point inside, as shown on the proposed sun visor warning label.

NHTSA originally allowed either ''warning'' or ''caution'' on the current label because either word would achieve the goal of attracting attention to the label (59 FR 11200, at 11202; March 10, 1994). NHTSA continues to believe that the word choice for the heading will not change the effectiveness of the label. However, a recent Federal law encourages agencies to harmonize their standards with existing standards (Pub.L. 104–113; March 7, 1996). One of the stated purposes of the ANSI standards is ''to achieve application of a national uniform system for the recognition of potential personal injury hazards for those persons using products'' (ANSI Z535.4–1991, section 2.2). Given the Federal law and this purpose, and absent strong evidence that argues against following the ANSI standards, NHTSA has decided to adhere to them with respect to the heading.

Under the ANSI standard, the hazards associated with air bags are appropriately classified as potential hazards, since they only exist if there is a crash of sufficient severity to cause the air bags to deploy. For children, the risk associated with the hazard is clearly death or serious injury. Therefore, NHTSA will require that all labels use the word ''warning.'' NHTSA will also specify the use of the alert symbol allowed by the ANSI standards (i.e., an exclamation mark inside a triangle, preceding the text of the heading). Participants in the recent focus groups noted that this symbol was very effective in drawing attention to the label, and also made the warning appear more official.

D. Color

Two commenters again asked NHTSA to harmonize the colors with the ANSI standards (ANSI Z535.4, section 7). Commenters also raised concerns about the readability of certain color combinations for persons with vision difficulties. In particular, commenters noted that black was easier to read than red on a yellow background, or that black was easier to read on white background rather than a yellow background. Other commenters, though, specifically stated that it was the colorfulness of the proposed labels that contributed to their effectiveness.

The ANSI standards specify that, when ''warning'' is used in the heading, the background color should be orange, the text black, and the alert symbol should be a black triangle with an orange exclamation point. Pictograms should be black on white, with occasional uses of color for emphasis. Message text should be black on white. The color yellow used in NHTSA's proposed labels is associated with the word ''caution'' in the ANSI standards.

Yellow was the overwhelming color preference of the participants in the focus groups. Only two of the 53 participants preferred orange. Participants generally stated that yellow was more eye-catching than orange. Participants also noted that red (stop) and yellow (caution) had meaning to them, but not orange. Participants in San Diego and Chicago preferred the red on yellow headings in some of the tested labels, because they were very eye-catching. However, the participants in Baltimore preferred the black headings, as recommended by ANSI, on a yellow background, stating that this color combination was easier to read. Participants in San Diego and Chicago also indicated that the all yellow labels were more eye-catching than labels in which the message text had a white background. However, the Baltimore participants thought the all yellow labels were ''too much'' and suggested that the color on the heading was sufficient to attract their attention.

NHTSA is requiring that all pictograms be black on a white background with a red circle and slash. While some of the proposed labels were white on black background, NHTSA believes that the two versions are equally visible, and therefore, is harmonizing with the ANSI standards. NHTSA is also requiring that the message text be black on white. This color combination is consistent with ANSI standards. NHTSA agrees this may be easier to read for some people.

However, NHTSA has decided not to follow the ANSI standards with respect to the background color for the heading ''Warning.'' Instead of the orange specified in the ANSI standards, NHTSA is requiring that yellow be used as the background for the heading. The focus group evidence overwhelmingly suggests that yellow would be a more effective color than orange for attracting attention to the label. As noted above, 51 participants said yellow was significantly more eye-catching and effective than orange, while only 2 participants said orange was more effective than yellow. NHTSA takes very seriously the importance of making sure these labels do all they can to help avoid preventable deaths. Given the importance of this task and the focus group results, NHTSA has concluded that it should specify that the background color for the header of these labels be yellow.

E. Pictogram

The proposed labels included two pictograms: one showing an adult and an inflating air bag, and the other showing a rear-facing child seat being impacted by an air bag surrounded by a red circle with a slash across it. Commenters criticized the first pictogram for representing an adult (instead of a child) and for the lack of a visible shoulder belt. Transport Canada asked if the agency had considered the proposed ISO pictogram for the child seat pictogram, and asked if the agency would consider proposing its pictogram to ISO for use internationally. Other commenters also asked the agency to harmonize with the proposed ISO pictogram. Commenters criticized the proposed child pictogram because there was too little of the vehicle to give a context for the picture, because there was no visible seat belt, and because the lines around the child's head looked like the rays of the sun. Chrysler's comment included some suggested labels which used a different, but similar, child pictogram. The Chrysler pictogram modifies the proposed pictogram by showing more of the vehicle seat for context, by having the child seat broken by the inflating air bag, and by having the air bag bending around the child seat. Finally, many commenters noted that the red slash went in different directions on different labels and asked the agency to specify the standard upper left-to-lower right orientation.

The participants in the second round of focus groups examined the proposed child pictogram, the ISO pictogram, and the Chrysler pictogram. The participants indicated that a pictogram was important to attract attention, and that even a bad pictogram would get them to read the label. The ISO pictogram was the least liked by these groups. Participants indicated that it was too peaceful, and didn't convey a sense of danger. One of the Chicago groups also indicated that the pictogram was misleading, as it suggested that a fully inflated air bag never touched a rear-facing child seat. Of the remaining two pictograms, the Chrysler pictogram was preferred. However, some participants found this pictogram too graphic and harsh. Others indicated that it was one of the most effective pictograms they had seen because it enabled the viewer to understand the harm without reading the text. The one change suggested by the focus groups was to increase the relative size of the child seat in the pictogram, similar to the proposed pictogram.

Because the most serious air bag side effects relate to infants and children, NHTSA is amending the labels to require a child (infant) pictogram on all labels. However, at least one participant in five of the six focus groups expressed concern that pictogram showing air bag danger to infants in rear-facing child seats might imply that an air bag poses no danger to children in forward-facing seats, booster seats, or children using vehicle belts. These participants were concerned that a pictogram focusing entirely on infants in rear-facing child seats would mislead the public with regard to the hazards of current air bag designs.

NHTSA agrees this is a legitimate concern. However, after further agency analysis of this area, NHTSA has decided to keep a pictogram showing an infant in a rear-facing child seat. First, it would place an extraordinary burden on a pictogram to rely exclusively on it to show all possible hazards instead of using the pictogram to communicate some hazards and the accompanying text to communicate others. For instance, the recognized symbol for ''no smoking'' shows a lit cigarette with a red slash through it. One might misinterpret this symbol to mean no cigarette smoking, but that smoking a cigar or a pipe is permitted by the symbol. One of the participants in a Chicago focus group commented that the concerns about the infant pictogram are demanding too much of a pictogram. According to this participant, the job of the pictogram is simply to attract the reader's interest and attention to the text of the warning label.

NHTSA agrees with the participant's judgment that one significant purpose of the pictogram is to attract the reader's attention. In addition to this, NHTSA

expects a good pictogram to identify a significant portion of the hazard and to depict that portion accurately. The agency concludes that the pictogram showing the hazard posed by an air bag to a child in a rear-facing child seat meets all of these purposes. While the pictogram does not depict the larger group at risk, the focus groups all found that the pictogram of the child in the rear-facing seat would be effective at attracting people's attention to the label and getting them to read the label. Again, based on the focus group results, NHTSA believes the language of the labels makes it very clear that a larger group of children are at risk.

NHTSA is not adopting the ISO pictogram for its label. NHTSA thoroughly examined the ISO pictogram when developing the proposed pictograms. NHTSA decided to propose its pictogram, which the agency believes represents a significant improvement to the ISO pictogram by making the diagram more dynamic and by depicting the harm more clearly. NHTSA tested the ISO pictogram in its second round of focus groups and found that only one out of 53 participants liked it. More significantly, most of the participants did not understand what it was attempting to show and most said it would not attract their attention to the label. Given these results, NHTSA does not believe it would be appropriate to use the ISO pictogram. NHTSA staff are involved with the ISO committee working on this pictogram. The agency representatives will suggest that the ISO committee consider replacing its current pictogram with the pictogram NHTSA is requiring on its labels.

NHTSA was impressed by the pictogram included with the comment from Chrysler, as were the recent focus groups. Participants in the focus groups preferred the Chrysler pictogram by a substantial margin. Some participants even said the Chrysler pictogram was ''perfect,'' and that ''you understand the problem before you've read one word of the label.'' This was not a universally shared sentiment. Some participants said the Chrysler pictogram was ''too harsh,'' ''too violent,'' and ''too scary.'' However, even those participants who said it was too graphic agreed that it was very effective at drawing attention to the label. Therefore, NHTSA is specifying this pictogram for use on the air bag warning labels. In addition, this rule corrects the slash on the air bag alert label pictogram so that it follows the standard convention.

VII. Sun Visor Alert Label

NHTSA proposed an alert label for the side of the sun visor visible when the visor is in the stowed position. A manufacturer did not have to provide this label if the other proposed sun visor warning label were placed by the manufacturer so that is visible when the visor is in the stowed position. Ford commented that manufacturers would only use one sun visor label unless the alert label were smaller than the warning label. Manufacturers also pointed out that there were additional size concerns with this side of the visor as it was the most common location used for another mandatory warning label in utility vehicles. Some manufacturers wanted to keep the current alert label.

NHTSA has decided that the alert label can be reduced to 50% of the proposed size, rather than to 75% as for other labels. Because this label has fewer words than other labels, it will still be very visible. This should alleviate some of the concerns about space for other required labels. In addition, because the new labels are so colorful, NHTSA is concerned about public objections if manufacturers were to place the warning label so that it was visible for extended periods of time. To be consistent with other size changes, NHTSA is specifying that the pictogram have a minimum diameter of 20 mm, and the text area be no smaller than 20 square cm.

The new alert label replaces the current alert label. NHTSA believes that the addition of the pictogram and the word ''warning,'' are more likely to attract the attention of vehicle occupants and induce them to look for the label on the other side of the visor.

VIII. Sun Visor Warning Label

The proposed sun visor warning label stated, ''Unbelted children can be killed by the air bag.'' Commenters said that this statement was too narrow, since improperly belted, and perhaps even some properly belted, children can be injured or killed by the air bag. The proposed label stated, ''Never put a rear-facing child seat in the front.'' Again, commenters said this statement was too narrow, that all children should be in the rear seat. The proposed label stated, ''Don't sit close to the air bag.'' Commenters preferred the current statement, ''Do not sit or lean unnecessarily close to the air bag,'' because people may believe that it is unnecessary to worry about leaning or being thrown forward so long as their seat is moved back from the air bag. Finally, some commenters said that air bags have adverse effects for adults and that the label placed too much emphasis on children.

NHTSA believes that many of the suggestions regarding wording changes have merit, and is making some changes to the labels. NHTSA tested some of the recommendations in the focus groups. After reviewing the comments and the focus group results, NHTSA has decided that the message of the new label will read:

DEATH or SERIOUS INJURY can occur.

- Children 12 and under can be killed by the air bag.
- The BACK SEAT is the SAFEST place for children.
- NEVER put a rear-facing child seat in the front.
- Sit as far back as possible from the air bag.
- ALWAYS use SEAT BELTS and CHILD RESTRAINTS.

The addition of the sentence that all children are safest in the back reflects the emphasis of the agency's public education campaign. NHTSA has removed the modifier ''unbelted'' in front of children. NHTSA agrees that this statement was too narrow. Focus group participants generally asked for guidance about when occupants are no longer to be regarded as ''children.'' This rule responds to this concern by adding the age range ''12 and under.'' Finally, focus group participants found the statement ''don't sit close to the air bag'' vague and asked for more guidance about how close was too close. In response to these concerns, NHTSA provided the Baltimore focus groups with labels containing the following guidance: ''sit as far back as possible from the air bag.'' The participants found this much more helpful. Accordingly, this rule makes the same change to the sun visor warning label.

NHTSA is not changing the emphasis on children. The primary thrust of the proposed changes was the adverse effects on children. NHTSA believes this focus is necessary as long as the current threat to children remains as serious as it is now. Both the first and second rounds of focus groups indicated that they were much more likely to read *and* heed a label that tells them of a hazard to children and how to protect children than they would be to read a general hazard warning. Thus, the focus on children helps make the label more effective in communicating warnings relevant to adults as well as children. NHTSA notes that the advice in the last two bullets of this label is applicable to anyone, and would reduce the risk for those occupants. The focus groups correctly understood that these last two bullets applied to all occupants, not just children. Thus, there was no indication in the focus groups that the label's

emphasis on children leaves the public with the erroneous impression that only children face risks from air bags or that the general occupant safety messages in the last two bullets are limited to children.

IX. Label on Passenger-Side End of Vehicle Dash or on Door Panel

As discussed in the NPRM, none of the 66 participants in the original focus groups noticed this label on the vehicle they were shown. This was the proposed label that generated the most comments on size concerns from manufacturers. Manufacturers noted that the available space was very small on some vehicles, and that the area sometimes has vents or access panels. Manufacturers also asked that the label be harmonized with the proposed ISO label. General Motors stated that the agency should only require one new label. Finally, Advocates for Highway and Auto Safety stated that the label was likely to be ineffective and should not be required.

NHTSA has decided not to require this label. The agency's focus groups provided no indications that a label in this location would be effective. In addition, NHTSA agrees that too many labels can reduce the impact of all the labels. Not including the end-of-dash label in the final rule will help address concerns expressed in the comments about the number of new labels NHTSA is requiring and the potential conflict if ISO adopts its proposed end-of-dash label.

X. Label in the Middle of the Dash Panel

As proposed, this label was to be a temporary label. Many advocacy groups and individuals stated that this should be a permanent label. Manufacturers expressed concerns with adhesive residue marring the vehicle surface, and asked for alternatives such as hang tags from the mirror or other non-adhesive labels. Manufacturers also stated that the middle of the dash could have instruments which would make it difficult to place even a temporary label there, and asked if the label could be placed on other areas of the dash such as the glove compartment door.

NHTSA is not making this label permanent. NHTSA does not want the labels to become a source of irritation to consumers. The label in the middle of the dash is an additional means to reach a new vehicle buyer and ensure that the buyer knows that the vehicle has air bags and that there are warnings associated with this equipment. Since air bags are still a new feature for many buyers, NHTSA believes this additional reminder will be useful. However, this is not the only, or even the primary, means to warn consumers about the adverse effects of air bags. Indeed, the permanent sun visor warning label contains the warning that ''Children 12 and under can be killed by air bag.''

NHTSA is relaxing the location requirements for this label. NHTSA proposed the middle of the dash to ensure the label was in a highly visible location. NHTSA agrees that there are other very conspicuous locations in a vehicle, and will allow the label to be anywhere on the dash or the steering wheel hub where the label will be clearly visible to the driver. NHTSA is not allowing the label to be a hang tag from the rearview mirror, however. NHTSA is concerned that this location would cause visibility concerns during a test drive and the label would very likely be removed from the vehicle before it reaches the purchaser.

NHTSA is also relaxing the requirement that the label be ''affixed,'' so that manufacturers do not need to use adhesives. Manufacturers would be allowed to use other means of attaching the label to the dash, such as clips in available openings.

After reviewing the comments and the second round of focus group results, the agency has decided that the text of the new removable label will read:

Children Can be KILLED or INJURED by Passenger Air Bag.
The back seat is the safest place for children 12 and under.
Make sure all children use seat belts or child seats.

The second round of focus groups examined three alternative versions of removable labels that differed in some respect from the text of the proposed label. For two of the new alternatives, the changes moved the statement ''make sure all children wear seat belts'' to the end of the label and added the phrase ''or child seats.'' Some commenters indicated that the original statement might lead people to use seat belts for children that should be in child seats. The message was changed so that the warning about the possibility of death or injury is not limited to unbelted children or children in rear-facing child seats. Finally, a statement that the back seat is safest was added. The third alternative removable label tested in these focus groups used the language suggested by the Parent's Coalition for Air Bag Warnings (''WARNING. Do not seat children in the front passenger seat. Air bag deployment can cause serious injury or death to children.'').

The focus groups preferred the label design that began, ''WARNING—Children can be KILLED or INJURED by Passenger Air Bag.'' The participants indicated that this was ''more informative'' than the proposed removable label and that the message was ''quick and to the point.'' Again, some participants thought this language was ''strident'' and ''scary,'' but the participants nearly unanimously agreed that this opening would induce people to read the rest of the label to learn more about the problem. NHTSA is adopting this as the first line of the removable label required by this rule.

The next line of this removable label explains that ''The back seat is the safest place for children 12 and under.'' This language was suggested in the comments of National Safe Kids Campaign. NHTSA has added an age definition to more clearly explain the meaning of the word ''children,'' as suggested by the focus groups in San Diego and Chicago. The final line in the label advises ''Make sure all children use seat belts or child seats.''

The label suggested by the Parents' Coalition was the second choice of the focus group participants. It was the preferred choice for those participants who found the ''children can be killed'' message too strident. However, a number of participants reacted by saying the opening ''Do not seat children in the front passenger seat'' was ''too preachy'' and that they ''didn't like someone telling them what to do.'' Others observed that they might not even read the second sentence about air bags causing serious injury or death, because the opening sentence here does not ''draw you into'' the label. The participants agreed that both the Parents' Coalition label and the label required in this rule convey essentially the same message. However, the focus group participants found the required label conveyed the message more effectively for them.

XI. Child Seat Label

NHTSA proposed to require the enhanced warning label on a rear-facing child seat to be affixed in the area where a child's head would rest. Many commenters stated that this location would not be so visible as the area on the cushion adjacent to where the head would rest. Commenters noted that many parents place the child in the seat before placing the seat in a vehicle, and therefore the warning would not be visible when placing the seat in the vehicle. Commenters also expressed concern with durability in this area or with the possibility that the label could irritate a child's head. Child seat manufacturers were also concerned that the prominence of this label would lead

users to conclude ''falsely'' that this warning was more important than other warnings.

NHTSA is requiring that an enhanced child seat warning label be placed on the upper portion of the child seat cushion. While NHTSA agrees that other issues are important, at this time, the air bag warning is the most important issue to communicate to consumers. However, NHTSA will allow some flexibility in the location on the cushion. The label can be either where the child's head rests or adjacent to that area. The purpose of the new location is to ensure that parents see the label each time they place the seat in a vehicle. This modification may make the label more visible and will ease some of the burden on child seat manufacturers.

The recent focus groups tested new versions of this label. The focus groups tested two new labels: (1) a label with the ISO pictogram, and the ANSI color scheme, except that the heading had a yellow background, and (2) a label with the Chrysler pictogram, the ANSI color scheme, and an additional line of text that the back seat is the safest place for children. The focus groups preferred the latter version of the label, if the heading were yellow instead of orange.

Based on the comments and focus groups results, the message of the new label will read:

WARNING:
DO NOT place rear-facing child seat on front seat with air bag.
DEATH OR SERIOUS INJURY can occur.
The back seat is the safest place for children 12 and under.

XII. Letters to Owners of Existing Vehicles

NHTSA is aware that some manufacturers intend to send letters to current owners of vehicles with passenger-side air bags. These letters may include copies of the new warning labels. NHTSA encourages manufacturers to do this.

The warning labels now on vehicles were put on in compliance with Standard No. 208. Thus, vehicle owners or others might wonder whether placing a new warning label over the existing warning label would be a violation of the statutory prohibition against ''making inoperative'' items, including labels, installed in compliance with a safety standard. NHTSA would like to assure the public that no statutory prohibition would be violated by placing a new warning label over an existing warning label. Obviously, there is no violation if a person decides to do this to his or her own vehicle, because the Federal prohibition does not apply to owners of vehicles, but only to commercial businesses like manufacturers, dealers, and repair businesses. If a manufacturer, dealer, or repair shop were to place a new warning label over the existing warning labels, that act would not constitute a ''making inoperative'' violation. NHTSA has long said that, with respect to a safety standard requirement that has changed since a vehicle was manufactured, modifying the vehicle so that it no longer complies with the requirement in effect when the vehicle was manufactured is not a violation of this prohibition if the modification brings the vehicle into compliance with the requirement currently in effect. Thus, commercial businesses do not need to be concerned about potential violations of this prohibition.

The NHTSA focus groups indicated that the inclusion of a label in a letter from a vehicle manufacturer would increase significantly the likelihood that they would read the letter. Based on this, NHTSA strongly encourages manufacturers to consider including labels with any letters they may send existing owners. The letter will give the manufacturers an additional opportunity to inform the public about this problem and to offer more detailed advice than can be expressed on a label.

XIII. Leadtime and Costs

NHTSA proposed to require the new or enhanced vehicle labels for vehicles manufactured on or after a date 60 days after publication of the final rule. The agency also proposed that enhanced labels be affixed to all child restraints that can be used in a rear-facing position and that are manufactured on or after a date 180 days after publication of the final rule. This longer lead time for child seat manufacturers was an acknowledgment that these manufacturers will have to change their manufacturing process to include some means of permanently labeling the padding or cushion, something they do not do presently, to the best of the agency's knowledge.

No child seat manufacturers asked for longer leadtime. Therefore, NHTSA is adopting the proposed leadtime of 180 days after publication of this final rule.

Most vehicle manufacturers asked for longer leadtime, ranging from 90 to 180 days. NHTSA has decided to allow 90 days leadtime for vehicle labels. The proposed 60 day leadtime reflected NHTSA's desire for expedited action on this issue. Both suppliers and manufacturers have said that 60 days is not feasible. The adopted leadtime is at the low end of the estimates of feasible leadtime from the commenters. Because NHTSA has decided not to adopt one of the proposed labels, the leadtime needed by manufacturers should be reduced. In view of the immediate need to alert the public to the adverse effects of air bags on children, NHTSA finds that a lead time of less than 180 days is in the public interest.

Finally, to encourage the earliest possible installation of the new enhanced labels, NHTSA is allowing manufacturers to install the new labels before the required date.

NHTSA estimates that the total incremental costs of the vehicle labels will be $0.11 to $0.35 per vehicle. Based on an estimated 15 million passenger cars and light trucks sold annually, the cost of this rule will be $1.65 to $5.25 million. For the child seat label, NHTSA estimates that the total incremental costs will be $0.30 to $0.60 per child seat. Based on an estimate that 3.9 million of the 5.1 million child restraints sold annually are capable of being used rear-facing, the annual cost of this rule will be $1.17 to $2.34 million. Thus, the total cost of this rule is estimated to be $2.82 to $7.59 million annually. A complete discussion of the agency's cost estimate can be found in the Final Regulatory Evaluation placed in the docket for this rulemaking.

XIV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''significant'' under the Department of Transportation's regulatory policies and procedures. This action is considered significant because of the degree of public interest in this subject. This action is not economically significant. The total cost of this rule is estimated to be $2.82 to $7.59 million annually. A complete discussion of the agency's cost estimate can be found in the Final Regulatory Evaluation placed in the docket for this rulemaking.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This final rule affects motor vehicle manufacturers and child seat manufacturers. Almost all motor vehicle manufacturers do not qualify as small

businesses. The agency knows of eight manufacturers of child seats, two of which NHTSA considers to be small business. However, since this rule involves only labeling changes, the rule will not have any significant economic impact.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this final rule.

D. National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

E. Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by redesignating S4.5.1(e) as S4.5.1(f), by revising S4.5.1, S4.5.1(b) and S4.5.1(c), and by adding a new S4.5.1(e) and a new S4.5.5, to read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

* * * * *

S4.5.1 *Labeling and owner's manual information.* The labels specified in S4.5.1(b), (c), and (e) of this standard are not required for vehicles that have a smart passenger air bag meeting the criteria specified in S4.5.5 of this standard.

(a) * * *

(b) *Sun visor warning label.*

(1) *Vehicles manufactured before February 25, 1997.* Each vehicle shall comply with either S4.5.1(b)(1)(i) or S4.5.1(b)(1)(ii), and with S4.5.1(b)(1)(iii). At the manufacturer's option, the vehicle may comply with the requirements of S4.5.1(b)(2), instead of the requirements of S4.5.1(b)(1).

(i) Each front outboard seating position that provides an inflatable restraint shall have a label permanently affixed to the sun visor for that seating position on either side of the sun visor, at the manufacturer's option. Except as provided in S4.5.1(b)(1)(v), this label shall read:

CAUTION—TO AVOID SERIOUS INJURY:
For maximum safety protection in all types of crashes, you must always wear your safety belt.
Do not install rearward-facing child seats in any front passenger seat position.
Do not sit or lean unnecessarily close to the air bag.
Do not place any objects over the air bag or between the air bag and yourself.
See the owner's manual for further information and explanations.

(ii) If the vehicle is equipped with a cutoff device permitted by S4.5.4 of this standard, each front outboard seating position that provides an inflatable restraint shall have a label permanently affixed to the sun visor for such seating position on either side of the sun visor, at the manufacturer's option. Except as provided in S4.5.1(b)(1)(v), this label shall read:

CAUTION—TO AVOID SERIOUS INJURY:
For maximum safety protection in all types of crashes, you must always wear your safety belt.
Do not install rearward-facing child seats in any front passenger seat position, unless the air bag is off.
Do not sit or lean unnecessarily close to the air bag.
Do not place any objects over the air bag or between the air bag and yourself.
See the owner's manual for further information and explanations.

(iii) The coloring of the label shall contrast with the background of the label.

(iv) If the vehicle does not have an inflatable restraint at any front seating position other than that for the driver, the statement ''Do not install rearward-facing child seats in any front passenger seat position'' may be omitted from the label.

(v) At the manufacturer's option, the word ''warning'' may replace the word ''caution'' in the labels specified in S4.5.1(b)(1)(i) and S4.5.1(b)(1)(ii).

(2) Vehicles manufactured on or after February 25, 1997. Each vehicle shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown in either Figure 6a or 6b of this standard, as appropriate, and shall comply with the requirements of S4.5.1(b)(2)(i) through S4.5.1(b)(2)(iii).

(i) The heading area shall be yellow with the word ''warning'' and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 square cm.

(iii) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 30 mm in diameter.

(3) Except for the information on an air bag maintenance label placed on the visor pursuant to S4.5.1(a) of this standard, no other information shall appear on the same side of the sun visor to which the sun visor warning label is affixed. Except for the information in an air bag alert label placed on the visor pursuant to S4.5.1(c) of this standard, or in a utility vehicle label that contains the language required by 49 CFR 575.105(c)(1), no other information about air bags or the need to wear seat belts shall appear anywhere on the sun visor.

(c) *Air bag alert label*—(1) Vehicles manufactured before February 25, 1997. If the label required by S4.5.1(b)(1) for a sun visor (other than the sun visor for the driver seating position) is not visible when the sun visor is in the stowed position, an air bag alert label shall be permanently affixed either to that visor so that the label is visible when the visor is in that position or to the cover of the air bag for that seating position, at the option of the manufacturer. An air bag alert label affixed to an air bag cover pursuant to this paragraph shall read ''Air Bag. See Sun Visor.'' An air bag alert label affixed to a sun visor pursuant to this paragraph shall read ''Air Bag. See Other Side.'' The color of the label shall contrast with the background of the label. If a manufacturer chooses to comply with

the requirements of S4.5.1(b)(2) rather than the requirements of S4.5.1(b)(1), the air bag alert label shall comply with the requirements of S4.5.1(c)(2).

(2) Vehicles manufactured on or after February 25, 1997. If the label required by S4.5.1(b)(2) is not visible when the sun visor is in the stowed position, an air bag alert label shall be permanently affixed to that visor so that the label is visible when the visor is in that position. The label shall conform in content to the sun visor label shown in Figure 6c of this standard, and shall comply with the requirements of S4.5.1(c)(2)(i) and S4.5.1(c)(2)(ii).

(i) The message area shall be black with yellow text. The message area shall be no less than 20 square cm.

(ii) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 20 mm in diameter.

* * * * *

(e) *Label on the dash*. Each vehicle manufactured on or after February 25, 1997 that is equipped with an inflatable restraint for the passenger position shall have a label attached to a location on the dashboard or the steering wheel hub that is clearly visible from all front seating positions. The label need not be permanently affixed to the vehicle. This label shall conform in content to the label shown in Figure 7 of this standard, and shall comply with the requirements of S4.5.1(e)(2)(i) and S4.5.1(e)(2)(ii).

(i) The heading area shall be yellow with the word ''warning'' and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 square cm.

* * * * *

S4.5.5 *Smart passenger air bags*. For purposes of this standard, a smart passenger air bag is a passenger air bag that:

(a) Provides an automatic means to ensure that the air bag does not deploy when a child seat or child with a total mass of 30 kg or less is present on the front outboard passenger seat, or

(b) Incorporates sensors, other than or in addition to weight sensors, which automatically prevent the air bag from deploying in situations in which it might have an adverse effect on infants in rear-facing child seats, and unbelted or improperly belted children, or

(c) Is designed to deploy in a manner that does not create a risk of serious injury to infants in rear-facing child seats, and unbelted or improperly belted children.

* * * * *

3. Section 571.208 is amended by adding new figures 6a, 6b, 6c, and 7 at the end of the section as follows:

BILLING CODE 4910–59–P

Figure 6a. Sun Visor Label Visible When Visor is in Down Position.

Figure 6b. Sun Visor Label Visible When Visor is in Down Position.

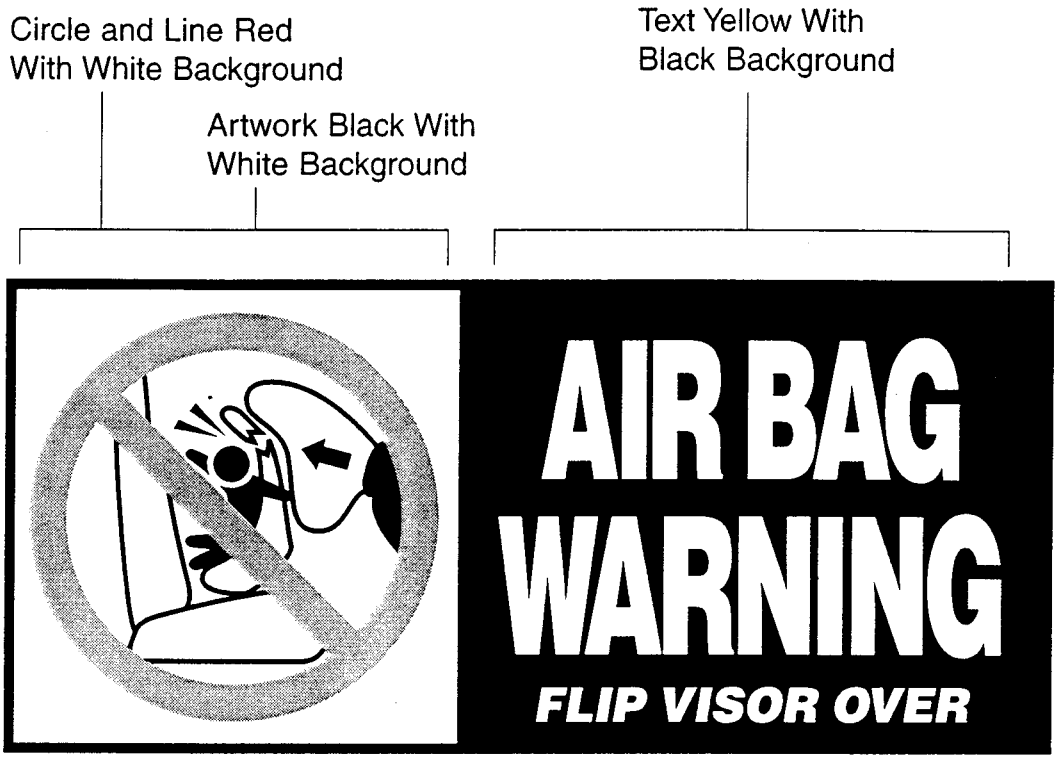

Figure 6c. Sun Visor Label Visible When Visor is in Up Position.

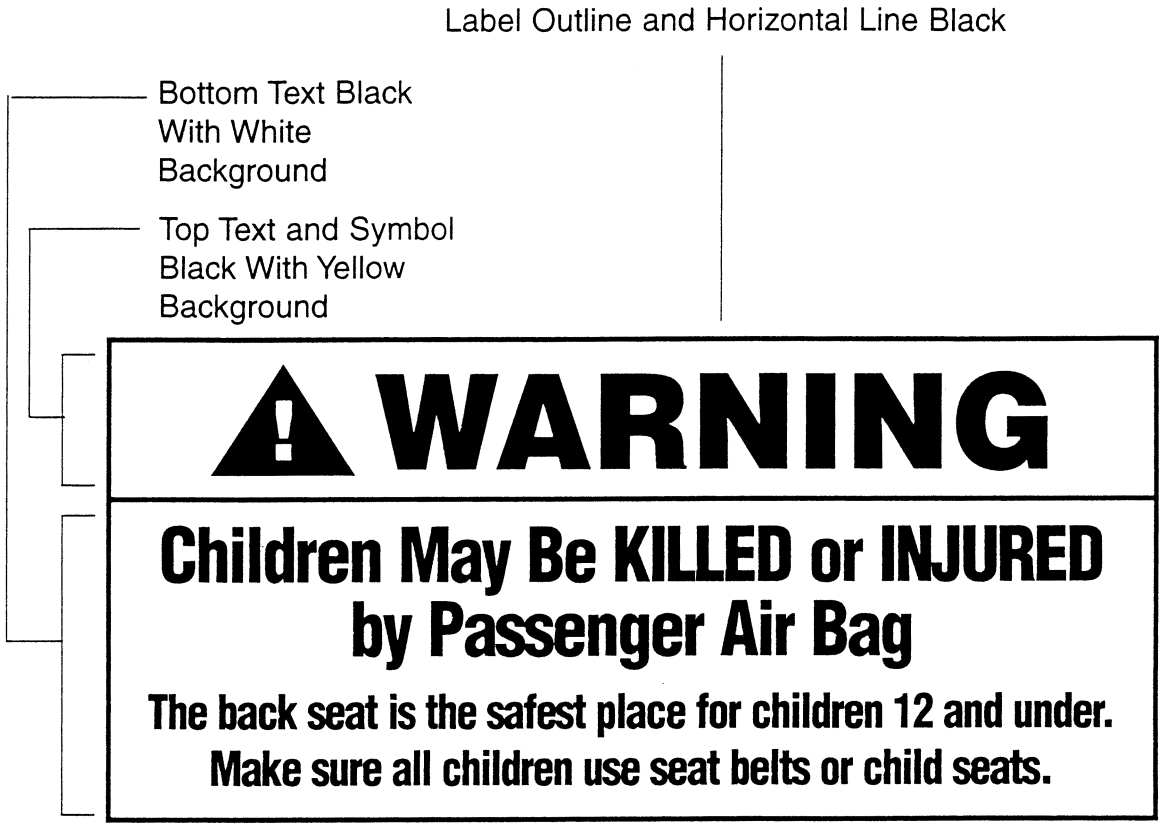

Figure 7. Removable Label on Dash.

BILLING CODE 4910–59–C

4. Section 571.213 is amended by adding S5.5.2(k) introductory text' and adding a new section S5.5.2(k)(4) to read as follows:

§ 571.213 Standard No. 213, Child restraint systems.

* * * * *

S5.5.2

* * * * *

(k) At the manufacturer's option, child restraint systems that can be used in a rear-facing position may comply with the requirements of S5.5.2(k)(4), instead of the requirements of S5.5.2(k)(1)(ii) or S5.5.2(k)(2)(ii).

(1) * * *

* * * * *

(4) In the case of each child restraint system that can be used in a rear-facing position and is manufactured on or after May 27, 1997, instead of the warning specified in S5.5.2(k)(1)(ii) or S5.5.2(k)(2)(ii) of this standard, a label that conforms in content to Figure 10 and to the requirements of S5.5.2(k)(4)(i) through S5.5.2(k)(4)(iii) of this standard shall be permanently affixed to the outer surface of the cushion or padding in or adjacent to the area where a child's head would rest, so that the label is plainly visible and easily readable.

(i) The heading area shall be yellow with the word ''warning'' and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 square cm.

(iii) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 30 mm in diameter.

* * * * *

5. Section 571.213 is amended by adding a new figure 10 at the end of the section as follows:

BILLING CODE 4910–59–P

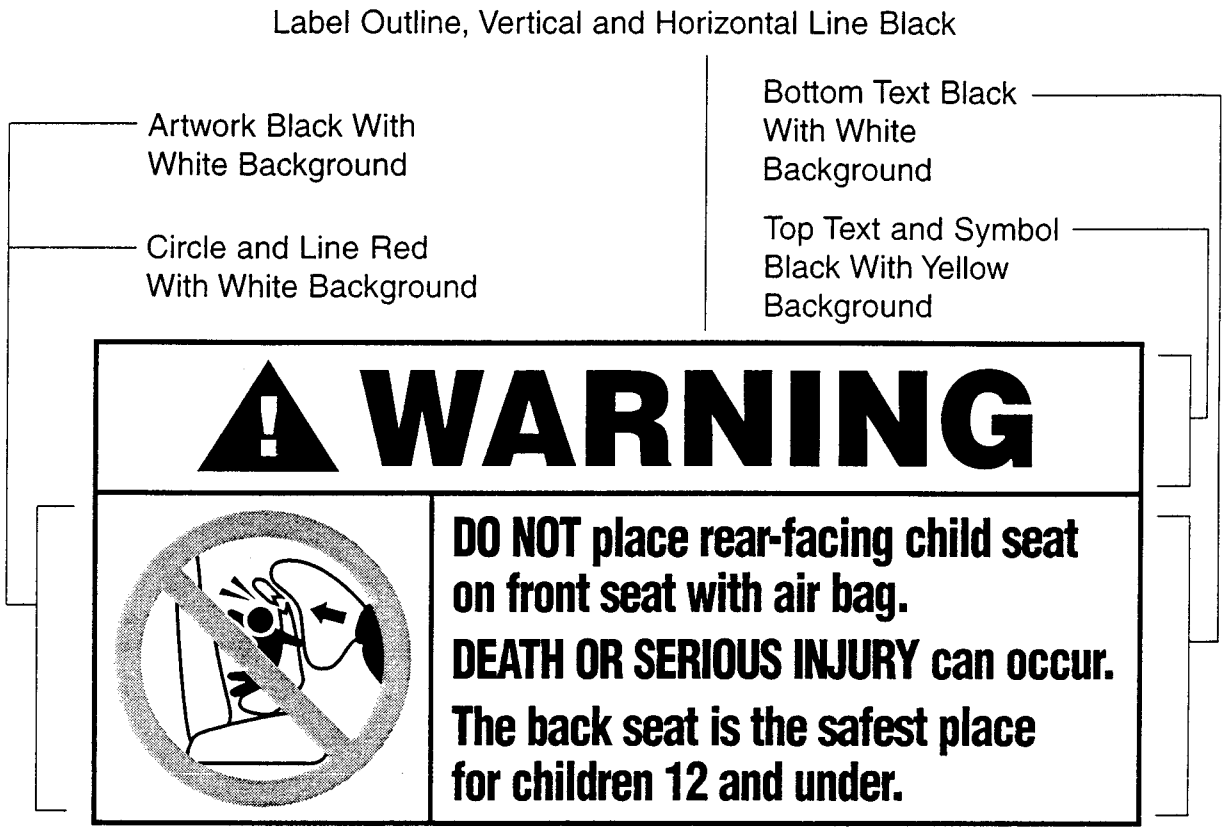

Figure 10. Label on Child Seat Where Child's Head Rests.

Issued on November 22, 1996.
Ricardo Martinez,
Administrator.

[FR Doc. 96–30362 Filed 11–22–96; 4:01 pm]
BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 111996A]

Atlantic Tuna Fisheries; Fishery Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Quota transfer; closure.

SUMMARY: NMFS has projected that the Atlantic bluefin tuna (ABT) Incidental category quota, as previously adjusted, will be attained shortly. Therefore, NMFS further adjusts the quota for the Incidental category by transferring 20 metric tons (mt) from the General category. Consequently, the General category fishery will be closed effective at 11:30 p.m. on November 26, 1996. This action is being taken to prevent overharvest of the total U.S. ABT quota.

EFFECTIVE DATES: The quota adjustment for the Incidental category is effective November 22, 1996 until December 31, 1996. The General category closure is effective 11:30 p.m. local time on November 26, 1996, until June 1, 1997.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347, or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

NMFS is required, under 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a Federal Register announcement to close the applicable fishery.

Incidental Category Transfer

Implementing regulations for the Atlantic tuna fisheries at § 285.22 provide for a quota of 110 mt of large medium and giant ABT to be harvested from the regulatory area by vessels fishing under the Incidental category quota during calendar year 1996. Inseason actions decreased the quota to 69 mt (61 FR 48640, September 16, 1996; 61 FR 53677, October 15, 1996). In making such inseason reallocations, NMFS is required under the regulations to consider the following factors:

(1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock;

(2) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made;

(3) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin

tuna before the anticipated end of the fishing season; and

(4) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

The inseason transfers from the Incidental category were made to extend scientific data collection on certain size classes of ABT while preventing overharvest of the adjusted subquotas for the General and Angling fishing categories. Subsequent to those adjustments, fishery conditions have changed relative to catch and effort. ABT have largely migrated south and hook-and-line catch has essentially ceased in the traditional fall fishing areas of southern New England and the New York Bight. Conversely, current fishery conditions are likely to result in increased catch by longline vessels operating in the mid-Atlantic region, around Cape Hatteras, and in the Gulf of Mexico.

In November and December 1995, the Atlantic swordfish fishery was closed due to attainment of the directed fishery quota (60 FR 46775, September 8, 1995). In response to the economic hardship precipitated by this protracted closure during a prime market season, NMFS adjusted the swordfish fishing year to start the semiannual quota periods on June 1 and December 1 each year (61 FR 27304, May 31, 1996). Thus, longline fishing effort is likely to increase in December 1996 relative to this same period in recent years. Currently, less than 7 mt of ABT remain in the Incidental longline category while approximately 22 mt of ABT remain in the General category. Given the low probability of additional hook-and-line catch in traditional fishing areas and the likelihood of increased ABT interaction rates with longline gear, it is necessary to transfer ABT to the Incidental category.

A transfer of 20 mt, 10 mt each to the northern and southern longline subcategories, meets the criteria for inseason transfers as specified in the regulations. After extended reopenings, the hook-and-line categories likely will not take the remaining quota. Without a transfer, unavoidable bycatch by longliners will result in unnecessary discard waste and loss of scientific information on the distribution of ABT during the southerly migration.

General Category Closure

Implementing regulations for the Atlantic tuna fisheries at § 285.22 provide for a quota of 541 mt of large medium and giant ABT to be harvested from the regulatory area by vessels fishing under the General category quota during calendar year 1996. Inseason actions increased the quota to 593 mt (61 FR 50765, September 27, 1996; 61 FR 53677, October 15, 1996). This current transfer of 20 mt to the Incidental category leaves approximately 2 mt of ABT in the General category allocation.

Based on reported catch and effort, NMFS projects that the revised General category quota will be reached shortly. Therefore, fishing for, retaining, possessing, or landing large medium or giant ABT under the General category quota must cease at 11:30 p.m. local time November 26, 1996.

This closure affects all areas including the New York Bight set-aside. Although established in October (61 FR 50765, September 27, 1996), the New York Bight set-aside was no longer necessary when subsequent quota transfers led to the reopening of the General category fishery in all areas. In recent weeks, the bluefin tuna have moved to the south and catch rates are increasing in North Carolina, while no bluefin landings have been reported from the New York/New Jersey area since November 4, 1996. Given the likelihood of increased catch rates as the bluefin concentrate in the coastal waters off North Carolina, the fishery must be closed to prevent the remaining General category quota from being exceeded.

The General category closure is effective in all areas of the Atlantic ocean. However, anglers may continue to fish for ABT 27 inches (69 cm) or greater under the NMFS tag and release program (50 CFR 285.27). This closure does not affect the Incidental category, which will remain open until the adjusted quota is reached.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: November 22, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–30340 Filed 11–22–96; 2:16 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 230
Wednesday, November 27, 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.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0942]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The proposed update provides guidance on issues relating to the treatment of certain fees paid in connection with mortgage loans. It addresses new tolerances for accuracy in disclosing the amount of the finance charge and other affected cost disclosures. In addition, the proposed update discusses issues such as the treatment of debt cancellation agreements and a creditor's duties if providing periodic statements via electronic means.

DATES: Comments must be received on or before January 6, 1997.

ADDRESSES: Comments should refer to Docket No. R–0942, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens or James A. Michaels, Senior Attorneys, or Sheilah A. Goodman or Manley Williams, 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 Telecommunications Device for the Deaf (TDD) *only*, contact Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. The TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR Part 226). The Board's official staff commentary (12 CFR Part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise. The Board expects to adopt revisions to the commentary in final form in March 1997; to the extent the revisions impose new requirements on creditors, compliance would be optional until October 1, 1997, the effective date for mandatory compliance.

On September 19, 1996, the Board published amendments to Regulation Z (61 FR 49237) implementing the Truth in Lending Act Amendments of 1995 (''1995 Amendments,'' Pub. L. 104–29, 109 Stat. 271). The amendments clarify the treatment of fees typically associated with real estate-related lending, and revise tolerances for finance charge calculations for loans secured by real estate or dwellings. In the same rulemaking, the Board also addressed the treatment of fees charged in connection with debt cancellation agreements. In large measure, the proposed commentary incorporates the supplementary information accompanying that rulemaking.

II. Proposed Revisions

Supplement I—Official Staff Interpretations

Introduction

Comment I–5 updates the reference to the regulation's appendices.

Subpart A—General

Section 226.2—Definitions

2(a)(25) Security Interest

Comment 2(a)(25)–6 refers to model form H–9, which was revised in the September 1996 rulemaking. The comment reflects changes to the form's text.

Section 226.4—Finance Charge

4(a) Definition

Comments 4(a)–3 and –4 are deleted, and subsequent comments redesignated, in accord with the revision and reorganization of § 226.4(a) in the September 1996 rulemaking.

Paragraph 4(a)(1) Charges by Third Parties

Comment 4(a)(1)–1 retains the example of third-party charges currently in comment 4(a)–3.i. The example illustrates that amounts charged by a third party are included in the finance charge if the creditor requires the use of the third party, even if the consumer may choose the service provider.

Comment 4(a)(1)–2 addresses the treatment of annuity premiums associated with some reverse mortgages. The Board proposes to treat the cost of the premiums as a finance charge when the purchase of an annuity is effectively required incident to the credit.

4(a)(2) Special rule; closing agent charges

Proposed comment 4(a)(2)–1 retains the substance of the guidance currently in comment 4(a)–4; that is, charges by a third-party closing agent are finance charges only if the creditor requires the particular charge or service, or to the extent the creditor retains any portion of the fee (unless the charge is otherwise excluded). Technical amendments conform the text to new § 226.4(a)(2)—such as replacing ''settlement agent'' with ''closing agent''—without any substantive change. The comment also clarifies that the special rule applies only to the third party serving as a closing agent for the particular loan. Charges by a third party who is not the

closing agent for the loan but who provides services typically performed by closing agents (recording the mortgage, for example) are covered by the general rule for third-party charges in paragraph 4(a)(1).

Paragraph 4(a)(3) Special Rule; Mortgage Broker Fees

Comments 4(a)(3)–1 and –2 address the treatment of mortgage broker fees. Under the 1995 Amendments, mortgage broker fees paid by the borrower are finance charges (unless otherwise excluded). Comment 4(a)(3)–1 clarifies that mortgage broker fees may be excluded from the finance charge if the fee would be excluded when charged by the creditor. The comment also provides that if the mortgage broker charges an application fee, the fee may be excluded from the finance charge if the broker charges the fee to all applicants, whether or not credit is extended.

Proposed comment 4(a)(3)–2 discusses the scope of the special rule for mortgage broker fees. It addresses the treatment of compensation paid by the creditor to a mortgage broker in addition to—or substitution for—compensation paid by the consumer to the broker.

4(b) Examples of Finance Charges

Paragraph 4(b)(10) Debt Cancellation Fees

Proposed comment 4(b)(10)–1 clarifies that for purposes of Regulation Z, the term ''debt cancellation agreement'' includes a specialized type of agreement known as guaranteed automobile protection or ''GAP'' agreements.

4(c) Charges Excluded From the Finance Charge

Paragraph 4(c)(5)

Numerous creditors have asked for additional guidance on certain finance charges paid by a noncreditor seller on a consumer's behalf before loan closing. Comment 4(c)(5)–2 currently states that these payments, such as for mortgage insurance premiums, should be excluded from the finance charge as seller's points. The proposal clarifies the standards for determining when to exclude such amounts from the finance charge.

Section 226.17(c)(1) states that disclosures must be based on the consumer's legal obligation. Comment 17(c)(1)–3 provides guidance for disclosing the effect of payments by a seller or another third party that reduce, for example, a consumer's interest rate. Disclosures should reflect the payment only if the consumer is no longer legally bound to the creditor for the amount paid. Comment 4(c)(5)–2 would be revised to clarify that the same standard applies for amounts paid by noncreditor sellers.

4(d) Insurance and Debt Cancellation Coverage

Paragraph 4(d)(3) Voluntary Debt Cancellation Fees

Proposed comment 4(d)(3)–1 clarifies that fees for GAP agreements must be disclosed in accord with paragraph 4(d)(3) rather than the property insurance provisions of paragraph 4(d)(2). Proposed comment 4(d)(3)–2 clarifies that creditors may characterize debt cancellation fees as insurance premiums in their TILA disclosures only if the debt cancellation coverage constitutes insurance under state law.

4(e) Certain Security Interest Charges

Section 226.4(e) excludes certain security interest charges paid to public officials from the finance charge if the amounts are itemized and disclosed. As an example, comment 4(e)–1 lists a tax imposed solely on the creditor that is charged to the consumer. To ease compliance, the proposed revision also provides a cross reference to comment 4(a)–7 (to be redesignated as 4(a)–5), which also addresses the treatment of taxes.

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(b) Time of Disclosures

5(b)(2) Periodic Statements

Paragraph 5(b)(2)(ii)

Comment 5(b)(2)(ii)–3 responds to technological developments in the way credit transactions are conducted via electronic means; it provides guidance on when periodic statements may be provided electronically, for example, via home banking systems. The proposal is part of a general review that will seek to adapt current rules to the way electronic disclosures may be provided and retained. For example, the Board has addressed similar issues in recent proposed amendments to Regulation E (Electronic Fund Transfers, 12 CFR Part 205, 61 FR 19696, May 2, 1996) and Regulation CC (Expedited Funds Availability, 12 CFR Part 229, 61 FR 27802).

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(2)(ii)

Proposed comment 17(c)(2)(ii)–1 addresses the new rule applicable to the disclosure of per-diem interest charges. Under the rule, any numerical disclosure affected by the per-diem interest charge is considered accurate if it is based on the information known to the creditor at the time the disclosure is prepared, whether or not the disclosure of per-diem interest is accurate when it is received by the consumer. The proposed comment clarifies that in such cases, the resulting finance charge is considered accurate without regard to the tolerance for errors under § 226.18(d)(1). The Board requests comment on whether a conforming comment to paragraph 31(d)(3) is necessary.

17(f) Early Disclosures

Paragraph 17(f)(2)

The Board proposes to reorganize comment 17(f)–1 and to add proposed comment 17(f)(2)–1 to conform to the new regulation. Comment 17(f)–1 includes an additional example relating to mortgage loans. The revision also clarifies that for purposes of determining if redisclosure is required, the changed terms must be redisclosed according to the rules for accuracy in paragraph 17(f) rather than the tolerances in § 226.18(d) or 226.22(a).

Section 226.18—Content of Disclosures

18(c) Itemization of Amount Financed

Comment 18(c)–4 provides that in transactions subject to the Real Estate Settlement Procedures Act (RESPA), no itemization of the amount financed is required with the early TILA disclosures if the creditor complies with the good faith estimate requirements of RESPA. The comment would be amended to clarify that in such transactions, if redisclosure is required under § 226.19(a)(2), no itemization need be provided if, at or prior to consummation, the consumer receives a settlement statement that conforms with the substantive requirements of RESPA.

The Department of Housing and Urban Development (HUD) recently solicited comment on whether creditors, in transactions subject to RESPA, should be allowed to show only the total amount collected for escrow on the settlement statement, rather than itemizing these amounts. Comment

18(c)(1)(iv) would be revised and expanded to address how creditors can determine the portion of the total amount collected for an escrow account that is a prepaid finance charge, if any.

18(d) Finance Charge

Paragraph 18(d)(2)

Proposed comment 18(d)(2)–1 incorporates the guidance formerly found in comment 18(d)–2 that was removed as part of the recent reorganization of § 226.18(d).

Paragraph 18(n) Insurance and debt Cancellation

Proposed comment 18(n)–2 provides guidance for disclosing debt cancellation fees under § 226.4(d)(3). The proposed comment clarifies that creditors may disclose debt cancellation fees as insurance premiums only if the coverage is insurance under state law, consistent with proposed comment 4(d)(3)–2.

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

Paragraph 19(a)(2) Redisclosure Required

Comment 19(a)(2) is revised for consistency with proposed comment 17(f)(2)–1.

Section 226.22—Determination of the Annual Percentage Rate

22(a) Accuracy of the Annual Percentage Rate

Paragraphs 22(a)(4) and (a)(5)

Sections 226.22(a)(4) and (a)(5) provide two additional APR tolerances for mortgage loans when the finance charge has been misstated but is considered accurate. The proposed comments provide specific examples of these tolerances.

Section 226.23—Right of Rescission

23(g) Tolerances for Accuracy

Paragraph 23(g)(2) One Percent Tolerance

Proposed comment 23(g)(2)–1 clarifies that the phrase ''new advance'' has the same meaning in paragraph 23(g)(2) as it has in comment 23(f)–4. Both rules address rescission rights when home-secured loans are refinanced.

Paragraph 23(h) Special Rules for Foreclosures

Proposed comment 23(h)–1 clarifies that the special rules for foreclosures under paragraph 23(h) only apply to transactions that were originally subject to rescission under paragraph 226.23(a)(1).

Paragraph 23(h)(1)(i)

Proposed comment 23(h)(1)(i)–1 clarifies that a consumer may rescind a loan in foreclosure if a mortgage broker fee is omitted or understated, without regard to the dollar amount involved. An example illustrates the rule.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.31—General Rules

31(c) Timing of disclosures

Section 226.31(c) discusses the timing rules for providing disclosures to consumers for transactions covered by § 226.32 (§ 226.3(c)(1)) and reverse mortgages (§ 226.31(c)(2)). Comment 31(c)(1)–1, which states that disclosures are furnished when received by the consumer, is redesignated as comment 31(c)–1 to reflect that the rule applies to all transactions covered by § 226.31(c).

Section 226.32—Requirements for Certain Closed-end Home Mortgages

32(b) Definitions

Paragraph 32(b)(1)(i)

Comment 32(b)(1)(i)–1 is revised to clarify that per diem interest, typically paid in a lump sum at closing, is nonetheless interest, and is not a component of ''points and fees'' under paragraph 32(b)(1).

32(c) Disclosures

32(c)(3) Regular payment

Balloon payments are prohibited in loans that are covered by § 226.32 and have a term of less than five years. Proposed comment 32(c)(3)–2 clarifies that if a loan with a term of five years or more provides for a balloon payment, the balloon payment must be disclosed under this paragraph.

Section 226.33—Requirements for Reverse Mortgages

33(a) Definition

Paragraph 33(a)(2)

Under § 226.33, a reverse mortgages can become due and payable only after the consumer dies, the dwelling is transferred, or the consumer ceases to occupy the dwelling as a principal dwelling. Some states require mortgages to have a definite maturity date. The proposed comment clarifies how a transaction can comply with those laws and have a definite maturity date while remaining a reverse mortgage under § 226.33.

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

Comment app. G and H–2 would be revised, consistent with comments 4(d)(3)–1 and 18(n)–2, to reflect that creditors should not characterize debt cancellation fees as insurance premiums unless such coverage is insurance under state law.

Appendix H—Closed-End Model Forms and Clauses

The Board modified the current model form H–9 in the September 1996 rulemaking. Proposed comment app. H–11 would clarify that the revised H–9 is substantially similar to the current H–9, and creditors may continue to use the prior version. Creditors are encouraged to use the revised version when reordering or reprinting forms.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–0942, and, when possible, should use a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text in machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½-inch or 5¼-inch computer diskettes in any IBM-compatible DOS-based format.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with new Federal Register publication rules.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR Part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226, under *Introduction*, the last sentence in paragraph 5. would be revised to read as follows:

Supplement I—Official Staff Interpretations

Introduction

* * * * *

5. *Comment designations.* * * * fl Comments to the fi [The] appendices may be cited fl , for example, fi as Comments app. A–1 fl . fi [through J–2.]

* * * * *

3. Supplement I to Part 226, under *Section 226.2—Definitions,* under *paragraph 2(a)(25),* is amended by removing the last two sentences of the second undesignated paragraph of paragraph 6.

4. In Supplement I to Part 226, under *Section 226.4—Finance Charge,* the following amendments would be made:

a. Under *4(a) Definition.*, paragraphs 3. and 4. would be removed and paragraphs 5. through 7. would be redesignated as paragraphs 3. through 5., respectively, and new paragraphs 4(a)(1), 4(a)(2), and 4(a)(3) would be added preceding 4(b);

b. Under *4(b) Examples of finance charges.*, a new paragraph 4(b)(10) would be added;

c. Under *4(c) Charges excluded from the finance charge.*, under *4(c)(5)* paragraph 2. would be revised;

d. Under 4(d), the paragraph heading would be revised, and a new paragraph 4(d)(3) would be added; and

e. Under *4(e) Certain security interest charges.*, paragraph 1.i. would be revised. The additions and revisions would read as follows:

* * * * *

Subpart A—General

* * * * *

Section 226.4—Finance Charge

4(a) Definition.

* * * * *

fl *Paragraph 4(a)(1) Charges by third parties.*

1. *Choosing the provider of a required service.* An example of a third-party charge included in the finance charge is the cost of required mortgage insurance, even if the consumer is allowed to choose the insurer.

2. *Annuities associated with reverse mortgages.* Some creditors may offer annuities in connection with a reverse mortgage transaction. The amount of the premium is a finance charge if the creditor in effect requires the purchase of the annuity incident to the credit. Examples include the following:

i. The credit documents reflect the purchase of an annuity from a specific provider or providers.

ii. The creditor assesses an additional charges on consumers who do not purchase an annuity from a specific provider.

iii. The annuity is intended to supplement or replace the creditor's payments to the consumer either immediately or at some future date.

Paragraph 4(a)(2) Special rule; closing agent charges .

1. *General.* This rule applies to charges by a third party serving as the closing agent for the particular loan. Unless a charge is otherwise excluded (for example, a real estate-related closing cost under § 226.4(c)(7) or a fee paid in a comparable cash transaction), a fee charged by a third-party closing agent is included in the finance charge if the creditor requires the imposition of the charge or the provision of the service, or to the extent the creditor retains any portion of the charge. For example, a courier fee charged by a third-party closing agent is a finance charge if the creditor requires the use of a courier.

Paragraph 4(a)(3) Special rule; mortgage broker fees.

1. *Special rule—mortgage broker fees.* A fee charged by a mortgage broker is excluded from the finance charge if it is the type of fee that is also excluded when charged by the creditor. To exclude an application fee from the finance charge, a mortgage broker must charge the fee to all applicants for credit, whether or not credit is extended.

2. *Compensation by lender.* Compensation paid by a creditor to a mortgage broker under an arrangement between those parties is not included in the finance charge. For example, where a consumer is obligated to pay points to the creditor and a fee to a mortgage broker, those charges must be disclosed as finance charges. Under a separate arrangement between the creditor and the broker, the creditor may also agree to compensate the broker, such as in ''yield spread premiums'' or ''back points.'' This compensation paid by the creditor to the broker is not a finance charge. fi

* * * * *

4(b) Examples of finance charges.

* * * * *

fl *Paragraph 4(b)(10) Debt cancellation fees.*

1. *Definition.* The term ''debt cancellation agreement'' refers to a contract between a borrower and a creditor providing for satisfaction of all or part of the debt when a specified event occurs. The term includes guaranteed automobile protection or ''GAP'' agreements, which cancel the remaining debt after property insurance benefits are exhausted. fi

* * * * *

Paragraph 4(c)(5).

* * * * *

2. *Other seller-paid amounts. Mortgage insurance premiums and other* fl finance fi charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a noncreditor seller. [In such cases the] fl The creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge fl if the consumer is not legally bound to the creditor for the charge fi . A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available[, as called for by the estimate provisions of the regulation].

* * * * *

4(d) Insurance fl and debt cancellation coverage fi .

* * * * *

fl *Paragraph 4(d)(3).*

1. *General.* Fees charged for the specialized form of debt cancellation agreement known as guaranteed automobile protection or ''GAP'' agreements must be disclosed according to § 226. 4(d)(3) rather than according to § 226. 4(d)(2) for property insurance.

2. *Disclosures.* Creditors can comply with § 226. 4(d)(3) by providing a disclosure that refers to debt cancellation coverage whether or not the agreement is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law. fi

* * * * *

4(e) Certain security interest charges.

1. Examples.

i. *Excludable charges.* Sums must be actually paid to public officials to be excluded from the finance charge under § 226.4(e)(1). Examples are charges or other fees required for filing or recording security agreements, mortgages, continuation statements, and similar documents, as well as intangible property or other taxes imposed by the state solely on the creditor [and payable by] fl and charged to fi the consumer (if the tax must be paid to record a security interest). fl (See comment 4(a)–5 (formerly 4(a)–7) regarding the treatment of taxes, generally.). fi

* * * * *

5. In Supplement I to Part 226, under *Section 226.5—General Disclosure Requirements,* under *Paragraph 5(b)(2)(ii).*, paragraph 3. would be revised to read as follows:

* * * * *

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

* * * * *

5(b) Timing of disclosures.

* * * * *

5(b)(2) Periodic statements.

* * * * *

Paragraph 5(b)(2)(ii).

* * * * *

3. *Calling for periodic statements.* The creditor may permit consumers to call for their periodic statements, but may not require them to do so. If the consumer wishes to pick up the statement and the plan has a free-ride period, the statement fl (including a statement provided by electronic means) fi must be made available in accordance with the 14-day rule.

* * * * *

6. In Supplement I to Part 226, under *Section 226.17—General Disclosure Requirements,* the following amendments would be made:

a. Under *17(c) Basis of disclosures and use of estimates*, a new paragraph 17(c)(2)(ii) would be added; and

b. Under *17(f) Early disclosures*, paragraphs 1. introductory text, 1. i., the last sentence of 1. ii., and 1. iii. would be revised and a heading would be added to paragraph 1. ii; and a new paragraph 17(f)(2) preceding 17(g) would be added. The additions and revisions would read as follows:

* * * * *

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

* * * * *

17(c) Basis of disclosures and use of estimates.

* * * * *

fl *Paragraph 17(c)(2)(ii).*

1. *Per-diem interest.* This paragraph applies to any numerical disclosure (such as the finance charge or annual percentage rate) that is affected by the amount of the per-diem interest charge that will be collected at consummation. If the amount of per-diem interest used in preparing the disclosures for consummation is based on the information known to the creditor at the time the disclosure document is prepared, the disclosures are considered accurate under this rule, and the affected disclosures are also considered accurate. For example, if the amount of per-diem interest used to prepare disclosures is less than the amount of per-diem interest charged at consummation, and as a result the finance charge is understated by $200, the disclosed finance charge is considered accurate even though the understatement is not within the $100 tolerance of § 226.18(d)(1). In this example, if in addition to the understatement related to the per-diem interest, a $90 fee is incorrectly omitted from the finance charge, causing it to be understated by a total of $290, the finance charge is considered accurate because the $90 fee is within the tolerance in § 226.18(d)(1). fi

* * * * *

17(f) Early disclosures.

1. *Change in rate or other terms.* Redisclosure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in fl this section, even if the initial disclosures would be considered accurate under the tolerances in §§ 226.18(d) or 226.22(a). fi [§ 226.22(a) (1/8 of 1 percentage point in regular transactions and 1/4 of one percentage point in irregular transactions. Rediscloure is also required, even if the annual percentage rate is within the permitted tolerance, if the disclosures were not based on estimates in accordance with § 226.17(c)(2) and labeled as such.] To illustrate:

i. fl *General. A.* fi If disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than 1/8 of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such.

fl B. In a regular transaction, if early disclosures are marked as estimates and the disclosed annual percentage rate is within ⅛ of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate). fi

ii. fl *Nonmortgage loan.* fi * * * (See § 226.18(d) fl (2) fi ⟦and footnote 41⟧ of this part.)

iii. fl *Mortgage loan.* At the time TILA disclosures are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. Assuming there were no other changes requiring redisclosure, the creditor may rely on the disclosures prepared in July that were accurate when they were prepared. However, if the creditor prepares new disclosures in August that will be provided at consummation, the new disclosures must take into account the amount of the per-diem interest known to the creditor at that time. fi ⟦If early disclosures are marked as estimates and the disclosed annual percentage rate is within tolerance at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).⟧

fl *Paragraph 17(f)(2).*

1. *Irregular transactions.* For purposes of this paragraph, a transaction is deemed to be ''irregular'' according to the definition in footnote 46 of § 226.22(a)(3). fi

* * * * *

7. In Supplement I to Part 226, under *Section 226.18—Content of Disclosures*, the following amendments would be made:

a. Under *18(c) Itemization of Amount Financed.*, paragraph 4. would be revised;

b. Under *18(c)(1)(iv).*, paragraph 2. would be revised;

c. Under *18(d) Finance charge.*, a new paragraph *18(d)(2) Other credit.* would be added after paragraph 1; and

d. Under *18(n) Insurance.*, the heading would be revised and paragraph 2. would be added.

The revisions and additions would read as follows:

* * * * *

Section 226.18—Content of Disclosures

* * * * *

18(c) Itemization of amount financed.

* * * * *

4. *RESPA transactions.* The Real Estate Settlement Procedures Act (RESPA) requires creditors to provide fl a fi good faith estimate⟦s⟧ of closing costs fl and a settlement statement listing the amounts paid by the consumer fi . Transactions subject to RESPA are exempt from the requirements of § 226.18(c) if the creditor complies with fl RESPA's requirements for a fi ⟦the⟧ good faith estimate⟦s⟧ fl and settlement statement. fi ⟦requirement.⟧

The itemization of the amount financed need not be given, even though the content and timing of the good faith estimate[s] fl and settlement statement fi under RESPA differ from the fl requirements of fi § fl § fi 226.18(c) fl and 19(a)(2) fi [requirement]. fl If the settlement statement is substituted for the itemization when redisclosure is required under § 226.19(a)(2), it must be delivered to the consumer at or prior to consummation. fi

* * * * *

Paragraph 18(c)(1)(iv).

* * * * *

⟦2. Prepaid mortgage insurance premiums. RESPA requires creditors to give consumers a settlement statement disclosing the costs associated with mortgage loan transactions. Included on the settlement statement are mortgage insurance premiums collected at settlement that are prepaid finance charges. In calculating the total amount of prepaid finance charges, creditors should use the amount for mortgage insurance listed on the line for mortgage insurance on the settlement statement (line 1002 on HUD–1 or HUD 1–A), without adjustment, even if the actual amount collected at settlement may vary because of RESPA's escrow accounting rules. Figures for mortgage insurance disclosed in conformance with RESPA shall be deemed to be accurate for purposes of Regulation Z.⟧

fl 2. *Escrow items.* RESPA requires creditors to give consumers a good faith estimate and settlement statement disclosing the costs associated with mortgage loan transactions. Included in these disclosures are amounts which are paid at or before consummation and placed in an escrow or impound account. Typically some, but not all, of the escrow items are prepaid finance charges, such as mortgage insurance premiums.

Regardless of how the escrow amounts are shown on the good faith estimate or settlement statement for RESPA purposes, creditors must be able to identify the amount attributable to finance charges in order to calculate the total prepaid finance charge under § 226.18(c)(1)(iv).

i. *Itemized amounts.* If the amounts paid into escrow are individually itemized on the good faith estimate and the settlement statement, the creditor may use the itemized amount even if the actual amount collected at settlement varies because of RESPA's escrow accounting rules. For example, if the itemized amount on the settlement statement includes mortgage insurance, creditors may rely on the amount listed on line 1002 of the HUD–1 or HUD 1–A, even though an adjustment to the aggregate amount of the escrow items may be shown on another line in the 1000 series. If an itemized escrow amount that is a finance charge is disclosed in conformance with RESPA, it shall be deemed to be accurate for purposes of Regulation Z.

ii. *Lump-sum amounts.* If an amount paid into escrow is listed as a lump sum on the good faith estimate and the settlement statement, and if that amount includes some costs that are finance charges, the creditor

must identify the amount attributable to finance charges to calculate the total prepaid finance charge under § 226.18(c)(1)(iv). To determine the amount attributable to the finance charge, creditors must use single-item accounting, as defined under RESPA (24 CFR §§ 3500.17(b) and (d)(2)). Alternatively, creditors may treat the entire amount paid into escrow as a prepaid finance charge. fi

* * * * *

18(d) Finance charge.

* * * * *

fl *Paragraph 18(d)(2) Other credit.*

1. *Tolerance.* When a finance charge error results in a miscalculation of the amount financed, or of some other numerical disclosure for which the regulation provides no specific tolerance, the miscalculation does not violate the act or the regulation if the finance charge error is within the permissible tolerance under this paragraph. fi

* * * * *

Paragraph 18(n) Insurance fl and debt cancellation. fi

* * * * *

fl 2. *Debt cancellation.* Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law. Otherwise, they may provide a parallel disclosure that refers to debt cancellation coverage. fi

* * * * *

8. In Supplement I to Part 226, under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions,* under *19(a)(2) Rediscloure required.*, the first sentence of paragraph 1. would be revised to read as follows:

* * * * *

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

Paragraph 19(a)(2) Rediscloure required.

1. *Conditions for rediscloure.* Creditors must make new disclosures if the annual percentage rate at consummation differs from the estimate originally disclosed by more than ⅛ of 1 percentage point in regular transactions or ¼ of 1 percentage point in irregular transactions, as defined in fl footnote 46 of fi § 226.22 fl (a)(3) fi u* * *

* * * * *

9. In Supplement I to Part 226, *Section 226.22—Determination of the Annual Percentage Rate,* would be amended by adding new paragraphs 22(a)(4) and 22(a)(5) to read as follows:

* * * * *

Section 226.22—Determination of the Annual Percentage Rate

22(a) Accuracy of the annual percentage rate.

* * * * *

fl *Paragraph 22(a)(4) Mortgage loans.*

1. Example. If a creditor improperly omits a $75 fee from the finance charge on a regular transaction, the understated finance charge is considered accurate under § 226.18(d)(1), and the annual percentage rate corresponding to that understated finance charge also is considered accurate even if it falls outside the tolerance of ⅛ of 1 percent provided under § 226.22(a)(2). In that case, an annual percentage rate corresponding to a $100 understatement of the finance charge would not be considered accurate.

Paragraph 22(a)(5) Additional tolerance for mortgage loans.

1. *Example.* This paragraph contains an additional tolerance for a disclosed annual percentage rate that is incorrect but is closer to the actual annual percentage rate than the rate that would be considered accurate under the tolerance in § 226.22(a)(4). To illustrate: in an irregular transaction subject to a ¼ of 1 percent tolerance, if the actual annual percentage rate is 9.00 percent and a $75 omission from the finance charge corresponds to a rate of 8.50 percent that is considered accurate under § 226.22(a)(4), a disclosed APR of 8.65 percent is within the tolerance in § 226.22(a)(5). In this example of an understated finance charge, a disclosed annual percentage rate below 8.50 or above 9.25 percent will not be considered accurate. fi

* * * * *

10. In Supplement I to Part 226, *Section 226.23—Right of Rescission* would be amended by adding new 23(g) and (23)(h) to read as follows:

* * * * *

Section 226.23—Right of Rescission

* * * * *

fl *23(g) Tolerances for accuracy.*

Paragraph 23(g)(2) One percent tolerance.

1. *New advance.* The phrase ''new advance'' has the same meaning as in comment 23(f)–4.

23(h) Special Rules for Foreclosures.

1. *Rescission.* Section 226.23(h) applies only to transactions that are subject to rescission under § 226.23(a)(1).

Paragraph 23(h)(1)(i).

1. *Mortgage broker fees.* A consumer may rescind a loan in foreclosure if a mortgage broker fee was omitted or understated, without regard to the dollar amount involved. For example, a consumer—s right to rescind a loan in foreclosure is triggered by a $10 understatement of a mortgage broker fee; an understatement of more than $35 in other finance charges also triggers rescission. fi

* * * * *

11. In Supplement I to Part 226, under *Section 226.31—General Rules,* under *Paragraph 31(c)(1)* paragraph 1. would be redesignated as paragraph 1. under *31(c),* and paragraph 2., under *Paragraph 31 (c)(1)* would be redesignated as paragraph 1.

12. In Supplement I to Part 226, under *Section 226.32—Requirements for Certain Closed-End Home Mortgages,* the following amendments would be made:

a. Under *Paragraph 32(b)(1)(i).,* paragraph 1. would be revised; and

b. Under *32(c)(3).,* a new paragraph 2. would be added.

The revisions and additions would read as follows:

* * * * *

Section 226.32—Requirements for Certain Closed-End Home Mortgages

* * * * *

32(b) Definitions.

Paragraph 32(b)(1)(i).

fl 1. *General.* Section 226.32(b)(1)(i) includes in the total ''points and fees'' items defined as finance charges under §§ 226.4(a) and 226.(4)(b). Items excluded from the finance charge under other provisions of § 226.4 are not included in the total ''points and fees'' under paragraph 32(b)(1)(i), but may be included in ''points and fees'' under paragraphs 32(b)(1)(ii) and 32(b)(1)(iii). Interest, including per diem interest, is excluded from ''points and fees'' under § 226.32(b)(1). fi

* * * * *

32(c) Disclosures.

* * * * *

32(c)(3) Regular payment.

* * * * *

fl 2. *Balloon payments.* If a loan with a term of five years or more provides for a balloon payment, the balloon payment must be disclosed. For a loan with a term of less than five years, a balloon payment is prohibited. fi

* * * * *

13. In Supplement I to Part 226, under *Section 226.33—Requirements for Reverse Mortgages,* under *Paragraph 33(a)(2),* in paragraph 2., the third and fourth sentences would be revised and a new sentence would be added at the end of the paragraph to read as follows.

* * * * *

Section 226.33—Requirements for Reverse Mortgages

33(a) Definition.

* * * * *

Paragraph 33(a)(2).

* * * * *

2. *Definite term or maturity date.* * * * Stating a definite maturity date or term of repayment in an obligation does not violate the definition of a reverse-mortgage transaction if the maturity date or term of repayment used would fl not fi ⟦in no case⟧ operate to cause maturity prior to the occurrence of any of the maturity events recognized in the regulation.

fl For example, some reverse mortgage programs specify that the final maturity date is the borrower's 150th birthday; other programs include a shorter term but provide that the term is automatically extended for consecutive periods if none of the other maturity events has yet occurred. These programs would be permissible. fi ⟦For example, a provision that allows a reverse-mortgage loan to become due and payable only after the consumer's death, transfer, or cessation of occupancy, or after a specified term, but which automatically extends the term for consecutive periods as long as none of the events specified in this section had yet occurred would be permissible.⟧

* * * * *

14. In Supplement I to Part 226, under *APPENDICES G AND H—OPEN-END AND CLOSED-END MODEL FORMS AND CLAUSES,* a new paragraph 2. would be added to read as follows:

* * * * *

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

* * * * *

fl 2. *Debt cancellation coverage.* The regulation does not authorize creditors to characterize debt cancellation fees as insurance premiums for purposes of this regulation. Creditors may provide a disclosure that refers to debt cancellation coverage whether or not the agreement is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law. fi

* * * * *

15. In Supplement I to Part 226, under *Appendix H—Closed-End Model Forms and Clauses,* a new sentence would be added to the end of paragraph 11. to read as follows:

* * * * *

Appendix H—Closed-End Model Forms and Clauses

* * * * *

11. *Models H–8 and H–9.* * * * fl The prior version of model form H–9 is substantially similar to the current version and creditors may continue to use it, as appropriate. Creditors are encouraged, however, to use the current version when reordering or reprinting forms. fi

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, November 14, 1996.

William W. Wiles,

Secretary of the Board

[FR Doc. 96–29639 Filed 11–26–96; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 936

[No. 96–78]

Community Support Requirements

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation on community support requirements. The proposed rule replaces the existing review process with uniform community support standards all Federal Home Loan Bank (FHLBank) members must meet in order to maintain access to long-term FHLBank advances, and review criteria the Finance Board must apply when determining a member's compliance with the statutory and regulatory standards. Consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review, the proposed rule streamlines the regulatory requirements to reduce the time spent by FHLBank members to prepare and submit, and the Finance Board to review and process, community support submissions.

DATES: The Finance Board will accept comments on this proposed rule in writing on or before January 27, 1997.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Penny S. Bates, Program Analyst, Community Support Program, Office of Supervision, 202/408–2574, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408–2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service that FHLBank members must meet in order to maintain access to long-term advances. See 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the FHLBank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901, *et seq.*, and record of lending to first-time homebuyers. See 12 U.S.C. 1430(g)(2). In accordance with section 10(g)(1) of the Bank Act, the Board of Directors of the Finance Board approved a final community support rule, which appears at part 936 of the Finance Board's regulations, in November 1991. See 56 FR 58639 (Nov. 21, 1991), codified at 12 CFR part 936. The current rule establishes a process under which an FHLBank member submits a community support statement, and in some cases, a community support action plan or amended action plan, first to the member's FHLBank and then to the Finance Board for review.

By its terms, the current rule applies to every FHLBank member, although in practice, the Finance Board has applied its requirements only to members that are subject to the CRA. In September 1993, the Finance Board sought public comments concerning application of the community support rule, particularly the CRA factor, to FHLBank members that are not subject to the CRA, that is, credit unions and insurance companies. See 58 FR 46569 (Sept. 2, 1993) (advance notice of proposed rulemaking). Notwithstanding that the Finance Board received 31 comments in response to the advance notice of proposed rulemaking, it is again specifically seeking comments on how it may apply the CRA factor to FHLBank members that are not subject to the CRA. The Finance Board will consider all comments it receives before taking final action, including comments received in response to the advance notice of proposed rulemaking published in September 1993 and this notice of proposed rulemaking.

Although the Bank Act requires the Finance Board to develop community support standards, see 12 U.S.C. 1430(g)(1), the current rule provides neither definitive standards an FHLBank member must meet in order to maintain access to long-term advances, nor review criteria the Finance Board must apply to decide whether a member has satisfied the statutory or regulatory community support requirements. See 12 CFR part 936. Further, although the number of FHLBank members and community support submissions Finance Board staff must review has increased substantially (from approximately 2,970 to 6,000 members, and 370 to 750 submissions per calendar quarter), the number of Finance Board staff available to review those submissions has not changed. In order to provide appropriate standards and review criteria for determining compliance with section 10(g) of the Bank Act and to ensure adequate review by Finance Board staff, the Finance Board has decided to streamline the regulatory requirements by replacing the existing review process with uniform community support standards and review criteria, thereby reducing the time spent by FHLBank members to prepare and submit, and the Finance Board to review and process, community support submissions. In addition, consistent with section 10(g) of the Bank Act, the proposed community support rule will apply to *every* FHLBank member regardless of whether the member is subject to the CRA.

II. Analysis of the Proposed Rule

A. Community Support Requirement

Proposed § 936.2 establishes the basic requirement that a FHLBank member selected for community support review must submit a community support statement (statement) to the Finance Board. The Finance Board anticipates selecting a FHLBank member for community support review about once every two years. Consistent with current practice, the Finance Board will select approximately one-eighth of the

members in each FHLBank district for community support review each calendar quarter. To the extent practicable, the Finance Board will select members that are subject to the CRA based on the chronological sequence of their CRA evaluations, and members that are not subject to the CRA based on the chronological sequence of their admittance to membership in the FHLBank System. In any case, the Finance Board will review an institution only after it has been a FHLBank member for one year.

1. Notice Provisions

Proposed § 936.2(b) sets out the notice requirements and the deadline by which members must submit statements to the Finance Board for review. Consistent with current practice, § 936.2(b)(1)(i) of the proposed rule requires the Finance Board to notify each FHLBank of the members within its district that must submit a statement during the calendar quarter. At the same time, the Finance Board must publish a notice in the Federal Register that includes the name and address of each member required to submit a statement during the calendar quarter, and the deadline for submission of the statement to the Finance Board. To provide sufficient time for the member to prepare the required statement, the deadline for submission to the Finance Board must be no less than 45 calendar days from the date of publication of the Federal Register notice. Section 936.2(b)(2)(ii) then requires each FHLBank to provide written notice to its members of their selection for community support review and of the requirement to submit a statement to the Finance Board by the deadline stated in the Federal Register notice.

2. Required Documents

Proposed § 936.2(c) describes the information a member must include in a statement. As noted above, section 10(g)(2) of the Bank Act requires the Finance Board to take into account a FHLBank member's performance under the CRA. *See* 12 U.S.C. 1430(g)(2); *supra* part I. Changes to the regulations implementing the CRA that took effect on January 1, 1996 generally shift the focus of CRA review and evaluation from process to performance.[1] As of January 1, 1996, the primary federal bank and thrift regulators began conducting revised CRA examinations for small banks (defined in the CRA regulation as insured depository institutions with less than $250 million in assets) that focus on lending, investment, and service to the community. This review process now more closely resembles the statutory review required for purposes of community support. Approximately 80 percent of FHLBank members are small banks reviewed currently under the revised CRA examination procedures. The revised CRA procedures will become applicable to the remainder of the FHLBank members that are subject to the CRA on July 1, 1997. To accommodate these changes, eliminate duplicative documentation, and reduce the amount of time spent by FHLBank members in preparing and the Finance Board in reviewing and processing community support submissions, the Finance Board intends to place greater reliance on a member's CRA evaluation. To streamline the review process, proposed § 936.2(c)(1) requires a member subject to the CRA to submit the portion of the public disclosure section of the most recent CRA evaluation provided by the member's appropriate federal financial supervisory agency that contains its CRA rating and the date of the CRA evaluation. For consistency, under § 936.1(j) of the proposed rule, the term ''appropriate federal financial supervisory agency'' has the same meaning as in the CRA. *See* 12 U.S.C. 2902(1).

Under section 10(g)(2) of the Bank Act, the Finance Board also must consider a FHLBank member's record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2); supra part I. This statutory factor will be applied to *every* FHLBank member under the proposed rule. The Finance Board is revising the meaning of ''first-time homebuyer'' in § 936.1(m) of the proposed rule to make it consistent with the definition of that term in affordable housing statutes.[2] To minimize the burden on FHLBank members and the Finance Board, proposed § 936.2(c)(2) requires a member to provide a brief description of its record of lending, or of the assistance it provides, to first-time homebuyers on a Finance Board Community Support Statement Form executed by the member's board of directors or by an individual duly authorized to act on behalf of the member. The information required by the Community Support Statement Form, which is included at Appendix A, is discussed in detail below.

3. Public Comment Process

Unlike the current rule, which imposes a limited comment acceptance period, § 936.2(d) of the proposed rule permits members of the public to submit comments concerning a member's community support performance to the Finance Board at any time. To encourage the submission of comments, proposed § 936.2(d)(1) retains the current regulatory requirement that the FHLBanks notify interested parties of the members selected for community support review. The Finance Board will consider all public comments it has received concerning a selected member in conducting its community support review of that member.

B. Community Support Standards

Proposed § 936.3 establishes the community support standards a FHLBank member must meet in order to maintain access to long-term advances, and the review criteria the Finance Board must apply in evaluating a member's community support performance. The Finance Board proposes to include standards and criteria for the two mandatory statutory factors—a CRA factor and a first-time homebuyer factor. The Finance Board requests comments on whether the regulation should establish standards and criteria for factors other than those required by statute, such as violations of fair housing, equal credit opportunity, or other laws that prohibit discrimination in lending. Under the current rule, members must submit information concerning such violations as part of their statements.

Under the proposed rule, a FHLBank member that is subject to the CRA will satisfy the statutory and regulatory community support requirements if it meets the performance standards for both the CRA and first-time homebuyer factors, and a FHLBank member that is not subject to the CRA will satisfy the statutory and regulatory community support requirements if it meets the performance standard for the first-time homebuyer factor.

1. CRA Factor

Section 936.3(b) establishes CRA performance standards for FHLBank members that are subject to the requirements of the CRA. Under the proposed rule, a member will be deemed to meet the CRA performance

[1] *See* 12 CFR parts 25 (Office of the Comptroller of the Currency), 228 (Board of Governors of the Federal Reserve System), 391 (Federal Deposit Insurance Corporation), and 563e (Office of Thrift Supervision).

[2] *See, e.g.,* 42 U.S.C. 12713(b)(2), (3) (standards established by the Cranston-Gonzalez National Affordable Housing Act that must be used to determine eligibility under any federal program to assist first-time homebuyers); 12 U.S.C. 1701x(d)(10)(H), (M) (U.S. Department of Housing and Urban Development's assistance to low- and moderate-income housing program); 42 U.S.C. 1472(h)(12)(B), (C) (U.S. Department of Agriculture's program to provide loans for housing and buildings on adequate farms).

standard if the rating in the member's most recent federal CRA evaluation is ''Outstanding'' or ''Satisfactory.'' If the rating in a member's most recent federal CRA evaluation is ''Needs to Improve,'' the Finance Board will place the member on probation for a one-year period. During the probationary period, the member will be eligible to receive long-term advances. If the member's federal CRA rating does not improve before the probationary period ends, the Finance Board will restrict the member's access to long term advances. If the rating in a member's most recent federal CRA evaluation is ''Substantial Noncompliance,'' the Finance Board will immediately restrict the member's access to long-term advances.

2. First-Time Homebuyer Factor

Section 936.3(c) establishes first-time homebuyer standards for all FHLBank members. This is consistent with the goals of the National Homeownership Strategy and the Finance Board's commitments under its National Partners For Homeownership Partnership Agreement. Under the proposed rule, a member may demonstrate compliance with the first-time homebuyer standards in several ways. First, a member that demonstrates to the satisfaction of the Finance Board that it has an established record of lending to first-time homebuyers will be deemed to meet the first-time homebuyer standard. In order to demonstrate this aspect of first-time homebuyer performance, part II(A) of the Community Support Statement Form asks a member to provide the following information: (1) the number of mortgage loans it has made to first-time homebuyers; (2) the dollar amount of the mortgage loans it has made to first-time homebuyers; (3) loans made to first-time homebuyers as a percentage of all mortgage loans it has made; and (4) dollars loaned to first-time homebuyers as a percentage of all mortgage dollars it has loaned. The Finance Board considered establishing bright-line numerical thresholds for first-time homebuyer lending. However, due to the great variety of FHLBank members in terms of size, location, and mission, application of such thresholds might be too harsh in many instances. To take into account the diversity of FHLBank System membership, the Finance Board is proposing to evaluate a member's record of lending to first-time homebuyers on a case-by-case basis. The Finance Board requests comments as to whether the regulation should include specific numerical review criteria or other criteria to evaluate a member's record of lending to first-time homebuyers.

Alternatively, a member may satisfy the first-time homebuyer standard by demonstrating to the satisfaction of the Finance Board that it has a program under which it actively seeks to lend to first-time homebuyers or to assist potential first-time homebuyers to qualify for mortgage loans. In order to demonstrate this alternative, part II(B) of the Community Support Statement Form asks a member to indicate whether it offers, or participates in, special loan products, financial services, programs, or activities that benefit, serve, or are targeted to, first-time homebuyers. Qualifying activities include special credit products that provide flexible underwriting or qualifying criteria; participation in loan consortia for first-time homebuyer loans; participation in federal, state, or local government homeownership or other related programs like Federal Housing Administration or Veterans Administration mortgage loan programs; cooperation with community or nonprofit groups or national organizations like the Federal National Mortgage Association (also known as Fannie Mae) or the Federal Home Loan Mortgage Corporation (also known as Freddie Mac); counseling programs or other homeownership education activities; marketing plans and related outreach programs; or technical assistance to organizations that assist first-time homebuyers. A member may, but is not required to, attach to the Community Support Statement Form a one-page description of other first-time homebuyer programs or activities in which it is involved. In the one-page attachment, a member may also describe factors that affect its ability to assist first-time homebuyers. The Finance Board solicits comments on whether the regulation or Community Support Statement Form should include any additional or different criteria for evaluating the assistance a member provides to first-time homebuyers or potential first-time homebuyers.

Finally, a member may satisfy the first-time homebuyer standard if it demonstrates to the satisfaction of the Finance Board that it meets a combination of the elements discussed above.

If the Finance Board deems the evidence of first-time homebuyer performance provided by the member to be unsatisfactory, the Finance Board will place the member on probation for a one-year period. During the probationary period, the member will be eligible to receive long-term advances. If the member does not satisfy the first-time homebuyer performance standard before the probationary period ends, the Finance Board will restrict the member's access to long-term advances. The Finance Board will immediately restrict a member's access to long-term advances if the member fails to provide any evidence of its record of lending to first-time homebuyers.

C. Decisions on Community Support Statements

Proposed § 936.4 sets forth the procedures for review of statements by the Finance Board. To ensure expeditious action on statements, proposed § 936.4(a) requires the Finance Board to act on a statement within 75 calendar days of the date it deems the statement complete. To make certain that the time period provided for review is not unduly restrictive, the proposed rule deems a statement complete, thus triggering the 75-day time period, only after the Finance Board has obtained all of the information required by this part and any other information it considers necessary to process the statement. The proposed rule also permits the Finance Board to stop the 75-day time period if it determines during the review process and notifies the member in writing that additional information is necessary to process the statement. The Finance Board must restart the 75-day time period where it stopped upon receiving the additional required information. The Finance Board will have an additional 10 calendar days to process a statement if it receives additional information on or after the seventieth day of the 75-day time period.

Proposed § 936.4(b) requires the Finance Board to notify a member and the appropriate FHLBank in writing of its determination regarding the member's statement. The notice will identify specifically the reasons for the Finance Board's determination.

D. Restrictions On Access to Long-Term Advances

1. Imposing Restrictions

Proposed § 936.5 sets forth the procedures by which the Finance Board may restrict a FHLBank member's access to long-term advances. Consistent with the current rule, for purposes of this part the term ''long-term advance'' means an advance with a term to maturity greater than one year. Under § 936.5(a) of the proposed rule, the Finance Board will restrict a FHLBank member's access to long-term advances if it determines that the member:

(1) has not complied with the requirements of part 936;

(2) has submitted a statement that was not approved by the Finance Board;

(3) has not received a CRA rating of ''Outstanding'' or ''Satisfactory'' before the end of the one-year probationary period described in § 936.3(b)(2) of the proposed rule; or

(4) has not provided first-time homebuyer evidence satisfactory to the Finance Board before the end of the one-year probationary period described in § 936.3(c)(2) of the proposed rule.

Under proposed § 936.5(b), the Finance Board must promptly notify a member and the appropriate FHLBank of its determination to restrict the member's access to long-term advances. The Finance Board must send the notice to the member by certified mail, return receipt requested, and to the FHLBank by regular mail. Proposed § 936.5(c) provides that a restriction on access to long-term advances will become effective automatically on the date the decision notices are mailed.

2. Removing Restrictions

Section 936.5(d) of the proposed rule sets forth the bases for removing restrictions on access to long-term advances imposed by the Finance Board under this part. The Finance Board, in its sole discretion, may remove a restriction on a member's access to long-term advances under two circumstances. First, the Finance Board may remove a restriction if it determines that application of the restriction may adversely affect the safety and soundness of the member. Second, the Finance Board may remove a restriction if it determines that the member subsequently has complied with the requirements of part 936. Since the primary purpose for imposing a restriction on access to long-term advances is to encourage FHLBank members to comply with the community support regulation, the Finance Board believes it should remove such restrictions as soon as the member can demonstrate that it is in full compliance with the regulatory requirements. Therefore, the Finance Board proposes to eliminate the mandatory 180-day waiting period provided in the current rule.

Under the proposed rule, a member may submit a detailed written request to the Finance Board to remove a restriction on access to long-term advances. If a reinstatement request is based on safety and soundness concerns, the request must include a statement from the member's primary federal regulator that application of the restriction may adversely affect the safety and soundness of the member. Proposed § 936.5(d)(3) requires the Finance Board to notify a member and the appropriate FHLBank of its decision to remove a restriction within 30 calendar days of receipt of the member's request. The Finance Board must send the notice to the member by certified mail, return receipt requested, and to the FHLBank by regular mail. The Finance Board's decision to remove a restriction will become effective automatically on the date the decision notices are mailed.

3. Effect of Restrictions on the Affordable Housing and Community Investment Programs

Under proposed § 936.5(e), if the Finance Board has restricted a member's access to long-term advances under this part, the member will not be eligible to participate in either the Affordable Housing Program (AHP) or the Community Investment Program (CIP). The Finance Board believes that it should not offer a member the opportunity to participate in community lending programs subsidized by the FHLBanks until the member has demonstrated a willingness to use its own resources to meet community lending needs. Accordingly, unlike the current rule, the Finance Board is proposing to limit participation in the AHP and CIP only to members that have met the statutory and regulatory community support requirements. The Finance Board specifically asks for comments on this proposed change.

E. FHLBank Community Support Programs

Under proposed § 936.6(a) and (b), each FHLBank must consult with its Advisory Council to develop and implement initiatives to increase community-oriented mortgage lending and affordable housing finance activities. For purposes of the proposed regulation, the term ''community-oriented mortgage lending'' has the same meaning as in section 10(i)(2) of the Bank Act. *See* 12 U.S.C. 1430(i)(2). Consistent with current practice, the proposed rule also requires each FHLBank to establish and maintain a community support program that: (1) provides technical assistance to members; (2) promotes and expands community-oriented mortgage lending and affordable housing finance; (3) identifies opportunities for members to expand financial and credit services in underserved neighborhoods and communities; and (4) encourages members to increase their community-oriented mortgage lending and affordable housing finance activities through the use of monetary and nonmonetary incentives. Examples of appropriate incentives include discounts or preferred terms on advances to members or awards or technical assistance to nonprofit housing developers or community groups that have outstanding records of participation in community-oriented mortgage lending and affordable housing finance activities. These examples are meant to be illustrative, not exclusive.

To motivate FHLBank members to meet the community support requirements, § 936.5(c) of the proposed rule requires each FHLBank to provide a yearly report to its members that identifies AHP, CIP, and other FHLBank activities, and summarizes community-oriented mortgage lending and affordable housing finance activities undertaken by members, nonprofit housing developers, community groups, or other entities in the FHLBank district, that may provide opportunities for a member to meet the community support requirements. To reduce the regulatory burden imposed on the FHLBanks, the Finance Board has decided to cut the reporting frequency in half.

F. Reports

Section 10(j)(11) of the Bank Act requires each FHLBank Advisory Council to submit annually a report to the Finance Board analyzing the low-income housing activity of its FHLBank. *See* 12 U.S.C. 1430(j)(11). Since the concept of community support includes initiatives related to affordable housing, the Finance Board believes that the annual report each Advisory Council submits should include an analysis of the community support program and activities of its FHLBank. The Finance Board has included this requirement in § 936.7 of the proposed rule.

Pursuant to section 10(j)(12) of the Bank Act, the Finance Board annually must prepare and submit to Congress a report on FHLBank support of, and use of advances for, low-income housing and community development. *See* 12 U.S.C. 1430(j)(12)(A). The Finance Board's annual report to Congress must include the annual Advisory Council reports to the Finance Board on the low income housing activity of the FHLBanks. *Id.* 1430(j)(12)(B). The Finance Board intends to include also in its annual report to Congress an analysis of the FHLBanks community support programs and activities.

III. Regulatory Flexibility Act

The proposed rule implements statutory requirements binding on all FHLBank members, regardless of their size. The Finance Board is not at liberty to make adjustments in those

requirements to accommodate small entities. The Finance Board has not imposed any additional regulatory requirements that will have a disproportionate impact on small entities. By streamlining the regulatory requirements, the Finance Board has, to the maximum extent possible, reduced the costs FHLBank members, the FHLBanks, and Finance Board will incur to produce, review, and process the submissions the Finance Board requires in determining whether a FHLBank member has complied with the statutory and regulatory community support requirements. Thus, in accordance with the provisions of the Regulatory Flexibility Act, the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

IV. Paperwork Reduction Act

The Finance Board has submitted to the Office of Management and Budget (OMB) an analysis of the collection of information contained in §§ 936.2 through 936.7 of the proposed rule, described more fully in part II of the *Supplementary Information*. The Finance Board uses the information collection to determine whether FHLBank members satisfy the statutory and regulatory community support requirements. *See* 12 U.S.C. 1430(g); 12 CFR part 936. Only FHLBank members that meet these standards may maintain access to long-term FHLBank advances. *See* 12 U.S.C. 1430(g). Responses are required to obtain or retain a benefit. *See id.* The Finance Board will maintain the confidentiality of information obtained from respondents pursuant to the collection of information as required by applicable statute, regulation, and agency policy. Books or records relating to this collection of information must be retained as provided in the regulation.

Likely respondents and/or recordkeepers will be institutions that are members of a FHLBank and the Finance Board. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. *See* 44 U.S.C. 3512(a).

The estimated annual reporting and recordkeeping hour burden is:

a. Number of respondents.....3000
b. Total annual responses.....3000
Percentage of these responses collected electronically 0
c. Total annual hours requested 4010
d. Current OMB inventory.....20475
e. Difference 16465

The estimated annual reporting and recordkeeping cost burden is:

a. Total annualized capital/startup costs.....0
b. Total annual costs (O&M).....0
c. Total annualized cost requested $155,800.62
d. Current OMB inventory.....0
e. Difference $155,800.62

The Finance Board will accept written comments concerning the accuracy of the burden estimates and suggestions for reducing the burden at the address listed above.

The Finance Board has submitted the collection of information to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995, *codified at* 44 U.S.C. 3507(d). Comments regarding the proposed collection of information may be submitted in writing to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, D.C. 20503 by January 27, 1997.

List of Subjects in 12 CFR Part 936

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

Accordingly, the Finance Board hereby proposes to revise title 12, chapter IX, part 936, of the Code of Federal Regulations, to read as follows:

PART 936—COMMUNITY SUPPORT REQUIREMENTS

Sec.
936.1 Definitions.
936.2 Community support requirement.
936.3 Community support standards.
936.4 Decision on community support statements.
936.5 Restrictions on access to long-term advances.
936.6 Bank community support programs.
936.7 Reports.

Appendix A to Part 936—Community Support Statement Form

Authority: 12 U.S.C. 1422a(a)(3)(B), 1422b(a)(1), 1429, and 1430.

§ 936.1 Definitions.

For purposes of this part:

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

(b) *Advance* means a loan from a Bank that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower's obligation; and

(3) Fully secured by collateral in accordance with the Act and part 935 of this chapter.

(c) *Advisory Council* means the Advisory Council each Bank is required to establish pursuant to section 10(j)(11) of the Act and part 960 of this chapter.

(d) *Affordable Housing Program* or *AHP* means the program each Bank is required to establish pursuant to section 10(j) of the Act and part 960 of this chapter.

(e) *Appropriate federal financial supervisory agency* means the Office of the Comptroller of the Currency for national banks; the Board of Governors of the Federal Reserve System for state chartered banks that are members of the Federal Reserve System and bank holding companies; the Federal Deposit Insurance Corporation for state chartered banks and savings banks that are not members of the Federal Reserve System and the deposits of which are insured by the Federal Deposit Insurance Corporation; and the Office of Thrift Supervision for savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation and savings and loan holding companies.

(f) *Bank* or *Banks* means a Federal Home Loan Bank or the Federal Home Loan Banks.

(g) *Community Investment Program* or *CIP* means the program each Bank is required to establish pursuant to section 10(i) of the Act.

(h) *Community-oriented mortgage lending* has the same meaning as in section 10(i)(2) of the Act.

(i) *CRA* means the Community Reinvestment Act of 1977, as amended (12 U.S.C. 2901, *et seq.*).

(j) *CRA evaluation* means the public disclosure portion of the CRA performance evaluation provided by a member's appropriate Federal financial supervisory agency.

(k) *Finance Board* means the agency established as the Federal Housing Finance Board.

(l) *First-time homebuyer* means:

(1) An individual and his or her spouse, if any, who has had no present ownership interest in a principal residence during the three-year period prior to purchase of a principal residence.

(2) A displaced homemaker who, except for owning a residence with his or her spouse or residing in a residence owned by his or her spouse, meets the requirements of paragraph (l)(1) of this section. For purposes of this paragraph (l)(2), the term *displaced homemaker* means an adult who has not worked full-time, full-year in the labor force for a number of years and, during that period, worked primarily without remuneration to care for a home and family, and currently is unemployed or

underemployed and is experiencing difficulty in obtaining or upgrading employment.

(3) A single parent who, except for owning a residence with his or her spouse or residing in a residence owned by his or her spouse, meets the requirements of paragraph (l)(1) of this section. For purposes of this paragraph (l)(3), the term *single parent* means an individual who is unmarried or legally separated from a spouse and has custody or joint custody of one or more minor children or is pregnant.

(m) *Long-term advance* means an advance with a term to maturity greater than one year.

(n) *Member* means an institution admitted to membership and owning capital stock in a Bank.

§ 936.2 Community support requirement.

(a) *Selection for community support review.* The Finance Board shall select a member for community support review approximately once every two years.

(b) *Notice.*—(1) *By the Finance Board.* The Finance Board concurrently shall:

(i) Notify each Bank of the members within its district that are required to submit community support statements during the calendar quarter; and

(ii) Publish a notice in the Federal Register that includes the name and address of each member required to submit a community support statement during the calendar quarter, and the deadline for submission of the community support statement to the Finance Board. The deadline for submission of a community support statement shall be no earlier than 45 calendar days after the date of publication of the Federal Register notice.

(2) *By the Banks.* Within 15 calendar days of the date of publication of the Federal Register notice required by paragraph (b)(1)(ii) of this section, a Bank shall provide written notice to each member within its district that is named in the Federal Register notice, that the member is required to submit a community support statement to the Finance Board by the deadline stated in the Federal Register notice.

(c) *Required documents.* Each member selected for community support review shall submit a community support statement to the Finance Board that includes the following:

(1) *CRA evaluation.* For members subject to the CRA, the page or pages of the most recent CRA evaluation that contain the member's CRA rating and the date of the CRA evaluation.

(2) *First-time homebuyer certification.* For all members, a completed Community Support Statement Form executed by the member's board of directors or by an individual duly authorized to act on behalf of the member's board of directors.

(d) *Public comments.*—(1) *Notice.* Within 15 calendar days of the date of publication of the Federal Register notice required by paragraph (b)(1)(ii) of this section, a Bank shall provide written notice to its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the name and address of each member within its district that is required to submit a community support statement during the calendar quarter.

(2) *Review.* In reviewing a member for community support, the Finance Board shall take into consideration any public comments it has received concerning the member.

§ 936.3 Community support standards.

(a) *Standards.* In reviewing a community support statement, the Finance Board shall take into account a member's performance under the CRA if the member is subject to the requirements of the CRA, and the member's record of lending to first-time homebuyers.

(b) *CRA factor.*—(1) *Adequate performance.* A member that is subject to the requirements of the CRA shall be deemed to meet the CRA standard if the rating in the member's most recent CRA evaluation is ''Outstanding'' or ''Satisfactory.''

(2) *Probationary performance.* A member that is subject to the requirements of the CRA shall be subject to a one-year probationary period if the rating in the member's most recent CRA evaluation is ''Needs to Improve.'' During the probationary period, the member will be eligible to receive long-term advances. If the member does not meet the CRA standard before the probationary period ends, the Finance Board shall restrict the member's access to long-term advances in accordance with § 936.5.

(3) *Inadequate performance.* A member's access to long-term advances shall be restricted in accordance with § 936.5 if the rating in the member's most recent CRA evaluation is ''Substantial Noncompliance.''

(c) *First-time homebuyer factor.* (1) *Adequate performance.* In determining whether a member meets the first-time homebuyer standard, the Finance Board shall consider a member's description of its efforts to assist first-time or potential first-time homebuyers or its explanation of factors that affect its ability to assist first-time or potential first-time homebuyers. A member shall be deemed to meet the first-time homebuyer standard if the member demonstrates to the satisfaction of the Finance Board that it:

(i) Has an established record of lending to first-time homebuyers;

(ii) Has a program whereby it actively seeks to lend to first-time homebuyers, including, but not limited to, the following:

(A) Flexible underwriting standards for first-time homebuyers;

(B) Participation in federal, state, or local government, or nationwide homeownership lending programs that serve first-time homebuyers; or

(C) Participation in loan consortia for first-time homebuyer loans; or

(iii) Has a program whereby it actively seeks to assist potential first-time homebuyers to qualify for mortgage loans, including, but not limited to, the following:

(A) Special counseling programs or other homeownership education activities that benefit first-time homebuyers;

(B) Marketing plans and related outreach programs targeted to first-time homebuyers; or

(C) Technical assistance to organizations that assist first-time homebuyers; or

(D) Participation with community or nonprofit groups that assist first-time homebuyers; or

(iv) Has any combination of the elements described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2) *Probationary performance.* If the evidence of first-time homebuyer performance is deemed to be unsatisfactory by the Finance Board, the member shall be subject to a one-year probationary period. During the probationary period, the member will be eligible to receive long-term advances. If the member does not meet the first-time homebuyer standard before the probationary period ends, the Finance Board shall restrict the member's access to long-term advances in accordance with § 936.5.

(3) *Inadequate performance.* A member's access to long-term advances shall be restricted in accordance with § 936.5 if the member provides no evidence of first-time homebuyer performance.

§ 936.4 Decision on community support statements.

(a) *Action on community support statements.* The Finance Board shall act on each community support statement in accordance with the requirements of § 936.3 within 75 calendar days of the date the Finance Board deems the

community support statement to be complete. The Finance Board shall deem a community support statement complete when it has obtained all of the information required by this part and any other information it deems necessary to process the community support statement. If the Finance Board determines during the review process that additional information is necessary to process the community support statement, the Finance Board may deem the community support statement incomplete and stop the 75-day time period by providing written notice to the member. When the Finance Board receives the additional information, it shall again deem the community support statement complete and resume the 75-day time period where it stopped. The Finance Board shall have 10 calendar days in addition to the 75-day time period to act on a community support statement if the Finance Board receives the additional information on or after the seventieth day of the 75-day time period.

(b) *Decision on community support statements.* The Finance Board shall provide written notice to the member and the member's Bank of its determination regarding the community support statement submitted by the member. The notice shall identify the reasons for the Finance Board's determination.

§ 936.5 Restrictions on access to long-term advances.

(a) *Requirement.* The Finance Board shall restrict a member's access to long-term advances if the member:

(1) Failed to comply with the requirements of this part;

(2) Submitted a community support statement that was not approved by the Finance Board;

(3) Did not receive a rating in a CRA evaluation of ''Outstanding'' or ''Satisfactory'' before the end of the one-year probationary period described in § 936.3(b)(2); or

(4) Failed to provide evidence satisfactory to the Finance Board of its first-time homebuyer performance before the end of the one-year probationary period described in § 936.3(c)(2).

(b) *Notice.* The Finance Board shall provide written notice to a member and the member's Bank of its determination to restrict the member's access to long-term advances, the member by certified mail, return receipt requested, and the member's Bank by regular mail.

(c) *Effective date.* Restrictions on access to long-term advances shall take effect on the date the notices required under paragraph (b) of this section are mailed.

(d) *Removing restrictions.* The Finance Board may remove restrictions on a member's access to long-term advances imposed under this section:

(1) If the Finance Board determines that application of the restriction may adversely affect the safety and soundness of the member. A member may submit a written request to the Finance Board to remove a restriction on access to long-term advances under this paragraph (d)(1). A written request submitted under this paragraph (d)(1) shall contain a clear and concise statement of the basis for the request and a statement from the member's appropriate federal financial supervisory agency that application of the restriction may adversely affect the safety and soundness of the member.

(2) If the Finance Board determines that the member subsequently has complied with the requirements of this part. A member may submit a written request to the Finance Board to remove a restriction on access to long-term advances under this paragraph (d)(2). A written request submitted under this paragraph (d)(2) shall state with specificity how the member has complied with the requirements of this part.

(3) Within 30 calendar days of receipt of a request submitted by a member under paragraph (d)(1) or (d)(2) of this section, the Finance Board shall provide written notice to the member and the member's Bank of its determination, the member by certified mail, return receipt requested, and the member's Bank by regular mail. The Finance Board's determination shall take effect on the date the notices are mailed.

(e) AHP and CIP. A member that is subject to a restriction on access to long-term advances under this part shall not be eligible to participate in the Affordable Housing Program or the Community Investment Program.

§ 936.6 Bank community support programs.

(a) *Requirement.* Consistent with the safe and sound operation of the Bank, each Bank shall establish and maintain a community support program. A Bank's community support program should:

(1) Provide technical assistance to members;

(2) Promote and expand community-oriented mortgage lending and affordable housing finance;

(3) Identify opportunities for members to expand financial and credit services in underserved neighborhoods and communities; and

(4) Encourage members to increase their community-oriented mortgage lending and affordable housing finance activities by providing incentives such as awards or technical assistance to nonprofit housing developers or community groups with outstanding records of participation in community-oriented lending or affordable housing finance partnerships with members.

(b) *Advisory Councils.* A Bank shall consult with its Advisory Council to develop and implement initiatives to increase community-oriented mortgage lending and affordable housing finance activities in the Bank district.

(c) *Notice.* A Bank shall provide annually to each of its members a written notice:

(1) Identifying AHP, CIP, and other Bank activities that may provide opportunities for a member to meet the community support requirements; and

(2) Summarizing community-oriented mortgage lending and affordable housing finance activities undertaken by members, nonprofit housing developers, community groups, or other entities in the Bank's district, that may provide opportunities for a member to meet the community support requirements.

§ 936.7 Reports.

The annual report Advisory Councils are required to submit to the Finance Board pursuant to section 10(j)(11) of the Act shall include an analysis of the appropriate Bank's community support program and activities.

BILLING CODE 6725–01–U–AA

Appendix A to Part 936—Community Support Statement Form

FEDERAL HOUSING FINANCE BOARD
COMMUNITY SUPPORT STATEMENT

(Instructions on Reverse)

Name of Institution: _____

Address: _____

City: _____ **State:** _____ **Zip Code:** _____

Docket Number: _____

Contact Person: (Mr./Ms.) _____ **Title:** _____

Phone Number: (___) _____ **Fax Number:** (___) _____

I. CRA Factor

Most recent federal CRA Rating: _____ CRA Evaluation Date: _____

[Attach the page(s) of your institution's most recent federal CRA evaluation showing the rating and evaluation date.]

II. First-time Homebuyer Factor

A. Complete the following four questions using data for the past year.

1.	Number of mortgage loans made to first-time homebuyers	_____
2.	Dollar amount of loans made to first-time homebuyers	$_____
3.	Loans made to first-time homebuyers as a percentage of all mortgage loans	_____%
4.	Dollars loaned to first-time homebuyers as a percentage of all mortgage dollars loaned	_____%

B. Check as many boxes as appropriate:

1.	In-house first-time homebuyer program *(e.g.* marketing plans and outreach programs)	_____
2.	Other in-house lending products that serve first-time homebuyers	_____
3.	Flexible underwriting standards for first-time homebuyers	_____
4.	Participate in nationwide first-time homebuyer programs (Fannie Mae, Freddie Mac, etc.)	_____
5.	Participate in federal government programs that serve first-time homebuyers (FHA, VA, etc.)	_____
6.	Participate in state or local government programs targeted to first-time homebuyers	_____
7.	Participate with community groups or organizations that assist first-time homebuyers	_____
8.	Participate in loan consortia that make loans to first-time homebuyers	_____
9.	Special counseling or homeownership education benefiting first-time homebuyers	_____
10.	Technical assistance to organizations that assist first-time homebuyers	_____
11.	Other (see instructions for Part II)	_____

III. Certify that information in this Community Support Statement and the attachments is correct to the best of your knowledge by filling out the information below.

Signed _____ Title _____

Print Name _____ Date _____

(over)

FHFB Form 96-01 OMB Number 3069-0003 Expires xx-xx-xx

BILLING CODE 6725–01–C

Community Support Statement Instructions

Purpose: To maintain continued access to long-term advances, section 10(g) of the Federal Home Loan Bank Act [12 U.S.C. § 1430(g)] requires the Federal Housing Finance Board (Finance Board) to take into account a Federal Home Loan Bank member's performance under the Company Reinvestment Act of 1977 [12 U.S.C. § 2901 et seq.] (CRA) and its record of lending to first-time homebuyers.

Part I (CRA Factor): All members subject to CRA must complete this section. Indicate your institution's most recent federal CRA evaluation rating and date, and attach to this form the page(s) of that evaluation showing the rating and date. Do not attach the entire CRA evaluation. [If your institution is not subject to CRA, indicate this in the CRA evaluation field on this form.]

If a member's most recent federal CRA evaluation is rated ''Needs to Improve,'' the Finance Board will place that member on a one-year probation, during which it will retain access to long-term advances. If the member does not receive an improved CRA rating before the end of the one-year probation period, its access to long-term advances will be restricted.

If a member's most recent federal CRA rating is ''Substantial Non-compliance,'' the Finance Board immediately will take action to restrict that member's access to long term advances. The restriction will remain in effect until the member's rating improves. (For purposes of Community Support review, the term ''long-term advances'' means advances with a term to maturity greater than one year).

Part II (First-time Homebuyer Factor): All members must complete this section. An institution may demonstrate assistance to first-time homebuyers in many ways, but the Finance Board is particularly interested in actual loans, products, and services to first-time homebuyers. Although completion of both Section A and Section B is requested, you may satisfy the first-time homebuyer factor by demonstrating adequate lending performance (Section A), by demonstrating participation in programs that assist first-time homebuyers (Section B), or by a combination of both factors. If the information requested in Part II is inadequate to reflect your institution's compliance with the first-time homebuyer factor, you may attach a one-page description of your efforts to assist first-time homebuyers and/or an explanation of factors affecting your institution's ability to assist first-time homebuyers. No other information beyond this one-page description will be considered.

If a member does not submit evidence of assistance to first-time homebuyers, the Finance Board immediately will take action to restrict that member's access to long term advances. The restriction will remain in effect until the member submits information satisfactory to the Finance Board. (For purposes of Community Support review, the term ''long-term advances'' means advances with a maturity greater than one year).

Part III (Certification): All members must complete this section. Your institution's board of directors, or an individual duly authorized to act on behalf of the board of directors, must certify that the information in this Community Support Statement and the attachments is correct to the best of its knowledge.

Assistance: Your Federal Home Loan Bank has a Community Support Program that can assist you in preparing your Community Support Statement.

Once you have completed this form, please submit it, along with all attachments, to the Federal Housing Finance Board, Office of Supervision, 1777 F Street, N.W., Washington, D.C. 2006.

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

Bruce A. Morrison,

Chairperson.

[FR Doc. 96–29747 Filed 11–26–96; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AEA–13]

Proposed Amendment to Class E Airspace; Galax, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Galax, VA. The Development of a new Standard Instrument Approach Procedure (SIAP) at Twin County Airport based on the Global Positioning System has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

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

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 96–AEA–13, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan Jr., Airspace Specialist, Operations Branch, AEA–530 F.A.A. Eastern Region, Federal Building #111, John F, Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AEA–13.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel

concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Galax, VA. A GPS RWY 36 SIAP has been developed for the Twin County Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

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

* * * * *

AEA VA E5—Galax, VA [Revised]

Twin County Airport, VA
(Lat. 36°45′58″N, long. 80°04′25″W)
Pulaski VORTAC
(Lat. 37°05′16″N, long. 80°42′46″W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Twin County Airport and within 4 miles each side of the Pulaski VORTAC 194° radial extending from the 6.3-mile radius to 7 miles south of the VORTAC and within 4 miles each side of the 359° bearing to the airport extending from the 6.3-mile radius to 12 miles south of the airport.

* * * * *

Issued in Jamaica, New York, on November 18, 1996.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96–30208 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AEA–12]

Proposed Amendment to Class E Airspace; Hudson, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Hudson, NY. The development of a new Standard Instrument Approach Procedure (SIAP) at Columbia County Airport based on the Global Positioning System has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 31, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 96–AEA–12, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AEA–12.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel

concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Hudson, NY. A GPS RWY 21 SIAP has been developed for the Columbia County Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

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

* * * * *

AEA NY—E5 Hudson, NY [Revised]

Columbia County Airport, NY
(Lat. 36°45′58″N, long. 80°04′25″W)
Philmont NDB
(Lat. 42°15′10″N, long. 73°43′23″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Columbia County Airport and within a 14.8-mile radius of Columbia County Airport extending clockwise from a 025° bearing to a 180° bearing from the airport and within 3.1 miles each side of a 194° bearing from the Philmont NDB extending from the 7-mile radius to 10 miles south of the NDB and within 7 miles each side of the 012° bearing from the airport extending from the 7-mile radius to 17 miles north of the airport, excluding the portion that coincides with the Albany, NY 700 foot Class E airspace area.

* * * * *

Issued in Jamaica, New York, on November 18, 1996.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96–30209 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airpace Docket No. 96–ASO–32]

Proposed Amendment to Class E Airspace; Tampa FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Tampa, FL. A GPS RWY 16 Standard Instrument Approach Procedure (SIAP) has been developed for Clearwater Air Park, Clearwater, FL. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at Clearwater Air Park. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

DATES: Comments must be received on or before January 7, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–32, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt for their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ASO–32.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for

comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify Class E airspace at Tampa, FL. A GPS RWY 16 Standard Instrument Approach Procedure (SIAP) has been developed for cleawrater Air Park, Clearwater, FL. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at Clearwater Air Park. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

ASO FL E5 Tampa, FL [Revised]

Tampa International Airport, FL
(Lat. 27°58′32″N. long. 82°31′59″W)
St. Petersburg-Clearwater International Airport
(Lat. 27°54′39″N. long. 82°41′14″W)
MacDill AFB
(Lat. 27°50′57″N. long. 82°31′17″W)
Peter O Knight Airport
(Lat. 27°54′56″N. long. 82°26′57″W)
Albert-Whitted Airport
(Lat. 27°45′54″N. long. 82°37′38″W)
Vandenberg Airport
(Lat. 27°00′33″N. long. 82°20′59″W)
Clearwater Air Park
(Lat. 27°58′35″N. long. 82°45′31″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Tampa International Airport, St. Petersburg-Clearwater International Airport, MacDill AFB and Peter O Knight Airport, and within a 6.3-mile radius of Albert-Whitted Airport, Vandenberg Airport and Clearwater Air Park, excluding that airspace within the Lakeland, FL, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on November 14, 1996.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–30211 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASO–33]

Proposed Establishment of Class E Airspace; Milton, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Milton, FL. A GPS RWY 36 Standard Instrument Approach Procedure (SIAP) has been developed for Peter Prince Field Airport. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at Peter Prince Field Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

DATES: Comments must be received on or before January 7, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–33, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following

statement is made: ''Comments to Airspace Docket No. 96–ASO–33.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Milton, FL. A GPS RWY 36 Standard Instrument Approach Procedure (SIAP) has been developed for Peter Prince Field Airport. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at Peter Prince Field Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

ASO FL E5—Milton, FL [New]

Peter Prince Field Airport, FL
(Lat. 30°38′15″N, long. 86°59′37″W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Peter Prince Field Airport.

* * * * *

Issued in College Park, Georgia, on November 14, 1996.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–30212 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANE–22]

Establishment of Class E Airspace; Oxford, ME; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction.

SUMMARY: This action corrects the longitude and latitude coordinates for Oxford County Regional Airport (K81B) in the description of new Class E airspace established to provide for adequate controlled airspace for those aircraft using the new GPS RWY 33 Instrument Approach Procedure.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, Operations Branch, ANE–530.6, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7536; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION:

History

On August 19, 1996, the FAA published in the Federal Register (61 FR 42785) a direct final rule establishing Class E airspace at Oxford, ME. That action was necessary to provide adequate controlled airspace for aircraft using the new GPS RWY 33 Instrument Approach Procedure to Oxford County Regional Airport (K81B). The FAA uses the direct final rulemaking procedure for non-controversial rules when the FAA believes that no adverse public comment will be received. On October 28, 1996, the FAA published in the Federal Register (61 FR 55563) confirmation that the FAA received no adverse comments to this direct final rule, and notice that the original effective date of the rule was extended to December 5, 1996, to allow additional time to coordinate the establishment of the new instrument approach procedure with other agencies. As a result of that coordination, the FAA finds that this action is necessary to correct the longitude and latitude coordinates for the Oxford County Regional Airport that appear in the description of the new Class E airspace at Oxford, ME.

Correction to the Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates of Oxford County Regional Airport contained in the description of Class E airspace at Oxford, ME, as published in the Federal Register on August 19, 1996 (61 FR 42785), Federal Register document 96–

21092; page 42786, column 1; and the description in FAA Order 7400.9D, dated September 16, 1996, which is incorporated by reference in 14 CFR 71.1; are corrected as follows:

§ 71.71 [Corrected]

Subpart E—Class Airspace

* * * * *

ANE ME E5—Oxford, ME [Corrected]

Oxford County Regional Airport

By removing ''(lat. 44°09′27″N, long. 70°28′53″W)'' and substituting ''(lat. 44°09′23″, long. 70°28′48″W).''

* * * * *

Issued in Burlington, MA on November 19, 1996.

John J. Boyce,

Assistant Manager, Air Traffic Division, New England Region.

[FR Doc. 96–30215 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket 154, NY22–1; FRL–5652–5]

Approval and Promulgation of Air Quality Implementation Plans; New York: Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional interim rule.

SUMMARY: EPA is proposing a conditional interim approval of a State Implementation Plan (SIP) revision submitted by the State of New York. This revision establishes and requires the implementation of an enhanced inspection and maintenance (I/M) program in the counties of the Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk (except Fisher's Island), and Westchester Counties. The intended effect of this action is to propose conditional interim approval of the I/M program proposed by the State, based upon the State's good faith estimate, which asserts that the State's network design emission reduction credits are appropriate and the revision is otherwise in compliance with the Clean Air Act (CAA). This action is being taken under section 348 of the National Highway System Designation Act of 1995 (NHSDA) and section 110 of the CAA. EPA is proposing a conditional interim approval because the State's SIP revision is deficient with respect to the following requirements: test procedures; standards and equipment; waiver expenditure requirements; and performance standard modeling.

If the State commits within 30 days of the publication of this proposed conditional interim approval to correct the major deficiencies by dates certain as described below, then this proposed conditional interim approval shall expire pursuant to the NHSDA and section 110 of the CAA on the earlier of 18 months from final interim approval, or on the date EPA takes final action on the state's full I/M SIP. In the event that the State fails to submit a commitment to correct all of the major deficiencies within 30 days after the publication of this proposed conditional interim approval, then EPA is proposing in the alternative to disapprove the SIP revision. If the state does not make a timely commitment but the conditions are not met by the specified date within one year, EPA proposed that this proposed conditional interim approval will convert to a final disapproval. If the conditional interm approval is converted to a disapproval, EPA will notify the State by letter that the conditions have not been met and that the conditional interim approval has been converted to a disapproval.

DATES: Comments must be received on or before December 27, 1996.

ADDRESSES: Written comments on this proposed action may be addressed to: Regional Administrator, Attention: Air Programs Branch, Division of Environmental Planning and Protection, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866. Copies of the documents relevant to this action are available for public inspection during normal business hours at the address shown above.

Electronic Availability: This document and EPA's technical support document are available at Region 2's site on the Internet's World Wide Web at: http://www.epa.gov/region02/ air/sip/.

FOR FURTHER INFORMATION CONTACT: Rudolph K. Kapichak, Mobile Source Team Leader, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Background

A. Impact of the National Highway System Designation Act on the Design and Implementation of Enhanced Inspection and Maintenance Programs Under the Clean Air Act

The National Highway System Designation Act of 1995 (NHSDA) establishes two key changes to the enhanced I/M Rule requirements previously developed by EPA. Under the NHSDA, EPA cannot require states to adopt or implement centralized, test-only IM240 enhanced vehicle inspection and maintenance programs as a means of compliance with section 182, 184 or 187 of the CAA. Also under the NHSDA, EPA cannot disapprove a state SIP revision, nor apply an automatic discount to a state SIP revision under section 182, 184 or 187 of the CAA, because the I/M program in such plan revision is decentralized, or a test-and-repair program. Accordingly, the so-called ''50 percent credit discount'' that was established by the EPA's I/M Program Requirements Final Rule, (published November 5, 1992, and herein referred to as the I/M Rule or the federal I/M regulation) has been effectively replaced with a presumptive equivalency criterion, which places the emission reductions credits for decentralized networks on par with credit assumptions for centralized networks, based upon a state's good faith estimate of reductions as provided by the NHSDA and explained below in this section.

EPA's I/M Rule established many other criteria unrelated to network design or test type for states to use in designing enhanced I/M programs. All other elements of the I/M Rule, and the statutory requirements established in the CAA continue to be required of those states submitting I/M SIP revisions under the NHSDA. Therefore, the NHSDA specifically requires that these submittals must otherwise comply in all respects with the I/M Rule and the CAA.

The NHSDA also requires states to swiftly develop, submit, and begin implementation of these enhanced I/M programs, since the anticipated start-up dates developed under the CAA and EPA's I/M Rule have already been delayed. In requiring states to submit their I/M plans within 120 days of the NHSDA passage, and in allowing these states to submit proposed regulations within this time frame for their I/M programs (which can be finalized and submitted to EPA during the interim period) it is clear that Congress intended

for states to begin testing vehicles as soon as practicable now that the decentralized credit issue has been clarified and directly addressed by the NHSDA.

Submission criteria described under the NHSDA allow for a state to submit proposed regulations for this interim program, provided that the state has all of the statutory authority necessary to carry out the program. Also, in proposing the interim emission reduction credits for this program, the state is required to make a good faith estimate regarding the performance of its enhanced I/M program. Since this estimate is expected to be difficult to quantify, the state need only provide that the proposed emission reduction credits claimed for the submission have a basis in fact. A good faith estimate may be based on any of the following: the performance of any previous I/M program, the results of remote sensing or other roadside testing techniques, fleet and vehicle miles traveled (VMT) profiles, demographic studies, or other evidence which has relevance to the effectiveness or emissions reducing capabilities of an I/M program.

This action is being taken under the authority of both the NHSDA and section 110 of the CAA. Section 348 of the NHSDA expressly directs EPA to issue this interim approval for a period of 18 months, at which time the interim program will be evaluated in concert with the appropriate state agencies and EPA. The Conference Report on section 348 of the NHSDA states that it is expected that the estimated emission reduction credits claimed by the state in its I/M SIP, and the actual emissions reductions demonstrated through the program data may not match exactly. Therefore, the Conference Report suggests that EPA use the program data to appropriately adjust the proposed emission reduction credits to reflect the emissions reductions actually measured by the state during the program evaluation period.

Furthermore, EPA believes that in taking action under section 110 of the CAA, it is appropriate to grant a conditional approval to this submittal, since there are some deficiencies with the submittal in respect to CAA statutory and regulatory requirements (identified herein). EPA believes that these deficiencies can be corrected by the state during the interim period.

B. Interim Approvals Under the NHSDA

The NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals under this Act. The NHSDA also directs EPA and the states to review the interim program results at the end of 18 months, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort to reflect the emissions reductions actually measured by the state during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes Congress intended for these programs to start-up as soon as possible, which EPA believes should be at the latest, by November 15, 1997. This would allow the state about six months to generate data to support its emission reduction claim. EPA further believes that in setting such a strict timetable for program evaluations under the NHSDA, Congress recognized and attempted to mitigate any further delay with the start-up of this program. For the purposes of this program, ''start-up'' is defined as a fully operational program which has begun regular, mandatory inspections and repairs, using the final test strategy and covering each of a state's required areas. EPA proposes that if the state fails to start its program on this schedule, the approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent to the state.

The program evaluation to be used by the state during the 18-month interim period must be acceptable to EPA. EPA anticipates that such a program evaluation process will be developed by the Environmental Council of States (ECOS) group that has convened and that was organized for this purpose. EPA further anticipates that in addition to the interim, short term evaluation, the state will conduct a long term, ongoing evaluation of the I/M program as required by the I/M Rule in 40 CFR 51.353 and 51.366.

C. Process for Final Approval of This Program Under the CAA

As per the NHSDA requirements, this interim rulemaking will expire within 18 months of the conditional interim approval, or sooner if EPA takes action to approve the final SIP submittal prior to that date. A final approval of the state's final I/M SIP revision (which will include the state's program evaluation and final adopted state regulations) is still necessary under section 110 and under section 182, 184 or 187 of the CAA. After EPA reviews the state's submitted program evaluation, final rulemaking on the state's final SIP revision will occur.

II. EPA's Analysis of New York State's Submittal

On March 27, 1996, the New York State Department of Environmental Conservation (DEC) submitted a revision to its State Implementation Plan (SIP) for an enhanced I/M program to qualify under the NHSDA. The revision consists of enabling legislation that will allow the State to implement the I/M program, proposed regulations, a description of the I/M program (including a modeling analysis and detailed description of program features), and a good faith estimate that includes the State's basis in fact for emission reduction claims of the program. The State's credit assumptions were based upon the removal of the 50 percent credit discount for all portions of the program that are based on a test-and-repair network, and the application of the State's own estimate of the effectiveness of its decentralized test-and-repair program.

A. Analysis of the NHSDA Submittal Criteria

Transmittal Letter

On March 27, 1996, New York submitted an enhanced I/M SIP revision to EPA, requesting action under the NHSDA and the CAA. The official submittal was made by David Sterman, Deputy Commissioner, the appropriate State official, and was addressed to Regional Administrator Jeanne M. Fox, the appropriate EPA official in the Region.

Enabling Legislation

The State of New York has legislation under Articles 3 and 19 of the State's Environmental Conservation Law and titles II and III of the State's Vehicle and Traffic Law, enabling the implementation of an enhanced I/M program.

Proposed Regulations

On March 6, 1996, the State of New York, proposed regulations in accordance with 40 CFR Part 51, establishing an enhanced I/M program. DEC proposed to amend existing regulation 6NYCRR Part 217, ''Motor Vehicle Emissions,'' and the Department of Motor Vehicles (DMV) proposed to amend existing regulation 15NYCRR Part 79, ''Motor Vehicle Inspection Regulations.'' The primary program changes are as follows:

- A transient test (using a dynamometer) will replace the idle test,
- Waivers will now be granted only after motorists meet the repair expenditure requirement, and

• A gas cap test will be added to curtail evaporative emissions.

The State anticipates fully adopting regulations by mid-November 1996.

Program Description

New York has proposed an annual enhanced decentralized test-and-repair I/M program utilizing ''IG240'', which is a transient dynamometer-based emissions test. Existing test-and-repair stations will be utilized for the program. New York anticipates that approximately 50 percent of the existing stations will upgrade their equipment. Vehicles 25 years old and newer will be subject to the new program. The State proposes to implement the enhanced program in January 1998. Pass/fail cutpoints will be phased-in through to the year 2000.

Emission Reduction Claim and Basis for the Claim

The ''Utah Protocol'' was used to support the State's estimate of the anticipated emission reductions. It is also assumed that utilizing ''IG240'' emissions testing will yield emission reductions midway between what would be gained from IM240 and a two-mode Acceleration Simulation Mode (ASM) test. The State claims 81 percent effectiveness for its test-and-repair program. The State proposes to use gas cap testing in place of pressure/purge testing and claims 100 percent effectiveness. The State claims only 50 percent effectiveness for its technician training program because the repair technicians will not be required to be licensed.

B. Analysis of the EPA I/M Regulation and CAA Requirements

• AAs previously stated, the NHSDA left those elements of the I/M Rule that do not pertain to network design or test type intact. Based upon EPA's review of New York's submittal, EPA believes the State has not complied with all aspects of the NHSDA, the CAA and the I/M Rule. Therefore, EPA proposes to conditionally approve the I/M SIP revision. Before EPA can continue with the interim rulemaking process, the State must make a commitment within 30 days of November 27, 1996 to correct the major deficiencies by dates certain as described in this document. New York's major deficiencies are described below.

Waiver Expenditure Requirements

Many of the I/M programs currently operating include waivers for vehicles that cannot pass the applicable pass/fail standards, usually with a minimum expenditure requirement. Section 182(c)(2)(C)(iii) of the CAA included such a requirement, calling for owners of vehicles that fail an initial emissions inspection to spend at least $450 (1989 cost), allowing for yearly Consumer Price Index (CPI) adjustments as specified in section 502(b)(3)(B)(v)(II) of the CAA. Although New York's proposed enhanced I/M program does include the $450 initial amount, it is not clear from the submitted I/M SIP revision whether the CPI adjustments account for increases since 1989, as required.

Enhanced I/M Performance Standard Modeling

Section 51.350 of the federal I/M regulation requires that states submit, along with their proposed programs, modeling assumptions and results using EPA's most recent version of the mobile emissions model; currently MOBILE5a. New York's submittal includes such modeling. However, it includes assumptions for a test method that has yet to be developed, and for which no emission reduction credits have been established.

Test Procedures, Standards and Equipment

Sections 51.357 and 51.358 of the federal I/M regulation require states to provide a clear step-by-step description of the test equipment, test process, and the pass/fail standards to be used. Since New York's test has not been fully developed, the State has yet to finalize its test procedure, standards and test equipment specifications. This must be done well in advance of program start.

In order for EPA to proceed with conditional interim approval the State must commit within 30 days of the publication date of this proposal to correct these major deficiencies by dates certain or this approval will convert to a disapproval under CAA section 110(k)(4). EPA proposes that the deficiencies with regard to the enhanced performance standard modeling and the waiver expenditure requirements must be corrected within 12 months of EPA's conditional interim approval. Because the finalization of the test procedures, standards and equipment specifications is critical to ensuring that the program begins testing by the required date EPA proposes that this deficiency must be corrected no later than January 31, 1997. It is essential that the State submit final test procedures, standards and equipment specifications no later than this date because a significant lead time is necessary in order for the program to begin testing as planned.

EPA has also identified certain minor (de minimis) deficiencies in the I/M SIP revision, which include:

(1) Repair station report card,
(2) Quality control,
(3) Quality assurance,
(4) Data Collection,
(5) Inspector training, and
(6) On-road testing.

EPA has determined that allowing the State a longer time to correct these minor deficiencies will have a de minimis impact on the State's ability to meet clean air goals. Therefore, the State need not commit to correct these deficiencies in the short term, and EPA will not impose conditions on interim approval with respect to these deficiencies. However, the State must correct these deficiencies during the 18-month term of the interim approval, as part of the fully adopted rules that the State will submit to support final approval of its I/M SIP. So long as the State corrects these minor deficiencies prior to final action on the State's I/M SIP, EPA concludes that failure to correct the deficiencies in the short term is de minimis and will not adversely affect EPA's ability to give interim approval to the proposed I/M program.

Considering the implementation schedule provided by New York in its March 27, 1996 submittal, EPA sought assurances that the State would make every effort to meet the program start-up date. As a result, on October 24, 1996, DEC Deputy Commissioner David Sterman wrote to Region 2 indicating that the date would be met. This letter will be made part of the official docket.

Applicability—40 CFR 51.350

Section 182(c)(3) of the CAA and the federal I/M regulation require all states with areas classified as being serious or worse ozone nonattainment areas to implement an enhanced I/M program. The New York-New Jersey-Long Island nonattainment area is classified as a severe ozone nonattainment area and is required to implement an enhanced I/M program as per section 182(c)(3) of the CAA and 40 CFR 51.350(2). In addition, Bronx, Kings, Nassau, New York, Queens, Richmond, and Westchester Counties are designated as a moderate nonattainment area for carbon monoxide (CO) with a design value carbon monoxide concentration greater than 12.7 ppm. As per 40 CFR 51.350(3), any area classified as moderate CO nonattainment with a design value concentration greater than 12.7 ppm shall also implement an enhanced I/M program.

New York's proposed I/M regulation requires that the enhanced I/M program be implemented in Bronx, Kings,

Nassau, New York, Queens, Richmond, Rockland, Suffolk (except Fisher's Island) and Westchester Counties.

New York State plans to require that all other counties be covered by an inspection program in accordance with the Ozone Transport Region (OTR) low enhanced I/M Rule, which was published in the Federal Register on July 25, 1996. Since this rule was only recently published, the State could not be expected to submit an I/M SIP revision for these counties pursuant to that rule by this time. As a result, New York will submit a final I/M SIP revision for these counties at a later date, and EPA will evaluate the adequacy of that program and take action at that time.

The New York I/M legislative authority provides the legal authority to establish the geographic boundaries. The program boundaries are listed in Section 2.0 of the I/M SIP revision. EPA is proposing at this time to find that the geographic applicability requirements are satisfied for the counties subject to the original I/M Rule.

The federal I/M regulation requires that the State program shall not sunset until it is no longer necessary. EPA interprets the federal regulation as stating that a SIP which does not sunset prior to the attainment deadline for each applicable area satisfies this requirement. The New York I/M regulation provides for the program to continue past the attainment dates for all applicable nonattainment areas in the State. New York's submittal meets the applicability requirements of the federal I/M regulation for interim approval.

Enhanced I/M Performance Standard—40 CFR 51.351

The federal I/M regulation requires that enhanced I/M programs must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and the following model I/M program parameters: Network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the New York submittal the most current version was MOBILE5a. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both nitrogen oxides (NO_x) and hydrocarbons (HC) as evaluated for the year 2002. In the case of carbon monoxide nonattainment areas, the performance standard must also be met for CO as evaluated for the year 2002. The New York submittal must meet the enhanced I/M performance standard for HC, NO_x and CO in all applicable I/M areas in New York.

The New York submittal includes the following program design parameters:

Mobile5a parameter	New York's program
Network type	Combination test-only, and test-and-repair.
Start date	1998.
Test frequency	Annual.
Model years	25 years old and newer.
Vehicle type coverage	LDGV, LDGT1, LDGT2, and HDGV.
Exhaust emission test type	NY-Test (short transient) on 1981 and newer vehicles less than or equal to 8500 lbs gross vehicle weight rating (GVWR) and single speed idle test on 1980 and older vehicles and vehicles greater than 8500 lbs GVWR.
Emission standards	0.8/15/2.0 grams per mile (NY-Test) 1.2 percent CO, 220 ppm HC (Idle Test).
Emission control devices	Air pump, fuel inlet restrictor, EGR, PCV, TAC, catalyst.
Evaporative system function checks	Missing gas cap and evaporative disablement.
Waiver rate	3 percent.
Compliance rate	98 percent.
Stringency (pre-1981 failure rate)	20 percent.
Evaluation dates	HC and NO_X, July 2000; CO, July 2001.

New York attempted to estimate the credit discount for this program by modeling the State's program as both test-only and test-and-repair and interpolating the results linearly to match the 81 percent claimed effectiveness. EPA finds this method to be acceptable. However, the analysis assumes that final pass/fail cutpoints will be used. In reality, the State intends to use looser phase-in cutpoints at least until the year 2000.

New York intends to phase in the pass/fail standards so that those used during the initial cycles will not be as stringent as those the program will eventually use. Preliminary modeling performed by EPA indicates that the use of the looser standards will still allow the State to meet its emission reduction obligations required by the 15 percent plan. However, EPA's modeling using corrected input parameters shows that New York's program fails to meet the emission reduction expectations of the ''high enhanced I/M performance standard'' for hydrocarbons. It does, however, meet the ''low enhanced I/M performance standard.'' Therefore, the State will be able to show that the program at least meets the ''low enhanced I/M performance standard.'' If the State's final program analysis indicates that use of these standards will not generate the emission reductions needed to allow the State to meet the goals of its 15 percent plan, New York may be required to use tighter standards, or implement other control strategies.

EPA is proposing conditional interim approval of the State program at this time consistent with the intent of the NHSDA that state I/M programs be promptly approved and implemented for an 18-month period. EPA proposes that this approval be conditioned upon the requirement that the State conduct and submit the necessary modeling and demonstration that the program will meet the performance standard. EPA proposes that the modeling and demonstration be submitted by a date certain within 12 months from conditional interim approval. If the State fails to submit this new modeling within 12 months, EPA proposes that

the conditional interim approval will convert to a disapproval upon a letter from EPA indicating that the State has failed to submit the modeling and demonstration of compliance with the performance standard by the required date.

If the State cannot meet the enhanced I/M performance standard, the State may demonstrate compliance with the low enhanced performance standard established in 40 CFR 51.351(g). That section provides that states may select the low enhanced performance standard if they have an approved SIP for reasonable further progress in 1996, commonly known as a 15 percent reduction SIP or 15 percent plan. In fact EPA approval of 15 percent plans has been delayed, and although EPA is preparing to take action on 15 percent plans in the near future, it is unlikely that EPA will have completed final action on most 15 percent plans prior to the time EPA believes it would be appropriate to give final or conditional interim approval to I/M programs under the NHSDA. New York is currently reassessing its 15 percent plan to include the I/M program changes. This re-assessment is to be based on the current program design and its emission reduction benefit as of November 1999. If the results indicate that the State will not achieve a 15 percent reduction in emissions, New York may choose to either make I/M program improvements that would allow the program to meet the enhanced I/M performance standard or add other provisions to its overall control plan.

In enacting the NHSDA, Congress evidenced an intent to have states promptly implement I/M programs under interim approval status to gather the data necessary to support state claims of appropriate credit for alternative network design systems. By providing that such programs must be submitted within a four month period, that EPA could approve I/M programs on an interim basis based only upon proposed regulations, and that such approvals would last only for an 18 month period, it is clear that Congress anticipated both that these programs would start quickly and that EPA would act quickly to give them interim approval.

Many states have designed a program to meet the low enhanced performance standard, and have included that program in their 15 percent plan submitted to EPA for approval. Such states anticipated that EPA would propose approval both of the I/M programs and the 15 percent plans on a similar schedule, and thus that the I/M programs would qualify for approval under the low performance standard. EPA does not believe it would be consistent with the intent of the NHSDA to delay action on interim I/M approvals until the Agency has completed action on the corresponding 15 percent plans. Although EPA acknowledges that under its regulations final approval of a low enhanced I/M program after the 18-month evaluation period would have to await approval of the corresponding 15 percent plan, EPA believes that in light of the NHSDA it can grant either final or conditional interim approval of such I/M plans provided that the Agency has determined as an initial matter that approval of the 15 percent plan is appropriate, and has issued a proposed approval of that 15 percent plan.

The State plans to submit a revised 15 percent plan. It is possible that New York's proposed I/M program may fall short of the enhanced I/M performance standard but exceed the low enhanced performance standard. If this is the case and the emission reductions provided by the I/M program allow the State to fulfill the requirements of its 15 percent plan, then EPA will review the 15 percent plan and propose action on it shortly thereafter. Should EPA propose approval of the 15 percent plan, EPA will proceed to take conditional interim approval action on the I/M plan. EPA proposes in the alternative that if the Agency proposes instead to disapprove the 15 percent plan, EPA would then disapprove the I/M plan as well because the State would no longer be eligible to select the low enhanced performance standard under the terms of 40 CFR 51.351(g).

Network Type and Program Evaluation—40 CFR 51.353

The federal I/M regulation requires that enhanced programs shall include an ongoing evaluation to quantify the emission reduction benefits of the program, and to determine if the program is meeting the requirements of the CAA and the federal I/M regulation. The SIP shall include details on the program evaluation and a schedule for submittal of biennial evaluation reports, data from a state monitored or administered mass emission test of at least 0.1 percent of the vehicles subject to inspection each year, a description of the sampling methodology, the data collection and analysis system, and the legal authority enabling the evaluation program.

In order to determine whether the State I/M program meets the enhanced I/M performance standard, and is therefore approvable, it must submit modeling demonstrating that the programs achieve the required emission reductions by the relevant dates. Because of delayed program start up and program reconfiguration, the existing modeling used by the State to demonstrate compliance with the performance standard is no longer accurate, as it is based on start up and phase-in of testing and cut-points that do not reflect the current program configuration or start dates that the State will actually implement. EPA believes, based on the available modeling and its own extrapolation of expected emission reductions from the program, that the State program will at least meet the low enhanced performance standard. However, the State must conduct new modeling using the actual program configuration and start dates to verify that the performance standard will in fact be met. For example, phase-in cutpoints corresponding to the test-type and correct program start-up dates should be included in the new modeling.

EPA is proposing conditional interim approval of the State's program at this time consistent with the intent of the NHSDA that state I/M programs be promptly approved and implemented. EPA proposes that this approval be conditioned upon the requirement that the State conduct and submit the necessary new modeling and demonstration that the program will meet the performance standard, within 12 months from conditional interim approval. If the State fails to submit this new modeling within 12 months, EPA proposes that the conditional interim approval will convert to a disapproval upon a letter from EPA indicating that the State has failed to submit the modeling and demonstration of compliance with the performance standard by the required date.

In addition, the existing I/M Rule requires that the modeling demonstrate that the state program has met the performance standard by fixed evaluation dates. The first such date is January 1, 2000. However, few state programs will be able to demonstrate compliance with the performance standard by that date as a result of delays in program start up and phase in of testing requirements. EPA believes that based on the provisions of the NHSDA, the evaluation dates in the current I/M Rule have been superseded. Congress provided in the NHSDA for state development of I/M programs that would start significantly later than the start dates in the current I/M Rule. Consistent with Congressional intent, such programs by definition will not achieve full compliance with the performance standard by the beginning of 2000.

As explained above, EPA has concluded that the NHSDA superseded the start date requirements of the I/M Rule, but that states should still be required to start their programs as soon as possible, which EPA has determined would be November 15, 1997. Therefore, EPA believes that pursuant to the NHSDA, the initial evaluation date should be January 1, 2002. This evaluation date will allow states to fully implement their I/M programs and complete at least one cycle of testing at full stringency cutpoints in order to demonstrate compliance with the performance standard.

The State has proposed a decentralized test-and-repair enhanced I/M program in the applicable geographic area. This program includes a program evaluation in which 0.1 percent of the subject vehicle population, at a minimum, will randomly receive a ''NY–TEST,'' IG240 emissions test. The final design of the evaluation program will be based upon discussions with EPA and equipment vendors.

With the conditions described above, the New York submittal meets the network type and program evaluation requirements of the federal I/M regulation for interim approval.

Adequate Tools and Resources—40 CFR 51.354

The federal I/M regulation requires the state to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if it is demonstrated that the funding can be maintained. Reliance on funding from the state or local general fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

New York's Clean Air Compliance Act establishes an administrative fee of $2.00 per test which is deposited into the Mobile Source Account of New York's Clean Air Fund. The fund is intended to support I/M program activities including planning, implementation, and administration. The projected budget and personnel requirements for the DMV are $9,644,200 and 159 staff positions respectively. The projected budget and personnel requirements for the DEC are $8,355,000 and 80 staff positions respectively.

The New York submittal meets the adequate tools and resources requirements of the federal I/M regulation for interim approval.

Test Frequency and Convenience—40 CFR 51.355

The federal I/M regulation established an enhanced I/M performance standard which is based on an annual test frequency; however, other schedules may be approved if the performance standard is achieved. The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

New York's proposed I/M program requires annual inspections. The current emission inspection population will be required to get an enhanced inspection based upon the expiration of their emission/safety inspection sticker. Information will be provided to the public six months prior to the implementation of the enhanced program. The inspection dates of all vehicles will be tracked by the DMV to assure that the inspections take place. The DMV has determined that a minimum of 2,500 testing lanes is required for motorist convenience. There are approximately 5,000 test-and-repair inspection stations under the current inspection program. The DMV also assumes that some test-only and high volume lanes may provide additional throughput capability.

The New York submittal meets the test frequency and convenience requirements of the federal I/M regulation for interim approval.

Vehicle Coverage—40 CFR 51.356

The federal I/M regulation establishes a performance standard for enhanced I/M programs which is based on coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds GVWR, and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles.

According to the requirements of 40 CFR 51.356(B)(2), fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration. However, fleet vehicles shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in the same type of test network as other vehicles in the state. Vehicles which are operated on federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the state or local I/M area.

The federal I/M regulation requires that the SIP shall include: (a) The legal authority or rule necessary to implement and enforce the vehicle coverage requirement, (b) a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and (c) a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption. Such exemptions shall be accounted for in the emissions reduction analysis.

New York State's submittal indicates that the DMV will review registration files to identify vehicles for the enhanced emissions testing program. The vehicle's registration is valid for two years and the emission/safety inspection stickers are valid for one year. Registration renewals will be denied to any vehicle that has not passed an emission inspection. The following vehicles are exempt from emissions testing requirements: Diesel and electric powered vehicles, model year vehicles 26 years old and older, new vehicle exemption for first two years, special class vehicles (i.e., historical, special purpose commercial, all terrain vehicles, motorcycles, Classes A, B, and C limited use motorcycles, farm dealer, motorcycle dealer, transporter, all terrain dealers, light trailer, semi trailer, trailer, house trailer, boat, snowmobile and certain vehicles classified by DMV as custom or homemade prior to January 1997).

DMV will inventory federal fleet vehicles and other currently unregistered vehicles. Inspection expiration dates will be assigned to these vehicles. Enforcement will be accomplished through file checks and

site visits. Fleets may inspect their own vehicles if they become licensed inspection facilities and purchase the specified equipment. State fleets will be assigned inspection expiration dates as will federal vehicles. Registrations will be suspended for a vehicle found uninspected. Some large fleets will be given permanent fleet registrations. These will expire in October of every year and will be electronically renewed if the vehicle passed an emission inspection within the year. Fleet vehicles must pass the emissions inspection to be eligible for reregistration. New York has an agreement with the New York City Department of Environmental Protection and the New York City Taxi and Limousine Commission to require I/M inspections three times per year for medallion taxicabs.

The New York submittal meets the vehicle coverage requirements of the federal I/M regulation for interim approval.

Test Procedures and Standards—40 CFR 51.357

The federal I/M regulation requires that written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA document entitled ''High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications,'' EPA–AA–EPSD–IM–93–1, dated April 1994. The federal I/M regulation also requires vehicles that have been altered from their original certified configuration (i.e., engine or fuel switching) to be subject to the requirements of § 51.357(d).

New York's test procedures are listed in the State's draft technical specifications and the emissions inspection procedure manual, appendices to its I/M SIP submittal. These procedures do not correspond to EPA's procedures due to the differences in the testing equipment.

Under the State's test procedures, vehicles will be tested without prior repair or adjustment at the test facility. Vehicle operators will have access to the test area to observe the inspection in most stations. Vehicles will be rejected from testing if the exhaust system is missing or leaking or other unsafe conditions are evident. The test procedure provides for a retest after repair for any vehicle that failed the original test. All test procedures and standards including visual equipment inspections for the chassis model year and type will be applied for vehicles with switched engines. Altered vehicles from one fuel type to another will be tested according to procedures and standards of the current fuel type.

New York performed an evaluation of EPA's pressure and purge tests and has determined that there are unresolved built-in problems with these tests. Therefore, as an alternative to the pressure and purge tests, New York proposes to initially include only gas cap testing and expanded model year anti-tampering inspections. EPA is working with states to resolve the problems which have been encountered with implementation of the purge and pressure tests. When the problems are resolved, New York will need to implement the purge and pressure tests in order to receive the full amount of credit claimed for these tests in its I/M SIP submittal.

New York's test procedures are based on the use of a transient emissions test known as ''Inspection Grade 240 or IG240,'' for which the State is now developing basic requirements. The State has submitted draft equipment specifications and other supporting data that EPA is now evaluating. This sets New York apart from other states considering similar test procedures. Furthermore, New York has proven competence in establishing new procedures in the past. Therefore, EPA intends to allow the State, under a conditional interim approval, to proceed. It should be noted, however, that if at any time the State and EPA determine that the level of emission reduction credits granted to this test differs from the reductions actually achieved, New York will be required to re-evaluate its program assumptions and submit results to EPA.

Within 30 days of the publication of this notice, New York must submit a commitment to submit final test procedures and standards by a date certain which is no later than January 31, 1997. It is essential that the State submit final test procedures and standards no later than this date because a significant lead time is necessary in order for the program to begin testing as planned. If the State fails to commit within 30 days to submit approvable final test procedures and standards for the IG240 test as specified above, then EPA proposes in the alternative to disapprove the New York I/M SIP. If the State makes the commitment but this condition is not met, EPA will issue a letter to the State indicating that the conditional interim approval has been converted to a disapproval.

Test Equipment—40 CFR 51.358

The federal I/M regulation requires that computerized test systems be used for performing any measurement on subject vehicles. The federal I/M regulation also requires that the state SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The New York submittal contains the written draft technical specifications for the test equipment to be used in the program including an outline of the software specifications. The specifications require the use of computerized test systems. Equipment tampering, computerization, system lockouts, and the required data link specifications are being developed by the DMV. Since these documents have not been finalized, New York's submittal of the test equipment specifications cannot be considered complete.

Within 30 days of the publication of this notice, New York must submit a commitment to submit final test equipment specifications by a date certain which is no later than January 31, 1997. It is essential that the State submit final test equipment specifications no later than this date because a significant lead time is necessary in order for the program to begin testing as planned. If the State fails to commit within 30 days to submit approvable final test equipment specifications for the IG240 test as specified above, then EPA proposes in the alternative to disapprove the New York I/M SIP. If the State makes the commitment but this condition is not met, EPA will issue a letter to the State indicating that the conditional interim approval has been converted to a disapproval.

Quality Control—40 CFR 51.359

The federal I/M regulation requires that states implement quality control measures to insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

The New York submittal contains quality control measures for the emission measurement equipment, record keeping requirements and measures to maintain the security of all documents used to establish compliance with the inspection requirements.

However, this portion of the New York submittal does not include a description of the quality control requirements as set forth in § 51.359 of the federal I/M regulation.

This is a minor deficiency and must be corrected in the State's final I/M SIP revision submitted at the end of the 18-month interim period.

Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allow a motorist to comply without meeting the applicable test standards. For enhanced I/M programs, an expenditure of at least $450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Repairs for 1980 and newer model year vehicles must be performed by a recognized repair technician. The federal I/M regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that committed to in the SIP.

New York's proposed I/M program will allow the issuance of a $450 waiver adjusted annually according to the Consumer Price Index beginning in 1998. To be eligible for a waiver, the inspection facility must verify that: Appropriate emissions repairs were performed, the vehicle emission system has not been tampered with, the safety inspection has been passed, repairs or adjustments have not resulted in the retest being invalid or the acceptance of pollutants in excess of their limits, and documented repair costs were at least as much as the cost amount. The State has estimated a waiver rate of 3 percent of the initially failed vehicles. In the event the actual waiver rate exceeds the estimated waiver rate of 3 percent used for estimating the I/M program's emission reduction credits, the State will take corrective action. No hardship time extensions nor compliance via diagnostic inspection will be allowed.

Although New York's program does include the $450 initial amount, it is not clear from the submitted I/M SIP revision whether the CPI adjustments account for increases since 1989, as required by section 502(b)(1)(B)(v)(II) of the CAA and the federal I/M regulation. EPA understands the State's reluctance to implement the full CPI adjusted amount at program start-up and offered to postpone it consistent with the intent of the NHSDA that I/M programs be allowed to start in 1997. EPA believes, that consistent with its interpretation that the start dates and evaluation dates in EPA's I/M Rule have been extended by approximately two years by the NHSDA, the deadline for the full implementation of the waiver can also be extended by two years. As a result, the repair expenditure waiver must be fully adjusted by the increase in the CPI since 1989 no later than January 1, 2000.

This is a major program element required under the CAA and the I/M Rule. Therefore, New York must, within 30 days of the publication of this notice, submit a commitment to correct this major deficiency by a date certain within 12 months of the publication of the conditional interim approval. If the State fails to submit the revised repair expenditure waiver within 12 months, EPA proposes that the conditional interim approval will convert to a disapproval upon a letter from EPA indicating that the State has failed to submit the revised repair expenditure waiver by the required date.

Motorist Compliance Enforcement—40 CFR 51.361

The federal I/M regulation requires that compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. An enhanced I/M area may use either sticker-based enforcement programs or computer-matching programs if either of these programs were used in the existing program that was operating prior to passage of the CAA, and if it can be demonstrated that the alternative has been more effective than registration denial. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, and a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

Part 301 of New York State's Vehicle and Traffic Law provides the legal authority to implement registration denial motorist enforcement. New York's I/M SIP revision commits to a compliance rate of 98 percent which was used in the performance standard modeling demonstration. The State's submittal meets the motorist compliance enforcement requirements of the federal I/M regulation for interim approval.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The I/M SIP revision shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program.

New York's registration system is computer-based and controlled by a DMV computer in Albany. The accuracy of the inspection data input into the system will be assured by bar coded vehicle information on the registration which is attached to the vehicle's windshield. If incorrect information is entered into the computer, a match would not be found and the inspection would not be allowed. New York has trained personnel and written procedures for the compliance enforcement program. Staff will be disciplined, dismissed or prosecuted if discovered engaged in any improprieties. The DMV will annually conduct two program audits and one covert investigation at each inspection station. New York will determine the equipment audit frequency with the development of the equipment specifications.

New York's submittal meets the motorist compliance enforcement program oversight requirements of the federal I/M regulation for interim approval.

Quality Assurance—40 CFR 51.363

The federal I/M regulation requires that an ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the I/M SIP revision.

Details of New York's quality assurance program have not been developed and, therefore, were not provided in the I/M SIP revision submittal.

This is a minor deficiency and must be corrected in the State's final I/M SIP revision submitted at the end of the 18-month interim period.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

The federal I/M regulation requires that enforcement against licensed stations, contractors and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures that can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the I/M SIP revision. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits, unless constitutionally prohibited. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the I/M SIP revision submittal. The I/M SIP revision shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

Part 79 of 15NYCRR, Motor Vehicle Inspection Regulations, gives the DMV authority for enforcement against contractors, stations and inspectors. The DMV will utilize triggers to identify violating stations and inspectors. If an inspector is found to be incompetent, that inspector will not be allowed to perform inspections until successful completion of a written examination. Failure of this examination would result in the revocation of the inspector's license. Stations or inspectors found committing serious violations will have their licenses suspended pending a hearing and will be expeditiously moved through the hearing process. A penalty of $350 per violation will be assessed upon the inspection station and/or the inspector for violations of the inspection requirements. Records of all enforcement activities will be kept for five years and reported on an annual basis.

EPA's I/M Rule requires monetary penalties for gross violations to be at least $100 or five times the inspection fee, whichever is higher. New York has proposed a $20 inspection fee, making the minimum per violation penalty $100. Since New York's penalty schedule exceeds this amount, it is acceptable. The State's submittal meets the enforcement against contractors, stations and inspectors requirements of the federal I/M regulation for interim approval.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359.

New York's proposed I/M program includes the elements of the data collection elements in the federal I/M regulation. New York will hire a contractor for data management. A central database will be established to support real-time and batch electronic transmissions from the testing facilities. The data manager will supply batch data to DEC.

New York's submittal meets the data collection requirements of the federal I/M regulation for interim approval.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the state and EPA. The federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports are to be submitted by July and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two-year period and how these problems will be or were corrected.

New York's submittal provides analysis and reporting descriptions as well as an acceptable schedule for submittal of such reports. Therefore, the State's submittal meets the data analysis and reporting requirements of the federal I/M regulation for interim approval.

Inspector Training and Licensing or Certification—40 CFR 51.367

The federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections.

Prior to the implementation of the enhanced I/M program, New York will require that all currently certified emission inspectors be relicensed for the performance of the enhanced test. Inspectors will be recertified every three years.

New York's revised inspector certification program is currently under development.

This is a minor deficiency and must be corrected in the State's final I/M SIP revision submitted at the end of the 18-month interim period.

Public Information and Consumer Protection—40 CFR 51.368

The federal I/M regulation requires the I/M SIP revision to include public information and consumer protection programs.

New York's public information program is under development. The program will provide information on the benefits of an enhanced I/M program through public service address messages, registration inserts, pamphlets, vehicle inspection demonstrations, auto show participation, and vehicle repair effectiveness demonstrations. Motorists that fail the test will be provided a diagnostic report by the inspection station. The DMV will protect the public from fraud and abuse by inspectors, mechanics and others involved in the I/M program. A repair form will be required to be completed for each vehicle that fails the test and submitted to the DMV for the development of a database.

During the comment period for the November 5, 1992 federal I/M regulation, EPA received a number of comments expressing concerns about consumer protection with regard to motor vehicle repairs. As a result, § 51.368 of the federal I/M regulation includes a requirement for inspection programs to collect, and make available to motorists, data on the effectiveness of repairs performed by repair stations on vehicles that fail the initial test. New York's submittal includes a requirement for motorists with failing vehicles to return a repair form indicating the types of repairs made and whether or not they were successful. However, it makes no provision for motorists to have access to the compiled data either through

periodic reports or through some form of specially generated printout indicating which stations in the motorist's vicinity are qualified to make the needed repairs.

Since the details of New York's public information program are still under development and it does not include provision for motorists to have access to the compiled data, New York must make corrections to this section of the I/M SIP revision.

This is a minor deficiency and must be corrected in the State's final I/M SIP revision submitted at the end of the 18-month interim period.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The federal I/M regulation requires States to take steps to ensure that the capability exists in the repair industry to repair vehicles. The I/M SIP revision must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements in the federal I/M regulation, and a description of the repair technician training resources available in the community.

New York is claiming only 50 percent credit for its technician training program because although improvements will be made to the program, licensing or certification will not be required for the mechanics to perform repairs on the vehicles. In addition, New York proposes to phase-in the emissions test cutpoints to allow the repair industry time to adapt to the new tests and obtain the enhanced training. The DMV will provide information to repair technicians related to the diagnosis and repair of vehicles that fail the I/M test and monitor the performance of the test-and-repair facilities. The State will be developing improvements to the current training curriculum related to the diagnosis and repair of vehicles failing the I/M test.

New York's submittal meets the improving repair effectiveness requirements of the federal I/M regulation for interim approval.

Compliance With Recall Notices—40 CFR 51.370

The federal I/M regulation requires states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in an emission related recall receive the required repairs prior to completing the emission test and/or renewing the vehicle registration.

Under its proposed I/M program the State will notify the motorist that his/her vehicle appears on a recall list and that the vehicle must be repaired prior to its inspection and renewal. Upon arrival at the testing facility, the on-line system will alert the inspector that the vehicle has been recalled. The motorist will be required to show documentation of the vehicle's repairs.

New York's submittal meets the compliance with recall notices requirements of the federal I/M regulation for interim approval.

On-Road Testing—40 CFR 51.371

The federal I/M regulation requires on-road testing in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the requirements of the federal I/M regulation. The program must include on-road testing of 0.5 percent of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the enhanced I/M program area. Motorists that have passed an emission test and are found to be high emitters as a result of an on-road test shall be required to pass an out-of-cycle test.

New York will utilize RSD to perform on-road testing of 20,000 vehicles annually in the enhanced I/M area. This will be used to evaluate the performance of the I/M program. The State is not ready to commit to identifying the pass/fail cutpoints that will be utilized in the RSD program until a vehicle database is developed and evaluated with New York's potential RSD contractor. Passing an out-of-cycle test is not required. Therefore, New York must make changes to the element of its I/M SIP revision.

This is a minor deficiency and must be corrected in the State's final I/M SIP revision submitted at the end of the 18-month interim period.

State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372–51.373

These sections of the federal I/M regulation require that the state outline program milestones and provide an implementation schedule.

New York's I/M SIP revision submittal contains the proposed enhanced I/M program regulations. Draft specifications, procedures and requests for proposal (RFPs) for equipment and contractor services have not been developed. Licensing and certification of inspectors will be performed prior to the start of the program. Mandatory testing is scheduled to begin in January of 1998. Full stringency cutpoints may be implemented in January 2000.

With the conditions described above, New York's submittal meets the requirements under these sections of the federal I/M regulation for interim approval.

III. Discussion for Rulemaking Action

Today's notice of proposed conditional interim approval begins a 30-day time period for the State to make a commitment to EPA to correct the major deficiencies of the I/M SIP revision that EPA has identified, by dates certain as described in this notice. These major deficiencies are:

Waiver Expenditure Requirements

Many of the I/M programs currently operating include waivers for vehicles that cannot pass the applicable pass/fail standards, usually with a minimum expenditure requirement. Congress included such a requirement in the CAA, calling for owners of vehicles that fail an initial emissions inspection to spend at least $450, adjusted annually by the Consumer Price Index (CPI) as specified in Title V of the CAA, before a waiver can be granted. Title V clearly states that CPI adjustments must begin as of 1989. Although New York's program does include the $450 initial amount, it is not clear from the submitted I/M SIP revision whether the CPI adjustments account for increases since 1989, as required. The cost waiver, including the application of the annual CPI adjustment retroactive to 1989, must be fully in place by January 1, 2000.

Performance Standard Modeling

To determine whether the proposed I/M program will reduce vehicle emissions sufficiently as defined by the 15 percent plan for the area it is necessary to calculate the expected vehicle emissions taking into account all the aspects of the program. Parameters such as when the program begins, which vehicles are tested, and what type of test will be used have a significant impact on the level of emission reductions obtained. Section 51.351 of the federal I/M regulation requires that states submit, along with their proposed programs, modeling assumptions and results using EPA's most recent version of the mobile emissions model; currently MOBILE5a.

New York's submittal includes such modeling. However, it includes assumptions for a test method that is still under development and for which no emission reduction credits have been established. New York assumed that the proposed test procedure has an effectiveness equal to the median

between a two-mode Acceleration Simulation Mode (ASM) test and the IM240. The State acknowledges that at this time there is a limited basis for assuming this level of effectiveness and has committed to gathering the data required to support this assumption.

Test Procedures, Standards and Equipment

As previously stated, the test used to analyze vehicle emissions has a significant impact on the program's effectiveness. Over the two decades since I/M programs have been in operation, EPA has collected a great deal of information that indicate which test procedures are more effective. Since I/M programs comprise a large portion of the reductions expected from overall ozone and carbon monoxide reduction plans, it is important for EPA to review program parameters before testing begins. As a result, states may be able to avoid program development problems.

Sections 51.357 and 51.358 of the federal I/M regulation require states to provide a clear step-by-step description of the test equipment, test process, and the pass/fail standards to be used. Since New York's test has not been fully developed, the State has yet to outline its test procedure. This must be done well in advance of program start.

Within 30 days of publication of this notice, the State must make a commitment to EPA to correct these major deficiencies, by dates certain. In the case of the test procedures, standards and equipment specifications EPA is requiring that the State submit final versions of these materials by January 31, 1997. EPA believes that the State must finalize these elements far in advance of the planned start date for the program so that equipment may be purchased and installed and the program's start date is not jeopardized. In the case of the performance standard modeling and the waiver expenditure requirements, EPA is requiring that the State submit the required modeling and the revised waiver expenditure requirements no later than 12 months from the date of the publication of the notice of conditional interim approval. If the State does not make such a commitment within 30 days, EPA today is proposing in the alternative that this SIP revision be disapproved.

If EPA disapproves this submission or if the State does not correct the major deficiencies identified above and implement the interim program so that the conditional interim approval converts to a disapproval pursuant to section 110(k), EPA, under section 179(a)(2), must apply one of the sanctions set forth in section 179(b) within 18 months of such disapproval or finding. Section 179(b) provides two sanctions available to the Administrator: highway funding and the imposition of emission offset requirements. In EPA's August 4, 1994 final sanctions rule, (See 59 FR 39832) the sequence of mandatory sanctions for findings and disapprovals made pursuant to section 179 of the CAA was finalized. This rulemaking states that the section 179(b)(2) offset sanction applies in an area 18 months from the date when the EPA makes a finding or a disapproval under section 179(a) with regard to that area. Furthermore, the section 179(b)(1) highway funding restrictions apply in an area six months following application of the offset sanction. This nondiscretionary process for imposing and lifting sanctions is set forth at 40 CFR 52.31.

If New York makes the commitment within 30 days, EPA's conditional interim approval of the plan will last until the date by which New York has committed to cure all of the deficiencies. EPA expects that within this period the State will not only correct the deficiencies as committed to by the State, but that the State will also begin program start-up by November 15, 1997. If New York does not correct the major deficiencies and implement the interim program by the required dates, EPA is proposing in this notice that the conditional interim approval will be converted to a disapproval after a finding letter is sent to the State.

IV. Explanation of the Interim Approval

At the end of the 18-month interim period, the approval status for this program will automatically lapse pursuant to the NHSDA. It is expected that New York will at that time be able to make a demonstration of the program's effectiveness using the appropriate evaluation criteria. Since EPA expects that these programs will have started by November 15, 1997, New York will have at least six months of program data that can be used for the demonstration. If New York fails to provide a demonstration of the program's effectiveness to EPA within 18 months of the conditional interim approval, the interim approval will lapse, and EPA will be forced to disapprove the State's I/M SIP revision. If New York's program evaluation demonstrates a lesser amount of emission reductions actually realized than were claimed in the State's previous submittal, EPA will adjust the State's emission reduction credits accordingly, and use this information to act on the State's final I/M program.

V. Further Requirements for Permanent I/M SIP Approval

At the end of the 18-month interim period, which is started by the conditional interim approval of the I/M SIP revision, final approval of the State's plan will be granted based upon the following criteria:

(1) New York has complied with all the conditions of its commitment to EPA,

(2) EPA's review of New York's program evaluation confirms that the appropriate amount of program credit was claimed by the State and was achieved with the interim program,

(3) Final program regulations are submitted to EPA, and

(4) New York's I/M program meets all of the requirements of EPA's I/M Rule, including those deficiencies found de minimis for purposes of interim approval.

VI. EPA's Evaluation of the Interim Submittal

EPA is proposing a conditional interim approval of the New York I/M SIP revision which was submitted on March 27, 1996. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking subsequent action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

Proposed Action

EPA is proposing conditional interim approval of this revision to the New York SIP for an enhanced I/M program based on certain conditions.

Major Deficiencies

(1) New York must commit within 30 days of the publication of this notice to implement the $450 waiver plus CPI adjustment retroactive to 1989 no later than January 1, 2000. This commitment must be fulfilled by a date certain, but no later than 12 months after conditional interim approval.

(2) New York must commit within 30 days of the publication of this notice to submit modeling results once acceptable test procedures and credits have been developed for IG240. This commitment must be fulfilled by a date certain, but no later than 12 months after conditional interim approval.

(3) New York must commit within 30 days of the publication of this notice to submit IG240 equipment, test

procedures, standards and equipment specifications. Because early finalization of these elements is critical to the program being able to start by the planned date, these elements must be submitted by January 31, 1997.

Minor Deficiencies

New York must correct these minor deficiencies in its final regulations to be submitted after the 18-month interim period.

(1) New York's must submit quality control measures in accordance with the requirements set forth in 40 CFR Part 51.359.

(2) New York must complete the development of the inspector training and certification program.

(3) New York must finalize plans for its data collection system.

(4) New York must complete the public information program, including the repair station report card.

(5) New York must commit to perform on-road testing in accordance with the requirements set forth in section 51.371 of the federal I/M regulation.

(6) New York must complete the development of the quality assurance program.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

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.

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 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.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air 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).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

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 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 proposed 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.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 6, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 96–29660 Filed 11–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[FRL–5644–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; SO_2: New Manchester-Grant Magisterial District, Hancock County Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia. This revision provides for, and demonstrates, the attainment of the national ambient air quality standards (NAAQS) for sulfur oxides, measured as sulfur dioxide (SO_2) in the New Manchester-Grant Magisterial District, Hancock County nonattainment area. In the Final Rules section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives

adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. 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.

DATES: Comments must be received in writing by December 27, 1996.

ADDRESSES: Written comments on this action should be addressed to Makeba A. Morris, Chief, Technical Assessment Section (3AT22), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and, West Virginia Division of Environmental Protection, 1558 Washington Street, East, Charleston, West Virginia 25311.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, Technical Assessment Section (3AT22), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, phone: 215 566–2196.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this Federal Register.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping requirements, Sulfur Oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 17, 1996.

Stanley L. Laskowski,

Actg Regional Administrator, Region III.

[FR Doc. 96–30325 Filed 11–26–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 628, 640, 654, 662, and 674

[Docket No. 960314075–6320–05; I.D. 103196A]

RIN 0648–AI16

Atlantic Bluefish Fishery; Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Stone Crab Fishery of the Gulf of Mexico; Northern Anchovy Fishery; Salmon Fisheries Off the Coast of Alaska; Removal of Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Withdrawal of proposed rules.

SUMMARY: NMFS withdraws five proposed rules that would have withdrawn approval of fishery management plans (FMPs) for the Atlantic bluefish fishery, the spiny lobster fishery of the Gulf of Mexico and South Atlantic, the stone crab fishery of the Gulf of Mexico, the northern anchovy fishery, and the salmon fisheries off the coast of Alaska, and their implementing regulations. This action is in response to opposition by Regional Fishery Management Councils (Councils) to the proposed rules, taking into account a provision in the recently enacted Sustainable Fisheries Act.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, 301–713–2341.

SUPPLEMENTARY INFORMATION: Consistent with the President's Reinvention Initiative, NMFS published proposed rules that would have withdrawn the approval of the Secretary of Commerce (Secretary) for FMPs governing the Atlantic bluefish fishery (61 FR 13810, March 28, 1996), the spiny lobster fishery of the Gulf of Mexico and South Atlantic (61 FR 12055, March 25, 1996), the stone crab fishery of the Gulf of Mexico (61 FR 12056, March 25, 1996), the northern anchovy fishery (61 FR 13148, March 26, 1996), and the salmon fisheries off the coast of Alaska (61 FR 13149, March 26, 1996), and their implementing regulations. Rationale for the proposed actions was provided in the preambles to the proposed rules and is not repeated here.

The Mid-Atlantic Fishery Management Council and other commenters opposed withdrawal of the bluefish FMP because much of the fishery occurs in the exclusive economic zone, and public participation would be reduced without the FMP process. The South Atlantic Council and other commenters believed regulations implementing the spiny lobster FMP are a necessary back-up to Florida's regulations. The Gulf of Mexico Council and other commenters opposed withdrawal of the stone crab FMP because of the potential for gear conflicts and for circumvention of the Florida limited entry system. The North Pacific Council and the Alaska Department of Fish and Game were concerned about implications under the Endangered Species Act if the high seas salmon FMP were withdrawn, although other commenters favored the proposal. The Pacific Council and other commenters supported retention of the northern anchovy FMP to support California's management measures and coordination with Mexico.

On October 11, 1996, the President signed into law S. 39, the Sustainable Fisheries Act (Act), which amended the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq*.). Section 109(i) of the Act states that the Secretary may repeal or revoke an FMP for a fishery under the authority of a Council only if the Council approves the repeal or revocation by a three-quarters majority of the voting members of the Council. However, the President stated, on signing Pub. L. 104–297, that the Secretary is to treat this provision as advisory, not mandatory. Given the involved Councils' opposition to the repeals of the five FMPs, NMFS is hereby withdrawing the proposed rules. NMFS intends to consolidate the implementing regulations for the five FMPs, which now appear in 50 CFR parts 628, 640, 654, 662, and 674, into the appropriate consolidated fishery regulations in 50 CFR parts 622, 648, 660, and 679 through future rulemaking.

Authority: 16 U.S.C. 1801 *et seq*.

Dated: November 21, 1996.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–30263 Filed 11–26–96; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 660

RIN 0648–AJ02

[Docket No. 961121322–6322–01; I.D. 110696B]

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Bottomfish Fishery; Mau Zone Moratorium

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes that no new permits be issued for 2 years to vessel owners for harvesting bottomfish in the Mau Zone of the Northwestern Hawaiian Islands (NWHI) so that effort in the fishery will be stabilized while the Western Pacific Fishery Management Council (Council) develops a limited access program for the area. A moratorium on new permits would stabilize effort in the fishery while the Council develops a management system for the Mau Zone that may permanently limit access to the fishery.

DATES: Comments on the proposed rule will be accepted through January 10, 1997.

ADDRESSES: Send comments to Ms. Hilda Diaz-Soltero, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Copies of the Environmental Assessment can be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, NMFS, (808) 973–2985; Svein Fougner, NMFS, (310) 980–4034; or Kitty Simonds, Council, (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Council's Bottomfish Plan Team, Advisory Panel, and Advisory Review Board held a meeting on November 16–17, 1995, and, following a review of the NWHI bottomfish fishery, recommended that the Council place a 1-year moratorium on issuing new Mau Zone permits so that a limited entry program could be developed. The NWHI bottomfish fishery is divided into a Ho'omalu Zone, which is presently managed by a limited entry program, and a Mau Zone, which is an open access fishery. A Federal permit is required for both areas.

The Council's Scientific and Statistical Committee met December 4–5, 1995, and asked for further biological and economic analysis of the NWHI fishery, which was provided by the NMFS Southwest Fisheries Science Center, Honolulu Laboratory, in April 1996 (Administrative Report H–96–07). The analysis shows that the average fishing vessel recoups operating costs, but does not recoup total costs. Average economic conditions for the fishery are poor. The number of vessels with permits in the Mau Zone exceeds the estimated economic optimum, even when the analysis assumes the potential maximum effort only for the active vessels. This report may be obtained from the Administrator, Southwest Region, NMFS (see **ADDRESSES**).

New estimates put the maximum sustainable yield (MSY) at 455,000 lb (206,385 kg) for the Ho'omalu Zone and 131,000 lb (59,421 kg) for the Mau Zone. In 1994 and 1995, landings from the Mau Zone were 158,200 lb (71,758 kg) and 210,000 lb (95,254 kg), respectively, exceeding the MSY. Although landings from the Ho'omalu Zone have not exceeded the MSY, a combination of two zones, if adopted by some future action, could lead to an additional increase in fishing effort in the Mau Zone, because the vessels that fish farther up the Hawaiian chain have, on average, greater fishing power than vessels now fishing in the Mau Zone.

At its 89th meeting, held April 24–26, 1996, the Council voted to recommend a 1-year moratorium on issuing new permits for the Mau Zone. At its 90th meeting, August 7–9, 1996, the Council recommended that the moratorium be extended to 2 years, because 1 year may not allow sufficient time to complete the development of and implement an access limitation system for the Mau Zone fishery.

The Council took action on the recommended moratorium in accordance with the framework procedures of 50 CFR 660.67(d), which specifically addresses the access limitation process. During the proposed moratorium, the Council would develop an approach that aims to reduce the potential increase in fishing pressure in the Mau Zone and increase the economic efficiency of the fishery.

Discussions among the members of the Council's Bottomfish Plan Team, Task Force, Advisory Panel, and Review Board have pointed out the necessity of three elements in any limited access plan: Simplicity, equity, and the importance of restricting the number of potential participants. Approximately 80 vessels have had permits for the Mau Zone at some time in the past; however, some owners of vessels have died, and some vessels have permanently left the fishery, leaving a core of perhaps 30 vessels, whose owners could renew their permits and participate in the fishery. Any plan that the Council adopts is likely to contain some kind of qualifying criteria. A permit obtained by a former permittee during the proposed moratorium would not likely, in itself, guarantee a permit under the permanent limited access system. Historical landings data and current landings data, coupled with non-transferable permits, has been one approach considered for reducing the number of bottomfish vessels in the fishery and maintaining an active fleet at an optimal level.

Following the effective date of the final rule implementing the moratorium, only those vessel owners who have held Mau Zone permits would be eligible to renew or obtain permits for the length of the moratorium.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, as follows:

The proposed rule would establish a moratorium for 2 years on issuing new permits to harvest bottomfish in the Mau Zone of the Northwestern Hawaiian Islands (NWHI). During the moratorium, a limited entry program would be developed for the area by the Council, which would be implemented by regulatory amendment to the plan using the framework procedures at 50 CFR 660.67(d).

The NWHI bottomfish fishery is divided into two zones, the Ho'omalu Zone and the Mau Zone. The Ho'omalu Zone, the zone northwest of the Mau Zone, is currently managed by limited access, while the Mau Zone is managed by open access. A Federal permit is required to fish in either area. The Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries (FMP) contains an administrative framework that anticipated the possibility of implementing limited access programs. The framework process requires that specific factors, such as participation in the fishery, economics of the fishery, and the capability of fishing vessels to engage in other fisheries, be reviewed before any action is taken. This process was followed and opportunity was provided for public comment. No individuals with fishing vessels presently participating in the fishery would be denied a permit; however, no permits would be issued to new participants for 2 years following the effective date of the final rule. Catch, effort, revenue, or employment in the fishery during the term of the moratorium would not be expected to change as a result of the moratorium. As a result, an initial regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 21, 1996.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST AND WESTERN PACIFIC STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.61, paragraph (a) is revised to read as follows:

§ 660.61 Permits.

(a) The owner of any vessel used to fish for bottomfish in the Mau Zone must have a permit issued under this section for that vessel. Applications from persons not previously permitted to fish in the Mau Zone will not be approved for a 2-year period beginning [the effective date of the final rule].

* * * * *

[FR Doc. 96–30339 Filed 11–26–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 230
Wednesday, November 27, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Proposed Nationwide Agreement Regarding the Protection of Historic Properties During Federal Agency Emergency Response Under the National Contingency Plan

AGENCIES: Advisory Council on Historic Preservation (ACHP); United States Coast Guard; United States Environmental Protection Agency; Department of the Interior; Department of Agriculture; Department of Commerce, National Oceanic and Atmospheric Administration; Department of Defense; and Department of Energy.

ACTION: Notice of intent to execute a nationwide programmatic agreement on protection of historic properties during emergency removal of oil and hazardous material releases.

SUMMARY: Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) requires Federal agencies to consider the effects of their undertakings on historic properties and to provide the ACHP a reasonable opportunity to comment on Federal agency decisions and actions that may affect historic properties. Historic properties include districts, sites, structures, buildings, and objects included in or eligible for inclusion in the National Register of Historic Places. Implementing regulations for the NHPA, at 36 CFR Part 800, provide specific procedures for compliance with Section 106 which are not well suited to emergency situations.

The proposed Programmatic Agreement (PA) has been developed pursuant to 36 CFR 800.13 among the ACHP, the National Conference of State Historic Preservation Officers (NCSHPO), and Federal agencies that are members of the National Response Team. The purpose of the PA is to provide those participating Federal agencies with uniform procedures for consideration of historic properties during emergency response actions and to demonstrate the ACHP's endorsement of such procedures. The proposed PA provides a process for ensuring appropriate consideration of historic properties during emergency response actions and planning activities under the NCP, recognizing that the Federal On-Scene Coordinator (OSC) may have to make emergency response decisions that adversely affect historic properties. The PA includes provisions for Federal agencies to consult with the interested public, including Indian tribal/Hawaiian Native organizations, in pre-incident planning and prior to emergency response actions that may adversely affect historic properties. Upon signature, compliance with the PA will be deemed to constitute compliance with Section 106 of the NHPA.

Public comments on the proposed agreement should be provided within 45 days from the date of publication of this notice. Interested members of the public may provide comments to, or obtain additional information regarding this PA, from Carol Gleichman, Advisory Council on Historic Preservation, Office of Planning and Review—West, 12136 W. Bayaud Ave., Suite 330, Lakewood, CO 80228; (303) 969–5110.

Dated: November 21, 1996.

John M. Fowler,

Acting Executive Director.

[FR Doc. 96–30274 Filed 11–26–96; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 96–079–1]

Dekalb Genetics Corp.; Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Corn

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Dekalb Genetics Corporation seeking a determination of nonregulated status for a corn line designated as DBT418 that has been genetically engineered for insect resistance. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn line presents a plant pest risk.

DATES: Written comments must be received on or before January 27, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–079–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–079–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnologist, BSS, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7612; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340.

Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On October 17, 1996, APHIS received a petition (APHIS Petition No. 96–291–01p) from the Dekalb Genetics Corporation (Dekalb) of Mystic, CT, requesting a determination of nonregulated status under 7 CFR part 340 for an insect-resistant corn line designated as DBT418. The Dekalb petition states that the subject corn line should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, corn line DBT418 has been genetically engineered to express a CryIA(c) insect control protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *kurstaki* (Bt). The petitioner states that the Bt delta-endotoxin protein is expressed at an effective level in plant tissue in the subject corn line and is effective in controlling the European corn borer throughout the growing season. Corn line DBT418 also expresses the *bar* gene isolated from *Streptomyces hygroscopicus* that encodes a phosphinothricin acetyltransferase (PAT) enzyme, which, when introduced into a plant cell, inactivates glufosinate, also known as phosphinothricin, the active ingredient in the herbicides Basta®, Rely®, Finale®, and Liberty®. The *cryIA(c)* and *bar* genes were introduced into the subject corn line by microprojectile bombardment and their expression is controlled in part by gene sequences derived from the plant pathogens cauliflower mosaic virus and *Agrobacterium tumefaciens.*

Dekalb's corn line DBT418 is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogenic sources. The subject corn line has been evaluated in field trials conducted since 1993 under APHIS notifications. In the process of reviewing the applications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including insecticides, be registered prior to distribution or sale, unless exempt by EPA regulation. Accordingly, Dekalb has submitted to the EPA an application to register insect-resistant corn containing the plant pesticide active ingredient Bt CryIA(c) delta-endotoxin and the genetic material necessary for its production in corn. Residue tolerances for pesticides are established by the EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 201 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA. Dekalb has also submitted pesticide petitions to the EPA for exemptions from tolerance requirements for residues of the Bt CryIA(c) delta-endotoxin active ingredient and the PAT enzyme inert ingredient in corn.

The FDA published a statement of policy on foods derived from new plant varieties in the Federal Register on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the Federal Register announcing the regulatory status of Dekalb's corn line DBT418 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 21st day of November 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–30319 Filed 11–26–96; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Intergovernmental Advisory Committee Subcommittee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on December 5, 1996, at the Red Lion Hotel, Columbia River, 1401 N. Hayden Island Drive, Portland, Oregon 97217. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be discussed include, but are not limited to: (1) implementation monitoring, (2) adaptive management areas, and (3) recommendations on the Joint Planning Team proposal. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT:

Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–326–6265).

Dated: November 21, 1996.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 96–30273 Filed 11–26–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Economic Development Administration (EDA), Department of Commerce (DoC).

Title: Proposal for Federal Assistance and Application for Federal Assistance.

Form Number(s): ED–900P and ED–900A.

Agency Approval Number: OMB 0610–0094.

Type of Request: Extension of a currently approved collection.

Burden: 72,000 hours.

Number of Respondents: 2,500 (1,500 for ED–900P and 1,000 for ED–900A).

Average Hours per Response: 8 hours ED–900P and 60 hours ED–900A.

Needs and Uses: These forms are needed to assure that applicants meet statutory and program requirements for program administration. The information requested in the ED–900P, Proposal for Federal Assistance, is necessary for EDA to make a preliminary evaluation of a proposed project before an applicant is invited to submit an ED–900A, Application for Federal Assistance. The information requested in the ED–900A application is necessary for EDA to determine if applicants meet the legal requirements of Public Works and Economic Development Act of 1965 Pub. L. 89–136), as amended. EDA would be unable to carry out its programs of awarding grants for Federal assistance without the information submitted by applicants.

Affected Public: State, local or Tribal governments, nonprofit organizations, and for-profit organizations for the Research and Evaluation program.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Public Works and Economic Development Act of 1965 (P.L. 89–136), as amended.

OMB Desk Officer: Victoria Wassmer, (202) 395–5871.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Acting DoC Forms Clearance Officer, 202–482–3272, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Victoria Wassmer, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 20, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–30265 Filed 11–26–96; 8:45 am]

BILLING CODE 3510–24–P

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1997 Annual Demographic Survey – Supplement to the Current Population Survey.

Form Number(s): CPS–580 & 580(SP), CPS–676 & 676(SP).

Agency Approval Number: 0607–0354.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 20,410 hours.

Number of Respondents: 50,500.

Avg Hours Per Response: 24 and a half minutes.

Needs and Uses: The Bureau of the Census conducts the Annual Demographic Survey (ADS) every year in March as a supplement to the Current Population Survey (CPS). The Bureau of the Census, the Bureau of Labor Statistics, and the Department of Health and Human Services sponsor this supplement. In the ADS, we collect information on work experience, migration, personal income and noncash benefits, household noncash benefits, and race. The work experience items in the ADS provide a unique measure of the dynamic nature of the labor force as viewed over a one–year period. The income data from the ADS are used by social planners, economists, Government officials, and market researchers to gauge the economic well-being of the Nation as a whole, and selected population groups of interest. Researchers evaluate March income data not only to determine poverty levels, but also to determine whether Government programs are reaching eligible households. The questions for the 1997 supplement will be the same as those asked in 1996 with some new items and some changes to existing items.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182 & Title 29 USC, Sections 1–9.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 20, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–30266 Filed 11–26–96; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

Determination Not To Revoke Antidumping Duty Orders and Findings Nor To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke antidumping duty orders and findings nor to terminate suspended investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: November 27, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party has requested an

administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on July 1, 1996, and on October 1, 1996, we published in the Federal Register a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–588–045, Japan, Steel Wire Rope, Objection Date: October 16, 1996, Objector: Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, Contact: Davina Hashmi at (202) 482–3813

A–570–007, The People's Republic of China, Barium Chloride, Objection Date: October 7, 1996, Objector: Chemical Products Corporation, Contact: Roy Unger at (202) 482–6312

A–570–003, The People's Republic of China, Shop Towels, Objection Date: October 7, 1996, Objector: Milliken & Company, Contact: Hermes Pinilla at (202) 482–3477

A–479–801, Yugoslavia, Industrial Nitrocellulose, Objection Date: October 7, 1996, Objector: Hercules Incorporated, Aqualon Division, Contact: Rebecca Trainor at (202) 482–0666

A–822–801, Belarus, Solid Urea, Objection Date: July 19, 1996, Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Contact: Thomas Barlow at (202) 482–0410

Dated: November 20, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 96–30351 Filed 11–26–96; 8:45 am]

BILLING CODE 3510–DS–M

Intent To Revoke Antidumping Duty Orders and Findings and To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty orders and findings and to terminate suspended investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of December 1996.

EFFECTIVE DATE: November 27, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Brazil, Certain Carbon Steel Butt-Weld Pipe Fittings, A–351–602, 51 FR 45152, December 17, 1986, Contact: Thomas Schauer at (202) 482–4852

Germany, Animal Glue and Inedible Gelatin, A–428–062, 42 FR 64116, December 22, 1977, Contact: Tom Killiam at (202) 482–2704

Japan, Business Telephone Systems, A–588–809, 54 FR 50789, December 11, 1989, Contact: Hermes Pinilla at (202) 482–4733

Japan, Cellular Mobile Telephones and Subassemblies, A–588–405, 50 FR 51724, December 19, 1985, Contact: Charles Riggle at (202) 482–0650

Japan, Drafting Machines and Parts Thereof, A–588–811, 54 FR 53671, December 29, 1989, Contact: Mathew Blaskovich at (202) 482–5831

Japan, Steel Wire Strand, A–588–068, 43 FR 57599, December 8, 1978, Contact: Kris Campbell at (202) 482–3813

New Zealand, Low-Fuming Brazing Copper Rod & Wire, A–614–502, 50 FR 49740, December 4, 1985, Contact: Karin Price at (202) 482–3782

South Korea, Photo Albums, A–580–501, 50 FR 51272, December 16, 1985, Contact: Tom Futtner at (202) 482–3814

Taiwan, Porcelain-On-Steel Cooking Ware, A–583–508, 51 FR 43416, December 2, 1986, Contact: Amy Wei at (202) 482–1131

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity to Object

Domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of December 1996. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k)(3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: November 20, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 96–30350 Filed 11–26–96; 8:45 am]

BILLING CODE 3510–05–M

U.S.-Turkey Business Development Council: Membership

ACTION: Notice of membership opportunity.

SUMMARY: As part of its Big Emerging Market Strategy for Turkey, the Department of Commerce is establishing a Business Development Council (BDC) in cooperation with the Turkish Government. The Department of Commerce is currently seeking nominations of outstanding individuals to serve on the U.S. section of the BDC as representatives of their particular industry sector. The purpose of the BDC will be to provide a forum through which U.S. and Turkish private sector representatives can engage in constructive exchanges of information on commercial matters, and in which governments can exchange information, solve problems, and more effectively work together on issues of mutual concern relating to the following:

—Identifying commercial opportunities, impediments, and issues of concern to the U.S. and Turkish business communities;
—Addressing obstacles to trade and investment;
—Improving the dissemination of information on U.S.-Turkey market opportunities;
—Developing sectoral or project-oriented approaches to expand business opportunities;
—Implementing trade/business development and promotion programs, including trade missions, exhibits, seminars, and other events; and
—Identifying further steps to facilitate and encourage the development of commercial expansion and cooperation between the two countries.

The inaugural meeting of the BDC is expected to take place during early 1997 in either Washington, DC or Ankara, Turkey with government and private sector members from both countries in attendance.

Obligations

Private sector members will be appointed for a two (2) year term and will serve at the discretion of the Secretary of Commerce. Private sector members shall serve as representatives of the business community and the industry their business represents. Private sector members are expected to participate fully in defining the agenda for the Council and in implementing its work program. It is expected that private sector members chosen for BDC membership will attend at least seventy-five percent (75%) of the BDC meetings which will be held in the United States and Turkey.

Private sector members are fully responsible for travel, living and personal expenses associated with their participation in the BDC. The private sector members will serve in a representative capacity presenting the views and interests of the particular business sector in which they operate; private sector members are not special government employees.

It is anticipated that the private sector members of the BDC will form a steering committee to guide overall private sector participation. It is further anticipated that the steering committee will arrange for staff support for the BDC activities at the expense of the steering committee members.

Criteria

The Council will be composed of two sections, a U.S. section and a Turkish section. The U.S. Section will be chaired by the Under Secretary for International Trade of the Department of Commerce, or designee, and will include approximately 20 members from the U.S. private sector.

In order to be eligible for membership in the U.S. section, potential candidates must be:

—A U.S. citizen or permanent U.S. resident;
—A CEO or other senior management level employee of a U.S. company or organization involved in trade with and/or investment in Turkey; and
—Not a registered foreign agent under the Foreign Agent Registration Act of 1938, as amended (FARA).

In reviewing eligible candidates, the Department of Commerce will consider such selection factors as:

—Depth of experience in the Turkish market;
—Export/investment experience;
—Industry or service sector represented;
—Contribution to diversity based on company size, location, demographics, and traditional under-representation in business; and
—Stated commitment to actively participate in BDC activities and meetings.

To be considered for membership, please provide the following: name and title of individual proposed for consideration; name and address of the company or organization sponsoring each individual; company's or organization's product or service line; size of the company or organization; export experience/foreign investment experience; a brief statement (not more than 2 pages) of why each candidate should be considered for membership on the Council; the particular segment of the business community each candidate would represent; a personal resume; and a statement that the applicant is not a registered Foreign Agent under FARA.

DEADLINE: In order to receive full consideration, requests must be received no later than December 27, 1996.

ADDRESSES: Please send your requests for consideration to Mr. Boyce Fitzpatrick, Turkey Desk Officer, Office of European Union and Regional Affairs, by fax on 202/482–2897 or by mail at Room 3045, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Boyce Fitzpatrick, Turkey Desk Officer, Office of European Union and Regional Affairs, Room 3045, U.S. Department of Commerce, Washington, DC 20230; telephone: 202/482–2177.

Authority: Act of February 14, 1903, c. 552, as amended, 15 U.S.C. 1501 et seq, 32 Stat. 825; Reorganization Plan No. 3 of 1979, 19 U.S.C. 2171 Note, 93 Stat. 1381.

Dated: November 20, 1996.

William W. Ginsberg,

Acting Assistant Secretary for Market Access and Compliance.

[FR Doc. 96–30294 Filed 11–26–96; 8:45 am]

BILLING CODE 3510–DA–P

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1997 Annual Demographic Survey – Supplement to the Current Population Survey.

Form Number(s): CPS–580 & 580(SP), CPS–676 & 676(SP).

Agency Approval Number: 0607–0354.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 20,410 hours.

Number of Respondents: 50,500.

Avg Hours Per Response: 24 and a half minutes.

Needs and Uses: The Bureau of the Census conducts the Annual Demographic Survey (ADS) every year in March as a supplement to the Current Population Survey (CPS). The Bureau of the Census, the Bureau of Labor Statistics, and the Department of Health and Human Services sponsor this supplement. In the ADS, we collect

information on work experience, migration, personal income and noncash benefits, household noncash benefits, and race. The work experience items in the ADS provide a unique measure of the dynamic nature of the labor force as viewed over a one–year period. The income data from the ADS are used by social planners, economists, Government officials, and market researchers to gauge the economic well-being of the Nation as a whole, and selected population groups of interest. Researchers evaluate March income data not only to determine poverty levels, but also to determine whether Government programs are reaching eligible households. The questions for the 1997 supplement will be the same as those asked in 1996 with some new items and some changes to existing items.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182 & Title 29 USC, Sections 1–9.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 20, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–30266 Filed 11–26–96; 8:45 am]

BILLING CODE 3510–07–F

National Oceanic and Atmospheric Administration

Northwest Region Federal Fisheries Permits

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 27, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to William L. Robinson, NMFS, 7600 Sand Point Way NE, Seattle WA 98112, 206–526–6140.

SUPPLEMENTARY INFORMATION:

I. Abstract

Three data collections dealing with Federal fishery permits affect participants in the groundfish fishery off Washington, Oregon, and California (WOC). The three data collections involve: (1) Exempted fishing permits (previously called experimental fishing permits); (2) limited entry permits for commercial fishermen; and (3) Federal permits for groundfish processing vessels over 125′ in length.

Exempted (experimental) fishing permits are issued to applicants for fishing activities that would otherwise be prohibited. The information provided by applications allows NMFS to evaluate the consequences of the exempted fishing activity and weigh the benefits and costs. Permittees are required to file reports on the results of the experiments, so that NMFS can evaluate the techniques used and decide if management regulations should be changed.

A Federal permit is required to commercially catch groundfish, and permits are endorsed for one or more of three gear types (trawl, longline, and fish pot). Participation in the fishery and access to permits have been limited as a way of controlling the overall fleet harvest capacity. Limited entry permits must be renewed annually and are transferable.

NOAA is also considering the implementation of a requirement that fish processing vessels over 125′ in length obtain a federal fisheries permit to process groundfish in the WOC fishing area. Such a requirement may be needed to obtain adequate information on which to base both in-season and between-season management decisions affecting the Pacific groundfish resource, to know the number of vessels operating for the purpose of deployment of observers, and for enforcement monitoring.

II. Method of Collection

These are written data collections that are prepared and submitted by the vessel owner or operator to the National Marine Fisheries Service, Northwest Regional Office, by mail, fax, electronic mail, or in person.

III. Data

OMB Number: 0648–0203.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: This data collection involves owners and operators of vessels that fish for or process groundfish in ocean waters 0–200 nautical miles offshore Washington, Oregon, and California.

Estimated Number of Respondents: Approximately 956 respondents are expected: 9 for exempted (previously called ''experimental'') fishing permits, 930 for limited entry permit renewals or transfers, and 17 for at-sea processing permits for vessels over 125 feet (38.5 meters) in length.

Estimated Time Per Response: This is variable depending on the action taken. An average of 60 minutes is expected for applications for an exempted fishing permit, and 30 minutes to prepare subsequent reports. An average of 20 minutes is expected to renew or transfer a limited entry permit. An average of 20 minutes is estimated to prepare data required of at-sea processing vessels.

Estimated Total Annual Burden Hours: The public is expected to spend a total of 406 hours complying with these data collections: 90 hours for exempted fishing permits, 310 hours for limited entry permits, and 6 hours for at-sea processing permits.

Estimated Total Annual Cost to Public: The direct cost to the public is estimated to be less than $17,200 annually, derived as follows: less than $16,000 for transfer, registration and replacement fees and underutilized species permit application fees; less than $500 for vessel documentation; about $500 to have documents notarized; and about $200 for mailing. These estimates do not include time spent preparing submissions.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 21, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–30267 Filed 11–26–96; 8:45 am]

BILLING CODE 3510–22–P

Southwest Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 27, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information of copies of the information collection instrument(s) and instructions should be directed to Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, California 90802, telephone 310–980–4034.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Federal Fisheries Permits Program administered by the Southwest Region, NMFS, is the principal mechanism for monitoring participation in the pelagic longline, crustacean, bottomfish and precious corals fisheries in the western Pacific region. These fisheries are regulated under fishery management plans prepared by the Western Pacific Fishery Management Council and approved by the Secretary of Commerce. Persons wishing to participate in these fisheries must have permits, and permits are obtained from the Southwest Region, NMFS. Information on the permit application forms ensures up-to-date records for purposes of determining interests in the fisheries, participation, entry and exit patterns so that impacts on permittees from possible regulatory changes can be determined; for enforcement; and for advising fishermen of actual or potential changes in regulations.

II. Method of Collection

Permittees file applications for new permits, renewals, or other permit actions (e.g., permit transfers) with the Pacific Area Office, Southwest Region, and submit appropriate fees if required. Application forms are provided by the Pacific Area Office, which then reviews the application, determines that all information is furnished, obtains NOAA General Counsel clearance (to determine if there are any unpaid fines or penalties), and issues the permit. Permit information is then entered into the appropriate data base.

III. Data

OMB Number: 0648–0204.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Individuals and Businesses, primarily commercial fishermen.

Estimated Number of Respondents: 275.

Estimated Time Per Response: 30 minutes for fishery permit applications, 1 hour for experimental permit applications, and 2 hours for longline limited entry permit appeals.

Estimated Total Annual Burden Hours: 158.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 21, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–30268 Filed 11–26–96; 8:45 am]

BILLING CODE 3510–22–P

Notice of Public Meeting, Modernization Transition Committee (MTC)

Time and Date: December 12, 1996 from 8:00 a.m. to 4:00 p.m.

Place: This meeting will take place at the Silver Spring Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland.

Status: The meeting will be open to the public. The time between 11:00 a.m. to 11:30 a.m. will be set aside for oral comments or questions from the public. Approximately 50 seats will be available on a first-come first-served basis for the public.

Matters to be Considered: This meeting will cover: Consultation on approximately 11 Automation Certifications and 5 combined Consolidation and Automation Certifications; consultation on the FY 1998 National Implementation Plan; update on the Air Safety Appraisal Letter; and a presentation on the planned survey to be conducted at the 27 service level ''D'' locations.

Contact Person for More Information: Mr. Nicholas Scheller, National Weather Service, Modernization Staff, 1325 East-West Highway, SSMC2, Silver Spring, Maryland 20910. Telephone: (301) 713–0454.

Dated: November 22, 1996.

Nicholas R. Scheller,

Manager, National Implementation Staff.

[FR Doc. 96–30314 Filed 11–26–96; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A, CFDA No. 84.031G]

Notice Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1997 for the Strengthening Institutions, Hispanic-Serving Institutions (HSIs), and Endowment Challenge Grant Programs

Purpose

Institutions of higher education must meet specific statutory and regulatory requirements to be designated eligible to receive funds under the Strengthening Institutions, HSI, and Endowment Challenge Grant Programs, authorized, respectively, under Part A, Section 316, and Part C of Title III of the Higher Education Act of 1965, as amended (HEA).

The Department has made no decision as to whether it will hold grant competitions for new awards under Parts A, Section 316, and Part C of Title III. The Department must review the available funding for the program before determining whether to hold competitions for new awards in Fiscal Year 1997.

Institutions that wish to be considered for waivers of certain non-Federal share requirements under the Federal Work-Study (FWS) of Federal Supplemental Educational Opportunity Grant (FSEOG) Programs authorized under Title IV of the HEA must submit a Title III eligibility application to the Department by the deadline dates set forth in this notice and must qualify as an eligible institution under this notice. Qualified institutions may receive these waivers even if they are not recipients of grants funds under Title III.

If an institution is interested in obtaining eligibility for purposes of receiving a new grant under the Strengthening Institutions or HSI Programs, applying for a new grant under the Endowment Challenge Grant Program, or receiving a waiver of the non-Federal share under FWS or FSEOG Programs, it must submit its application to the Department by March 13, 1997. However if an institution submits its application by February 13, 1997, the Department will notify the applicant of its eligibility status by March 17, 1997. Any of these applicants that believe it failed to be designated as an eligible institution because of errors in its application or insufficient information in its waiver request may submit an amended application to the Department no later than April 14, 1997.

If an applicant submits its initial application after February 13, 1997 but on or before March 13, 1997, the Department does not guarantee that it can review this delayed application and notify the applicant in time to allow revisions to the application by April 14, 1997 deadline date for amended applications.

An institution that misses the April 14, 1997 deadline for submission of a revised application will not be designated as eligible for fiscal year 1997.

Because of the direct benefits to institutions that are able to revise unapproved applications, the Department strongly recommends that institutions apply by the February 13, 1997 deadline.

Deadline for Transmittal of Applications

February 13, 1997 for early applications, March 13, 1997 for all initial applications, and April 14, 1997 for amended applications.

Applications Available

January 6, 1997.

Eligibility Information

To qualify as an eligible institution under the Strengthening Institutions and Endowment Challenge Grant Programs, an applicant must (1) be accredited or preaccredited by a nationally recognized accrediting agency; (2) be legally authorized by the State in which it is located to be a junior or community college or to provide a bachelor's degree program; and (3) have a high enrollment of needy students. In addition, its educational and general (E&G) expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. The complete eligibility requirements are found in the Strengthening Institutions Program regulations, 34 CFR 607.2–607.5, as revised in the Federal Register on August 15, 1994 (59 FR 41914, 41922).

Enrollment of Needy Students

Under 34 CFR § 607.3(a), an institution is considered to have a high enrollment of needy students if—(1) at least 50 percent of its degree students received financial assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work Study, or Perkins Loan Program; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offer similar instruction. To qualify under this latter criterion, an institution's Pell Grant percentage for base year 1994–95 must be more than the median for its category of comparable institutions provided on the table in this notice.

E&G Expenditures per FTE Student

An institution should compare its average E&G expenditure/FTE student to the average E&G expenditure/FTE student for its category of comparable institutions contained in the table in this notice. If the institution's average E&G expenditure for the 1994–95 base year is less than the average for its category of comparable institutions, it meets this eligibility requirement.

The institution's E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Pell Grant percentages and the average E&G expenditures per FTE student for the 1994–95 base year for the four categories of comparable institutions:

	Median Pell Grant percentage	Average E&G per FTE student
2-year Public Institutions	29.57	$6,025
2-year Non-Profit Private Institutions	31.43	9,075
4-year Public Institutions	28.83	14,735
4-year Non-Profit Private Institutions	28.68	21,062

Waiver Information

Institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditure requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR §§ 607.3(b) and 607.4 (c) and (d). As discussed in the preamble to the final regulations published in the Federal Register on August 15, 1994 (59 FR 41914–41917), the Secretary has developed a set of more specific instructions relating to the waiver provisions for institutions unable to meet the needy student enrollment requirement. Institutions requesting a wavier of this requirement must include detailed information as set forth in the

instructions for completing the application.

Under specific waiver options provided under the authority in 34 CFR § 607.3(b) (2), (3) and (6), an institution must provide evidence related to the number of students from low-income families that it served in base year 1994–95. The regulations define ''low-income'' as an amount that does not exceed 150 percent of the amount equal to the poverty level as established by the U.S. Bureau of the Census, 34 CFR 607.3(c). For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

BASE YEAR LOW-INCOME LEVELS

Size of family unit	Contiguous 48 States, the District of Columbia, and outlying jurisdictions	Alaska	Hawaii
1	$7,360	$9,200	$8,470
2	9,840	12,300	11,320
3	12,320	15,400	14,170
4	14,800	18,500	17,020
5	17,280	21,600	19,870
6	19,760	24,700	22,720
7	22,240	27,800	25,570
8	24,720	30,900	28,420

For family units with more than eight members add the following amount for each additional family member: $2,480 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $3,100 for Alaska; and $2,850 for Hawaii.

The figures shown as low-income levels represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The Census levels were published by the U.S. Department of Health and Human Services in the Federal Register on February 10, 1994 (59 FR 6277–6278).

In reference to the waiver option specified in § 607.3(b)(4) of the regulations, information about ''metropolitan statistical areas'' may be obtained by requesting the *Metropolitan Statistical Areas, 1993*, order number PB93–192664, from the National Technical Information Services, Document sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number (703) 487–4650. There is a charge for this publication. For general information about ''metropolitan statistical areas'', institutions of higher education may contact the Strengthening Institutions Program Branch.

Applicable Regulations

Regulations applicable to the eligibility process include: (a) the Strengthening Institutions Program Regulations in 34 CFR Part 607, as revised in the Federal Register on August 15, 1994 (59 FR 41914); (b) the Endowment Challenge Grant Program Regulations in 34 CFR Part 628; and (c) the Education Department General Administrative Regulations in 34 CFR Parts 74, 75, 77, 82, 85, and 86.

For Applications or Information Contact

Strengthening Institutions Program Branch, Division of Institutional Development, U.S. Department of Education, 600 Independence Avenue, SW., (Suite 600–C, Portals Building), Washington, DC 20202–5335. Telephone: (202) 708–8839 or 708–8857. 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.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server (at Gopher://gcs.ED.GOV/); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority

20 U.S.C. 1057, 1059c and 1065a.

Dated: November 21, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–30225 Filed 11–26–96; 8:45 am]

BILLING CODE 4000–01–P–M

DEPARTMENT OF ENERGY

[Docket No. EA–134]

Application To Export Electric Energy to Mexico; Arizona Public Service Company

AGENCY: Office of Fossil Energy, DOE.

AGENCY: Notice of application.

SUMMARY: Arizona Public Service Company (APS), 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 December 27, 1996.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import & Export Activities (FE–52), Office of Coal & Power Systems, 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 November 12, 1996, APS 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 national electric utility of Mexico, pursuant to section 202(e) of the FPA. Specifically, APS, has proposed to transmit to CFE electric energy purchased in the wholesale power marketplace, or when available, excess energy from its own system.

APS would arrange for the exported energy to be transmitted to CFE over one or more of the following international transmission or subtransmission lines for which Presidential permits (PP) have been previously issued:

Owner	Location	Presidential voltage	Permit No.
San Diego Gas & Elect	Miguel, CA	230 kV	PP–68.
	Imperial Valley, CA	230 kV	PP–79.
El Paso Electric	Diablo, NM	115 kV	PP–92.
	Ascarate, TX	115 kV	PP–48.
Central Power and Light	Brownsville, TX	138 kV	PP–94.
		69 kV	PP–94.

Owner	Location	Presidential voltage	Permit No.
Comision Federal de Electricidad	Eagle Pass, TX	138 kV	PP–50.
	Laredo, TX	138 kV	PP–57.
	Falcon Dam, TX	138 kV	Not required.

On November 17, 1995, in Order EA–104, APS was authorized to export electric energy to Mexico through the facilities of San Diego Gas and Electric Company. The energy to be exported was designated economy energy. By this application APS seeks a more broad authorization to include firm energy, if available.

In a related matter, on October 29, 1996, the Secretary of Energy signed Delegation Order No. 0204–163, which delegated and assigned to the Federal Energy Regulatory Commission (FERC) authority to carry out such functions vested in the Secretary to regulate access to, and the rates, terms and conditions for, transmission services over the facilities of the El Paso Electric Company (EPE). This authority was delegated to FERC for the sole purpose of authorizing FERC to take any actions necessary to effectuate open access transmission over the United States portion of EPE's electric transmission lines connecting the Diablo and Ascarate substations in the United States with the Insurgentes and Riverena substations in Mexico. Notice and a copy of the Delegation Order were published in the Federal Register on November 1st at 61 FR 56525.

In its application, APS also requested authority to transmit electric energy to CFE through a San Diego Gas & Electric Company (SDG&E) owned 69-kV transmission line authorized in PP–49. On February 1, 1996, in Order PP–49–1, DOE amended the previously issued Presidential permit by authorizing SDG&E to remove the cross-border span and retain the U.S. portion of the facilities for domestic purposes to help increase reliability of service to regional customers in the U.S.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's 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: Dennis Beals, Manager, Bulk Power Technical Services, Arizona Public Service Company, P.O. Box 53999, Station 9860, Phoenix, AZ 85072–3999 and Bruce A. Gardner, Esq., Senior Attorney, Arizona Public Service Company, P.O. Box 53999, Station 9820, Phoenix, AZ 85072–3507.

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 November 21, 1996.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 96–30292 Filed 11–26–96; 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, December 5, 1996 6:00 pm–9:30 pm.

ADDRESSES: Arvada Center for the Arts and Humanities, 6901 Wadsworth Boulevard, Arvada, CO.

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 present and discuss information about cleanup plans and Rocky Flats' budget for fiscal year 1997. The cleanup plans are performance measures set by the Department of Energy for Kaiser-Hill, the contractor hired to complete cleanup work at the site.

(2) The Board will hear a presentation on the findings of a community needs assessment performed by the University of Colorado School of Nursing and the Jefferson County Department of Health and Environment earlier this year. The purpose of the study was to identify concerns of the community around Rocky Flats with regard to health and safety issues during site cleanup. The final needs assessment report includes a series of recommendations for meeting the informational and health and safety needs of the community.

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 am and 4:00 pm 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 November 21, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–30291 Filed 11–26–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP96–403–002]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 20, 1996.

Take notice that on November 15, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets, to be effective November 1, 1996:

Second Revised Volume No. 1

Substitute Seventeenth Revised Sheet No. 9
Second Substitute Second Revised Sheet No. 187.1
Second Substitute First Revised Sheet No. 187.2
Substitute First Revised Sheet No. 187A
Substitute First Revised Sheet No. 187B

Original Volume No. 2

Substitute Third Revised Sheet No. 13
Second Substitute Third Revised Sheet No. 15

ANR states that the purpose of this filing is to correct errors made on these tariff sheets in its November 12, 1996 compliance filing in this docket. Such compliance filing was made to reflect the removal of the ''Rate Adjustment for Viking Transportation Costs'' provision contained in Section 29 of the General Terms and Conditions of its tariff, and the removal of approximately $10.2 million of Viking Transportation Costs from its base rates.

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 Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with 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. 96–30236 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES97–10–000]

Canal Electric Company; Notice of Application

November 20, 1996.

Take notice that on November 15, 1996, Canal Electric Company filed an application, under § 204 of the Federal Power Act, seeking authorization to issue short-term debt, from time to time, in an aggregate principal amount of not more than $60 million outstanding at any one time, during a two-year period commencing on the effective date of the letter order in this Docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 11, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30249 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–-M

[Docket No. RP96–383–001]

CNG Transmission Corporation; Notice of Compliance Tariff Filing

November 20, 1996.

Take notice that on November 15, 1996, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1996:

Substitute First Revised Sheet No. 105
Second Revised Sheet No. 108
Original Sheet No. 108A
Fourth Revised Sheet No. 121
Original Sheet No. 121A
Third Revised Sheet No. 136
Original Sheet No. 136A
Substitute First Revised Sheet No. 142
Original Sheet No. 142A
Substitute First Revised Sheet No. 162
Original Sheet No. 162A
First Revised Sheet No. 181
Original Sheet No. 181A
Substitute First Revised Sheet No. 183
Original Sheet No. 183A
Second Revised Sheet No. 202
Original Sheet No. 202A
Substitute Second Revised Sheet No. 364
Substitute Original Sheet No. 364A
Substitute Second Revised Sheet No. 369
Original Sheet No. 369A
Substitute Original Sheet No. 373A
First Revised Sheet No. 378
Original Sheet No. 378A

CNG states that the purpose of this filing is to revise CNG's proposed tariff provisions with regard to Negotiated Rates, as directed by the Commission's October 31, 1996, ''Order Accepting, Subject to Conditions, and Rejecting Tariff Sheets.''

CNG states that copies of its filing have been mailed to CNG's customers and interested state commissions, and to parties to the captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 96–30240 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–390–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

November 20, 1996.

Take notice that on November 15, 1996, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, bearing a proposed effective date of November 1, 1996, in compliance with the Commission's order in Columbia Gulf Transmission Co., et al., 77 FERC ¶ 61,093 (1996), which addressed Columbia's tariff revisions to permit negotiated rate arrangements.

Substitute Second Revised Sheet No. 146
Substitute First Revised Sheet No. 182
First Revised Sheet No. 266
Substitute Second Revised Sheet No. 280
Substitute Third Revised Sheet No. 280
Substitute Third Revised Sheet No. 282
Substitute First Revised Sheet No. 310
Substitute Fourth Revised Sheet No. 353
Substitute Fourth Revised Sheet No. 374

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's 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 appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30238 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–389–001]

Columbia Gulf Transmission Company; Notice of Compliance Filing

November 20, 1996.

Take notice that on November 15, 1996, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of November 1, 1996, in compliance with the Commission's order in Columbia Gulf Transmission Co., et al., 77 FERC ¶ 61,093 (1996), which addressed Columbia Gulf's tariff revisions to permit negotiated rate arrangements.

Sub 1st Rev Third Revised Sheet No. 054
Sub 2nd Rev Second Revised Sheet No. 062
1st Revised Second Revised Sheet No. 129
1st Revised Second Revised Sheet No. 130
Substitute Second Revised Sheet No. 144
Substitute Second Revised Sheet No. 145
Substitute Second Revised Sheet No. 146
Sub 2nd Rev First Revised Sheet No. 163
Substitute Third Revised Sheet No. 193
Substitute Second Revised Sheet No. 205

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30239 Filed 11–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–109–000]

Distrigas of Massachusetts Corporation; Notice of Application

November 21, 1996.

Take notice that on November 20, 1996, Distrigas of Massachusetts Corporation (DOMAC), 75 State Street, Boston, Massachusetts, 02109, filed in Docket No. CP97–109–000 an application for a limited-term certificate of public convenience and necessity and request for expedited action requesting authority to install certain temporary air injection equipment at its liquefied natural gas (LNG) terminal in Everett, Massachusetts.

DOMAC states that it requires additional air injection capability in order to air-stabilize a cargo of Algerian LNG, with a higher than usual BTU content, which is currently en route to its terminal. DOMAC further states that its current air injection equipment is inadequate to fully air-stabilize the cargo in time to enable the receipt of an additional cargo of high BTU LNG also en route to its terminal from Abu Dhabi. DOMAC has requested issuance of temporary authority by November 22, 1996, and a limited-term certificate for the remainder of the winter heating season ending on March 31, 1997.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 12, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, NE., 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 or 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 determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment and grant of certificate 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 a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for DOMAC to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30253 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–13–001]

East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 20, 1996.

Take notice that on November 15, 1996, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute First Revised Sheet No. 145 and Substitute First Revised Sheet No. 154, to be effective November 1, 1996.

East Tennessee states that the revised tariff sheets are submitted to comply with the Commission's October 31, 1996 order in this proceeding. East Tennessee states that, pursuant to such order, the revised sheets make clear that East Tennessee is not authorized to negotiate terms and conditions of service.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

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 Section 385.211 of the Commission's Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. 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. 96–30235 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–89–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

November 21, 1996.

Take notice that on November 12, 1996, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP97–89–000, a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon a delivery point (Chamberino Meter Station) and the service related thereto in Dona Ana County, New Mexico, under the blanket certificate issued in Docket No. CP82–435–000, pursuant to Section 7(b) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states that it provides firm transportation service for the City of Las Cruces, New Mexico (Las Cruces) at the Chamberino Meter Station pursuant to the terms and conditions of a Transportation Service Agreement dated August 15, 1991.

El Paso further states that by letter dated June 3, 1996, Las Cruces notified El Paso of its desire to cease the receipt of natural gas service at the Chamberino Meter Station because Las Cruces has completed the construction of its Afton Transmission Line and is therefor able to receive all of the natural gas requirements formerly received at the Chamberino Meter Station at El Paso's existing Afton Meter Station. Subsequently, by letter agreement dated July 3, 1996, El Paso and Las Cruces agreed that the Chamberino Meter Station would be abandoned and the facilities removed upon receipt of the appropriate authorization from the Commission.

El Paso says there will be no adverse environmental effects from the proposed abandonment. El Paso states that the metering facility will be removed with only minimal ground disturbance which will be limited to existing, previously-disturbed right-of-way.

El Paso states that it has provided written notification of the proposed abandonment to the New Mexico Public Service Commission.

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. 96–30255 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–82–000]

GPM Gas Corporation v. El Paso Natural Gas Company; Notice of Complaint

November 21, 1996.

Take notice that on November 14, 1996, in accordance with Rules 206, 209 and 212 of the Rules of Practice and Procedure of the Commission, 18 CFR 385.206, 385.209, and 385.212, GPM Gas Corporation (GPM) tendered for filing a complaint against El Paso Natural Gas Company (El Paso) and moves that the Commission issue an order to show cause why El Paso should not be ordered to cease and desist from violating the Commission's regulations, policies and orders.

GPM contends El Paso is unduly favoring El Paso Field Services (El Paso's gathering/marketing affiliate) with respect to compression charges to access El Paso's mainline.

GPM states that on September 13, 1995, in Docket No. CP94–183–000 72 FERC ¶ 61,220 (1995) the Commission issued an order approving the abandonment by El Paso of certain gas gathering assets, which are now owned and operated by El Paso Field Services, El Paso's unregulated affiliate. El Paso did not, however, abandon its South Carlsbad compression station, which GPM argues has been an integral part of the gathering systems.

GPM argues that El Paso requires GPM's (and others') gas to be delivered at about twice the pressure as gas delivered by El Paso Field Services, so that Field Services' costs of compression are much lower than GPM's. GPM claims that it is also assigned other South Carlsbad compression costs, because El Paso's transportation rates include some of the ''gathering'' compression costs that GPM argues should be properly allocated to Field Services.

GPM asks that the Commission issue a show cause order to make El Paso show why it should not remove all South Carlsbad (and other) compression costs from its mainline transmission and fuel rates, and recover compression costs only from the gas that flows through the compression facilities. GPM also requests that the Commission convene an expedited technical conference or hearing, if appropriate, to determine any fact issues that may be in dispute.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before December 13, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before December 13, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30251 Filed 11–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–81–000]

K N Interstate Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

November 20, 1996.

Take notice that on November 15, 1996 K N Interstate Gas Transmission Company Co. (KNI) tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets, to be effective January 1, 1997:

Third Revised Volume No. 1–A

First Revised Sheet No. 15
First Revised Sheet No. 29
First Revised Sheet No. 43
First Revised Sheet No. 55
First Revised Sheet No. 73
First Revised Sheet No. 85
First Revised Sheet No. 101
First Revised Sheet No. 112
First Revised Sheet No. 124
First Revised Sheet No. 135

Third Revised Volume No. 1–B

First Revised Sheet No. 9
First Revised Sheet No. 33
First Revised Sheet No. 34
First Revised Sheet No. 43
Original Sheet No. 89

KNI states that these tariff sheets are being filed in order to make changes to KNI's tariff to permit KNI to charge negotiated rates for its transportation, no-notice and storage services.

KNI states that copies of the filing were served upon KNI's mainline jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to be heard or to make any protest with reference to this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30233 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–393–002]

Koch Gateway Pipeline Company; Notice of Compliance Filing

November 20, 1996.

Take notice that on November 15, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1996:

2nd Sub Fourth Revised Sheet No. 2707

Koch states that the purpose of this filing is to comply with the Commission's Order on October 31, 1996, 77 FERC ¶ 61,098 (1996). Specifically, Koch is complying with the Commission's directive to explain how the unauthorized gas provision will work and modifying Section 20.2 to reflect specific unauthorized gas crediting language.

Koch states that copies of the filing are being served upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with the requirements 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. 96–30237 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–172–005]

Koch Gateway Pipeline Company; Notice of Compliance Filing

November 20, 1996.

Take notice that on November 15, 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, with an effective date of April 12, 1996.

Third Sub First Revised Sheet No. 1408

Koch states that these revised tariff sheets are filed to comply with the Commission's ''Order Accepting Tariff Sheet Subject to Condition'' issued November 5, 1996 in Docket No. RP96–172–002 and RP96–172–003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such motions or protest must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30242 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–96–000]

Koch Gateway Pipeline Company; Notice of Application

November 20, 1996.

Take notice that on November 13, 1996, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251–1487, filed in Docket No. CP97–96–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval for Koch to abandon, by sale to Metroplex Pipeline Company, L.L.C. (Metroplex), the western portion of its 16-inch Latex-Fort Worth Mainline and certain related transmission laterals, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Koch requests authorization to abandon in place by sales to Metroplex, the western segment of its 16-inch Latex-Forth Worth Main Line, designated as Index 1, from Fort Worth, Texas to Willis Point, Texas as well as the related lateral lines. Koch states that the facilities to be abandoned consist of approximately 108 miles of various size transmission facilities located in Tarrant, Dallas, Kaufman and Van Zandt Counties, Texas. Koch indicates that these transmission facilities are positioned at the far northwest extremity of its system, away from its other productive pipeline assets, and no gas supplies are connected to these facilities. Koch, claiming that its market has dwindled along the length of Index 1 west of Willis Point, Texas and, as a direct result of this shrunken market, the cost of operating and maintaining the Index 1 facilities bears no proportion to the

revenue generated by the facilities, asserts that abandonment of these underutilized facilities is in the public interest.

Koch states that a finding by the Commission that upon approval of the abandonment and sale, the subject facilities shall not be subject to the jurisdiction of the Commission, is a condition of the sale.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 11, 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 or 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 determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation 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, 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 a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Koch to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30246 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–14–001]

Midwestern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 20, 1996.

Take notice that on November 15, 1996, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute First Revised Sheet No. 100, to be effective November 1, 1996.

Midwestern states that the revised tariff sheet is submitted to comply with the Commission's October 31, 1996 order in this proceeding. Midwestern states that, pursuant to such order, the revised sheet makes clear that Midwestern is not authorized to negotiate terms and conditions of service.

Midwestern states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. 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. 96–30234 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–83–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 20, 1996.

Take notice that on November 15, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Tenth Revised Sheet No. 237A and Eleventh Revised Sheet No. 237B, with a proposed effective date of December 15, 1996.

National proposes to flow through to its former RQ and CD customers refunds, including interest, received from certain of National's upstream pipeline-suppliers related to National's Account Nos. 191 and 186.

National states that in accordance with Sections 21 (c) and (d) of the General Terms and Conditions of National's FERC Gas Tariff, National is allocating the $862,839.75 in commodity credit and $103.71 in demand credit according to the RQ and CD customers' commodity sales based on the 12 months ending July 31, 1993, and their level of demand determinants on July 31, 1993, the day before National implemented restructured services on its system.

National states that copies of this filing were served upon the company's jurisdictional customers and upon the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30232 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–331–006]

National Fuel Gas Supply Corporation; Notice of Revised Compliance Filing

November 20, 1996.

Take notice that on November 18, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sub. First Revised Sheet No. 131R.04 and Third Revised Sheet No. 206, to be effective September 1, 1996.

National states that on September 16, 1996, it submitted its compliance filing in the above-captioned proceeding. National states that the purpose of this filing is to correct one typographical and one pagination error found in that compliance filing.

National further states that it is serving copies of this filing upon its firm customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30241 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–97–000]

Natural Gas Pipeline Company of America; Notice of Application

November 21, 1996.

Take notice that on November 13, 1996, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed an abbreviated application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act requesting authority to: (1) abandon 900 feet of pipeline lateral in two segments, (2) construct and operate 3,000 feet of pipeline lateral in three segments, and (3) operate approximately 3,200 feet of pipeline lateral in four segments, all as more fully described in the application that is on file with the Federal Energy Regulatory Commission and open to public inspection.

Natural proposes to abandon certain pipeline laterals and to construct and operate other pipeline laterals in Natural's Loudon Storage Field (Loudon) located in Fayette county, Illinois. Natural says it has experienced a number of corrosion leaks at Loudon. Natural further states that without replacement, the existing laterals that have experienced corrosion leaks could continue to deteriorate to a point where the reliability of Loudon would be compromised. Natural states that the proposed construction will not affect the current design day and peak day capacities for Loudon. The cost of the project is estimated at approximately $396,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 12, 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 or 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 determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30254 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–100–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

November 20, 1996.

Take notice that on November 15, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP97–100–000 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 install and operate the Menlo #2 TBS, a new delivery point to be located in Guthrie County, Iowa, to accommodate incremental, interruptible natural gas deliveries to IES Utilities (IES) under Northern's blanket certificate issued in Docket No. CP82–401–000 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.

Northern states that it requests authority to install and operate the proposed delivery point to accommodate incremental, interruptible natural gas deliveries to IES under Northern's currently effective throughput service agreements with IES. Northern asserts that IES has requested the proposed delivery point to accommodate service to their customers who have not previously been served by natural gas. The estimated interruptible volumes proposed to be delivered to IES at the Menlo #2 TBS are 680 MMBtu on a peak day and 94,000 MMBtu on an annual basis.

Northern states that the estimated cost to install the new delivery point is $87,156, and that IES will reimburse Northern for the total cost of constructing the proposed delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed 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. 96–30245 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–84–000]

Northwest Alaskan Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 21, 1996.

Take notice that on November 18, 1996, Northwest Alaskan Pipeline Company (Northwest Alaskan), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2,

Thirty-Ninth Revised Sheet No. 5, with a proposed effective date of January 1, 1997.

Northwest Alaskan states that it is submitting Thirty-Ninth Revised Sheet No. 5 reflecting a decrease in total demand changes for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. (Pan-Alberta) and resold to Pan-Alberta Gas (U.S.), Inc. (PAG–US) under Rate Schedules X–2 and X–3, and an increase in total demand charges for Canadian gas purchased from Pan-Alberta and resold to PAG–US under Rate Schedule X–1 and Pacific Interstate Transmission Company (PIT) under Rate Schedule X–4.

Northwest Alaskan states that it is submitting Thirty-Ninth Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and PAG–US and PIT, and pursuant to Rate Schedules X–1, X–2, X–3 and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (January 1, 1997 through June 30, 1997) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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 in accordance with 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30250 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–84–000]

PanEnergy Field Services, Inc.; Notice of Petition for Declaratory Order

November 20, 1996.

Take notice that on November 5, 1996, PanEnergy Field Service, Inc. (Field Services),[1] 370 Seventeenth Street, Suite 900, Denver, Colorado 80202, filed in Docket No. CP97–84–000 a petition pursuant to Section 16 of the Natural Gas Act (NGA), and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207 (a)(2)), for a declaratory order disclaiming Commission jurisdiction over certain facilities to be acquired from Trunkline Gas Company (Trunkline),[2] an affiliate, and the services provide through them, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Field Services seeks a declaratory order from the Commission finding that:

(1) The Texas and Louisiana Gulf Coast Facilities (Gulf Coast Facilities) described in Section VI and in Appendix B to its petition, including those facilities which are functionally gathering facilities but included on the accounting records of Trunkline as transmission, are or, upon transfer to Field Services, would be facilities used for the gathering of natural gas exempt from Commission jurisdiction under Section 1(b) of the NGA.

(2) Field Services would not be a ''natural-gas company'' pursuant to Section 2(6) of the NGA by virtue of its proposed acquisition, ownership and operation of the facilities.

(3) The gathering services that Field Services seeks to perform as described in Section VI and in Appendix B to its petition would be exempt from the Commission's jurisdiction under Section 1(b) of the NGA; and

(4) Field Services' rates and changes for gathering services would not be subject to Sections 4 and 5 of the NGA.

Field Services proposes to operate the Gulf Coast Facilities as a gas gatherer providing gathering and related services on an open-access basis to all customers. Field Services avers that it does not propose to engage in the sale or transportation of natural gas in any manner which would subject it to the Commission's jurisdiction under the NGA. Field Services is offering default contracts for firm and interruptible service to current shippers to provide for an orderly transition for those shippers; proforma copies of the contracts are attached in Appendix A to the petition. In addition, Field Services may seek to reconfigure certain facilities to be acquired from Trunkline to more efficiently incorporate them into Field Services' gathering activities as needed to provide the services required by producers and Trunkline's customers. With regard to the Gulf Coast Facilities, Field Services would provide supply aggregation, balancing, compression, metering, improve access to processing and alternative shipping arrangements into other pipelines and other markets, thereby aligning contracts, costs, services, and charges in a rational and financially sound manner. Field Services states that it would not become an ''affiliated marketer'' as defined by the Commission in its rules. Field Services further states that its goal is to expand and improve the quality of gathering related service available to existing and future producers and shippers.

Any person desiring to be head or to make any protest with reference to said petition should on or before December 11, 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 384.214 or 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 determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules

Lois D. Cashell,

Secretary.

[FR Doc. 96–30247 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[1] Field Services is a wholly-owned subsidiary of PanEnergy Corp, and owns gathering and processing assets in the states of Alabama, Arkansas, Colorado, Kansas, Louisiana, Mississippi, New Mexico, Texas and Utah.

[2] Trunkline has filed a related abandonment application in Docket No. CP97–83–000.

[Docket Nos. RP96–260–000, RP96–260–001, and RP96–260–002]

Panhandle Eastern Pipe Line Company; Notice of Technical Conference

November 21, 1996.

An informal technical conference will be convened to discuss issues raised by certain parties as directed by the Commission in its November 4, 1996

order in these proceedings.[1] Panhandle Eastern Pipe Line Company (Panhandle) should be prepared at the technical conference to address such issues and provide further support. With respect to discussion or examination of certain materials for which Panhandle requests confidential treatment, attendance at the technical conference is limited to parties which execute a protective agreement with Panhandle.

The conference to address the issues has been scheduled for Tuesday, December 10, 1996 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30252 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–629–033]

Tennessee Gas Pipeline Company; Notice of Amendment

November 21, 1996.

Take notice that on November 15, 1996, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an abbreviated application in Docket No. CP89–629–033, pursuant to Section 7(c) of the Natural Gas Act, to amend the certificate of public convenience and necessity previously issued in this proceeding to accommodate two shippers' requests for additional receipt and delivery points, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Tennnessee states that on November 14, 1990, it received Section 7(c) authorization to provide, *inter alia*, firm transportation service on behalf of Selkirk Cogen Partners, L.P. (Selkirk) and Orchard Gas Corporation (Orchard) (as agent for both MASSPOWER and Granite State Gas Transmission, Inc.).[1] Tennessee states that each shipper has requested an additional delivery point and an additional receipt point to ensure its ability to fully utilize the service under its firm transportation agreement. Selkirk and Orchard state that the additional receipt and delivery points are required in the event of any modifications in gas requirements at their cogeneration plants due to either temporary outages at the plants or unavailability of their gas supplies.

Tennessee states the addition of these points would not increase the shippers' current maximum daily contract quantities under their respective transportation agreements. In addition, the requested points for each shipper are located between the shipper's existing firm receipt and delivery points. Tennessee states that it has sufficient capacity to accommodate these requests without adversely affecting service to other firm customers and without the construction of new facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 12, 1996, file with the Federal Energy Regulatory Commission, 888 First St., NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules and Practice and Procedure (18 CFR 385.214 or 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 determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion of leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30256 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[1] 77 FERC ¶ 61,123 (1996).

[1] 53 FERC ¶ 61,194 (1990).

[Docket No. CP88–171–032]

Tennessee Gas Pipeline Company; Notice of Amendment

November 21, 1996.

Take notice that on November 15, 1996, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an abbreviated application in Docket No. CP88–171–032, pursuant to Section 7(c) of the Natural Gas Act, to amend the certificate of public convenience and necessity previously issued in this proceeding to accommodate two shippers' requests for additional receipt and delivery points, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Tennessee states that on May 2, 1990 [1] and September 13, 1990,[2] it received Section 7(c) authorization to provide, *inter alia*, firm transportation service on behalf of Ocean State Power II (Ocean State II) and Altresco-Pittsfield, LP (Alteresco). Tennessee states that Ocean State II has requested an additional delivery point and an additional receipt point and Altresco has requested two additional delivery points and two additional receipt points to ensure their ability to fully utilize the service under their respective firm transportation agreements. Ocean State II and Altresco state that the additional receipt and delivery points are required in the event of any modifications in gas requirements at their cogeneration plants due to either temporary outages at the plants or unavailability of their gas supplies.

Tennessee states the addition of these points would not increase the shippers' current maximum daily contract quantities under their respective transportation agreements. In addition, the requested points for each shipper are located between their existing firm receipt and delivery points. Tennessee states that it has sufficient capacity to accommodate these requests without adversely affecting service to other firm customers and without the construction of new facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 12, 1996, file with the Federal Energy Regulatory Commission, 888 First St., NE, 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 or 385.211)

[1] 51 FERC ¶ 61,113 (1990).

[2] 52 FERC ¶ 61,257 (1990).

and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30257 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP87–132–015]

Tennessee Gas Pipeline Company; Notice of Amendment

November 21, 1996.

Take notice that on November 15, 1996, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an abbreviated application in Docket No. CP87–132–015, pursuant to Section 7(c) of the Natural Gas Act, to amend the certificate of public convenience and necessity previously issued in this proceeding to accommodate a shipper's request for an additional receipt and delivery point, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Tennessee states that on October 3, 1988, it received Section 7(c) authorization to provide, *inter alia*, firm transportation service on behalf of Ocean State Power (Ocean State) [1] Tennessee states that Ocean State has requested an additional delivery point and an additional receipt point to ensure its ability to fully utilize the service under its firm transportation agreement. Ocean State asserts that the additional receipt and delivery points are required in the event of any modifications in gas requirements at its cogeneration plants due to either temporary outages at the plants or unavailability of its gas supplies.

Tennessee states the addition of these points would not increase Ocean State's current maximum daily contract quantities under its transportation agreement. In addition, the requested points for Ocean State are located between its existing firm receipt and delivery points. Tennessee states that it has sufficient capacity to accommodate these requests without adversely affecting service to other firm customers and without the construction of new facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 12, 1996, file with the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 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 or 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 determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30258 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–3–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 20, 1996.

Take notice that on November 15, 1996 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which tariff sheets are enumerated in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedules GSS and LSS, and fuel changes attributable to transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. This tracking filing is being made pursuant to Section 4 of Transco's Rate Schedule LSS, Section 3 of Transco's Rate Schedule GSS, and Section 4 of Transco's Rate Schedule FT–NT.

Transco states that included in Appendices B and C attached to the filing are explanations of the rate of fuel changes and details regarding the computation of the revised Rate Schedules LSS, GSS, and FT–NT rates.

Transco states that copies of the filing are being mailed to each of its LSS, GSS, and FT–NT customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered

[1] 43 FERC ¶ 61,010 (1988); *order on rehearing,* 45 FERC ¶ 61,324 (1988); *order on rehearing,* 55 FERC ¶ 61,480 (1991).

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 pubic inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30231 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–83–000]

Trunkline Gas Company; Notice of Application

November 20, 1996.

Take notice that on November 5, 1996, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP97–83–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by transfer to PanEnergy Field Services, Inc. (Field Services), a wholly-owned subsidiary of PanEnergy Corp, under a transfer agreement dated October 15, 1996, certain offshore and onshore gathering facilities located in Beauregard Parish, Louisiana, and Jim Wells, Bee, Goliad, Jackson, Dewitt, Victoria, Colorado, Wharton, Harris, Montgomery, Newton and Austin Counties, Texas, and Vermilion, Ship Shoal, South Timbalier, South Pelto, Ewing Bank and Grand Isle, Offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.[1]

Trunkline states that the utilization of its gathering facilities is changing as a result of Order No. 636 and the required unbundling of its transportation and gathering rates together with its customers' elections to cease purchasing natural gas from Trunkline. Therefore, Trunkline is proposing to transfer its gathering facilities to Field Services for operation as a stand alone gathering system on an open access, nonjurisdictional basis. Trunkline advises that Field Services would assume all future investment, operational and economic responsibilities for these facilities. Thus, Trunkline continues, the potential for these facilities to become stranded assets of Trunkline would be avoided, and Trunkline would not experience the attendant transition and abandonment costs under Order No. 636. Trunkline asserts that the Commission's approval of Trunkline's application is necessary to allow Field Services to compete for gathering business on a level playing field.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 11, 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 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests field with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, 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 a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30248 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[1] Field Services has filed a related petition for declartory Order in Docket No. CP97–84–000.

[Docket No. EC97–5–000, et al.]

Ohio Edison Company, et al.; Electric Rate and Corporate Regulation Filings

November 21, 1996.

Take notice that the following filings have been made with the Commission:

1. Ohio Edison Company, Pennsylvania Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket Nos. EC97–5–000 and ER97–413–000]

Take notice that on November 8, 1996, Ohio Edison Company (OE), Pennsylvania Power Company (Penn Power), OE's wholly-owned subsidiary, The Cleveland Electric Illuminating Company (CEI) and The Toledo Edison Company (TE) collectively, the ''Applicants'') filed a joint application pursuant to Sections 203 and 205 of the Federal Power Act and the Federal Energy Regulatory Commission's applicable regulations seeking authorization and approval for the Applicants to form a new system to be owned by FirstEnergy Corp. (FirstEnergy), a holding company incorporated in the State of Ohio. Applicants further request a finding that the related Joint Dispatch Agreement (JDA) is just and reasonable. The Applicants request approval by September 1, 1997.

OE is an electric utility operating in Ohio and through Penn Power, in western Pennsylvania. CEI is an electric utility operating in Ohio. TE is an electric utility operating in Ohio. Pursuant to the Merger Agreement, CEI, OE and TE will become operating companies of FirstEnergy. Penn Power will remain a subsidiary of Ohio Edison.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Catamount Thetford Corporation

[Docket No. EG96–98–000]

Take notice that on November 19, 1996, Catamount Thetford Corporation (the ''Applicant'') whose address is 71 Allen Street, Building A, Rutland, Vermont, 05701, filed with the Federal Energy Regulatory Commission an application, pursuant to Order 591, to amend its application for determination of exempt wholesale generator status made pursuant to Part 365 of the Commission's regulations.

The Applicant states that it will be engaged indirectly, through Fibrowatt Thetford Limited, its affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, and exclusively in the business of owning an approximately 38.5 MW net poultry-litter-fired electrical generating facility located in Thetford, England, and selling electric energy at wholesale, as that term has been interpreted by the Commission. The Applicant requests a determination that the application for exempt wholesale generator status is

amended and that the Applicant is an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Comment date: December 10, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Power Company of America, L.P., Utility-2000 Energy Corp., The Utility-Trade Corp., Conagra Energy Services, Inc., Alliance Power Marketing Inc., Conti Metals, Inc. and Edison Source

[Docket Nos. ER95–111–008, ER95–187–006, ER95–1382–005, ER95–1751–004, ER96–1818–003, ER96–2083–001 and ER96–2150–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 21, 1996, Power Company of America, L.P. filed certain information as required by the Commission's May 3, 1995, order in Docket No. ER95–111–000.

On October 15, 1996, Utility-2000 Energy Corp. filed certain information as required by the Commission's December 29, 1994, order in Docket No. ER95–187–000.

On October 15, 1996, The Utility-Trade Corp. filed certain information as required by the Commission's August 25, 1995, order in Docket No. ER95–1382–000.

On November 14, 1996, ConAgra Energy Services, Inc. filed certain information as required by the Commission's October 23, 1995, order in Docket No. ER95–1751–000.

On October 21, 1996, Alliance Power Marketing Inc. filed certain information as required by the Commission's June 17, 1996, order in Docket No. ER96–1818–000.

On November 19, 1996, Conti Metals, Inc. filed certain information as required by the Commission's July 9, 1996, order in Docket No. ER96–2083–000.

On November 1, 1996, Edison Source filed certain information as required by the Commission's August 13, 1996, order in Docket No. ER96–2150–000.

4. Portland General Electric Company

[Docket No. ER96–1600–001]

Take notice that on October 16, 1996, Portland General Electric Company tendered for filing an amendment to its compliance filing in the above-referenced docket.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. US Energy, Inc.

[Docket No. ER96–2879–000]

Take notice that on November 4, 1996, US Energy, Inc. tendered for an amendment in the above-referenced docket.

Comment date: December 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Manner Technologies, L.L.C.

[Docket No. ER97–135–000]

Take notice that on November 18, 1996, Manner Technologies, L.L.C. tendered for filing an amendment in the above-referenced docket.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER97–424–000]

Take notice that on November 12, 1996, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a Notice of Cancellation of Service Agreement No. 5, FERC Electric Tariff, Original Volume No. 1 between Wisconsin Electric and Upper Peninsula Power Company.

Comment date: December 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER97–427–000]

Take notice that on November 12, 1996, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 249.35, FERC Rate Schedule No. 259.36, and all supplements thereto.

Comment date: December 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER97–428–000]

Take notice that on November 12, 1996, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 247.33, FERC Rate Schedule No. 247.34, and all supplements thereto.

Comment date: December 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER97–429–000]

Take notice that on November 12, 1996, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 302 and all supplements thereto.

Comment date: December 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER97–435–000]

Take notice that on November 12, 1996, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 274 and all supplements thereto.

Comment date: December 5, 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. 96–30283 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2539—NY]

Niagara Mohawk Power Corporation; Notice of Availability of Draft Environmental Assessment

November 20, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the School Street Project located in Albany and Saratoga counties, New York, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental

protection or enhancement measures, would not constitute a major federal action significantly affecting the equality of the human environment.

Copies of the DEA are available for review in the Public Reference and Files Maintenance Branch, Room 2A of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426. Please affix ''School Street Project No. 2539'' to all comments. For further information, please contact Edward R. Meyer at (202) 208–7998.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30243 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1962–000–California]

Pacific Gas and Electric Company; Notice of Revised Deadline Date To Provide Comments on Staff's Draft Environmental Assessment

November 20, 1996.

On November 1, 1996, the Commission issued a Notice of Availability of Draft Environmental Assessment (draft EA) for the relicensing of the existing Rock Creek—Cresta Project. This notice indicated that concerned persons and entities had 45 days from that date to file comments concerning the subject document with the Commission.

Because of a delay in mailing the draft EA and to ensure that all parties have sufficient time to evaluate and respond to the conclusions and recommendations included therein, the deadline date for comments on the Rock Creek—Cresta draft EA is hereby extended to December 31, 1996.

Copies of the draft EA are available for review in the Public Reference and Files Maintenance Branch of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

Any comments filed with the Commission should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix ''Rock Creek—Cresta Hydroelectric Project, No. 1962–000'' to all comments. For further information, please contact Jim Haimes at (202) 219–2780.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30244 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2607–007, et al.

Hydroelectric Applications [Duke Power Company, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Amendment of License.

b. Project No.: 2607–007.

c. Date filed: October 1, 1996.

d. Applicant: Duke Power Company.

e. Name of Project: Spencer Mountain.

f. Location: On the South Fork Catawba River, near Gastonia, North Carolina.

g. Filed Pursuant to: Federal Power Act 16 USC §§ 791(a) 825(r).

h. Applicant Contact:

Timothy L. Huffman, Senior Engineer, Duke Power Company–EC12V, P.O. Box 1006, Charlotte, NC 28201–1006, (704) 382–5185

Mark Sundquist, President, Northbrook Carolina Hydro, L.L.C., 225 W. Wacker Drive, Suite 2330, Chicago, IL 60606, (312) 553–2136.

i. FERC Contact: Michael Spencer, (202) 219–2846.

j. Comment Date: December 26, 1996.

k. Description of Amendment: The amendment of license would consist of: (1) removing the 3,300-foot-long transmission line from the switchyard to the interconnection system from the license; and (2) modifying the project boundary to match the river banks that changed due to the natural flow of the South Fork Catawba River.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2 a. Type of Application: Declaration of Intent/Declaratory Order.

b. Project No.: DI97–1–000.

c. Date Filed: October 25, 1996.

d. Applicant: Alaska Power Company.

e. Name of Project: South Fork Hydro Project.

f. Location: South Fork of Black Bear Creek on Prince of Wales Island near the community of Klawock, AK, within the Copper River Meridian, at T73S, R82E, Sec. 1, 2, 11, and 12.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 USC § 817(b).

h. Applicant Contact: Robert S. Grimm, President, Alaska Power Company, P.O. Box 222, 191 Otto Street, Port Townsend, WA 98368, (360) 385–1733.

i. FERC Contact: Etta Foster, (202) 219–2679.

j. Comment Date: December 30, 1996.

k. Description of Project: The proposed run-of-river project will consist of: (1) a small diversion structure; (2) a 30-inch diameter, 3,000-foot long penstock; (3) a powerhouse containing a generating system with a rated capacity of 3 to 4 MW; (3) a transmission line; and (4) appurtenant facilities.

When a petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: The additional energy from the hydropower project at South Fork will allow the Applicant to meet the energy demand utilizing a renewable resource instead of diesel generation.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

3 a. Type of Application: Recreation Plan (Article 410) and Flow Release Plan (Article 411).

b. Project No.: 2442–017 and –019.

c. Date Filed: October 15, 1996.

d. Applicant: City of Watertown, New York.

e. Name of Project: Watertown Project.

f. Location: Black River, Jefferson County, New York.

g. Filed Pursuant to: Federal Power Act, 16 USC 791(a)–825(r).

h. Applicant Contact: Robert Upson, P.E., City of Watertown, Watertown Municipal Building, 245 Washington Street, Watertown, NY 13601, (315) 785–7730.

i. FERC Contact: Patti Pakkala, (202) 219–0025.

j. Comment Date: December 26, 1996.

k. Description of Project: The City of Watertown, New York, licensee for the Watertown Project, has filed the

recreation plan and flow release plan required by articles 410 and 411 of the project license, respectively. The recreation plan includes provisions for a canoe portage around the project, and fishing and boating access to the reservoir and tailwater area. The flow release plan proposes the release of flows for whitewater recreational boating purposes below the New York State Route 3 bridge. In the recreation plan, the licensee is proposing to modify the canoe portage route considered during licensing, due to site constraints at the put-in location. Further, the licensee is proposing not to provide fishing access on the side of the river downstream of the powerhouse, given that fishing access will be provided across the river at Water Works Park.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. Type of Application: Application to Grant an Easement to Cresent Resources, Inc. to construct a private marina.

b. Project Name and No: Keowee-Toxawway Project, FERC Project No. 2503–041.

c. Date Filed: September 20, 1996.

d. Applicant: Duke Power Company.

e. Location: Sceneca, South Carolina Oconee County.

f. Filed pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

g. Applicant Contact: Mr. E. M. Oakley, Duke Power Company, P.O. Box 1006, Charlotte, North Carolina 28201, (704) 382–5778.

h. FERC Contact: Brian Romanek, (202) 219–3076.

i. Comment Date: December 30, 1996.

j. Description of the filing: Application of Duke Power Company to grant an easement of 1.74 acres of project land to Cresent Resources, Inc. to construct a private residential marina consisting of 70 floating boat slips. The proposed marina would provide access to the reservoir for residents of the Summit Subdivision. The proposed marina would consist of an access ramp and floating slips. The slips would be anchored by using self-driving piles.

k. This notice also consists of the following standard paragraphs: B, C1, D2.

5 a. Type of Application: Application to Grant an Easement to Cresent Resources, Inc. to construct a private marina.

b. Project Name and No: Keowee-Toxawway Project, FERC Project No. 2503–042.

c. Date Filed: September 20, 1996.

d. Applicant: Duke Power Company.

e. Location: Wagener, South Carolina. Oconee County.

f. Filed pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

g. Applicant Contact: Mr. E. M. Oakley, Duke Power Company, P.O. Box 1006, Charlotte, North Carolina 28201, (704) 382–5778.

h. FERC Contact: Brian Romanek, (202) 219–3076.

i. Comment Date: December 30, 1996.

j. Description of the filing: Application of Duke Power Company to grant an easement of 0.33 acres of project land to Cresent Resources, Inc. to construct a private residential marina consisting of 12 floating boat slips. The proposed marina would provide access to the reservoir for residents of the Emerald Pointe Subdivision (Phases II and III). The proposed marina would consist of an access ramp and floating slips. The slips would be anchored by using self-driving piles.

k. This notice also consists of the following standard paragraphs: B, C1, D2.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 15, 1996, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30282 Filed 11–26–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140248; FRL–5573–2]

Access to Confidential Business Information by the National Institutes of Health

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the National Institutes of Health (NIH) access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to confidential data submitted to EPA will occur no sooner than December 9, 1996.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division 7408, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In a June 10, 1996, letter to the Director of the Information Management Division, Office of Pollution Prevention and Toxics, NIH has requested access to confidential business information submitted to EPA under TSCA in order to review EPA programs designed to control the risk of harm presented by chemicals.

In accordance with 40 CFR 2.306(h), EPA has determined that NIH will require access to CBI submitted to EPA under all sections of TSCA to successfully perform their duties. NIH personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the

information may be claimed or determined to be CBI.

EPA is issuing this notice to allow NIH to review TSCA data pertaining to production volumes for chemicals that are considered candidates for the National Toxicology Program (NTP). EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide NIH access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this agreement will take place at EPA's Research Triangle Park, North Carolina facility.

NIH will be authorized access to TSCA CBI under the *TSCA Confidential Business Information Security Manual.* Upon completing review of the CBI materials, NIH will return all materials to EPA.

NIH personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: November 19,1996.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–30308 Filed 11–26–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5656–1]

Public Water Supervision Program: Program Revisions for the State of Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Vermont is revising it's approved State Public Water Supply Supervision Primacy Program. Vermont has adopted two drinking water regulations: (1) For Volatile Organic Chemicals, Synthetic Organic Chemicals, and Inorganic Chemicals (known as Phase II, Phase IIB and V) that correspond to the National Primary Drinking Water Regulations promulgated by EPA on January 30, 1991 (56 FR 3526), July 1, 1991 (56 FR 30266), and July 17, 1992 (57 FR 31776) and (2) for controlling Lead and Copper in drinking water that correspond to the National Primary Drinking Water Regulations promulgated by EPA on June 7, 1991 (56 FR 26460). EPA has determined that the State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions. All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by December 27, 1996 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by December 27, 1996, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective December 27, 1996.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing. (3) The signature of the individual making the request: or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, at the following offices:

Water Supplies Division, Vermont Department of Environmental Conservation, 103 South Main Street, Waterbury, VT 05676,
and
U.S. Environmental Protection Agency—Region I, Office of Ecosystem Protection—Vermont State Program, One Congress Street—11th Floor, Boston, MA 02203

FOR FURTHER INFORMATION CONTACT: Anthony Ciccarelli, U.S. Environmental Protection Agency—Region I, Office of Ecosystem Protection—Vermont State Program, JFK Federal Building, Boston, MA 02203, Telephone: (617) 565–3470.

Authority

Section 1413 of the Safe Drinking Water Act, as amended (1996); and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: November 19, 1996.

John P. DeVillars,

Regional Administrator.

[FR Doc. 96–30312 Filed 11–26–96; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–42189; FRL–5575–7]

Endocrine Disruptors; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA is announcing the first meeting of the Endocrine Disruptors Screening and Testing Advisory Committee (EDSTAC), a committee established under the provisions of the Federal Committee Advisory Act (FACA) to advise EPA on a strategy for screening and testing chemicals and pesticides for their potential to disrupt endocrine functions in humans and wildlife.

DATES: The meeting will be held on December 12–13, 1996. It will begin at 8 a.m. and end at 5 p.m. on December 12th. There will be an opportunity for public comment from 7 p.m. until 9 p.m. on the evening of December 12th. The Committee will reconvene at 8 a.m. and adjourn at 12:30 p.m. on December 13th.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 250 Gateway Blvd., South San Francisco, CA 94080. A block of rooms has been reserved at a rate of $109/night. When contacting the hotel please refer to the ''Endocrine Disrupter Screening and Testing Advisory Committee'' meeting to obtain this rate. The telephone number at the hotel is 425–589–3400, fax: 415–876–0305.

FOR FURTHER INFORMATION CONTACT: To obtain additional information please contact the contractor assisting EPA with meeting facilitation and logistics: Ms. Tutti Otteson, The Keystone Center, P.O. Box 8606, Keystone, CO 80435, telephone: 970–468–5822, fax: 970–262–0152, email: totteson@keystone.org. For technical information, contact Tony Maciorowski (telephone: 202–260–3048; e-mail: maciorowski.tony@epamail.epa.gov) or Gary Timm (telephone: 202–260–1859; e-mail: timm.gary@epamail.epa.gov) at EPA.

SUPPLEMENTARY INFORMATION: EPA's Office of Prevention, Pesticides and Toxic Substances is taking the lead for the Agency on endocrine disruption screening and testing issues. EPA began its efforts to develop a screening and testing strategy by obtaining the views of key stakeholders at a meeting on May 15–16, 1996 (61 FR 20814, May 8, 1996) (FRL–5369–8). At the May stakeholder's meeting participants generally agreed that government, industry, academia and public interest groups should work

collaboratively to develop a screening and testing strategy.

Recent legislation (i.e., reauthorization of the Safe Drinking Water Act and passage of the Food Quality Protection Act) has mandated that such a screening and testing program be developed by EPA. Further, underlying authority for EPA to consider implementation of such a program is found in the existing Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and Toxic Substances Control Act (TSCA).

EPA has concluded that a FACA chartered committee would be the best means of providing advice and consultation to the Agency regarding the development of an endocrine disruptor screening and testing program and proposes to form the Endocrine Disrupter Screening and Testing Advisory Committee (EDSTAC). An organizational meeting of EDSTAC nominees and other interested stakeholders was held in Washington, DC on October 31 and November 1, 1996 (61 FR 54195, October 17, 1996) (FRL–5571–2).

EDSTAC Purpose and Goals

The purpose of EDSTAC is to provide advice and counsel to the Agency on a strategy to screen and test endocrine disrupting chemicals and pesticides in humans, fish, and wildlife. This strategy will be aimed at reducing or mitigating risk to human health and the environment. The broad goals and objectives of EDSTAC are set forth in its charter and include the following:

(a) A strategy for identifying and selecting from among existing and new initial screening mechanisms, as well as the methods to ensure their validation.

(b) The selection of validated initial screens EPA should use to initiate the endocrine disrupter screening and testing program.

(c) A strategy and criteria for deciding when more thorough endocrine disrupter testing, beyond the initial screening, is needed, what existing and new tests may be appropriate, as well as the methods to ensure their validation.

(d) The selection of validated tests EPA should use subsequent to, or in lieu of, the initial screens.

(e) A flexible process to select and prioritize the chemicals and pesticides that will be subjected to the initial screening and, where appropriate, subsequent testing.

The Committee may pursue these goals sequentially or in parallel tracks. In either case, the Committee may recommend that EPA take action to implement agreements that are reached on one or more of these goals before agreements are reached on all of the goals. EPA expects the EDSTAC to take a consensus approach to reaching their findings and recommendations.

These goals will also be pursued in a manner that recognizes the data made available as a result of the endocrine disrupter screening and testing program will be used to reduce or mitigate risk to human health and the environment. It is anticipated that this overarching risk management goal will eventually require the development of approaches to: Synthesize exposure and hazard information; and incorporate synthesized exposure and hazard information into risk reduction and risk management decisions.

EDSTAC Communication Objectives

In developing its recommendations on an endocrine disrupter screening and testing program, the Committee may also need to address issues associated with how to publicly communicate the true intent of their substantive agreements and recommendations they submit to EPA. The Committee may also need to develop recommendations for how EPA should communicate screening and testing information to the public if the Agency follows the Committee's recommended approaches to screening and testing.

Proposed Agenda for December 12–13 Meeting

The following is the proposed agenda for this first meeting.

1. Discuss and further refine the goals and objectives of EDSTAC.

2. Discuss and agree on the scope of EDSTAC's activities. The scope of EDSTAC's activities may encompass:

a. Only estrogen effects stipulated as the minimum requirement by legislation or other endocrine disrupter effects. If broader than estrogen, which additional hormonal effects should be included (e.g., androgens, anti-androgens, anti-estrogens, thyroids)?

b. Single compounds or mixtures of compounds as well. If mixtures are included, are there specific commonly found mixtures or classes of chemicals that can be included rather than all possible mixtures?

c. Only human health effects or ecological effects as well.

3. Review and approve the Committee's operating ground rules.

4. Discuss the structure and utilization of work groups to address the issues encompassed by the scope of the Committee's activities.

5. Initiate discussion of the principles that should guide the Agency's endocrine disrupter screening and testing program. These principles will be applicable to the development of the EDSTAC's screening and testing recommendations, as well as future EPA endocrine disrupter screening and testing policy decisions. These principles would address:

a. The purpose of screening and testing.

b. Selecting from among alternative screens and tests.

c. Establishing the order or logical relationships for using different screens and tests.

d. Validating screens and tests.

e. Interpreting the results of screens and tests, including the utility of the information to be gained from screens and tests in deciding what happens both within the screening and testing arena itself as well as in the broader risk management/ decision making arena.

f. How to expand screening and testing beyond whatever hormonal effects the Committee recommends to be the initial focus of EPA's endocrine disrupter screening and testing program.

Dated: November 21, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–30309 Filed 11–26–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5656–3]

Proposed CERCLA Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Manistique River/Harbor Site, Manistique, MI

AGENCY: Environmental Protection Agency.

ACTION: Notice; Request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative cost recovery settlement concerning the Manistique River/Harbor Site in Schoolcraft County, Manistique, Michigan. The settling parties are listed in the Supplementary Information portion of this Notice. The settlement is designed to resolve the settling parties' liability for polychlorinated biphenyl (''PCB'')-contaminated sediments located within the Site. The settlement requires the settling parties to pay $6,419,037 to the Hazardous Substances Superfund. The settlement includes an EPA covenant not to sue the settling parties pursuant

to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607; Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973; Sections 7, 16 and 17 of the Toxic Substances Control Act, 15 U.S.C. 2606, 2615 and 2616; Sections 309, 311 and 504 of the Federal Water Pollution Control Act, 33 U.S.C. 1319, 1321, and 1364; and Sections 406 and 413 of the Rivers and Harbors Act, 33 U.S.C. 406 and 413. The U.S. EPA's authority to enter into this administrative settlement agreement is conditioned upon the approval of the Attorney General of the United States (or her delegatee). The settlement agreement has been submitted to the United States Department of Justice for such approval.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at U.S. Environmental Protection Agency, 77 West Jackson Blvd., Record Center 7th Floor, Chicago, Illinois 60604. Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before December 30, 1996.

ADDRESSES: The proposed Administrative Order on Consent (''AOC'') embodying the settlement agreement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region 5, Superfund Division Record Center, 77 West Jackson Boulevard, 7th Floor, Chicago, Illinois 60604. A copy of the proposed AOC may be obtained from Deborah Garber (address see below). Comments should reference the Manistique River/Harbor Site, Manistique, Michigan.

FOR FURTHER INFORMATION CONTACT: Deborah Garber, Office of Regional Counsel, Mail Code CS–29A, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION:

A. Background

The Manistique River is located in Schoolcraft County in Michigan's Upper Peninsula. The river flows from the northeast and discharges into Lake Michigan at the City of Manistique. The Manistique Harbor is carved out of Lake Michigan at the mouth of the river by a breakwater system which is maintained by the U.S. Corps of Engineers. The river and harbor have been and continue to be used for recreational purposes, including sport fishing, boating and swimming. The Site consists of the bottom sediments within the Harbor and within a 1.7 mile stretch of the Manistique River immediately upstream from its discharge point into Lake Michigan. PCB contamination of the sediments within the Site was discovered in the 1970's. Historically, lumbering/sawmill, paper milling and other industrial operations were located on the banks of the river and discharged wastes into the river. Most of these operations ceased many years ago and the entities conducting them no longer exist. Currently, the only active manufacturing operation along the river banks adjoining the site is Manistique Papers, Inc (''MPI''). The Edison Sault Electric Company (''Edison Sault'') maintains a substation on the west bank of the river, south of MPI. A scrap yard has operated on the east bank of the river since the 1960's.

Beginning in 1993, U.S. EPA has taken and will in the future take, removal actions pursuant to CERCLA to address the threat to human health and the environment posed by the PCB-contaminated sediments within the Site.

The Site is being addressed under CERCLA removal authorities pursuant to the Agency's Superfund Accelerated Cleanup Model (''SACM'') Program. In 1994, two of the settling parties—MPI and Edison Sault conducted an Engineering Evaluation/Cost Analysis (''EE/CA'') pursuant to an Administrative Order on Consent, to investigate the extent of contamination within the Site and to evaluate response action alternatives for the contaminated sediments. During the summers of 1995 and 1996, U.S. EPA conducted a removal action to dredge and dispose of PCB-contaminated sediments from a hotspot within the river portion of the site, referred to as Area B in the proposed AOC.

Beginning in the summer of 1997, U.S. EPA will dredge and dispose of contaminated sediments in a second area located in the River (in 1993 EPA placed a temporary cap over this area) and a third 15-acre area within the Harbor (referred to as Areas C and D respectively, in the proposed AOC).

B. Settling Parties

The parties to this proposed settlement agreement are: Manistique Papers, Inc. (''MPI'') (owner and operator of the paper mill since 1991); The Old Mountain Company, Inc. (the corporate successor to the long-time previous owner/operator of the paper mill); Edison Sault Electric Company (''Edison Sault''); The United States Coast Guard; Kruger, Inc. and Hicliff Corporation, parent corporations to MPI; ESELCO, parent corporation to Edison Sault; and the City of Manistique.

C. Description of Settlement

The proposed settlement is a ''cashout'': MPI, Edison Sault and The Old Mountain Company, Inc. have agreed, jointly and severally, to pay to the Hazardous Substances Superfund $6,401,000. The U.S. Coast Guard will pay $18,037 to the Superfund. These monies will be placed in a special interest-bearing account to be applied toward reimbursement of U.S. EPA's costs of implementing the response actions at the Site. The other entities and the City of Manistique would be allowed to be signatories to the consent order without payment of additional monies; they would, however, give covenants not to sue to the United States and its agencies relating to the response actions taken at the site. In addition to this cash settlement, MPI has entered into an agreement with U.S. EPA (''Access and Services Agreement'') to allow use of portions of its real property for construction of treatment and storage facilities which are needed for the response actions as well as other in-kind services, which U.S. EPA values at approximately $1 million. The Access and Services Agreement, embodied in a separate Administrative Order on Consent, will become effective on the effective date of this Agreement. A copy of the Access and Services Agreement is included in the background information relating to this settlement. The total estimated cost of the response actions taken and to be taken at the Manistique River/Harbor Site is $17.1 million. The settling parties would contribute $6,418,000 in cash and $1 million in in-kind services under this settlement. In addition they have spent $1.5 million to complete the EE/CA, for a total of $8.9 million. Thus, the settling parties would pay approximately 50 percent of the total estimated costs of the response actions for the Site. The U.S. EPA has the option to pursue other non-settling potentially responsible parties for additional reimbursement of site response costs.

Dated: November 20, 1996.

Richard C. Karl,

Acting Director, Superfund Division.

[FR Doc. 96–30467 Filed 11–26–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5655–9]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. § 9622, notice is hereby given that a proposed administrative cost recovery settlement concerning the Regional Enterprises Site, Prince George County, Virginia, was executed by the Agency on November 7, 1996. The settlement resolves an EPA claim under section 107 of CERCLA, 42 U.S.C. 9607, against Regional Enterprises, Inc. The settlement would require Regional Enterprises, Inc. to pay $12,878.29 within 60 days of the effective date of the Agreement to the EPA Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

DATES: Comments must be submitted on or before December 27, 1996.

AVAILABILITY: The proposed agreement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 841 Chestnut Building, Philadelphia, PA 19107. Comments should reference the ''Regional Enterprises Site; ''Regional Enterprises, Inc.'' and ''EPA Docket No. III–95–62–DC'', and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Margaret Cardamone (3RC23), Associate Regional Counsel, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107, Phone: (215) 566–2477.

Dated: November 7, 1996.

Stanley L. Laskowsk,

Acting, Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 96–30313 Filed 11–26–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Being Reviewed by FCC for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

November 21, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before January 27, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0514.

Title: Section 43.21(c) Holding Company Annual Report.

Type of Review: Extension.

Respondents: Businesses or other for profit.

Number of Respondents: 20.

Estimate Hours Per Response: 1 Hour.

Total Annual Burden: 20 hours.

Needs and Uses: The SEC form 10K is needed from holding companies of communications common carriers to provide the Commission with the data required to fulfill its regulatory responsibilities and by the public in analyzing the industry. Selected information is compiled and published in the Commission's annual common carrier statistical publication.

Federal Communications Commission.

William F. Caton,

Acting, Secretary.

[FR Doc. 96–30279 Filed 11–26–96; 8:45 am]

BILLING CODE 6712–01–M

Notice of Public Information Collections Submitted to OMB for Review and Approval

November 20, 1996

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not

display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 27, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain^{x}t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0147.

Title: Section 64.804—Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office.

Form No.: N/A.

Type of Review: Extension of an existing collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 13.

Estimated Time Per Response: 8 hours.

Total Annual Burden: 208 hours.

Needs and Uses: Communications common carriers with operating revenues exceeding $100 million who extend unsecured credit to a candidate or person on behalf of such candidates for Federal office must file with the FCC a report including due and outstanding balances. The information is used for monitoring purposes.

OMB Approval Number: 3060–0165.

Title: Records to be Maintained and Reports to be Filed—Part 41 Franks and Section 41.31.

Form No.: N/A.

Type of Review: Extension of an existing collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 68.

Estimated Time Per Response: 6 hours.

Total Annual Burden: 408 hours.

Needs and Uses: Subject carriers are required to maintain records in such manner so that if ordered by the Federal Communications Commission, the carriers could furnish a report showing every person holding a telephone or telegraph frank. This data reports every person who has received free service. The regulated carriers are the affected public.

OMB Approval No.: 3060–0208.

Title: 73.1870 Chief Operators.

Form No.: N/A.

Type of Review: Extension of an existing collection.

Respondents: Businesses or other for-profit; not-for-profit institutions.

Number of Respondents: 13,600.

Estimated Hour Per Response: 26.166 hours.

Total Annual Burden: 355,858 hours.

Needs and Uses: Section 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. Section 73.1870(b)(3) requires that this designation must be in writing and posted at the transmitter site. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in the station files. Section 73.1870(c)(3) requires that the chief operator, or personnel delegated and supervised by the chief operator, review the station records at least once each week to determine if required entries are being made correctly, and verify that the station has been operated in accordance with FCC rules and the station authorization. Upon completion of the review, the chief operator must date and sign the log, initiate any corrective action which may be necessary and advise the station licensee of any condition which is repetitive. The posting of the designation of the chief operator is used by interested persons to readily identify the chief operator. The review of the station records is used by the chief operator, and FCC staff in investigations, to assure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

OMB Approval No.: 3060–0113.

Title: EEO Program Report.

Form No.: FCC 396.

Type of Review: Extension of an existing collection.

Respondents: Businesses or other for profit; not-for-profit institutions.

Number of Respondents: 2,000.

Estimate Hour Per Response: 3 hours per response.

Total Annual Burden: 6,000.

Needs and Uses: The Broadcast EEO Program Report (FCC Form 396) is a device that is used to evaluate a broadcaster's EEO program to ensure that they are making satisfactory efforts to comply with FCC's EEO requirements. FCC Form 396 is required to be filed at the time of renewal of license by all AM, FM, TV, Low Power TV and International stations with five or more full-time employees.

OMB Approval Number: 3060–0395.

Title: Automated Reporting and Management Information Systems (ARMIS)—Sections 43.21 and 43.22.

Form No.: FCC Report 43–02, 43–05, 43–07.

Type of Review: Revised collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 43–02 has 50 respondents at 960 hours per respondent; 43–05 has 12 respondents at 833 hours per respondent; 43–07 has 12 respondents at 5.7 hours per respondent.

Total Annual Burden: 62,464 hours.

Needs and Uses: ARMIS is needed to administer our accounting, jurisdictional separations, access charges and joint cost rules and rules to analyze revenue requirements and rates of return, service quality and infrastructure development. It collects financial and operating data from all Tier 1, Class A local exchange carriers with annual revenues over $100 million and carriers who elect incentive regulation. The information contained in the reports provides the necessary detail to enable this Commission to fulfill its regulatory responsibilities. Section 402(b)(2)(B) of the Telecommunications Act of 1996 provides that ARMIS reports may be filed annually. Accordingly, the Commission reduced the frequency of the quality of service report from quarterly to annually.

OMB Approval Number: 3060–0513.

Title: ARMIS Joint Cost Report.

Form No.: FCC Report 43–03.

Type of Review: Revised collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 150.

Estimated Time Per Response: 200 hours.

Total Annual Burden: 30,000 hours.

Needs and Uses: The Joint Cost Report is needed to administer our joint cost rules (Part 64) and to analyze data

in order to prevent cross-subsidization of nonregulated operations by the regulated operations of Tier 1 carriers. This collection is being revised to incorporate the requirement of Section 402(c) of the Telecommunications Act of 1996 requiring the Commission to adjust the revenue threshold for inflation.

OMB Approval Number: 3060–0511.
Title: ARMIS Access Report.
Form No.: FCC Report 43–04.
Type of Review: Revised collection.
Respondents: Businesses or other for-profit.
Number of Respondents: 150.
Estimated Time Per Response: 1,150 hours.
Total Annual Burden: 172,500 hours.
Needs and Uses: The Access Report is needed to administer our accounting, jurisdictional separations and access charge rules, and to analyze revenue requirements and rates of return and to collect financial and operating data from all Tier 1 local exchange carriers.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96–30276 Filed 11–26–96; 8:45 am]
BILLING CODE 6712–01–P

[Report No. 2165]

Petition for Reconsideration of Action in Rulemaking Proceedings

November 22, 1996.

A Petition for reconsideration has been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by December 12, 1996. See Section 1.4(b) (1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations. (Waverly, NY and Altoona, PA) (MM Docket No. 96–11, RM–8742)

Number of Petition Filed: 1.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96–30278 Filed 11–26–96; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

ANNOUNCING AN OPEN MEETING OF THE BOARD

TIME AND DATE: 8:30 a.m. Wednesday, December 4, 1996.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Final Rule—FHLBank System Compensation
- Approval of 1997 FHLBank Presidents' Appointments and Base Salaries
- Approval of 1997 Office of Finance Managing Director's Appointment and Base Salary
- Final Adoption of Supervisory Determination Appeal Procedures
- Office of Finance Debt Issuance

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,
Managing Director.
[FR Doc. 96–30453 Filed 11–25–96; 11:42 am]
BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 202–007540–069.
Title: United States Atlantic and Gulf/Southeastern Caribbean Agreement.
Parties: Crowley American Transport, Inc., NPR, Inc., Sea-Land Services, Inc., Caribbean General Maritime, Ltd., King Ocean Service, Seaboard Marine, Ltd., Tecmarine Lines, Inc., Tropical Shipping and Construction Co. Ltd.
Synopsis: The proposed amendment would permit Agreement members to operate non-vessel operating common carrier, less than containerload cargo consolidation service companies in the Agreement trade.

Agreement No.: 213–010955–005.
Title: ACL/H–L Reciprocal Space Charter and Sailing Agreement.
Parties: Atlantic Container Line AB, Hapag-Lloyd AG.
Synopsis: The proposed modification adds a new article 7.2 which permits either party to withdraw from the Agreement upon six month's written notice and revises article 9 by deleting the Agreement's expiration date and providing for an indefinite term.

Agreement No.: 203–011222–004.
Title: Multi-Carrier Discussion Agreement.
Parties: Wilhelmsen Lines AS, Leif Hoegh & Co., A/S, Waterman Steamship Corporation.
Synopsis: The proposed amendment deletes National Shipping Company of Saudi Arabia as a party, updates the address of Wilhelmsen Lines AS and reduces the Agreement's geographic scope from a bi-directional, worldwide service to the trade from certain countries in Southeast Asia to U.S. Atlantic and Gulf Coast ports.

Agreement No.: 203–011507–001.
Title: Di Gregorio-Tricon Agreement.
Parties: Di Gregorio Navegacao Ltda., DSR-Senator Lines, Cho Yang Shipping Co., Ltd.
Synopsis: The proposed modification consists of various technical and non-substantive revisions in compliance with requirements of the Brazilian Merchant Marine Authority. The modification also updates the address of a party. The parties have requested a shortened review period.

Dated: November 21, 1996.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 96–30230 Filed 11–26–96; 8:45 am]
BILLING CODE 6730–01–M

[Agreement No.: 203–011223–014]

Request for Additional Information

Title: Transpacific Stabilization Agreement
Parties:
American President Lines, Ltd.
Evergreen Marine Corp. (Taiwan) Ltd.
Hanjin Shipping Co., Ltd.
Hapag-Lloyd A.G.
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Nedlloyd Lines B.V.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
P&O Containers, Limited.

Sea-Land Service, Inc.
Yangming Marine Transport Corp.

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. 203–011223–014 as required by the Act. This action extends the review period as provided in section 6(c) of the Act.

Dated: November 22, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–30281 Filed 11–26–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why and of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Pantrac Transport Corp., Brooklyn Navy Yard Bldg. #5, Suite 307, Flushing & Cumberland Ave., Brooklyn, NY 11205, Officer: Benjamin Hamalian, President

Panamerican All Trading Services Corp., 5461 N.W. 72nd Avenue, Miami, FL 33166, Officers: Jorge Murillo, President, Adriana P. Orozco, Secretary

Fidelity Forwarding International, Inc., 429 Piaget Avenue, Route 46, Suite 4, Clifton, NJ 07011, Officers: Charles P. Alles, President, Jayne I. Alles, Secretary.

Dated: November 21, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–30229 Filed 11–26–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 102896 AND 110896

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Westinghouse Electric Corporation, Robert F.X. Sillerman, SFX Broadcasting, Inc	96–2456	10/28/96
Robert F.X. Sillerman, Westinghouse Electric Corporation, Westinghouse Electric Corporation	96–2457	10/28/96
Wolters Kluwer nv, Time Warner Inc., Little, Brown and Company (Inc.)	96–2791	10/28/96
CRA Managed Care, Inc., Summit Ventures II, L.P., Prompt Associates, Incorporated	97–0131	10/28/96
Specialty Paperboard, Inc., CPG Investors Inc., CPG Investors Inc	96–2826	10/29/96
The Reilly Family Limited Partnership, Canaan Capital Offshore Limited Partnership, C.V., FKM Advertising Co	96–3079	10/29/96
Medical Service Association of Pennsylvania Blue Shield, DavisVision, Inc., DavisVision Inc	97–0002	10/29/96
Raul Alarcon, Jr., Infinity Broadcasting Corporation, Infinity Broadcasting Corporation of Illinois	97–0136	10/29/96
OCM Principal Opportunities Fund, L.P., TCW Special Credits Fund V-The Principal Fund, International Logistics Limited	97–0138	10/29/96
Stanford University, Lucile Salter Packard Children's Hospital at Stanford, Lucile Salter Packard Children's Hospital at Stanford	97–0173	10/29/96
Renfro Corporation, Fruit of the Loom, Inc., Fruit of the Loom, Inc	97–0190	10/29/96
Watson Pharmaceuticals, Inc., Odassen Pharmaceuticals, Inc., Odassen Pharmaceuticals, Inc	97–0191	10/29/96
KN Energy, Inc., The Williams Companies, Williams Gas Processing Co/Williams Field Services Co	96–2967	10/30/96
Sierra Pine Limited, Harold C. Simmons Family Trust #2, Medite Corporation	96–3062	10/30/96
PanEnergy Corp., Tejas Gas Corporation, Transok, Inc	97–0041	10/30/96
Jefferson Smurfit Group plc, Donald F. Barstad, American Lithographers & Business Forms, Inc	97–0044	10/30/96
Value Health, Inc., Beverly Enterprises, Inc., MedView Services, Incorporated, Resource Opportunities	97–0161	10/30/96
North American Vaccine, Inc., Cephalon, Inc., Cephalon, Inc	97–0184	10/31/96
Royal Dutch Petroleum Company, Metallgesellschaft AG (a German company), MG Gas Services Inc	97–0207	10/31/96
PhyCor, Inc., Lewis-Gale Clinic, Inc., Lewis-Gale Clinic, Inc	97–0079	11/01/96
Richard R. Rogers, Bromar, Inc., Bromar, Inc	97–0085	11/01/96
Richard R. Rogers, Marketing Specialists Sales Company, Market Specialists Sales Company	97–0121	11/01/96
The 1818 Fund II, Lof., S–O Aquisition Corp.	97–0142	11/01/96
Southern Union Company, United Cities Gas Company, United Cities Gas Company	97–0157	11/01/96
TRW Inc., Izumi Motor Co., Ltd. (a Japanese company), Izumi Corporation Industries, Inc	97–0192	11/01/96
Clark E. and Mary E. McLeod, McLeod, Inc., McLeod, Inc.	97–0201	11/01/96
Phillip H. McNeill, Sr., Interstate Hotels Company, Interstate Hotels Company	97–0237	11/01/96
Financial Holding Corporation, Close Brothers PLC, PROMPT Finance Incorporated	97–3034	11/03/96
Gannett Co., Inc., Jacor Communications, Inc., Citicasters Co.	97–0061	11/04/96
Jacor Communications, Inc., Gannett Co., Inc., Pacific and Southern Company, Inc	97–0062	11/04/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 102896 AND 110896—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Columbian Mutual Life Insurance Company, Golden Eagle Mutual Life Insurance Corporation, Golden Eagle Mutual Life Insurance Corporation	97–0080	11/04/96
Scot K. Ginsburg, George G. Beasley, Beasley FM Acquisition Corp./WDAS License L.P	97–0107	11/04/96
Atlantic Equity Partners International II, L.P., James H. Schwartzburg, PackerWare Corporation	97–0159	11/04/96
Craig O. McCaw, Linkatel Pacific, L.P., Linkatel Pacific, L.P	97–0169	11/04/96
nv W.A. Hoek's Machine-en Zuurstoffabriek, Samuel J. King, Sunox, Inc	97–0172	11/04/96
Booth Creek Partners Limited II, L.L.P., Iowa Ham Processors, Inc., Iowa Ham Processors, Inc. & Iowa Ham Canning, Inc	97–0180	11/04/96
Zenith National Insurance Corp., Associated General Commerce Self-Insurers' Trust Fund, Associated General Commerce Self-Insurers' Trust Fund	97–0182	11/04/96
Equifax Inc., CUNA Service Group, Inc., CUNA Service Group, Inc., Card Services Business	97–0183	11/04/96
Enron Corp., Portland General Corporation, Portland General Corporation	97–0186	11/04/96
B.I.M.C. Holding Corporation, Long Island Jewish Medical Center, Long Island Jewish Medical Center	97–0195	11/04/96
Long Island Jewish Medical Center, B.I.M.C. Holding Corporation, B.I.M.C. Holding Corporation	97–0196	11/04/96
HealthPlan Services Corporation, Health Risk Management, Inc., Health Risk Management, Inc	97–0197	11/04/96
Nationwide Mutual Insurance Company, Jeffrey Chandler, Tri-Cities Broadcasting Corp	97–0199	11/04/96
Great Plains Communications, Inc., US West, Inc., US West Communications, Inc.	97–0203	11/04/96
Edward G. Atsinger, III, Infinity Broadcasting Corporation, Infinity Broadcasting Corporation of Dallas	97–0205	11/04/96
Stuart W. Epperson, Infinity Broadcasting Corporation, Infiority Broadcasting Corporation of Dallas	97–0206	11/04/96
Minnesota Mining & Manufacturing Company, Cyrus Tang, Curatek Pharmaceuticals Limited Partnership	97–0208	11/04/96
American Radio Systems Corporation, Xenophon Zapis, Zapis Communications Corporation	97–0210	11/04/96
Dover Corporation, Everett Charles Technologies, Inc. Everett Charles Technologies, Inc	97–0217	11/04/96
SunGard Data Systems Inc., Broadway & Seymour, Inc., Corbel & Co	97–0218	11/04/96
Entergy Corporation, Sentry Management Corporation, Sentry Management Corporation	97–0219	11/04/96
Robert F.X. Sillerman, Ronald Delsener, Delsener/Slater Enterprises, Ltd., Beach Concerts, Inc	97–0226	11/04/96
Torstar Corporation, Thomas F. Richardson, Delta Education, Inc	97–0227	11/04/96
Diagnostic Health Services, Inc., Horizon/CMS Healthcare Corporation, Advanced Clinical Technologies, Inc	97–0228	11/04/96
FS Equity Partners II, L.P., The TJX Companies, Inc., Chadwick's, Inc., CDM Corp., Trade Name Sub	97–0232	11/04/96
National Realty Trust, Peter D. Burgdorff, Douglas and Jean Burgdorff, Inc	97–0241	11/04/96
Harte-Hanks Communications, Inc., Robert M. White, Marketing Communications, Inc	97–0246	11/04/96
Wendy's International, Inc., Volunteer Capital Corporation, Volunteer Capital Corporation and VCE Restaurants, Inc	97–0247	11/04/96
Petco Animal Supplies, Inc., Pet Food Warehouse, Inc., Pet Food Warehouse, Inc	97–0256	11/04/96
US West, Inc., Continental Cablevision, Inc., Continental Cablevision, Inc	96–1421	11/05/96
Thomas & Betts Corporation, Augat, Inc., Augat, Inc	97–0146	11/05/96
Rite Aid Corporation, Green Equity Investors, L.P., Thrifty PayLess Holdings, Inc	97–0214	11/06/96
Green Equity Investors, L.P., Rite Aid Corporation, Rite Aid Corporation	97–0215	11/06/96
RPM, Inc., The B.F. Goodrich Company, Tremco Incorporated	97–0216	11/06/96
PriCellular Corporation, Horizon Cellular Telephone Company, L.P., Horizon Cellular Telephone Company of Kentucky, L.P	97–0264	11/06/96
A.L. Ueltschi, Berkshire Hathaway, Inc., Berkshire Hathaway Inc	97–0240	11/08/96
CGW Southeast Partners III, L.P., Don Tyson, Gorges Foodservice, Inc., Tyson Holding Company	97–0245	11/08/96
Berkshire Hathaway Inc., FlightSafety International, Inc., FlightSafety International, Inc	97–0249	11/08/96
G. Drew Conway, William Campbell, Application Resources, Inc	97–0254	11/08/96
Ruben A. Perez, American Medical Response, Inc., American Medical Response, Inc	97–0259	11/08/96
Russell D. and Diane M. Schneider, American Medical Response, Inc., American Medical Response, Inc	97–0260	11/08/96
American Medical Response, Inc., STAT Healthcare, Inc., STAT Healthcare, Inc	97–0261	11/08/96
Hartmarx Corporation, Plaid Clothing Group, Inc. (Debtor-In-Possession), Plaid Clothing Group, Inc., Palm Beach Co., Inc., Plaid	97–0265	11/08/96
Power Control Technologies, Inc., Ronald O. Perelman, Flavors Holdings, Inc	97–0273	11/08/96
Timothy A. Ramos, Cambridge Technology Partners, Cambridge Technology Partners	97–0289	11/08/96
Wendy's International, Inc., Imasco Limited, Imasco Holdings, Inc.; Hardee's Food Systems, Inc.; and	97–0300	11/08/96
Code, Hennessey & Simmons II, L.P., Stronghaven, Inc., Stronghaven, Inc	97–0301	11/08/96
Booth Creek Partners Limited II, L.L.P., Fibreboard Corporation, Trimont Land Company, Bear Mountain, Inc. & Sierra-Taho	97–0302	11/08/96
Nissho Iwai Corporation, National Pipe & Plastics, Inc. (debtor in possession), National Pipe & Plastics, Inc	97–0317	11/08/96
DecisionOne Holdings Corp., Memorex Telex N.V., Memorex Telex Corp., Tulsa Computer Products, Inc	97–0323	11/08/96

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–30219 Filed 11–26–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–23]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on November 6, 1996.

Proposed Projects

1. Studies of Adverse Reproductive Outcomes in Female Occupational Groups—(0920–0367)—Revised—An estimated 50,000 to 60,000 chemicals are in common use throughout society today and hundreds of new chemicals are introduced each year. Yet the list of environmental chemicals and agents that have been investigated to determine whether they have adverse effects on reproductive health is still limited. With the growing number of women in the work force, it is becoming increasingly important to evaluate the potential female reproductive health effects of occupational and physical agents.

In this program, NIOSH is planning to undertake a series of five studies to focus on potential reproductive effects of chemical and physical agents in the workplace. In the studies planned under this program, the reproductive health of a group of female workers exposed to the agent of interest, will be compared to the reproductive health of a group of working women with no occupational exposure to known or suspected reproductive toxicants.

For all studies, data from company personnel records containing demographic, and work history information will be used to estimate workplace exposures. Each woman will be asked to complete a telephone questionnaire on reproductive history and other factors (such as cigarette smoking) that may influence reproductive function. Each questionnaire will take approximately 60 minutes to complete. Medical records will be requested to confirm adverse reproductive outcomes reported by the participants. The risk of adverse reproductive outcomes between the two groups of women will then be compared.

The first study to be conducted under this program will be a study of reproductive disorders among female flight attendants. Approximately 66,000 flight attendants are currently employed by U.S. commercial airlines and are potentially exposed to ionizing radiation and disruption of circadian rhythms, two exposures that may adversely affect reproductive function. The other studies to be conducted under this program have not yet been determined. The total annual burden is 6,800.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Workers	6,200	1	1

2. National Hospital Discharge Survey—(0920–0212)—Extension. The National Hospital Discharge Survey (NHDS), which has been conducted continuously by the National Center for Health Statistics, CDC, since 1965, is the principal source of data on inpatient utilization of short-stay, non-Federal hospitals and is the only annual source of nationally representative estimates on the characteristics of discharges, the lengths of stay, diagnoses, surgical and non-surgical procedures, and the patterns of use of care in hospitals in various regions of the country. It is the benchmark against which special programmatic data sources are compared. Data collected through the NHDS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field. NHDS data have been used extensively in the production of goals for the Year 2000 Health Objectives and the subsequent monitoring of these goals. In addition, NHDS data provide annual updates for numerous tables in the Congressionally-mandated NCHS report, *Health, United States.* Data for the NHDS are collected annually on approximately 275,000 discharges from a nationally representative sample of noninstitutional hospitals, exclusive of Federal, military and Veterans' Administration hospitals. The data items collected are the basic core of variables contained in the Uniform Hospital Discharge Data Set (UHDDS). Data for approximately half of the responding hospitals are abstracted from medical records while the remainder of the hospitals supply data through commercial abstract service organizations, state data systems, in-house tapes or printouts. There is no actual cost to respondents since hospital staff who actively participate in the data collection effort are compensated by the government for their time. The total annual burden is 2,513.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Medical Record Abstracts Primary Procedure Hospitals	77	250	0.0833
Alternate Procedure Hospitals	134	250	0.01666
In-House Tape or Printout Hospitals	103	12	0.18333
Update Form (Abstract Service Hospitals)	164	2	0.0333
Quality Control Forms	50	40	0.1666
Induction Forms	40	1	2

Dated November 20, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy, Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–30270 Filed 11–26–96; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Notice of Allotment Percentages for Child Welfare Services State Grants

AGENCY: Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

ACTION: Biennial publication of allotment percentages for States under the Title IV–B subpart 1, Child Welfare Services State Grants Program.

SUMMARY: As required by section 421(c) of the Social Security Act (42 U.S.C. 621(c)), the Department is publishing the allotment percentage for each State under the Title IV–B subpart 1, Child Welfare Services State Grants Program. Under section 421(a), the allotment percentages are one of the factors used in the computation of the Federal grants awarded under the Program.

DATES: Effective for Fiscal Years 1998 and 1999.

FOR FURTHER INFORMATION CONTACT: Joanne Moore, Family Support Branch, Division of Formula, Entitlement and Block Grants, Office of Program Support, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Washington D.C. 20447.

SUPPLEMENTARY INFORMATION: The allotment percentage for each State is determined on the basis of paragraphs (b) and (c) of section 421 of the Act. The allotment percentage for each State is as follows:

State	Allotment percentage
Alabama	58.72
Alaska	47.24
Arizona	56.11
Arkansas	61.15
California	47.95
Colorado	48.34
Connecticut	31.65
Delaware	43.56
District of Columbia	30.00
Florida	50.36
Georgia	53.36
Hawaii	45.69
Idaho	58.89
Illinois	45.73
Indiana	53.70
Iowa	55.13
Kansas	52.69
Kentucky	59.43
Louisiana	59.20
Maine	56.57
Maryland	42.88
Massachusetts	40.05
Michigan	49.21
Minnesota	48.43
Mississippi	64.32
Missouri	53.26
Montana	59.56
Nebraska	53.55
Nevada	47.19
New Hampshire	45.54
New Jersey	35.42
New Mexico	60.99
New York	40.50
North Carolina	54.72
North Dakota	59.47
Ohio	51.78
Oklahoma	59.52
Oregon	53.73
Pennsylvania	49.11
Rhode Island	49.00
South Carolina	59.33
South Dakota	57.67
Tennessee	54.88
Texas	54.22
Utah	60.97
Vermont	54.16
Virginia	48.09
Washington	48.44
West Virginia	61.75
Wisconsin	52.18
Wyoming	54.67
American Samoa	70.00
Guam	70.00
Northern Marianas	70.00
Puerto Rico	70.00
Virgin Islands	70.00

Dated: November 18, 1996.

James A. Harrell,

Deputy Commissioner, Administration for Children, Youth and Families.

[FR Doc. 96–30285 Filed 11–26–96; 8:45 am]

BILLING CODE 4184–01–P

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; Revised Promulgation for Fiscal Year 1997

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of revised allocation of title XX—social services block grant allotments for Fiscal Year 1997.

SUMMARY: The Federal allotments to states for social services under title XX of the Social Security Act were first published on December 1, 1995 and based upon the authorization amount of $2.8 million. The second notice was published on September 13, 1996 based upon legislation which decreased the authorization amount to $2.380 million. This notice promulgates the funds actually appropriated for fiscal year 1997 in the amount of $2.5 million.

FOR FURTHER INFORMATION CONTACT: Frank A. Burns, (202) 401–5536.

SUPPLEMENTARY INFORMATION: For Fiscal Year 1997, the allotments are based upon the Bureau of Census population statistics contained in its reports ''Updated National/State Population Estimates'' (CB95–39 Table 1) released March 1, 1995, and ''1990 Census of Population and Housing'' (CPH–6–AS and CPH–6–CNMI) published April 1992, which was the most recent data available from the Department of Commerce at the time of the Department's initial promulgation.

EFFECTIVE DATE: The allotments are effective October 1, 1996.

FISCAL YEAR 1997 REVISED FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS

	Appropriation level
Total	$2,500,000,000
Alabama	40,287,742
Alaska	5,786,767
American Samoa	93,025
Arizona	38,912,667
Arkansas	23,423,994
California	300,138,416
Colorado	34,911,586
Connecticut	31,273,371
Delaware	6,741,680
Dist. of Col.	5,442,999
Florida	133,238,883
Georgia	67,369,047
Guam	431,035
Hawaii	11,258,414
Idaho	10,819,153
Illinois	112,221,268
Indiana	54,926,543
Iowa	27,014,462
Kansas	24,388,455
Kentucky	36,544,485
Louisiana	41,204,456
Maine	11,840,910
Maryland	47,802,899
Massachusetts	57,686,239
Michigan	90,678,451
Minnesota	43,610,835
Mississippi	25,486,604
Missouri	50,400,259
Montana	8,174,047
Nebraska	15,498,224
Nevada	13,913,068
New Hampshire	10,857,350
New Jersey	75,476,251
New Mexico	15,794,246
New York	173,497,976
North Carolina	67,512,284
North Dakota	6,092,339
No. Mariana Islands	86,207
Ohio	106,014,339

FISCAL YEAR 1997 REVISED FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS—Continued

	Appropriation level
Oklahoma	31,111,036
Oregon	29,468,586
Pennsylvania	115,086,004
Puerto Rico	12,931,035
Rhode Island	9,520,473
South Carolina	34,987,979
South Dakota	6,884,916
Tennessee	49,416,700
Texas	175,493,743
Utah	18,219,723
Vermont	5,538,491
Virgin Islands	431,035
Virginia	62,565,839
Washington	51,020,953
West Virginia	17,398,498
Wisconsin	48,528,632
Wyoming	4,545,381

Dated: November 21, 1996.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 96–30286 Filed 11–26–96; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 96N–0449]

Current Science and Technology on Fresh Juices; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming meeting to review the current science, including technological and safety factors, relating to fresh juices and to consider any other measures necessary to provide safe fruit juices.

DATES: The public meeting will be held on December 16 through 17, 1996, from 8:30 a.m. to 5 p.m. Submit registration for the meeting by December 6, 1996. Submit written material and requests to make oral presentations by December 6, 1996. Written comments may be submitted through January 3, 1997.

ADDRESSES: The public meeting will be held at the DoubleTree Hotel, Pentagon City, 300 Army Navy Dr., Arlington, VA. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Catherine M. DeRoever, Center for Food Safety and Applied Nutrition (HFS–22), Food and Drug Administration, 200 C Street, SW, Washington, DC 20204, 202–205–4251, (FAX) 202–205–4970, (Internet) CMD@FDACF.SSW.DHHS.GOV. Send registration information (including name, title, firm name, address, telephone, and fax number) and written material and requests to make oral presentations to the contact person.

SUPPLEMENTARY INFORMATION: The purpose of this meeting will be to provide an open discussion of the current state of the science and a review of technological and safety factors, relating to fresh juices from farm to table. While this is the primary focus of the meeting, there will also be consideration of issues and data pertaining to *E. coli 0157:H7,* which caused the recent foodborne disease outbreak from apple juice, and to other pathogenic bacterial strains, e.g., *Salmonella spp.*

This meeting is of special interest to the fruit and vegetable industry, public health associations, and health agencies of state and local governments. It will provide an opportunity to consider how FDA's regulatory program relative to fresh juice and juice products needs to be revised; to discuss and exchange information on all relevant safety considerations; to identify research needs; to consider whether additional consumer education is necessary; and to consider what other measures are needed to reduce the risk of future outbreaks.

The agenda will include presentations on such topics as: (1) Background of the October 1996 outbreak, (2) fruit juice associated outbreaks, (3) juice industry practices, (4) growing and harvesting practices, (5) organic production, (6) emerging pathogens, (7) specific microbial concerns, and (8) labeling issues.

The agency is interested in learning about all aspects of juice production and distribution. Both oral and written comments are encouraged on the following topics:(1) Appropriate good manufacturing practices (GMP's) for the production of fresh juices, (2) identification of critical control points in juice processing under a Hazard Analysis and Critical Control Point System, (3) whether pasteurization of fresh juices is appropriate or necessary, (4) sanitizers that are available to control pathogens of concern, (5) alternative available food additives that will ensure safety, (6) any new technologies/ intervention strategies that are becoming available that appear to be effective in the control of *E. coli O157:H7* or other pathogens of concern, and (7) the advice that should be given to consumers.

The agency is encouraging individuals with information and data on these topics to present their comments at the meeting or in writing. Transcripts of the public meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript of the public meeting and all submitted comments will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 22, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–30442 Filed 11–26–96; 11:00 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Document Identifier: HCFA–1964

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. HCFA–1964 *Type of information collection request:* Reinstatement, without change, of previously approved collection for which approval has

expired; *Title of information collection:* Request for Review of Part B Medicare Claim and Supporting Regulation 42 CFR 405.807; *Form No.:* HCFA–1964; *Use:* This form is completed by beneficiaries, representative, or assignees who wish to pursue their statutory appeal rights by requesting a review of an initial determination made by a Part B carrier on a claim for medical and other health services. 42 CFR 405.807 is the regulation supporting this collection of information; *Frequency:* On occasion; *Affected public:* individuals or households, not for profit institutions; *Number of respondents:* 7,200,000; *Total annual responses:* 7,200,000; *Total annual hours:* 1,800,000.

To obtain copies of the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 19, 1996.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–30224 Filed 11–26–96; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Extension of Due Date for Availability of Funds To Provide Technical and Non-Financial Assistance to Federally Funded Migrant Health Centers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Extension of due date for availability of funds notice.

The due date for receipt of applications for Availability of Funds Notice published in the Federal Register at 61 FR 57689 is extended to December 12, 1996.

No other changes are being made to the document.

Dated: November 21, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–30277 Filed 11–26–96; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meetings:

Purpose/Agenda

To review and evaluate contract proposals.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: December 10, 1996.

Time: 3–4:30 pm.

Place: 6120 Executive Blvd., Rockville, MD 20892, (telephone conference call).

Contact Person: Craig A. Jordan, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–8693.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: December 11, 1996.

Time: 3–5 pm.

Place: 6120 Executive Blvd., Rockville, MD 20892, (telephone conference call).

Contact Person: Craig A. Jordan, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–8693.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. 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.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: November 20, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30342 Filed 11–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; National Institute on Aging

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:

Name of Committee: National Institute on Aging Special Emphasis Panel.

Dates of Meeting: December 9–10, 1996.

Times of Meeting: December 9—7:30 p.m. to recess. December 10—8:30 a.m. to adjournment.

Place of Meeting: Helmsley Medical Towers Apartments, 1320 York Avenue, New York, New York 10021.

Purpose/Agenda: To review a grant application.

Contact Person: Dr. James P. Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel (Teleconference).

Date of Meeting: December 13, 1996.

Time of Meeting: 1:30 p.m. to adjournment.

Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Purpose/Agenda: To review a grant application.

Contact Person: Dr. Mary Ann Guadagno, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Dates of Meeting: December 16–17, 1996.

Times of Meeting: December 16—7:30 p.m. to recess; December 17—8:00 a.m. to adjournment.

Place of Meeting: San Antonio Marriott River Center Hotel, 101 Bowie Street, San Antonio, Texas 78205.

Purpose/Agenda: To review a grant application.

Contact Person: Dr. James P. Harwood, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Dates of Meeting: January 6–8, 1997.

Times of Meeting: January 6—8:00 a.m. to recess; January 7—8:00 a.m. to recess; January 8—8:00 a.m. to adjournment.

Place of Meeting: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Purpose/Agenda: To review grant applications.

Contact Person: Dr. Arthur Schaerdel, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

These 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 commerical 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. 93.866, Aging Research, National Institutes of Health)

Dated: November 20, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30343 Filed 11–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; National Institute of Mental Health

Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose

To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: December 6, 1996.
Time: 3:30 p.m.
Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Phyllis L. Zusman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: December 6, 1996.
Time: 3 p.m.
Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Lawrence E. Chaitkin, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: December 18, 1996.
Time: 9 a.m.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: November 22, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30345 Filed 11–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; 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 National Institute on Drug Abuse (NIDA) Special Emphasis Panel meetings:

Purpose/Agenda

To evaluate and review grant applications and contract proposals.

Name of Committee: NIDA Special Emphasis Panel.
Date: December 3, 1996.
Time: 10:00 a.m.
Place: Parklawn Bldg., 5600 Fishers Lane, Room 10–49, Rockville, MD 20857.
Contact Person: Mr. Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–1644.

Name of Committee: NIDA Special Emphasis Panel.
Date: December 4, 1996.
Time: 9:00 a.m.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Mr. Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–1644.

Name of Committee: NIDA Special Emphasis Panel.
Date: December 4–5, 1996.
Time: 8:30 a.m.
Place: Bethesda Hyatt Regency, One Bethesda Metro Center, 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: NIDA Special Emphasis Panel.
Date: December 5, 1996.
Time: 9:00 a.m.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Mr. Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–1644.

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: NIDA Special Emphasis Panel.
Date: December 17, 1996.
Time: 9:00 a.m.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Mr. Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–1644.

Name of Committee: NIDA Special Emphasis Panel.
Date: January 14–15, 1997.
Time: 9:00 a.m.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Mr. Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–1644.

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/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, 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 Institutes of Health.)

Dated: November 22, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30346 Filed 11–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; National Library of Medicine

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 Library of Medicine Special Emphasis Panel (SEP) meeting:

Name of SEP: National Library of Medicine Special Emphasis Panel.
Date: December 4–6, 1996.
Time: 8:30 a.m.
Place: Medical College of Wisconsin, 8701 Watertown Plank Road, Milwaukee, Wisconsin.
Contact: Dr. Roger W. Dahlen, Chief, Biomedical Information Support Branch, EP, 8600 Rockville Pike, Bldg. 38A, Rm. 5S–522, Bethesda, Maryland 20894, 301/496–4221.
Purpose/Agenda: To evaluate and review IAIMS 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. 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 15 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. 93.879—Medical Library Assistance, National Institutes of Health)

Dated: November 22, 1996.

Paula N. Hayes,

Acting NIH Committee Management Officer.

[FR Doc. 96–30349 Filed 11–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; Division of Research Grants

Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.
Date: December 5, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 5182, Telephone Conference.
Contact Person: Dr. Carl Banner, Scientific Review Administrator, 6701 Rockledge Drive, Room 5182, Bethesda, Maryland 20892, (301) 435–1251.

Name of SEP: Biological and Physiological Sciences.
Date: December 9, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4150, Telephone Conference.
Contact Person: Dr. Marcia Litwach, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435–1719.

Name of SEP: Biological and Physiological Sciences.
Date: December 11, 1996.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 4150, Telephone Conference.
Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.
Date: December 16, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4112, Telephone Conference.
Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Marlyand 20892, (301) 435–1783.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 17, 1996.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 4182, Telephone Conference.
Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Purpose/Agenda

To review Small Business Innovation Research.

Name of SEP: Biological and Physiological Sciences.
Date: December 18, 1996.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5198, Telephone Conference.
Contact Person: Dr. Michael Micklin, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

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 Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: November 22, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30347 Filed 11–26–96; 8:45 am]

BILLING CODE 4140–01–M

Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 4, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4210: Telephone Conference.
Contact Person: Dr. Bruce Maurer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4210, Bethesda, Maryland 20892, (301) 435–1225.

Name of SEP: Biological and Physiological Sciences.
Date: December 12, 1996.
Time: 9:00 a.m.
Place: Holiday Inn-Olde Towne, Alexandria, VA.
Contact Person: Dr. Cheryl Corsaro, Scientific Review Administrator, 6701 Rockledge Drive, Room 6172, Bethesda, Maryland 20892, (301) 435–1045.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Chemistry and Related Sciences.
Date: December 18, 1996.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5150, Telephone Conference.
Contact Person: Dr. Zakir Bengali, Scientific Review Administrator, 6701 Rockledge Drive, Room 5150, Bethesda, Maryland 20892, (301) 435–1742.

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 Nos. 93.306, 93.333, 93.337, 93.393–396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health HHS).

Dated: November 22, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30348 Filed 11–26–96; 8:45 am]

BILLING CODE 4140–01–M

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 January 5–7, 1997, at the National Institutes of Health, Building 31, Conference Room 6C9, 31 Center Drive, Bethesda, Maryland, 20892.

This meeting will be open to the public from 8:30 a.m. to 12:00 p.m. and from 1:30 p.m. to 5:00 p.m. on January 6th, 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 January 5th, and from 8:30 a.m. until adjournment on January 7th, for the review, discussion and evaluation of individual programs and projects conducted by the NINDS. The programs and discussions include 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 personal 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 5AO5, 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: November 21, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–30344 Filed 11–26–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4086–N–79]

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: January 29, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mr. Oliver Walker, Office of Housing, Department of Housing and Urban Development, Room 9116, 451 7th Street, SW, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jane E. Luton, Telephone number (202) 708–2556; extension 2537 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) 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; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: 24 CFR, Part 889 Section 202 Supportive Housing for the Elderly—Capital Advance Program and 24 CFR, Part 890 Supportive Housing for Persons with Disabilities—Capital Advance Program.

OMB Control Number: 2502–0470.

Description of the need for the information and proposed use: The Section 202 program, amended by Section 801 of the National Affordable Housing Act (NAHA) of 1990, provides capital advances to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. Section 811 of the NAHA created a new capital advance program for the development of supportive housing for persons with disabilities. In order to ensure that viable projects are developed, it is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and whether the project design meets the needs of the residents. These factors are critical in meeting statutory requirements, assuring the continued marketability of the projects, and protecting the Department's financial interest (both in developing projects within cost limits and achieving economical subsidy costs) in projects funded under these programs.

Agency form numbers: FHA–2476A, HUD–90164CA, HUD–90165CA, HUD–90166CA, HUD–90167CA, HUD–90170CA, HUD–90176CA, HUD–90177CA, HUD–90163CA, HUD–90732A–CA and HUD–92531A–CA.

Members of affected public: An estimation of the total numbers of hours needed to prepare the information collection is 11,225 and the frequency of responses is 1. A summary of the number of respondents and the hours of responses is as follows:

Total annual responses	×	Hours per response	=	Total hours
260		12.0		3,120
200		40.0		8,000
100		0.5		50
60		0.5		30
50		0.5		25
Total		53.5		11,225

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 18, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–30302 Filed 11–26–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–4118–N–02]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 27, 1996.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 21, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Notice of Funding Availability (NOFA) for HUD's Research in Residential Lead Hazard Control.

Office: Lead Hazard Control.

OMB Approval Number: None.

Description of the Need for the Information and Its Proposed Use: Based on HUD's authority under Title X of the Housing and Community Development Act of 1992, HUD's Office of Lead Hazard Control will award grants or cooperative agreements for research on specific topic areas related to residential lead hazard evaluation and control. Results from this research will be used to update HUD's *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.*

Form Number: None.

Respondents: Not-for-profit institutions, business or other for-Profit, and State, Local, or Tribal Government.

Frequency of Submission: On Occasion.

REPORTING BURDEN

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application Development	20		1		90		1,800
Progress Reports	6		7		8		336

Total Estimated Burden Hours: 2,136.

Status: New.

Contact: Peter Ashley, HUD, (202) 755–1785 x115, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 21, 1996.

[FR Doc. 96–30295 Filed 11–26–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–96–FR–4086–N–75]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 27, 1996.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 14, 1996.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Grantee Annual Report (GAR) for Competitive Homeless Assistance Programs.

Office: Community Planning and Development.

OMB Approval Number: 2506–0126.

Description of the Need for the Information and its Proposed Use: The Grantee Annual Reports are needed by HUD to chart the accomplishments of the Transitional Housing and Permanent Housing components under the Supportive Housing Demonstration Program (SHDP). HUD will use the information for program monitoring, program evaluation, and to report to Congress on the overall progress of the SHDP.

Form Number: HUD–40076–A & HUD–40083–A.

Respondents: State, Local, or Tribal Government and Not-For-Profit Institutions.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Record Preparation	343		1		20		6,860
Recordkeeping	343		1		45		15,435

Total Estimated Burden Hours: 22,295.

Status: Reinstatement, without changes.

Contact: Maggie Taylor, HUD, (202) 708–4300, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 14, 1996.

[FR Doc. 96–30298 Filed 11–26–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–76]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 27, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 14, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Youthbuild Program (FR–3450 and FR–3451).

Office: Community Planning and Development.

OMB Approval Number: 2506–0142.

Description of the Need for the Information and its Proposed Use: The Youthbuild Program requires collection of information for an application, semi-annually progress reports and final reports. The data will be used to rate and rank applications for funding and to monitor progress and record accomplishments.

Form Number: HUD–40201, HUD–40202, HUD–27054, and SF–1199A.

Respondents: State, Local, or Tribal Government and Not-For-Profit Institutions.

Frequency of Submission: Semi-annually and annually.

Reporting Burden	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Applications	400		1		35		14,000
Progress Reports	50		1		10		500

Total Estimated Burden Hours: 14,500.

Status: Extension, without changes.

Contact: Liz Butler, HUD, (202) 708–2290, Joseph F. Lackey, Jr., OMB (202) 395–7316.

Dated: November 14, 1996.

[FR Doc. 96–30299 Filed 11–26–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–77]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 27, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 14, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Annual Progress Report (APR) for Competitive Homeless Assistance Programs.

Office: Community Planning and Development.

OMB Approval Number: 2506–0145.

Description of The Need for the Information and its Proposed Use: Annual Progress Reports for HUD's competitive homeless assistance programs will be completed each year by State and local governments, public housing authorities, and non-profit organizations. These reports will provide HUD with information necessary for program monitoring and evaluation.

Form Number: HUD–40118.

Respondents: State, Local, or Tribal Government and Not-For-Profit Institutions.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Annual Report	2,165		1		20		43,300
Recordkeeping	2,165		1		45		97,425

Total Estimated Burden Hours: 140,725

Status: Extension, without changes

Contact: Maggie Taylor, HUD, (202) 708–4300, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 14, 1996.

[FR Doc. 96–30300 Filed 11–26–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR4086–N–78]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 27, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 8, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Urban Homesteading Program—Semi-Annual Progress Report.

Office: Community Planning and Development.

OMB Approval Number: 2506–0042.

Description of The Need For The Information and its Proposed Use: Respondents are Local Urban Homesteading Agencies (LUHAs) which received properties under HUD's Section 810 Urban Homesteading Program. By statute, HUD is required to conduct a continuing evaluation of the Urban Homesteading Program. The primary purpose for this information collection is to determine whether or not the LUHAs are disposing of the properties as required by law and HUD's requirements.

Form Number: HUD–40063–A.

Respondents: State, Local, or Tribal Government and Not-For-Profit Institutions.

Frequency of Submission: Semi-annually and Recordkeeping.

Reporting burden	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Progress Reports	150		2		.75		225
Reportkeeping	150		2		1		300

Total Estimated Burden Hours: 525.

Status: Reinstatement, with changes.

Contact: William Hanson, HUD, (202) 708–2094 x4582, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 8, 1996.

[FR Doc. 96–30301 Filed 11–26–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4017–N–02]

Announcement of Funding Awards Community Development Block Grant Program for Indian Tribes and Alaska Native Villages, Fiscal Year 1996

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1996 for the Community Development Block Grant (CDBG) Program for Indian Tribes and Alaska Native Villages. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide assistance to the Indian Tribes and Alaska Native Villages.

FOR FURTHER INFORMATION CONTACT: Jennifer Bullough, Native American Programs, Washington, DC Office, Office of Public and Indian Housing, Department of Housing and Urban Development, Room B–133, 451 Seventh Street SW, Washington, DC 20410. Telephone (202) 755–0066 (this is not a toll-free number). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TTY) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CDBG Program for Indian Tribes and Alaska Native Villages is authorized by Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR part 953.

This Notice announces FY 1996 funding to be used to assist in the development of viable Indian and

Alaska Native communities, including decent housing, a suitable living environment, and economic opportunities. The FY 1996 awards announced in this Notice were selected for funding consistent with the provisions in the Notice of Funding Availability (NOFA) published in the Federal Register on May 9, 1996 (61 FR 21338).

The Catalog of Federal Domestic Assistance number for the CDBG Program for Indian Tribes and Alaska Native Villages is 14.862.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: November 21, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A—Fiscal Year 1996—CDBG Program for Indian Tribes and Alaska Native Villages

RECIPIENTS OF FUNDING DECISIONS

Funding recipient (name and address)	Amount approved
Eastern/Woodlands ONAP	
Aroostock Band of Micmacs, P.O. Box 772, Presque Isle, ME 04769	$300,000
Bad River Band of the Lake Superior Tribe of Chippewa Indians, P.O. Box 39, Odanah, WI 54861	221,448
Bois Forte Reservation, P.O. Box 16, Nett Lake, MN 55772	300,000
Forest County Potawatomi Community, P.O. Box 340, Crandon, WI 54520	300,000
Little River Band of Ottawa Indians, P.O. Box 314, Manistee, MI 49960	300,000
Menominee Indian Tribe of Wisconsin, P.O. Box 910, Keshena, WI 54135	300,000
Oneida Indian Nation of New York, 23 Genesse Street, Oneida, NY 13421	300,000
Oneida Tribe of Indians of Wisconsin, P.O. Box 365, Oneida, WI 54155	300,000
Penobscot Indian Nation, 6 River Road, Indian Island, Old Town, ME 04468	300,000
Red Cliff Band of Lake Superior Chippewa, P.O. Box 529, Bayfield, WI 54814	214,047
Senaca Nation of Indians, 1490 Route 438, Irving, NY 14081	300,000

RECIPIENTS OF FUNDING DECISIONS—Continued

Funding recipient (name and address)	Amount approved
Stockbridge-Munsee Community, N8476 Moh He Con Nuck Road, Bowler, WI 54416	300,000
Upper Sioux Community, P.O. Box 147, Granite Falls, MN 56241	300,000
Wampanoag Tribe of Gay Head, 20 Black Brook Road, Gay Head, MA 02575	293,273
Southern Plains ONAP	
Cherokee Nation, P.O. Box 948, Tahlequah, OK 74465	540,000
Chitimacha Tribe of Louisiana, Chitimacha Reservation, Charenton, LA 70523–6691	577,714
Choctaw Nation of Oklahoma, Drawer 1210, Durant, OK 74702–1210	750,000
Coushatta Tribe of Louisiana, P.O. Box 818, Elton, LA 70532	750,000
Iowa Tribe of Kansas and Nebraska, RR 1, Box 58 A, White Cloud, KS 66094	375,000
Iowa Tribe of Oklahoma, RR #1, Box 721, Perkins, OK 74059	444,553
Kaw Nation, Drawer 50, Kaw City, OK 74641	750,000
Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, OK 74447–0580	739,959
Osage Nation of Oklahoma, 1333 Grandview, Pawhuska, OK 74056	700,000
Ponca Tribe of Oklahoma, Box 2, White Eagle, Ponca City, OK 74601	554,167
Seminole Nation of Oklahoma, P.O. Box 1498, Wewoka, OK 74884	750,000
Seneca-Cayuga Tribe of Oklahoma, P.O. Box 1238, Miami, OK 74355	416,784
Wyandotte Tribe of Oklahoma, P.O. Box 250, Wyandotte, OK 74370	717,900
Otoe-Missouria Tribe of Indians, Rt 1, Box 62, Red Rock, OK 74651	732,611
Quapaw Tribe of Oklahoma, P.O. Box 765, Quapaw, OK 74363	355,000
Northern Plains ONAP	
Crow Tribe of Montana, P.O. Box 159, Crow Agency, MT 59022	800,000
Fort Belknap, R.R. 1, Box 66, Harlem, MT 59526	460,000
Fort Berthold, HC 3, Box 2, New Town, ND 58763	565,022
Fort Totten, Devils Lake Sioux Tribe, Fort Totten, ND 58335	800,000
Northern Arapaho Tribe, P.O. Box 396, Fort Washakie, WY 82514	800,000
Northern Ponca Tribe, 3610 Dodge, Omaha, NE 68131	298,000

RECIPIENTS OF FUNDING DECISIONS—Continued

Funding recipient (name and address)	Amount approved
Salish-Kootenai Tribe, P.O. Box 278, Pablo, MT 59855	800,000
Sisseton-Wahpeton Sioux Tribe, P.O. Box 509, Agency Village, SD 57262	800,000
Turtle Mountain Band of Chippewa, P.O. Box 900, Belcourt, ND 58316	800,000
Ute Indian Tribe, P.O. Box 190, Fort Duchesne, UT 84026	800,000
Winnebago Sioux Tribe, P.O. Box 687, Winnebago, NE 68071	800,000
Southwest ONAP	
Big Valley Rancheria, 1490 Soda Bay Road, Lakeport, CA 95453	120,750
Bishop Paiute Indian Reservation, Post Office Box 548, Bishop, CA 93514	450,000
Bridgeport Indian Colony, Post Office Box 37, Bridgeport, CA 93517	178,890
Cabazon Indian Reservation, 84–245 Indio Springs Drive, Indio, CA 92201	450,000
Colusa Rancheria, Post Office Box 8, Colusa, CA 95932	398,712
Fort Mojave Indian Reservation, 500 Merriman Avenue, Needles, CA 92363	450,000
Gila River Indian Community, Post Office Box 97, Sacaton, AZ 85247	2,500,000
Hoopa Valley Tribe, Post Office Box 1348, Hoopa, CA 95546	550,000
Hualapai Indian Tribe, Post Office Box 179, Peach Springs, AZ 86434	550,000
Karuk Tribe, Post Office Box 1016, Happy Camp, CA 96039	550,000
La Posta Band of Mission Indians, 1064 Barona Road, Lakeside, CA 92040	450,000
Manzanita Band of Mission Indians, Post Office Box 1302, Boulevard, CA 91905	449,943
Navajo Nation, Post Office Box 9000, Window Rock, AZ 86515	5,258,168
Pascua Yaqui Indian Tribe, 7474 S. Camino de Oeste, Tucson, AZ 85746	2,000,000
Pueblo of Zuni, Post Office Box 339, Zuni, NM 87327	661,099
Rohnerville Rancheria, Post Office Box 731, Loleta, CA 95551	417,841
San Carlos Apache Tribe, Post Office Box "O", San Carlos, AZ 85550	1,000,000
San Pasqual Indian Reservation, Post Office Box 365, Valley Center, CA 92082	449,845
Smith River Rancheria, Post Office Box 239, Smith River, CA 95567	449,903

RECIPIENTS OF FUNDING DECISIONS—Continued

Funding recipient (name and address)	Amount approved
Tohono O'odham Nation, Post Office Box 837, Sells, AZ 85634	380,475
Trinidad Rancheria, Post Office Box 639, Trinidad, CA 95570–0630	267,753
Tule River Indian Reservation, Post Office Box 589, Porterville, CA 93258	449,789
White Mountain Apache Tribe, Post Office Box 700, Whiteriver, AZ 85941	1,777,932
Yavapai Apache Tribe, Post Office Box 1188, Camp Verde, AZ 86322	450,000
Yurok Tribal Council, 1034 Sixth Street, Eureka, CA 95501	450,000
Northwest ONAP	
Confederated Tribes of the Umatilla, Indian Reservation, P O Box 638, Pendleton, OR 97801	320,000
Kalispel Indian Tribe, P.O. Box 39, Usk, WA 99180	133,000
Lower Elwha Tribe, 2851 Lower Elwha Road, Port Angeles, WA 98363	320,000
Nisqually Indian Tribe, 4820 She-Nah-Num Drive S.E., Olympia, WA 98503	295,400
Quileute Indian Tribe, P.O. Box 279, LaPush, WA 98350	320,000
Quinault Indian Tribe, P.O. Box 189, Taholah, WA 98587	320,000
Shoalwater Bay Tribe, P.O. Box 130, Tokeland, WA 98590	320,000
Skokomish Indian Tribe, N 80 Tribal Center Road, Shelton, WA 89584	270,617
Stillaguamish Indian Tribe, P.O. Box 277, Arlington, WA 98223	319,750
Upper Skagit Indian Tribe, 2284 Community Plaza, Sedro Woolley, WA 98284	320,000
Alaska ONAP	
CCTHITA/Chilkoot Indian Association, P.O. Box 490, Haines, AK 99827	300,000
CCTHITA/Douglas Indian Association, P.O. Box 240541, Douglas, AK 99824	300,000
CCTHITA/Hoonah Indian Association, P.O. Box 602, Hoonah, AK 99829–0602	300,000
CCTHITA/Organized Village of Saxman, Route 2, Box 2 Saxman, Ketchikan, AK 99901	300,000
CCTHITA/Skagway Village, c/o P.O. Box 399, Skagway, AK 99840	300,000
Central Council Tlingit & Haida Indian, Tribes of Alaska, 320 West Willoughby Ave., Ste 300, Juneau, AK 99801–9983	500,000
Nanwalek Traditional Council, P.O. Box 8028, Nanwalek, AK 99603	340,985
Native Village of Elim, P.O. Box 70, Elim, AK 99739	400,000
Native Village of Unalakleet, Box 270, Unalakleet, AK 99684	500,000
Port Graham Village Council, P.O. Box 5510, Port Graham, AK 99603	500,000
Tatitlek IRA Council, P.O. Box 171, Tatitlek, AK 99677	463,652

[FR Doc. 96–30306 Filed 11–26–96; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science

Central Utah Project Completion Act; Wasatch County Water Efficiency Project and Daniel Replacement Project

AGENCIES: The Department of the Interior (Department); the Utah Reclamation Mitigation and Conservation Commission (Commission); and the Central Utah Water Conservancy District (District).

ACTION: Notice of availability of the Final Environmental Impact Statement (FEIS): FES 96–58.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department, Commission, and the District have issued a joint Final Environmental Impact Statement (FEIS) for the Wasatch County Water Efficiency Project and Daniel Replacement Project (WCWEP & DRP). The FEIS analyzes alternatives and impacts associated with efficiency improvements in the management, delivery, and treatment of water in Wasatch County. The project includes the conversion of some open irrigation systems to pressurized pipeline systems, thus conserving water and making sprinkler irrigation possible. Central Utah Project water conserved under section 207 of the Act which is available to the District would be provided to the Daniel Irrigation Company as a replacement supply for the terminated transbasin diversion from the Strawberry River, located in the Colorado River Basin. With the termination of the diversion from the Strawberry River, natural stream flows would be re-established in the upper Strawberry River, thus completing a major mitigation commitment associated with the Strawberry Aqueduct and Collection System of the Bonneville Unit. Colorado River Storage Project power would be used, as part of the WCWEP & DRP project, to conserve water, improve efficiencies, and provide a replacement water supply.

DATES: Written comments relating to the FEIS will be accepted no later than January 13, 1997.

ADDRESSES: Comments on the FEIS should be addressed to: Karen Ricks, Project Manager, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058.

SUPPLEMENTARY INFORMATION: Public participation has occurred throughout the EIS process. A Notice of Intent was published in the Federal Register December 31, 1992. A notice of availability of the Draft Environmental Impact Statement was published in the Federal Register June 13, 1996. There have been numerous open houses, public meetings, and mail-outs to solicit comments and ideas. Any comments received throughout the process have been considered.

FOR FURTHER INFORMATION: Additional copies of the FEIS, DEIS, copies of the resources technical reports, or information on matters related to this notice can be obtained on request from: Ms. Nancy Hardman, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058, Telephone: (801) 226–7187, Fax: (801) 226–7150.

Copies are also available for inspection at:

Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058.

Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, Utah 84101.

Department of the Interior, Natural Resource Library, Serials Branch, 18th and C Streets, NW, Washington, D.C. 20240.

Department of the Interior, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606.

Dated: November 22, 1996.

Ronald Johnston,

CUPCA Program Director, Department of the Interior.

[FR Doc. 96–30284 Filed 11–26–96; 8:45 am]

BILLING CODE 4310–BK–P

Bureau of Land Management

[ID–014–06–1430–01; IDI–31387]

Plan Amendment to Allow for an Indemnity School Land Selection to Transfer Public Lands in Valley County, Idaho to the State of Idaho

AGENCY: Bureau of Land Management.

ACTION: Notice of availability/notice of realty action.

SUMMARY: Notice is hereby given that the BLM proposes to amend the Cascade Resource Management Plan (RMP) to allow for transfer of certain public lands listed below and to classify them as suitable for Indemnity School Land Selection by the State of Idaho.

Boise Meridian, Idaho

T. 17 N., R. 4 E.,
Sec. 21: S½SE¼,
Sec. 33: E½SW¼, W½SE¼,
Sec. 35: NE¼SE¼, W½SE¼, SW¼.

DATES: Any protest to the proposed plan amendment must be submitted to the BLM Director on or before December 27, 1996, and comments regarding the indemnity selection and proposed transfer of lands to the State of Idaho may be submitted to the District Manager on or before January 13, 1997.

ADDRESSES: Protests to the plan amendment are to be sent to: Director (WO–210); Bureau of Land Management; Attn: Brenda Williams; 1849 C Street, NW; Washington, D.C. 20240. Comments on the selection and disposal of the lands are to be sent to: District Manager, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705, telephone number (208) 384–3352 or 384–3300.

FOR FURTHER INFORMATION CONTACT: John Fend, Cascade Resource Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705, telephone number (208) 384–3352 or 384–3300.

SUPPLEMENTARY INFORMATION: Any party that participated in the plan amendment process and is adversely affected by the proposed amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the BLM Director at the address provided above. If no protests are submitted within the 30 days, the plan amendment will be approved.

For a period of 45 days from the publication of this notice, interested parties may submit comments regarding the indemnity selection and proposed transfer of lands to the State of Idaho. Comments are to be submitted to the District Manager at the address provided above. Any objections will be reviewed by the State Director who may sustain, vacate, or modify this proposed realty action. In the absence of any planning protests or objections regarding the indemnity selection, this proposed realty action will become the final determination of the Department of Interior.

This NOA/NORA supplements the notice published August 19, 1996, on pages 42912 and 42913 of the Federal Register. The original NOA/NORA identified the three parcels listed above as not suitable for indemnity selection. This determination was based on a recommendation to ensure protection of sensitive and candidate species's habitat by retaining it under federal management. Further consideration has indicated that the subject habitat would be adequately protected under State management, and transfer of the lands would not contribute to potential listing of any sensitive or candidate species as threatened or endangered. Therefore, the lands listed above have been examined, and through the public supported land use planning process have been determined to be suitable and are hereby classified for disposal via the indemnity selection by the State of Idaho pursuant to Sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852). The land will not be transferred until 45 days after the date of publication of this notice in the Federal Register.

This Decision is in accordance with the Endangered Species Act of 1973 (Pub. L. 93–205, 87 Stat. 884, 16 U.S.C. 1531), E.O. No. 11593, National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470 et seq.), as amended, National Environmental Policy Act of 1969 (P.L. 91–190, 83 Stat. 852; 42 U.S.C. 4321), Federal Land Policy and Management Act of October 21, 1976 (Pub. L. 94–579, 90 Stat. 2743 Section 102(8)), and Section 7 of the Taylor Grazing Act (43 U.S.C. 315, 315a–315r). This Classification action meets the criteria in, and is made pursuant to 43 CFR 2410.1(a)–(d), and 2450.

The purpose of this indemnity selection is to satisfy a portion of the debt owned to the State of Idaho by the federal government for school endowment lands not available for transfer to the State at the time of statehood. The reservations, terms, and conditions applicable to the conveyance are:

Excepting and Reserving to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Those rights for an access road granted to Boise Cascade Corporation by Right-of-Way IDI–22101, under the Federal Land Policy and Management Act of October 21, 1976.

Dated: November 21, 1996.

Jerry L. Kidd,

Acting District Manager.

[FR Doc. 96–30272 Filed 11–26–96; 8:45 am]

BILLING CODE 4310–GG–M

[UT–940–06–5700–00; UTU–72211]

Realty Action; Utah

AGENCY: Bureau of Land Management.

ACTION: Notice of availability and notice of realty action.

SUMMARY: Notice is hereby given that an environmental assessment (EA) and proposed plan amendment to the Pinyon Management Framework Plan for land tenure adjustments have been completed. Pursuant to this EA and proposed plan amendment, 1553.64 acres of public land have been found suitable for disposal through exchange pursuant to section 206, Title II of the Federal Land Policy and Management Act of 1976. Public land proposed for exchange is located at Salt Lake Meridian, T.31S., R.13W., sec. 5, lots 5, 6, 11 and 12; sec. 6 lots 1 and 2; sec.8, E½; sec. 9; sec. 10, W½, Iron County, Utah. The United States would acquire the following described 2360 acres of private land from the James and Jessie Minor Private Revocable Living Trust: Salt Lake Meridian, T.31S., R.15W., sec. 36, W½NE¼, W½, and NW¼SE¼; T.31S., R.17W., sec. 32; T.32S., R.17W., sec. 16; T.34S., R.19W., sec. 16. The land tenure adjustment will not occur until at least 60 days after the date of this notice and is contingent upon the signing of a decision record approving the proposed amendment.

DATES: The proposed plan amendment may be protested. The protest period will commence with the date of publication of this notice. Protests must be submitted on or before December 27, 1996.

ADDRESSES: Protests to the proposed plan amendment should be addressed to the Director (WO–210), Bureau of Land Management, Attn: Brenda Williams, Resource Planning Team, 1849 C Street, NW., Washington, DC 20240, within 30 days after the date of publication of this notice for the proposed planning amendment.

FOR FURTHER INFORMATION CONTACT: Ervin Larsen, Bureau of Land Management, Cedar City District, 176 D.L. Sargent Drive, Cedar City, Utah 84720, telephone (801) 865–3081.

SUPPLEMENTARY INFORMATION: The lands described have been segregated from all forms of appropriation under the public land laws, including the mining laws, for a period of five (5) years or pending disposition, whichever occurs first. Only the surface estate will be disposed. The patents, when issued, will contain certain reservations to the United States and will be subject to existing rights-of-way. Detailed information concerning these reservations as well as specific conditions of the exchange are available for review at the Cedar City District Office at the address listed above. Any person who participated in the planning process and has an interest which is or may be adversely affected by these proposed amendments may protest to the Director of the Bureau of Land Management. The protest must be in writing and filed within 30 days of the date of publication of this notice of Availability in the Federal Register. The protest shall contain the name, mailing address, telephone number and interest of the person filing the protest; a statement of the issue or issues being protested; a statement of the part of the amendment(s) being protested; a copy of all documents addressing the issue or issues that were submitted during the planning process and a concise statement explaining why the State Director's proposed decision is believed to be in error. In the absence of timely objections, these proposals shall become the final determination of the Department of the Interior.

David E. Little,

Acting State Director, Utah.

[FR Doc. 96–30269 Filed 11–26–96; 8:45 am]

BILLING CODE 4310–DQ–P

National Park Service

Extension of Time Requested for Decision From OMB

AGENCY: Department of the Interior, National Park Service, Big Cypress National Preserve.

ACTION: Notice.

SUMMARY: On October 25, 1996, the National Park Service published a Notice and Request for Comments in the Federal Register (F.R. 61(208): 55313–55314) stating that the National Park Service (NPS) and Virginia Polytechnic Institute and State University propose to conduct a survey of the current amount and distribution of Off-Road Vehicle (ORV) use within the Big Cypress National Preserve. The goal is to learn about this use with respect to vehicle type, recreation activity type, and management unit location of use. Results will be used by park planners, park managers, and members of the public in considering alternative ORV management options.

Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the NPS in the October 25 Federal Register notice stated that it was requesting OMB to process the Information Collection Request (ICR) under the emergency processing provision by November 15, 1996 and that it was inviting public comment on the Proposed ICR for thirty days from the date of publication of the October 25 Federal Register notice.

In this notice, the NPS is reporting that it has amended its request to OMB to process this ICR under the emergency processing provision by requesting a decision date of no later than November 25, 1996. This revised decision date closely coincides with the published 30 day period during which the NPS accepted public comments about the proposed ICR.

Terry N. Tesar,

Information Collection Clearance Officer, Audits and Accountability Team, National Park Service.

[FR Doc. 96–30438 Filed 11–26–96; 10:10 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 12, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by December 12, 1996.

Beth Savage,

Acting Keeper of the National Register.

ARIZONA

Maricopa County

Jones, Edward L., House, 5555 N. Casa Blanca Dr., Paradise Valley, 96001474

ILLINOIS

Whiteside County

Odell Building, 202 E. Lincolnway Rd., Morrison, 96001475

MAINE

Cumberland County

Dry Mills School, 1 Game Farm Rd., Dry Mills, 96001495

Penobscot County

(Historic Residential Architecture of Bangor MPS), Sargent—Roberts House, 178 State St., Bangor, 96001476

Waldo County

Bayside Historic District, Roughly bounded by Penobscot Bay, Clinton Ave., George St., and Bay View Park, Bayside, 96001477

MARYLAND

Kent County

Airy Hill, 7909 Airy Hill Rd., Chestertown vicinity, 96001478

MASSACHUSETTS

Worcester County

Still River Baptist Church, 213 Still River Rd., Harvard, 96001479

MICHIGAN

Barry County

Chief Noonday Group Camp Historic District, E of Briggs Rd., approximately 1 mi. SE of jct. of Briggs Rd. and Bowens Mill Rd., Yankee Springs Township, Bowens Mill vicinity, 96001481

Long Lake Group Camp Historic District, Long Lake Rd., near jct. of Gun Lake Rd. and Hastings Point Rd., Yankee Springs Township, Cloverdale vicinity, 96001482

Delta County

Fayette (Boundary Increase), Fayette State Park, end of MI 183, Fairbanks Township, Fayette, 96001480

MISSOURI

Johnson County

Warren Steet Methodist Episcopal Church, 201 S. Warren St., Warrensburg, 96001483

NORTH CAROLINA

Duplin County

Warsaw Historic District (Duplin County MPS), Roughly bounded by former Atlantic Coastline RR right-of-way, N. and S. Front, Pollock, Frisco, Plank, and Railroad Sts., Warsaw, 96001484

OKLAHOMA

Grady County

Pocasset Gymnasium, .5 mi. S of jct. of Dutton Rd. and OK 81, Pocasset, 96001489

Stephens County

Duncan Armory, 100 ft. from jct. of 14th St. and unmarked alley between Fuqua Park and Ash Ave., Duncan, 96001490

Tulsa County

66 Motel (Route 66 in Oklahoma MPS), 3660 Southwest Blvd., Tulsa, 96001487

Eleventh Street Arkansas River Bridge (Route 66 in Oklahoma MPS), US 66 over the Arkansas R., from Tulsa to W. Tulsa, Tulsa, 96001488
Sinclair Service Station (Route 66 in Oklahoma MPS), 3501 E. 11th St., Tulsa, 96001486

PUERTO RICO

Vega Baja Municipality

Casa Alonso, 34 Betances St., Veja Baja, 96001491

WASHINGTON

Spokane County

Central Steam Heat Plant, 152 S. Post St. and 815 W. Railroad Ave., Spokane, 96001492

Whatcom County

Peace Arch, Peace Arch State Park, US 5 at the US-Canadian border, Blaine, 96001493
Washington Grocery Company Warehouse, 1125 Railroad Ave., Bellingham, 96001494

[FR Doc. 96–30202 Filed 11–26–96; 8:45 am]

BILLING CODE 4310–70–P

Notice of Intent to Repatriate a Cultural Item from Alaska in the Possession of the Denver Museum of Natural History, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate a cultural item in the possession of the Denver Museum of Natural History, Denver, CO, that meets the definition of ''cultural patrimony'' under section 2 of the act.

The hat is of circular wooden construction, eighteen inches in diameter at the lower rim and seven inches high at the crown. It is decorated with paint, hair, cowrie and abalone shells. A separate wooden crest, nine inches in height, is attached to the top of the hat. The hat with the crest and the carving on the face of it looks like a Northwest Pacific Coast representation of a Killerwhale.

The hat was sold by Annie Jacobs to Michael R. Johnson in January 1974. The hat was purchased by Francis V. and Mary W. A. Crane in 1975 and donated to the Denver Museum of Natural History in 1976.

Evidence provided by the Jacobs Family of the Da*k*la'aweidi clan and additional information provided by the Da*k*la'aweidi clan through the Central Council of the Tlingit and Haida Indian Tribes of Alaska identifies the hat as a Killerwhale Clan hat (Keet S'aaxw) of the Da*k*la'aweidi Killerwhale House. They further state that the hat is an object of cultural patrimony with ongoing historical, traditional, and cultural importance to the Tlingit people. Lastly, they assert that no individual has the legal right to alienate this clan hat and that sale of the hat to Mr. Johnson was done without the approval of the clan.

Officials of the Denver Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (3)(D), this cultural item has ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Denver Museum of Natural History have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between this item and the Central Council of Tlingit and Haida Indian Tribes of Alaska acting on behalf of the Da*k*la'aweidi Clan.

Copies of this notice have been sent to the Central Council of the Tlingit and Haida Indian Tribes of Alaska and of the Da*k*la'aweidi Clan. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Dr. Robert B. Pickering, Department of Anthropology, Denver Museum of Natural History, 2001 Colorado Blvd., Denver, CO 80205–5798, telephone: (303) 370–6492, FAX (303) 331–6492, email rpick@csn.org before December 27, 1996. Repatriation of the object to the Central Council of the Tlingit and Haida Indian Tribes of Alaska on behalf of the Da*k*la'aweidi Clan, may begin after that date if no additional claimants come forward.

Dated: November 21, 1996

Richard C. Waldbauer,

Acting, Departmental Consulting Archeologist,

Acting Manager, Archeology and Ethnography Program.

[FR Doc. 96-30341 Filed 11-26-96; 8:45 am]

BILLING CODE 4310–70–F

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet to discuss several issues including: mission and principles for the Ecosystem Roundtable, tools available for the Ecosystem Roundtable to use, objectives for the various programs, and discussion regarding how short-term priorities should be set. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements of consideration.

DATES: The Bay-Delta Advisory Council's Ecosystem Roundtable meeting will be held from 9:00 am to 3:00 pm on Friday, December 13, 1996.

ADDRESSES: The Ecosystem Roundtable will meet at the State Water Resources Control Board Hearing Room, 901 P Street, Sacramento, CA.

CONTACT PERSON FOR MORE INFORMATION: Cindy Darling, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The CALFED Bay-Delta Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term

solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: November 19, 1996.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 96–30203 Filed 11–26–96; 8:45 am]

BILLING CODE 4310–94P–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–387]

Certain Self-Powered Fiber Optic Modems; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on April 25, 1996, on behalf of Patton Electronics Co. (Patton) of Gaithersburg, Maryland. The complaint alleges violations of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain self-powered fiber optic modems that allegedly infringe claims 1, 2, 3, 7, and 8 of U.S. Letters Patent 4,161,650, (the '650 patent) and that there exists an industry in the United States as required by subsection (a)(2) of section 337. The notice of investigation named RAD Data Communications, Ltd., of Tel Aviv, Israel and RAD Data Communications, Inc. (collectively ''RAD'') of Mahwah, New Jersey as respondents.

On October 11, 1996, Patton and RAD filed a joint motion to terminate the investigation based on a settlement agreement. On October 23, 1996, the Commission investigative attorney (IA) filed a response in support of the joint motion to terminate the investigation. On October 24, 1996, the ALJ issued an ID (Order No. 16) granting the joint motion to terminate the investigation on the basis of a settlement agreement. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 C.F.R. 210.42.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: November 21, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–30321 Filed 11–26–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–391]

Certain Toothbrushes and the Packaging Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 25, 1996, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Procter & Gamble Company, One Procter & Gamble Plaza, Cincinnati, OH 45202. An amended complaint was filed on November 14, 1996, and supplementary letters were filed on November 18 and 19, 1996. The complaint, as amended and supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain toothbrushes and packaging thereof by reason of infringement of U.S. Patent Des. 328,392 and U.S. Copyright Registration No. TX 4–103–537. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue permanent exclusion orders and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1996).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 21, 1996, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine—

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain toothbrushes by reason of infringement of U.S. Patent Des. 328,392;

(b) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the

sale for importation, or the sale within the United States after importation of certain toothbrushes and/or the packaging thereof, by reason of infringement of U.S. Copyright Registration No. TX 4–103–537; and

(c) Whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—The Procter & Gamble Company, One Procter & Gamble Plaza, Cincinnati, Ohio 45202.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Shummi Enterprise Co., Ltd., No. 15, Alley 8, Lane 53, Nanking East Road, Section 4, Taipei, Taiwan.

Shumei Industrial Co., Ltd., Ping-Di, Central, Lung-Kang District, Shenzhen, China.

Giftline International Corporation, 1/F, No. 33, Alley 6, Lane 133, Nanking East Road, Section 4, Taipei, Taiwan.

Lollipop Imports & Exports of Brooklyn, Inc., 774 Broadway, Brooklyn, New York 11206.

MAS Marketing, Inc., 23800 Commerce Park D, Cleveland, Ohio 44122.

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Room 401–O, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a) such responses will be considered by the Commission if received no later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: November 22, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–30320 Filed 11–26–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 10, 1996, Hoffman-LaRoche, Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of levorphanol (9220) a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture finished dosage forms for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 27, 1997.

Dated: October 28, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–30353 Filed 11–26–96; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on September 18, 1996, North Pacific Trading Company, 1505 SE Gideon Street, Portland, Oregon 97202, made application by renewal to the Drug Enforcement Administration to be registered as an importer of marihauna (7360) a basic class of controlled substance listed in Schedule I.

This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird food.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: October 31, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–30354 Filed 11–26–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, Departmental Management is soliciting comments concerning the proposed extension collection of the Generic Clearance for Customer Satisfaction Surveys.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 27, 1997.

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Mrs. Terry O'Malley, OASAM–ITC N–1301, 200 Constitution Avenue, NW, Wash., DC 20210; 202 219–5096 ext. 166 (*this is not a toll-free number*); Fax=202 219–5075; Internet TOMalley@DOL.GOV.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Department of Labor plans to conduct a variety of voluntary customer satisfaction surveys of regulated/nonregulated entities which will be specifically designed to gather information from a customer's perspective as prescribed E.O. 12862, Setting Customer Service Standards, September 11, 1993.

These customer satisfaction surveys of regulated entities will provide important information on customer attitudes about the delivery and quality of agency products/services and will be used as part of an ongoing process to improve DOL programs. This generic clearance will allow agencies to gather information of regulated entities from both Federal and non-Federal users.

Type of Review: Extension.

Agency: Departmental Management.

Title: Customer Satisfaction Survey Generic Clearance.

OMB Number: 1225–0058.

Affected Public: Individuals or households/Business or other for-profit/ Not-for-profit institutions/Farms/ Federal Government/State, Local or Tribal Government.

Total Respondents: Undetermined/ varies by survey.

Frequency: On occassion.

Total Responses: Undetermined/ varies by survey.

Average Time per Response: Undetermined/varies by survey.

Total Burden Cost (capital/startup): –0–

Total Burden Cost (operating/ maintaining): –0–

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 22, 1996.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–30329 Filed 11–26–96; 8:45 am]

BILLING CODE 4510–23–M

Submission for OMB review; comment request

November 22, 1996.

The Department of Labor (DOL) has submitted the following public information collection request (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ({202} 219–5096×166). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call {202} 219–4720 between 9:00 a.m. and 12:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the Federal Register. The OMB is particularly interested in comments which:

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

Agency: Occupational Safety and Health Administration.

Title: 1,2-Dibromo-3-chloropropane.

OMB Number: 1218–0101.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 0.

Note: At the present time there are no known DBCP being produced or utilized in the United States; however, in the event that DBCP is being used, OSHA would want to

ensure that the information collection requirements are in compliance with PRA95.

Estimated Time Per Respondent: 0 minutes.

Total Burden Hours: 1.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The purpose of this standard and its information collection is to provide protection for employees from the adverse health effects associated with occupational exposure to 1,2-dibromo-3-chloropropane (DBCP). The standard requires employers to monitor employee exposure to DBCP, to monitor employee health and to provide employees with information about their exposures and the health effects of injuries. In addition employers are required to notify OSHA Area Directors of regulated areas.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–30330 Filed 11–26–96; 8:45 am]

BILLING CODE 4510–26–M

Employment and Training Administration

[TA–W–32,298]

Tampa Mill Division of Ameristeel Including the Transportation Division (Formerly Florida Steel Corporation) Tampa, FL; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on July 22, 1996, applicable to all workers of Tampa Mill Division of Ameristeel, formerly Florida Steel Corporation located in Tampa, Florida. The notice was published in the Federal Register on August 6, 1996 (61 FR 40852).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that workers employed at the Transportation Division of the subject firm were inadvertently excluded from the certification. Workers at the Transportation Division located at the production facility in Tampa provided transport services for the rebar produced at that location.

The intent of the Department's certification is to include all workers of the Tampa Mill Division of Ameristeel. Accordingly, the Department is amending the certification to include workers of the Transportation Division of Tampa Mill Division of Ameristeel, Tampa, Florida.

The amended notice applicable to TA–W–32,298 is hereby issued as follows:

''All workers of Tampa Mill Division of Ameristeel, including the Transportation Division, Tampa, Florida, who became totally or partially separated from employment on or after April 22, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, D.C. this 15th day of November, 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–30335 Filed 11–26–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,719]

Contact Technologies, Incorporated, St. Marys, Pennsylvania; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Contact Technologies, Inc., St. Marys, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–32,719; Contact Technologies, Incorporated, St. Marys, Pennsylvania (November 14, 1996)

Signed at Washington, D.C. this 15th day of November, 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–30336 Filed 11–26–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 9, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 9, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 4th day of November, 1996.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 11/04/96

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,866	EWI, Inc (Wkrs)	Dover, TN	10/18/96	Automotive Parts.
32,867	OPT Industries (Wkrs)	Phillipsburg, NJ	09/24/96	Transformers and Power Supplies.
32,868	Duck Head Apparel (Comp)	Monroe, GA	10/15/96	Men's Slacks and Shorts.

APPENDIX—PETITIONS INSTITUTED ON 11/04/96—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,869	Celina Apparel, Inc (Comp)	Celina, TN	10/16/96	Ladies' Pants.
32,870	Sportswear Associates (Comp)	Moss, TN	10/16/96	Ladies' Pants, Skirts, Shorts.
32,871	Ford Electronics & Ref. (Comp)	Hatfield, PA	10/14/96	Logistics & Interface of Components.
32,872	Tri-Con Industries, LTD (Comp)	Livingston, TN	10/08/96	Automotive Seat Covers.
32,873	Joelle Bridals, Inc (UNITE)	New York, NY	10/16/96	Bridal Gowns, Mother of the Bride, etc.
32,874	JoBre Cap Co (Comp)	Waycross, GA	10/09/96	Caps.
32,875	Truth Hardware (Wkrs)	Owatonna, MN	09/30/96	Window Hardware.
32,876	Eastland Woolen Mill, Inc (Wkrs)	Corinna, ME	10/15/96	Wool Fabric.
32,877	Hamilton Beach—Proctor (Comp)	Southern Pines, NC	10/16/96	Soleplate Assembly & Coverbase Molding.
32,878	Ralph's Rig Service, Inc (Comp)	Great Bend, KS	10/17/96	Service & Repair Oilfield Equipment.
32,879	Agway, Incorporated (AFGM)	Waverly, NY	10/17/96	Small Animal Feed.
32,880	United Technologies, Inc (UTA)	Niles, MI	10/15/96	Airbags, Steering Wheels, Backcovers.
32,881	National Food Products (Comp)	Reading, PA	09/23/96	Processed Mushroom Products.
32,882	Assembly Service, Inc (Comp)	El Paso, TX	10/16/96	Brooms.
32,883	American Bank Note Co (GCIU)	Bedford Park, IL	10/18/96	Security Documents.
32,884	Staflex/Harotex (Wkrs)	Taylors, SC	10/21/96	Interlinings For Garments.
32,885	Controls Techiques (Wkrs)	Grant Island, NY	10/17/96	P.C. Boards & AC–DC Drives Controls.
32,886	Practical Peripherals (Comp)	Thousand Oaks, CA	10/04/96	Modems for Personal Computers.
32,887	Woolrich, Inc (Comp)	Howard, PA	10/25/96	Men's & Ladies' Outerwear.
32,888	MagneTek (Comp)	Huntington, IN	10/08/96	Electronic Ballasts.
32,889	Motorola/Ceramic Products (Wkrs)	Albuquerque, NM	10/12/96	Filters for Cellular Phones.

[FR Doc. 96–30333 Filed 11–26–96; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–32,735]

Harbours Casuals, Inc., Plains, Pennsylvania, Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 9, 1996, in response to a petition which was filed by a union official on August 27, 1996, on behalf of workers at Harbours Casuals, Inc., Plains, Pennsylvania.

The petitioning union has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 13th day of November, 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 96–30337 Filed 11–26–96; 8:45 am]
BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 9, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 9, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 12th day of November, 1996.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX: PETITIONS INSTITUTED ON 11/12/96

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,890	Lambda Electronics, Inc (Co.)	McAllen, TX	10/21/96	Power Supplies.
32,891	Clarks Companies, N.A. (Co.)	Kennett Square, PA	10/10/96	Men's Dress & Work Shoes.
32,892	International Paper Co (Wkrs)	Oakland, OR	10/20/96	Tree Seedlings.
32,893	Armour Swift-Eckrich (Co.)	Kalamazoo, MI	10/17/96	Smoked Sausage.
32,894	Amp, Inc. (Wkrs)	Lowell, NC	10/28/96	Electrical Connectors.
32,895	Control Techniques Drive (Wkrs)	Grand Island, NY	10/21/96	Electronic Drives.
32,896	W.T.T.C, Inc. (Wkrs)	El Paso, TX	10/23/96	Apparel Garments.
32,897	Kibak Tile (Co.)	Redmond, OR	10/15/96	Hand Painted Tiles, Bisque, Glazes.
32,898	J.H. Collectibles, Inc (ILGWU)	Nevada, MO	10/21/96	Ladies' Skirts, Dresses, Pants.

APPENDIX: PETITIONS INSTITUTED ON 11/12/96—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,899	L. Robert Kimball (Wkrs)	Ebensburg, PA	10/22/96	Tax Maps—Deeds, Road Maps.
32,900	Pacificorp (Wkrs)	Portland, OR	10/25/96	Support Services—Electrical Power.
32,901	American Commercial (UPU)	Orrville, OH	9/24/96	Stamping and Assembling Metal Parts.
32,902	Old Ben Coal Co (UMWA)	Edgarton, WV	9/24/96	Metallurgical Coal.
32,903	Now Products, Inc (Co.)	Chicago, IL	9/30/96	Bean Bags, Futons, Juvenile Furniture.
32,904	James River Corp. (Co.)	Old Town, ME	10/31/96	Hardwood Pulp.
32,905	Masco Tech Stamping (Wkrs)	Oxford, MI	10/06/96	Battery Straps, Fender Molds.
32,906	Moisture Systems (Wkrs)	Hopkinton, MA	10/23/96	Moisture Systems.
32,907	Bartell Machinery Systems (Co.)	Rome, NY	10/29/96	Wire Making Machinery—Beadline.
32,908	Jensports (Wkrs)	New Kensington, PA	10/28/96	Ladies Sportswear.
32,909	Avery Denisson (IBT)	Torrance, CA	10/22/96	Stationary, Office Supplies.
32,910	Conoco (Co.)	Houston, TX	11/01/96	Crude Oil.
32,911	Johnson Controls, Inc (IAM)	Milwaukee, WI	10/22/96	Terminal Unit Valves.
32,912	Integrated Device Tech (Co.)	Salinas, CA	10/29/96	Test Computer Chips.
32,913	Mobil Natural Gas, Inc (Wkrs)	Houston, TX	10/22/96	Oil and Gas.
32,914	Chicago Pneumatic Tool (IAMAW).	Utica, NY	10/16/96	Tools—Abrasive, Compression & Hammers.
32,915	Springs Window Fashions (Co.)	Cty of Industry, CA	10/24/96	Miniblinds.
32,916	Groschopp (Wkrs)	Sanburn, IA	10/30/96	Small Fractional Motors.
32,917	Pak-Mor Manufacturing (Wkrs)	Duffield, VA	10/22/96	Garbage Truck Bodies.
32,918	Osh Kosh B'Gosh (Wkrs)	Liberty, KY	10/28/96	Children's Clothing.
32,919	Ferris Industries, Inc (Wkrs)	Vernon, NY	9/18/96	Commercial Heavy Duty Lawn Mowers.
32,920	Gerry Baby Products (UNITE)	Thornton, CO	11/04/96	Baby Products.
32,921	T.J.F.C. Manufacturing (UNITE)	Cleveland, OH	11/04/96	Men's Tailored Clothing.
32,922	Hecht Mfg Co (Co.)	Milwaukee, WI	10/25/96	Ladies' Skirts, Jackets etc.
32,923	Connor Rubber Technologie (RWDSU).	Fort Wayne, IN	10/31/96	Hard Rubber Battery Casings.

[FR Doc. 96–30332 Filed 11–26–96; 8:45 am]
BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision therefore, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,747; Lucent Technologies, Inc., Consumer Products Div., Little Rock, AR

TA–W–32,789; Stanly Knitting Mills, Inc., Mountain City, NC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–32,819; The Dial Corp., Memphis, TN

TA–W–32,733; Comet Rice, Stuttgart, AR

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,892; International Paper, Kellogy Tree Nursery, Oakland, OR

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–32,770; Total Petroleum, Inc., Arkansas City, KS

U.S. aggregate imports of asphalt and road oil decreased in 1995 when compared to 1994 and continued to decline during the latest twelve month period (July–June) 1996.

U.S. aggregate imports of jet fuel decreased in 1995 when compared to 1994. The import/shipment ratio also decreased during the same period.

TA–W–32,793; PCI Group, Inc., New Bedford, MA

The declines in employment at the subject firm are attributed to a decision of transfer production from the subject firm to another domestic company location.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–32,748; Clintwood Garment Co., Clintwood, VA; September 3, 1995.

TA–W–32,791; River Heights, Inc., Crump, TN: September 30, 1995.

TA–W–32,869; Celina Apparel, Inc., Celina, TN: October 16, 1995.

TA–W–32,720; Mr. T's Apparel Crystal Spring, MS: August 24, 1995.

TA–W–32,781; Western Atlas Logging Service, Anchorage, AK: August 29, 1995.
TA–W–32,396; Bill-Co Manufacturing, Inc., Albany, KY: May 20, 1995.
TA–W–32,758; Moen, Inc., Elyria, OH: August 30, 1995.
TA–W–32,713; Argo Apparel Corp., Schuylkill Haven, PA: August 27, 1995.
TA–W–32,708; Murray, Inc., Lawrence, TN: August 16, 1995.
TA–W–32,692; Tuboscope Vetco, Corpus Christi, TX: August 25, 1995.
TA–W–32,767; Nowsco Well Service, Inc., Woodward, OK: September 4, 1995.
TA–W–32,833; TRW, Inc. TRW Vehicle Safety Systems, Washington Stamping Plant, Washington, MI: October 4, 1995.
TA–W–32,739; Mission Plastic of DeQueen, AR: August 29, 1995.
TA–W–32,722; Lambda Electronics, Inc., Tuscon, AZ: August 28, 1995.
TA–W–32,670; Dal-Tile Corp., Pocatello, ID: July 12, 1995.
TA–W–32,715; Acme United Corp., Westcott Plant, Seneca Falls, NY: May 11, 1995.
TA–W–32,806; Sanco Corp., Dew Enterprises (AKA Certified Systems), Tyler, TX: September 16, 1995.
TA–W–32,727; Amana Refrigeration, Inc., Delaware, OH: August 27, 1995.
TA–W–32,742; Joseph P. Conroy, Inc., Johnstown, NY: August 29, 1995.
TA–W–32,760; Semont, Inc., A Division of Victoria Royal, New York, NY: September 5, 1995.
TA–W–32,729; Kuppenheimer Manufacturing Co., Inc., Loganville, GA: August 25, 1995.
TA–W–32,730; Kuppenheimer Manufacturing Co., Inc., Wellston, OH: August 25, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of November, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01297; Celina Apparel, Celina, TN
NAFTA–TAA–01262; American Banknote Co., Bedford Park, IL
NAFTA–TAA–01250; Mission Plastics of Arkansas, Inc., Subsidiary of Peterson Manufacturing Co., Dequeen, AR
NAFTA–TAA–01195; BASF Corp., Graphics Group, Holland, MI A; Warsaw, IN, B; Salem, IL, C; Willard, OH, D; Nashville, TN E; Brunswick, OH, F; Louisville, KY, G; Crawfordsville, IN, H; Dyersburg, TN
NAFTA–TAA–01258; River Heights, Inc., Crump, TN
NAFTA–TAA–01296; Sportswear Associates, Inc., Clay Sportswear Div., Moss, TN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01283; Rexel, Inc., Consolidated Electric Supply, Miami, FL

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01275; United Technologies Automotive, Inc., Wiring System Div., North Manchester Plant #84, North Manchester, IN: October 14, 1995.
NAFTA–TAA–01279; Tri-Con Industries, Ltd, Livingston, TN: October 8, 1995.
NAFTA–TAA–01255; Sanco Corp., Dew Enterprises (AKA Certified Systems), Tyler, TX: September 16, 1995.
NAFTA–TAA–01248; TRW Automotive Products Remanufacturing, McAllen, TX: September 24, 1995.
NAFTA–TAA–01276; Dal-Tile Corp., Pocatello, ID: September 6, 1995.
NAFTA–TAA–01268; Crouzet Corp., Carrollton, TX: September 23, 1995.
NAFTA–TAA–01272; Kimble Glass, Inc., Vineland, NJ: October 7, 1995.
NAFTA–TAA–01273; TRW, Inc., TRW Vehicle Safety Systems, Washington Stamping Plant, Washington, MI

I hereby certify that the aforementioned determinations were issued during the month of November, 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 18, 1996.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–30334 Filed 11–26–96; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–32,913]

Mobil Natural Gas, Inc. (MNGI), Houston, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 12, 1996 in response to a worker petition which was filed on November 12, 1996 on behalf of workers at Mobil Natural Gas, Inc. (MNGI), Houston, Texas.

An active certification covering the petitioning group of workers remains in effect (TA–W–32,644). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 19th day of November, 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–30331 Filed 26–11–96; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ENDOWMENT FOR THE ARTS AND THE HUMANITIES

National Heritage Fellowships Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Fellowships Panel (National Heritage Fellowships Section) to the National Council on the Arts will meet on December 16–18, 1996. The panel will meet from 9:30 a.m. to 10:30 p.m. on December 16; from 9:30 a.m. to 6:30 p.m. on December 17; and from 9:00 a.m. to 3:30 p.m. on December 18, 1996. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsections (c)(4), (6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5691.

Dated: November 23, 1996.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 96–30304 Filed 11–26–96; 8:45 am]

BILLING CODE 7537–01–M

Leadership Initiatives: Millennium Projects Panel Teleconference

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the Leadership Initiatives Advisory Panel (Millennium Projects Section) to the National Council on the Arts will convene by teleconference on December 16, 1996 from 2:00 p.m. to 3:30 p.m. This teleconference will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995 these sessions will be closed to the public pursuant to subsections (c)(4), (6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5691.

Dated: November 23, 1996.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 96–30305 Filed 11–26–96; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL LABOR RELATIONS BOARD

National Labor Relations Board Advisory Committee on Agency Procedure; Notice of Renewal

AGENCY: National Labor Relations Board.

ACTION: Notice of renewal of advisory committee.

SUMMARY: The National Labor Relations Board (NLRB) announces that the NLRB Advisory Committee on Agency Procedure has been renewed after consultation with the Committee Management Secretariat as required by the Federal Advisory Committee Act and regulations issued by the General Services Administration. Under its original charter filed in May 1994, the Committee was scheduled to expire on December 31, 1996, absent renewal. Under the terms of the renewed Advisory Committee charter, the Committee shall expire on August 27, 1998, absent renewal.

FOR FURTHER INFORMATION CONTACT: Advisory Committee Management Officer and Designated Federal Official, Enid W. Weber, Associate Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Suite 11600, Washington, D.C. 20570–0001; telephone: (202) 273–1937.

Dated: Washington, D.C., November 20, 1996.

By direction of the Board:

John J. Toner,

Executive Secretary.

[FR Doc. 96–30307 Filed 11–26–96; 8:45 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal Hydraulic Phenomena Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on December 18–19, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Most of the meeting will be closed to public attendance to discuss Westinghouse Electric Corporation proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, December 18, 1996—8:30 a.m. until the conclusion of business

Thursday, December 19, 1996—8:00 a.m. until the conclusion of business

The Subcommittee will continue its review of the results of the Westinghouse test and analysis programs conducted in support of the AP600 design certification and the relevant portions of the NRC staff's Supplemental Draft Safety Evaluation Report. Specifically, the Subcommittee will review the Westinghouse Phenomena Identification and Ranking Table (PIRT)/Scaling Report pertaining to the AP600 Reactor Coolant System. 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.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary

views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, Westinghouse Electric Corporation, their consultants, and other interested persons regarding this review.

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, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). 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: November 21, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–30293 Filed 11–26–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22345; 812–10234]

Calvert Social Investment Fund, et al.; Notice of Application

November 20, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: Calvert Social Investment Fund, The Calvert Fund, Calvert Tax-Free Reserves, Calvert Cash Reserves, Calvert Municipal Fund, Inc., Calvert World Values Fund, Inc., Calvert New World Fund, Inc., First Variable Rate Fund, and Acacia Capital Corporation (collectively, the ''Funds''), Calvert Asset Management Company, Inc. (''CAMC''), and Calvert-Sloan Advisers LLC (''Calvert-Sloan'' or, together with CAMC, the ''Advisers'').

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from the provisions of section 15(a) of the Act and rule 18f-2 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit them to enter into and materially amend contracts with the Funds' subadvisers without shareholder approval.

FILING DATES: The application was filed on July 3, 1996, and amended on September 3, 1996, and November 18, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 16, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Funds and Advisers, 4550 Montgomery Avenue, Suite 1000N, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Mercer E. Bullard, Branch Chief, (202) 942–0564, or Elizabeth G. Osterman, Assistant Director, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund is registered under the Act as an open-end management investment company with one or more series (the ''Portfolios'').[1] Calvert Social Investment Fund, The Calvert Fund, Calvert Tax-Free Reserves, Calvert Cash Reserves, and First Variable Rate Fund are business trusts organized under Massachusetts law. Calvert Municipal Fund, Inc., Calvert World Values Fund, Inc., Calvert New World Fund, Inc., and Acacia Capital Corporation are corporations organized under Maryland law. Acacia Capital Corporation has six Portfolios, which are sold only to insurance companies for their separate accounts and not to individual investors.

2. CAMC is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). CAMC is an indirect wholly-owned subsidiary of Acacia Mutual Life Insurance Company. Calvert-Sloan, a registered investment adviser under the Advisers Act, is a joint venture between Calvert Group, Ltd., the corporate parent of CAMC, and Sloan Holdings, Inc., a wholly-owned subsidiary of Sloan Financial Group, Inc. (''SFG''). SFG is the corporate parent of two of the subadvisers to the Portfolios, NCM Capital Management Group, Inc., and New Africa Advisers, Inc. The Advisers are paid a fee based on average daily net assets for investment advisory services. Some Portfolios pay their Adviser a performance-based incentive fee that conforms to section 205 of the Advisers Act and rules thereunder.

3. CAMC serves as investment manager to each Portfolio (other than the Calvert New Africa Fund, a series of Calvert New World Fund, Inc.) pursuant to investment management agreements between the CAMC and each Fund. Calvert-Sloan serves as investment manager of the Calvert New Africa Fund.

4. A number of Portfolios employ subadvisers (''Subadvisers''), each of which is registered as an investment adviser under the Advisers Act. Certain Portfolios currently employ more than one Subadviser (the ''Multi-Adviser Portfolios''), and others employ one Subadviser (the ''Single Subadviser Portfolios''). Certain Funds do not have Portfolios that currently employ Subadvisers, but they may do so in the future. Investment decisions for Portfolios that employ Subadvisers are made by the Subadvisers, who have discretionary authority to invest all or a portion of the assets of a Portfolio, subject to the general supervision of the Advisers and the board of each Fund. Subadvisers provide advisory services pursuant to an written advisory agreement (''Investment Subadvisory Agreement''). The Subadvisers' fee are paid by the Advisers at rates negotiated by the Advisers. The fees are based on assets allocated to the Subadviser. Some Subadvisers receive a performance-based incentive fee that conforms to section 205 of the Advisers Act and rules thereunder.

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as investment adviser to a registered

[1] Applicants also request relief with respect to any additional Portfolio organized in the future and any other open-end management investment company advised by an Adviser, or a person controlling, controlled by, or under common control with an Adviser, in the future, provided that such investment company operates in substantially the same manner as the Funds and complies with the conditions to the requested order.

investment company except pursuant to a written contract that has been approved by a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants request an exemption from section 15(a) of the Act and rule 18f–2 thereunder to permit the Funds and the Advisers to enter into and materially amend Investment Subadvisory Agreements without shareholder approval.

3. Applicants believe that the Advisers' constant supervision of the Subadvisers will permit the proportion of shareholders' assets subject to particular Subadviser styles to be reallocated (or new Subadvisers introduced) in response to changing market conditions or Subadviser performance, in an attempt to improve a Portfolio's overall performance. Applicants assert that shareholders are, in effect, electing to have the Advisers select one or more Subadvisers best suited to achieve the Portfolio's investment objective. Applicants state that shareholders rely on the Advisers for investment management and the Advisers' expertise to select Subadvisers.

4. Applicants contend that, because shareholders rely on the Advisers to select Subadvisers, it is the investment advisory agreements with the Advisers (''Investment Advisory Agreements'') over which shareholders should exercise control. Such Agreements would continue to be subject to the shareholder approval requirements of section 15 of the Act.

5. Applicants contend that requiring shareholder approval of Subadvisers and Investment Subadvisory Agreements would impose costs on the Funds without advancing shareholder interests. Applicants believe that shareholders' interests are adequately protected by their voting rights with respect to the Investment Advisory Agreements and the responsibilities assumed by the Advisers and the Funds' boards. As either Maryland corporations or Massachusetts business trusts, the Funds generally are not required under state law to hold annual shareholder meetings, and do not generally plan to hold such meetings, unless legally required to do so, in order to avoid the attendant costs.

6. Applicants believe that it has become increasingly difficult to obtain shareholder quorums for shareholder meetings. Without the requested relief, applicants believe that a Portfolio may be left with a ''lame duck'' Subadviser while awaiting shareholder approval. Applicants also believe that requiring shareholder approval of new Subadvisers and amendments to Investment Subadvisory Agreements would prevent the Funds from promptly and timely employing Subadvisers best suited to the needs of the Funds.

7. Applicants contend that shareholders will be provided with adequate information about Subadvisers. Prospectuses and Statements of Additional Information will contain all required information regarding each Subadviser. Within 90 days of the hiring of a new Subadviser or material amendment of an Investment Subadvisory Agreement, the Portfolio will furnish shareholders with all the information that would have been provided in a proxy statement.

8. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested exemptive relief satisfies this standard.

Applicants' Conditions

Applicants agree that the order shall be subject to the following conditions:

1. Before a Portfolio may rely on the order requested in the application, the operation of the Portfolio in the manner described in the application will be approved by a majority of the outstanding voting securities, as defined in the Act, of the Portfolio (or, in the case of the Acacia Capital Corporation, by the unitholders of any separate account for which the Corporation serves as a funding medium), or, in the case of a new Portfolio whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before offering shares of such Portfolio to the public.

2. Any Portfolio relying on the requested relief will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application.

3. CAMC, or as the case may be, Calvert-Sloan, will provide management and administrative services to the Portfolios and, subject to the review and approval of their respective boards of trustees/directors, will: set the overall investment strategies of the Portfolios; recommend Subadvisers; allocate and, when appropriate, reallocate the assets of the Portfolios among Subadvisers; and monitor and evaluate the investment performance of the subadvisers, including their compliance with the investment objectives, policies, and restrictions of the Portfolios.

4. A majority of each board of trustees/directors of each Fund will be persons each of whom is not an ''interested person'' of the Fund (as defined in section 2(a)(19) of the Act) (the ''Independent Trustees/Directors''), and the nomination of new or additional Independent Trustees/Directors will be placed within the discretion of the then existing Independent Trustees/Directors.

5. The Funds will not enter into Investment Subadvisory Agreements on behalf of their Portfolios with any Subadviser that is an ''affiliated person,'' as defined in section 2(a)(3) of the Act, of the Funds, the Portfolios, or the Advisers other than by reason of serving as a Subadviser to one or more of the Portfolios (an ''Affiliated Subadviser'') without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

6. When a change of Subadviser is proposed for a Portfolio with an Affiliated Subadviser, the board of trustees/directors of the applicable Fund, including a majority of the Independent Trustees/Directors, will make a separate finding, reflected in the minutes of meetings of the board of trustees/directors of the Portfolio that any such change of Subadviser is in the best interest of the Portfolio and its shareholders (or, in the case of the Acacia Capital Corporation, of the unitholders of any separate account for which the Corporation serves as a funding medium) and does not involve a conflict of interest from which CAMC, Calvert-Sloan, or an Affiliated Subadviser derives an inappropriate advantage.

7. No director, trustee, or officer of a Fund or an Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee, or officer) any interest in a Subadviser except for ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Manager, or ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

8. Within 90 days of the hiring of any Subadviser or the implementation of

any proposed material changed in an Investment Subadvisory Agreement, the affected Portfolio will furnish its shareholders with all information about the new Subadviser or Investment Subadvisory Agreement that would be included in a proxy statement. Such information will include any change in such disclosure caused by the addition of a new Subadviser or any proposed material change in the Investment Subadvisory Agreement of a Portfolio. The Portfolio will meet this condition by providing shareholders, within 90 days of the hiring of the Subadviser or implementation of any material change to the terms of an Investment Subadvisory Agreement, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 (''Exchange Act''). The information statement also will meet the requirements of item 22 of Schedule 14A under the Exchange Act. The Acacia Capital Corporation will ensure that the information statement is furnished to the unitholders of any separate account for which the Corporation serves as a funding medium.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30223 Filed 11–26–96; 8:45 am]

BILLING CODE 8010–01–M

Agency Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 2, 1996.

An open meeting will be held on Monday, December 2, 1996, at 10:00 a.m. A closed meeting will be held on Thursday, December 5, 1996, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Monday, December 2, 1996, at 10:00 a.m., will be:

The Commission will meet with members of the Financial Accounting Standards Board to discuss subjects including international accounting standards setting, derivatives/comprehensive income, disaggregated information, and disclosure effectiveness. For further information, please contact Robert Lavery at (202) 942–4417.

The subject matter of the closed meeting scheduled for Thursday, December 5, 1996, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: November 25, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–30528 Filed 11–25–96; 2:58 pm]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 15, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–676.
Date filed: November 15, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 13, 1996.
Description: Application of Falcon Air Express, Inc. pursuant to 14 C.F.R. Section 302.4 and Subpart Q of the Department's Regulations for an amendment to its certificate of public convenience and necessity to the extent necessary to lift the ''one aircraft'' limitation currently in place on its certificate.

Docket Number: OST–95–677.
Date filed: November 15, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 13, 1996.
Description: Application of Falcon Air Express, Inc. pursuant to 14 C.F.R. Section 302.4 and Subpart Q of the Department's Regulations for an amendment to its certificate of public convenience and necessity to the extent necessary to lift the ''one aircraft'' limitation currently in place on its certificate.

Docket Number: OST–96–1938.
Date filed: November 12, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 10, 1996.
Description: Application of Sun Country Airlines, Inc., pursuant to 49 U.S.C. Sections 41101(a) and 41102(a), (b), and Subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity for scheduled foreign air transportation of persons, property and mail between a point or point in the United States, on the one hand, and certain named terminal points in the Caribbean, on the other hand.

Docket Number: OST–96–1943.
Date filed: November 13, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 11, 1996.
Description: Application of Khabarovsk Aviation Group, pursuant to 49 U.S.C., Section 41302 and Subpart Q of the Regulations, applies for a foreign air carrier permit to enable KAG to operate scheduled foreign air transportation of persons, property and mail from a point or points in the Russian Federation, via intermediate points, to the coterminal points Anchorage, Alaska; Seattle, Washington; San Francisco, California; and Los Angeles, California.

Docket Number: OST–96–1945.
Date filed: November 14, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 12, 1996.
Description: Application of USAir, Inc. pursuant to 14 C.F.R. Part 215 and Subpart Q of the Regulations, requests that the Department approve and register a change in the name of USAir to US Airways, Inc. d/b/a US Airways and d/b/a USAir, and reissue all of its

certificates of public convenience and necessity in the name of US Airways, Inc. d/b/a US Airways and d/b/a USAir.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–30363 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Partnership Council; Notice of Meeting

AGENCY: U.S. Department of Transportation, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of Transportation (DOT) announces a meeting of the DOT Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

Time and Place: The Council will meet on December 17, 1996, at 10:00 a.m., at the U.S. Department of Transportation, Nassif Building, room10234–10238, 400 Seventh Street, SW, Washington, DC 20590. The room is located on the 10th floor.

Type of meeting: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

Point of contact: John E. Budnik or Jean B. Lenderking, Labor-Employee Relations Office, Department of Transportation, Nassif Building, 400 Seventh Street, SW, room 9425, Washington, DC 20590, (202) 366–9439 or (202) 366–8085, respectively.

Supplementary Information: The purpose of this meeting is to finalize Council Operating Principles, address approaches for achieving goals identified in the Council's charter, and provide a DOT review.

Public Participation: We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Mr. John Budnik or Ms. Jean Lenderking at the address shown above. Comments should be received by December 9 in order to be considered at the December 17 meeting.

Issued in Washington, D.C., on November 22, 1996. For the Department of Transportation.

John E. Budnik,

Chief, Office of Employee and Labor Relations.

[FR Doc. 96–30364 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–62–P

White House Commission on Aviation Safety and Security; Open Meeting

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of meeting.

SUMMARY: The White House Commission on Aviation Safety and Security will hold a meeting to discuss aviation safety and security issues. The meeting is open to the public.

DATES: The meeting will be held on Thursday, December 5, 1996, from 2:00 PM to 4:00 PM.

ADDRESSES: The meeting will take place in the Commerce Department Auditorium, 14th Street, between Constitution and Pennsylvania Avenues, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard K. Pemberton, Administrative Officer, Room 6210, GSA Headquarters, 18th & F Streets, NW, Washington, DC 20405; telephone 202.501.3863; telecopier 202.501.6160.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 USC Appendix), DOT gives notice of a meeting of the White House Commission on Aviation Safety and Security (''Commission''). The Commission was established by the President to develop advice and recommendations on ways to improve the level of civil aviation safety and security, both domestically and internationally. The principal purpose of the meeting on December 5 is to examine the national air traffic control system.

Exceptional circumstances exist for providing less than fifteen days public notice of this meeting, the circumstances being uncertainty of the availability of the Vice President of the United States, Chair of the Commission.

Limited seating for the public portion of the meeting is available on a first-come, first-served basis. The public may submit written comments to the Commission at any time; comments should be sent to Mr. Pemberton at the address and telecopier number shown above.

Issued in Washington, DC on November 21, 1996.

Nancy E. McFadden,

General Counsel, Department of Transportation.

[FR Doc. 96–30205 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier and General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of a meeting of the FAA Aviation Rulemaking Advisory Committee to discuss Air Carrier and General Aviation Maintenance Issues.

DATES: The meeting will be held on December 13, 1996, from 9:00 a.m. to 4:00 p.m. Arrange for presentations by December 3, 1996.

ADDRESSES: The meeting will be held at the Air Transport Association of America, Suite 1100, 1301 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Higginbotham, Federal Aviation Administration, Office of Rulemaking (ARM–207), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3498; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on December 13, 1996, at the Air Transport Association of America, Suite 1100, 1301 Pennsylvania Avenue, NW., Washington, DC 20004. The agenda will include:

1. Opening remarks;
2. Committee Administration;
3. New Business:

- Vote on a proposed Advisory Circular from the Maintenance Training Program Working Group. This draft Advisory Circular provides guidance on the types of training that may be provided to meet maintenance training requirements for air carriers conducting domestic, flag, and supplemental operations.
- Status reports from other working groups;

4. A discussion of future meeting dates, locations, activities, and plans.

The public may request copies of the advisory circular on which the vote will take place by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by December 3, 1996, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on November 20, 1996.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–30210 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Central Wisconsin Airport, Mosinee, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Central Wisconsin Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 27, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James S. Hansford, Airport Manager, at the following address: Central Wisconsin Airport, 200 CWA Drive, Suite 201, Mosine, Wisconsin 54455–9601.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Central Wisconsin Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huber, Program Manager, Airports District Office, Room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450–2706, Telephone: (612) 713–4357. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Central Wisconsin Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 8, 1996, the FAA determined that the application to use the revenue for a PFC submitted by the Central Wisconsin Joint Airport Board was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 1, 1997.

The following is a brief overview of the application.

PFC application number: 97–02–U–00–CWA.

Level of the PFC: $3.00.

Actual charge effective date: November 1, 1993.

Estimated charge expiration date: November 1, 2012.

Total approved net PFC revenue: $7,725,600.

Brief description of proposed project: Ramp Modification and Terminal Concourse Addition.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-demand air taxi operators operating aircraft with less than 20 seats.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Central Wisconsin Airport office.

Issued in Des Plaines, Illinois, on November 19, 1996.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 96–30214 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Fort Smith Regional Airport, Fort Smith, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Fort Smith Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 27, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Johnson, Airport Manager of Fort Smith Regional Airport at the following address: Mr. Robert Johnson, Airport Manager, Fort Smith Regional Airport, 5600 Airport Boulevard, Suite 200, Fort Smith, AR 72930.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 153.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610. (817) 222–5614

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Fort Smith Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 7, 1996, the FAA determined that the application to use the revenue from a PFC submitted by Fort Smith Regional Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 1, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Charge effective date: May 1, 1997.

Proposed charge expiration date: January 1, 2010.

Total estimated PFC revenue: $4,069,371.

PFC application number: 97–02–U–00–FSM.

Brief description of proposed project(s):

Projects To Use PFC's

PFC Reimbursable Projects; Acquire Power Sweeper; Overlay Runway 7/25;

Airport Master Plan and Terminal Area Plan; Terminal Complex Development; and Purchase Maintenance/Snow Removal Equipment.

Proposed Class or Classes of Air Carriers To Be Exempted From Collecting PFC's: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in persons at Fort Smith Regional Airport.

Issued in Fort Worth, Texas on November 14, 1996.

Edward N. Agnew,

Acting Manager, Airports Division.

[FR Doc. 96–30217 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Greater Rockford Airport, Rockford, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Greater Rockford Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 27, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA Great Lakes Region, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James W. Loomis, Executive Director, of the Greater Rockford Airport Authority at the following address: Greater Rockford Airport Authority, 60 Airport Drive, Rockford, Illinois 61109.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Greater Rockford Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Pur, Airports Engineer, FAA Great Lakes Region, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018, 847/294–7527. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Great Rockford Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 12, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Greater Rockford Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 26, 1997.

The following is a brief overview of the application:

PFC Application Number: 97–04–C–00–RFD.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 1997.

Proposed charge expiration date: June 1, 2018.

Total estimated PFC revenue: $6,387,352.

Brief description of proposed project(s): Overlay South Parallel Taxiway to Runway 1/19; Acquire Snow Removal Equipment; Construct Parallel Taxiway to Runway 7/25; Reconstruct Runway 19 Parallel Taxiway; Overlay Taxiway G; PFC Program Administration; Acquire ARFF Equipment. Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Greater Rockford Airport Authority.

Issued in Des Plaines, Illinois on November 19, 1996.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 96–30213 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board

[STB Finance Docket No. 33286]

Norfolk Southern Corporation and Norfolk Southern Railway Company—Control—Conrail Inc. and Consolidated Rail Corporation

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 1; Notice of prefiling notification and request for comments.

SUMMARY: Pursuant to 49 CFR 1180.4(b), Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR)[1] have notified the Surface Transportation Board (Board) of their intent to file an application seeking authority under 49 U.S.C. 11323–25 for: (1) The acquisition of control of Conrail Inc. (CRI) and Consolidated Rail Corporation (CRC)[2] by NSC; and (2) the resulting common control by NSC of Conrail and its subsidiaries, on the one hand, and NSR and its subsidiaries, on the other. The Board finds this to be a major transaction as defined in 49 CFR part 1180. The Board invites comments from interested persons on a proposed procedural schedule.

DATES: Written comments on the proposed schedule must be filed with the Board no later than December 13, 1996. Applicants' reply is due by December 23, 1996.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33286 and must be sent to the Office of the Secretary, Case Control Branch, ATTN: STB Finance Docket No. 33286, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.[3]

[1] NSC and NSR are referred to collectively as applicants.

[2] CRI and CRC are referred to collectively as Conrail.

[3] In addition to submitting an original and 25 copies of all documents filed with the Board, the parties are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette which is formatted for WordPerfect 5.1 (or formatted so that it can be converted into WordPerfect 5.1) and is clearly labeled with the identification acronym and number of the pleading contained on the diskette [49 CFR 1180.4(2)]. The computer data contained on the computer diskettes submitted will be subject

Continued

In addition, one copy of all documents in this proceeding must be sent to the applicants' representative: Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, L.L.P., 888 Seventeenth Street, N.W., Washington, DC 20006–3939.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 927–5352. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In the notice of intent filed November 6, 1996, applicants state that on October 23, 1996, NSC announced its intention to commence a public tender offer for equity securities of CRI. On October 24, 1996, NSC and its wholly owned subsidiary, Atlantic Acquisition Corporation (Acquisition), commenced the tender offer pursuant to an Offer to Purchase dated October 24, 1996. NSC and Acquisition have offered to purchase shares of common stock of CRI, subject to the conditions specified in the Offer to Purchase. Upon purchase of CRI shares by NSC, Acquisition, or their affiliates, such purchased shares will be deposited in an independent voting trust pending approval by the Board of the acquisition of control by NSC of Conrail.[4] NSC is seeking to negotiate with CRI a definitive merger agreement pursuant to which CRI would, as soon as practicable following consummation of the Offer, consummate a merger or similar business combination with Acquisition or another direct or indirect subsidiary of NSC (the Merger). To avoid the acquisition of control by NSC of Conrail prior to approval by the Board, NSC intends to deposit all issued and outstanding common stock of Acquisition (which may become stock of the surviving corporation on consummation of the Merger) owned by NSC into the voting trust at or immediately prior to the Merger. Upon Board approval of the acquisition by NSC of control of Conrail, NSC will acquire control of Conrail through stock ownership of the voting trust.

Applicants state that they will use the year 1995 for purposes of their impact analysis to be filed in the application, and that they anticipate filing their application on or before May 1, 1997.

The Board finds that this is a major transaction, as defined at 49 CFR 1180.2(a), as it is a control transaction involving two or more Class I railroads. The application must conform to the regulations set forth at 49 CFR part 1180 and must contain all information required therein for major transactions, except as modified by any advance waiver.[5] The carriers are also required to submit maps with overlays that show the existing routes of both carriers and their competitors.

By petition filed November 8, 1996 (NSC–3), applicants requested a protective order to protect confidential, highly confidential, and proprietary information, including contract terms, shipper-specific traffic data, and other traffic data to be submitted in connection with the control application. Applicants' request for protective order will be addressed in a separate decision.

Also on November 8, 1996, applicants filed a petition to establish a proposed procedural schedule (NSC–2). Applicants' proposed procedural schedule is as follows:

Applicants' Proposed Procedural Schedule

F—Primary application and related applications filed.
F + 30—Board notice of acceptance of primary application and related applications published in the Federal Register.
F + 45—Notification of intent to participate in proceeding due.
F + 60—Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due with respect to such applications.
F + 120—Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other opposition evidence and argument due. Comments by U.S. Department of Justice (DOJ) and U.S. Department of Transportation (DOT) due.
F + 135—Notice of acceptance (if required) of inconsistent and responsive applications published in the Federal Register.
F + 150—Response to inconsistent and responsive applications due. Response to comments, protests, requested conditions, and other opposition due. Rebuttal in support of primary application and related applications due.
F + 165—Rebuttal in support of inconsistent and responsive applications due.
F + 185—Briefs due, all parties (not to exceed 50 pages).
F + 215—Oral argument (at Board's discretion).
F + 217—Voting conference.
F + 255—Date of service of final decision.

Under applicants' proposal, immediately upon each evidentiary filing, the filing party shall place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and shall make its witnesses available for discovery depositions. Access to documents subject to the protective order shall be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Relevant excerpts of transcripts will be received in lieu of cross-examination, unless cross-examination is needed to resolve material issues of disputed fact. Discovery on responsive and inconsistent applications will begin immediately upon their filing. The Administrative Law Judge assigned to this proceeding will have the authority initially to resolve any discovery disputes.[6]

The proposed schedule is identical to the one requested by the applicants in STB Finance Docket No. 33220, *CSX Corporation and CSX Transportation, Inc.—Control and Merger—Conrail Inc. and Consolidated Rail Corporation (CSX/CR)*, filed October 18, 1996 (CSX/CR–3), and is substantially similar to that adopted in *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railway Company (UP/SP)*, Finance

to the protective order that will be entered in a subsequent decision, and is for the exclusive use of Board employees reviewing substantive matters in this proceeding. The flexibility provided by such computer file data will facilitate expedited review by the Board and its staff.

[4] Applicants filed a copy of a proposed voting trust agreement (VTA) on October 25, 1996, to be entered into by and between NS, Acquiror, and a Bank (to be named as Trustee) for use in a possible future NS acquisition of Conrail. An informal staff opinion letter was issued on November 1, 1996. On November 6, 1996, applicants submitted an alternative VTA proposed to be entered into by and between NS, Acquiror, and a Bank (to be named as Trustee), which would revise ¶ 4 of the VTA to reflect that, if a merger between Acquiror and Conrail Inc. takes place prior to Board approval of the control application and the common stock of the merged entity is deposited into the voting trust in accordance with VTA ¶ 3, the Trustee will have the authority from the outset to vote all shares of the Trust Stock on all matters except the enumerated matters in ¶ 4 ''in accordance with its best judgment concerning the interests of the Company.'' An informal opinion letter was issued on November 18, 1996.

[5] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, requires that we consider the effect of the proposed transaction ''on competition among rail carriers in the affected region or in the national rail system.'' 49 U.S.C. 11324(b)(5). Applicants are reminded to include analysis on both of these criteria in their competitive analyses.

[6] The process of assigning an ALJ to this proceeding is underway, and we will leave all discovery matters, including the adoption of any guidelines governing discovery initially, to the discretion of the ALJ. A decision naming that judge will be issued as soon as possible.

Docket No. 32760 (*see* Decision No. 6, ICC served Oct. 19, 1995; and Decision No. 9, ICC served Dec. 27, 1995).

Applicants' proposal is one of the first major consolidation transactions presented to the Board under the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), enacted December 29, 1995, and effective January 1, 1996. The Board is seeking comments from the public on applicants' proposed procedural schedule, as modified by us below to adhere more closely to the provisions of ICCTA. In ICCTA, Congress provided pursuant to 49 U.S.C. 11325(b) [emphasis added]:

(b) If the application involves the merger or control of two or more Class I railroads, as defined by the Board, the following conditions apply:

(1) Written comments about an application may be filed with the Board within 45 days after notice of the application is published [F + 75 days] under subsection (a)[7] of this section. Copies of such comments shall be served on the Attorney General and the Secretary of Transportation, who may decide to intervene as a party to the proceeding. That decision must be made by the 15th day after the date of receipt of the written comments, and if the decision is to intervene, preliminary comments about the application must be sent to the Board by the end of the 15th day after the date of receipt of the written comments [F + 90 days].

(2) The Board shall require that applications inconsistent with an application, notice of which was published under subsection (a) of this section, and applications for inclusion in the transaction, be filed with it by the 90th day after publication of notice [F + 120 days] under that subsection.

(3) The Board must conclude evidentiary proceedings by the end of 1 year after the date of publication of notice under subsection (a) of this section. The Board must issue a final decision by the 90th day after the date on which it concludes the evidentiary proceedings.

Specifically, we propose to modify applicants' proposed schedule to require parties intending to file comments, protests, requests for conditions, and any other opposition evidence and argument to file their submissions 75 days from the date the application is filed [F + 75] as provided for under 49 U.S.C. 11325(b)(1), with comments from the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT) due 90 days from the date the application is filed [F + 90 days] as provided for under 49 U.S.C. 11325(b)(1). If these due dates were to be established for comments in this proceeding, responses to comments, protests, requested conditions, and other opposition, and also rebuttal in support of the primary application and related applications would be due 30 days after the due date (i.e., on day F + 105 for responses to commenters and parties other than DOJ and DOT; and on day F + 120 for responses to DOJ and DOT). We propose to keep inconsistent and responsive applications due 120 days from the date the application is filed [F + 120 days] as provided for under 49 U.S.C. 11325(b)(2). Because there has not been a major merger in the East since the early 1980s, given our merger experience, we believe it would be prudent for us to factor in some additional time to accommodate possible unique issues that may arise. We propose extending applicants' proposed procedural schedule by 45 days allocated as follows: (1) adding 5 days to applicants' proposed period of time for parties to prepare their briefs, so that briefs would be due on F + 190 days; (2) adding 15 days to applicants' proposed period of time for parties to prepare for oral argument, so that oral argument would occur on F + 235 days; (3) adding 3 days to applicants' proposed 2-day interval between the oral argument and the voting conference, so that a voting conference would occur on F + 240 days; and (4) adding 22 days to applicants' proposed period of time after the voting conference for the service of the Board's final decision on F + 300 days. In addition, we propose requiring applicants to file an environmental report, including all supporting documents, no later than 30 days prior to the filing of the primary application.[8]

Proposed Procedural Schedule as Modified by the Board[9]

F—−30—Environmental report, including all supporting documents due.

F—Primary application and related applications filed.

F + 30—Board notice of acceptance of primary application and related applications published in the Federal Register.

F + 45—Notification of intent to participate in proceeding due.

F + 60—Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due with respect to such applications.

F + 75—All comments, protests, requests for conditions, and any other opposition evidence and argument due.

F + 90—Comments by U.S. Department of Justice (DOJ) and U.S. Department of Transportation (DOT) due.

F + 105—Responses to comments, protests, requested conditions, and other opposition due. Rebuttal in support of primary application and related applications due in response to filings on day F + 75.

F + 120—Inconsistent and responsive applications due. Rebuttal in support of primary application and related applications due in response to filings of DOJ and DOT on day F + 90.

F + 135—Notice of acceptance (if required) of inconsistent and responsive applications published in the Federal Register.

F + 150—Response to inconsistent and responsive applications due.

F + 165—Rebuttal in support of inconsistent and responsive applications due.

F + 190—Briefs due, all parties (not to exceed 50 pages).

F + 235—Oral argument (close of record).

F + 240—Voting conference.

F + 300—Date of service of final decision.

Applicants are proposing that any applications for authority for, or for exemption of, merger-related abandonments, and any supporting verified statements, be filed with the primary application, and be treated as related applications, with any opposition evidence, comments, rebuttal and briefing on those applications to be submitted in accordance with the same schedule as the primary application. We agree that we should process any merger-related abandonment applications in accordance with the overall merger procedural schedule, rather than applying the procedures found at 49 U.S.C. 10903, which is similar to our process we used in the *UP/SP* proceeding. *See UP/SP* (Decision No. 9) (ICC served Dec. 27, 1995), slip op. at 9–10. Therefore, we will grant applicants' request for waiver under 49 CFR 1152.24(e)(5) to permit modifications of the procedures and

[7] Under 49 U.S.C. 11325(a), ''[t]he Board shall publish notice of the application under section 11324 in the Federal Register by the end of the 30th day after the application is filed with the Board * * *.''

[8] While applicants need not file their actual operating plan due at the time of the filing of their application, the supporting documents must be completely consistent with their operating plan and contain sufficient information to allow immediate initiation of the environmental review process.

[9] Emphasis added to indicate the proposed changes made by the Board.

timetables prescribed in 49 CFR 1152.25(d) (6) and (7) to be consistent with the procedural schedule subsequently adopted in this proposed merger proceeding.[10]

We invite all interested persons to submit written comments on the procedural schedule we are proposing here. Comments must be filed by December 13, 1996. Applicants may reply by December 23, 1996.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: November 21, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–30290 Filed 11–26–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33295]

Wisconsin Central Ltd.—Trackage Rights Exemption—Commuter Rail Division of the Regional Transportation Authority

Commuter Rail Division of the Regional Transportation Authority (METRA) has agreed to grant non-exclusive trackage rights to Wisconsin Central Ltd. (WCL), a class II railroad, over 6.0 miles of railroad between milepost 12.6 at Franklin Park to milepost 6.6 at Cragin, in Cook County, IL. The transaction was scheduled to be consummated on November 11, 1996.

The trackage rights is solely for the purpose of moving loaded and empty cars in through freight service.[1]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33295, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Janet H. Gilbert, Esq., Wisconsin Central Ltd., 6250 N. River Road, Suite No. 9000, Rosemont, IL 60018.

Decided: November 19, 1996.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–30288 Filed 11–26–96; 8:45 am]

BILLING CODE 4915–00–P

[10] Applicants indicate that they intend to file shortly a petition for waiver or clarification of Railroad Consolidation Procedures, and related relief. As in *UP/SP,* applicants should also seek an exemption under 49 U.S.C. 10502 from any statutory procedural requirements at 49 U.S.C. 10903 necessary to allow the Board to process the merger-related abandonment applications under the procedural schedule ultimately adopted. *See UP/SP* (Decision No. 3) (ICC served Sept. 5, 1995), slip op. at 7–10.

[1] The parties have agreed that except for emergencies or until further review, WCL is restricted in the number and length of trains it can operate over the line each day.

Surface Transportation Board [1]

[STB Finance Docket No. 33116]

Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of a petition for exemption and a request for public comments, including comments on labor protective arrangements to be provided by a Class II railroad under 49 U.S.C. 10902.

SUMMARY: Wisconsin Central Ltd. (WCL), a Class II rail carrier, seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 for its acquisition of two lines of railroad from Union Pacific Railroad Company (UP) in central Wisconsin. Section 10902 is a new provision added by the ICCTA governing purchases of active rail lines by Class II (medium sized) and Class III (small) carriers. Under subsection 10902(d), a Class II railroad that acquires a rail line subject to the Board's jurisdiction must provide a fair and equitable arrangement for the protection of employees who may be affected by the transaction. The arrangement shall consist exclusively of 1 year of severance pay equal to the employee's earnings during the 12 months preceding the application filing date.

[1] The ICC Termination Act of 1995 (ICCTA), Pub. L. No. 104–88, 109 Stat. 803, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board) effective January 1, 1996. This notice relates to a transaction that is subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

WCL has proposed an employee protective arrangement to comply with subsection 10902(d). The labor protective arrangement that results from this proceeding may be used as a model for conditions we impose governing the minimum labor protective arrangements we require with respect to acquisitions by Class II railroads. Such arrangements have in the past consisted of two elements: (1) Procedural (i.e., when must employees be notified of their options and by whom); and (2) substantive (i.e., how many years of protection should be provided and what should that level of protection be). Plainly the new provision explicitly limits substantive aspects of any arrangement we may require. We seek comments on whether WCL's proposed arrangement meets the statutory requirements, and on whether and to what extent we should establish and/or oversee the procedural aspects of labor protective arrangements under this statute.

DATES: Comments are due on December 27, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Finance Docket No. 33116 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, send one copy of comments to petitioner's representative: Janet H. Gilbert, General Counsel, Wisconsin Central Ltd., P.O. Box 5062, Rosemont, IL 60017–5062.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: WCL, a wholly owned subsidiary of Wisconsin Central Transportation Corporation, proposes to acquire from UP two rail lines, the ''Hayward Line'' between Hayward and Hayward Junction, WI, and the ''Wausau Pocket'' between Kelly and Wausau-Schofield, WI, totaling 17.8 miles in central Wisconsin. There are two shippers on the Hayward Line and eight shippers on the Wausau Pocket that jointly generate approximately 12,300 carloads a year. WCL submitted supporting statements from each shipper on the two lines. The Board seeks comments on the proposed transaction.

As noted, the ICCTA included a new statutory provision—49 U.S.C. 10902—that applies to the acquisition or operation of additional rail lines by Class II and Class III railroads. As enacted, subsection 10902(c) requires the Board, after application by a Class II or III rail carrier, to issue a certificate

authorizing the transaction ''unless the Board finds that such activities are inconsistent with the public convenience and necessity.'' Under subsection 10902(d), a Class II railroad receiving such a certificate must provide a fair and equitable arrangement for the protection of employees who may be adversely affected by the transaction. The arrangement shall consist exclusively of 1 year of severance pay equal to the employee's earnings during the 12 months preceding the application filing date. The parties may agree to terms other than as provided. The Board may approve the requested certificate as filed or may include conditions (other than labor protection conditions) the Board finds necessary in the public interest. 49 U.S.C. 10902(c). While petitioner seeks an exemption from subsection 10902, the Board's exemption authority may not be used to relieve a rail carrier of its obligation to protect the interests of employees. 49 U.S.C. 10502(g).

Petitioner expects that the transaction, while eliminating nine UP positions, will create eight new positions on WCL. WCL indicates that it will offer these new positions to displaced UP employees on a priority basis, subject to application and employee qualification. WCL will provide affected UP employees with written notice of the positions, including wage and benefit levels, job responsibilities, and other relevant data, at least 1 month before consummation of the transaction. WCL proposes to inform displaced UP employees of any option they may have to decline a WCL job and elect a severance payment.

Under petitioner's protective arrangement, for any severed UP employee not hired by WCL, WCL will provide a single payment equal to the employee's railroad earnings for the 12-month period ending October 18, 1996. For severed UP employees hired by WCL, severance payments will be paid for 1 year on a prorated, monthly basis, reduced each month by the employee's WCL earnings for the corresponding month. WCL estimates that its pay scales are 90% of those of Class I carriers.

In view of the requirement of subsection 10902(d) that a Class II railroad provide a fair and equitable arrangement for the protection of employees adversely affected by the carrier's acquisition, the Board invites comments on whether WCL's proposed employee protective arrangement meets the requirements of 49 U.S.C. 10902. As noted, such arrangements have in the past consisted of two elements: (1) Procedural (i.e., when must employees be notified of their options and by whom); and (2) substantive (i.e., how many years of protection should be provided and what should that level of protection be). Plainly the new provision explicitly limits substantive aspects of any arrangement we may require. Thus, specifically we seek comments on whether and to what extent we should establish and/or oversee the procedural aspects of labor protective arrangements under this statute.

Comments may address such issues as the minimum standards or conditions for the arrangement, the carrier's responsibility to negotiate an arrangement or, failing agreement, to disclose those standards or conditions prior to consummation, and criteria for determining whether the arrangement is fair and equitable. The resulting labor protective arrangement imposed in this proceeding may be used as precedent for the labor protection we impose on future acquisitions by Class II railroads.

Comments (an original and 10 copies) must be in writing, and are due on December 27, 1996. Additional information may be obtained from petitioner's representative. We encourage any commenter to submit its comments as computer data on a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1. Any diskette submission (one diskette will be sufficient) should be in addition to the written submission.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

Decided: November 15, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–30289 Filed 11–26–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Applicable Rate of Interest on Nonqualified Withdrawals From a Capital Construction Fund

Under the authority in Section 607(h)(4)(B) of the Merchant Marine Act, 1936, as amended (the Act, 46 U.S.C. 1177(h)(4)(B)), we hereby determine and announce that the applicable rate of interest on the amount of additional tax attributable to any nonqualified withdrawals from a Capital Construction Fund established under Section 607 of the Act shall be 6.93 percent, with respect to nonqualified withdrawals made in the taxable year beginning in 1996.

The determination of the applicable rate of interest with respect to nonqualified withdrawals was computed, according to the joint regulations issued under the Act (46 CFR 391.7(e)(2)(ii)), by multiplying eight percent by the ratio which (a) the average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of such taxable year bears to (b) the average yield on 5-year Treasury securities for the calendar year 1970. The applicable rate so determined was computed to the nearest one-hundredth of one percent.

Dated: November 21, 1996.

So Ordered By:

Maritime Administrator
Maritime Administration
Under Secretary for Oceans and Atmosphere/ Administrator, National Oceanic and Atmospheric Administration
Assistant Secretary (Tax Policy) Department of the Treasury

Albert J. Herberger,

Maritime Administrator.

D. James Baker,

Under Secretary for Oceans and Atmosphere/ Administrator, National Oceanic and Atmospheric Administration.

Donald C. Lubick,

Acting Assistant Secretary (Tax Policy).

[FR Doc. 96–30315 Filed 11–26–96; 8:45 am]

BILLING CODE 4910–81–P

UNITED STATES INFORMATION AGENCY

Office of Citizens Exchange; NIS Secondary School Initiative; Secondary School Linkage Program

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges, Division of the NIS Secondary School Initiative, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award to conduct exchanges through the multiple secondary school linkage program with Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Public or private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply either to enhance/expand existing linkages or to develop new school linkage programs. All submissions must contain a Student exchange component and an Educator (teacher and/or administrator) exchange component. The maximum grant award will be $400,000.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act.

The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above was originally provided through the FREEDOM Support Act of 1992. Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–97–13.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m., Washington, D.C. time on *Friday, January 31, 1997.* Faxed documents will not be accepted, nor will documents postmarked *January 31, 1997* but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Subject to the availability of funding, grants will be awarded by April 1997, for programs to begin after September 1, 1997.

FOR FURTHER INFORMATION CONTACT:

The NIS Secondary School Initiative E/PY, Room 320, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, Telephone: (202) 619–6299; fax: (202) 619–5311; E-mail: bbeemer@usia.gov to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/ or from the Internet Gopher at gopher://gopher.usia.gov. Under the heading ''International Exchanges/Training,'' select ''Request for Proposals (RFPs).'' Please read ''About the Following RFPs'' before downloading.

Please specify USIA Program Officer Brent Beemer on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: *E/PY–97–13*, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal.

Overview: The short-term goal of the school linkage program is to provide partial funding for linkages between U.S. and NIS schools featuring student and educator exchanges for the purpose of collaborative substantive projects. Grant-funded exchanges must have a thematic focus and have tangible outcomes (such as development and use of educational materials). The long term goals are to:

(1) Advance mutual understanding between the U.S. and the NIS;

(2) develop lasting institutional ties between U.S. and NIS schools and communities;

(3) promote U.S. government/educational and not for profit sector cooperation by supporting linkages which hold promise for a sustainable program beyond the grant term and serve the needs and interests of the schools.

The linked networks of secondary schools in the U.S. and networks of schools in the NIS must establish ties between the schools in the network through two sets of exchange programs: 1) the exchange of secondary school students, from 14 to 18 years of age, between the U.S. and participating NIS countries; and 2) the exchange of secondary school educators between the U.S. and NIS countries.

Guidelines: USIA funding may not be used to supplant existing private sector funding. Applicants must indicate how activities have been funded in the past and how the activities will be expanded with assistance from USIA. Proposals that successfully address the following factors will receive priority consideration:

(1) All school linkages must clearly describe and define substantive thematically based projects that are the focus of the exchange for both students

and educators. This applies to the United States portion of the program as well as the NIS portion. Specific activities, products, curriculum materials, and pre-planning are areas that can be addressed. For example, what will the participants be doing? Where will they be doing this? Why is it important and relevant to the thematic focus of the program? Proposals that clearly answer these questions will be more competitive. In an effort to clarify possible thematic foci, suggested themes for exchange projects include but are not limited to the following: civic education, health education (including the issues of alcohol abuse and other substance abuse), environmental issues, youth leadership training, volunteerism, computer technology, agriculture, and business administration/management (including entrepreneurship).

(2) Significant cost-sharing is mandatory in ALL proposals. Moreover, those proposals that show more generous and creative cost-sharing will be more favorably viewed. Proposals that contain non-USIA funded items such as: additional students and/or educators on the exchange, U.S. participants paying for some of their own costs, computer software purchases, cultural excursions, state/national capital civics programs, and other significant items will be more competitive proposals than those that do not. However, NIS participants may not be charged to participate in the program, aside from paying for in-country costs (such as transportation to the point of departure), the costs of hosting the U.S. students and educators, and miscellaneous expenses such as pocket money.

(3) Proposals that clearly present independent educator programs for teachers/administrators will be more competitive than those that do not. These programs could include curriculum development seminars, ''shadowing'' host peers in the classroom, university-level courses, or other substantive activities. A program that relies on the educator to act as just an escort will be viewed much less favorably. Although educators can certainly travel with student groups, a group of educators could travel separately if an organization developed such a program.

The U.S. recipient of the grant is responsible for recruiting/selecting/organizing a minimum of three U.S. secondary schools to form the U.S. network, strengthening an existing working relationship with an organization or agency of government in the NIS responsible for a network of schools there, and linking the two networks through substantive exchange activities.

Because the ultimate goal of this program is self-sufficiency, individual schools that have received USIA funding under the NIS Secondary School Initiative for a total of three years are not eligible for USIA funding for participant travel costs, per diem, or allowances under this grant.

Partnerships should have an existence beyond the scope of this initiative; that is, there should be an inherent reason for their linkage apart from the availability of grant funds. Competitive proposals must demonstrate a solid and comprehensive follow-on plan to continue after the grant has expired.

An ideal project builds upon previous contacts and interaction between the proposed networks to help ensure a solid foundation for the linkage. The U.S. schools should collaborate with the NIS schools in planning and preparation. Proposals should support a working relationship that will produce something tangible and lasting in addressing the interests of both sides, beyond the confines of the exchange. The proposal should specify up front what the measurable goals and objectives of the program will be. Each school partnership must also provide a statement of goals and objectives for their exchange.

In general, new school linkages should target under-served countries or regions. For programs with Russia, priority will be given to linkages with schools located outside of the Moscow and St. Petersburg regions. Programs in Ukraine must have a Ukrainian partner organization that has its base of operation in Ukraine and not in another country.

The U.S. recipient of the grant will: design the overall plan that integrates the two components of the linkage, ensure quality control for all program elements, manage all travel arrangements, logistics, passports, visas, etc., provide competent and informed escorts for student groups, and disburse and account for grant funds. Recipients of the assistance award are responsible for ensuring the selection of exchange participants who are most suited for the program. Participants (both Educators and Students) from the U.S. and NIS countries should represent a diversity of backgrounds (racial, geographic, economic status, religious, etc.) to give greater understanding to the culture and society as a whole. Selection of individual participants from the U.S. and the NIS in the exchange components of the program must be merit-based; the proposal should describe the mechanisms used for participant selection.

Applicants should be familiar with the ''General Provisions'' of J–1 visa regulations. The Agency will process the IAP–66 forms for travel to the U.S. Applicant organizations are required to use the USIA Accident and Sickness Program for Exchanges (ASPE) for participants in USIA funded exchanges. Applicants who choose not to use the USIA plan must demonstrate that an alternative plan: (1) provides comparable or better coverage and (2) costs less. Please refer to the Program Objectives, Goals, and Implementation section of the Solicitation Package for greater detail regarding the design of the component parts as well as other program information.

Proposed budget: Awards may not exceed $400,000. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. All program costs should clearly indicate whether they cover U.S. or NIS participants. The cost per NIS student, NIS educator, U.S. student, U.S. educator should be listed separately. Grants awarded to eligible organizations with fewer than four years of experience in conducting international exchange programs will be limited to $60,000. Be sure to note the statement on cost-sharing in the Guidelines section. Please refer to the POGI and Proposal Submission Instructions sections of the Solicitation Package for complete budget guidelines and format instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European Affairs (EEN) and the USIA posts overseas. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered:

1. Programmatic Planning, Objectives, and Quality

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term individual and institutional linkages. A detailed agenda and plan should adhere to the program overview and guidelines described above. Proposals must provide a plan for continued follow-on activity (without USIA support) that ensures that USIA-supported programs are not isolated events.

2. Organizational Capacity and Track Record

Proposed personnel and institutional resources should be adequate and appropriate to achieve the Program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants. An organization's track record will be evaluated based on the achievement of stated goals and impact on schools in the U.S. and NIS.

3. Support of Diversity

Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity. Applicants should review the Bureau of Educational and Cultural Affairs ''diversity flyer.'' Additionally, the geographic diversity of programs in both the U.S. and the NIS will be a significant factor in USIA's award decisions.

4. Cost-effectiveness/Sharing

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Overall costs of participants will be a major factor in the review of the proposal. Proposals should maximize cost-sharing through United States participant contributions and other private sector support as well as institutional direct funding contributions. Source of funds for cost-sharing should be indicated.

5. Project Evaluation

Proposals must include a plan to evaluate the program, both as the activities unfold and at the end. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology for use in linking outcomes to original project objectives for each school linkage. Award-receiving organizations/institutions will be expected to submit reports on each separate linkage.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements. Organizations will be expected to cooperate with USIA in evaluating their programs under the principles of the Government Performance and Results Act of 1993, which requires federal agencies to measure and report on the results of their programs and activities.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: November 20, 1996.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 96–30261 Filed 11–26–96; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Proposed Information Collection Activity; Public Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before January 27, 1997.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0215.

Title and Form Number: Request for Information to Make Direct Payment to Child Reaching Majority, VA Form Letter 21–863.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form letter is used to gather the necessary information to determine the address of a child attaining majority and to determine the child's student status.

Current Actions: The information is needed to pay a child directly when the child attains majority. VA procedures provide that a competent child who is entitled to benefits in his or her own right should be paid directly upon attaining majority.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,767 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 22,600.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 273–7079 or FAX (202) 275–4884.

Dated: November 12, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–30260 Filed 11–26–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0180.

Title and Form Number: Compliance Report of Proprietary Institutions, VA Form 27–4274.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Need and Uses: The form will be used to collect statistical information from proprietary schools which receive Federal assistance from the VA and the Department of Education to determine compliance with applicable civil rights statutes and regulations.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 124 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 124.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (0451A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: November 7, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–30259 Filed 11–26–96; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday
November 27, 1996

Part II

Environmental Protection Agency

40 CFR Part 258

Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–5654–3]

RIN 2050–AD04

Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As part of the President's regulatory reform initiative, the Environmental Protection Agency (EPA) is amending the financial assurance provisions of the Municipal Solid Waste Landfill Criteria, under subtitle D of the Resource Conservation and Recovery Act. The financial assurance provisions require owners and operators of municipal solid waste landfills (MSWLFs) to demonstrate that adequate funds will be readily available for the costs of closure, post-closure care, and corrective action for known releases associated with their facilities. The existing regulations specify several mechanisms that owners and operators may use to make that demonstration.

Today's rule increases the flexibility available to owners and operators by adding two mechanisms to those currently available. The additional mechanisms, a financial test for use by local government owners and operators, and a provision for local governments that wish to guarantee the costs for an owner or operator, are designed to be self-implementing. Use of the financial test provided in this rule allows a local government to use its financial strength to avoid incurring the expenses associated with the use of a third-party financial instrument. Demonstrating that the costs of closure, post-closure care, and corrective action for known releases are available protects the environment by assuring that landfills will be properly managed at the end of site life when revenues are no longer being generated and physical structures may begin to break down.

DATES: The effective date for this final rule is April 9, 1997. The compliance date for MSWLF's is April 9, 1997, except for small, dry or remote landfills which have until October 9, 1997 to comply.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, first Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–96–LGFF–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page. The index and some supporting material is available electronically. See the Supplementary Information section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline toll free at (800) 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, D.C. metropolitan area, call 703 412–9810 or TDD 703 412–3323; or George Garland, Office of Solid Waste (5306W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 at (703) 308–7272.

SUPPLEMENTARY INFORMATION: The index and the Comment Response Document are available on the Internet. Follow these instructions to access the information electronically:

WWW: http//www.epa.gov/epaoswer
Gopher: gopher.epa.gov
Dial-up: 919 558–0335

If you are using the gopher or direct dialup method, once you are connected to the EPA Public Access Server, look for this report in the directory EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA).

FTP: ftp.epa.gov
Login: anonymous
Password: your internet address
Files are located in /pub/gopher/OSWRCRA.

Preamble Outline

I. Authority

These amendments to Title 40, part 258, of the Code of Federal Regulations are promulgated under the authority of sections 1008, 4004, and 4010 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6907, 6944, and 6949a.

II. Background

The Agency proposed revised criteria for municipal solid waste landfills (MSWLFs), including financial assurance requirements, on August 30, 1988 (see 53 FR 33314) pursuant to the authority listed above. The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post-closure care, and corrective action associated with MSWLFs.

In the August 30, 1988 proposal, rather than proposing specific financial assurance mechanisms, the Agency proposed a financial assurance performance standard. The Agency solicited public comment on this performance standard approach and, at the same time, requested comment on whether the Agency should develop financial test mechanisms for use by local governments and corporations. In response to comments on the August 1988 proposal, the Agency added several specific financial mechanisms to the financial assurance performance standard of § 258.74 in promulgating the October 9, 1991 final rule on MSWLF criteria (56 FR 50978). That provision allows approved States to use any State-approved mechanism that meets that performance standard.

Commenters on the August 30, 1988 proposal also supported the development of financial tests for local governments and for corporations to demonstrate that they meet the financial assurance performance standard, without the need to produce a third-party instrument to assure that the obligations associated with their landfill will be met.[1] The Agency agreed with commenters and, in the October 9, 1991 preamble, announced its intention to develop both a local government and corporate financial test in advance of the effective date of the financial assurance provisions.

On April 7, 1995, the Agency delayed the date by which MSWLFs must comply with RCRA subtitle D financial

[1] For a description of the third-party instruments available to MSWLF owners and operators, see 56 FR 50978.

assurance requirements until April 9, 1997 (see 60 FR 17649) (remote, very small landfills as defined at 40 CFR 258.1(f)(1) must comply by October 9, 1997). EPA extended the compliance date to provide adequate time to promulgate financial tests for local governments and for corporations before the financial assurance provisions take effect. The delayed effective date also was intended to provide owners and operators sufficient time to determine whether they satisfy the applicable financial test criteria for all of the obligations associated with their facilities, and to obtain a guarantor or an alternate instrument, if necessary. The Agency proposed a local government financial test and a corporate financial test on December 27, 1993 (see 58 FR 68353) and October 12, 1994 (see 59 FR 51523), respectively. The Agency expects to promulgate the final corporate test in the spring of 1997.

III. Summary of Rule

A. Local Government Financial Test

Today's rule allows local government owners and operators of MSWLFs that meet certain financial, public notice, and recordkeeping and reporting requirements to use a financial test to demonstrate financial assurance for MSWLF closure, post-closure and corrective action costs up to a specified maximum limit. The financial test allows a local government to avoid incurring the expenses associated with demonstrating financial assurance through the use of third-party financial instruments, such as a trust fund, letter of credit or insurance policy. Under this approach, a local government must demonstrate that it is capable of meeting its financial obligations at its MSWLF through ''self-insurance''.

1. Financial Component

A local government must qualify to use the financial test by satisfying either the bond rating provision or the financial ratio alternative. These provisions measure a local government's current financial condition and, thereby, indicate its ability to pay for closure, post-closure and corrective action costs.

(a) Bond Rating Requirement

The financial test's bond rating provision requires a local government to have a current investment grade bond rating (i.e., Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's) on all outstanding general obligation bonds. Today's rule provides that a local government with outstanding general obligation bonds that do not meet the bond rating requirement is not eligible to use the financial test.

(b) Financial Ratio Alternative to the Bond Rating Requirement

A local government that does not have any outstanding general obligation bonds, or that only has unrated general obligation bonds, may qualify to use the financial test if it satisfies both a liquidity ratio and a debt service ratio.

(c) Compliance with GAAP

A local government that uses the financial ratio alternative to qualify for the financial test must determine whether it satisfies the financial ratios on the basis of a financial statement prepared in accordance with Generally Accepted Accounting Principles (GAAP) for governments.

(d) Operating Deficit Limit

Notwithstanding whether a local government meets the bond rating requirement or the financial ratio alternative, a local government is disqualified from using the financial test if its financial statements prepared in accordance with GAAP show an operating deficit equal to five percent or more of its total annual revenue for each of the past two years.

(e) Adverse or Qualified Auditor's Opinion

A local government is also disqualified from using the financial test if an audit of its most recent financial statement (prepared in accordance with GAAP) receives an adverse opinion, disclaimer of opinion, or other qualified opinion.

2. Public Notice Component

A local government must disclose in its annual budget or financial report the estimated costs of its closure, post-closure and corrective action obligations, including the years when such costs are expected to be incurred. Closure, post-closure, and corrective action costs that are to be incurred during a local government's current budget period must be included as line items in that budget; those costs that are to be incurred in future budget periods need only be disclosed in a supplemental section to a local government's budget or financial report.

3. Recordkeeping and Reporting Component

A local government must review its financial situation every year to determine if it satisfies the requirements of the financial test and is still eligible to use the financial test. If a local government that is using the financial test determines that it no longer meets the financial test, then it must obtain alternate financial assurance within 210 days of the close of its fiscal year.

If a local government meets the test's financial requirements, it must also satisfy certain public notice and recordkeeping and reporting requirements to demonstrate financial assurance for MSWLF closure, post-closure and corrective action costs. A local government must also place in a MSWLF's operating record:

(1) A letter from the local government's chief financial officer that certifies that the local government satisfies the requirements of the financial test for those costs for which financial assurance is being demonstrated through the financial test,

(2) A local government's independently audited year-end financial statement prepared in accordance with GAAP,

(3) The opinion prepared by the auditor of the local government's year-end financial statement, and

(4) An evaluation by the local government's auditor or by the appropriate state agency that the information in the chief financial officer's letter to the operating record is consistent with the local government's audited year-end financial statement.

4. Calculation of Costs to be Assured

The financial test limits the amount of closure, post-closure and corrective action costs for which a local government may demonstrate financial assurance through use of the test, in proportion to a local government's financial capacity as represented by its annual revenues. A local government may only use the financial test to demonstrate financial assurance for the costs of its total environmental obligations up to a maximum amount that does not exceed 43 percent of the local government's total annual revenues (see discussion below of Calculation of Costs to be Assured, Section IV.A.4).

B. Local Government Guarantee

Today's rule allows local governments to guarantee the closure, post-closure and corrective action costs of other MSWLF owners and operators through the use of the financial test. Furthermore, local governments may combine financial mechanisms and use a financial test or guarantee to cover a portion of the total costs of closure, post-closure care and corrective action, while the remaining costs are covered by an alternative financial mechanism. However, financial mechanisms that guarantee performance of work, instead

of payment of costs, cannot be combined with other instruments.

C. Discounting

Under today's rule, State Directors may allow discounting at an essentially risk free rate of interest for closure, post-closure care, and corrective action cost estimates under certain conditions as described later in this preamble.

D. Effective Date

Today's rule allows State Directors to waive the financial assurance requirements for up to one year until April 9, 1998 for good cause if an owner or operator demonstrates to the Director's satisfaction that the April 9, 1997 effective date does not provide sufficient time to comply with these requirements and that such a waiver will not adversely affect human health and the environment.

IV. Response to Comments and Analysis of Issues

Forty commenters, primarily States, local governments, and their representative associations, commented on the proposed local government financial test. A compilation of all public comments and the Agency's responses is available in the Docket. (See Comment Response Document for Proposed Rule: Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities (40 CFR Part 258, Docket F–93–LGFP–FFFFF).)

A. Local Government Financial Test

The Proposed Local Government Financial Test included several components: Financial, public notice, recordkeeping and reporting, and a limitation on costs to be ensured by the test. (See Comment Response Document, Sections 3.1, 3.2, and 3.3.)

Comment: Several commenters were concerned that the financial test is not stringent enough and would not guarantee that the necessary funds would be available to conduct closure and post-closure care activities. Some commenters further argued that, to the extent that the financial test does not guarantee the availability of funds, local governments using the financial test would be in violation of the financial assurance requirements set out at 40 CFR 258.71(b) and 258.72(b) that MSWLF owners and operators provide continuous coverage of the costs of closure and post-closure care.

Response: EPA is adopting the local government financial test because it believes some local governments possess sufficient financial capacity and fiscal responsibility to satisfy the objectives of financial responsibility without the use of a third-party mechanism. The test's financial ratios and bond rating criterion are intended to ensure that a local government is financially capable of meeting its assured obligations. The public notice requirement ensures that the local governments using the test are committed to planning for the assured obligations and meeting them in a timely manner. As discussed in greater detail below, EPA believes that a local government that meets the financial, public notice, and recordkeeping and reporting requirements of the financial test will be able to fund the assured MSWLF closure, post-closure care, or corrective action obligations in a timely manner. The purpose of the test is not to predict whether a local government will go bankrupt but rather to indicate whether it will have adequate funds to establish a trust fund or other allowable instrument to provide financial assurance for closure, post-closure care, or corrective action if its financial position deteriorates beyond acceptable levels.

Comment: Some commenters argued that the financial test is too stringent and that it could not be used by many local governments, particularly small local governments.

Response: The purpose of the financial test is not to exempt local governments from the financial assurance requirements, but to allow those local governments that possess sufficient financial capacity and fiscal responsibility to satisfy the objectives of financial responsibility without the use of a third-party mechanism. Inevitably some local governments will not have the financial capacity and fiscal responsibility to benefit from the financial test. Nevertheless, the Agency estimates that 91 percent of all local governments that own or operate a MSWLF would be able to use the test for at least some amount of their subtitle D obligations, while 54 percent of all local governments would be able to use the financial test for all of their subtitle D obligations. Accordingly, the Agency believes that the financial test would allow a reasonable number of local governments to self-insure their MSWLF obligations and still protect public health and the environment by assuring that adequate funds are available for closure, post-closure care, and corrective action.

1. Financial Component (§ 258.74(f)(1))

The proposed financial component would require that all outstanding general obligation bonds be rated investment grade. Alternatively, the local government could pass three ratios:

—Liquidity Ratio (cash plus marketable securities to total expenditures) must be less than or equal to .05;
—Debt Service Ratio (annual debt service to total expenditures) must be less than or equal to .2; and
—Use of Borrowed Funds Ratio (long term debt issued to capital expenditures) must be less than or equal to 2.

In addition to passing the bond test or the ratio test, the local government would have to:

—Not have an operating deficit greater than 5 percent of expenditures for each of the past two years;
—Prepare financial statements in accordance with Generally Accepted Accounting Principles; and
—Have an unqualified auditor's opinion.

(See Comment Response Document, Section 4.1)

Comment: A commenter suggested that local governments should be able to demonstrate financial assurance for landfill closure, post-closure and corrective action costs without having to demonstrate their financial capability. This commenter believed that one may assume that local governments with taxing authority will be in a position to pay for closure, post-closure and corrective action costs. The commenter argued, therefore, that a local government should qualify to use the financial test, unless there are indications that it is not financially sound, such as a below investment grade bond rating or being in default on a bond issue.

Response: The Agency believes that it is essential that a local government demonstrate its financial capability to qualify for the financial test, because a local government must have sufficient financial capacity to be able to obtain the necessary closure and post-closure funds at the time that the funds are needed. Although most local governments are able to pay off their financial obligations over time, conflicting financial demands could cause financially weaker local governments to delay necessary closure and post-closure activities at MSWLF's. Any delay in conducting necessary closure and post-closure activities could jeopardize public health and the environment as well as significantly increase response costs for corrective action at a site. In some cases, such increased costs would ultimately have to be borne by State or federal response authorities.

Comment: Another commenter argued that only local governments with a minimum annual revenue of $3 million should qualify for the local government financial test.

Response: Although the corporate financial test is only available to corporations with at least $10 million in annual revenues, the Agency has not adopted a similar minimum size requirement for the local government financial test because local governments, unlike corporations, have taxing authority and are, therefore, less likely to become insolvent. Instead of requiring a minimum size for a local government to qualify for the financial test, the test establishes a maximum amount (43 percent of a local government's total annual revenue) up to which a local government may rely on the test to demonstrate financial assurance in order to ensure that the costs being assured are appropriate in relation to the size of a local government.

a. Bond rating requirement (§ 258.74(f)(1)(i)(A))

Comment: Some commenters believed that the financial test's reliance on the ratings of bonds issued by a local government may be an inappropriate measure of that local government's financial strength. They argued that general obligation bond ratings are not good indicators of the financial health of the local government that issues the bonds, because the ratings indicate the risk associated with the bonds themselves rather than any risk associated with the financial capability of the issuing local government. They also argued that ratings of other kinds of bonds, such as insured bonds or collateralized bonds, do not reflect the issuing local government's financial condition and, therefore, do not reflect any changes in a local government's financial strength over time.

Other commenters argued that the financial test's bond rating requirement is too restrictive, because it limits the bond ratings allowed to general obligation bond ratings and does not include other forms of rated debt, such as revenue bonds.

Response: Today's rule relies on a local government's general obligation bond ratings as a measure of a local government's financial capability because such bond ratings are based on a comprehensive evaluation of a local government's financial condition (See Comment Response Document, Section 4.1.1 for more detail). Today's rule disallows the use of insured general obligation bond ratings, because the rating of such bonds is based on the financial capability of the insurer and may not reflect a local government's current financial condition. Today's rule does not allow the use of revenue or collateralized bond ratings as a measure of a local government's financial capability because such bond ratings only reflect the financial risk associated with a particular revenue source or asset and not the general financial health of the local government.

Comment: A commenter argued that the financial test's bond rating requirement should be made more stringent by only considering the ratings of general obligation bonds issued within the previous two years by a local government in an amount equal to the funds necessary for closure and post-closure care.

Response: Today's rule does not impose such additional requirements on qualifying for the financial test: The ratings of outstanding general obligation bonds are updated periodically to reflect a local government's current financial condition. In addition, § 258.74(f)(4) of today's rule already requires proportionality between the amount of costs that can be assured under the financial test and a local government's financial capability by limiting the costs to be assured under the financial test to a maximum of 43 percent of the local government's total annual revenue.

Comment: Several commenters pointed out that many local governments may not have ratings on their general obligation debt because it is not always necessary to obtain a rating to market bonds. They explained that the language of the proposed rule would preclude local governments with unrated general obligation bonds from qualifying for the financial test, because not only would they be unable to satisfy the bond rating requirement but they also would be ineligible to use one of the financial ratios to qualify for the financial test; only local governments with no general obligations bonds, rated or unrated, would be eligible to use the financial ratios to qualify for the financial test.

Response: Sections 258.74(f)(1)(i)(A) and (B) of today's rule clarify that the bond rating requirement only applies to local governments with ''rated'' outstanding general obligation bonds. This clarification provides local governments that have unrated general obligation bonds, and hence that cannot satisfy the bond rating requirement, the opportunity nevertheless to qualify for the financial test by meeting one of the financial ratio alternatives to the bond rating requirement.

b. Financial ratio alternative to the bond rating requirement (§ 258.74(f)(1)(i)(B))

Comment: Some commenters questioned the appropriateness of the proposed financial ratios. Suggested alternatives include the ratio between the total assessed value of a local government's taxable real estate and the actual amount of real estate taxes collected or the ratio between a local government's total general obligation debt and its taxable real estate. Another commenter suggested that ratios that measure a local government's total debt and pension fund obligations should be added to the proposed financial ratios to provide greater certainty of a local government's financial ability to satisfy its closure and post-closure obligations.

Response: EPA considered these and similar measures of a local government's financial health in the course of developing the local government financial test proposed on December 27, 1993. As discussed in the preamble to the proposed rule (58 FR 68353, 68356), EPA analyzed the different financial ratios and thresholds identified in the literature on local government finances and eliminated them from further consideration if they could not be: (A) Calculated easily from the financial statements of local governments, analyzed based on available data, or used because they were clearly less supported in the financial literature relied upon in this rulemaking (See Bibliography of Financial Sources and References in the Docket) than similar measures; (B) if the relationship between the measure and financial health appeared random; (C) if the measures and associated thresholds could not differentiate among local governments; (D)if the measures were highly sensitive to small changes in the threshold value; or (E) if the measures were highly correlated with other measures already in the test that evaluated the same aspect of local government financial health. From the remaining measures, EPA selected those ratios and thresholds that were best substantiated in the public finance literature.

EPA rejected using the ratio between the total assessed value of a local government's taxable real estate and the actual amount of real estate taxes collected because, although the ratio measures a local government's potential revenue, it does not describe a local government's willingness to use this source of revenue. Similarly, EPA rejected using the ratio between a local government's total general obligation debt and its taxable real estate because, although it provides a measure of a local government's revenue from property

taxes, it does not measure willingness to use this revenue source (See Comment Response Document, Section 4.1.2, for more detail). EPA rejected ratios evaluating pension funds because there was no data to allow the Agency to select an appropriate threshold to indicate when pension funds may be in financial difficulty. Finally, EPA decided that measures evaluating total debt were unnecessary, because the debt service ratio already measures a local government's ratio of annual debt service to total expenditures.

(1) The liquidity ratio (§ 258.74(f)(1)(i)(B)(1))

Comment: Several commenters questioned the appropriateness of the liquidity ratio incorporated into today's rule, because they believe that a local government's cash balance is a poor indicator of its financial capability.

Response: Although the liquidity ratio, by itself, may not provide a conclusive measure of a local government's financial capability to conduct closure, post-closure care and corrective action at a MSWLF, it does provide a measure of a local government's ability to meet current and unexpected obligations. EPA is concerned that a local government with a cash shortage would have to delay or restrict its services and would, therefore, be unable to conduct any MSWLF closure, post-closure care or corrective action activities when necessary.

Comment: Another commenter suggested that a working capital ratio would be preferable to a liquidity ratio, because liquidity ratios, which are derived from a local government's balance sheet, can be manipulated to reach a particular result.

Response: EPA adopted a liquidity ratio because such a ratio is appropriate for local governments. A working capital ratio is appropriate to evaluate corporations. Today's rule also limits the potential for satisfying a particular financial ratio through the use of inappropriate accounting practices by requiring that a local government's financial statement comply with Generally Accepted Accounting Principles (GAAP).

Comment: Some commenters questioned the appropriateness of the liquidity ratio threshold that requires that a local government maintain a minimum five percent cash balance in its budget in order to satisfy the liquidity ratio. One commenter believed that a five percent cash balance is too low, another that it is too high, and yet another that such a minimum cash balance requirement would require local governments, which must maintain a balanced budget under state law, to specifically budget a five percent cash balance.

Response: EPA does not believe that it is necessary to require that a local government maintain more than a five percent cash balance, because it is unnecessary that a local government maintain a sufficient cash balance to be able to respond to all of its potential MSWLF closure, post-closure and corrective action obligations at any one time. Instead, as discussed above, the purpose of the liquidity ratio is to ensure that a local government has the financial flexibility to be able to respond to some unexpected obligations in addition to fulfilling its planned or anticipated obligations. Not only should a local government be financially able to meet its planned MSWLF obligations in the face of other unexpected obligations, but it should also be able to respond to immediate and unexpected MSWLF obligations. It is generally accepted in the financial literature (See Bibliography of Financial Sources and References in the Docket) that a five percent cash balance is a sufficient financial ''cushion'' for local governments to be able to meet both current and unexpected obligations in most situations. On the other hand, EPA does not believe that a minimum five percent cash balance is too high a cash balance for a local government to be able to maintain or that such a requirement would disqualify many local governments from using the financial test to demonstrate financial assurance. EPA's research shows that over 96 percent of all local governments that own or operate MSWLFS maintain such a minimum cash balance and would satisfy the liquidity ratio. EPA also does not expect that local governments, which must maintain a balanced budget under state law, would have to specifically budget a five percent cash balance in order to satisfy the liquidity ratio. As indicated above, EPA's research shows that the vast majority of local governments already maintain enough of their assets in cash and in current investments to pass the liquidity ratio.

Comment: A commenter questions whether the financial test's liquidity ratio is the standard measure of liquidity typically used in financial analyses and whether it provides a meaningful assessment of a local government's fiscal responsibility.

Response: The financial test's liquidity ratio is a standard measure of liquidity employed in financial analyses of municipal governments (See Bibliography of Financial Sources and References in the Docket). Additionally, as discussed above, liquidity provides an important measure of a local government's ability to meet current and unexpected obligations.

(2) The debt service ratio (§ 258.74(f)(1)(i)(B)(2))

Comment: Some commenters question the appropriateness and the value of a debt service ratio, on the grounds that it is unclear how such a ratio contributes to an evaluation of a local government's financial capability and that such a ratio would only apply to other than general obligation bond debt (only local governments without general obligations bonds may use the financial ratio alternative).

Response: As discussed in the December 27, 1993 proposal, debt service represents a fixed expense that limits the flexibility of local governments. High debt service significantly reduces the resources available to fund current operating expenses, the flexibility to fund unexpected needs, and the ability to obtain additional loans or issue additional debt. The Agency believes that local governments that are overly burdened by debt service payments may have greater difficulty paying for assured activities in a timely fashion. Standard & Poors, for example, employs the debt service ratio in evaluating and rating municipal bond issues and considers such a ratio to be high, similar to the threshold percentage in today's rule, when it exceeds 20 percent of annual expenditures. Although the debt service ratio would not measure debt service from rated general obligation bonds, it would measure debt service from unrated or insured general obligation bonds, revenue bonds and debt service attributable to other government funds, including special assessment bonds, certificates of participation and bank loans.

(3) The use of borrowed funds ratio (Proposed § 258.74(f)(1)(i)(B)(2))

Comment: Commenters noted that borrowed funds, especially those received late in the year, are typically not all spent in that year. Even when they will eventually be spent on capital improvements, these unspent borrowed funds will result in failing this ratio.

Response: We agree that this is a problem and found that attempting to define Current Year Long Term Debt Issued to avoid that problem was very complicated. Moreover, the requirement that a local government not have an operating deficit in excess of 5% for each of the last two years also assures that the local government is not

substantially relying on long term debt to pay short term expenses. That is, there is not a large gap between expenses and revenues which must be filled by long term debt. Since this was the purpose of the use of borrowed funds ratio and the use of borrowed funds ratio may have unintended consequences, the Agency decided to drop the use of borrowed funds ratio.

c. Compliance with GAAP (§ 258.74(f)(1)(ii))

Comment: Three commenters from Nebraska, including the State of Nebraska, argue that requiring local governments to use GAAP would be unnecessarily burdensome, because most Nebraskan local governments use cash basis accounting to prepare their financial statements and that these local governments would have to prepare duplicate financial statements using GAAP to qualify for the financial test.

Response: The Agency believes that it is necessary for local governments to prepare an annual financial report in compliance with GAAP, because the Agency's analysis of the financial test ratios was predicated on ratios derived from financial statements prepared in accordance with GAAP. The use of other forms of accounting could alter the results of the ratios. Indeed, it appears that although Nebraska state law allows local governments to use cash basis accounting to prepare financial statements, it recommends that statements be prepared in accordance with GAAP. Of course, a State could develop its own financial test pursuant to § 258.74(i) which relied on cash flow accounting, subject to approval of its State MSWLF permit program.

d. Operating Deficit Limit (§ 258.74(f)(1)(iii)(3))

Comment: Commenters noted that the proposal does not define operating deficit, total revenue, or total expenditures.

Response: Today's rule does define these terms at § 258.74(f)(1)(iv) in accordance with definitions included in the Background Document.

Comment: There is an inconsistency between the preamble and the text of the December 27, 1993 proposed rule, which provided that the operating deficit limit applied if a local government experienced a greater than five percent deficit in ''each'', and in ''either'', of the past two years.

Response: Today's rule clarifies that the operating deficit limit applies if a local government experiences such a deficit in ''each'' of the past two years.

2. Public Notice Component (§ 258.74(f)(2))

In order to ensure that a local government using the test acknowledges the obligations it is seeking to assure and that the community decisionmakers are aware of and agree to the commitment of future local government funds, the proposed rule would require that a local government, in each year that the financial test or guarantee is used, identify assured costs in either its budget or its comprehensive annual financial report. (See Comment Response Document, Section 4.2)

Comment: Several commenters noted that the public notice requirement in the proposed rule was inconsistent with the Governmental Accounting Standards Board (GASB) Statement Number 18, ''Accounting for Municipal Solid Waste Landfill Closure and Postclosure Care Costs.''

Response: The Agency agrees and has modified the public notice requirement to be consistent with GASB 18. Accordingly, a local government in compliance with GASB Statement Number 18, which requires more information than today's rule, will also meet the public notice requirement of the financial test.

Comment: One commenter stated that it may not be possible to include a notice of corrective action in a Comprehensive Annual Financial Report or annual budget within 120 days after the corrective action remedy has been selected.

Response: The Agency recognizes the difficulty raised by the commenter. Today's rule modifies the public notice requirement in the event that corrective action is necessary. The modification allows a local government to place a letter in an MSWLF's operating record, if it is not possible to include a notice of the corrective action in a Comprehensive Annual Financial Report or annual budget within 120 days after the remedy has been selected.

3. Recordkeeping and Reporting Component (§ 258.74(f)(3))

In order to confirm that the self-implementing requirements of the financial test have been met, the proposed rule would require local governments to document their use of the test by placing four items in the facility operating record: (1) A letter signed by the local government's chief financial officer (CFO), (2) the local government's independently audited year-end financial statements for the latest fiscal year, (3) the auditor's unqualified opinion of the year-end financial statement for the latest fiscal year, and (4) the special report of the independent certified public accountant or State Agency upon examination of the CFO's letter. In addition, owners and operators would be required to update these items annually, and to notify the State Director and obtain alternative financial assurance if the local government is no longer able to pass the financial test. (See Comment Response Document, Section 4.3)

Comment: Commenters suggested several clarifications to the recordkeeping and reporting requirements. For example, the proposed rule incorrectly provided that the CFO letter only certify that the local government meet ''either'' requirement and inadvertently omitted the operating deficit requirement from the certification requirement in the local government certification letter.

Response: Today's rule adopts standard language suggested by the American Institute of Certified Public Accountants to be used in the report of the independent CPA or State Agency verifying the accuracy of the information provided by the local government's chief financial officer pursuant to § 258.74(f)(3)(i)(A) of the rule. Today's rule also clarifies that the local government CFO letter to be placed in a facility's operating record must certify that a local government ''both'' meets the bond rating/financial ratio requirement and that it prepares its financial statements in conformity with Generally Accepted Accounting Principles and provides that the local government CFO letter must also certify that the local government has not had an operating deficit greater than or equal to five percent in each of the past two years.

Comment: Some commenters believed that 90 days was an insufficient amount of time to update the records and several noted that their States allowed 180 days to obtain audited financial reports.

Response: Today's rule doubles the amount of time allowed to update the records to be maintained in a facility's operating record from 90 to 180 days after the end of a local government's fiscal year. Today's rule, like the proposed rule, continues to require that a local government obtain alternate financial insurance—if a local government determines that it no longer meets the financial test based on the results of the annual records update—within thirty days of the deadline by which a local government must update its records; however, to reflect the additional 90 days provided to local governments to update their records, today's rule also extends the total time

from the end of a local government's fiscal year by which a local government must obtain alternate financial assurance from 120 to 210 days.

4. Calculation Of Costs To Be Assured

Under the proposed rule, a local government would not be able to use the financial test to assure closure, post-closure care, and corrective action costs that exceed 43 percent of the local government's total annual revenue. Additionally, if a local government assures the costs of other environmental obligations through the use of other financial tests, then it could use today's financial test for closure, post-closure care, and corrective action costs only to the extent that its total environmental obligations assured through the use of a financial test do not exceed 43 percent of its total annual revenue. This amount was derived from estimates in the financial literature (See Bibliography of Financial sources and References in the Docket) that a local government may typically incur additional expenditures up to 5 percent of its current annual budget without unreasonable stress. Discounting a 20 year stream of such payments at 10 percent yields the amount of a bond issue (43 percent of expenditures) that might be handled by a local government using future financial flexibility. (See Comment Response Document, Section 4.4.)

Comment: One commenter argued that the financial test should be made more stringent by disqualifying local governments whose financial assurance obligations are greater than 43 percent of their total annual revenues from using the financial test. If only local governments with financial assurance obligations that are less than 43 percent of the local government's total annual revenue could use the financial test, it would, they argue, better ensure that local governments are financially able to fulfill their closure, post-closure care and corrective action obligations.

Response: The 43 percent threshold limit on a local government's ability to ''self-insure'' its environmental obligations ensures that a local government's environmental obligations, for which a local government proposes to demonstrate financial assurance on the basis of its financial ability, are not disproportionate to its relative financial capability to fulfill those obligations. EPA has determined that a local government may reasonably be expected to be able to pay the costs of its environmental obligations that it is ''self-insuring'' at any one time up to 43 percent of its total annual revenues. To the extent that the anticipated costs of a local government's environmental obligations that are being deferred at any one time were to exceed 43 percent of its total annual revenues, EPA believes that it would be substantially less likely that a local government would be financially able to, in fact, fulfill those obligations at the time that they were to become due. Since EPA believes that a community may safely ''self-insure'' its environmental obligations up to 43 percent of its total annual revenues, it is not necessary to disqualify a community from using the financial test if its total environmental financial assurance costs are greater than 43 percent of its total annual revenues. In such a case, a community should be able to realize the same cost savings as other communities by self-insuring at least a portion of its environmental obligations and obtaining third-party financial assurance instruments for any costs that exceed the 43 percent threshold. Although a requirement that a community be able to self-insure all of its environmental obligations within the 43 percent threshold would certainly limit the number of communities that could use the financial test and, thereby, guarantee that the necessary funds are available in the future by requiring those communities to obtain third-party financial assurance instruments, such a requirement would disproportionately disqualify smaller local governments, which are the local governments that can least afford the expense of obtaining a third-party financial instrument.

Comment: Other commenters suggested that the 43 percent threshold was either too high or too low thereby making the financial test, respectively, not stringent enough or too stringent.

Response: EPA believes that the 43 percent threshold is appropriate. As discussed in greater detail in the Comment Response Document, Section 4.4, the threshold is based on information contained in the public financial literature (See Bibliography of Financial Sources and References in the Docket) about the percent of total revenues that a local government should be able to devote in the course of a year to meet environmental obligations over a twenty year period and not experience undue financial difficulty.

B. Local Government Guarantee (§ 258.74(h))

Under the proposed rule, a local government could guarantee the costs of closure, post-closure and corrective action associated with a MSWLF owner by another local government or by a private business. The local government guarantor would have to promise to take responsibility for the obligations of the owner or operator if the owner or operator fails to do so and provide proof that it passes the financial test requirements. (See Comment Response Document, Sections 5.1 and 5.2)

Comment: Some commenters opposed allowing a local government to guarantee the costs of the environmental obligations of other MSWLFs because MSWLF owners and operators are less likely to manage their MSWLFs appropriately if they do not have to pay closure, post-closure or corrective action costs. One commenter was particularly concerned about the potential for abuse inherent in the use of public funds or credit to guarantee the closure, post-closure and corrective action costs of privately-owned MSWLFs and pointed out that such practices are prohibited in many states.

Response: Today's rule maintains the local governments guarantee as proposed and does not restrict its use. As discussed above, EPA believes that a local government that meets the financial, public notice, and recordkeeping and reporting requirements of the financial test will be able to fund the assured MSWLF closure, post-closure care or corrective action obligations in a timely manner. A local government may, of course, only guarantee the closure, post-closure or corrective action costs of another MSWLF owner and operator, if such an arrangement is consistent with state law. Even if a local government guarantee is not precluded by state law, a state may nevertheless disallow the use of the guarantee if it determines that there is the potential for abuse.

Comment: Commenters suggested several clarifications to provisions of the proposed local government guarantee.

Response: Today's rule clarifies that if a guarantee is cancelled, then pursuant to § 258.74(h)(1)(iii) the owner or operator of the MSWLF must obtain alternate financial assurance within 120 days following ''the guarantor's notice of cancellation'' (not within 120 days following ''the close of the guarantor's fiscal year''). Similarly, today's rule clarifies that if the local government guarantor no longer qualifies to use the financial test, then, pursuant to § 258.74(h)(2)(iii), the owner or operator of the MSWLF must obtain alternate financial assurance within 90 days following ''the determination that the guarantor no longer meets the requirements of paragraph (f)(1) of this section''; not within 90 days following ''the guarantor's notice of cancellation.''

C. Discounting of Costs in Calculating Financial Assurance Cost Estimates

The financial assurance requirements under RCRA subtitle D currently require owners and operators to calculate cost estimates in current dollars, and aggregate these estimates (even though these costs may be incurred many years in the future). Owners must obtain a financial responsibility instrument for at least the amount of this aggregated cost estimate. In the preamble to the December 27, 1993 proposed rule (58 FR 68353, 68361), EPA solicited comments on whether MSWLF owners and operators should be allowed to use a present value based on a discount rate to estimate certain financial assurance costs. Cost discounting would allow owners and operators to adjust an aggregated cost estimate to reflect the fact that activities are scheduled to occur in the future and to obtain a financial instrument for less than the aggregate costs (i.e. the ''present value'' of the aggregated costs). (See Comment Response Document, Section 7)

Comment: A number of commenters opposed allowing MSWLF owners and operators to discount financial assurance costs because of their belief that landfill owners and operators often underestimate cost estimates and that the timing of a closure event is uncertain. One commenter suggested that the risks of discounting could be minimized with State oversight if EPA provided specific guidelines.

Response: The Financial Accounting Standards Board (which sets standards for corporate accounting) allows discounting only when costs and timing of closure are certain and then only for an essentially risk free rate, adjusted for inflation. The Agency agrees with commenters that cost estimates are frequently underestimated and that the closure date is usually uncertain because sites may fill up more quickly than expected or they may close because of enforcement actions as a result of rule violations. We also agree with the Financial Accounting Standards Board that discounting is only appropriate when cost estimates and closure dates are certain. For these reasons, the Agency has decided against allowing discounting without State oversight.

Because the Agency recognizes that there are cases where cost estimates are accurate and closure dates are certain, we have decided to allow State Directors to allow discounting for closure, post-closure, and corrective action costs if they believe that cost estimates are accurate and the closure date is certain and where the local government has submitted a finding from a Registered Professional Engineer that cost estimates are accurate and certifies that there are no known factors which would change the estimated closure date. The State must also determine that the facility is in compliance with all regulations it determines to be applicable and appropriate. Consistent with other elements of this rule, cost estimates must be adjusted annually to reflect inflation and remaining site life. The discount rate used may not be greater than the rate of return for essentially risk free investments, such as 1 year Treasury bills, net of inflation. As noted above, discounting at an essentially risk free rate of return is that allowed by the Financial Accounting Standards Board and was suggested by several commenters. The Government Accounting Standards Board notes that EPA is already allowing for discounting for inflation because it allows annual adjustments of cost estimates for inflation. For this reason the Agency requires that inflation be deducted from an essentially risk free rate of return in calculating a discount rate. The resulting rate allows conservatively invested funds to grow to the needed amount in the time available. (See Comment Response Document, Section 7)

D. Different Financial Tests for Local Government Owners and Operators of MSWLFs and Underground Storage Tanks

The financial test proposed for use by local government owners and operators of MSWLFs under subtitle D of RCRA was different from the previously adopted financial test for use by local government owners and operators of underground storage tanks (USTs) under subtitle I of RCRA. As discussed in the preamble to the December 27, 1993 proposed rule (58 FR 68353, 68362), while EPA generally strives to maintain consistency between programs, EPA believes that there are important policy reasons to use a different test for the two programs. All commenters on this issue agreed with EPA that the financial test for local government owners and operators of USTs would be inappropriate for use by local government owners and operators of MSWLFs. The Agency agrees with commenters and has not allowed the UST test to be used for MSWLF's. (See Comment Response Document, Section 8)

E. Effective Date for Financial Responsibility Requirements for Municipal Solid Waste Landfills

The effective date for financial responsibility requirements for MSWLF's is April 9, 1997 except for small, dry or remote landfills which have until October 9, 1997 to comply (see 60 FR 52337, October 6, 1995). In response to commenters who said that they needed up to 18 months after promulgation of the local government financial test to comply with the financial responsibility requirements for municipal solid waste landfills, the Agency has decided to allow State Directors to waive the financial assurance requirements for up to an additional 12 months as described earlier in section III of this preamble. This would provide the 18 months requested by certain commenters. (See also Comment Response Document, Section 12.5)

V. Economic and Regulatory Impacts

A. Executive Order 12866

Under Executive Order 12866, EPA must determine the economic impact of a rule. The Agency estimates that today's rule will save local government owners and operators of MSWLFs $105.1 million annually: $96.6 million attributable to the availability of the local government financial test and $8.5 million attributable to the availability of the local government guarantee. A complete discussion of the Agency's analysis can be found in the docket for today's rule.

To calculate the cost savings associated with today's rule, the Agency updated the information used to calculate the anticipated cost savings discussed in the December 27, 1993 proposed rule (58 FR 68353, 68363). The Agency updated the 1987 data on the universe of existing MSWLF landfills by accounting for the number of MSWLF landfills that have been closed since then and adjusted accordingly the representative sample of local government owners and operators of MSWLFs used to determine how many local governments would meet the financial ratios of the financial test. The Agency also adjusted the costs of closure and post-closure care for inflation. Based on this updated information, the Agency believes that 91 percent of all local governments that own or operate a MSWLF would be able to use the test for at least some amount of their Subtitle D obligations, while 54 percent of all local governments would be able to use the financial test for all their subtitle D obligations.

Of approximately 3400 landfills in this analysis, 2700 are publicly owned, and of those 1500 (54%) were estimated to be able to use the financial test for all of their Subtitle D obligations. Of the remaining 1200, about half would be able to satisfy the financial test on their own and with the guarantee assistance of local governments that also use their landfill. The other half, about 600, would not be able to pass the financial test nor get help with the guarantee and so would need to set up a mechanism for financial assurance. EPA estimated that the cost to these landfills to obtain letters of credit is about $18.1 million per year (1.5% annual administrative cost for letters of credit ''times'' the closure and post-closure costs for these landfills of about $1.2 billion). These landfills could also assure by establishing trust funds, entailing the costs of the funds set aside, the opportunity cost of the funds, and trust fund administrative costs. EPA believes that the cost if all chose to establish trust funds would be similar to the cost of using a letter of credit. Of these 600 or so landfills, 520 are owned by local governments with populations of 10,000 or less.

Today's rule will not result in an adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. at the time an Agency publishes a proposed or final rule, it generally must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's rule adds a local government financial test and local government guarantee as two additional mechanisms that can be used to demonstrate financial responsibility for environmental obligations. Entities able to use these mechanisms will be allowed to demonstrate financial responsibility for their environmental obligations without incurring the costs of obtaining a third-party mechanism. The Agency has allowed local governments of any size to use up to 43% of their revenues to assure environmental obligations if they pass the financial test. This contrasts with suggestions from some commenters that a minimum size requirement should be part of the test. Because this rule is deregulatory in nature, I certify pursuant to 5 U.S.C. 605b, that this regulation will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

OMB approved the information collection requirements of the MSWLF criteria, including financial assurance criteria, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2050–0122. The burden estimate for the financial assurance provisions included the burden associated with obtaining and maintaining any one of the allowable financial assurance instruments, including a financial test.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. 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 is not subject to the requirements of sections 202, 203 and 205 of the UMRA. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. On the contrary, as described above, the Agency estimates that today's rule will save local government owners and operators of MSWLFs $105.1 million annually by allowing local governments to use a financial test or a local government guarantee to demonstrate financial responsibility for environmental obligations without incurring the costs of obtaining a third-party mechanism. Although today's rule is specifically intended to ''significantly or uniquely affect small governments,'' the Agency does not believe that today's rule is subject to section 203 of the UMRA to the extent today's rule provides regulatory flexibility for local governments and does not to impose additional regulatory requirements. Indeed, today's rule is being promulgated in response to a long standing request by local governments after substantial input from such local governments into the rule's development.

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 1966, 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 a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 258

Environmental protection, Closure, Corrective action, Financial assurance, Waste treatment and disposal, Water pollution control.

Dated: November 15, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation for part 258 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a), 6944(a), and 6949a(c); 33 U.S.C. 1345(d) and 1345(e).

2. Section 258.70 is amended by adding paragraph (c) to read as follows:

§ 258.70 Applicability and effective date.

* * * * *

(c) The Director of an approved State may waive the requirements of this section for up to one year until April 9, 1998 for good cause if an owner or operator demonstrates to the Director's satisfaction that the April 9, 1997 effective date for the requirements of this section does not provide sufficient time to comply with these requirements and that such a waiver will not adversely affect human health and the environment.

3. Section 258.74 is amended by adding text to paragraphs (f) and (h) and by revising paragraph (k) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(f) *Local government financial test.* An owner or operator that satisfies the requirements of paragraphs (f)(1) through (3) of this section may demonstrate financial assurance up to the amount specified in paragraph (f)(4) of this section:

(1) *Financial component.* (i) The owner or operator must satisfy paragraph (f)(1)(i)(A) or (B) of this section as applicable:

(A) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or

(B) The owner or operator must satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement:

(*1*) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(*2*) A ratio of annual debt service to total expenditures less than or equal to 0.20.

(ii) The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant (or appropriate State agency).

(iii) A local government is not eligible to assure its obligations under § 258.74(f) if it:

(A) Is currently in default on any outstanding general obligation bonds; or

(B) Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or

(C) Operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or

(D) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate State agency) auditing its financial statement as required under paragraph (f)(1)(ii) of this section. However, the Director of an approved State may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Director deems the qualification insufficient to warrant disallowance of use of the test.

(iv) The following terms used in this paragraph are defined as follows:

(A) *Deficit* equals total annual revenues minus total annual expenditures;

(B) *Total revenues* include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party;

(C) *Total expenditures* include all expenditures excluding capital outlays and debt repayment;

(D) *Cash plus marketable securities* is all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions; and

(E) *Debt service* is the amount of principal and interest due on a loan in a given time period, typically the current year.

(2) *Public notice component.* The local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this section or prior to the initial receipt of waste at the facility, whichever is later. Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action costs must be placed in the CAFR not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

(3) *Recordkeeping and reporting requirements.* (i) The local government owner or operator must place the following items in the facility's operating record:

(A) A letter signed by the local government's chief financial officer that:

(*1*) Lists all the current cost estimates covered by a financial test, as described in paragraph (f)(4) of this section;

(*2*) Provides evidence and certifies that the local government meets the conditions of paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) of this section; and

(*3*) Certifies that the local government meets the conditions of paragraphs (f)(2) and (f)(4) of this section.

(B) The local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate State agency that conducts equivalent comprehensive audits;

(C) A report to the local government from the local government's independent certified public accountant (CPA) or the appropriate State agency based on performing an agreed upon procedures engagement relative to the financial ratios required by paragraph (f)(1)(i)(B) of this section, if applicable, and the requirements of paragraphs (f)(1)(ii) and (f)(1)(iii) (C) and (D) of this section. The CPA or State agency's report should state the procedures performed and the CPA or State agency's findings; and

(D) A copy of the comprehensive annual financial report (CAFR) used to comply with paragraph (f)(2) of this section or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(ii) The items required in paragraph (f)(3)(i) of this section must be placed in the facility operating record as follows:

(A) In the case of closure and post-closure care, either before the effective

date of this section, which is April 9, 1997, or prior to the initial receipt of waste at the facility, whichever is later, or

(B) In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of § 258.58.

(iii) After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

(iv) The local government owner or operator is no longer required to meet the requirements of paragraph (f)(3) of this section when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section; or

(B) The owner or operator is released from the requirements of this section in accordance with § 258.71(b), 258.72(b), or 258.73(b).

(v) A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance in the operating record, and notify the State Director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(vi) The Director of an approved State, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the Director of an approved State finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternate financial assurance in accordance with this section.

(4) *Calculation of Costs to be Assured.* The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under this paragraph is determined as follows:

(i) If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

(ii) If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

(iii) The owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in paragraphs (f)(4) (i) and (ii) of this section.

* * * * *

(h) *Local Government Guarantee.* An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by §§ 258.71, 258.72, and 258.73, by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in paragraph (f) of this section, and must comply with the terms of a written guarantee.

(1) *Terms of the written guarantee.* The guarantee must be effective before the initial receipt of waste or before the effective date of this section, whichever is later, in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. The guarantee must provide that:

(i) If the owner or operator fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required; or

(B) Establish a fully funded trust fund as specified in paragraph (a) of this section in the name of the owner or operator.

(ii) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the State Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the State Director, as evidenced by the return receipts.

(iii) If a guarantee is cancelled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the State Director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the State Director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the State Director.

(2) *Recordkeeping and reporting.* (i) The owner or operator must place a certified copy of the guarantee along with the items required under paragraph (f)(3) of this section into the facility's operating record before the initial receipt of waste or before the effective date of this section, whichever is later, in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

(ii) The owner or operator is no longer required to maintain the items specified in paragraph (h)(2) of this section when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section; or

(B) The owner or operator is released from the requirements of this section in accordance with § 258.71(b), 258.72(b), or 258.73(b).

(iii) If a local government guarantor no longer meets the requirements of paragraph (f) of this section, the owner or operator must, within 90 days, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the State Director. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

* * * * *

(k) *Use of multiple mechanisms.* An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by §§ 258.71, 258.72, and 258.73, by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The mechanisms must be as specified in paragraphs (a), (b), (c), (d), (f), (h), (i), and (j) of this section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care and/or corrective action may be

provided by a combination of mechanisms, rather than a single mechanism.

* * * * *

4. Section 258.75 is added to subpart G to read as follows:

§ 258.75 Discounting.

The Director of an approved State may allow discounting of closure cost estimates in § 258.71(a), post-closure cost estimates in § 258.72(a), and/or corrective action costs in § 258.73(a) up to the rate of return for essentially risk free investments, net of inflation, under the following conditions:

(a) The State Director determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a Registered Professional Engineer so stating;

(b) The State finds the facility in compliance with applicable and appropriate permit conditions;

(c) The State Director determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and

(d) Discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.

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Wednesday
November 27, 1996

Part III

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3 et al.

Rules, Policies, and Procedures for Corporate Activities; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3, 5, 7, 16 and 28

[Docket No. 96–24]

RIN 1557–AB27

Rules, Policies, and Procedures for Corporate Activities

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is revising its rules governing corporate applications and notices. This final rule is another component of the OCC's Regulation Review Program to update and streamline OCC regulations, focus regulations on key safety and soundness concerns and agency objectives, and reduce unnecessary regulatory costs and other burdens.

The final rule revises and reorganizes the OCC's regulation for national bank corporate activities and transactions. It also modernizes and clarifies the rules, reduces unnecessary regulatory burden and, consistent with statutory requirements, imposes regulatory requirements only where needed to address safety and soundness concerns or to accomplish other statutory responsibilities of the OCC.

EFFECTIVE DATE: December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Stuart E. Feldstein, Assistant Director, Legislative and Regulatory Activities, (202) 874–5090; Karen McSweeney, Attorney, Legislative and Regulatory Activities, (202) 874–5090; Jerome Edelstein, Senior Counsel, Bank Activities and Structure, (202) 874–5300; or Cheryl A. Martin, Senior Licensing Policy and Systems Analyst, Licensing Policy and Systems Division, (202) 874–5060. Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The Proposal

On November 29, 1994, the OCC published a notice of proposed rulemaking (59 FR 61034, Nov. 29, 1994) (proposal) to revise 12 CFR part 5—the OCC's rule governing the policies and procedures for national bank corporate transactions and activities.

The proposal sought to implement the goals of the OCC's Regulation Review Program by eliminating unnecessary regulatory burden and streamlining procedures for corporate applications and transactions while protecting the safety and soundness of the national banking system. The proposal also restructured various sections of part 5 to create a more readable and understandable regulation, and it updated other sections by incorporating interpretive rulings and significant OCC interpretive positions where necessary.

Comments Received and Changes Made

The final rule implements most of the initiatives contained in the proposal. However, the OCC has made a number of changes in the final rule in response to the comments received and to further reduce unnecessary regulatory burden.

The OCC received 71 comment letters on the proposal. The vast majority of these comments supported the OCC's proposed changes to part 5. The comment letters received by the OCC included 34 from banks, bank holding companies, and related entities, 16 from trade associations (including bank, securities, real estate, insurance, newspaper, and travel agency), four from community groups, four from private businesses, five from members of Congress, two from Federal regulators, two from unaffiliated individuals, three from law firms, and one from a clearinghouse.

Commenters strongly favored reducing unnecessary regulatory burden, updating and clarifying the rules, and streamlining the application process. Overall, most commenters commended the OCC's efforts, and some commenters offered variations on certain of the proposed changes.

Overview of the Final Rule

The OCC reviewed part 5 to update and streamline corporate filing procedures for national banks and to reduce unnecessary regulatory burden consistent with safe and sound banking practices and other regulatory responsibilities of the OCC.

The final rule contains a fundamental restructuring of the OCC's approach to the corporate application process by creating a new expedited review process for many types of applications submitted by healthy banks whose applications should entail low levels of risk. This new process enables the OCC to calibrate the extent of regulatory review an application receives to focus more resources on applications that are novel, are complex, or present potentially greater risk to the applicant bank.

Section-by-Section Discussion

Most commenters focused on specific provisions of the proposal with many recommending further changes. The OCC carefully considered each of the comment letters and has made a number of changes to the proposal in response to those comments and recommendations. The following section-by-section discussion identifies and discusses comments and changes to the proposal. A table summarizing the sections of the former part 5 changed by the final rule is included at the end of this preamble.

Scope (§ 5.1)

The proposal clarified the purpose of part 5 and transferred information concerning the role of the OCC's Multinational Banking Department to § 5.3, *Definitions,* and § 5.4, *Filing required.* The OCC received no comments on this section.

The OCC adopts the changes contained in the proposal and clarifies the corporate filing procedures for Federal branches and agencies. The final rule also adds a new subpart F, which outlines the filing procedures for Federal branches and agencies and directs readers to 12 CFR part 28 for further information.

Rules of General Applicability (§ 5.2)

The proposal consolidated the rules of general applicability for part 5 into a single section. The proposal also relocated the definitions to § 5.3, *Definitions,* and the information regarding denials to § 5.13, *Decisions.* Proposed § 5.2(b) described the limited circumstances under which the OCC may adopt materially different procedures for a filing or class of filings.

Two commenters expressed concern that proposed § 5.2(b) would allow the OCC too much latitude to adopt procedures other than those set forth in part 5. One commenter suggested limiting the circumstances under which the OCC may adopt materially different procedures. The OCC has historically limited its discretion under this provision to special circumstances, thus enabling the OCC to respond promptly to emergencies such as Hurricane Andrew. This continues to be the OCC's intent, and the final rule includes this language to reflect this approach.

Definitions (§ 5.3)

The proposal consolidated in § 5.3 definitions previously located throughout part 5. The proposal also added new definitions to clarify the part generally and updated existing definitions to make them more accurate and precise.

The proposal added a definition of ''short-distance relocation,'' used in connection with both branch and main office relocations. ''Short-distance

relocation'' was defined as moving the premises of a branch or main office within a one thousand-foot radius of the current site if it is located within a central city of a Metropolitan Statistical Area (MSA) designated by the Department of Commerce; a one mile radius of the site if it is located within an MSA designated by the Department of Commerce, but not within a central city; or a two-mile radius of the site if it is not located within an MSA.

In response to a request by two commenters, the final rule contains a definition of the term ''central city'' used to define a short-distance relocation. This definition recognizes that the Office of Management and Budget has succeeded the Commerce Department as the agency that identifies central cities for certain purposes. Under the final rule, a central city is a city or cities identified as a central city by the Director of the Office of Management and Budget. This provides a simple, unambiguous test for determining when relocation applications are subject to a ten-day public comment period instead of a 30-day comment period.

Another commenter stated that having two designations for sites located within an MSA was confusing. This commenter suggested removing the first prong of the definition (*i.e.*, within a one thousand foot-radius of a site located within a central city of an MSA). The OCC believes that the distances in the proposed definition are appropriate for different types of metropolitan areas. Therefore, the final rule does not change this aspect of the proposal.

Two other commenters urged the OCC to include more flexible language in the definition of ''short-distance relocation.'' However, using any test other than a bright-line test could create further uncertainties. Therefore, the OCC adopts this definition as proposed.

The final rule also modifies the proposed definition of ''appropriate district office'' by identifying the OCC's International Banking and Finance Department as the ''appropriate district office'' for Federal branches and agencies.

The proposal also contained a definition of ''eligible bank,'' a concept central to the new system of expedited review for certain applications filed with the OCC. The proposal defined the term ''eligible bank'' as a national bank that is well capitalized as defined in 12 CFR part 6, has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (CAMEL), has a CRA rating of ''Satisfactory'' or better, and is not subject to certain formal OCC enforcement actions.

The OCC received 15 comment letters on the definition of eligible bank. Eleven commenters supported the definition. Four commenters opposed the definition and the concept of expedited processing.

A number of commenters expressed concern that by making banks with ''Satisfactory'' or ''Outstanding'' CRA ratings eligible for expedited processing, the OCC was establishing a ''safe harbor'' against public challenge to an applicant bank's CRA performance. This is neither the purpose nor the effect of the eligible bank concept. In fact, § 5.13 of the final rule explicitly enables the OCC to remove a filing from expedited review procedures if the OCC concludes, among other things, that an adverse comment presents a significant CRA concern that, in the OCC's view, has not previously been satisfactorily resolved. Thus, as discussed in greater detail later, § 5.13 ensures that the OCC will fully and carefully consider all significant adverse CRA comments, including those involving eligible banks.

Several commenters also expressed concern that CAMEL ratings would become publicly available as a result of this new process. Some commenters suggested eliminating the CAMEL rating from the list of criteria necessary to qualify as an eligible bank, thus placing more emphasis on the capital adequacy of the bank filing the application. Other commenters suggested adopting altogether different criteria such as the Federal Deposit Insurance Corporation's (FDIC's) assessment risk classifications.

The OCC carefully considered these concerns and concluded that the suggested alternatives do not adequately address the criteria that are critical in permitting a bank to use expedited review. For example, limiting the definition to criteria focused primarily on capital adequacy eliminates important supervisory considerations regarding management of the bank. Moreover, while the FDIC's assessment risk classification system has attractive features, it appears better suited for the FDIC's insurance purposes than for determining which banks would qualify for expedited application processing. Therefore, the OCC adopts the definition of eligible bank as proposed.

The final rule also adds a definition of ''eligible depository institution,'' a term used in § 5.24, *Conversions,* and § 5.33, *Business combinations.* An eligible depository institution is a state bank or a Federal or state savings association that meets the ''eligible bank'' criteria under § 5.3(g) and is FDIC-insured, except that the bank's primary Federal regulator makes the determinations regarding certain of the eligible bank criteria.

The OCC also adopts the other definitions as proposed with some minor changes.

Filing Required (§ 5.4)

The proposal clarified the application and notice filing requirements and permitted an applicant to file with the OCC forms that the applicant had submitted to another Federal agency, if the forms covered the proposed action and contained substantially the same information that the OCC would require.

Each commenter addressing this section supported the proposal. Therefore, the OCC adopts this section as proposed, with minor modifications and one new burden-reducing feature.

The final rule contains a new provision that allows an applicant to incorporate by reference information that the applicant submitted to the OCC or another Federal agency with a previous application or other filing. Material incorporated by reference must be current and responsive to the information requested by the OCC, and the applicant must attach a copy of the relevant material to its application. This provision allows an applicant to avoid compiling lengthy background or supporting documentation each time it submits an application to the OCC and also ensures that the information is current, accurate, and accessible to the OCC.

Fees (§ 5.5)

The proposal removed unnecessary information from former § 5.5, such as procedures for determining the fee schedule, and referred to 12 CFR 8.8 regarding the ''Notice of Comptroller of the Currency fees.'' Two commenters suggested that the OCC create a differential fee structure for eligible banks. The OCC intends to implement this suggestion in the near future. Therefore, the OCC adopts this section as proposed with minor clarifying changes.

Investigations (§ 5.7)

The proposal clarified and condensed the relevant information and incorporated the fee provision pertaining to investigations. Two commenters suggested that the OCC limit the circumstances under which it may request additional information in connection with a filing. However, the proposal provides needed flexibility to evaluate factual and legal issues that arise during the course of a filing. Thus, the final rule retains the general authority for the OCC to seek additional information in connection with a filing

and to deem a filing abandoned if the requested information is not furnished within the specified time period. However, this provision is moved to § 5.13.

Public Notice (§ 5.8)

The proposal required an applicant to publish a public notice of its filing in a newspaper widely available in each geographic area in which the applicant proposed to engage in business.

Several commenters urged the OCC not to make this change, but rather to retain the language in the former regulation. Under former § 5.8(a), a bank must publish public notice in a newspaper of general circulation in the community in which the applicant proposes to engage in business. These commenters stated that the former standard provided more effective notice to the public.

The OCC agrees with the commenters that the former standard better advises the public of filings submitted to the OCC and does not unduly burden applicants. Thus, the final rule retains the language from the former regulation.

The proposal also provided under § 5.8(f) that the OCC may require or give public notice and request comment on any filing and in any manner the OCC determines appropriate for the particular filing. In addition, in circumstances where the public notice requirements of § 5.8 do not apply to a particular filing, the OCC may determine to give public notice if the filing presents a significant and novel policy, supervisory, or legal issue. The proposal also authorized the OCC to require public notice in addition to any notice otherwise required under this part.

The proposal also added several provisions to reduce unnecessary regulatory burden. For example, the proposal allowed an applicant to publish a single notice in certain circumstances for two or more filings and permitted the OCC to accept a notice published by an applicant for another Federal agency in lieu of the public notice requirements of part 5.

The OCC adopts these proposed changes with some minor modifications. First, in connection with publishing a single notice for multiple transactions, the final rule amends proposed § 5.8(d) to require the applicant to explain in the notice how the transactions that are the subject of the notice are related.

Second, in § 5.8(e), the final rule clarifies that the OCC may accept a single joint notice containing the information required by the OCC and the other Federal agency, provided that the notice states that comments must be submitted to both the OCC and the other Federal agency.

Public Availability (§ 5.9)

The proposal condensed this section to reflect the current OCC practice of granting requests for information on particular filings.

Two commenters suggested that the OCC include standards for confidential treatment of information concerning applications. The final rule clarifies that the OCC follows the Freedom of Information Act (FOIA), 5 U.S.C. 552, in determining whether to treat information as confidential.

The OCC final rule also adds language to clarify that requests for the public file on pending applications should be directed to the appropriate district office, and requests for the public file on applications or notices that have been closed or decided should be directed to the Disclosure Officer, Communications Division. The revisions also clarify what constitutes the public file and that an applicant or interested person submitting information may request confidential treatment for specific information.

Comments (§ 5.10)

The proposal reorganized this section, removed unnecessary and repetitive information, and clarified the remaining provisions. The proposal also established the time period for interested persons to submit comments.

The proposal included a provision that allowed the OCC to extend the comment period if the applicant failed to file all required supporting data in time to permit review by interested persons, if any person requesting an extension of time provided ''adequate justification,'' or if the OCC determined that other extenuating circumstances existed. The proposal also removed a provision that automatically granted a 14-day extension of the comment period for individuals whose request for a hearing had been denied.

Several commenters recommended that the OCC clarify the term ''adequate justification.'' In response to these comments, the final rule removes the phrase ''adequate justification'' and provides that a person requesting an extension of the comment period must satisfactorily demonstrate to the OCC that he or she needs additional time to develop factual information that the OCC determines is necessary to consider the application.

One commenter also objected to the proposed elimination of the 14-day automatic extension of the comment period for interested persons upon the OCC's denial of a hearing request. The commenter suggested that the OCC permit a person to submit additional information at any time once a person has filed timely comments. Other commenters supported the elimination of the 14-day automatic extension of the comment period and suggested placing additional restrictions on the comment period.

The OCC believes that the proposal strikes an appropriate balance between providing an opportunity for interested persons to comment on an application and the need for an applicant to have some reliable time frame for the application process. In particular, the OCC notes that as a general matter it considers late-filed comments on a filing if doing so would not inappropriately delay action on a filing. The OCC adopts this provision as proposed.

The final rule also removes the hearing-related provisions from proposed § 5.10, *Comments and requests for hearings,* and places them in § 5.11, *Hearings and other meetings.*

Hearings and Other Meetings (§ 5.11)

The proposal reorganized and streamlined this section. Under the proposal, any person could submit a written request for a hearing. The proposal noted that the OCC generally grants a hearing request only upon a determination that written submissions would be insufficient or that a hearing would benefit the decisionmaking process or be in the public interest.

Some commenters recommended that the OCC adopt more stringent requirements for determining when to grant a hearing. Other commenters suggested that the OCC make the standards for granting a hearing more lenient. The OCC believes that this provision represents an equitable and balanced approach because it provides an adequate basis for an individual to request a hearing, but provides more clarity with respect to the circumstances under which the OCC will grant the request. The OCC adopts this provision substantially as proposed.

The proposal also provided that the person requesting a hearing would no longer bear the cost of the hearing room or the OCC's transcripts. The person requesting the hearing would continue to assume the cost of one copy of the transcript for his or her use.

Some commenters suggested that the OCC continue to require the person requesting the hearing to bear the cost of the hearing room and transcription of the proceedings. These commenters believed that by not imposing these costs the number of requests might increase. This could increase the burden

and costs associated with filing an application. However, the ability to cover these costs is not a factor in determining whether to grant a request for a hearing. The OCC has consistently considered requests to waive these costs on a case-by-case basis. Thus, the final rule does not change the proposal in this regard.

The final rule also adds new provisions for the OCC to arrange meetings between interested parties to an application in settings less formal than a hearing. Under the final rule, the OCC may arrange for a public meeting in connection with an application, either upon receipt of a written request for such a meeting which is made during the comment period or upon the OCC's own initiative. The OCC also may arrange a private meeting with an applicant or other interested parties to an application, or with an applicant and other interested parties to an application, in order to clarify and narrow the range of differences on an application.

The final rule also makes a structural change to this section and § 5.10, *Comments,* by adopting proposed § 5.10(c)–(e) as part of § 5.11 to consolidate all the information on hearings into one section.

Computation of Time (§ 5.12)

The proposal made no substantive changes to this section, and the OCC received no comments on this section. Therefore, the OCC adopts this section as proposed.

Decisions (§ 5.13)

The proposal reorganized and clarified the various types of OCC decisions on filings. It also explained that the OCC grants eligible banks expedited processing for certain filings and clarified the circumstances under which the OCC may determine not to grant expedited processing for a filing by an eligible bank. Under the proposal, the OCC would have decided not to process an application under the expedited procedures if it had concluded that the filing or an adverse public comment received prior to the OCC's decision presented a significant supervisory, CRA (if applicable), or compliance concern, or raised a significant legal or policy issue.

The great majority of commenters strongly supported the proposed revisions to this section, with a number of commenters suggesting additional changes. In response to the comments, the OCC changed the final rule to clarify both when the expedited review process might be extended and the circumstances under which an application will be removed from the expedited review process. As set forth below, these changes are designed to balance the concerns of those interested in removing undue delays from the application process with the need fairly to assess legitimate CRA concerns.

Under the final rule, the OCC will remove a filing from the expedited review category if the OCC concludes that the filing, or an adverse comment regarding the filing, presents a significant supervisory, CRA (if applicable), or compliance concern, or raises a significant legal or policy issue requiring additional OCC review. With respect to adverse comments that present CRA concerns, the final rule clarifies that a significant CRA concern exists if the OCC concludes that: (1) a bank's CRA rating is less than satisfactory, institution-wide, or, where applicable, in a state or multistate MSA; or (2) a bank's CRA performance is less than satisfactory in an MSA or in the non-MSA portion of a state in which it seeks to expand through approval of an application for a deposit facility as defined in 12 U.S.C. § 2902(3).

The final rule also adds a new provision to recognize that in certain circumstances it may be necessary to extend the review process in order to evaluate further whether to remove an application from expedited review processing. Under the final rule, the OCC may extend the review process up to an additional ten days in circumstances where a comment contains specific assertions concerning a bank's CRA performance. Under the final rule, the OCC may extend the review period if these specific assertions, if true, would indicate a reasonable possibility that: (1) a bank's CRA rating would be less than satisfactory, institution-wide, or, where applicable, in a state or multistate MSA; or (2) a bank's CRA performance would be less than satisfactory in an MSA or in the non-MSA portion of a state in which it seeks to expand through approval of an application for a deposit facility as defined in 12 U.S.C. § 2902(3). This provision allows the OCC additional time to assess specific CRA assertions by a commenter and determine whether additional review, which would warrant removal of the application from the expedited review category, is needed.

The OCC notes, however, that it may not be necessary to trigger the extra ten-day review period in all cases. For example, the OCC may already have sufficient current information to permit it to assess the particular assertions contained in the comment. In these cases, the OCC's information would provide the basis for concluding whether or not to remove an application from expedited review processing without extending the period an additional ten days.

In other circumstances, the OCC is prepared, within the additional time allowed, promptly to conduct a targeted investigation of CRA performance. These inquiries could be conducted, for example, whenever additional detailed information is needed to evaluate CRA comments involving particular branches or assessment areas. In these situations, the information obtained from the inquiry would allow the OCC to determine whether the comment raises a ''significant'' unresolved CRA concern necessitating further review and removal from expedited review processing. The OCC will provide the applicant with a written explanation if it decides not to process an application from an eligible bank under expedited review pursuant to § 5.13(a).

The OCC also notes that it may deny or condition approval of an application, including under the expedited review procedures, even if the bank has an overall satisfactory CRA rating in order to ensure satisfactory performance in a particular state or multistate MSA, or, where applicable, in an MSA or the non-MSA portion of states.

The proposal also set forth certain circumstances where adverse CRA comments would not remove an application from expedited review processing. Under the proposal, adverse comments that did not raise significant supervisory, CRA (where applicable), or compliance concerns, or significant legal or policy issues, or that were frivolous, filed primarily to delay action on the filing, or that raised negative CRA issues that already had been resolved between the commenter and the applicant would not prevent an eligible bank's filing from receiving expedited processing. Several commenters suggested that the OCC clarify the phrase ''resolved by the commenter and the applicant.''

The OCC understands the difficulties in having all parties agree that an issue has been ''resolved.'' Therefore, rather than have the commenter and the applicant decide that an issue has been resolved, the final rule clarifies the circumstances under which the OCC will determine an issue to have been satisfactorily resolved. Under the final rule, the OCC considers a CRA concern to have been satisfactorily resolved if the OCC previously reviewed (*e.g.*, in an examination or in connection with an application) a CRA concern presenting substantially the same issue in substantially the same area during

substantially the same time, and the OCC determines that the concern would not warrant denial or imposition of a condition on approval of the application. The final rule also removes reference to comments ''filed for competitive reasons'' from these processing criteria because the OCC has concluded that such standard would likely be impractical to apply.

The proposal also set forth the circumstances under which the OCC would reconsider a denial of a filing and consolidated the paragraph regarding OCC reconsideration of applications.

One commenter suggested that the OCC include a reference to the OCC's Ombudsman in the regulation. The final rule notes that an applicant may file an appeal with the Ombudsman or the Deputy Comptroller for Bank Organization and Structure.

The proposal also added a provision explaining that the OCC does not generally grant a national bank an extension of time to commence a corporate activity once approved by the OCC. Some commenters indicated that the OCC should provide more flexibility for certain transactions that are beyond the applicant's control. The OCC recognizes this concern and has modified the rule accordingly. Under the final rule, the OCC generally will not grant an extension of time to commence a new or expanded corporate activity, unless the OCC determines that the delay is beyond the applicant's control.

The proposal also provided that the OCC could nullify any decision if there was a material misrepresentation or omission in the underlying filing, or if the decision was contrary to law, regulation, or OCC policy, or was granted due to a clerical or administrative error or a material mistake of law or fact. Two commenters suggested that the OCC should revise the proposal regarding its authority to nullify a decision. However, the OCC believes that this approach will not prove burdensome to applicants and will preserve the integrity of the application process. Therefore, the OCC adopts the language contained in the proposal.

Finally, the OCC has changed this section to clarify that a filing must contain all information required by the relevant regulation and that a filing may be deemed abandoned if required information is not furnished as required or within a specified time period.

Organizing a Bank (§ 5.20)

The proposal clarified, streamlined, and reorganized this section to focus on those issues central to charter applications. It also incorporated and consolidated provisions regarding special purpose national banks, such as national banks limited to fiduciary activities.

The OCC received few comments addressing this section. One commenter recommended an expedited review process for ''well-capitalized'' bank holding companies establishing *de novo* banks. Another commenter urged the OCC to consider the financial and managerial resources of a sponsoring bank holding company rather than those of the organizers.

The OCC agrees with the commenters that an application to organize a new bank that is sponsored by a bank holding company whose lead depository institution meets certain requirements does not present the same level of safety and soundness and other supervisory concerns as other applications to organize a bank. Thus, the final rule provides that the OCC will preliminarily approve a charter application sponsored by a bank holding company whose lead depository institution is an eligible bank or eligible depository institution, as of the 15th day after the close of the comment period or 45 days after a filing is received by the OCC, whichever is later, unless the OCC notifies the applicant that it is not eligible for expedited review, or the expedited review process is extended, under § 5.13, or the OCC determines that the proposed bank will offer banking services that are materially different from those offered by the lead depository institution. The final rule defines the term ''lead depository institution'' in § 5.20(d)(5) as the largest depository institution controlled by the bank holding company based on a comparison of the average total assets controlled by each depository institution as reported in its Consolidated Report of Condition and Income for the immediately preceding four calendar quarters. The final rule also clarifies that the OCC considers the financial and managerial resources of the sponsor, rather than the organizing group, if the organizing group is sponsored by an existing holding company, individuals currently affiliated with other depository institutions, or individuals who, in the OCC's view, are otherwise collectively experienced in banking and have demonstrated the ability to work together effectively.

The proposal also maintained the OCC's ability, as a condition of charter approval, to object to and preclude the hiring of any officer, or appointment or election of any director, for two years following the commencement of the bank's business. This provision is retained in the final rule.

The final rule also provides that a national bank that seeks to invest in a bank with a community development focus must comply with the applicable requirements of 12 CFR part 24.

Conversion (§ 5.24)

The proposal reorganized and streamlined the OCC's rules governing charter conversions involving national banks. Among other things, the proposal clarified the types of entities that may convert to a national bank and established procedures for conversions from a national bank to another form of charter. The proposal also added specific language throughout this section to clarify the precise requirements and law applicable to an institution converting to a national bank charter.

The proposal also provided more explicit procedures for a financial institution converting to a national bank charter. The proposal required institutions converting to a national bank charter to identify all subsidiaries the institution seeks to retain following the conversion and to provide the information and analysis of the subsidiary's activities that would be required under § 5.34. In addition, as did the proposal, the final rule requires institutions converting to a national bank charter to identify nonconforming assets (including nonconforming subsidiaries) and nonconforming activities that the institution holds or engages in. The OCC considers requests to retain nonconforming assets of a state bank pursuant to its authority under 12 U.S.C. 35.

The OCC adopts the language in the proposal with a few clarifying changes and one additional change intended to reduce regulatory burden. The final rule establishes an expedited review procedure for healthy state banks or Federal or state savings associations (eligible depository institutions as defined in § 5.3(h)) that wish to convert to a national bank charter. Under this provision, an application by an eligible depository institution to convert to a national bank is deemed approved as of the 30th day after a filing is received by the OCC, unless the bank is notified that it is not eligible for expedited review under the standards contained in § 5.13(a)(2).

Fiduciary Powers (§ 5.26)

The proposal reorganized the OCC's application procedures for fiduciary powers and clarified the circumstances under which the OCC requires a national bank to obtain approval to

exercise fiduciary powers. The proposal also provided that a separate application to exercise fiduciary powers was not required when: (1) two or more national banks merge or consolidate and one of the banks has previously received approval to exercise fiduciary powers that is in effect at the time of the merger, or (2) a national bank with fiduciary powers is the resulting bank in a merger or consolidation with a state bank without fiduciary powers. An applicant applying for a charter for a national bank limited to fiduciary activities should file its application under § 5.20.

Two commenters supported the revisions to § 5.26. The OCC adopts the changes contained in the proposal with two substantive additions intended to further reduce paperwork burdens for a national bank filing an application under this section. Under the final rule, if approval to exercise fiduciary powers is desired in connection with any other transaction subject to an application under this part, an applicant may include its request for approval to exercise fiduciary powers as part of its other application. The OCC does not require a separate application to exercise fiduciary powers in these circumstances.

The final rule also streamlines the application procedure for a national bank meeting the eligible bank criteria contained in § 5.3(g). Under the final rule, an eligible bank need not submit an opinion of counsel to the OCC. However, in certain circumstances, the OCC may request this information prior to the bank commencing the activity.

Finally, the final rule clarifies that when a national bank with prior OCC approval to exercise fiduciary powers commences fiduciary activities in a new state, the bank need not file an additional application under this section, and is only required to file a written notice with the OCC within ten days after commencing the activities.

Establishment, Acquisition, and Relocation of a Branch (§ 5.30)

The proposal comprehensively revised the OCC's branching regulation to update the definition of the types of facilities that constitute a ''branch'' and to streamline procedures for acquiring and moving branches.

The OCC received numerous comments on this section. The OCC carefully considered all the comments, and the final rule reflects changes made in response to those comments and also incorporates recent statutory changes.

A. Definition of ''Branch''

Proposed § 5.30(d)(1)(ii)(A) excluded from the definition of a branch a facility to which ''the bank does not permit members of the public to have physical access * * * (*e.g.*, an office established by the bank that receives deposits only through the mail).'' This aspect of the proposal reflected the position taken by the OCC in several interpretive letters.

Several commenters specifically supported this provision but sought further clarification. One commenter was concerned that prohibiting access to ''members of the public'' would prohibit access even to those members of the public, such as delivery people, that are at the site for reasons other than to conduct banking transactions.

The final rule excludes from the definition of ''branch'' a facility that would otherwise qualify as a branch because it is established by a national bank and engages in one or more branching functions (receipt of deposits, payment of withdrawals, or making loans) but which prohibits access to members of the public for purposes of conducting one or more branching functions. The OCC expects that facilities that come within this exception will not be designed to undertake in-person branching transactions with customers nor would they invite members of the public to visit such sites to conduct branching transactions.

Proposed § 5.30(d)(1)(ii)(B) clarified that the term ''branch'' does not include a facility that is ''generally available to customers of other banks to receive substantially similar services pertaining to their accounts at other banks on the basis of substantially similar terms and conditions.'' As recognized by a number of commenters, the primary impact of this provision would have been to exclude from the definition of branch ATMs that are linked to networks and, thus, provide services to bank customers and non-customers alike. However, as a result of recent statutory changes contained in Section 2205 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Public Law 104–208, Sept. 30, 1996 (110 Stat. 3009), ATMs and remote service units are no longer considered branches and, thus, are not subject to the limitations on national bank branching imposed by the McFadden Act and codified at 12 U.S.C. 36. Consequently, the OCC has deleted this provision from the final rule and has also revised the final rule to state specifically that ATMS and remote service units are not branches. The OCC also recognizes, however, that other situations may still arise where a particular facility should not be considered to be a bank branch because it, in fact, provides services generally on a nondiscriminatory basis with respect to accounts that its customers hold as well as accounts held by noncustomers in other banks and depository institutions. The OCC believes these issues are best considered on a case-by-case basis based on the particular circumstances involved.

B. Messenger Service

Proposed § 5.30(f)(2)(iii) sets forth procedural rules specific to the establishment of messenger services. One commenter asked the OCC to define the term ''messenger service.'' The OCC believes that defining the term ''messenger service'' will clarify the applicability of these provisions and thus adds a definition that cross-references the definition of ''messenger service'' in 12 CFR 7.1012. In addition, the provisions permitting multiple messenger service applications to be combined has been retained in the final rule.

C. Public Notice for a Mobile Branch

Proposed § 5.30(h)(1) stated the publication requirements for a mobile branch application. One commenter requested clarification on the publication requirements. An applicant must publish public notice for a mobile branch or messenger service application in a newspaper that meets the requirements of § 5.8 for each area in which the mobile facility will provide branching services. An applicant need only publish public notice in one newspaper that meets those requirements in each area that it intends to serve. In addition, the final rule adds a definition of ''mobile branch'' which includes a branch, other than a messenger service facility, that does not have a single, fixed site, such as a van that travels to various public locations to enable customers to conduct their banking business. Each mobile unit requires a branching license. This is because a mobile facility is available at public sites to customers generally, unlike a messenger service facility that only serves specific customers at places such as their homes or businesses.

D. Reduced Comment Period

Proposed § 5.30(h)(2) provided a ten-day comment period for an application to establish an ATM branch and to engage in a short-distance branch relocation. While many commenters explicitly supported these reduced comment periods, several commenters thought that the OCC should apply the ten-day comment period more broadly.

In applying a reduced comment period for ATM branches and short-distance relocations, the OCC attempted to identify those types of applications

that are less likely to raise legal and policy concerns which generally lead to public comment. Short-distance relocations, which are unlikely in most states to raise legal concerns and where the relocated branch will serve the same area as the former branch, are less likely to raise concerns giving rise to public comment. Consequently, the final rule does not expand the availability of the reduced comment period. However, because the statutory change excluded ATMs from the term ''branch'' as that term is used in the McFadden Act, the final regulation applies the reduced comment period only to short distance relocations and increases the comment period to 15 days. Similarly, because of the statutory change with respect to ATMs and remote service units, the proposed rule permitting a national bank to seek approval for multiple ATMs and unstaffed branches in one application is no longer necessary.

E. Temporary Branches

The proposal requested comment on whether to apply streamlined procedures to temporary branches. All commenters who addressed this issue supported some form of streamlined processing for temporary branches. Therefore, the final rule contains a statement that the OCC will consider a request to waive or reduce the public notice and comment period with respect to an application to restore banking services to a community affected by a disaster or temporarily replace banking facilities where, because of an emergency, the bank temporarily cannot provide or must curtail banking services. Also, the procedures set forth in OCC Advisory Letters 94–3, 94–4, and 94–6 regarding branches at colleges and universities continue to be valid.

The final rule also provides that the OCC may waive or reduce the public notice and comment period, with respect to an application to establish a temporary branch, if: (1) the applicant bank has a CRA rating of ''Satisfactory'' or better; and (2) the temporary branch, if established by a state bank to operate in the manner proposed, would be permissible under state law without state approval. For these purposes, the final rule defines a temporary branch as a branch that is located at a fixed site and from the time of its opening is scheduled to close, and will permanently close, as of a certain date no longer than one year after it is first opened. Of course, if a proposal for a temporary branch does not meet these requirements, the bank can still apply to establish the branch under the standard branch application procedures.

Business Combinations (§ 5.33)

The proposal substantially reorganized, condensed, and simplified this section. The proposal used the term ''business combination,'' rather than ''merger,'' to avoid confusion on specific transactions and incorporated pertinent information regarding interim banks from former §§ 5.20 and 5.21. The proposal also provided for expedited review of certain corporate reorganizations (*e.g.*, a holding company could combine certain subsidiary banks under an expedited review process).

The proposal adopted the procedures of 12 U.S.C. 214a, 214c, 215, and 215a for combinations between national banks and Federal savings associations, with appropriate modifications to conform the style of § 5.33(g) with the rest of § 5.33 and part 5. In addition, similar to the treatment of conversions, references in 12 U.S.C. 214c to the ''law of the State in which such national banking association is located'' and ''any State authority'' mean ''the laws and regulations governing Federal savings associations'' and ''Office of Thrift Supervision,'' respectively.

The proposal also revised this section to reflect certain provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103–328, Sept. 29, 1994, 108 Stat. 2338 (Riegle-Neal Act), regarding interstate business combinations.

The overwhelming number of comments received supported the proposed changes to § 5.33. Therefore, the OCC adopts this section substantially as proposed with an additional burden-reducing feature. This new provision in the final rule permits certain healthy banks to use a streamlined application form under expedited review procedures to effect certain types of business combinations. The OCC believes that this approach will significantly reduce paperwork burden for these banks while maintaining the focus of the OCC's review on those areas that pose significant risks to national banks.

Under the final rule, an applicant may file an abbreviated application form as instructed in the Manual and qualify for expedited processing of its application if: (1) at least one party to the transaction is an eligible bank and all other parties to the transaction are eligible banks or eligible depository institutions, the resulting national bank will be well capitalized immediately following the consummation of the transaction, and the total assets of the target depository institution are not more than 50 percent of the total assets of the acquiring bank, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application; (2) the acquiring national bank is an eligible bank, the target bank is not an eligible bank or an eligible depository institution, the resulting national bank will be well capitalized immediately following consummation of the transaction, and either (a) the appropriate district office has approved the use of the streamlined form; or (b) the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application. A streamlined application form will, of course, continue to require information necessary for the OCC to make a determination under the standards of the Bank Merger Act and this regulation, which include the convenience and needs of the community to be served and relevant CRA considerations.

Under the final rule, these applications, together with applications that qualify as ''business reorganizations,'' will be deemed approved by the OCC as of the 45th day after the filing is received by the OCC or the 15th day after the close of the comment period, whichever is later, unless the OCC notifies the bank that the filing is not eligible for expedited review, or the expedited review process is extended, under the standards in § 5.13.

In addition, with respect to business reorganizations, the final rule incorporates the eligible depository institution concept into the expedited review process for these transactions. Thus, a business combination between an eligible bank and eligible depository institution controlled by the same holding company would receive expedited processing.

Operating Subsidiaries (§ 5.34)

The proposal contained comprehensive revisions to § 5.34, *Operating subsidiaries,* and solicited public comment on a number of issues. The overwhelming majority of commenters supported the changes contained in the proposal. A number of commenters opposed specific provisions, two commenters asserted that the OCC lacked authority to issue the regulation under 12 U.S.C. 93a, and several other commenters urged specific changes. A discussion of the comments and the changes made in the final rule is set forth below.

A. Procedures

The proposal restructured the OCC approval requirements for an application by a national bank to establish or acquire an operating subsidiary, or to commence a new activity in an existing operating subsidiary. Essentially, operating subsidiary proposals would fall into one of three categories: (1) after-the-fact notice for certain types of activities; (2) expedited processing for certain other types of activities, when proposed to be conducted by financially strong and well-managed banks; and (3) standard processing in other cases. These revised procedures would expedite application processing for less complex activities and thus reduce unnecessary regulatory burden and enable the OCC to focus attention on novel or complex filings.

First, the after-the-fact notice procedures required a national bank to file a notice with the OCC within ten days after acquiring or establishing the subsidiary or commencing the new activity. The national bank was required to be ''adequately capitalized'' or ''well capitalized'' and not deemed to have been in ''troubled condition'' for purposes of § 5.51. In addition, the subsidiary could only engage in certain preapproved activities that were listed as eligible for after-the-fact notice.

The second category of procedures provided for expedited review of applications requiring prior OCC approval. To qualify for expedited review, a national bank was required to be an eligible bank, and the activity proposed had to be on the list of activities permissible for expedited processing. These applications were deemed approved 30 days after filing, unless the OCC notified the applicant prior to that date that the application was not eligible for expedited review under § 5.13(a)(2).

The third category of procedures generally covered all other operating subsidiary situations.

The OCC received 20 comments addressing these procedures. The majority of commenters supported the proposed changes.

Four commenters recommended moving certain activities from the expedited review to the notice category. These recommendations generally concerned activities related to foreign exchange, coin and bullion, leasing of personal property, securities brokerage, lending activities and providing investment advice. Two commenters also suggested adding property appraisal services to the notice list.

In the final rule, the OCC retains the activities in the categories set forth in the proposal with a few changes. The proposal included in the notice category providing financial and transactional advice to customers and assisting customers in structuring, arranging, and executing various financial transactions, provided the bank and its affiliates did not participate as principal. These transactions included mergers and acquisitions, swaps and derivatives, foreign exchange and related transactions, and arranging commercial real estate equity financing. The final rule removes the prohibition on participating as principal with respect to swaps and derivatives and foreign exchange and related transactions, since these are activities frequently undertaken directly by banks as part of their banking business. These notice category provisions relating to swaps and derivatives, and foreign exchange transactions, were then combined with the provision in the expedited category relating to dealing, trading, and investing in foreign exchange, coin and bullion and retained in the expedited processing category.

The final rule also moves the following activities from the expedited processing category to the notice category: (1) Activities that relate to making, purchasing, selling, servicing and warehousing loans, or interests therein; and (2) activities related to leasing of personal property. However, these activities are not eligible for the notice category where the notice involves the direct or indirect acquisition by the bank of any low-quality asset from an affiliate in connection with any transaction subject to § 5.34. The terms ''low-quality asset'' and ''affiliate'' have the same meaning as provided in section 23A of the Federal Reserve Act, 12 U.S.C. 371c.

In response to comments, the final rule adds to the expedited processing category real estate appraisal services conducted for the subsidiary, the bank, or other financial institutions. The final rule also adds to the notice category establishing and operating a subsidiary to own, hold, or manage all or part of the parent bank's investment securities portfolio.

Finally, the final rule updates activities relating to data processing to recognize that national banks are engaging in an increasing range of activities through electronic means. Under the final rule, the notice category relating to data processing activities is revised to cover activities involving data processing and warehousing products, services and related activities, including equipment and technology, performed for the operating subsidiary, its parent bank, and their affiliates. The final rule also includes in the expedited processing category data processing and warehousing products, services and related activities, including data processing equipment and technology permissible under 12 U.S.C. 24(Seventh) and 12 CFR 7.1019. The activities in the expedited processing category may be performed externally for parties other than the subsidiary itself, its parent bank, and their affiliates.

The notice category contains less complex, commonly accepted banking-related activities that the OCC has previously approved for operating subsidiaries on a case-by-case basis. The activities in the expedited review category are also activities that the OCC has previously approved but that are more complex, may require more specialized expertise, and, at this time, warrant prior OCC review. The OCC intends to revisit the activities contained in these categories on a regular basis and make changes as experience dictates.

The final rule also provides that notices and expedited approvals submitted to the OCC must contain a representation and undertaking that the activity will be conducted in accordance with OCC policy contained in published OCC guidance. This provision ensures that banks seeking expedited review and after-the-fact notice procedures conform their activities to parameters defined by the OCC. A bank may also apply through the standard processing procedures to engage in any activity that may not conform with OCC published guidance.

B. Ownership of the Operating Subsidiary

Former § 5.34 required a national bank to own at least 80 percent of the voting stock of a corporation to qualify as an operating subsidiary. The proposal would have amended this provision to require the parent bank to own more than 50 percent of the voting stock.

The majority of commenters supported the proposed change, noting that this provision would increase a national bank's flexibility to structure its internal organization.

A number of commenters also urged the OCC to permit a national bank to own 50 percent or less of a subsidiary under § 5.34 where the bank has effective working control over the subsidiary through other means. The OCC has carefully considered these comments and agrees that the bank's control of the operating subsidiary should be the determinative factor, whether that control is through a majority of the voting interest or though other means. Accordingly, the final rule

permits a national bank to own more than 50 percent of the voting (or similar type of controlling) interest of an operating subsidiary, or 50 percent or less of the voting (or similar) interest of the subsidiary if the bank otherwise controls the subsidiary and no other party controls more than 50 percent of the voting (or similar type of controlling) interest of the subsidiary.

However, to recognize that effective working control arrangements will come in a variety of forms, the final rule requires a national bank to file an application for OCC approval under the standard application procedures where the national bank proposes to own 50 percent or less of the voting (or similar) interest of the subsidiary. Thus, regardless of the type of activity that the subsidiary proposes to engage in, a national bank would not qualify for the notice or expedited review if it proposes to acquire 50 percent or less of the voting (or similar) interest of an operating subsidiary. This will permit the OCC to conduct a case-by-case review to ensure that the national bank has effective control over the subsidiary and that the bank is not exposed to undue risks. In determining whether there is control, one factor the OCC will consider is whether generally accepted accounting principles or Consolidated Reports of Condition and Income instructions would require consolidation of the bank and its subsidiaries.

The proposal also solicited comment on whether § 5.34 should include interests in entities other than corporations, such as limited liability companies (LLCs). The OCC received 11 comments addressing this issue, all of which supported including LLCs under the operating subsidiary rule. Some commenters also suggested broadening the rule to include other similar entities.

LLCs and other similar entities, *e.g.*, business trusts, have recently emerged in many states as an alternative to the corporate form of ownership. These entities are hybrid business organizations with characteristics of corporations (limited liability) and partnerships (tax treatment). As such, the entities have certain key attributes of corporations and joint ventures that the OCC has long permitted banks to participate in—bank control of the entity and limitation or insulation of the bank's liability for the entity's activities. Authorizing investments in these and other similar types of entities as operating subsidiaries increases the flexibility of national banks to structure their operations. Moreover, to date, the OCC's experience with LLCs has not revealed any additional risks unique to these entities. Thus, the final rule provides that an operating subsidiary that a national bank may invest in includes a corporation, limited liability company, or similar entity, if the parent bank owns more than 50 percent of the entity's voting (or similar type of controlling) interest, or otherwise controls the subsidiary and no other party controls more than 50 percent of the voting (or similar type of controlling) interest in the subsidiary. However, as is the case with national bank investments in operating subsidiaries that are corporations, only the standard application procedures apply to investments of 50 percent or less of the voting (or similar) interest where the parent bank otherwise controls the LLC or similar entity.

The final rule retains the language in the former rule relating to consolidation of book figures of a parent bank and operating subsidiary with some modifications. Under the final rule, pertinent book figures of the parent bank and its operating subsidiary must be combined in order to apply certain statutory limitations to the parent bank and its subsidiary on a combined basis, such as dividend limitations and lending limits. *See e.g.*, 12 U.S.C. 56, 60, 84 and 371d. However, in determining compliance with statutory limits based on regulatory capital, the bank will be required to make any reductions in regulatory capital required by 5.34(f), discussed later.

C. Fiduciary Powers

The proposal also requested comment on whether § 5.34 should require a national bank to obtain approval to exercise fiduciary powers as a precondition to providing investment advice, either in the bank or through a subsidiary.

The OCC received seven comments on this issue and all opposed the requirement. A number of commenters viewed the requirement as overly broad. Moreover, commenters noted that requiring a national bank to obtain prior OCC approval could result in different treatment for national banks and state-chartered banks.

The OCC has carefully considered these comments, and the final rule provides that if an operating subsidiary proposes to exercise investment discretion on behalf of customers or to provide investment advice for a fee, the bank must obtain OCC approval to exercise fiduciary powers, and the subsidiary will be subject to the requirements of 12 CFR part 9, except in two circumstances. First, the bank is not required to obtain approval to exercise fiduciary powers if the subsidiary is registered under the Investment Advisers Act of 1940, 15 U.S.C. 80b–1 *et seq.* Second, approval is not required if the subsidiary is registered, or has filed a notice, under the applicable provisions of sections 15, 15B or 15C of the Securities Exchange Act of 1934, 15 U.S.C. 78o, 78o–4, or 78o–5, as a broker, dealer, municipal securities dealer, government securities broker or government securities dealer; and the subsidiary's performance of investment advisory services as described in 15 U.S.C. 80b–2(a)(11) is solely incidental to the conduct of its business as broker or dealer and there is no special compensation to the subsidiary for those advisory services. This approach ensures effective regulation of the entity exercising the investment discretion in accordance with industry standards and avoids duplicative layers of regulatory oversight.

D. New Procedure for Certain Activities

The proposal revised former § 5.34(d)(2)(i) to provide that ''unless otherwise provided by statute or regulation, *or determined by the OCC in writing*, all provisions of Federal banking laws and regulations applicable to the operations of the parent bank apply to the operations of the bank's operating subsidiaries.'' (*Emphasis added*). The proposed revised standard would have allowed the OCC to determine, on a case-by-case basis, whether a bank could conduct through a subsidiary an activity *within the business of banking or incidental thereto*, but for one reason or another prohibited to a national bank directly to conduct or conduct in that manner, as in the case where (1) a specific prohibition applies to a parent bank but not to the bank's subsidiary, or (2) the legal authority to conduct the activity is otherwise restricted to the subsidiary.

The OCC received 46 comments on this provision. Approximately 75 percent of the commenters supported the provision in some fashion, most very strongly. Among other things, commenters noted that the proposal would: (1) provide banks with corporate flexibility and a meaningful alternative to structure their operations; (2) improve efficiencies; and (3) foster competition in the development and delivery of banking products and services to benefit consumers and businesses.

Several commenters opposed the proposal, however. These commenters included several trade associations that generally questioned bank entry into certain lines of business. A number of these commenters also urged the OCC not to take action on the proposal until

Congress acted on the scope of permissible bank affiliate powers.

Commenters also raised concerns with the OCC's authority to adopt the proposal and with safety and soundness issues associated with the proposal. Among other things, commenters asserted that: (1) the OCC lacks the authority to adopt the provision under 12 U.S.C. 24(Seventh) because the proposal would be inconsistent with the statutory language and legislative history of 12 U.S.C. 24(Seventh); (2) the proposal is inconsistent with past OCC precedent; (3) the provision may be inconsistent with sections 16 and 21 of the Banking Act of 1933 (Act of June 16, 1933, Ch. 89, section 16 and section 21, 48 Stat. 162, 184, and 189) (the 1933 Act or the Glass-Steagall Act); (4) the proposal may be inconsistent with the Bank Holding Company Act because that Act should be viewed as the exclusive method by which bank affiliates may engage in bank-ineligible activities; (5) the OCC lacks the authority to adopt the proposed changes under 12 U.S.C. 93a because that authority does not apply to securities activities of national banks under the Glass-Steagall Act [1]; and (6) the proposal would expose national banks to unacceptable safety and soundness risks.

The OCC has carefully considered all of these concerns, and, for the reasons discussed below, has determined to adopt various changes to this portion of the proposal to address issues raised by the commenters. In sum, under the procedures prescribed by § 5.34 of the final rule, a national bank may establish or acquire an operating subsidiary to conduct, or may conduct in an existing operating subsidiary, activities that are part of or incidental to the business of banking, as determined by the Comptroller of the Currency, pursuant to 12 U.S.C. 24(Seventh), and other activities permitted for national banks or their subsidiaries under other statutory authority. In certain circumstances, as described in § 5.34(f), this may include permitting a national bank to acquire or establish an operating subsidiary to conduct, or to conduct in an existing operating subsidiary, an activity that is permissible for the subsidiary under the foregoing standards but different from that permissible for the parent national bank. In these circumstances the activity will be subject to a number of safeguards, discussed below, and the OCC will publish a notice in the Federal Register and request comment prior to taking action on the application if the proposed activity has not been previously approved by the OCC.[2] For subsequent applications for the same activity, the OCC also may publish a notice and seek comment.

The final rule contains a number of built-in safeguards, responding to issues raised by commenters, to ensure that any new activities are conducted safely and soundly. Moreover, new activities will be approved only after case-by-case consideration has afforded the OCC the opportunity not only to require conformance with the conditions detailed in the final rule but also with any additional conditions that may be appropriate for a particular activity and for the particular applicant bank. This approach—tailoring the scope of the approval, if approval is appropriate, to the circumstances of the activity in question—allows the OCC to fulfill its continuing obligation to ensure that risk is identified, managed and controlled.

The following sections discuss in detail the particular concerns raised by certain commenters.

1. Authority Under 12 U.S.C. 24(Seventh) for the Final Operating Subsidiary Rule

Some commenters asserted that 12 U.S.C. 24(Seventh) prohibits a national bank from owning stock for its own account and that the OCC does not have the authority to permit national bank operating subsidiaries. These commenters also contended that, because of this, the OCC lacks the authority under 12 U.S.C. 24(Seventh) to issue a final rule permitting a national bank subsidiary to conduct an activity deemed to be part of the business of banking or incidental thereto, but different from that permitted for its parent bank to conduct directly.

The commenters who asserted that 12 U.S.C. 24(Seventh) precludes a national bank from owning any stock in a corporation point to the language in 12 U.S.C. 24(Seventh) that states: ''Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase [by the bank] of any shares of stock of any corporation.''

This language, which was added to 12 U.S.C. 24(Seventh) by section 16 of the 1933 Act has, for decades, been consistently interpreted by the OCC as preventing national banks from undertaking the types of speculative stock purchases that were the object of the 1933 Act, not as a bar to the ability of national banks to have subsidiaries or to own stock, where such ownership is otherwise authorized. This interpretation is entirely consistent with the language of 12 U.S.C. 24(Seventh) cited above—that the new provisions added in 1933 do not *authorize* national banks to purchase corporate stock, but to the extent other authority exists to do so, that authority remains intact.[3] Thus, such ownership as is ''otherwise permitted by law'' remains permissible. One such ''law'' is the powers sentence in 12 U.S.C. 24(Seventh), which was unaffected by the section 16 changes. This analysis is amply supported by the legislative history accompanying the enactment of this language.[4]

The key national bank powers portion of section 24(Seventh), which has existed essentially unchanged since its enactment in 1864, states that a national bank is expressly authorized to carry on the business of banking and to exercise ''all such incidental powers as shall be necessary'' to carry on that business. The courts have construed the term ''necessary'' to mean ''convenient and useful''. *See Arnold Tours, Inc.* v. *Camp,* 472 F.2d 427 (1st Cir. 1972).

In *NationsBank of North Carolina, N.A.* v. *Variable Annuity Life Insurance Co.*, 115 S.Ct. 810, 130 L.Ed. 2d 740 (1995), (VALIC), the Supreme Court confirmed that a national bank's permissible activities are not limited to the five enumerated powers described in the powers sentence of 12 U.S.C. 24(Seventh) and activities incidental to those enumerated powers. ''[T]he Comptroller * * * has discretion to authorize activities beyond those specifically enumerated. The exercise of the Comptroller's discretion, however, must be kept within reasonable bounds.'' *Id.* at 814, n.2.

It is clear that the authority under 12 U.S.C. 24(Seventh) includes activities that are incident to being in business generally, and that a bank, as a business, may engage in activities that are

[1] The Securities and Exchange Commission expressed no objection to the OCC's proposal regarding expanded activities for operating subsidiaries subject to the understanding that: (1) the OCC intended that securities activities conducted in operating subsidiaries are subject to regulation under the Federal securities laws, and (2) the OCC's proposal was not intended as a steppingstone to permit activities previously not permitted for a bank to conduct itself to be shifted from an operating subsidiary to the bank. If, in fact, securities activities are approved for an operating subsidiary, these understandings will be correct.

[2] This new notice process will allow commenters to present any issues they believe the OCC should take into account in connection with the particular bank and its proposed activity, *e.g.*, legal issues, safety and soundness concerns, and service to the bank's community.

[3] *See* Legal Opinion from Julie L. Williams, Chief Counsel, to Eugene A. Ludwig, Comptroller of the Currency, ''Legal Authority for Revised Operating Subsidiary Regulation,'' (November 18, 1996), (Legal Opinion), at 9–14.

[4] *See* Legal Opinion at 8–11.

convenient and useful to the conduct of that business. For example, such powers as having employees and borrowing money to conduct operations fall into this category. Moreover, Congress has repeatedly recognized and regulated these business activities of banks without deeming it necessary to authorize them explicitly because they are authorized by the powers sentence in 12 U.S.C. 24(Seventh). Thus, for example, various statutes refer to duties of bank employees and place limits on the ownership of bank premises, assuming their existence in each case.[5]

The use of subsidiaries is convenient and useful to national banks in conducting their banking business, and the ability of national banks to own subsidiaries under the authority of 12 U.S.C. 24(Seventh) is well founded. For example, the changes made to 12 U.S.C. 24(Seventh) by the 1927 McFadden Act, (Act of February 25, 1927, Ch. 191, section 2(b), 44 Stat. 1226) (1927 Act) and the 1933 Act confirm that national banks have authority to own subsidiaries pursuant to their incidental powers. In each instance, the statute placed limitations on bank subsidiary activities, presupposing the ability of the bank to own and operate a subsidiary in the first place, even though such ownership was not expressly identified in the statute as a bank power. For example, the 1927 Act limited the *amount* a national bank could invest in a corporation conducting a safe deposit business, thereby acknowledging that banks already had authority to own this type of corporation under 12 U.S.C. 24(Seventh). Similarly, in one of many examples from the 1933 Act supporting this proposition, that Act limited the amount that a national bank could invest in a bank premises subsidiary corporation, thereby acknowledging the continued lawfulness of the investment.[6] The 1933 Act also imposed limits on transactions by national banks (and state member banks) with their ''affiliates,'' which were defined to include companies that were controlled by a bank.[7] The scope of these provisions would make no sense unless Congress believed that national banks had the authority in the first place to control a company as a subsidiary.

Nor does the OCC believe that the ownership of a subsidiary is convenient or useful to its parent bank *only* when the subsidiary can do no more than duplicate the activities permissible for its parent bank. Clearly, the ability to operate something other than a precise clone of itself could be convenient or useful to a bank in various situations. Those situations have boundaries, however, since not just the ownership of the subsidiary, but also what it *does*, must be part of or incidental to the business of banking, or otherwise authorized for the bank or the subsidiary.

Accordingly, under the final rule, a national bank operating subsidiary remains limited in its activities to those that are part of or incidental to the business of banking as determined by the OCC, or otherwise permissible for national banks or their subsidiaries under other statutory authority. The final rule confirms, however, that this may include activities different from what the parent national bank may conduct directly, *if*, in the circumstances presented, the reason or rationale for restricting the parent bank's ability to conduct the activity does not apply to the subsidiary, and if the ability of the subsidiary to conduct the activity would not frustrate a congressional purpose of preventing the activity from being undertaken by its parent bank.[8]

Under the final rule, therefore, the OCC must evaluate an operating subsidiary application involving this type of activity on a case-by-case basis. For each activity, the OCC will consider the particular activity at issue, and weigh: (1) the form and specificity of the restriction applicable to the parent bank; (2) *why* the restriction applies to the parent bank; and (3) whether it would frustrate the purpose underlying the restriction on the parent bank to permit a subsidiary of the bank to engage in the particular activity. The OCC's evaluation of all these factors will also take into account safety and soundness implications of the activity, the regulatory safeguards that apply to the operating subsidiary and to the activity itself, any conditions that may be imposed in conjunction with an application approval, and any additional undertakings by the bank or the operating subsidiary that address the foregoing factors.

2. Consistency of the Final Rule With Past OCC Precedent

Some commenters have asserted that prior OCC characterizations of a national bank operating subsidiary as a ''department of the bank'' and other statements on the permissible activities of an operating subsidiary preclude the OCC from determining that an operating subsidiary may conduct an activity not directly permissible for the parent bank, even if the activity is part of or incidental to the business of banking. The OCC recognizes that some may have viewed the terminology it has used as representing a legal conclusion regarding the outer bounds of the activities permissible for a national bank operating subsidiary. However, neither the OCC's position nor judicial precedent is that limiting.

It is true that the OCC has generally taken a policy position that the Federal banking laws applicable to a national bank should also apply to its operating subsidiary. That this did not represent a legal determination that an operating subsidiary may *never* permissibly conduct activities different from those allowed its parent bank is illustrated, however, by exceptions contained in even relatively early OCC approvals. *See, e.g.*, Letter from Deputy Comptroller DeShazo (October 25, 1967); Letter from Deputy Comptroller Watson (January 1968). *See also*, Interpretive letter No. 289, *reprinted in* [1983–1984 Transfer Binder] Fed. Banking L. Rep. (CCH) para. 85,453 (approving an operating subsidiary to act as a general partner of a partnership formed to establish ATMs).[9] *See also Independent Bankers Ass'n of Georgia* v. *Board of Governors of the Federal Reserve System*, 516 F.2d 1206 (D.C. Cir. 1975) (a national bank could lawfully conduct, through a subsidiary that was a holding company, banking operations at various locations in a state that would have been barred for the bank directly under the state's branching laws).

The final rule resolves the ambiguities of OCC precedents by clarifying that the permissible activities of an operating subsidiary are not necessarily a carbon copy of the permissible activities of its parent. However, the activities still must qualify as a part of the business of banking or incidental thereto, or be permissible for national banks or their subsidiaries under other statutory authority, and the final rule also provides a specific (and public) process for evaluating applications that involve this type of activity.

This approach is based not only on extensive reanalysis of the relevant statutes and legislative history, but also on the availability of enhanced supervisory tools for ensuring that these activities are conducted safely and soundly. The OCC is not precluded from modifying its policies where the modification is lawful and where enhanced flexibility can be appropriately monitored and contained via the imposition of conditions as

[5] *See* Legal Opinion at 2–5.

[6] *See* Legal Opinion at 4–7, 13.

[7] *See* Legal Opinion at 12–14.

[8] *See* Legal Opinion at 19–24.

[9] *See* Legal Opinion at 21–23.

warranted and the availability of improved supervisory tools. *Cf. Smiley* v. *Citibank,* 116 S.Ct. 1730, 135 L.Ed. 2d 25 (1996). For example, as discussed later, Congress has provided the bank regulatory agencies enhanced authority to levy civil money penalties and issue cease and desist orders to deter unsafe or unsound activities. In addition, an extensive ''prompt corrective action'' regime of mandatory and discretionary supervisory tools was enacted in 1991 to enable regulators to protect the financial stability of all types of insured depository institutions.

3. Consistency With the Glass-Steagall Act

Some commenters also suggested that the proposal would not be consistent with various provisions of the Glass-Steagall Act. These commenters contended that §§ 16 and 21 of the Glass-Steagall Act prevent commercial and investment banking functions from being conducted by a single entity.

The OCC notes that these comments are premised on the assumption that the OCC will approve *specific* types of activities under this regulation and go on to provide the commenters' views about the legality of conducting those types of activities in an operating subsidiary. However, the final rule only establishes a process that enables the OCC to consider and act on a broader range of corporate activities than is permitted for operating subsidiaries under former part 5. By issuing this portion of the final rule, the OCC is not addressing or approving any particular activity for national bank operating subsidiaries. The OCC will evaluate applications to engage in any new operating subsidiary activity on a case-by-case basis following a comprehensive review of any supervisory, policy or legal concerns, consistent with the new procedures for public notice and comment set forth in the final rule.

4. Consistency With the Bank Holding Company Act

Some commenters asserted that the regulation is inconsistent with the Bank Holding Company Act (BHCA) because the BHCA is the exclusive means by which bank holding company affiliates can engage in activities not permissible for banks to conduct themselves. Some of these commenters asserted, for example, that the BHCA, which permits bank holding companies to engage in ineligible securities activities through nonbank subsidiaries provides the exclusive method by which Congress intended to permit bank affiliates to engage in activities such as ineligible securities activities.

As noted above, however, this final rule only establishes a *process* for the OCC to consider a broader range of subsidiary activities. Approval of a particular activity will be subject to the application process set forth in the regulation. To the extent that specific activities are questioned by commenters those issues will be addressed in the context of a specific application; they are not presented by a rule that only establishes an application process. Moreover, the process in the regulation does not authorize ''nonbank'' activities; only activities that are ''part of the business of banking or incidental thereto,'' or permitted for national banks or their subsidiaries under other statutory authority, could be permitted.

The OCC also notes that courts have specifically held that the BHCA does not govern the permissible activities of banks or their subsidiaries. For example, in *Independent Insurance Agents of America, Inc.* v. *Board of Governors of the Federal Reserve System,* 890 F.2d 1275 (2d Cir. 1989) (Merchants II), *cert. denied,* 498 U.S. 810 (1990), the Second Circuit upheld a Federal Reserve Board (FRB) order concluding that the BHCA's activity restrictions did not apply to the activities of a bank subsidiary of a bank holding company. In upholding the order, the court noted that the FRB had a ''reasonable'' interpretation of the BHCA, one that confided decisions regarding the scope of permissible activities of bank subsidiaries to the banks' national and state chartering authorities. *Id.* at 1284.

Shortly thereafter, in *Citicorp* v. *Board of Governors of the Federal Reserve System,* 936 F.2d 66 (2nd Cir. 1991), *cert. denied,* 502 U.S. 1031 (1992), the court applied the reasoning of *Merchants II to a situation involving a subsidiary* of a bank in a bank holding company structure. In vacating a FRB order that required a state bank owned by a bank holding company to terminate certain activities conducted through the state bank's subsidiary, the court found that the BHCA ''cannot sensibly be interpreted to reimpose the authority of the [FRB] on a generation-skipping basis to regulate the subsidiary's subsidiary.'' *Id.* at 68. The activities of the bank's subsidiary in question were, according to the court, appropriately the responsibility of the bank's chartering authority to address.[10]

[10] *Cf.* Section (4)(c)(5) of the Bank Holding Company Act, 12 U.S.C. 1843(c)(5), that provides that the investment and activities restrictions contained in section 4 of that Act do not apply to ''shares which are of the kinds and amounts eligible for investment by national banking associations'' under section 24 of the National Bank Act.

5. OCC Authority Under 12 U.S.C. 93a

Some commenters asserted that the OCC lacks the authority under 12 U.S.C. 93a to issue § 5.34. Federal law at 12 U.S.C. 93a authorizes the Comptroller of the Currency to issue rules and regulations to carry out the responsibilities of the office, except that the authority conferred by 12 U.S.C. 93a does not apply to 12 U.S.C. 36 or the Glass-Steagall Act. These commenters contended that 12 U.S.C. 93a does not confer authority on the OCC to establish national bank powers that they do not have under existing law.

The OCC believes that these commenters misunderstood the effect of the proposal. As already described earlier, the final rule establishes a procedure under which the OCC will consider applications for activities for operating subsidiaries on a case-by-case basis. Moreover, as discussed earlier, these activities must be part of or incidental to the business of banking, or permitted for national banks or their subsidiaries under other statutory authority.

Further, § 5.34 does not purport to diminish or otherwise affect the application of the Glass-Steagall Act to national banks. Glass-Steagall Act prohibitions are still applicable to the same degree as prior to the adoption of the rule. The final rule only recognizes that operating subsidiaries are entities, distinct from a bank, whose activities are not necessarily required to be an exact duplicate of the activities permitted for their parent bank. In other words, the final rule only recognizes the *possibility* that some activity restrictions that apply to a national bank may not apply to a bank's subsidiary. Thus, in this rulemaking, the OCC has not exercised its authority under 12 U.S.C. 93a to adopt that principle as a matter of law or as a final interpretation.

6. Safety and Soundness Considerations

Some commenters also argued that the proposal would permit banks through their operating subsidiaries to engage in risky activities that would jeopardize the deposit insurance system.

The OCC does not today, and will not under this revised rule, approve applications for operating subsidiaries to engage in activities that would endanger the stability of their parent banks. Moreover, the OCC does not assume that new activities would necessarily involve more risk than many well-recognized banking activities conducted by banks today. The OCC also has available a number of measures to address safety and soundness issues that may arise in connection with

activities conducted under the authority of this section. These safeguards include certain requirements added to the final rule in response to commenters' suggestions, the ability to condition application approvals on a case-by-case basis, and statutory changes in recent years that have provided the banking agencies with additional supervisory tools.

For example, in the proposal the OCC noted that it would impose appropriate conditions in connection with the approval of a particular operating subsidiary application in order to ensure bank safety and soundness. After careful deliberation, the OCC has decided to include in the final rule a number of additional conditions that would apply to the parent bank and/or the subsidiary when the subsidiary engages in an activity authorized under § 5.34(d), but different from that permitted for the bank directly to conduct.

The safeguards that are built into the final rule fall into two categories. First, because the use of a separate subsidiary structure can enhance the safety and soundness of conducting new activities by distinguishing the subsidiary's activities from those of the parent bank (as a legal matter) and allowing more focused management and monitoring of its operations,[11] the final rule contains a number of requirements that are intended to emphasize the importance of the subsidiary's independent legal and corporate existence.

Specifically, the final rule requires the subsidiary to: (1) be physically separate and distinct in its operations from the parent bank, including ensuring that the employees of the subsidiary are compensated by the subsidiary, although this requirement would not be construed to prohibit the parent bank and the subsidiary from sharing the same facility, provided that any area in which the subsidiary conducts business with the public is distinguishable, to the extent practicable, from the area in which customers of the bank conduct business with the bank; (2) be held out as a separate and distinct entity from the bank in its written material and direct contact with outside parties, with all written marketing material clearly stating that the subsidiary is a separate entity from the bank and the obligations of the subsidiary are not obligations of the bank; (3) not have the same name as its parent bank, and if the subsidiary has a name similar to its parent bank to take appropriate steps to minimize the risk of customer confusion, including clarifying the separate character of the two entities and the extent to which their respective obligations are insured or not insured by the Federal Deposit Insurance Corporation; (4) be adequately capitalized according to relevant industry measures and maintain capital adequate to support its activities and to cover reasonably expected expenses and losses; (5) maintain separate accounting and corporate records; (6) conduct its operations pursuant to independent policies and procedures that are also intended to inform customers that the subsidiary is an organization separate from the bank; (7) contract with the bank for any services only on terms and conditions substantially comparable to those available to or from independent entities; (8) observe appropriate separate corporate formalities, such as separate board of directors' meetings; (9) maintain a board of directors at least one-third of whom shall not be directors of the bank and shall have relevant expertise capable of overseeing the subsidiary's activities; and (10) have internal controls appropriate to manage the financial and operational risks associated with the subsidiary. These internal controls should also be maintained by the bank.

Second, if the subsidiary is engaged in a principal capacity in activities authorized under § 5.34(f), certain supervisory tools will be particularly useful to protect the financial soundness of the bank. For example, the final rule provides that the bank's capital and total assets shall each be reduced by an amount equal to the amount of the bank's equity investment in the subsidiary, and the subsidiary's assets and liabilities shall not be consolidated with those of the bank. For risk-based capital purposes, 50 percent of the bank's equity investment in the subsidiary must be deducted from Tier 1 capital and 50 percent from Tier 2 capital. In addition, the OCC may require the bank to calculate its capital on a consolidated basis for purposes of determining whether the bank is adequately capitalized under 12 CFR part 6.

The final rule also provides that a national bank must satisfy the eligible bank criteria contained in § 5.3(g) before commencement of the activity, and thereafter, taking into account the required capital deduction described above. The eligible bank criteria helps to ensure that only financially strong and well-managed banks will undertake these activities through their subsidiaries. If the bank ceases to be well capitalized for two consecutive quarters, it must submit a plan to the OCC detailing how it will become well capitalized.

The final rule also contains safeguards on transactions between the bank and this type of subsidiary. Under the final rule, the standards of sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. 371c and 371c–1, shall apply to, and shall be enforced and applied by the OCC with respect to, transactions between the bank and the subsidiary. The application of these sections will limit a bank's investments in and extensions of credit to this type of subsidiary to 10 percent of the bank's capital, require extensions of credit to be fully collateralized, and apply arm's-length safeguards to transactions between the bank and the subsidiary.

Collectively, these conditions will help to contain risk, reduce potential conflicts of interest, and help to ensure the safe and sound operation of the parent bank. The arm's-length standards also address concerns regarding inappropriate subsidization by the bank of its subsidiary. In addition, the OCC retains the authority to impose additional safeguards, either on a case-by-case or activity-by-activity basis, to address safety and soundness issues presented by particular types of operations. To the extent that the OCC's future experience with the safeguards contained in the regulation indicates that the safeguards need to be supplemented, or that other measures would more effectively or efficiently accomplish their intended objectives, the OCC will propose appropriate changes to the regulation.

Finally, Federal legislation in recent years has provided the federal banking agencies with additional supervisory tools to address promptly supervisory concerns that may arise in connection with activities engaged in by banks or their subsidiaries. For example, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 provided substantial civil money penalties for national banks engaging in unsafe and unsound banking practices or for violations of conditions imposed in writing in connection with the grant of an application or other request by a national bank. Likewise, the Federal Deposit Insurance Corporation Improvement Act of 1991, (Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2236), established a framework for prompt corrective action when banks fail to meet specified capital requirements, including the ability of the OCC to require an undercapitalized institution to divest any subsidiary that may pose

[11] *See e.g.*, OCC Interpretive Letter No. 725 (May 10, 1996) *reprinted in* Fed. Banking L. Rep. (CCH) Para. 81,040 (special purpose subsidiary established by NationsBank, N.A.). The FDIC in a recent proposal also recognized that conducting activities in a subsidiary can be helpful in containing risks to the bank. See 61 FR 43,486 (August 23, 1996).

a significant risk to the parent bank or that is likely to cause a significant dissipation of the institution's assets or earnings. These and other available supervisory actions provide the OCC with a substantial array of tools—not available until relatively recently—to address risks presented by national bank operating subsidiaries.

Bank Service Companies (§ 5.35)

Proposed § 5.35 streamlined the application requirements and clarified certain aspects of the rule. The proposal also minimized regulatory burden with respect to low-risk activities by implementing changes resulting from the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, Sept. 23, 1994, 108 Stat. 2160 (Riegle Act), and conforming § 5.35 with the procedures proposed for operating subsidiaries.

The commenters supported the proposal, and, specifically, the expedited review procedure and parallel construction to § 5.34.

The OCC adopts this section as proposed, with modifications and other technical changes to conform this section to § 5.34. The section is also changed from the proposal to account for the new provisions in section 2613 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 that authorize bank service companies to organize as limited liability companies.

Other Equity Investments (§ 5.36)

The proposal restructured the section and removed OCC approval requirements for equity investments in an agricultural credit corporation or in a savings association to be acquired under section 13 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1823. Instead, the proposal covered only investments authorized by statutes enacted after February 12, 1990, that are not covered by other OCC regulations.

The proposal also incorporated an application process that conformed with other sections in part 5. The proposal maintained the 30-day time frame for approval of other equity investments but simplified the language to correspond to other similar provisions. The OCC also requested comment on whether to remove the section.

The OCC received two comment letters, each supporting removal of the provision. However, the OCC continues to believe that although an application may not be warranted, some notification to the OCC of certain equity investments by national banks facilitates examiner supervision and bank safety and soundness. Therefore, the final rule clarifies that 12 U.S.C. 24(Seventh) and other statutes authorize national banks to make various types of equity investments. With respect to equity investments in an agricultural credit corporation, a savings association eligible to be acquired under section 13 of the FDIA, 12 U.S.C. 1823, and equity investments authorized by statute after February 12, 1990 and not covered by other applicable OCC regulation, the OCC will continue to require the bank to file a notice with the appropriate district office within 10 days after the investment. Other types of equity investments permitted for national banks will be reviewed by the OCC, as appropriate, on a case-by-case basis.

Investment in Bank Premises (§ 5.37)

The proposal transferred certain provisions previously located in 12 CFR part 7, clarified the circumstances under which OCC approval is required for national bank investment in bank premises in excess of the bank's capital stock, and described the procedures for submitting an application for OCC review. The proposal also provided that, notwithstanding the capital stock limitation, an eligible bank may provide an after-the-fact notice for aggregate investments in bank premises up to 20 percent of the bank's ''capital and surplus'' as defined in § 5.3(d).

Commenters generally supported the proposed provision, especially the expedited review process. However, a number of commenters had additional recommendations. Most suggestions focused on proposed § 5.37(c)(3), which provided for a notice procedure for eligible banks making qualifying investments in bank premises.

The OCC has reviewed the commenters' suggestions and the after-the-fact notice procedures and determined that the examination and supervision process contains sufficient safeguards to prevent excessive investments in bank premises. Therefore, the final rule makes a number of changes to further increase the amount a national bank may invest in bank premises without seeking OCC approval and to conform with recent changes in the Economic Growth and Regulatory Paperwork Reduction Act of 1996. Under the final rule, a bank that has a CAMEL rating of 1 or 2 may make an aggregate investment in bank premises up to 150 percent of the bank's capital and surplus (as defined in § 5.3(d)) without submitting an application for prior approval to the appropriate district office, provided that the bank is well capitalized both before and after the loan or investment is made. The bank must provide a description of the investment to the appropriate district office within 30 days following the transaction.

The final rule also defines the term ''bank premises'' by adopting certain provisions of the Call Report line item on Bank Premises and Fixed Assets. Under the final rule, ''bank premises'' is defined as: (1) premises that are owned and occupied (or to be occupied, if under construction) by the bank, its branches, or its consolidated subsidiaries; (2) capitalized leases and leasehold improvements, vaults, and fixed machinery and equipment; (3) remodeling costs to existing premises; (4) real estate acquired and intended, in good faith, for use in future expansion; or (5) parking facilities that are used by customers or employees of the bank, its branches, and its consolidated subsidiaries. The inclusion of this definition will clarify the types of investments and loans subject to this section.

Another commenter suggested the OCC clarify whether the entire investment in bank premises must be made within eighteen months to avoid the expiration of approval. The changes in the final rule to § 5.13(g) for situations beyond the control of the applicant adequately address this concern.

Change in Location of Main Office (§ 5.40)

The proposal reorganized this section and streamlined the procedures to change the location of a national bank's main office.

All comments received by the OCC on this section supported the proposal. One commenter suggested including a notice procedure for a temporary relocation of a main office in the event that the permanent location is not immediately available. The OCC plans to include further guidance on this issue in the Manual. The OCC adopts this section substantially as proposed.

Corporate Title (§ 5.42)

The proposal rearranged this section for greater clarity and specifically alerted banks to the restrictions in 18 U.S.C. 709 regarding the use of certain titles. No comments were received on this section. The OCC adopts this section substantially as proposed.

Changes in Permanent Capital (§ 5.46)

The proposal restructured and streamlined this section to clarify the requirements for a change to a national bank's permanent capital and to reduce regulatory burden. The proposal no longer required letters of intent, preliminary approval, and notification of changes in par value (unless related

to selling stock for consideration other than cash). By dividing the relevant information by subject matter, the proposal clarified the procedures by which a national bank may make a change in its permanent capital and drew a clear distinction between procedures increasing and decreasing permanent capital.

The proposal also sought to facilitate increases in permanent capital by clarifying that most increases in permanent capital do not require OCC approval. Generally, a national bank need only file a letter of notification with the OCC after the sale or completion of the transaction. The proposal also provided an expedited review procedure for eligible banks.

All the comments received on this section supported the OCC's proposal. The OCC believes these procedures significantly clarify and streamline the process for changes in permanent capital. Therefore, the OCC is adopting this section as proposed with an additional change to further reduce regulatory burden.

Under proposed § 5.46, a national bank had to submit an application and receive OCC approval each time it intended to decrease its permanent capital. The final rule provides that an eligible bank may submit an application for expedited processing that would cover planned reductions of capital and distributions that would result in a distribution of cash or assets or a transfer to undivided profits for up to four consecutive quarters (*i.e.*, one year), rather than requiring four separate applications and related application fees. To qualify for this treatment, the bank must continue to be an eligible bank following each reduction in its capital. In addition, the application must include the specified information for each quarter covered by the application.

Subordinated Debt as Capital (§ 5.47)

Under the proposal, unless the OCC has previously notified a national bank that prior approval is required, a national bank needed no prior approval to prepay subordinated debt.

Most comments received on proposed § 5.47 supported the OCC's proposal to allow a national bank to issue subordinated debt as Tier 2 capital without prior OCC approval. However, one commenter noted that prior regulatory approval and knowledge of reductions in capital may be an important element of monitoring safety and soundness, and thus, prepayments of subordinated debt should be subject to OCC approval.

The OCC shares the commenter's desire to ensure the safe and sound operation of banks, particularly those institutions that are not well capitalized. Therefore, the OCC has changed the proposal to provide that only banks that remain eligible banks may dispense with prior OCC approval for the prepayment of subordinated debt. This will ensure the continued monitoring of prepayments of subordinated debt by institutions more likely to present safety and soundness concerns (*i.e.*, banks that are not well capitalized, have a CAMEL rating of 3, 4, or 5, or are subject to certain OCC orders, agreements or directives). The OCC also retains the authority to notify any other bank that demonstrates safety and soundness concerns that the bank must obtain prior OCC approval to issue or prepay subordinated debt. The OCC believes that this approach ensures continued monitoring of safety and soundness concerns without unduly restricting well-capitalized, well-managed banks.

In addition, the final rule adds provisions relating to the issuance of subordinated debt to count as Tier 3 capital in addition to Tier 2 capital.

Voluntary Liquidation (§ 5.48)

The proposal reorganized and simplified this section. It clarified that a national bank preparing to voluntarily liquidate must file a notice with the OCC once the bank's shareholders have voted to voluntarily liquidate the bank pursuant to 12 U.S.C. 182. The proposal stated that the bank must also publish a public notice pursuant to that statute.

The proposal also reduced the burden of dissolving shell banks remaining after whole-bank purchase and assumptions involving transactions between affiliated or non-affiliated banks, provided the acquiring bank is adequately capitalized.

The comment received by the OCC supported this provision. Therefore, the OCC adopts this section as proposed with minor clarifying changes.

Change in Bank Control; Reporting of Stock Loans (§ 5.50)

The proposal substantially reorganized, clarified, and simplified this section. Among other things, the proposal removed paragraphs that were repetitive or confusing and incorporated a number of OCC interpretations regarding § 5.50. The proposal also applied the standards of the Change in Bank Control Act of 1978 (CBCA), 12 U.S.C. 1817(j), to uninsured national banks.

The comments received by the OCC supported the proposed changes to this section and suggested some additional clarifications. The OCC adopts this section as proposed with a few modifications.

The newspaper publication required by proposed § 5.50(g)(1) required an applicant to publish a public announcement of its filing in a newspaper widely available in the geographic area where the affected national bank is located. This change is similar to that proposed in § 5.8, and commenters recommended that the OCC retain the language in the former regulation because they believed that it provides the public with more effective notice. The OCC agrees with the commenters, and the final rule retains the language in the former regulation, *i.e.*, requiring banks to publish a public announcement in a newspaper of general circulation in the community where the affected national bank is located.

Another commenter suggested that the OCC should revise proposed § 5.50(f)(2)(ii) (A) and (B) so that an acquiror must satisfy both factors to create a rebuttable presumption that an acquisition is made by a person with the power to direct the bank's management or policies. The OCC concluded that this change in the OCC's longstanding policy would be too restrictive and, therefore, the final rule adopts this provision as proposed.

One commenter also suggested that the term ''default'' in the definition of ''good faith'' be defined to mean only a failure to make timely payments of interest or principal or a material default with respect to other obligations in a loan agreement. Because these situations may be fact dependent, the OCC did not add limiting language in the final rule.

Finally, the final rule reflects recent amendments contained in section 2226 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 to the CBCA stock loan reporting requirements. These amendments eliminate the stock loan reporting requirements for all entities other than foreign banks and their affiliates. The OCC notes that for purposes of reporting loans secured by the stock of a national bank without FDIC deposit insurance, federal branches and agencies of foreign banks only are subject to these reporting requirements.

Change in Directors or Senior Executive Officers (§ 5.51)

The proposal provided for certain exceptions to reduce unnecessary regulatory burden, addressed agency appeal issues, and made additional housekeeping-type changes to conform § 5.51 to the rest of part 5.

The comments received by the OCC on this section all supported the changes to this section. The final rule adopts this section as proposed with additional changes to conform to the recent changes contained in section 2209 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. These changes removed the requirement of this section to provide prior written notice to the OCC to add or replace directors or senior executive officers if the national bank: (1) has operated as a depository institution for less than two years; or (2) has undergone a change in control within the preceding two years that required it to file a notice under the CBCA. These changes also extend the prior review period to 90 days and remove the requirements for suspending the review period.

Change of Address (§ 5.52)

The proposal added this section to part 5 to require a national bank that changes its address to inform the OCC of that change in a timely manner.

The OCC received no comments on this section. The final rule adopts this section substantially as proposed.

Dividends—Subpart E

The proposal organized the information in the current §§ 5.61 and 5.62 into a new subpart to communicate better the standards and procedures underlying a national bank's payment of dividends and to conform to recent statutory changes. The proposal also clarified definitions and procedures.

Commenters generally supported the proposed changes. A few commenters suggested providing circumstances under which a bank could pay dividends in kind without prior OCC approval. The OCC continues to believe, however, that dividends other than for cash raise potential valuation issues and should continue to receive prior OCC review.

The OCC adopts this subpart substantially as proposed with one exception. The final rule clarifies that § 5.64, which implements the dividend restrictions contained in 12 U.S.C. 60, does not apply to stock dividends. The provision is intended to prevent impairment of the bank's capital structure through payment of excessive dividends. The OCC believes that payments of stock dividends, which do not result in a distribution of cash or assets, do not raise these concerns.

Federal Branches and Agencies—Subpart F

The proposal discussed relocating provisions relating to applications of Federal branches and agencies, former §§ 5.23, 5.25, 5.41, and 5.43, to 12 CFR part 28 to consolidate all of the regulations concerning Federal branches and agencies and international activities of national banks in one regulation. The proposal invited comment on the advisability of relocating these provisions. The OCC received one comment letter generally supporting the relocation of the provisions relating to Federal branches and agencies.

The OCC determined that while it is desirable to consolidate all of the regulations concerning Federal branches and agencies and international activities of national banks in one regulation, it is also desirable to address all procedures relating to the filing of applications and notices in part 5. Therefore, the final rule includes a new subpart F outlining the corporate procedures for Federal branches and agencies and refers readers to part 28 for substantive rules and policies relating to Federal branches and agencies of foreign banks.

Technical Amendment to 12 CFR Part 3

The final rule contains two technical and conforming amendments to capital adequacy, 12 CFR part 3. These changes clarify that in most circumstances prior OCC approval is not required for the issuance and prepayment of subordinated debt.

Technical Amendment to 12 CFR Part 7

The final rule contains two technical changes to part 7 removing provisions that are now accounted for in part 5. A technical change is also made to § 7.1000 to cross-reference the applicable provisions in part 5 relating to investments in bank premises.

Technical Amendment to 12 CFR Part 16

The final rule contains a technical and conforming change to 12 CFR 16.20(d). The final rule changes the reference from § 5.33(b)(6)(ii) to § 5.33(e)(8).

Technical Amendment to 12 CFR Part 28

The final rule contains technical corrections to § 28.2(b) and § 28.10.

DERIVATION TABLE

[This table directs readers to the provision(s) of the former regulation, if any, upon which the provision in the final rule is based]

Revised provision	Original provision	Comments
§ 5.1	§ 5.1	Modified.
§ 5.2(a)	§ 5.2(a)	Modified.
(b)	§ 5.2(b)	Modified.
(c)	§ 5.14	Modified.
	§ 5.3	Removed.
§ 5.3(a)		Added.
(b)	§ 5.2(e)	Significant change.
(c)		Added.
(d)		Added.
(e)		Added.
(f)		Added.
(g)		Added.
(h)		Added.
(i)		Added.
(j)	§ 5.2(d)	Modified.
(k)		Added.
(l)		Added.
§ 5.4(a)	§ 5.4	Significant change.
(b)	§ 5.4	Modified.
(c)		Added.
(d)	§ 5.4	Significant change.
(e)		Added.
§ 5.5	§ 5.5	Significant change.

DERIVATION TABLE—Continued

[This table directs readers to the provision(s) of the former regulation, if any, upon which the provision in the final rule is based]

Revised provision	Original provision	Comments
	§ 5.6	Removed.
§ 5.7(a)	§ 5.7	Modified.
(b)	§§ 5.5(c), 5.7	No change.
§ 5.8(a)	§ 5.8(a)	Modified.
(b)	§ 5.8(a)	Modified.
(c)	§ 5.8(a)	Modified.
(d)		Added.
(e)		Added.
(f)		Added.
§ 5.9(a)	§ 5.9(b)	Modified.
(b)	§ 5.9(a)	Significant change.
(c)	§ 5.9(a)	Significant change.
§ 5.10(a)	§ 5.10(a)	Modified.
(b)	§ 5.10(a)	Significant change.
§ 5.11(a)	§ 5.10(b)	Modified.
(b)	§ 5.10(b)	Modified.
(c)	§ 5.10(c)	Modified.
§ 5.11(d)(1)	§ 5.11(a)	Modified.
(d)(2)	§ 5.11(d)	Modified.
(e)	§ 5.11(c)	Modified.
(f)	§ 5.10(b)(5)	Modified.
(g)(1)	§ 5.11(e)(1)	Modified.
(g)(2)	§ 5.11(e)(3)	Modified.
(g)(3)	§ 5.11(e)(3)	Significant change.
(h)	§ 5.11(f)	Modified.
(i)		Added.
§ 5.12	§ 5.12	No change.
§ 5.13(a)	§ 5.13 (b), (c)	Significant change.
(a)(1)		Added.
(a)(2)		Added.
(b)	§ 5.13(c)	Significant change.
(c)	§ 5.7	Modified.
(d)	§ 5.13(a)	Modified.
(e)	§ 5.13(a)	Modified.
(f)	§ 5.13(d)	Significant change.
(g)		Added.
(h)	§ 5.13(e)	Significant change.
	§ 5.14	Removed.
§ 5.20(a)	§ 5.20(b)	Significant change.
(b)		Added.
(c)	§§ 5.20(a), 5.21(a), 5.22(a)(2), 5.27(b)	Significant change.
(d)(1)	§ 5.27(c)	Modified.
(d)(2)–(7)		Added.
(e)(1)	§ 5.20(b), (d)(4)(v)	Significant change.
(e)(2)	§ 5.20(b)	Modified.
(f)(1)	§ 5.20(d)	Significant change.
(f)(2)	§ 5.20(c), (d)	Significant change.
(f)(3)	§ 5.20(d)(1), (d)(1)(ii)	Modified.
(g)(1)	§ 5.20(d)(2)(i)	Modified.
(g)(2)	§ 5.20(d)(3)(ii)	Modified.
(g)(3)(i)	§ 5.20(d)(2)(ii)	No change.
(g)(3)(ii)	§ 5.20(d)(2)(iii)	No change.
(g)(3)(iii)	§ 5.20(d)(2)(iv)	No change.
(g)(4)(i)	§ 5.20(d)(4)(iii)(A)	Modified.
(g)(4)(ii)	§ 5.20(d)(4)(iii)(C)	Modified.
(g)(5)	§ 5.20(d)(1)(iv), (d)(2)(iii)	Significant change.
(h)(1)	§ 5.20(d)(1)(i), (d)(3)	Significant change.
(h)(2)	§ 5.20(d)(3)(i)	Modified.
(h)(3)(i)	§ 5.20(d)(3)(ii)(A)	Modified.
(h)(3)(ii)	§ 5.20(d)(3)(ii)(C)	Significant change.
(h)(4)	§ 5.20(d)(3)(iii)	Significant change.
(h)(5)(i)	§ 5.20(d)(3)(iv), (d)(3)(iv)(A)	Significant change.
(h)(5)(ii)	§ 5.20(b), (d)(3)(iv)	Modified.
(h)(5)(iii)	§ 5.20(d)(3)(iv)(B)	Modified.
(h)(6)	§ 5.20(d)(3)(v), (d)(3)(v)(A)	Modified.
(h)(7)		Added.
(i)(1)	§ 5.20(e)	Significant change.
(i)(2)	§ 5.20(d)	Significant change.
(i)(3)	§ 5.20(d)(1)(iii)	Significant change.
(i)(4)	§ 5.20(d)(1)(iii)	Significant change.
(i)(5)(i)	§ 5.20(f)	Modified.

DERIVATION TABLE—Continued

[This table directs readers to the provision(s) of the former regulation, if any, upon which the provision in the final rule is based]

Revised provision	Original provision	Comments
(i)(5)(ii)	§ 5.20(d)(4)(ii)	No change.
(i)(5)(iii)	§ 5.20(d)(3)(iii), (g)	Modified.
(j)		Added.
(k)(1)	§ 5.27(e)(1)	Modified.
(k)(2)	§ 5.27(e)(2)	Modified.
(k)(3)	§ 5.27(d)	Significant change.
(l)	§ 5.22(a)(2), (c)	Significant change.
	§ 5.21	Incorporated into § 5.33.
	§ 5.22	Incorporated into § 5.20.
	§ 5.23	Incorporated into § 5.70.
§ 5.24(a)	§ 5.24(a)	Modified.
(b)		Added.
(c)		Added.
(d)(1)	§ 5.24(c)(1)	Significant change.
(d)(2)(i)		Added.
(d)(2)(ii)	§ 5.24(c)(2)	Significant change.
(d)(2)(iii)		Added.
(d)(2)(iv)	§ 5.24(c)(4)	Modified.
(d)(2)(v)	§ 5.24(c)(4)	Modified.
(d)(3)	§ 5.24(b)	No change.
(d)(4)		Added.
(e)(1)	§ 5.24(d)(1)	Significant change.
(e)(2)	§ 5.24(d)(2)	Modified.
(e)(3)	§ 5.24(d)(1)	Modified.
(f)		Added.
	§ 5.25	Incorporated into § 5.70.
§ 5.26(a)	§ 5.26(a)	No change.
(b)	§ 5.26(d)	Significant change.
(c)	§ 5.26(b)	Significant change.
(d)	§ 5.26(d)	Significant change.
(e)(1)	§ 5.26(d)	Significant change.
(e)(2)	§ 5.26(e)	Significant change.
(e)(3)	§ 5.26(f)	Significant change.
(e)(4)	§ 5.26(g)	Significant change.
(e)(5)		Added.
(e)(6)	§ 5.26(b)	Modified.
(e)(7)	§ 5.26(h)	Modified.
	§ 5.27	Incorporated into § 5.20.
§ 5.30(a)	§ 5.30(a)	Modified.
(b)	§ 5.30(a)	Modified.
(c)		Added.
(d)(1)	§§ 5.30(b), 5.31(b)	Significant change.
(d)(2)		Added.
(d)(3)		Added.
(d)(4)		Added.
(d)(5)		Added.
(e)	§ 5.30(c)	Significant change.
(f)(1)		Added.
(f)(2)		Added.
(f)(3)		Added.
(f)(4)	§ 5.30(g)	No change.
(f)(5)		Added.
(g)		Added.
(h)(1)		Added.
(h)(2)		Added.
(h)(3)		Added.
(h)(4)		Added.
(i)	§ 5.30(f)	Modified.
(j)		Added.
	§ 5.31	Incorporated into § 5.30.
	§ 5.32	Incorporated into § 5.70.
§ 5.33(a)	§ 5.33(a)	Significant change.
(b)		Added.
(c)		Added.
(d)(1)		Added.
(d)(2)		Added.
(d)(3)		Added.
(d)(4)	§ 5.21(a)	Significant change.
(e)(1)	§ 5.33(b)(2)	Significant change.
(e)(1)(i)	§ 5.33 (b)(2)(i), (b)(3), (b)(4)	Significant change.
(e)(1)(ii)	§ 5.33 (b)(2)(iii), (b)(2)(iv), (b)(6)	Significant change.

DERIVATION TABLE—Continued

[This table directs readers to the provision(s) of the former regulation, if any, upon which the provision in the final rule is based]

Revised provision	Original provision	Comments
(e)(1)(iii)	§ 5.33 (b)(2)(ii), (b)(5)	Significant change.
(e)(1)(iv)	§ 5.33 (b)(2)(ii), (b)(5)	Significant change.
(e)(2)		Added.
(e)(3)		Added.
(e)(4)(i)	§ 5.21	Significant change.
(e)(4)(ii)	§ 5.21 (e), (f)	Significant change.
(e)(4)(iii)	§ 5.21(g)	Significant change.
(e)(4)(iv)	§ 5.21(h)	Significant change.
(e)(5)	§ 5.33(b)(8)	Significant change.
(e)(6)		Added.
(e)(7)		Added.
(e)(8)	§ 5.33(b)(6)(ii)	Significant change.
(f)(1)		Added.
(f)(2)	§ 5.21(c)	Modified.
(f)(3)		Added.
(g)(1)	§ 5.33(c)(1)	Significant change.
(g)(2)	§ 5.33(c)(2)	Significant change.
(g)(3)(i)	§ 5.33(h)(1)	Significant change.
(g)(3)(ii)	§ 5.33(h)(2)	Modified.
(g)(3)(iii)	§ 5.33(h)(3)	Significant change.
(h)		Added.
(i)		Added.
(j)		Added.
§ 5.34(a)	§ 5.34(a)	Modified.
(b)		Added.
(c)		Added.
(d)(1)	§ 5.34 (c), (d)	Significant change.
(d)(2)	§ 5.34(c)	Significant change.
(d)(3)	§ 5.34(d)(3)	Modified.
(d)(4)	§ 5.34(d)(2)(ii)	Modified.
(e)(1)(i)	§ 5.34(d)(1)(i)	Significant change.
(e)(1)(ii)	§ 5.34(b)	Modified.
(e)(1)(iii)	§ 5.34(d)(1)(iii)	Modified.
(e)(2)		Added.
(e)(3)		Added.
(e)(4)	§ 5.34(d)(1)(iv)	Significant change.
(e)(5)		Added.
(f)		Added.
§ 5.35(a)	§ 5.35(a)	Modified.
(b)		Added.
(c)		Added.
(d)(1)–(5)	§ 5.35(c)	Significant change.
(e)	§ 5.35(d)	Significant change.
(f)(1)	§ 5.35 (e)(1), (e)(2)	Significant change.
(f)(2)		Added.
(f)(3)		Added.
(f)(4)	§ 5.35(e)(1)(i)(D)	Modified.
(f)(5)	§ 5.35(e)(1)(i)(B)	Significant change.
(f)(6)	§ 5.35(b)	Modified.
(g)	§ 5.35(e)(1)(ii)(A)	Modified.
(h)	§ 5.35(f)	Modified.
(i)(1)	§ 5.35(e)(1)(ii)(A)	Modified.
(i)(2)		Added.
§ 5.36(a)	§ 5.36(a)	Modified.
(b)	§ 5.36(c)	Modified.
(c)(1)	§ 5.36(d)(1)	Significant change.
(c)(2)	§ 5.36(d)(1)	Significant change.
(c)(3)	§ 5.36(d)(1)	Modified.
(d)	§ 5.36(b)	Modified.
§ 5.37		Added.
§ 5.40(a)	§ 5.40(a)	Modified.
(b)		Added.
(c)		Added.
(d)(1)	§ 5.40(d)(1)	No change.
(d)(2)	§ 5.40 (d)(2), (d)(3)	Significant change.
(d)(3)	§ 5.40(d)(4)	Modified.
(d)(4)		Added.
(d)(5)	§ 5.40(c)	Modified.
(e)	§ 5.40(h)	Modified.
	§ 5.41	Incorporated into § 5.70.
§ 5.42(a)	§ 5.42(a)	Modified.

DERIVATION TABLE—Continued

[This table directs readers to the provision(s) of the former regulation, if any, upon which the provision in the final rule is based]

Revised provision	Original provision	Comments
(b)		Added.
(c)	§ 5.42(c)	Significant change.
(d)(1)	§ 5.42(d)	Modified.
(d)(2)	§ 5.42(e)	Modified.
(d)(3)	§ 5.42(b)	Modified.
	§ 5.43	Incorporated into § 5.70.
	§ 5.44	Removed.
	§ 5.45	Removed.
§ 5.46(a)	§ 5.46(a)	Modified.
(b)		Added.
(c)		Added.
(d)	§ 5.46(b)	Modified.
(e)(1)		Added.
(e)(2)		Added.
(e)(3)		Added.
(e)(4)		Added.
(f)	§ 5.46(f)	Significant change.
(g)	§ 5.46(f) (2)–(5)	Significant change.
(h)	§ 5.46(f)(5), (f)(6)	Significant change.
(i)(1)	§ 5.46(g)(1)	Significant change.
(i)(2)	§ 5.46(f)(1)(i)	Significant change.
(i)(3)	§ 5.46(g)(2), (g)(3)	Significant change.
(i)(4)		Added.
(i)(5)	§ 5.46(g)(4)	Significant change.
(j)	§ 5.46(c)	Modified.
(k)	§ 5.46(d)	Significant change.
§ 5.47(a)	§ 5.47(a)	No change.
(b)	§ 5.47(b)	Modified.
(c)	§ 5.47(c)	No change.
(d)(1)	§ 5.47(d)(1)	No change.
(d)(2)	§ 5.47(d)(2)	No change.
(d)(3)		Added.
(e)(1)	§ 5.47(e)(1)	No change.
(e)(2)		Added.
(e)(3)	§ 5.47(e)(2)	Modified.
(f)(1)	§ 5.47(f)(1)	No change.
(f)(2)	§ 5.47(f)(2)	Modified.
(g)	§ 5.47(g)	Modified.
(h)	§ 5.47(h)	No change.
(i)	§ 5.47(i)	No change.
§ 5.48(a)	§ 5.48(a)	Modified.
(b)		Added.
(c)	§ 5.48(b)	Modified.
(d)		Added.
(e)(1)	§ 5.48(c)	Significant change.
(e)(2)	§ 5.48(e)	Significant change.
(e)(3)	§ 5.48(f)	Modified.
(f)(1)		Added.
(f)(2)		Added.
(g)	§ 5.48(d)	Modified.
§ 5.50(a)	§ 5.50(a)	Modified.
(b)		Added.
(c)(1)		Added.
(c)(2)(i)	§ 5.50 (f)(1), (f)(2)	Modified.
(c)(2)(ii)	§ 5.50(f)(1)	Modified.
(c)(2)(iii)	§ 5.50(f)(4)	No change.
(c)(2)(iv)	§ 5.50(f)(5)	No change.
(c)(2)(v)	§ 5.50(f)(6)	No change.
(c)(2)(vi)	§ 5.50(f)(7)	Modified.
(c)(3)	§ 5.50(g)(4)	Significant change.
(d)(1)		Added.
(d)(2)		Added.
(d)(3)	§ 5.50(d) (ftnt 1)	Modified.
(d)(4)		Added.
(d)(5)	§ 5.50(c), (d)(1) (ftnt 2)	Modified.
(d)(6)	§ 5.50(c)	Modified.
(e)(1)	§ 5.50(g)(1)(i), (g)(1)(iii)	Significant change.
(e)(2)	§ 5.50(g)(1)(ii), (g)(3)(iii)	Modified.
(e)(3)	§ 5.50(g)(1)(iii), (g)(5)	Modified.
(f)(1)	§ 5.50(b)	Significant change.
(f)(2)(i)	§ 5.50(d)(1)	Modified.

DERIVATION TABLE—Continued

[This table directs readers to the provision(s) of the former regulation, if any, upon which the provision in the final rule is based]

Revised provision	Original provision	Comments
(f)(2)(ii)	§ 5.50(d)(1)(i), (d)(1)(ii)	Modified.
(f)(2)(iii)	§ 5.50(d)(2)	No change.
(f)(2)(iv)	§ 5.50(d)(1), (d)(3)	Significant change.
(f)(2)(v)	§ 5.50(d)(3)	Significant change.
(f)(3)(i)	§ 5.50 (e)(2), (g)(2)	Modified.
(f)(3)(i)(A), (B)	§ 5.50(g)(2)	Modified.
(f)(3)(ii)	§ 5.50(g)(1)(v)	Modified.
(f)(3)(ii)(A)	§ 5.50(g)(1)(v)	Modified.
(f)(3)(ii)(B)	§ 5.50(h)(1)	Significant change.
(f)(3)(ii)(C)		Added(1)
(f)(3)(iii)	§ 5.50(g)(1)(iv)	Modified(1)
(f)(4)	§ 5.50(g)(5)	Significant change(1)
(f)(5)	§ 5.50(g)(1)(iv)	Significant change(1)
(g)(1)	§ 5.50(h)(1)	Significant change(1)
(g)(2)	§ 5.50(h)(2)	Significant change(1)
(h)		Added(1)
§ 5.51(a)	§ 5.51(a)	No change(1)
(b)		Added(1)
(c)(1)	§ 5.51(c)(1)	Modified(1)
(c)(2)	§ 5.51(c)(2)	Modified(1)
(c)(3)	§ 5.51(c)(3)	Modified(1)
(c)(4)	§ 5.51(c)(4)	Modified(1)
(c)(5)	§ 5.51(c)(5)	No change(1)
(c)(6)	§ 5.51(c)(6)	No change(1)
(d)	§ 5.51(d)	Modified(1)
(e)(1)	§ 5.51(e)(1)	Modified(1)
(e)(2)	§ 5.51(e)(2)	No change(1)
(e)(3)	§ 5.51(e)(3)	Modified(1)
(e)(4)	§ 5.51(e)(5)	Modified(1)
(e)(5)	§ 5.51(e)(6)	No change(1)
(e)(6)	§ 5.51(e)(7)	Modified(1)
(e)(7)	§ 5.51(e)(8)	No change(1)
(e)(8)	§ 5.51(b)	Modified(1)
(f)(1)	§ 5.51(f)(1)	No change(1)
(f)(2)	§ 5.51(f)(2)	No change(1)
(f)(3)	§ 5.51(f)(3)	No change(1)
(f)(4)	§ 5.51(f)(4)	No change(1)
§ 5.52		Added(1)
§ 5.60(a)	§§ 5.61(a), 5.62(a)	Significant change(1)
(b)		Added(1)
(c)	§§ 5.61(b), 5.62(b)	Modified(1)
§ 5.61(a)		Added(1)
(b)		Added(1)
§ 5.62		Added(1)
§ 5.63(a)	§ 5.61(a)	Significant change(1)
(b)	§ 5.61(e)	Modified(1)
§ 5.64(a)	§ 5.62(a)(1)	Significant change(1)
(b)	§ 5.62(a)(2)	Modified(1)
(c)	§ 5.61(d)(3)	Significant change(1)
(c)(1)	§ 5.61(d)(3)(i)	No change(1)
(c)(2)	§ 5.61(d)(3)(ii)	Modified(1)
§ 5.65		Added(1)
§ 5.66	12 CFR § 7.2024	No change(1)
§ 5.67	12 CFR § 7.2023	No change(1)
§ 5.70	§§ 5.23, 5.25, 5.27, 5.32, 5.41, 5.43	Significant change(1)

Regulatory Flexibility Act

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

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC

has determined that the final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, the final rule has the effect of reducing burden and increasing the efficiency of corporate activities and corporate transactions undertaken by national banks.

List of Subjects

12 CFR Part 3

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

12 CFR Part 5

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

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

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

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907 and 3909.

2. In § 3.100, the heading of paragraph (f) and paragraph (f)(1) are revised to read as follows:

§ 3.100 Capital and surplus.

* * * * *

(f) *Requirements and restrictions: Limited life preferred stock, mandatory convertible debt, and other subordinated debt*—(1) *Requirements.* Issues of limited life preferred stock and subordinated notes and debentures (except mandatory convertible debt) shall have original weighted average maturities of at least five years to be included in the definition of *surplus.* In addition, a subordinated note or debenture must also:

(i) Be subordinated to the claims of depositors;

(ii) State on the instrument that it is not a deposit and is not insured by the FDIC;

(iii) Be unsecured;

(iv) Be ineligible as collateral for a loan by the issuing bank;

(v) Provide that once any scheduled payments of principal begin, all scheduled payments shall be made at least annually and the amount repaid in each year shall be no less than in the prior year; and

(vi) Provide that no prepayment (including payment pursuant to an acceleration clause or redemption prior to maturity) shall be made without prior OCC approval unless the bank remains an eligible bank, as defined in 12 CFR 5.3(g), after the prepayment.

* * * * *

3. In appendix A to part 3, section 2, paragraph (b)(4) is revised and footnote 5 is removed and reserved to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

Section 2. Components of capital.

* * * * *

(b) *Tier 2 Capital.* * * *

(4) Term subordinated debt instruments, and intermediate-term preferred stock and related surplus are included in Tier 2 capital, but only to a maximum of 50% of Tier 1 capital as calculated after deductions pursuant to section 2(c) of this appendix. To be considered capital, term subordinated debt instruments shall meet the requirements of § 3.100(f)(1). However, pursuant to 12 CFR 5.47, the OCC may, in some cases, require that the subordinated debt be approved by the OCC before the subordinated debt may qualify as Tier 2 capital or may require prior approval for any prepayment (including payment pursuant to an acceleration clause or redemption prior to maturity) of the subordinated debt. Also, at the beginning of each of the last five years for the life of either type of instrument, the amount that is eligible to be included as Tier 2 capital is reduced by 20% of the original amount of that instrument (net of redemptions).

* * * * *

4. Part 5 is revised to read as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

Sec.

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

§ 5.1 Scope.

This part establishes rules, policies and procedures of the Office of the Comptroller of the Currency (OCC) for corporate activities and transactions involving national banks. It contains information on rules of general and specific applicability, where and how to file, and requirements and policies applicable to filings. This part also establishes the corporate filing procedures for Federal branches and agencies of foreign banks.

Subpart A—Rules of General Applicability

§ 5.2 Rules of general applicability.

(a) *General.* The rules in this subpart apply to all sections in this part unless otherwise stated.

(b) *Exceptions.* The OCC may adopt materially different procedures for a particular filing, or class of filings, in exceptional circumstances, such as natural disasters or unusual transactions, after providing notice of the change to the applicant and to any other party that the OCC determines should receive notice.

(c) *Additional information.* The ''Comptroller's Corporate Manual'' (Manual) provides additional guidance, including policies, procedures, and sample forms. The Manual is sent to all national banks and is available for a fee by writing to the Comptroller of the Currency, P.O. Box 70004, Chicago, IL 60673–0004.

§ 5.3 Definitions.

(a) *Applicant* means a person or entity that submits a notice or application to the OCC under this part.

(b) *Application* means a submission requesting OCC approval to engage in various corporate activities and transactions.

(c) *Appropriate district office* means:

(1) The OCC's Multinational Banking Department for all national banks that are subsidiaries of a designated multinational holding company;

(2) The district office for the OCC district where the national bank's supervisory office is located for all other banks; or

(3) The OCC's International Banking and Finance Department for Federal branches and agencies.

(d) *Capital and surplus* means:

(1) A bank's Tier 1 and Tier 2 capital calculated under the OCC's risk-based capital standards set forth in Appendix A to 12 CFR part 3 as reported in the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161; plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (d)(1) of this section, as reported in the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161.

(e) *Central city* means the city or cities identified as central cities by the Director of the Office of Management and Budget.

(f) *Depository institution* means any bank or savings association.

(g) *Eligible bank* means a national bank that:

(1) Is well capitalized as defined in 12 CFR 6.4(b)(1);

(2) Has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (CAMEL);

(3) Has a Community Reinvestment Act (CRA), 12 U.S.C. 2901 *et seq.*, rating of ''Outstanding'' or ''Satisfactory''; and

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

(h) *Eligible depository institution* means a state bank or a Federal or state savings association that meets the criteria for an ''eligible bank'' under § 5.3(g) and is FDIC-insured.

(i) *Filing* means an application or notice submitted to the OCC under this part.

(j) *National bank* means any national banking association and any bank or trust company located in the District of Columbia operating under the OCC's supervision.

(k) *Notice* means a submission notifying the OCC that a national bank intends to engage in or has commenced certain corporate activities or transactions.

(l) *Short-distance relocation* means moving the premises of a branch or main office within a:

(1) One thousand foot-radius of the site if the branch is located within a central city of an MSA;

(2) One-mile radius of the site if the branch is not located within a central city, but is located within an MSA; or

(3) Two-mile radius of the site if the branch is not located within an MSA.

§ 5.4 Filing required.

(a) *Filing.* A depository institution shall file an application or notice with the OCC to engage in corporate activities and transactions as described in this part.

(b) *Availability of forms.* Individual sample forms and instructions for filings are available in the Manual and from each district office.

(c) *Other applications accepted.* At the request of the applicant, the OCC may accept an application form or other filing submitted to another Federal agency that covers the proposed action or transaction and contains substantially the same information as required by the OCC. The OCC may also require the applicant to submit supplemental information.

(d) *Where to file.* An applicant should address a filing or other submission under this part to the attention of the Licensing Manager at the appropriate district office. However, the OCC may advise an applicant through a pre-filing communication to send the filing or submission directly to the Bank Organization and Structure Department or elsewhere as otherwise directed by the OCC. Relevant addresses are listed in the Manual.

(e) *Incorporation of other material.* An applicant may incorporate any material contained in any other application or filing filed with the OCC or other Federal agency by reference, provided that the material is attached to the application and is current and responsive to the information requested by the OCC. The filing must clearly indicate that the information is so incorporated and include a cross-reference to the information incorporated.

§ 5.5 Fees.

An applicant shall submit the appropriate filing fee, if any, in connection with its filing. An applicant shall pay the fee by check payable to the Comptroller of the Currency or by other means acceptable to the OCC. The OCC publishes a fee schedule annually in the ''Notice of Comptroller of the Currency fees,'' described in 12 CFR 8.8. The OCC generally does not refund the filing fees.

§ 5.6 [Reserved]

§ 5.7 Investigations.

(a) *Authority.* The OCC may examine or investigate and evaluate facts related to a filing to the extent necessary to reach an informed decision.

(b) *Fees.* The OCC may assess fees for investigations or examinations conducted under paragraph (a) of this section. The OCC publishes the rates, described in 12 CFR 8.6, annually in the ''Notice of Comptroller of the Currency fees.''

§ 5.8 Public notice.

(a) *General.* An applicant shall publish a public notice of its filing in a newspaper of general circulation in the community in which the applicant proposes to engage in business, on the date of filing, or as soon as practicable before or after the date of filing.

(b) *Contents of the public notice.* The public notice shall state that a filing is being made, the date of the filing, the name of the applicant, the subject matter of the filing, that the public may submit comments to the OCC, the address of the appropriate office(s) where comments should be sent, the closing date of the public comment period, and any other information that the OCC requires.

(c) *Confirmation of public notice.* The applicant shall mail or otherwise deliver a statement containing the date of publication, the name and address of the newspaper that published the public

notice, a copy of the public notice, and any other information that the OCC requires, to the appropriate district office promptly following publication.

(d) *Multiple transactions.* The OCC may consider more than one transaction, or a series of transactions, to be a single filing for purposes of the publication requirements of this section. When filing a single public notice for multiple transactions, the applicant shall explain in the notice how the transactions are related.

(e) *Joint public notices accepted.* Upon the request of an applicant for a transaction subject to the OCC's public notice requirements and public notice required by another Federal agency, the OCC may accept publication of a single joint notice containing the information required by both the OCC and the other Federal agency, provided that the notice states that comments must be submitted to both the OCC and, if applicable, the other Federal agency.

(f) *Public notice by the OCC.* In addition to the foregoing, the OCC may require or give public notice and request comment on any filing and in any manner the OCC determines appropriate for the particular filing.

§ 5.9 Public availability.

(a) *General.* The OCC provides a copy of the public file to any person who requests it. A requestor should submit a request for the public file concerning a pending application to the appropriate district office. A requestor should submit a request for the public file concerning a decided or closed application to the Disclosure Officer, Communications Division, at the address listed in the Manual. Requests should be in writing. The OCC may impose a fee in accordance with 12 CFR 4.17 and with the rates the OCC publishes annually in the ''Notice of Comptroller of the Currency Fees'' described in 12 CFR 8.8.

(b) *Public file.* A public file consists of the portions of the filing, supporting data, supplementary information, and information submitted by interested persons, to the extent that those documents have not been afforded confidential treatment. Applicants and other interested persons may request that confidential treatment be afforded information submitted to the OCC pursuant to paragraph (c) of this section.

(c) *Confidential treatment.* The applicant or an interested person submitting information may request that specific information be treated as confidential under the Freedom of Information Act, 5 U.S.C. 552 (*see* 12 CFR 4.12(b)). A submitter should draft its request for confidential treatment narrowly to extend only to those portions of a document it considers to be confidential. If a submitter requests confidential treatment for information that the OCC does not consider to be confidential, the OCC may include that information in the public file after providing notice to the submitter. Moreover, at its own initiative, the OCC may determine that certain information should be treated as confidential and withhold that information from the public file. A person requesting information withheld from the public file should submit the request to the Disclosure Officer, Communications Division, under the procedures described in 12 CFR part 4, subpart B. That request may be subject to the predisclosure notice procedures of 12 CFR 4.16.

§ 5.10 Comments.

(a) *Submission of comments.* During the comment period, any person may submit written comments on a filing to the appropriate district office.

(b) *Comment period*—(1) *General.* Unless otherwise stated, the comment period is 30 days after publication of the public notice required by § 5.8(a).

(2) *Extension.* The OCC may extend the comment period if:

(i) The applicant fails to file all required publicly available information on a timely basis to permit review by interested persons or makes a request for confidential treatment not granted by the OCC that delays the public availability of that information;

(ii) Any person requesting an extension of time satisfactorily demonstrates to the OCC that additional time is necessary to develop factual information that the OCC determines is necessary to consider the application; or

(iii) The OCC determines that other extenuating circumstances exist.

(3) *Applicant response.* The OCC may give the applicant an opportunity to respond to comments received.

§ 5.11 Hearings and other meetings.

(a) *Hearing requests.* Prior to the end of the comment period, any person may submit to the appropriate district office a written request for a hearing on a filing. The request must describe the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation of those issues or facts to the OCC. A person requesting a hearing shall simultaneously submit a copy of the request to the applicant.

(b) *Action on a hearing request.* The OCC may grant or deny a request for a hearing and may limit the issues to those it deems relevant or material. The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decisionmaking process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

(c) *Denial of a hearing request.* If the OCC denies a hearing request, it shall notify the person requesting the hearing of the reason for the denial.

(d) *OCC procedures prior to the hearing*—(1) *Notice of Hearing.* The OCC issues a Notice of Hearing if it grants a request for a hearing or orders a hearing because it is in the public interest. The OCC sends a copy of the Notice of Hearing to the applicant, to the person requesting the hearing, and anyone else requesting a copy. The Notice of Hearing states the subject and date of the filing, the time and place of the hearing, and the issues to be addressed.

(2) *Presiding officer.* The OCC appoints a presiding officer to conduct the hearing. The presiding officer is responsible for all procedural questions not governed by this section.

(e) *Participation in the hearing.* Any person who wishes to appear (participant) shall notify the appropriate district office of his or her intent to participate in the hearing within ten days from the date the OCC issues the Notice of Hearing. At least five days before the hearing, each participant shall submit to the appropriate district office, the applicant, and any other person the OCC requires, the names of witnesses, and one copy of each exhibit the participant intends to present.

(f) *Transcripts.* The OCC arranges for a hearing transcript. The person requesting the hearing generally bears the cost of one copy of the transcript for his or her use.

(g) *Conduct of the hearing*—(1) *Presentations.* Subject to the rulings of the presiding officer, the applicant and participants may make opening statements and present witnesses, material, and data.

(2) *Information submitted.* A person presenting documentary material shall furnish one copy to the OCC, and one copy to the applicant and each participant.

(3) *Laws not applicable to hearings.* The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Federal Rules of Evidence (28 U.S.C. Appendix), the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 *et seq.*), and the OCC's Rules of Practice and Procedure (12 CFR part 19) do not apply to hearings under this section.

(h) *Closing the hearing record.* At the applicant's or participant's request, the OCC may keep the hearing record open for up to 14 days following the OCC's receipt of the transcript. The OCC resumes processing the filing after the record closes.

(i) *Other meetings*—(1) *Public meetings.* The OCC may arrange for a public meeting in connection with an application, either upon receipt of a written request for such a meeting which is made during the comment period, or upon the OCC's own initiative. Public meetings will be arranged and presided over by a representative of the OCC.

(2) *Private meetings.* The OCC may arrange a meeting with an applicant or other interested parties to an application, or with an applicant and other interested parties to an application, to clarify and narrow the issues and to facilitate the resolution of the issues.

§ 5.12 Computation of time.

In computing the period of days, the OCC includes the day of the act (*e.g.*, the date an application is received by the OCC) from which the period begins to run and the last day of the period, regardless of whether it is a Saturday, Sunday, or legal holiday.

§ 5.13 Decisions.

(a) *General.* The OCC may approve, conditionally approve, or deny a filing after appropriate review and consideration of the record. In deciding an application under this part, the OCC may consider the activities, resources, or condition of an affiliate of the applicant that may reasonably reflect on or affect the applicant.

(1) *Conditional approval.* The OCC may impose conditions on any approval, including to address a significant supervisory, CRA (if applicable), or compliance concern, if the OCC determines that the conditions are necessary or appropriate to ensure that approval is consistent with relevant statutory and regulatory standards and OCC policies thereunder and safe and sound banking practices.

(2) *Expedited review.* The OCC grants eligible banks expedited review within a specified time after filing or commencement of the public comment period, including any extension of the comment period granted pursuant to § 5.10, as described in applicable sections of this part.

(i) The OCC may extend the expedited review process for a filing subject to the CRA up to an additional 10 days if a comment contains specific assertions concerning a bank's CRA performance that, if true, would indicate a reasonable possibility that:

(A) A bank's CRA rating would be less than satisfactory, institution-wide, or, where applicable, in a state or multistate MSA; or

(B) A bank's CRA performance would be less than satisfactory in an MSA, or in the non-MSA portion of a state, in which it seeks to expand through approval of an application for a deposit facility as defined in 12 U.S.C. 2902(3).

(ii) The OCC will remove a filing from expedited review procedures, if the OCC concludes that the filing, or an adverse comment regarding the filing, presents a significant supervisory, CRA (if applicable), or compliance concern, or raises a significant legal or policy issue, requiring additional OCC review. The OCC will provide the applicant with a written explanation if it decides not to process an application from an eligible bank under expedited review pursuant to this paragraph (a)(2)(ii). For purposes of this section, a significant CRA concern exists if the OCC concludes that:

(A) A bank's CRA rating is less than satisfactory, institution-wide, or, where applicable, in a state or multistate MSA; or

(B) A bank's CRA performance is less than satisfactory in an MSA, or in the non-MSA portion of a state, in which it seeks to expand through approval of an application for a deposit facility as defined in 12 U.S.C. 2902(3).

(iii) Adverse comments that the OCC determines do not raise a significant supervisory, CRA (if applicable), or compliance concern, or a significant legal or policy issue, or are frivolous, filed primarily as a means of delaying action on the filing, or that raise a CRA concern that the OCC determines has been satisfactorily resolved, do not affect the OCC's decision under paragraphs (a)(2)(i) or (a)(2)(ii) of this section. The OCC considers a CRA concern to have been satisfactorily resolved if the OCC previously reviewed (*e.g.*, in an examination or an application) a concern presenting substantially the same issue in substantially the same assessment area during substantially the same time, and the OCC determines that the concern would not warrant denial or imposition of a condition on approval of the application.

(iv) If a bank files an application for any activity or transaction that is dependent upon the approval of another application under this part, or if requests for approval for more than one activity or transaction are combined in a single application under applicable sections of this part, none of the subject applications may be deemed approved upon expiration of the applicable time periods, unless all of the applications are subject to expedited review procedures and the longest of the time periods expires without the OCC issuing a decision or notifying the bank that the filings are not eligible for expedited review under the standards in paragraph (a)(2)(ii) of this section.

(b) *Denial.* The OCC may deny a filing if:

(1) A significant supervisory, CRA (if applicable), or compliance concern exists with respect to the applicant;

(2) Approval of the filing is inconsistent with applicable law, regulation, or OCC policy thereunder; or

(3) The applicant fails to provide information requested by the OCC that is necessary for the OCC to make an informed decision.

(c) *Required information and abandonment of filing.* A filing must contain information required by the applicable section set forth in this part. To the extent necessary to evaluate an application, the OCC may require an applicant to provide additional information. The OCC may deem a filing abandoned if information required or requested by the OCC in connection with the filing is not furnished within the time period specified by the OCC.

(d) *Notification of final disposition.* The OCC notifies the applicant, and any person who makes a written request, of the final disposition of a filing, including confirmation of an expedited review under this part. If the OCC denies a filing, the OCC notifies the applicant in writing of the reasons for the denial.

(e) *Publication of decision.* The OCC will issue a public decision when a decision represents a new or changed policy or presents issues of general interest to the public or the banking industry. In rendering its decisions, the OCC may elect not to disclose information that the OCC deems to be private or confidential.

(f) *Appeal.* An applicant may file an appeal of an OCC decision with the Deputy Comptroller for Bank Organization and Structure or with the Ombudsman. Relevant addresses and telephone numbers are located in the Manual.

(g) *Extension of time.* When the OCC approves or conditionally approves a filing, the OCC generally gives the applicant a specified period of time to commence that new or expanded activity. The OCC does not generally grant an extension of the time specified to commence a new or expanded corporate activity approved under this

part, unless the OCC determines that the delay is beyond the applicant's control.

(h) *Nullifying a decision*—(1) *Material misrepresentation or omission.* An applicant shall certify that any filing or supporting material submitted to the OCC contains no material misrepresentations or omissions. The OCC may review and verify any information filed in connection with a notice or an application. If the OCC discovers a material misrepresentation or omission after the OCC has rendered a decision on the filing, the OCC may nullify its decision. Any person responsible for any material misrepresentation or omission in a filing or supporting materials may be subject to enforcement action and other penalties, including criminal penalties provided in 18 U.S.C. 1001.

(2) *Other nullifications.* The OCC may nullify any decision on a filing that is:

(i) Contrary to law, regulation, or OCC policy thereunder; or

(ii) Granted due to clerical or administrative error, or a material mistake of law or fact.

Subpart B—Initial Activities

§ 5.20 Organizing a bank.

(a) *Authority.* 12 U.S.C. 21, 22, 24(Seventh), 26, 27, 92a, 93a, 1814(b), 1816, and 2903.

(b) *Licensing requirements.* Any person desiring to establish a national bank shall submit an application and obtain prior OCC approval.

(c) *Scope.* This section describes the procedures and requirements governing OCC review and approval of an application to establish a national bank, including a national bank with a special purpose. Information regarding an application to establish an interim national bank solely to facilitate a business combination is set forth in § 5.33.

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

(1) *Bankers' bank* means a bank owned exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions or depository institution holding companies (as that term is defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813), the activities of which are limited by its articles of association exclusively to providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and to providing correspondent banking services at the request of other depository institutions or their holding companies.

(2) *Control* means control as used in section 2 of the Bank Holding Company Act, 12 U.S.C. 1841(a)(2).

(3) *Final approval* means the OCC action issuing a charter certificate and authorizing a national bank to open for business.

(4) *Holding company* means any company that controls or proposes to control a national bank whether or not the company is a bank holding company under section 2 of the Bank Holding Company Act, 12 U.S.C. 1841(a)(1).

(5) *Lead depository institution* means the largest depository institution controlled by a bank holding company based on a comparison of the average total assets controlled by each depository institution as reported in its Consolidated Report of Condition and Income required to be filed for the immediately preceding four calendar quarters.

(6) *Organizing group* means five or more persons acting on their own behalf, or serving as representatives of a sponsoring holding company, who apply to the OCC for a national bank charter.

(7) *Preliminary approval* means a decision by the OCC permitting an organizing group to go forward with the organization of the proposed national bank. A preliminary approval generally is subject to certain conditions that an applicant must satisfy before the OCC will grant final approval.

(e) *Statutory requirements*—(1) *General.* The OCC charters a national bank under the authority of the National Bank Act of 1864, as amended, 12 U.S.C. 1 *et seq.* The name of a proposed bank must include the word ''national.'' In determining whether to approve an application to establish a national bank, the OCC verifies that the proposed national bank has complied with the following requirements of the National Bank Act. A national bank shall:

(i) Draft and file articles of association with the OCC;

(ii) Draft and file an organization certificate containing specified information with the OCC;

(iii) Ensure that all capital stock is paid in; and

(iv) Have at least five elected directors.

(2) *Community Reinvestment Act.* Twelve CFR part 25 requires the OCC to take into account a proposed insured national bank's description of how it will meet its CRA objectives.

(f) *Policy*—(1) *General.* The marketplace is normally the best regulator of economic activity, and competition within the marketplace promotes efficiency and better customer service. Accordingly, it is the OCC's policy to approve proposals to establish national banks, including minority-owned institutions, that have a reasonable chance of success and that will be operated in a safe and sound manner. It is not the OCC's policy to ensure that a proposal to establish a national bank is without risk to the organizers or to protect existing institutions from healthy competition from a new national bank.

(2) *Policy considerations.* (i) In evaluating an application to establish a national bank, the OCC considers whether the proposed bank:

(A) Has organizers who are familiar with national banking laws and regulations;

(B) Has competent management, including a board of directors, with ability and experience relevant to the types of services to be provided;

(C) Has capital that is sufficient to support the projected volume and type of business;

(D) Can reasonably be expected to achieve and maintain profitability; and

(E) Will be operated in a safe and sound manner.

(ii) The OCC may also consider additional factors listed in section 6 of the Federal Deposit Insurance Act, 12 U.S.C. 1816, including the risk to the Federal deposit insurance fund, and whether the proposed bank's corporate powers are consistent with the purposes of the Federal Deposit Insurance Act and the National Bank Act.

(3) *OCC evaluation.* The OCC evaluates a proposed national bank's organizing group and its operating plan together. The OCC's judgment concerning one may affect the evaluation of the other. An organizing group and its operating plan must be stronger in markets where economic conditions are marginal or competition is intense.

(g) *Organizing group*—(1) *General.* Strong organizing groups generally include diverse business and financial interests and community involvement. An organizing group must have the experience, competence, willingness, and ability to be active in directing the proposed national bank's affairs in a safe and sound manner. The bank's initial board of directors generally is comprised of many, if not all, of the organizers. The operating plan and other information supplied in the application must demonstrate an organizing group's collective ability to establish and operate a successful bank in the economic and competitive conditions of the market to be served. Each organizer should be knowledgeable about the operating plan. A poor operating plan reflects adversely on the organizing

group's ability, and the OCC generally denies applications with poor operating plans.

(2) *Management selection.* The initial board of directors must select competent senior executive officers before the OCC grants final approval. Early selection of executive officers, especially the chief executive officer, contributes favorably to the preparation and review of an operating plan that is accurate, complete, and appropriate for the type of bank proposed and its market, and reflects favorably upon an application. As a condition of the charter approval, the OCC retains the right to object to and preclude the hiring of any officer, or the appointment or election of any director, for a two-year period from the date the bank commences business.

(3) *Financial resources.* (i) Each organizer must have a history of responsibility, personal honesty, and integrity. Personal wealth is not a prerequisite to become an organizer or director of a national bank. However, directors' stock purchases, individually and in the aggregate, should reflect a financial commitment to the success of the national bank that is reasonable in relation to their individual and collective financial strength. A director should not have to depend on bank dividends, fees, or other compensation to satisfy financial obligations.

(ii) Because directors are often the primary source of additional capital for a bank not affiliated with a holding company, it is desirable that an organizer who is also proposed as a director of the national bank be able to supply or have a realistic plan to enable the bank to obtain capital when needed.

(iii) Any financial or other business arrangement, direct or indirect, between the organizing group or other insider and the proposed national bank must be on nonpreferential terms.

(4) *Organizational expenses.* (i) Organizers are expected to contribute time and expertise to the organization of the bank. Organizers should not bill excessive charges to the bank for professional and consulting services or unduly rely upon these fees as a source of income.

(ii) A proposed national bank shall not pay any fee that is contingent upon an OCC decision. Such action generally is grounds for denial of the application or withdrawal of preliminary approval. Organizational expenses for denied applications are the sole responsibility of the organizing group.

(5) *Sponsor's experience and support.* A sponsor must be financially able to support the new bank's operations and to provide or locate capital when needed. The OCC primarily considers the financial and managerial resources of the sponsor and the sponsor's record of performance, rather than the financial and managerial resources of the organizing group, if an organizing group is sponsored by:

(i) An existing holding company;

(ii) Individuals currently affiliated with other depository institutions; or

(iii) Individuals who, in the OCC's view, are otherwise collectively experienced in banking and have demonstrated the ability to work together effectively.

(h) *Operating plan*—(1) *General.* (i) Organizers of a proposed national bank shall submit an operating plan that adequately addresses the statutory and policy considerations set forth in paragraphs (e) and (f)(2) of this section. The plan must reflect sound banking principles and demonstrate realistic assessments of risk in light of economic and competitive conditions in the market to be served.

(ii) The OCC may offset deficiencies in one factor by strengths in one or more other factors. However, deficiencies in some factors, such as unrealistic earnings prospects, may have a negative influence on the evaluation of other factors, such as capital adequacy, or may be serious enough by themselves to result in denial. The OCC considers inadequacies in an operating plan to reflect negatively on the organizing group's ability to operate a successful bank.

(2) *Earnings prospects.* The organizing group shall submit *pro forma* balance sheets and income statements as part of the operating plan. The OCC reviews all projections for reasonableness of assumptions and consistency with the operating plan.

(3) *Management.* (i) The organizing group shall include in the operating plan information sufficient to permit the OCC to evaluate the overall management ability of the organizing group. If the organizing group has limited banking experience or community involvement, the senior executive officers must be able to compensate for such deficiencies.

(ii) The organizing group may not hire an officer or elect or appoint a director if the OCC objects to that person at any time prior to the date the bank commences business.

(4) *Capital.* A proposed bank must have sufficient initial capital, net of any organizational expenses that will be charged to the bank's capital after it begins operations, to support the bank's projected volume and type of business.

(5) *Community service.* (i) The operating plan must indicate the organizing group's knowledge of and plans for serving the community. The organizing group shall evaluate the banking needs of the community, including its consumer, business, nonprofit, and government sectors. The operating plan must demonstrate how the proposed bank responds to those needs consistent with the safe and sound operation of the bank. The provisions of this paragraph may not apply to an application to organize a bank for a special purpose.

(ii) As part of its operating plan, the organizing group shall submit a statement that demonstrates its plans to achieve CRA objectives.

(iii) Because community support is important to the long-term success of a bank, the organizing group shall include plans for attracting and maintaining community support.

(6) *Safety and soundness.* The operating plan must demonstrate that the organizing group (and the sponsoring company, if any), is aware of, and understands, national banking laws and regulations, and safe and sound banking operations and practices. The OCC will deny an application that does not meet these safety and soundness requirements.

(7) *Fiduciary services.* The operating plan must indicate if the proposed bank intends to offer fiduciary services. The information required by § 5.26 shall be filed with the charter application. A separate application is not required.

(i) *Procedures*—(1) *Prefiling meeting.* The OCC normally requires a prefiling meeting with the organizers of a proposed national bank before the organizers file an application. Organizers should be familiar with the OCC's chartering policy and procedural requirements in the Manual before the prefiling meeting. The prefiling meeting normally is held in the district office where the application will be filed but may be held at another location at the request of the applicant.

(2) *Operating plan.* An organizing group shall file an operating plan that addresses the subjects discussed in paragraph (h) of this section.

(3) *Spokesperson.* The organizing group shall designate a spokesperson to represent the organizing group in all contacts with the OCC. The spokesperson shall be an organizer and proposed director of the new bank, except a representative of the sponsor or sponsors may serve as spokesperson if an application is sponsored by an existing holding company, individuals currently affiliated with other depository institutions, or individuals who, in the OCC's view, are otherwise collectively experienced in banking and

have demonstrated the ability to work together effectively.

(4) *Decision notification.* The OCC notifies the spokesperson and other interested persons in writing of its decision on an application.

(5) *Post-decision activities.* (i) Before the OCC grants final approval, a proposed national bank must be established as a legal entity. A national bank becomes a legal entity after it has filed its organization certificate and articles of association with the OCC as required by law. In addition, the organizing group shall elect a board of directors. The proposed bank may not conduct the business of banking until the OCC grants final approval.

(ii) For all capital obtained through a public offering a proposed national bank shall use an offering circular that complies with the OCC's securities offering regulations, 12 CFR part 16.

(iii) A national bank in organization shall raise its capital before it commences business. Preliminary approval expires if a national bank in organization does not raise the required capital within 12 months from the date the OCC grants preliminary approval. Approval expires if the national bank does not commence business within 18 months from the date the OCC grants preliminary approval.

(j) *Expedited review.* An application to establish a full-service national bank that is sponsored by a bank holding company whose lead depository institution is an eligible bank or eligible depository institution is deemed preliminarily approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC:

(1) Notifies the applicant prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2); or

(2) Notifies the applicant prior to that date that the OCC has determined that the proposed bank will offer banking services that are materially different than those offered by the lead depository institution.

(k) *National bankers' banks*—(1) *Activities and customers.* In addition to the other requirements of this section, when an organizing group seeks to organize a national bankers' bank, the organizing group shall list in the application the anticipated activities and customers or clients of the proposed national bankers' bank.

(2) *Waiver of requirements.* At the organizing group's request, the OCC may waive requirements that are applicable to national banks in general if those requirements are inappropriate for a national bankers' bank and would impede its ability to provide desired services to its market. An applicant must submit a request for a waiver with the application and must support the request with adequate justification and legal analysis. A national bankers' bank that is already in operation may also request a waiver. The OCC cannot waive statutory provisions that specifically apply to national bankers' banks pursuant to 12 U.S.C. 27(b)(1).

(3) *Investments.* A national bank may invest up to ten percent of its capital and surplus in a bankers' bank and may own five percent or less of any class of a bankers' bank's voting securities.

(l) *Special purpose banks.* An applicant for a national bank charter that will limit its activities to fiduciary activities, credit card operations, or another special purpose shall adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. An applicant for a national bank charter that will have a community development focus shall also adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. In addition to the other requirements in this section, a bank limited to fiduciary activities, credit card operations, or another special purpose may not conduct that business until the OCC grants final approval for the bank to commence operations. A national bank that seeks to invest in a bank with a community development focus must comply with applicable requirements of 12 CFR part 24.

§ 5.24 Conversion.

(a) *Authority.* 12 U.S.C. 35, 93a, 214a, 214b, 214c, and 2903.

(b) *Licensing requirements.* A state bank (including a ''state bank'' as defined in 12 U.S.C. 214(a)) or a Federal savings association shall submit an application and obtain prior OCC approval to convert to a national bank charter. A national bank shall give notice to the OCC before converting to a state bank (including a ''state bank'' as defined in 12 U.S.C. 214(a)) or Federal savings association.

(c) *Scope.* This section describes procedures and standards governing OCC review and approval of an application by a state bank or Federal savings association to convert to a national bank charter. This section also describes notice procedures for a national bank seeking to convert to a state bank or Federal savings association.

(d) *Conversion of a state bank or Federal savings association to a national bank*—(1) *Policy.* Consistent with the OCC's chartering policy, it is OCC policy to allow conversion to a national bank charter by another financial institution that can operate safely and soundly as a national bank in compliance with applicable laws, regulations, and policies. The OCC may deny an application by any state bank (including a ''state bank'' as defined in 12 U.S.C. 214(a)) and any Federal savings association to convert to a national bank charter on the basis of the standards for denial set forth in § 5.13(b), or when conversion would permit the applicant to escape supervisory action by its current regulator.

(2) *Procedures.* (i) Prefiling communications. The applicant should consult with the appropriate district office prior to filing if it anticipates that its application will raise unusual or complex issues. If a prefiling meeting is appropriate, it will normally be held in the district office where the application will be filed, but may be held at another location at the request of the applicant.

(ii) A state bank (including a state bank as defined in 12 U.S.C. 214(a)) or Federal savings association shall submit its application to convert to a national bank to the appropriate district office. The application must:

(A) Be signed by the president or other duly authorized officer;

(B) Identify each branch that the resulting bank expects to operate after conversion;

(C) Include the institution's most recent audited financial statements (if any);

(D) Include the latest report of condition and report of income (the most recent daily statement of condition will suffice if the institution does not file these reports);

(E) Unless otherwise advised by the OCC in a prefiling communication, include an opinion of counsel that, in the case of a state bank, the conversion is not in contravention of applicable state law, or in the case of a Federal savings association, the conversion is not in contravention of applicable Federal law;

(F) State whether the institution wishes to exercise fiduciary powers after the conversion;

(G) Identify all subsidiaries that will be retained following the conversion, and provide the information and analysis of the subsidiaries' activities that would be required if the converting bank or savings association were a national bank establishing each subsidiary pursuant to § 5.34; and

(H) Identify any nonconforming assets (including nonconforming subsidiaries) and nonconforming activities that the institution engages in, and describe the plans to retain or divest those assets.

(iii) The OCC may permit a national bank to retain such nonconforming assets of a state bank, subject to conditions and an OCC determination of the carrying value of the retained assets, pursuant to 12 U.S.C. 35.

(iv) Approval for an institution to convert to a national bank expires if the conversion has not occurred within six months of the OCC's preliminary approval of the application.

(v) When the OCC determines that the applicant has satisfied all statutory and regulatory requirements, including those set forth in 12 U.S.C. 35, and any other conditions, the OCC issues a charter certificate. The certificate provides that the institution is authorized to begin conducting business as a national bank as of a specified date.

(3) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant and novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(4) *Expedited review.* An application by an eligible depository institution to convert to a national bank charter is deemed approved by the OCC as of the 30th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(e) *Conversion of a national bank to a state bank*—(1) *Procedure.* A national bank may convert to a state bank, in accordance with 12 U.S.C. 214c, without prior OCC approval. Termination of the national bank's status as a national bank occurs upon the bank's completion of the requirements of 12 U.S.C. 214a, and upon the appropriate district office's receipt of the bank's national bank charter (or copy) in connection with the consummation of the transaction.

(2) *Notice of intent.* A national bank that desires to convert to a state bank shall submit to the appropriate district office a notice of its intent to convert. The national bank shall file this notice when it first submits a request to convert to the appropriate state authorities. The appropriate district office then provides instructions to the national bank for terminating its status as a national bank.

(3) *Exceptions to the rules of general applicability.* Sections 5.5 through 5.8, and 5.10 through 5.13, do not apply to the conversion of a national bank to a state bank.

(f) *Conversion of a national bank to a Federal savings association.* A national bank may convert to a Federal savings association without prior OCC approval. The requirements and procedures set forth in paragraph (e) of this section and 12 U.S.C. 214a and 12 U.S.C. 214c apply to a conversion to a Federal savings association, except as follows:

(1) In paragraph (e) of this section references to ''appropriate state authorities'' mean ''appropriate Federal authorities''; and

(2) References in 12 U.S.C. 214c to the ''law of the State in which the national banking association is located'' and ''any State authority'' mean ''laws and regulations governing Federal savings associations'' and ''Office of Thrift Supervision,'' respectively.

§ 5.26 Fiduciary powers.

(a) *Authority.* 12 U.S.C. 92a.

(b) *Licensing requirements.* A national bank must submit an application and obtain prior approval from, or in certain circumstances file a notice with, the OCC in order to exercise fiduciary powers. No approval or notice is required in the following circumstances:

(1) Where two or more national banks consolidate or merge, and any of the banks has, prior to the consolidation or merger, received OCC approval to exercise fiduciary powers and that approval is in force at the time of the consolidation or merger, the resulting bank may exercise fiduciary powers in the same manner and to the same extent as the national bank to which approval was originally granted; and

(2) Where a national bank with prior OCC approval to exercise fiduciary powers is the resulting bank in a merger or consolidation with a state bank.

(c) *Scope.* This section sets forth the procedures governing OCC review and approval of an application, and in certain cases the filing of a notice, by a national bank to exercise fiduciary powers. A national bank's fiduciary activities are subject to the provisions of 12 CFR part 9.

(d) *Policy.* The exercise of fiduciary powers is primarily a management decision of the national bank. The OCC generally permits a national bank to exercise fiduciary powers if the bank is operating in a satisfactory manner, the proposed activities comply with applicable statutes and regulations, and the bank retains qualified fiduciary management.

(e) *Procedure*—(1) *General.* The following institutions must obtain approval from the OCC in order to offer fiduciary services to the public:

(i) A national bank without fiduciary powers;

(ii) A national bank without fiduciary powers that desires to exercise fiduciary powers after merging with a state bank or savings association with fiduciary powers; and

(iii) A national bank that results from the conversion of a state bank or a state or Federal savings association that was exercising fiduciary powers prior to the conversion.

(2) *Application.* (i) Except as provided in paragraph (e)(2)(ii) of this section, a national bank that desires to exercise fiduciary powers shall submit to the OCC an application requesting approval. The application must contain:

(A) A statement requesting full or limited powers (specifying which powers);

(B) An opinion of counsel that the proposed activities do not violate applicable Federal or state law, including citations to applicable law;

(C) A statement that the capital and surplus of the national bank is not less than the capital and surplus required by state law of state banks, trust companies, and other corporations exercising comparable fiduciary powers;

(D) Sufficient biographical information on proposed trust management personnel to enable the OCC to assess their qualifications; and

(E) A description of the locations where the bank will conduct fiduciary activities.

(ii) If approval to exercise fiduciary powers is desired in connection with any other transaction subject to an application under this part, the applicant covered under paragraph (e)(1)(ii) or (e)(1)(iii) of this section may include a request for approval of fiduciary powers, including the information required by paragraph (e)(2)(i) of this section, as part of its other application. The OCC does not require a separate application requesting approval to exercise fiduciary powers under these circumstances.

(3) *Expedited review.* (i) An application by an eligible bank to exercise fiduciary powers is deemed approved by the OCC as of the 30th day after the application is received by the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(ii) An eligible bank applying for fiduciary powers may omit the opinion of counsel required by paragraph (e)(2)(i)(B) of this section unless such opinion is specifically requested by the OCC.

(4) *Permit.* Approval of an application under this section constitutes a permit under 12 U.S.C. 92a to conduct the fiduciary powers requested in the application.

(5) *Notice of fiduciary activities.* No further application under this section is required when a national bank with prior OCC approval to exercise fiduciary powers commences fiduciary activities in a state in addition to the state(s) described in the application for which it received OCC approval to exercise fiduciary powers. Instead, the bank shall provide written notice to the OCC within ten days after commencing fiduciary activities. The written notice must identify the state involved and describe the fiduciary activities to be conducted to the extent that they materially differ from fiduciary activities the bank was previously authorized to conduct.

(6) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant and novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(7) *Expiration of approval.* Approval expires if a national bank does not commence fiduciary activities within 18 months from the date of approval.

Subpart C—Expansion of Activities

§ 5.30 Establishment, acquisition, and relocation of a branch.

(a) *Authority.* 12 U.S.C. 1–42, and 2901–2907.

(b) *Licensing requirements.* A national bank shall submit an application and obtain prior OCC approval in order to establish or relocate a branch.

(c) *Scope.* This section describes the procedures and standards governing OCC review and approval of a national bank's application to establish a new branch or to relocate a branch. The standards of this section and, as applicable, 12 U.S.C. 36(b), but not the procedures set forth in this section, apply to a branch established as a result of a business combination approved under § 5.33. A branch established through a business combination is subject only to the procedures set forth in § 5.33.

(d) *Definitions*—(1) *Branch* includes any branch bank, branch office, branch agency, additional office, or any branch place of business established by a national bank in the United States or its territories at which deposits are received, checks paid, or money lent. A branch does not include an automated teller machine (ATM) or a remote service unit.

(i) A branch established by a national bank includes a mobile facility, temporary facility, drop box or a seasonal agency, as described in 12 U.S.C. 36(c).

(ii) A facility otherwise described in this paragraph (d)(1) is not a branch if:

(A) The bank establishing the facility does not permit members of the public to have physical access to the facility for purposes of making deposits, paying checks, or borrowing money (*e.g.*, an office established by the bank that receives deposits only through the mail); or

(B) It is located at the site of, or is an extension of, an approved main or branch office of the national bank. The OCC determines whether a facility is an extension of an existing main or branch office on a case-by-case basis.

(2) *Home state* means the state in which the national bank's main office is located.

(3) *Messenger service* has the meaning set forth in 12 CFR 7.1012.

(4) *Mobile branch* is a branch, other than a messenger service branch, that does not have a single, permanent site, and includes a vehicle that travels to various public locations to enable customers to conduct their banking business. A mobile branch may provide services at various regularly scheduled locations or it may be open at irregular times and locations such as at county fairs, sporting events, or school registration periods. A branch license is needed for each mobile unit.

(5) *Temporary branch* means a branch that is located at a fixed site and which, from the time of its opening, is scheduled to, and will, permanently close no later than a certain date (not longer than one year after the branch is first opened) specified in the branch application and the public notice.

(e) *Policy.* In determining whether to approve an application to establish or relocate a branch, the OCC is guided by the following principles:

(1) Maintaining a sound banking system;

(2) Encouraging a national bank to help meet the credit needs of its entire community;

(3) Relying on the marketplace as generally the best regulator of economic activity; and

(4) Encouraging healthy competition to promote efficiency and better service to customers.

(f) *Procedures*—(1) *General.* Except as provided in paragraph (f)(2) of this section, each national bank proposing to establish a branch shall submit to the appropriate district office a separate application for each proposed branch.

(2) *Messenger services.* A national bank may request approval, through a single application, for multiple messenger services to serve the same general geographic area. (*See* 12 CFR 7.1012). Unless otherwise required by law, the bank need not list the specific locations to be served.

(3) *Jointly established branches.* If a national bank proposes to establish a branch jointly with one or more national banks or depository institutions, only one of the national banks must submit a branch application. The national bank submitting the application may act as agent for all national banks in the group of depository institutions proposing to share the branch. The application must include the name and main office address of each national bank in the group.

(4) *Authorization.* The OCC authorizes operation of the branch when all requirements and conditions for opening are satisfied.

(5) *Expedited review.* An application submitted by an eligible bank to establish or relocate a branch is deemed approved by the OCC as of the 15th day after the close of the applicable public comment period, or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An application to establish or relocate more than one branch is deemed approved by the OCC as of the 15th day after the close of the last public comment period.

(g) *Interstate branches.* A national bank that seeks to establish and operate a de novo branch in any state other than the bank's home state or a state in which the bank already has a branch shall satisfy the standards and requirements of 12 U.S.C. 36(g).

(h) *Exceptions to rules of general applicability.* (1) A national bank filing an application for a mobile branch or messenger service branch shall publish a public notice, as described in § 5.8, in the communities in which the bank proposes to engage in business.

(2) The comment period on an application to engage in a short-distance branch relocation is 15 days.

(3) The OCC may waive or reduce the public notice and comment period, as appropriate, with respect to an application to establish a branch to restore banking services to a community affected by a disaster or to temporarily replace banking facilities where, because of an emergency, the bank

cannot provide services or must curtail banking services.

(4) The OCC may waive or reduce the public notice and comment period, as appropriate, for an application by a national bank with a CRA rating of Satisfactory or better to establish a temporary branch which, if it were established by a state bank to operate in the manner proposed, would be permissible under state law without state approval.

(i) *Expiration of approval.* Approval expires if a branch has not commenced business within 18 months after the date of approval.

(j) *Branch closings.* A national bank shall comply with the requirements of 12 U.S.C. 1831r–1 with respect to procedures for branch closings.

§ 5.33 Business combinations.

(a) *Authority.* 12 U.S.C. 24(Seventh), 93a, 181, 214a, 215, 215a, 215a–1, 215c, 1815(d)(3), 1828(c), 2903, and Sec. 102, Pub. L. 103–328, 108 Stat. 2338.

(b) *Licensing requirements.* A national bank shall submit an application and obtain prior OCC approval for a business combination between the national bank and another depository institution when the resulting institution is a national bank. A national bank shall give notice to the OCC prior to engaging in a combination where the resulting institution will not be a national bank.

(c) *Scope.* This section sets forth the standards for OCC review and approval of an application for a business combination resulting in a national bank and for notices and other procedures for national banks involved in all forms of combinations.

(d) *Definitions*—(1) *Business combination* means any merger or consolidation between a national bank and one or more depository institutions in which the resulting institution is a national bank, the acquisition by a national bank of all, or substantially all, of the assets of another depository institution, or the assumption by a national bank of deposit liabilities of another depository institution.

(2) *Business reorganization means either:*

(i) A business combination between eligible banks, or between an eligible bank and an eligible depository institution, that are controlled by the same holding company or that will be controlled by the same holding company prior to the date of the combination; or

(ii) A business combination between an eligible bank and an interim bank chartered in a transaction in which a person or group of persons exchanges its shares of the eligible bank for shares of a newly formed holding company and receives after the transaction substantially the same proportional share interest in the holding company as it held in the eligible bank (except for changes in interests resulting from the exercise of dissenters' rights), and the reorganization involves no other transactions involving the bank.

(3) *Home state* means, with respect to a national bank, the state in which the main office of the bank is located and, with respect to a state bank, the state by which the bank is chartered.

(4) *Interim bank* means a national bank that does not operate independently but exists solely as a vehicle to accomplish a business combination.

(e) *Policy*—(1) *Factors.* The OCC considers the following factors in evaluating an application for a business combination:

(i) *Competition.* (A) The OCC considers the effect of a proposed business combination on competition. The applicant shall provide a competitive analysis of the transaction, including a definition of the relevant geographic market or markets. An applicant may refer to the Manual for procedures to expedite its competitive analysis.

(B) The OCC will deny an application for a business combination if the combination would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking in any part of the United States. The OCC also will deny any proposed business combination whose effect in any section of the United States may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the probable effects of the transaction in meeting the convenience and needs of the community clearly outweigh the anticompetitive effects of the transaction. For purposes of weighing against anticompetitive effects, a business combination may have favorable effects in meeting the convenience and needs of the community if the depository institution being acquired has limited long-term prospects, or if the resulting national bank will provide significantly improved, additional, or less costly services to the community.

(ii) *Financial and managerial resources and future prospects.* The OCC considers the financial and managerial resources and future prospects of the existing or proposed institutions.

(iii) *Convenience and needs of community.* The OCC considers the probable effects of the business combination on the convenience and needs of the community served. The applicant shall describe these effects in its application, including any planned office closings or reductions in services following the business combination and the likely impact on the community. The OCC also considers additional relevant factors, including the resulting national bank's ability and plans to provide expanded or less costly services to the community.

(iv) *Community reinvestment.* The OCC considers the performance of the applicant and the other depository institutions involved in the business combination in helping to meet the credit needs of the relevant communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices.

(2) *Acquisition and retention of branches.* An applicant shall disclose the location of any branch it will acquire and retain in a business combination. The OCC considers the acquisition and retention of a branch under the standards set out in § 5.30, but it does not require a separate application under § 5.30.

(3) *Subsidiaries.* (i) An applicant shall identify any subsidiary to be acquired in a business combination and state the activities of each subsidiary. The OCC does not require a separate application under § 5.34.

(ii) An applicant proposing to acquire, through a business combination, a subsidiary of a depository institution other than a national bank shall provide the same information and analysis of the subsidiary's activities that would be required if the applicant were establishing the subsidiary pursuant to § 5.34.

(4) *Interim bank*—(i) *Application.* An applicant for a business combination that plans to use an interim bank to accomplish the transaction shall file an application to organize an interim bank as part of the application for the related business combination.

(ii) *Conditional approval.* The OCC grants conditional approval to form an interim bank when it acknowledges receipt of the application for the related business combination.

(iii) *Corporate status.* An interim bank becomes a legal entity and may enter into legally valid agreements when it has filed, and the OCC has accepted, the interim bank's duly executed articles of

association and organization certificate. OCC acceptance occurs:

(A) On the date the OCC advises the interim bank that its articles of association and organization certificate are acceptable; or

(B) On the date the interim bank files articles of association and an organization certificate that conform to the form for those documents provided by the OCC in the Manual.

(iv) *Other corporate procedures.* An applicant should consult the Manual to determine what other information is necessary to complete the chartering of the interim bank as a national bank.

(5) *Nonconforming assets.* An applicant shall identify any nonconforming activities and assets, including nonconforming subsidiaries, of other institutions involved in the business combination, that will not be disposed of or discontinued prior to consummation of the transaction. The OCC generally requires a national bank to divest or conform nonconforming assets, or discontinue nonconforming activities, within a reasonable time following the business combination.

(6) *Fiduciary powers.* An applicant shall state whether the resulting bank intends to exercise fiduciary powers pursuant to § 5.26(b) (1) or (2).

(7) *Expiration of approval.* Approval of a business combination, and conditional approval to form an interim bank charter, if applicable, expires if the business combination is not consummated within one year after the date of OCC approval.

(8) *Adequacy of disclosure.* (i) An applicant shall inform shareholders of all material aspects of a business combination and shall comply with any applicable requirements of the Federal securities laws and securities regulations of the OCC. Accordingly, an applicant shall ensure that all proxy and information statements prepared in connection with a business combination do not contain any untrue or misleading statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(ii) A national bank applicant with one or more classes of securities subject to the registration provisions of section 12 (b) or (g) of the Securities Exchange Act of 1934, 15 U.S.C. 78*l*(b) or 78*l*(g), shall file preliminary proxy material or information statements for review with the Director, Securities and Corporate Practices Division, OCC, Washington, DC 20219, and with the appropriate district office. Any other applicant shall submit the proxy materials or information statements it uses in connection with the combination to the appropriate district office no later than when the materials are sent to the shareholders.

(f) *Exceptions to rules of general applicability*—(1) *National bank applicant.* Section 5.8 (a) through (c) does not apply to a national bank applicant that is subject to specific statutory notice requirements for a business combination. A national bank applicant shall follow, as applicable, the public notice requirements contained in 12 U.S.C. 1828(c)(3) (business combinations), 12 U.S.C. 215(a) (consolidation under a national bank charter), 12 U.S.C. 215a(a)(2) (merger under a national bank charter), and paragraph (g) of this section (merger or consolidation with a Federal savings association resulting in a state bank).

(2) *Interim bank.* Sections 5.8, 5.10, and 5.11 do not apply to an application to organize an interim bank. However, if the OCC concludes that an application presents significant and novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply. The OCC treats an application to organize an interim bank as part of the related application to engage in a business combination and does not require a separate public notice and public comment process.

(3) *State bank or Federal savings association as resulting institution.* Sections 5.2 and 5.5 through 5.13 do not apply to transactions covered by paragraph (g)(3) of this section.

(g) *Approval procedures and treatment of dissenting shareholders in consolidations and mergers*—(1) *Consolidations and mergers with other national banks and state banks as defined in 12 U.S.C. 215b(1) resulting in a national bank.* A national bank entering into a consolidation or merger authorized pursuant to 12 U.S.C. 215 or 215a, respectively, is subject to the approval procedures and requirements with respect to treatment of dissenting shareholders set forth in those provisions.

(2) *Consolidations and mergers with Federal savings associations under 12 U.S.C. 215c resulting in a national bank.* (i) With the approval of the OCC, any national bank and any Federal savings association may consolidate or merge with a national bank as the resulting institution by complying with the following procedures:

(A) A national bank entering into the consolidation or merger shall follow the procedures of 12 U.S.C. 215 or 215a, respectively, as if the Federal savings association were a state or national bank.

(B) A Federal savings association entering into the consolidation or merger also shall follow the procedures of 12 U.S.C. 215 or 215a, respectively, as if the Federal savings association were a state bank or national bank, except where the laws or regulations governing Federal savings associations specifically provide otherwise.

(ii) The OCC may conduct an appraisal or reappraisal of dissenters' shares of stock in a national bank involved in a consolidation or merger with a Federal savings association if all parties agree that the determination is final and binding on each party.

(3) *Merger or consolidation of a national bank resulting in a state bank as defined in 12 U.S.C. 214(a) or a Federal savings association*—(i) *Policy.* Prior OCC approval is not required for the merger or consolidation of a national bank with a state bank or Federal savings association when the resulting institution will be a state bank or Federal savings association. Termination of a national bank's status as a national banking association is automatic upon completion of the requirements of 12 U.S.C. 214a, in accordance with 12 U.S.C. 214c, in the case of a merger or consolidation when the resulting institution is a state bank, or paragraph (g)(3)(iii) of this section, in the case of a merger or consolidation when the resulting institution is a Federal savings association, and consummation of the transaction.

(ii) *Procedures.* A national bank desiring to merge or consolidate with a state bank or a Federal savings association when the resulting institution will be a state bank or Federal savings association shall submit a notice to the appropriate district office advising of its intention. The national bank shall submit this notice at the time the application to merge or consolidate is filed with the responsible agency under the Bank Merger Act, 12 U.S.C. 1828(c). The OCC then provides instructions to the national bank for terminating its status as a national bank, including requiring the bank to provide the appropriate district office with the bank's charter (or a copy) in connection with the consummation of the transaction.

(iii) *Special procedures for merger or consolidation into a Federal savings association.* (A) With the exception of the procedures in paragraph (g)(3)(iii)(B) of this section, a national bank entering into a merger or consolidation with a Federal savings association when the resulting institution will be a Federal savings association shall comply with the requirements of 12 U.S.C. 214a and 12 U.S.C. 214c as if the Federal savings

association were a state bank. However, for these purposes the references in 12 U.S.C. 214c to ''law of the State in which such national banking association is located'' and ''any State authority'' mean ''laws and regulations governing Federal savings associations'' and ''Office of Thrift Supervision,'' respectively.

(B) National bank shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a as if the Federal savings association were a state bank. The OCC conducts an appraisal or reappraisal of the value of the national bank shares held by dissenting shareholders only if all parties agree that the determination will be final and binding. The parties shall also agree on how the total expenses of the OCC in making the appraisal will be divided among the parties and paid to the OCC. The plan of merger or consolidation must provide, consistent with the requirements of the Office of Thrift Supervision, the manner of disposing of the shares of the resulting Federal savings association not taken by the dissenting shareholders of the national bank.

(h) *Interstate combinations.* A business combination between banks under the authority of 12 U.S.C. 1831u(a)(1) must satisfy the standards and requirements and comply with the procedures of 12 U.S.C. 1831u and the procedures of 12 U.S.C. 215 and 215a as applicable. For purposes of this section, the acquisition of a branch without the acquisition of all or substantially all of the assets of a bank is treated as the acquisition of a bank whose home state is the state in which the branch is located.

(i) *Expedited review for business reorganizations and streamlined applications.* A filing that qualifies as a business reorganization as defined in paragraph (d)(2) of this section, or a filing that qualifies as a streamlined application as described in paragraph (j) of this section, is deemed approved by the OCC as of the 45th day after the application is received by the OCC, or the 15th day after the close of the comment period, whichever is later, unless the OCC notifies the applicant that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An application under this paragraph must contain all necessary information for the OCC to determine if it qualifies as a business reorganization or streamlined application.

(j) *Streamlined applications.* (1) An applicant may qualify for a streamlined business combination application in the following situations:

(i) At least one party to the transaction is an eligible bank, and all other parties to the transaction are eligible banks or eligible depository institutions, the resulting national bank will be well capitalized immediately following consummation of the transaction, and the total assets of the target institution are no more than 50 percent of the total assets of the acquiring bank, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application;

(ii) The acquiring bank is an eligible bank, the target bank is not an eligible bank or an eligible depository institution, the resulting national bank will be well capitalized immediately following consummation of the transaction, and the applicants in a prefiling communication request and obtain approval from the appropriate district office to use the streamlined application; or

(iii) The acquiring bank is an eligible bank, the target bank is not an eligible bank or an eligible depository institution, the resulting bank will be well capitalized immediately following consummation of the transaction, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

(2) When a business combination qualifies for a streamlined application, the applicant should consult the Manual to determine the abbreviated application information required by the OCC. The OCC encourages prefiling communications between the applicants and the appropriate district office before filing under paragraph (j) of this section.

§ 5.34 Operating subsidiaries.

(a) *Authority.* 12 U.S.C. 24(Seventh) and 93a.

(b) *Licensing requirements.* A national bank generally shall submit an application and obtain prior OCC approval to establish or commence new activities in an operating subsidiary. In certain circumstances, a national bank need only notify the OCC after it has established or commenced specified activities in an operating subsidiary.

(c) *Scope.* This section sets forth authorized activities and application and notice procedures for the establishment and operation of an operating subsidiary by a national bank.

(d) *Standards and requirements*—(1) *Authorized activities.* A national bank may establish or acquire an operating subsidiary to conduct, or may conduct in an existing operating subsidiary, activities that are part of or incidental to the business of banking, as determined by the Comptroller of the Currency, pursuant to 12 U.S.C. 24(Seventh), and other activities permissible for national banks or their subsidiaries under other statutory authority.

(2) *Qualifying subsidiaries.* For purposes of this section, an operating subsidiary in which a national bank may invest includes a corporation, limited liability company, or similar entity if the parent bank owns more than 50 percent of the voting (or similar type of controlling) interest of the subsidiary; or the parent bank otherwise controls the subsidiary and no other party controls more than 50 percent of the voting (or similar type of controlling) interest of the subsidiary. However, the following subsidiaries are not operating subsidiaries subject to this section:

(i) A subsidiary in which the bank's investment is made pursuant to specific authorization in a statute or OCC regulation (*e.g.*, a community development corporation subsidiary under 12 CFR part 24); and

(ii) A subsidiary in which the bank has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid a loss in connection with a debt previously contracted.

(3) *Examination and supervision.* Each operating subsidiary is subject to examination and supervision by the OCC. In conducting activities authorized under this section, unless otherwise provided by statute or regulation (including paragraph (f) of this section), applicable provisions of Federal banking law and regulations pertaining to the operations of the parent bank shall apply to the operations of the bank's operating subsidiary. If, upon examination, the OCC determines that the subsidiary is operating in violation of law, regulation, or written condition, or in an unsafe or unsound manner or otherwise threatens the safety and soundness of the bank, the OCC will direct the bank or operating subsidiary to take appropriate remedial action, which may include requiring the bank to divest or liquidate the subsidiary, or discontinue specified activities.

(4) *Consolidation of figures.* Pertinent book figures of the parent bank and its operating subsidiary shall be combined for the purpose of applying statutory limitations when combination is needed

to effect the intent of the statute, *e.g.*, for purposes of 12 U.S.C. 56, 60, 84 and 371d. However, in determining compliance with statutory limits based on regulatory capital, the bank shall make any reductions in regulatory capital required by paragraph (f) of this section.

(e) *Procedures*—(1) *General*—(i) *Application required.* (A) Except as provided in paragraphs (e)(2) and (e)(4) of this section, a national bank that intends to acquire or establish an operating subsidiary, or to perform a new activity in an existing subsidiary, shall submit an application to, and receive approval from, the OCC before acquiring or establishing the subsidiary, or commencing the new activity. The application must include a complete description of the bank's investment in the subsidiary, the proposed activities of the subsidiary, the organizational structure and management of the subsidiary, the relations between the bank and the subsidiary, and other information necessary to adequately describe the proposal. It also must state whether the bank intends to conduct any activity of the operating subsidiary at a location other than the main office or a previously approved branch of the bank. The OCC may require the applicant to submit a legal analysis if the proposal is novel, unusually complex or raises substantial unresolved legal issues. In such cases, the OCC encourages applicants to have a pre-filing meeting with the OCC.

(B) Notwithstanding any other provision in this section, a national bank shall file an application and obtain prior approval before acquiring or establishing an operating subsidiary, or performing a new activity in an existing subsidiary, if the bank controls the subsidiary but owns 50 percent or less of the voting (or similar type of controlling) interest of the subsidiary. These applications are not subject to paragraph (e)(4) of this section and are not eligible for the notice procedures in paragraph (e)(2) of this section or the expedited review procedures in paragraph (e)(3) of this section.

(ii) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant and novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(iii) *OCC review and approval.* The OCC reviews a national bank's application to determine whether the proposed activities are legally permissible for an operating subsidiary and to ensure that the proposal is consistent with safe and sound banking practices and OCC policy and does not endanger the safety or soundness of the parent national bank. As part of this process, the OCC may request additional information and analysis from the applicant.

(2) *Notice process for certain activities*—(i) *General.* A national bank that is ''adequately capitalized'' or ''well capitalized'' as those terms are defined in 12 CFR part 6, and has not been notified that it is in ''troubled condition'' as defined in § 5.51, may acquire or establish an operating subsidiary, or perform a new activity in an existing operating subsidiary, by providing the appropriate district office written notice within 10 days after acquiring or establishing the subsidiary, or commencing the activity, provided the activity is listed in paragraph (e)(2)(ii) of this section. The written notice must include a complete description of the bank's investment in the subsidiary and of the activity conducted and a representation and undertaking that the activity will be conducted in accordance with OCC policies contained in guidance issued by the OCC regarding the activity. Any bank receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(ii) *Activities eligible for notice.* The following activities qualify for the preapproved notice procedures:

(A) Holding property, such as real estate, personal property, securities, or other assets, acquired by the bank through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted;

(B) Business services for the bank or its affiliates. Furnishing services for the internal operations of the bank or its affiliates, including: accounting, auditing, appraising, advertising and public relations, data processing and data transmission services, databases, or facilities;

(C) Financial advice and consulting for the bank or its affiliates;

(D) Selling money orders, savings bonds, or travelers checks;

(E) Management consulting, operational advice, and specialized services for other depository institutions;

(F) Courier services between financial institutions;

(G) Providing check guaranty and verification services;

(H) Data processing and warehousing products, services, and related activities, including associated equipment and technology, for the operating subsidiary, its parent bank, and their affiliates;

(I) Acting as investment or financial adviser, (not involving the exercise of investment discretion), or providing financial counseling, including:

(*1*) Serving as the advisory company for a mortgage or real estate investment trust;

(*2*) Furnishing general economic information and advice, general economic statistical forecasting services, and industry studies;

(*3*) Providing financial advice to state or local governments or foreign governments with respect to issuance of securities;

(*4*) Providing tax planning and preparation; and

(*5*) Providing consumer financial counseling;

(J) Providing financial and transactional advice to customers and assisting customers in structuring, arranging, and executing various financial transactions (provided that the bank and its affiliates do not participate as a principal), including:

(*1*) Mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, and financial transactions (including private and public financings and loan syndications); and conducting financial feasibility studies; and

(*2*) Arranging commercial real estate equity financing;

(K) Investment advice, (not involving the exercise of investment discretion), on futures and options on futures;

(L) Making, purchasing, selling, servicing, or warehousing loans or other extensions of credit, or interests therein, for the subsidiary's account, or for the account of others, including consumer loans, credit cards loans, commercial loans, residential mortgage loans, and commercial mortgage loans. The notice procedure is not available under this paragraph, however, if the notice involves the direct or indirect acquisition by the bank of any low-quality asset from an affiliate in connection with a transaction subject to this section. For purposes of this paragraph (e)(2)(ii)(L), the terms ''low-quality asset'' and ''affiliate'' have the same meaning as provided in section 23A of the Federal Reserve Act, 12 U.S.C. 371c;

(M) Leasing of personal property, including:

(*1*) Leases in which the bank may invest pursuant to 12 U.S.C. 24(Seventh);

(*2*) Leases in which the bank may invest pursuant to 12 U.S.C. 24(Tenth); and

(*3*) Acting as agent, broker, or adviser in leases for others. The notice process for any leasing activity under this paragraph is not available, however, if the notice involves the direct or indirect acquisition by the bank of any low-quality asset from an affiliate in connection with a transaction subject to this section. For purposes of this paragraph (M), the terms ''low-quality asset'' and ''affiliate'' have the same meaning as provided in section 23A of the Federal Reserve Act, 12 U.S.C. 371c; or

(N) Owning, holding, and managing all or part of the parent bank's investment securities portfolio.

(3) *Expedited review*—(i) *General.* An eligible bank may acquire or establish an operating subsidiary to engage in the activities listed in paragraph (e)(3)(ii) of this section, or may perform such activities in an existing operating subsidiary, by submitting an application to the appropriate district office and receiving approval thereof. Such an application is deemed approved by the OCC 30 days after the filing is received by the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2). The application must include a complete description of the bank's investment in the subsidiary and of the activity to be conducted and a representation and undertaking that the activity will be conducted in accordance with the OCC policies contained in guidance issued by the OCC regarding the activity. All approvals are subject to the condition that the subsidiary conduct the activity in a manner consistent with OCC policies contained in the published guidance. The OCC also may impose additional conditions in connection with any approval under this section.

(ii) *Activities eligible for expedited review.* The following activities qualify for expedited review:

(A) Providing securities brokerage, related securities credit, and related activities, including investment advice;

(B) Underwriting and dealing in securities permissible for a national bank under 12 U.S.C. 24(Seventh) and 12 CFR part 1;

(C) Acting as futures commission merchant;

(D) Serving as an investment adviser for investment companies under the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*;

(E) Providing financial and transactional advice to customers and assisting customers in structuring, arranging, and executing various financial transactions relating to swaps and other derivatives and foreign exchange, coin and bullion, and related transactions;

(F) Data processing and warehousing products, services, and related activities, including associated equipment and technology permissible under 12 U.S.C. 24(Seventh) and 12 CFR 7.1019; or

(G) Real estate appraisal services for the subsidiary, parent bank or other financial institution.

(4) *No application or notice required.* A bank may acquire or establish an operating subsidiary without filing an application or providing notice to the OCC, provided the bank is adequately capitalized or well capitalized and the:

(i) Activities of the new subsidiary are limited to those activities previously reported by the bank in connection with the establishment or acquisition of a prior operating subsidiary;

(ii) Establishment or acquisition of the prior operating subsidiary was deemed permissible by the OCC;

(iii) Activities in which the new subsidiary will engage continue to be deemed legally permissible by the OCC; and

(iv) Activities of the new subsidiary will be conducted in accordance with any conditions imposed by the OCC in approving the conduct of these activities for any prior operating subsidiary of the bank.

(5) *Fiduciary powers.* If an operating subsidiary proposes to exercise investment discretion on behalf of customers or provide investment advice for a fee, the national bank must have prior OCC approval to exercise fiduciary powers pursuant to § 5.26 and the subsidiary shall be subject to the requirements of 12 CFR part 9, unless:

(i) The subsidiary is registered under the Investment Advisers Act of 1940, 15 U.S.C. 80b–1 *et seq.*; or

(ii) The subsidiary is registered, or has filed a notice, under the applicable provisions of sections 15, 15B or 15C of the Securities Exchange Act of 1934, 15 U.S.C. 78o, 78o–4, or 78o–5, as a broker, dealer, municipal securities dealer, government securities broker or government securities dealer; and the subsidiary's performance of investment advisory services as described in 15 U.S.C. 80b–2(a)(11) is solely incidental to the conduct of its business as broker or dealer and there is no special compensation to the subsidiary for those advisory services.

(f) *Additional requirements for certain permissible activities.* A national bank may acquire or establish an operating subsidiary to engage in an activity authorized under § 5.34(d) for the subsidiary but different from that permissible for the parent national bank, or may perform such activities in an existing operating subsidiary, subject to the following additional requirements:

(1) *Notice and comment.* If the OCC has not previously approved the proposed activity, the OCC will provide public notice and opportunity for comment on the application by publishing notice of the application in the Federal Register. For subsequent applications to conduct the activity, the OCC may also publish notice of the application in the Federal Register and provide an opportunity for public comment.

(2) *Corporate requirements.* The following corporate requirements apply:

(i) The subsidiary shall be physically separate and distinct in its operations from the parent bank, including ensuring that the employees of the subsidiary are compensated by the subsidiary. However, this requirement shall not be construed to prohibit the parent bank and the subsidiary from sharing the same facility, provided that any area in which the subsidiary conducts business with the public is distinguishable, to the extent practicable, from the area in which customers of the bank conduct business with the bank;

(ii) The subsidiary shall be held out as a separate and distinct entity from the bank in its written material and direct contact with outside parties. All written marketing material shall clearly state that the subsidiary is a separate entity from the bank and the obligations of the subsidiary are not obligations of the bank;

(iii) The subsidiary's name shall not be the same name as its parent bank, and a subsidiary that has a name similar to its parent bank shall take appropriate steps to minimize the risk of customer confusion, including with respect to the separate character of the two entities and the extent to which their respective obligations are insured or not insured by the Federal Deposit Insurance Corporation;

(iv) The subsidiary shall be adequately capitalized according to relevant industry measures and shall maintain capital adequate to support its activities and to cover reasonably expected expenses and losses;

(v) The subsidiary shall maintain separate accounting and corporate records;

(vi) The subsidiary shall conduct its operations pursuant to independent policies and procedures that are also intended to inform customers that the

subsidiary is an organization separate from the bank;

(vii) Contracts between the subsidiary and the bank for any services shall be on terms and conditions substantially comparable to those available to or from independent entities;

(viii) The subsidiary shall observe appropriate separate corporate formalities, such as separate board of directors' meetings;

(ix) The subsidiary shall maintain a board of directors at least one-third of whom shall not be directors of the bank and shall have relevant expertise capable of overseeing the subsidiary's activities; and

(x) The subsidiary and the parent bank shall have internal controls appropriate to manage the financial and operational risks associated with the subsidiary.

(3) *Supervisory requirements.* When the subsidiary will conduct an activity described in this paragraph (f) as principal, the following additional requirements apply:

(i) The bank's capital and total assets shall each be reduced by an amount equal to the bank's equity investment in the subsidiary (for purposes of risk-based capital this deduction shall be made equally from Tier 1 and Tier 2 capital), and the subsidiary's assets and liabilities shall not be consolidated with those of the bank. The OCC may, however, require the bank to calculate its capital on a consolidated basis for purposes of determining whether the bank is adequately capitalized under 12 CFR part 6;

(ii) The standards of sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) shall apply to, and shall be enforced and applied by the OCC with respect to, transactions between the bank and the subsidiary; and

(iii) The bank must qualify as an eligible bank under the criteria set forth at § 5.3(g), both prior to commencement of the activity, and thereafter, taking into account the capital deduction required by paragraph (f)(3)(i) of this section. If the bank ceases to be well capitalized for two consecutive quarters, it shall submit to the OCC, within the period specified by the OCC, an acceptable plan to become well capitalized.

§ 5.35 Bank service companies.

(a) *Authority.* 12 U.S.C. 93a and 1861–1867.

(b) *Licensing requirements.* Except where otherwise provided, a national bank shall submit a notice and obtain prior OCC approval to invest in the equity of a bank service company or to perform new activities in an existing bank service company.

(c) *Scope.* This section describes the procedures and requirements regarding OCC review and approval of a notice to invest in a bank service company.

(d) *Definitions*—(1) *Bank service company* means a corporation or limited liability company organized to provide services authorized by the Bank Service Company Act, 12 U.S.C. 1861 *et seq.*, all of whose capital stock is owned by one or more insured banks in the case of a corporation, or all of the members of which are one or more insured banks in the case of a limited liability company.

(2) *Limited liability company* means any non-corporate company, partnership, trust, or similar business entity organized under the law of a State (as defined in section 3 of the Federal Deposit Insurance Act) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company.

(3) *Depository institution,* for purposes of this section, means an insured bank, a financial institution subject to examination by the Office of Thrift Supervision, or the National Credit Union Administration Board, or a financial institution whose accounts or deposits are insured or guaranteed under state law and eligible to be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.

(4) *Invest* includes making any advance of funds to a bank service company, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered before the payment was made.

(5) *Principal investor* means the insured bank that has the largest amount invested in the equity of a bank service company. In any case where two or more insured banks have equal amounts invested, the bank service company shall designate one of the banks as its principal investor.

(e) *Standards and requirements.* A national bank may invest in the equity of a bank service company that conducts, or through an existing bank service company may conduct, activities described in paragraphs (f)(4) and (f)(5) of this section, and activities (other than taking deposits) permissible for the national bank and other state and national bank shareholders or members in the bank service company.

(f) *Procedures*—(1) *OCC notice and approval required.* Except as provided in paragraphs (f)(2) and (f)(5) of this section, a national bank that intends to make an investment in the equity of a bank service company, or to perform new activities in an existing bank service company, shall submit a notice to and receive prior approval from the OCC. The OCC approves or denies a proposed investment within 60 days after the filing is received by the OCC, unless the OCC notifies the bank prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or policy issue. The notice must include the information required by paragraph (g) of this section.

(2) *Notice process only for certain activities.* A national bank that is ''adequately capitalized'' or ''well capitalized,'' as defined in 12 CFR part 6, and has not been notified that it is in ''troubled condition,'' as defined in § 5.51, may invest in the equity of a bank service company, or perform a new activity in an existing bank service company, by providing the appropriate district office written notice within ten days after the investment, provided that the bank service company engages only in the activities listed in § 5.34(e)(2)(ii). No prior OCC approval is required. The written notice must include a complete description of the bank's investment in the subsidiary and of the activity conducted and a representation and undertaking that the activity will be conducted in accordance with OCC policies contained in guidance issued by the OCC regarding the activity. Any bank receiving approval under paragraph (f)(2) of this section is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with the published OCC guidance.

(3) *Expedited review.* Notwithstanding paragraph (f)(1) of this section, a notice by an eligible bank that seeks to make an investment in the equity of a bank service company, or to perform a new activity in an existing bank service company, is deemed approved by the OCC 30 days after the filing is received by the OCC, provided that the bank service company will engage in an activity listed in § 5.34(e)(3)(ii), unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2). The written notice must include a complete description of the bank's investment in the subsidiary and of the activity to be conducted and a representation and undertaking that the activity will be conducted in accordance with OCC policies contained in guidance regarding the activity. Approval under this paragraph (f)(3) is subject to the

condition that the bank service company conduct the activity in a manner consistent with OCC policies contained in guidance issued by the OCC regarding the activity. The OCC also may impose additional conditions in connection with any approval under this section.

(4) *Investments requiring no approval.* A national bank does not need OCC approval to invest in a bank service company, or to perform a new activity in an existing bank service company, if the bank service company will provide the following services only for depository institutions: check and deposit posting and sorting; computation and posting of interest and other credits and charges; preparation and mailing of checks, statements, notices, and similar items; or any other clerical, bookkeeping, accounting, statistical, or similar function.

(5) *Federal Reserve approval.* A national bank also may, with the approval of the Board of Governors of the Federal Reserve System (Federal Reserve Board), invest in the equity of a bank service company that provides any other service (except deposit taking) that the Federal Reserve Board has determined, by regulation, to be permissible for a bank holding company under 12 U.S.C. 1843(c)(8).

(6) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to a request for approval to invest in a bank service corporation. However, if the OCC concludes that an application presents significant and novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(g) *Required information.* A notice required under paragraph (f)(1), of this section must contain the following:

(1) The name and location of the bank service company;

(2) A complete description of the activities the bank service company will conduct;

(3) Information demonstrating that the bank will comply with the investment limitations of paragraph (h) of this section;

(4) Information demonstrating that the bank service company and all banks investing in the bank service company are located in the same state, unless the Federal Reserve Board has approved an exception to this requirement under the authority of 12 U.S.C. 1864(b); and

(5) Information demonstrating that the bank service company will conduct these activities only at locations in a state where the investing bank could be authorized to perform the activities directly.

(h) *Examination and supervision.* Each bank service company in which a national bank is the principal investor is subject to examination and supervision by the OCC in the same manner and to the same extent as that national bank.

(i) *Investment and other limitations*—(1) *Investment limitations.* A bank may not invest more than ten percent of its capital and surplus in a bank service company. In addition, the bank's total investments in all bank service companies may not exceed five percent of the bank's total assets.

(2) *Other limitations.* Expect as provided in paragraph (f)(5) of this section, a bank service company shall only conduct activities that the national bank could conduct directly. If the bank service company has both national and state bank shareholders or members, the activities conducted must also be permissible for the state bank shareholders or members.

§ 5.36 Other equity investments.

(a) *Authority.* 12 U.S.C. 1 *et seq.*, 24(Seventh), and 93a.

(b) *Scope.* National banks are permitted to make various types of equity investments pursuant to 12 U.S.C. 24(Seventh) and other statutes. These investments are in addition to those subject to §§ 5.34, 5.35, and 5.37. This section describes the procedure governing the filing of the notice that the OCC requires in connection with certain of these investments. Other investments authorized under this section may be reviewed on a case-by-case basis by the OCC.

(c) *Procedure.* (1) A national bank must provide the appropriate district office with written notice within ten days after making an equity investment in the following:

(i) An agricultural credit corporation;

(ii) A savings association eligible to be acquired under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823); and

(iii) Any other equity investment that may be authorized by statute after February 12, 1990, if not covered by other applicable OCC regulation.

(2) The written notice required by paragraph (c)(1) of this section must include a description, and the amount, of the bank's investment.

(3) The OCC reserves the right to require additional information as necessary.

(d) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, and 5.11 of this part do not apply to filings for other equity investments.

§ 5.37 Investment in bank premises.

(a) *Authority.* 12 U.S.C. 29, 93a, and 371d.

(b) *Scope.* This section sets forth the procedures governing OCC review and approval of applications by national banks to invest in bank premises or in certain bank premises related investments, loans, or indebtedness, as described in paragraph (d)(1)(i) of this section.

(c) *Definition—Bank premises* for purposes of this section includes the following:

(1) Premises that are owned and occupied (or to be occupied, if under construction) by the bank, its branches, or its consolidated subsidiaries;

(2) Capitalized leases and leasehold improvements, vaults, and fixed machinery and equipment;

(3) Remodeling costs to existing premises;

(4) Real estate acquired and intended, in good faith, for use in future expansion; or

(5) Parking facilities that are used by customers or employees of the bank, its branches, and its consolidated subsidiaries.

(d) *Procedure*—(1) *Application.* (i) A national bank shall submit an application to the appropriate district office to invest in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of the bank, or to make loans to or upon the security of the stock of such corporation, if the aggregate of all such investments and loans, together with the indebtedness incurred by any such corporation that is an affiliate of the bank, as defined in 12 U.S.C. 221a, will exceed the amount of the capital stock of the bank.

(ii) The application must include:

(A) A description of the bank's present investment in bank premises;

(B) The investment in bank premises that the bank intends to make, and the business reason for making the investment; and

(C) The amount by which the bank's aggregate investment will exceed the amount of the bank's capital stock.

(2) *Approval.* An application for national bank investment in bank premises or in certain bank premises' related investments, loans or indebtedness, as described in paragraph (d)(1)(i) of this section, is deemed approved as of the 30th day after the filing is received by the OCC, unless the OCC notifies the bank prior to that date that the filing presents a significant supervisory, or compliance concern, or raises a significant legal or policy issue. An approval for a specified amount under this section remains valid up to that amount until the OCC notifies the bank otherwise.

(3) *Notice process.* Notwithstanding paragraph (d)(1)(i) of this section, a bank that is rated 1 or 2 under the Uniform Financial Institutions Rating System (CAMEL) may make an aggregate investment in bank premises up to 150 percent of the bank's capital and surplus without the OCC's prior approval, provided that the bank is well capitalized as defined in 12 CFR part 6 and will continue to be well capitalized after the investment or loan is made. However, the bank shall notify the appropriate district office in writing of the investment within 30 days after the investment or loan is made. The written notice must include a description of the bank's investment.

(4) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant and novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

Subpart D—Other Changes in Activities and Operations

§ 5.40 Change in location of main office.

(a) *Authority* 12 U.S.C. 30, 93a, and 2901 through 2907.

(b) *Licensing requirements.* A national bank shall give prior notice to the OCC to relocate its main office within city, town, or village limits to an authorized branch location. A national bank shall submit an application and obtain prior OCC approval to relocate its main office to any other location in the city, town, or village, or within 30 miles of the limits of the city, town, or village in which the main office of the bank is located.

(c) *Scope.* This section describes OCC procedures and approval standards for an application or a notice by a national bank to change the location of its main office.

(d) *Procedure*—(1) *Main office relocation to an authorized branch location within city, town, or village limits.* A national bank may change the location of its main office to an authorized branch location (approved or existing branch site) within the limits of the same city, town, or village. The national bank shall submit a notice to the appropriate district office before the relocation. The notice must include the new address of the main office and the effective date of the relocation.

(2) *To any other location.* To relocate its main office to any other location, a national bank shall file an application to relocate with the appropriate district office. If relocating the main office outside the limits of its city, town, or village, a national bank shall also:

(i) Obtain the approval of shareholders owning two-thirds of the voting stock of the bank; and

(ii) Amend its articles of association.

(3) *Establishment of a branch at site of former main office.* A national bank desiring to establish a branch at its former main office location shall obtain OCC approval pursuant to the standards of § 5.30.

(4) *Expedited review.* A main office relocation application submitted by an eligible bank under paragraph (d)(2) of this section is deemed approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC notifies the bank prior to that time that the filing is not eligible for expedited review, or the expedited review period is extended, under § 5.13(a)(2).

(5) *Exceptions to rules of general applicability.* (i) Sections 5.8, 5.9, 5.10, and 5.11 do not apply to a main office relocation to an authorized branch location within the limits of the city, town, or village as described in paragraph (d)(1) of this section. However, if the OCC concludes that the notice under paragraph (d)(1) of this section presents a significant and novel policy, supervisory, or legal issue, the OCC may determine that any or all parts of §§ 5.8, 5.9, 5.10, and 5.11 apply.

(ii) The comment period on any application filed under paragraph (d)(2) of this section to engage in a short-distance relocation of a main office is 15 days.

(e) *Expiration of approval.* Approval expires if the national bank has not opened its main office at the relocated site within 18 months of the date of approval.

§ 5.42 Corporate title.

(a) *Authority.* 12 U.S.C. 21a, 30, and 93a.

(b) *Scope.* This section describes the method by which a national bank may change its corporate title.

(c) *Standards.* A national bank may change its corporate title provided that the new title includes the word ''national'' and complies with other applicable Federal laws, including 18 U.S.C. 709, regarding false advertising and the misuse of names to indicate a Federal agency, and any applicable OCC guidance.

(d) *Procedures*—(1) *Notice process.* A national bank shall promptly notify the appropriate district office if it changes its corporate title. The notice must contain the old and new titles and the effective date of the change.

(2) *Amendment to articles of association.* A national bank whose corporate title is specified in its articles of association shall amend its articles, in accordance with the procedures of 12 U.S.C. 21a, to change its title.

(3) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, 5.11, and 5.13(a) do not apply to a national bank's change of corporate title. However, if the OCC concludes that the application presents a significant and novel policy, supervisory, or legal issue, the OCC may determine that any or all parts of §§ 5.8, 5.9, 5.10, 5.11, and 5.13(a) apply.

§ 5.46 Changes in permanent capital.

(a) *Authority.* 12 U.S.C. 21a, 51, 51a, 51b, 51b–1, 52, 56, 57, 59, 60, and 93a.

(b) *Licensing requirements.* A national bank shall submit an application and obtain OCC approval to decrease its permanent capital. Generally, a national bank need only submit a notice to increase its permanent capital, although, in certain circumstances, a national bank shall be required to submit an application and obtain OCC approval.

(c) *Scope.* This section describes procedures and standards relating to a transaction resulting in a change in a national bank's permanent capital.

(d) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to changes in a national bank's permanent capital.

(e) *Definitions.* For the purposes of this section the following definitions apply:

(1) *Capital plan* means a plan describing the manner and schedule by which a national bank will attain specified capital levels or ratios, including a plan to achieve minimum capital ratios filed with the appropriate district office under 12 CFR 3.7 and a capital restoration plan filed with the OCC under 12 U.S.C. 1831o and 12 CFR 6.5.

(2) *Capital stock* means the total amount of common stock and preferred stock.

(3) *Capital surplus* means the total of:

(i) The amount paid in on capital stock in excess of the par or stated value;

(ii) Direct capital contributions representing the amounts paid in to the national bank other than for capital stock;

(iii) The amount transferred from undivided profits required by 12 U.S.C. 60; and

(iv) The amount transferred from undivided profits reflecting stock dividends.

(4) *Permanent capital* means the sum of capital stock and capital surplus.

(f) *Policy.* In determining whether to approve a proposed change to a national bank's permanent capital, the OCC considers whether the change is:

(1) Consistent with law, regulation, and OCC policy thereunder;

(2) Provides an adequate capital structure; and

(3) If appropriate, complies with the bank's capital plan.

(g) *Increases in permanent capital*—(1) *Prior approval*—(i) *Criteria.* A national bank need not obtain prior OCC approval to increase its permanent capital unless the bank is:

(A) Required to receive OCC approval pursuant to letter, order, directive, written agreement or otherwise;

(B) Selling common or preferred stock for consideration other than cash; or

(C) Receiving a material noncash contribution to capital surplus.

(ii) *Application and letter of notification.* A national bank that proposes to increase its permanent capital and that must receive OCC approval under paragraph (g)(1)(i) of this section shall file an application under paragraph (i)(1) of this section and a letter of notification under paragraph (i)(3) of this section. A national bank not required to obtain prior approval under paragraph (g)(1)(i) of this section for an increase in capital shall file only the letter of notification under paragraph (i)(3) of this section.

(2) *Preferred stock.* Notwithstanding paragraph (g)(1)(i) of this section, in the case of a sale of preferred stock, the national bank shall also submit provisions in the articles of association concerning preferred stock dividends, voting and conversion rights, retirement of the stock, and rights to exercise control over management to the appropriate district office prior to the sale of the preferred stock. The provisions will be deemed approved by the OCC within 30 days of its receipt, unless the OCC notifies the applicant otherwise, including a statement of the reason for the delay.

(h) *Decreases in permanent capital.* A national bank shall submit an application and obtain prior approval under paragraph (i)(1) or (i)(2) of this section for any reduction of its permanent capital.

(i) *Procedures*—(1) Prior approval. A national bank proposing to make a change in its permanent capital that requires prior OCC approval under paragraphs (g) or (h) of this section shall submit an application to the appropriate district office. The application must:

(i) Describe the type and amount of the proposed change in permanent capital and explain the reason for the change;

(ii) In the case of a reduction in capital, provide a schedule detailing the present and proposed capital structure;

(iii) In the case of a material noncash contribution to capital, provide a description of the method of valuing the contribution; and

(iv) State if the bank is subject to a capital plan with the OCC and how the proposed change would conform to a capital plan or if a capital plan is otherwise required in connection with the proposed change in permanent capital.

(2) *Expedited review.* An eligible bank's application is deemed approved by the OCC 30 days after the date the OCC receives the application described in paragraph (i)(1) of this section, unless the OCC notifies the bank prior to that date that the application is not eligible for expedited review under § 5.13(a)(2). A bank seeking to decrease its capital may request OCC approval for up to four consecutive quarters. An eligible bank may decrease its capital pursuant to such a plan only if the bank maintains its eligible bank status before and after each decrease in its capital.

(3) *Letter of notification.* After a bank completes an increase in capital it shall submit a letter of notification to the appropriate district office in order to obtain a certification from the OCC. The proposed change is deemed approved by the OCC and certified seven days after the date on which the OCC receives the letter of notification. The letter of notification must be acknowledged before a notary public by the bank's president, vice president, or cashier and contain:

(i) A description of the transaction, unless already provided pursuant to paragraph (i)(1) of this section;

(ii) The amount, including the par value of the stock, and effective date of the increase;

(iii) A certification that the funds have been paid in, if applicable;

(iv) A certified copy of the amendment to the articles of association, if required; and

(v) A statement that the bank has complied with all laws, regulations and conditions imposed by the OCC.

(4) *Notice process.* A national bank that decreases its capital in accordance with paragraphs (i)(1) or (i)(2) of this section shall notify the appropriate district office following the completion of the transaction.

(5) *Expiration of approval.* Approval expires if a national bank has not completed its change in permanent capital within one year of the date of approval.

(j) *Offers and sales of stock.* A national bank shall comply with the Securities Offering Disclosure Rules in 12 CFR part 16 for offers and sales of common and preferred stock.

(k) *Shareholder approval.* A national bank shall obtain the necessary shareholder approval required by statute for any change in its permanent capital.

§ 5.47 Subordinated debt as capital.

(a) *Authority.* 12 U.S.C. 93a.

(b) *Licensing requirements.* A national bank does not need prior OCC approval to issue subordinated debt, or to prepay subordinated debt (including payment pursuant to an acceleration clause or redemption prior to maturity) provided the bank remains an eligible bank after the transaction, unless the OCC has previously notified the bank that prior approval is required, or unless prior approval is required by law. No prior approval is required for the bank to count the subordinated debt as Tier 2 or Tier 3 capital. However, a bank issuing subordinated debt shall notify the OCC after issuance if the debt is to be counted as Tier 2 or Tier 3 capital.

(c) *Scope.* This section sets forth the procedures for OCC review and approval of an application to issue or prepay subordinated debt.

(d) *Definitions*—(1) *Capital plan* means a plan describing the means and schedule by which a national bank will attain specified capital levels or ratios, including a plan to achieve minimum capital ratios filed with the appropriate district office under 12 CFR 3.7 and a capital restoration plan filed with the OCC under 12 U.S.C. 1831o and 12 CFR 6.5.

(2) *Tier 2 capital* has the same meaning as set forth in 12 CFR 3.2(d).

(3) *Tier 3 capital* has the same meaning as set forth in 12 CFR part 3, appendix B, section 2(d).

(e) *Qualification as regulatory capital.* (1) A national bank's subordinated debt qualifies as Tier 2 capital if the subordinated debt meets the requirements in 12 CFR part 3, appendix A, section 2(b)(4), and complies with the ''OCC Guidelines for Subordinated Debt'' in the Manual.

(2) A national bank's subordinated debt qualifies as Tier 3 capital if the subordinated debt meets the requirements in 12 CFR part 3, section 2(d) of Appendix B.

(3) If the OCC notifies a national bank that it must obtain OCC approval before issuing subordinated debt, the subordinated debt will not qualify as Tier 2 or Tier 3 capital until the bank obtains OCC approval for its inclusion in capital.

(f) *Prior approval procedure*—(1) *Application.* A national bank required to obtain OCC approval before issuing or prepaying subordinated debt shall submit an application to the appropriate district office. The application must include:

(i) A description of the terms and amount of the proposed issuance or prepayment;

(ii) A statement of whether the bank is subject to a capital plan or required to file a capital plan with the OCC and, if so, how the proposed change conforms to the capital plan;

(iii) A copy of the proposed subordinated note format and note agreement; and

(iv) A statement of whether the subordinated debt issue complies with all laws, regulations, and the ''OCC Guidelines for Subordinated Debt'' in the Manual.

(2) *Approval*—(i) *General.* The application is deemed approved by the OCC as of the 30th day after the filing is received by the OCC, unless the OCC notifies the bank prior to that date that the filing presents a significant supervisory, or compliance concern, or raises a significant legal or policy issue.

(ii) *Tier 2 and Tier 3 capital.* When the OCC notifies the bank that the OCC approves the bank's application to issue or prepay the subordinated debt, it also notifies the bank whether the subordinated debt qualifies as Tier 2 or Tier 3 capital.

(iii) *Expiration of approval.* Approval expires if a national bank does not complete the sale of the subordinated debt within one year of approval.

(g) *Notice procedure.* If a national bank is not required to obtain approval before issuing subordinated debt, the bank shall notify the appropriate district office in writing within ten days after issuing subordinated debt that is to be counted as Tier 2 or Tier 3 capital. The notice must include:

(1) The terms of the issuance;

(2) The amount and date of receipt of funds;

(3) A copy of the final subordinated note format and note agreement; and

(4) A statement that the issue complies with all laws, regulations, and the ''OCC Guidelines for Subordinated Debt Instruments'' in the Manual.

(h) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to the issuance of subordinated debt.

(i) *Issuance of subordinated debt.* A national bank shall comply with the Securities Offering Disclosure Rules in 12 CFR part 16 when issuing subordinated debt even if the bank is not required to obtain prior approval to issue subordinated debt.

§ 5.48 Voluntary liquidation.

(a) *Authority.* 12 U.S.C. 93a, 181, and 182.

(b) *Licensing requirements.* A national bank considering going into voluntary liquidation shall notify the OCC. The bank shall also file a notice with the OCC once a liquidation plan is definite.

(c) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to a voluntary liquidation. However, if the OCC concludes that the notice presents significant and novel policy, supervisory or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(d) *Standards.* A national bank may liquidate in accordance with the terms of 12 U.S.C. 181 and 182.

(e) *Procedure*—(1) *Notice of voluntary liquidation.* When the shareholders of a solvent national bank have voted to voluntarily liquidate, the bank shall file a notice with the appropriate district office and publish public notice in accordance with 12 U.S.C. 182.

(2) *Report of condition.* The liquidating bank shall submit reports of the condition of its commercial, trust, and other departments to the appropriate district office by filing the quarterly Consolidated Reports of Condition and Income (Call Reports).

(3) *Report of progress.* The liquidating agent or committee shall submit a ''Report of Progress of Liquidation'' annually to the appropriate district office until the liquidation is complete.

(f) *Expedited liquidations in connection with acquisitions*—(1) *General.* When an acquiring depository institution in a business combination purchases all the assets, and assumes all the liabilities, including contingent liabilities, of a target national bank, the acquiring depository institution may dissolve the target national bank immediately after the combination. However, if any liabilities will remain in the target national bank, then the standard liquidation procedures apply.

(2) *Procedure.* After its shareholders have voted to liquidate and the national bank has notified the appropriate district office of its plans, the bank may surrender its charter and dissolve immediately, if:

(i) The acquiring depository institution certifies to the OCC that it has purchased all the assets and assumed all the liabilities, including contingent liabilities, of the national bank in liquidation; and

(ii) The acquiring depository institution and the national bank in liquidation have published notice that the bank will dissolve after the purchase and assumption to the acquiror. This is included in the notice and publication for the purchase and assumption required under the Bank Merger Act, 12 U.S.C. 1828(c).

(g) *National bank as acquiror.* If another national bank plans to acquire a national bank in liquidation through merger or through the purchase of the assets and the assumption of the liabilities of the bank in liquidation, the acquiring bank shall comply with the Bank Merger Act, 12 U.S.C. 1828(c), and § 5.33.

§ 5.50 Change in bank control; reporting of stock loans.

(a) *Authority.* 12 U.S.C. 93a and 1817(j).

(b) *Licensing requirements.* Any person seeking to acquire control of a national bank shall provide 60 days prior written notice of a change in control to the OCC, except where otherwise provided in this section.

(c) *Scope*—(1) *General.* This section describes the procedures and standards governing OCC review of notices for a change in control of a national bank and reports of stock loans.

(2) *Exempt transactions.* The following transactions are not subject to the requirements of this section:

(i) The acquisition of additional shares of a national bank by a person who:

(A) Has, continuously since March 9, 1979, (or since that institution commenced business, if later) held power to vote 25 percent or more of the voting securities of that bank; or

(B) Under paragraph (f)(2)(ii) of this section, would be presumed to have controlled that bank continuously since March 9, 1979, if the transaction will not result in that person's direct or indirect ownership or power to vote 25 percent or more of any class of voting securities of the national bank; or, in other cases, where the OCC determines that the person has controlled the bank continuously since March 9, 1979;

(ii) Unless the OCC otherwise provides in writing, the acquisition of additional shares of a national bank by a person who has lawfully acquired and maintained continuous control of the bank under paragraph (f) of this section after complying with the procedures and filing the notice required by this section;

(iii) A transaction subject to approval under section 3 of the Bank Holding Company Act, 12 U.S.C. 1842, section 18 of Federal Deposit Insurance Act, 12 U.S.C. 1828, or section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a;

(iv) Any transaction described in section 2(a)(5) or 3(a) (A) or (B) of the Bank Holding Company Act, 12 U.S.C. 1841(a)(5) and 1842(a) (A) and (B), by a person described in those provisions;

(v) A customary one-time proxy solicitation or receipt of *pro rata* stock dividends; and

(vi) The acquisition of shares of a foreign bank that has a Federally licensed branch in the United States. This exemption does not extend to the reports and information required under paragraph (h) of this section.

(3) *Prior notice exemption.* The following transactions are not subject to the prior notice requirements of this section but are otherwise subject to this section, including filing a notice and paying the appropriate filing fee, within 90 calendar days after the transaction occurs:

(i) The acquisition of control as a result of acquisition of voting shares of a national bank through testate or intestate succession;

(ii) The acquisition of control as a result of acquisition of voting shares of a national bank as a bona fide gift;

(iii) The acquisition of voting shares of a national bank resulting from a redemption of voting securities;

(iv) The acquisition of control of a national bank as a result of actions by third parties (including the sale of securities) that are not within the control of the acquiror; and

(v) The acquisition of control as a result of the acquisition of voting shares of a national bank in satisfaction of a debt previously contracted in good faith.

(A) ''Good faith'' means that a person must either make or acquire a loan secured by voting securities of a national bank in advance of any known default. A person who purchases a previously defaulted loan secured by voting securities of a national bank may not rely on this paragraph (c)(3)(v) to foreclose on that loan, seize or purchase the underlying collateral, and acquire control of the national bank without complying with the prior notice requirements of this section.

(B) To ensure compliance with this section, the acquiror of a defaulted loan secured by a controlling amount of a national bank's voting securities shall file a notice prior to the time the loan is acquired unless the acquiror can demonstrate to the satisfaction of the OCC that the voting securities are not the anticipated source of repayment for the loan.

(d) *Definitions.* As used in this section:

(1) *Acquisition* includes a purchase, assignment, transfer, or pledge of voting securities, or an increase in percentage ownership of a national bank resulting from a redemption of voting securities.

(2) *Acting in concert* means:

(i) Knowing participation in a joint activity or parallel action towards a common goal of acquiring control whether or not pursuant to an express agreement; or

(ii) A combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise.

(3) *Control* means the power, directly or indirectly, to direct the management or policies of a national bank or to vote 25 percent or more of any class of voting securities of a national bank.

(4) *Notice* means a filing by a person in accordance with paragraph (f) of this section.

(5) *Person* means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity, and includes voting trusts and voting agreements and any group of persons acting in concert.

(6) *Voting securities* means:

(i) Shares of common or preferred stock, or similar interests, if the shares or interests, by statute, charter, or in any manner, allow the holder to vote for or select directors (or persons exercising similar functions) of the issuing national bank, or to vote on or to direct the conduct of the operations or other significant policies of the issuing national bank. However, preferred stock or similar interests are not voting securities if:

(A) Any voting rights associated with the shares or interests are limited solely to voting rights customarily provided by statute regarding matters that would significantly affect the rights or preference of the security or other interest. This includes the issuance of additional amounts of classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing national bank, or the payment of dividends by the issuing national bank when preferred dividends are in arrears;

(B) The shares or interests are a passive investment or financing device and do not otherwise provide the holder with control over the issuing national bank; and

(C) The shares or interests do not allow the holder by statute, charter, or in any manner, to select or to vote for the selection of directors (or persons exercising similar functions) of the issuing national bank.

(ii) Securities, other instruments, or similar interests that are immediately convertible, at the option of the owner or holder thereof, into voting securities.

(e) *Policy*—(1) *General.* The OCC seeks to enhance and maintain public confidence in the banking system by preventing a change in control of a national bank that could have serious adverse effects on a bank's financial stability or management resources, the interests of the bank's customers, the Federal deposit insurance fund, or competition.

(2) *Acquisitions subject to the Bank Holding Company Act.* (i) If corporations, partnerships, certain trusts, associations, and similar organizations, that are not already bank holding companies, are not required to secure prior Federal Reserve Board approval to acquire control of a bank under section 3 of the Bank Holding Company Act, 12 U.S.C. 1842, they are subject to the notice requirements of this section.

(ii) Certain transactions, including foreclosures by depository institutions and other institutional lenders, fiduciary acquisitions by depository institutions, and increases of majority holdings by bank holding companies, are described in sections 2(a)(5)(D) and 3(a) (A) and (B) of the Bank Holding Company Act, 12 U.S.C. 1841(a)(5)(D) and 12 U.S.C. 1842(a) (A) and (B), but do not require the Federal Reserve Board's prior approval. For purposes of this section, they are considered subject to section 3 of the Bank Holding Company Act, 12 U.S.C 1842, and do not require either a prior or subsequent notice to the OCC under this section.

(3) *Assessing financial condition.* In assessing the financial condition of the acquiring person, the OCC weighs any debt servicing requirements in light of the acquiring person's overall financial strength; the institution's earnings performance, asset condition, capital adequacy, and future prospects; and the likelihood of the acquiring party making unreasonable demands on the resources of the institution.

(f) *Procedures*—(1) *Exceptions to rules of general applicability.* Sections 5.8(a), 5.9, 5.10, 5.11, and 5.13(a) through (f) do not apply to filings under this section.

(2) *Who must file.* (i) Any person seeking to acquire the power, directly or indirectly, to direct the management or policies, or to vote 25 percent or more of a class of voting securities of a national bank, shall file a notice with the OCC 60 days prior to the proposed acquisition, unless the acquisition is exempt under paragraph (c)(2) of this section.

(ii) The OCC presumes, unless rebutted, that an acquisition or other disposition of voting securities through which any person proposes to acquire ownership of, or the power to vote, ten percent or more of a class of voting securities of a national bank is an acquisition by a person of the power to direct the bank's management or policies if:

(A) The securities to be acquired or voted are subject to the registration requirements of section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l; or

(B) Immediately after the transaction no other person will own or have the power to vote a greater proportion of that class of voting securities.

(iii) Other transactions resulting in a person's control of less than 25 percent of a class of voting securities of a national bank are not deemed by the OCC to result in control for purposes of this section.

(iv) If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of ten percent or more of a class of a national bank's voting securities, and either the acquisitions are of a class of securities subject to the registration requirements of section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l, or immediately after the transaction no other shareholder of the national bank would own or have the power to vote a greater percentage of the class, each of the acquiring persons shall either file a notice or rebut the presumption of control.

(v) An acquiring person may seek to rebut the presumption established in paragraph (f)(2)(ii) of this section by presenting relevant information in writing to the appropriate district office. The OCC shall respond in writing to any person that seeks to rebut the presumption of control. No rebuttal filing is effective unless the OCC indicates in writing that the information submitted has been found to be sufficient to rebut the presumption of control.

(3) *Filings.* (i) The OCC does not accept a notice of a change in control unless it is technically complete, i.e., the information provided is responsive to every item listed in the notice form and is accompanied by the appropriate fee.

(A) The notice must contain personal and biographical information, detailed financial information, details of the proposed change in control, information on any structural or managerial changes contemplated for the institution, and other relevant information required by the OCC. The OCC may waive any of the informational requirements of the notice if the OCC determines that it is in the public interest.

(B) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied with a current statement of assets and liabilities and an income summary, together with a statement of any material changes since the date of the statement or summary. However, the OCC may require additional information, if appropriate.

(ii) The OCC has 60 days from the date it declares the notice to be technically complete to review the notice.

(A) When the OCC declares a notice technically complete, the appropriate district office sends a letter of acknowledgment to the applicant indicating the technically complete date.

(B) As set forth in paragraph (g) of this section, the applicant shall publish an announcement within 10 days of filing the notice with the OCC. The publication of the announcement triggers a 20-day public comment period. The OCC may waive or shorten the public comment period if an emergency exists. The OCC also may shorten the comment period for other good cause. The OCC may act on a proposed change in control prior to the expiration of the public comment period if the OCC makes a written determination that an emergency exists.

(C) An applicant shall notify the OCC immediately of any material changes in a notice submitted to the OCC, including changes in financial or other conditions, that may affect the OCC's decision on the filing.

(iii) Within the 60-day period, the OCC may inform the applicant that the acquisition has been disapproved, has not been disapproved, or that the OCC will extend the 60-day review period. The applicant may request a hearing by the OCC within 10 days of receipt of a disapproval (see 12 CFR part 19, subpart H, for hearing initiation procedures). Following final agency action under 12 CFR part 19, further review by the courts is available.

(4) *Disapproval of notice.* The OCC may disapprove a notice if it finds that any of the following factors exist:

(i) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(ii) The effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(iii) The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(iv) The competence, experience, or integrity of any acquiring person, or of any of the proposed management personnel, indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public, to permit that person to control the bank;

(v) An acquiring person neglects, fails, or refuses to furnish the OCC all the information it requires; or

(vi) The OCC determines that the proposed transaction would result in an adverse effect on the Bank Insurance Fund or the Savings Association Insurance Fund.

(5) *Disapproval notification.* If the OCC disapproves a notice, it mails a written notification to the proposed acquiring person within three days after the decision containing a statement of the basis for disapproval.

(g) *Disclosure*—(1) *Announcement.* The applicant shall publish an announcement in a newspaper of general circulation in the community where the affected national bank is located within ten days of filing. The OCC may authorize a delayed announcement if an immediate announcement would not be in the public interest.

(i) In addition to the information required by § 5.8(b), the announcement must include the name of the national bank named in the notice and the comment period (*i.e.*, 20 days from the date of the announcement). The announcement also must state that the public portion of the notice is available upon request.

(ii) Notwithstanding any other provisions of this paragraph (g), if the OCC determines in writing that an emergency exists and that the announcement requirements of this paragraph (g) would seriously threaten the safety and soundness of the national bank to be acquired, including situations where the OCC must act immediately in order to prevent the probable failure of a national bank, the OCC may waive or shorten the publication requirement.

(2) *Release of information.* (i) Upon the request of any person, the OCC releases the information provided in the public portion of the notice and makes it available for public inspection and copying as soon as possible after a notice has been filed. In certain circumstances the OCC may determine that the release of the information would not be in the public interest. In addition, the OCC makes a public announcement of a technically complete notice, the disposition of the notice, and the consummation date of the transaction, if applicable, in the OCC's ''Weekly Bulletin.''

(ii) The OCC handles requests for the non-public portion of the notice as requests under the Freedom of Information Act, 5 U.S.C. 552, and other applicable law.

(h) *Reporting of stock loans*—(1) *Requirements.* (i) Any foreign bank, or any affiliate thereof, shall file a consolidated report with the appropriate district office of the national bank if the foreign bank or any affiliate thereof, has credit outstanding to any person or group of persons that, in the aggregate, is secured, directly or indirectly, by 25 percent or more of any class of voting securities of the same national bank.

(ii) The foreign bank, or any affiliate thereof, shall also file a copy of the report with its appropriate district office if that office is different from the national bank's appropriate district office. If the foreign bank, or any affiliate thereof, is not supervised by the OCC, it shall file a copy of the report filed with the OCC with its appropriate Federal banking agency.

(iii) Any shares of the national bank held by the foreign bank, or any affiliate thereof, as principal must be included in the calculation of the number of shares in which the foreign bank or any affiliate thereof has a security interest for purposes of paragraph (h)(1)(i) of this section.

(2) *Definitions.* For purposes of this paragraph (h):

(i) *Foreign bank and affiliate* have the same meanings as in section 1 of the International Banking Act of 1978, 12 U.S.C. 3101.

(ii) *Credit outstanding* includes any loan or extension of credit; the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit; and any other type of transaction that extends credit or financing to a person or group of persons.

(iii) *Group of persons* includes any number of persons that a foreign bank, or an affiliate thereof, has reason to believe:

(A) Are acting together, in concert, or with one another to acquire or control shares of the same insured national bank, including an acquisition of shares of the same national bank at approximately the same time under substantially the same terms; or

(B) Have made, or propose to make, a joint filing under 15 U.S.C. 78m regarding ownership of the shares of the same depository institution.

(3) *Exceptions.* Compliance with paragraph (h)(1) of this section is not required if:

(i) The person or group of persons referred to in paragraph (h)(1) of this section has disclosed the amount borrowed and the security interest therein to the appropriate district office in connection with a notice filed under this section or any other application filed with the appropriate district office as a substitute for a notice under this section, such as for a national bank charter; or

(ii) The transaction involves a person or group of persons that has been the owner or owners of record of the stock for a period of one year or more or, if the transaction involves stock issued by a newly chartered bank, before the bank's opening.

(4) *Report requirements.* (i) The consolidated report must indicate the number and percentage of shares securing each applicable extension of credit, the identity of the borrower, and the number of shares held as principal by the foreign bank and any affiliate thereof.

(ii) The foreign bank and all affiliates thereof shall file the consolidated report in writing within 30 days of the date on which the foreign bank or affiliate thereof first believes that the security for any outstanding credit consists of 25 percent or more of any class of voting securities of a national bank.

(5) *Other reporting requirements.* A foreign bank or any affiliate thereof, supervised by the OCC and required to report credit outstanding secured by the shares of a depository institution to another Federal banking agency also shall file a copy of the report with its appropriate district office.

§ 5.51 Changes in directors and senior executive officers.

(a) *Authority.* 12 U.S.C. 1831i.

(b) *Scope.* This section describes the circumstances when a national bank must notify the OCC of a change in its directors and senior executive officers, and the OCC's authority to disapprove those notices.

(c) *Definitions*—(1) *Director* means a person who serves on the board of directors of a national bank except:

(i) A director of a foreign bank that operates a Federal branch; and

(ii) An advisory director who does not have the authority to vote on matters before the board of directors and provides solely general policy advice to the board of directors.

(2) *National bank,* as defined in § 5.3(j), includes a Federal branch for purposes of this section only.

(3) *Senior executive officer* means the chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, and any other individual the OCC identifies to the national bank who exercises significant influence over, or participates in, major policy making decisions of the bank without regard to title, salary, or compensation. The term also includes employees of entities retained by a national bank to perform such functions in lieu of directly hiring the individuals, and, with respect to a Federal branch operated by a foreign bank, the individual functioning as the chief managing official of the Federal branch.

(4) *Technically complete notice* means a notice that provides all the information requested in paragraph (e)(2) of this section, including complete explanations where material issues arise regarding the competence, experience, character, or integrity of proposed directors or senior executive officers, and any additional information that the OCC may request following a determination that the original submission of the notice was not technically complete.

(5) *Technically complete notice date* means the date on which the OCC has received a technically complete notice.

(6) *Troubled condition* means a national bank that:

(i) Has a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System (CAMEL);

(ii) Is subject to a cease and desist order, a consent order, or a formal written agreement, unless otherwise informed in writing by the OCC; or

(iii) Is informed in writing by the OCC that as a result of an examination it has been designated in ''troubled condition'' for purposes of this section.

(d) *Prior notice.* A national bank shall provide written notice to the OCC at least 90 days before adding or replacing any member of its board of directors, employing any person as a senior executive officer of the national bank, or changing the responsibilities of any senior executive officer so that the person would assume a different executive officer position, if:

(1) The national bank is not in compliance with minimum capital

requirements applicable to such institution, as prescribed in 12 CFR part 3, or is otherwise in troubled condition; or

(2) The OCC determines, in connection with the review by the agency of the plan required under section 38 of the Federal Deposit Insurance Act, 12 USC 1831o, or otherwise, that such prior notice is appropriate.

(e) *Procedures*—(1) *Filing notice.* A national bank shall file a notice with its appropriate supervisory office. When a national bank files a notice, the individual to whom the filing pertains shall attest to the validity of the information pertaining to that individual. The 90-day review period begins on the technically complete notice date.

(2) *Content of notice.* A notice must contain the identity, personal history, business background, and experience of each person whose designation as a director or senior executive officer is subject to this section. The notice must include:

(i) A description of his or her material business activities and affiliations during the five years preceding the date of the notice;

(ii) A description of any material pending legal or administrative proceedings to which he or she is a party;

(iii) Any criminal indictment or conviction by a state or Federal court; and

(iv) Legible fingerprints of the person, except that fingerprints are not required for any person who, within the three years immediately preceding the date of the present notice, has been subject to a notice filed with the OCC pursuant to section 32 of the FDIA, 12 U.S.C. 1831i, or this section and has previously submitted fingerprints.

(3) *Requests for additional information.* Following receipt of a technically complete notice, the OCC may request additional information, in writing where feasible, and may specify a time period during which the information must be provided.

(4) *Notice of disapproval.* The OCC may disapprove an individual proposed as a member of the board of directors or as a senior executive officer if the OCC determines on the basis of the individual's competence, experience, character, or integrity that it would not be in the best interests of the depositors of the national bank or the public to permit the individual to be employed by, or associated with, the national bank. The OCC sends a notice of disapproval to both the national bank and the disapproved individual stating the basis for disapproval.

(5) *Notice of intent not to disapprove.* An individual proposed as a member of the board of directors or as a senior executive officer may begin service before the expiration of the review period if the OCC notifies the national bank that the OCC does not disapprove the proposed director or senior executive officer.

(6) *Waiver of prior notice.* (i) A national bank may send a letter to the appropriate supervisory office requesting a waiver of the prior notice requirement. The OCC may waive the prior notice requirement but not the filing required under this section. The OCC may grant a waiver if it finds that delay could harm the national bank or the public interest, or that other extraordinary circumstances justify waiving the prior notice requirement. The length of any waiver depends on the circumstances in each case. If the OCC grants a waiver, the national bank shall file the required notice within the time period specified in the waiver, and the proposed individual may assume the position on an interim basis until the individual and the national bank receive a notice of disapproval or, if an appeal has been filed, until a notice of disapproval has been upheld on appeal as set forth in paragraph (f) of this section. If the required notice is not filed within the time period specified in the waiver, the proposed individual shall resign his or her position. Thereafter, the individual may assume the position on a permanent basis only after the national bank receives a notice of intent not to disapprove, after the review period elapses, or after a notice of disapproval has been overturned on appeal as set forth in paragraph (f) of this section. A waiver does not affect the OCC's authority to issue a notice of disapproval within 30 days of the expiration of such waiver.

(ii) In the case of the election at a meeting of the shareholders of a new director not proposed by management, a waiver is granted automatically and the elected individual may begin service as a director. However, under these circumstances, the national bank shall file the required notice with the appropriate supervisory office as soon as practical, but not later than seven days from the date the individual is notified of the election. The individual's continued service is subject to the conditions specified in paragraph (e)(6)(i) of this section.

(7) *Commencement of service.* An individual proposed as a member of the board of directors or as a senior executive officer may assume the office following the end of the review period, which begins on the technically complete notice date, unless:

(i) The OCC issues a notice of disapproval during the review period; or

(ii) The national bank does not provide additional information within the time period required by the OCC pursuant to paragraph (e)(3) of this section and the OCC deems the notice to be abandoned pursuant to § 5.13(c).

(8) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, 5.11, and 5.13 (a) through (f) do not apply to a notice for a change in directors and senior executive officers.

(f) *Appeal*—(1) If the national bank, the proposed individual, or both, disagree with a disapproval, they may seek review by appealing the disapproval to the Comptroller, or an authorized delegate, within 15 days of the receipt of the notice of disapproval. The national bank or the individual may appeal on the grounds that the reasons for disapproval are contrary to fact or insufficient to justify disapproval. The appellant shall submit all documents and written arguments that the appellant wishes to be considered in support of the appeal.

(2) The Comptroller, or an authorized delegate, may designate an appellate official who was not previously involved in the decision leading to the appeal at issue. The Comptroller, an authorized delegate, or the appellate official considers all information submitted with the original notice, the material before the OCC official who made the initial decision, and any information submitted by the appellant at the time of the appeal.

(3) The Comptroller, an authorized delegate, or the appellate official shall independently determine whether the reasons given for the disapproval are contrary to fact or insufficient to justify the disapproval. If either is determined to be the case, the Comptroller, an authorized delegate, or the appellate official may reverse the disapproval.

(4) Upon completion of the review, the Comptroller, an authorized delegate, or the appellate official shall notify the appellant in writing of the decision. If the original decision is reversed, the individual may assume the position in the bank for which he or she was proposed.

§ 5.52 Change of address.

(a) *Authority.* 12 U.S.C. 93a, 161, and 481.

(b) *Scope.* This section describes the obligation of a national bank to notify the OCC of any change in its address. However, no notice is required if the

change in address results from a transaction approved under this part.

(c) *Notice process.* Any national bank with a change in the address of its main office or in its post office box shall send a written notice to the appropriate district office.

(d) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, 5.11, and 5.13 do not apply to changes in a national bank's address.

Subpart E—Payment of Dividends

§ 5.60 Authority, scope, and exceptions to rules of general applicability.

(a) *Authority.* 12 U.S.C. 56, 60, and 93a.

(b) *Scope.* Except as otherwise provided, the restrictions in this subpart apply to the declaration and payment of all dividends by a national bank, including dividends paid in property. However, the provisions contained in § 5.64 do not apply to dividends paid in stock of the bank.

(c) *Exceptions to the rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this subpart.

§ 5.61 Definitions.

For the purposes of subpart E, the following definitions apply:

(a) *Capital stock, capital surplus,* and *permanent capital* have the same meaning as set forth in § 5.46.

(b) *Retained net income* means the net income of a specified period less the total amount of all dividends declared in that period.

§ 5.62 Date of declaration of dividend.

A national bank shall use the date a dividend is declared for the purposes of determining compliance with this subpart.

§ 5.63 Capital limitation under 12 U.S.C. 56.

(a) *General limitation.* Except as provided by 12 U.S.C. 59 and § 5.46, a national bank may not withdraw, or permit to be withdrawn, either in the form of a dividend or otherwise, any portion of its permanent capital. Further, a national bank may not declare a dividend in excess of undivided profits.

(b) *Preferred stock.* The provisions of 12 U.S.C. 56 do not apply to dividends on preferred stock. However, if the undivided profits of the national bank are not sufficient to cover a proposed dividend on preferred stock, the proposed dividend constitutes a reduction in capital subject to 12 U.S.C. 59 and § 5.46.

§ 5.64 Earnings limitation under 12 U.S.C. 60.

(a) *Transfers to capital surplus.* Subject to the restrictions in 12 U.S.C. 56 and this subpart, the directors of a national bank may declare and pay dividends as frequently and of such amount of undivided profits as they judge prudent. However, a national bank may not declare a dividend unless capital surplus equals or exceeds the capital stock of the bank, except:

(1) In the case of an annual dividend, the bank may declare a dividend if the bank transfers 10 percent of its net income for the preceding four quarters to capital surplus; or

(2) In the case of a quarterly or semiannual dividend, or any other special dividend, the bank may declare a dividend if the bank transfers 10 percent of its net income for the preceding two quarters to capital surplus.

(b) *Earnings limitation.* For purposes of 12 U.S.C. 60, a national bank may not declare a dividend if the total amount of all dividends (common and preferred), including the proposed dividend, declared by the national bank in any calendar year exceeds the total of the national bank's retained net income of that year to date, combined with its retained net income of the preceding two years, unless the dividend is approved by the OCC. A national bank shall submit a request for OCC approval of a dividend under 12 U.S.C. 60 to the appropriate district office.

(c) *Surplus surplus.* Any amount in capital surplus in excess of capital stock required by 12 U.S.C. 60(a) (referred to as ''surplus surplus'') may be transferred to undivided profits and available as dividends, provided:

(1) The bank can demonstrate that the surplus came from earnings of prior periods, excluding the effect of any stock dividend; and

(2) The board of directors of the bank approves the transfer of the surplus surplus from capital surplus to undivided profits.

§ 5.65 Restrictions on undercapitalized institutions.

Notwithstanding any other provision in this subpart, a national bank may not declare or pay any dividend if, after making the dividend, the national bank would be ''undercapitalized'' as defined in 12 CFR part 6.

§ 5.66 Dividends payable in property other than cash.

In addition to cash dividends, directors of a national bank may declare dividends payable in property, with the approval of the OCC. Even though the property distributed has been previously charged down or written off entirely, the dividend is equivalent to a cash dividend in an amount equal to the actual current value of the property. Before the dividend is declared, the bank should show the excess of the actual value over book value on the books of the national bank as a recovery, and the dividend should then be declared in the amount of the full book value (equivalent to the actual current value) of the property being distributed.

§ 5.67 Fractional shares.

To avoid complicated recordkeeping in connection with fractional shares, a national bank issuing additional stock by stock dividend, upon consolidation or merger, or otherwise, may adopt arrangements such as the following to preclude the issuance of fractional shares. The bank may:

(a) Issue scripts or warrants for trading;

(b) Make reasonable arrangements to provide those to whom fractional shares would otherwise be issued an opportunity to realize at a fair price upon the fraction not being issued through its sale, or the purchase of the additional fraction required for a full share, if there is an established and active market in the national bank's stock;

(c) Remit the cash equivalent of the fraction not being issued to those to whom fractional shares would otherwise be issued. The cash equivalent is based on the market value of the stock, if there is an established and active market in the national bank's stock. In the absence of such a market, the cash equivalent is based on a reliable and disinterested determination as to the fair market value of the stock if such stock is available; or

(d) Sell full shares representing all the fractions at public auction, or to the highest bidder after having solicited and received sealed bids from at least three licensed stock brokers. The national bank shall distribute the proceeds of the sale *pro rata* to shareholders who otherwise would be entitled to the fractional shares.

Subpart F—Federal Branches and Agencies

§ 5.70 Federal branches and agencies.

(a) *Authority.* 12 U.S.C. 93a and 3101 *et seq.*

(b) *Scope.* This subpart describes the filing requirements for corporate activities and transactions involving Federal branches and agencies of foreign banks. Substantive rules and policies for

specific applications are contained in 12 CFR part 28.

(c) *Definitions.* For purposes of this subpart:

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

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

(ii) Federal agency to a Federal branch or limited Federal branch;

(iii) Federal branch to a limited Federal branch or Federal agency; or

(iv) Limited Federal branch to a Federal branch or Federal agency.

(2) To *establish* a Federal branch or agency means to:

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

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

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

(iv) Change the status of an office; or

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

(d) *Filing requirements*—(1) *General.* Unless otherwise provided in 12 CFR part 28, a Federal branch or agency shall comply with the applicable requirements of this part.

(2) *Applications.* A foreign bank shall submit an application and obtain prior approval from the OCC before it:

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

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

PART 7—INTERPRETIVE RULINGS

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

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

6. In § 7.1000, paragraph (a)(2)(i) is amended by removing ''owned or'' and adding ''owned and'' and paragraph (c)(1) is revised to read as follows:

§ 7.1000 National bank ownership of property.

* * * * *

(c) *Investment in bank premises*—(1) *Investment limitation; approval.* 12 U.S.C. 371d governs when OCC approval is required for national bank investment in bank premises. A bank may seek approval from the OCC in accordance with the procedures set forth in 12 CFR 5.37.

* * * * *

§§ 7.2023 and 7.2024 [Removed]

7. Part 7 is amended by removing §§ 7.2023 and 7.2024.

PART 16—SECURITIES OFFERING DISCLOSURE RULES

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

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

9. In § 16.20 paragraph (d) is revised to read as follows:

§ 16.20 Current and periodic reports.

* * * * *

(d) Paragraph (a) of this section does not apply if the bank files the registration statement in connection with a merger, consolidation, or acquisition of assets subject to 12 CFR 5.33(e)(8).

PART 28—INTERNATIONAL BANKING ACTIVITIES

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

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

11. In § 28.2, paragraph (b) is revised to read as follows:

§ 28.2 Definitions.

* * * * *

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

* * * * *

12. Section 28.10 is revised to read as follows:

§ 28.10 Authority, purpose, and scope.

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

(b) *Purpose and scope.* This subpart implements the IBA pertaining to the licensing, supervision, and operations of Federal branches and agencies in the United States. For corporate procedures pertaining to Federal branches and agencies, refer to 12 CFR part 5.

13. In section 28.11, paragraphs (f) and (v) are revised to read as follows:

§ 28.11 Definitions.

* * * * *

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

* * * * *

(v) *Manual* means the Comptroller's Corporate Manual (*see* 12 CFR 5.2(c)).

* * * * *

Dated: November 20, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–30058 Filed 11–21–96; 3:42 pm]

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Federal Register

Wednesday
November 27, 1996

Part IV

Department of Education

34 CFR Part 668, et al.

Postsecondary Education: Student Assistance General Provisions; Federal Perkins Loan, Federal Work-Study, Federal Supplemental and Federal Pell Grant; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 673, 674, 675, 676, and 690

RIN 1840–AC34

Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Programs, Federal Supplemental Educational Opportunity Grant Program, and Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends the regulations governing the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). These programs include the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs and the Federal Pell Grant Program. These regulations, which eliminate duplicate provisions for the student financial assistance programs and consolidate common provisions for the campus-based programs, are part of a planned series of regulatory reform and relief measures for the title IV, HEA programs. The Secretary made these changes in response to the President's Regulatory Reform Initiative.

EFFECTIVE DATE: These regulations take effect on July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Adams, U.S. Department of Education, 600 Independence Avenue SW, Regional Office Building 3, Room 3053, Washington, DC 20202–5447. Telephone: (202) 708–4690.

1. For the Federal Perkins Loan Program: Gail H. McLarnon, U.S. Department of Education, 600 Independence Avenue, SW, Regional Office Building 3, Room 3053, Washington, DC 20202–5447. Telephone: (202) 708–8242.

2. For the FWS and FSEOG programs: Richard P. Coppage, U.S. Department of Education, 600 Independence Avenue, SW, Regional Office Building 3, Room 3053, Washington, DC 20202–5447. Telephone: (202) 708–4690.

3. For the Federal Pell Grant Program: Daniel J. Sullivan, U.S. Department of Education, 600 Independence Avenue, SW, Regional Office Building 3, Room 3053, Washington, DC 20202–5447. Telephone: (202) 708–4607.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On March 4, 1995, the President directed every Federal agency to review its rules and procedures to reduce regulatory and paperwork burden and directed Federal agencies to eliminate or revise those regulations that are outdated or otherwise in need of reform. Responding to the President's Regulatory Reform Initiative, the Secretary announced plans to eliminate or revise 93 percent of the Department's regulations. To launch the Department's reinvention effort, the Secretary published a notice in the May 23, 1995 Federal Register (60 FR 27223–27226), eliminating more than 30 percent of the Department's regulations, primarily in areas not related to student financial assistance.

The Secretary is conducting a page-by-page review of all student financial assistance regulations to identify those that should be eliminated or improved. The Secretary is also considering developing proposals for statutory amendments to eliminate unnecessary administrative burden.

As part of his response to the President's Regulatory Reinvention Initiative, on September 19, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for parts 668, 673, 674, 675, 676, and 690 in the Federal Register (61 FR 49389–49396). The NPRM included a discussion of the proposed changes that will not be repeated here. The following list summarizes those changes and identifies the pages of the preamble to the NPRM on which the discussion can be found.

PART 673— GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Subpart A—Purpose and Scope

The Secretary proposed to create a new part 673 of 34 CFR to consolidate the common provisions of the Federal Perkins Loan Program—part 674, the FWS Program—part 675, and the FSEOG Program—part 676 of program regulations (page 49390).

Subpart B—General Provisions for the Federal Perkins Loan, FWS, and FSEOG Programs

Sections 674.3, 675.3, and 676.3 Application

The Secretary proposed to delete duplicate provisions from parts 674, 675, and 676 and consolidate the application procedures into the new part 673 under § 673.3 (page 49390).

Sections 674.4, 675.4, and 676.4 Allocation and Reallocation

The Secretary proposed to delete duplicate provisions from parts 674, 675, and 676 and consolidate the allocation and reallocation provisions into the new part 673 under § 673.4 (page 49390).

Sections 674.14, 675.14, and 676.14 Overaward

The Secretary proposed to delete duplicate provisions from parts 674, 675, and 676 and consolidate the overaward provisions for the campus-based programs into the new part 673 under § 673.5 (page 49390–49391).

Sections 674.15, 675.15, 676.15 Coordination with BIA Grants

The Secretary proposed to delete duplicate provisions from parts 674, 675, and 676 and consolidate the provisions into the new part 673 under § 673.6 (page 49391).

Sections 674.18, 675.18, and 676.18 Use of Funds

The Secretary proposed to delete duplicate formulas and the ''allowable use'' provisions from parts 674, 675, and 676 and present them in the new part 673 under § 673.7 with a new heading of *Administrative cost allowance* (page 49391).

Federal Pell Grant Program

There were no major proposed changes to the Federal Pell Grant Program. However, the Secretary proposed some minor technical changes as described in the following paragraphs.

Section 690.2 General Definitions

The Secretary proposed to clarify the definition of ''Annual award'' in § 690.2(c) and to remove the definition of ''Comparable State income tax return'' because it is obsolete (page 49391).

Subpart B—Application Procedures for Determining Expected Family Contribution (EFC).

Section 690.14 Request for Recalculation of Expected Family Contribution Because of Clerical or Arithmetic Error

The Secretary proposed to amend § 690.14 by revising the heading of the section and by clarifying paragraph (b)(1) to provide an additional reason for recalculating a student's EFC that was

inadvertently left out of earlier regulations (page 49391).

Subpart F—Determination of Federal Pell Grant Awards.

Section 690.61 Submission Process and Deadline for a Student Aid Report or Institutional Student Information Record

The Secretary proposed to amend § 690.61(b)(2) by deleting the June 30 deadline date for a student to submit the required documents. Due to faster electronic data processing, a student now has an extended period of time to submit the required documents (page 49391).

Subpart G—Administration of Grant Payments.

Section 690.75 Determination of Eligibility for Payment

The Secretary proposed to revise § 690.75(e) by deleting ''the family contribution amount of $3,000'' and adding ''family contribution amount at least equal to the maximum authorized award amount for the award year'' to reflect the changes to the maximum award amount for each award year (page 49391).

Section 690.78 Method of Disbursement—by Check or Credit to a Student's Account.

The Secretary proposed to amend § 690.78(c)(2), (c)(3), and (c)(4) to allow a student 20 days instead of 15 days after the student's enrollment ends in an award year to pick up a Pell Grant disbursement for that award year (page 49391).

Section 690.81 Fiscal Control and Fund Accounting Procedures

The Secretary proposed to delete § 690.81(c) because the provisions contained in that paragraph duplicate provisions in § 668.161(b) of the Student Assistance General Provisions regulations, which cover all of the title IV programs (page 49391).

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goals that call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM several parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since the publication of the NPRM follows. Please note that this section addresses only the proposed regulations on which substantive comments were received or regulations that have been substantively changed as a result of the Secretary's review.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Part 673

Comments: Seven commenters expressed support for the Secretary's efforts to eliminate duplicate provisions and to consolidate common procedures in the campus-based program regulations into one section.

Discussion: The Secretary is encouraged by the expressions of support from the public for the activities that are part of the President's Regulatory Reinvention Initiative.

Changes: None.

Section 673.1 Purpose

Comments: One organization recommended that the Secretary revise the definition of the Federal Perkins Loan Program in paragraph (a) to refer to neediest undergraduate and graduate students instead of needy undergraduate and graduate students.

Discussion: The Secretary believes that the definition is consistent with §§ 461(a) and 463(a)(9) of the HEA. Section 674.10, which describes the selection of students for loans, reflects these statutory requirements while giving institutions the flexibility to define exceptional need within the unique context of their postsecondary population. It is the Secretary's intent to provide flexibility and reduce burden for institutions, not to add new restrictions.

Changes: None.

Section 673.5 Overaward

Comments: One commenter felt strongly that overawards in the Federal Perkins Loan Program should be treated the same as overawards in the Federal Family Education Loan (FFEL) Program and the William D. Ford Federal Direct Loan Program. This commenter believes that requiring students to repay overawards immediately rather than adding the overaward to the loan balance to be repaid under standard loan repayment terms is burdensome and inconsistent with the treatment of overawards in the FFEL and Direct Loan programs.

Discussion: The Secretary recognizes that the treatment of overawards in the Federal Perkins Loan Program is different from the treatment of overawards in the FFEL and Direct Loan programs. However, the Federal Perkins Loan Program is unique in that loans made under this program are made from a revolving fund that depends on contributions from a Federal Capital Contribution, the institutions own matching funds, and the repayment of principal and interest back into the fund from Federal Perkins Loan borrowers. The immediate repayment of overawards ensures that the Federal Perkins Loan fund is not rapidly depleted and that funds are available for future Federal Perkins Loan borrowers.

Changes: None.

Section 673.7 Administrative Cost Allowance

Comment: One organization commented that § 673.7(b) is an area in which institutions should be afforded flexibility in using their own procedures. Institutions vary on the time-frames within which they book entries on administrative cost allowances (ACA) and, therefore, should be given extra time to reflect these bookings in their records. The commenter believes that a six-month window of time after the award year ends to reflect adjustments and additional entries of ACA against their Perkins funds would provide institutions flexibility to use their own procedures.

Discussion: Neither the requirement that institutions charge their ACA against program expenditures made during an award year, nor the requirement that institutions charge their ACA during the same award year in which the expenditures for these costs were made under the Federal Perkins Loan Program is a new policy.

These requirements were previously contained in § 674.18, 675.18, and 676.18. The Secretary believes allowing institutions that administer the campus-based programs to report expenditures during a six-month window after an award year has ended would unnecessarily complicate the program's financial management and accounting procedures. However, adjustments may be made during the FISAP editing process, as needed.

Changes: None.

Federal Pell Grant Program

Section 690.78 Method of Disbursement—by Check or Credit to a Student's Account

Comments: One commenter recommended that the Secretary move the treatment of what the commenter described as ''late disbursements'' from § 690.78(c)(1) through (c)(5) to § 668.164 of the General Provisions regulations. The commenter also believes that §§ 690.78(c)(2), (c)(3), and (c)(4) are in conflict with the proposed late disbursement provisions in § 668.164(g).

Discussion: The Secretary does not believe that § 690.78 (c)(2), (c)(3), and (c)(4) are in conflict with the late disbursement provisions in § 668.164(g). The late disbursement provisions in § 668.164(g) apply only to ineligible students who are ineligible solely because they withdraw or are no longer enrolled at an institution. The provisions in § 690.78(c)(2), (c)(3), and (c)(4) deal with eligible students as well as ineligible students. The latter provisions also relate to the ability of a student to claim a Federal Pell Grant award rather than the making of late disbursements to students. However, the Secretary agrees with the commenter that it would be useful in § 690.78(c) to reference the late disbursement provisions in § 668.164.

Changes: Section 690.78(c)(6) is revised to reference the late disbursement provisions in § 668.164.

Additional Changes

Section 675.26 FWS Federal Share Limitations

The Secretary is providing for an additional waiver of the FWS institutional-share requirement in § 675.26. The Secretary will authorize a Federal share of 100 percent of the compensation earned by a student during an award year if all of the following criteria are met—

1. The work performed by the student is for the institution itself, for a Federal, State, or local public agency, or for a private nonprofit organization; and

2. The student is employed as a reading tutor for children who are in preschool through elementary school.

This regulatory change will provide an institution with the flexibility needed to respond to the President's ''America Reads'' Challenge, which will mobilize resources to ensure that all children can read independently by the end of the third grade. Forty percent of children are not reading well enough by the end of third grade. Children who cannot read early and well are hampered at the very start of their education and for the rest of their lives. This effort to tutor young children in reading can unlock the children's potential to learn and empower them throughout their lives. The investment in our youth is an investment in this country's future.

The Secretary strongly encourages all institutions to place FWS students as reading tutors for children. The placement of students in FWS jobs as reading tutors for children is an important way for institutions to meet the community service expenditure requirement under the FWS Program, serve the needs of the community, and give the FWS students a rewarding and enriching experience. The programs that provide this reading tutoring for children may take place during the children's school hours; or after school, on weekends, or in the summer, in order to extend the learning time. The institution may construct its own reading tutor program or become involved with existing community programs. The new waiver of the FWS institutional-share requirement provided in § 675.26 does not require the institution to make a request for the waiver. Also, the institution has the option of continuing to provide an institutional share and determining the amount of that share.

While institutions will not receive increased FWS allocations for this initiative and will be expected to meet the 100 percent Federal share from their normal FWS allocations, the Secretary notes that many institutions will receive substantially increased FWS allocations for the 1997–98 award year due to the higher FWS appropriations for FY 97. The Secretary believes that these increased FWS allocations will enable many institutions to support this initiative actively by providing 100 percent Federal share funding for the employment of FWS students as reading tutors.

It is also important to note that the Secretary continues the current exception that authorizes a Federal share of 100 percent of the compensation earned by students enrolled at institutions designated as an eligible institution under the Strengthening Institutions Program, the Strengthening Historically Black Colleges and Universities Program, or the Strengthening Historically Black Graduate Institutions Program.

Executive Order 12866

1. Assessment of Costs and Benefits

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

Thus, in assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the final regulations justify the costs.

Potential costs and benefits of the final regulations are discussed elsewhere in this preamble.

Paperwork Reduction Act of 1995

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Waiver of Proposed Rulemaking

In accordance with section 437 of the General Education Provisions Act (20 U.S.C. 1232) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, revising § 675.26(d) will increase institutional flexibility and help to meet an important educational need for reading tutors without imposing any burden on the affected parties. The Secretary is specifically authorized under section 443(b)(5) of the Higher Education Act of 1965, as amended (42 U.S.C. 2753(b)(5)) to determine, through the promulgation of regulations, that the Federal share of compensation for FWS students may exceed 75 percent if required in furtherance of the purposes of the program. The Secretary has made such a determination in this case. For these reasons, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on the amendment to § 675.26(d) is unnecessary and contrary to the public interest.

Intergovernmental Review

Some of these programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

The Federal Perkins Loan, Federal Work-Study, and Federal Pell Grant programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Loan programs—education, Grant programs—education, Student aid.

34 CFR Part 673

Loan programs—education, Grant programs—education, Student aid.

34 CFR Part 674

Loan programs—education, Student aid.

34 CFR Part 675

Loan programs—education, Student aid.

34 CFR Part 676

Grant programs—education, Student aid.

34 CFR 690

Grant programs—education, Student aid.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; and 84.063 Federal Pell Grant Program.)

Dated: November 21, 1996.

Richard W. Riley,

Secretary of Education.

The Secretary amends chapter VI of Title 34 of the Code of Federal Regulations as follows:

1. A new part 673 is added to read as follows:

PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Subpart A—Purpose and Scope

Sec.

Subpart B—General Provisions for the Federal Perkins Loan, FWS, and FSEOG programs

Authority: 20 U.S.C. 421–429, 1070b–1070b–3, and 1087aa–1087ii; 42 U.S.C. 2751–2756b, unless otherwise noted.

Subpart A—Purpose and Scope

§ 673.1 Purpose.

This part governs the following three programs authorized by title IV of the Higher Education Act of 1965, as amended (HEA) that participating institutions administer:

(a) The Federal Perkins Loan Program, which encourages the making of loans by institutions to needy undergraduate and graduate students to help pay for their cost of education.

(b) The Federal Work-Study (FWS) Program, which encourages the part-time employment of undergraduate and graduate students who need the income to help pay for their cost of education and which encourages FWS recipients to participate in community service activities.

(c) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program, which encourages the providing of grants to exceptionally needy undergraduate students to help pay for their cost of education.

(Authority: 20 U.S.C. 421–429, 1070b–1070b–3, and 1087aa–1087ii; 42 U.S.C. 2751–2756b)

§ 673.2 Applicability of regulations.

The participating institution is responsible for administering these programs in accordance with the regulations in this part and the applicable program regulations in 34 CFR parts 674, 675, and 676.

(Authority: 20 U.S.C. 421–429, 1070b–1070b–3, and 1087aa–1087ii; 42 U.S.C. 2751–2756b)

Subpart B—General Provisions for the Federal Perkins Loan, FWS, and FSEOG programs

§ 673.3 Application.

(a) To participate in the Federal Perkins Loan, FWS, or FSEOG programs, an institution shall file an application before the deadline date established annually by the Secretary through publication of a notice in the Federal Register.

(b) The application for the Federal Perkins Loan, FWS, and FSEOG programs must be on a form approved by the Secretary and must contain the information needed by the Secretary to determine the institution's allocation or reallocation of funds under sections 462, 442, and 413D of the HEA, respectively.

(Authority: 20 U.S.C. 1070b–3 and 1087bb; 42 U.S.C. 2752)

§ 673.4 Allocation and reallocation.

(a) *Allocation and reallocation of Federal Perkins Loan funds.* (1) The Secretary allocates Federal capital contributions to institutions participating in the Federal Perkins Loan Program in accordance with section 462 of the HEA.

(2) The Secretary reallocates Federal capital contributions to institutions participating in the Federal Perkins Loan Program by—

(i) Reallocating 80 percent of the total funds available in accordance with section 462(j) of the HEA; and

(ii) Reallocating 20 percent of the total funds available in a manner that best carries out the purposes of the Federal Perkins Loan Program.

(b) *Allocation and reallocation of FWS funds.* The Secretary allocates and reallocates funds to institutions participating in the FWS Program in accordance with section 442 of the HEA.

(c) *Allocation and reallocation of FSEOG funds.* (1) The Secretary allocates funds to institutions participating in the FSEOG program in accordance with section 413D of the HEA.

(2) The Secretary reallocates funds to institutions participating in the FSEOG Program in a manner that best carries out the purposes of the FSEOG Program.

(d) *General allocation and reallocation.*—(1) *Categories.* As used in section 462 (Federal Perkins Loan Program), section 442 (FWS Program), and section 413D (FSEOG Program) of the HEA, ''Eligible institutions offering comparable programs of instruction'' means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(i) Cosmetology.
(ii) Business.
(iii) Trade/Technical.
(iv) Art Schools.
(v) Other Proprietary Institutions.
(vi) Non-Proprietary Institutions.

(2) *Payments to institutions.* The Secretary allocates funds for a specific period of time. The Secretary provides an institution its allocation in accordance with the payment methods described in 34 CFR 668.162.

(3) *Unexpended funds.* (i) If an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an award year, the Secretary reduces the institution's allocation for that program for the second succeeding award year by the dollar amount returned.

(ii) The Secretary may waive the provision of paragraph (d)(3)(i) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(iii) The Secretary considers enforcement of paragraph (d)(3)(i) of this section to be contrary to the interest of the program only if the institution returns more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

(e) *Anticipated collections of Federal Perkins Loan funds.*

(1) For the purposes of calculating an institution's share of any excess allocation of Federal Perkins Loan funds, an institution's anticipated collections are equal to the amount that was collected by the institution during the second year preceding the beginning of the award period multiplied by 1.21.

(2) The Secretary may waive the provision of paragraph (e)(1) of this section for any institution that has a cohort default rate that does not exceed 7.5 percent.

(f) *Authority to expend FWS funds.* Except as specifically provided in 34 CFR 675.18(b), (c), and (f), an institution may not use funds allocated or reallocated for an award year—

(1) To meet FWS wage obligations incurred with regard to an award of FWS employment made for any other award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(g) *Authority to expend FSEOG funds.* Except as specifically provided in 34 CFR 668.164(g), an institution shall not use funds allocated or reallocated for an award year—

(1) To make FSEOG disbursements to students in any other award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(Authority: 20 U.S.C. 1070b-3 and 1087bb, 42 U.S.C. 2752)

§ 673.5 Overaward.

(a) *Overaward prohibited.*—(1) *Federal Perkins Loan and FSEOG Programs.* An institution may only award or disburse a Federal Perkins loan or an FSEOG to a student if that loan or the FSEOG, combined with the other resources the student receives, does not exceed the student's financial need.

(2) *FWS Program.* An institution may only award FWS employment to a student if the award, combined with the other resources the student receives, does not exceed the student's financial need.

(b) *Awarding and disbursement.* (1) When awarding and disbursing a Federal Perkins loan or an FSEOG or awarding FWS employment to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards Federal Perkins Loan funds, an FSEOG, or FWS funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(2) If a student receives resources at any time during the award period that were not considered in calculating the Federal Perkins Loan amount or the FWS or FSEOG award, and the total resources including the loan, the FSEOG, or the prospective FWS wages exceed the student's need, the overaward is the amount that exceeds need.

(c) *Resources.* (1) Except as provided in paragraph (c)(2) of this section, the Secretary considers that ''resources'' include, but are not limited to, any—

(i) Funds a student is entitled to receive from a Federal Pell Grant;

(ii) William D. Ford Federal Direct Loans;

(iii) Federal Family Education Loans;

(iv) Long-term loans, including Federal Perkins loans made by the institution;

(v) Grants, including FSEOGs, State grants, and ROTC subsistence allowances;

(vi) Scholarships, including athletic scholarships and ROTC scholarships;

(vii) Waivers of tuition and fees;

(viii) Fellowships or assistantships;

(ix) Veterans benefits;

(x) Net earnings from need-based employment; and

(xi) Insurance programs for the student's education.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (c)(1) of this section that are included in the calculation of the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Federal Direct PLUS Loan, a Federal PLUS Loan, a Federal Direct Unsubsidized Stafford/Ford Loan, a Federal Unsubsidized Stafford Loan, or a State-sponsored or private loan as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

(d) *Treatment of resources in excess of need—General.* An institution shall take the following steps if it learns that a student has received additional resources not included in the calculation of Federal Perkins Loan, FWS, or FSEOG eligibility that would result in the student's total resources exceeding his or her financial need by more than $300:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $300, no further action is necessary.

(2) If the student's total resources still exceed his or her need by more than $300, as recalculated pursuant to paragraph (d)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Federal Pell Grant).

(3) *Federal Perkins loan and FSEOG overpayment.* If the student's total resources still exceed his or her need by more than $300, after the institution takes the steps required in paragraphs (d)(1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $300 as an overpayment.

(e) *Termination of FWS employment.* (1) An institution may fund a student's FWS employment with FWS funds only until the amount of the FWS award has been earned or until the student's financial need, as recalculated under paragraph (d)(1) of this section, is met.

(2) Notwithstanding the provisions of paragraph (e)(1) of this section, an institution may provide additional FWS funding to a student whose need has been met until that student's cumulative earnings from all need-based employment occurring subsequent to the time his or her financial need has been met exceed $300.

(f) *Liability for and recovery of Federal Perkins loans and FSEOG overpayments.* (1) A student is liable for any Federal Perkins loan or FSEOG overpayment made to him or her.

(2) The institution is also liable for a Federal Perkins loan or FSEOG overpayment if the overpayment occurred because the institution failed to follow the procedures in this part, 34 CFR Part 668, 34 CFR Part 674, or 34 CFR Part 676. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan fund for a Federal Perkins loan overpayment or to its FSEOG account for an FSEOG overpayment if it cannot collect the overpayment from the student.

(3) If an institution makes a Federal Perkins loan or FSEOG overpayment for which it is not liable, it shall help the Secretary recover the overpayment by promptly attempting to recover the overpayment by sending a written notice to the student requesting repayment of the overawarded funds. The notice must state that failure to make that repayment or to make arrangements, satisfactory to the holder of the overpayment debt, to pay the overpayment renders the student ineligible for further title IV aid until final resolution of the overpayment.

(4) If a student objects to the institution's Federal Perkins loan or FSEOG overpayment determination on the grounds that it is erroneous, the institution shall consider any information provided by the student and determine whether the objection is warranted.

(5) *Referral of FSEOG overpayments.* (i) If the student fails to repay an FSEOG overpayment or make arrangements, satisfactory to the holder of the overpayment debt, to pay the FSEOG overpayment after taking the action required by paragraph (f)(3) and, if applicable, paragraph (f)(4) of this section, and the Federal share of the FSEOG overpayment is $25.00 or more, the institution shall notify the Secretary, identifying the Federal share of the FSEOG overpayment, the student's name, most recent address, telephone number, and any other relevant information. After notifying the Secretary under this section, the institution need make no further recovery efforts of FSEOG overpayments.

(ii) If an institution fails in its attempt to collect the overpayment and the Federal share of the FSEOG overpayment is less than $25.00, the institution need make no further recovery efforts of the FSEOG overpayment.

(Approved by the Office of Management and Budget under control number 1840–0535)

(Authority: 20 U.S.C. 1070b–1, 1087dd, and 1087hh, 42 U.S.C. 2753)

§ 673.6 Coordination with BIA grants.

(a) *Coordination of BIA grants with Federal Perkins loans, FWS awards, or FSEOGs.* To determine the amount of a Federal Perkins loan, FWS compensation, or an FSEOG for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements the student aid package specified in paragraph (a) of this section.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted from the other assistance (except for Federal Pell Grants), not from the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Federal Pell Grants. However, the institution may change the sequence if requested to do so by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a student who is also eligible for a BIA education grant, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1070b–1 and 1087dd; 42 U.S.C. 2753)

§ 673.7 Administrative cost allowance.

(a) An institution participating in the Federal Perkins Loan, FWS, or FSEOG programs is entitled to an administrative cost allowance for an award year if it advances funds under the Federal Perkins Loan Program, provides FWS employment, or awards grants under the FSEOG Program to students in that year.

(b) An institution may charge the administrative cost allowance calculated in accordance with paragraph (c) of this section for an award year against-(1) The Federal Perkins Loan Fund, if the institution advances funds under the Federal Perkins Loan Program to students in that award year;

(2) The FWS allocation, if the institution provides FWS employment to students in that award year; and

(3) The FSEOG allocation, if the institution awards grants to students under the FSEOG program in that award year.

(c) For any award year, the amount of the administrative costs allowance equals—

(1) Five percent of the first $2,750,000 of the institution's total expenditures to students in that award year under the FWS, FSEOG, and the Federal Perkins Loan programs; plus

(2) Four percent of its expenditures to students that are greater than $2,750,000 but less than $5,500,000; plus

(3) Three percent of its expenditures to students that are $5,500,000 or more.

(d) The institution shall not include, when calculating the allowance in paragraph (c) of this section, the amount of loans made under the Federal Perkins Loan Program that it assigns during the award year to the Secretary under section 463(a)(6) of the HEA.

(e) An institution shall use its administrative costs allowance to offset its cost of administering the Federal Pell Grant, FWS, FSEOG, and Federal Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR Part 668.

(f) An institution may use up to 10 percent of the administrative costs allowance, as calculated under paragraph (c) of this section, that is attributable to the institution's expenditures under the FWS program to pay the administrative costs of conducting its program of community service. These costs may include the costs of—

(1) Developing mechanisms to assure the academic quality of a student's experience;

(2) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(3) Collaborating with public and private nonprofit agencies and programs assisted under the National and Community Service Act of 1990 in the

planning, development, and administration of these programs.

(g) If an institution charges any administrative cost allowance against its Federal Perkins Loan Fund, it must charge these costs during the same award year in which the expenditures for these costs were made.

(Authority: 20 U.S.C. 1070b–2, 1087cc, and 1096, 42 U.S.C. 2753)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

2. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

§ 668.1 [Amended]

3. Section 668.1, paragraph (c)(4) is amended by adding ''673 and'' before ''676'' and adding an ''s'' to the word ''part''; paragraph (c)(10) is amended by adding ''673 and'' before ''675'' and adding an ''s'' to the word ''part''; and paragraph (c)(12) is amended by adding ''673 and'' before ''674'' and adding an ''s'' to the word ''part''.

§ 668.2 [Amended]

4. Section 668.2, in paragraph (b) amend the definition of ''Campus-based programs'' in paragraph (1) by adding ''673 and'' before ''674'' and adding an ''s'' to the word ''part''; in paragraph (2) add ''673 and'' before ''675'' and add an ''s'' to the word ''part''; and in paragraph (3) add ''673 and'' before ''676'' and add an ''s'' to the word ''part''.

§ 668.22 [Amended]

5. Section 668.22, paragraph (g)(3)(i) is amended by removing ''674, 675, 676,''.

PART 674—FEDERAL PERKINS LOAN PROGRAM

6. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

§ 674.3 [Removed]

7. Section 674.3 is removed and reserved.

§ 674.4 [Removed]

8. Section 674.4 is removed and reserved.

§ 674.8 [Amended]

9. Section 674.8 is amended by removing in paragraph (b)(2), ''§ 674.18(b)'' and adding in its place ''34 CFR 673.7''.

§ 674.14 [Removed]

10. Section 674.14 is removed and reserved.

§ 674.15 [Removed]

11. Section 674.15 is removed and reserved.

§ 674.18 [Amended]

12. Section 674.18 is amended by removing paragraph (b) and by redesignating paragraph (c) as paragraph (b).

PART 675—FEDERAL WORK-STUDY PROGRAM

13. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2751–2756b, unless otherwise noted.

§ 675.3 [Removed]

14. Section 675.3 is removed and reserved.

§ 675.4 [Removed]

15. Section 675.4 is removed and reserved.

§ 675.14 [Removed]

16. Section 675.14 is removed and reserved.

§ 675.15 [Removed]

17. Section 675.15 is removed and reserved.

§ 675.18 [Amended]

18. Section 675.18 is amended by removing paragraph (b) and by redesignating paragraphs (c), (d), (e), (f), (g), and (h) as paragraphs (b), (c), (d), (e), (f), and (g), respectively.

19. Section 675.26 is amended by revising paragraph (d) to read as follows:

§ 675.26 FWS Federal Share Limitations.

* * * * *

(d) For each award year, the Secretary authorizes a Federal share of 100 percent of the compensation earned by a student under this part if the work performed by the student is for the institution itself, for a Federal, State or local public agency, or for a private nonprofit organization, and

(1) The institution in which the student is enrolled—

(i) Is designated as an eligible institution under the Strengthening Institutions program (34 CFR part 607), the Strengthening Historically Black Colleges and Universities program (34 CFR part 608), or the Strengthening Historically Black Graduate Institutions program (34 CFR part 609); and

(ii) Requests that increased Federal share as part of its regular FWS funding application for that year; or

(2) The student is employed as a reading tutor for children who are in preschool through elementary school.

§ 675.49 [Amended]

20. Section 675.49 is amended by adding the words ''34 CFR part 673 and'' before the words ''this part 675''.

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

21. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

§ 676.3 [Removed]

22. Section 676.3 is removed and reserved.

§ 676.4 [Removed]

23. Section 676.4 is removed and reserved.

§ 676.14 [Removed]

24. Section 676.14 is removed and reserved.

§ 676.15 [Removed]

25. Section 676.15 is removed and reserved.

§ 676.16 [Amended]

26. Section 676.16 is amended by removing in paragraph (e)(1) and (e)(2) ''(f)'' and adding, in its place, ''(e)''.

§ 676.18 [Amended]

27. Section 676.18 is amended by removing paragraph (b) and by redesignating paragraph (c) as paragraph (b).

PART 690—FEDERAL PELL GRANT PROGRAM

28. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

29. Section 690.2, paragraph (c) is amended by removing the definition of ''Comparable State income tax return'' and by revising the definition of ''Annual award'' to read as follows:

§ 690.2 General definitions.

* * * * *

(c) * * *

Annual award: The Federal Pell Grant award amount a full-time student would receive under the Payment Schedule for a full academic year in an award year, and the amount a three-quarter-time, half-time, and less-than-half-time student would receive under the appropriate Disbursement Schedule for being enrolled in that enrollment status

for a full academic year in an award year.

* * * * *

30. Section 690.10(b) is revised to read as follows:

§ 690.10 Administrative cost allowance to participating schools.

* * * * *

(b) All funds an institution receives under this section must be used solely to pay the institution's cost of administering the Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs.

* * * * *

§ 690.12 [Amended]

31. Section 690.12(b)(1) is amended by removing ''a copy of''.

32. Section 690.13 is revised to read as follows:

§ 690.13 Notification of expected family contribution.

The Secretary sends a student's application information and EFC as calculated by the central processor to the student on an SAR and allows each institution designated by the student to obtain an ISIR for that student.

(Approved by the Office of Management and Budget under control number 1840–0681)

(Authority: 20 U.S.C. 1070a)

33. Section 690.14 is amended by removing paragraphs (b)(1) and (b)(2); by redesignating paragraph (b)(3) introductory text as paragraph (c) introductory text; by redesignating paragraph (b)(3)(i) as paragraph (c)(1); by redesignating paragraph (b)(3)(ii) as paragraph (c)(2); by redesignating paragraph (b)(4) as paragraph (d); and by revising the heading and paragraphs (a) and (b) to read as follows:

§ 690.14 Applicant's request to recalculate expected family contribution because of a clerical or arithmetic error or the submission of inaccurate information.

(a) An applicant may request that the Secretary recalculate his or her expected family contribution if—

(1) He or she believes a clerical or arithmetic error has occurred; or

(2) The information he or she submitted was inaccurate when the application was signed.

(b) The applicant shall request that the Secretary make the recalculation described in paragraph (a) of this section by—

(1) Having his or her institution transmit that request to the Secretary under EDE; or

(2) Sending to the Secretary an approved form, certified by the student, and one of the student's parents if the student is a dependent student.

* * * * *

34. Section 690.61 is amended by revising paragraphs (a)(1)(ii) and (b)(2) to read as follows:

§ 690.61 Disbursement conditions and deadlines.

(a) * * *

(1) * * *

(ii) The institution obtains a valid ISIR for the student.

* * * * *

(b) * * *

(2) By the deadline date established by the Secretary through publication of a notice in the Federal Register.

* * * * *

§ 690.75 [Amended]

35. Section 690.75 (a)(2) is amended by adding ''in an eligible program'' after ''enrolled''; and paragraph (e), introductory text is amended by removing the phrase ''an expected family contribution of at least $3,000'' and adding, in its place, ''an expected family contribution amount at least equal to the maximum authorized award amount for the award year''.

36. In Section 690.78 paragraph (c)(2) is amended by removing ''15'' and adding, in its place, ''20''; paragraph (c)(3) is amended by removing ''15'' and adding, in its place, ''20''; paragraph (c)(4) is amended by removing ''15'' and adding, in its place, ''20''; and a new paragraph (c)(6) is added to read as follows:

§ 690.78 Method of disbursement—by check or credit to a student's account.

* * * * *

(c) * * *

(6) An institution shall make a late disbursement to an ineligible student in accordance with the provisions in 34 CFR 668.164(g).

* * * * *

§ 690.81 [Amended]

37. Section 690.81 is amended by removing paragraph (c).

[FR Doc. 96–30264 Filed 11–26–96; 8:45 am]

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Part V

Office of Personnel Management

Laboratory Personnel Management Demonstration Project; Department of the Air Force; Notice

OFFICE OF PERSONNEL MANAGEMENT

Laboratory Personnel Management Demonstration Project; Department of the Air Force

AGENCY: Office of Personnel Management.

ACTION: Notice of approval of a demonstration project final plan.

SUMMARY: Title VI of the Civil Service Reform Act, 5 U.S.C. 4703, authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

Public Law 103–337, October 5, 1994, permits the Department of Defense (DoD), with the approval of OPM, to carry out personnel demonstration projects generally similar to the China Lake demonstration project at DoD Science and Technology (S&T) reinvention laboratories. The Air Force is proposing one demonstration project to cover its four S&T reinvention laboratories: Armstrong, Phillips, Rome, and Wright.

DATES: The demonstration project will be implemented March 2, 1997.

FOR FURTHER INFORMATION CONTACT:

AF Wendy B. Campbell, HQ AFMC/ST, 4375 Chidlaw Road, Suite 6, Wright-Patterson Air Force Base, OH 45433–5006, 513–257–1910.

OPM Fidelma A. Donahue, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7460, Washington, DC 20415, 202–606–1138.

SUPPLEMENTARY INFORMATION:

1. Background

Since 1966, at least 19 studies of Department of Defense (DoD) laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. The proposed project involves simplified job classifications, pay banding, and a contribution-based compensation system.

2. Overview

The 69 total comments received, both written and verbal, were a valuable source of input for the Air Force Laboratory Personnel Demonstration. They have been seriously considered and noted. Most changes to the demonstration project are based on these public comments. The majority of the changes are in the area of the Contribution-based Compensation System (CCS). Several other sections of the plan have been clarified and expanded, where necessary, to address missing or unclear information. A few editorial changes were also made.

3. Summary of Comments

Nineteen speakers commented on the Federal Register notice at the 4 public hearings and 50 letters were received. The following is a summary of these written and oral comments by topical area and a response to each.

(1) High Grade Controls

Comments. Commentors expressed dissatisfaction with today's high grade restrictions and questioned why the demonstration did not remove these controls. Senior managers and employees alike believe that with high grade controls the demonstration project cannot adequately and competitively compensate the best people, a major goal of the project. In addition, the ''seamless'' movement envisioned in the Contribution-based Compensation System (CCS) will not occur between level II and level III and employees felt disadvantaged by this.

Response. Due to defense drawdowns in conjunction with high grade controls, promotions from the GS–13 to the GS–14 grades in all the laboratories have been severely restricted. All DoD S&T reinvention laboratory demonstration projects requested the elimination of high grade controls. High grade controls, however, are not under OPM demonstration authority. After project implementation, the Air Force will evaluate the impact of high grade controls on the overall effectiveness of the demonstration project and will seek relief as appropriate. Regarding the treatment of level II employees under CCS, the demonstration employees have the opportunity to be better compensated, even under high grade control, through project procedures not available in the traditional system. Under the current performance management system, GS–13s with superior or excellent ratings are typically given performance awards ranging from 1–2% and may or may not get step increases. Under the demonstration, their CCS score may warrant amounts of ''I'' money larger than the old performance award money, while still enabling them to participate in the laboratory awards program.

(2) Management Issues

Comments. Those employees who commented were greatly concerned that the demonstration gives more authority and responsibility to laboratory supervisors and managers. With the feeling that many supervisors currently do not properly execute supervisory responsibilities or utilize the power and tools provided under the current management system, these employees fear a new system that gives supervisors additional authority over their career and pay. They claim supervisors who do nothing about poor performance are not being evaluated themselves on whether they are ''good'' supervisors or managers, even though supervision is a significant part of their job. Employees also believe upper level management does not really know what goes on in their organizations. Commentors state that military supervisors exacerbate this problem due to a perceived lack of interest in civilian issues and rapid military tour rotation. Managers are thought to be the key to the success of this demonstration and a ''magnifying lens'' should be on them. Therefore, several commentors recommend that employees evaluate their supervisors to attempt to bring more attention to this issue.

Response. The demonstration project includes, as part of the CCS annual cycle, a mid-year feedback that will emphasize employee professional qualities and development. As a result of the public comments received, the mid-year feedback will now include a supervisory feedback session for all levels of supervisors, military and civilian alike, where the supervisor's skills and abilities as a supervisor will be assessed. Employee input will be an integral part of this assessment. In addition, Air Force laboratory directors/commanders are committed to assisting in solutions to these issues and anticipate, before the first CCS assessment cycle in October 1997, to provide, as a first step, additional supervisory skills and management training for all supervisors.

(3) Contribution-Based Compensation System

Several subtopics were discussed relating to CCS.

(a) Level IV Ceiling

Comments. Commentors identified that the highest level IV employee must average 4.9 on every factor to remain ''on the line''. They claimed, as no scores are available above 4.9, that nothing can be done to offset a potentially lower score received in one of the factors. Thus, any score lower than 4.9 would prevent them from achieving the necessary average of 4.9. Commentors mentioned a lack of

opportunity for level IV employees at the top of the broadband level to fall below the rails. They believe this would disadvantage them during a RIF.

Response. Due to comments received, the CCS has been amended to add a factor score of 5.9 for contributions which represent ''higher than level IV'' contributions. Any 5.9 score must be justified and documented by the supervisor. Receipt of this score, however, does not result in an increased CCS payout beyond that associated with a score of 4.9.

Because of the upper pay limit imposed on broadband level IV and the slope of the SPL, employees at the top salaries of that level have no opportunity to score below the lower rail. Therefore, three categories of additional service credit will be defined for RIF purposes within broadband level IV: (1) Employees with CCS assessments on or below the SPL (a G6DX equal to or greater than 0.00), (2) those with CCS assessments above the SPL but on or below the upper rail (a ΔX equal to or greater than -0.30 and less than 0.00), and (3) those with CCS assessments above the upper rail (a ΔX less than -0.30).

(b) Derivation of the Standard Pay Line (SPL)

Comments. Some commentors performed their own calculations on the SPL. They criticized the ''least squares error fit'' derivation and objected to a linear equation for the SPL. One individual also commented that a statistical pooling error had been made. Several commentors believe some groups (upper level GS–13s) would enter the system overcompensated, while others (GS–15s) would enter being undercompensated.

Response. The SPL mathematics have been revalidated and the methodology for the derivation of the line upheld. Whereas the entire GS schedule is to be fit as a single population set rather than by ''pools'' of individual grades, a statistical pooling error did not occur. No employee enters the system either overcompensated or undercompensated because such a determination is not possible until an actual CCS assessment is given, the first occurring in October 1997. It is their CCS scores that place employees above, within, or below the rails—not the calculation of the SPL. Until October 1997, there is merely a correlation between today's salary and an expected CCS score. Figure 1 has been simplified.

(c) Payout

Comments. Some commentors expressed concerns over managers having control over a pay pool in which the manager is a member. They expressed concern that CCS would create competition for limited pay pool funds and destroy team work. In addition, employees were interested in how they would be informed of changes in ''I'' and what would keep it from going to zero.

Response. The demonstration project does not permit managers to control their own CCS assessment scores or to set their own pay. The ''I'' value, initially set at 2.4%, is subject to change, but not to elimination. Within the demonstration, as a minimum, the ''I'' money will be equal to step and promotion dollars under the General Schedule. This is thought to be adequate to fund CCS for its intended purpose while not creating an atmosphere of adverse competition. Changes in ''I'' will be publicized by the laboratory well in advance of the CCS assessment period for which it will become effective.

(d) Factors and Job Opportunity

Comments. Most commentors discussing the six CCS factors believe these will make everyone a ''Jack/Jill of all trades and master of none.'' They claim employees will be unable to contribute across all six factors at the necessary levels. Some employees believe they should not be evaluated on factors on which they have not been previously evaluated, e.g., business development and/or technology transition/transfer. Comments indicated that their contribution opportunity is dictated by their work assignments, claiming they are not allowed to participate in activities which would contribute to each of the six CCS factors. Realizing that contributions may have to span larger areas of work in the future, they express concern at today's way of assigning tasks. Visibility of work is also an issue. Some employees believe high dollar or high visibility programs are associated with high contributions, and they resent the perceived lack of opportunity.

Response. Broader work will be required under the demonstration project. Managers will be aware that all employees need to have contribution opportunities in each of the factors under which they are assessed. This will be stressed during management orientation and training sessions for the demonstration project.

(e) Weights

Comments. Comments generally supported factor weights as they preserve some ''specialist'' culture, but disagree with the stated intention of bringing all weights to one in future years. One individual thought all weights should be set at one because weights other than one may reward the less productive person who chooses not to emphasize work in a low weighted area.

Response. Each laboratory will set its own CCS weights. Each will also review and modify them annually. Laboratories may choose equal weighting schemes or they may adopt a more ''specialized'' profile. Such flexibility is a key to the demonstration project and in keeping with the demonstration's spirit of allowing differences between laboratories which can be evaluated to provide more effective management.

(f) CCS Score Disclosure and CCS Assessment Under Special Circumstances

Comments. Employees' comments revealed a lack of information in the project proposal on how CCS data will be provided back to them. They want to know how they will be able to judge both their relative standing in the pay pool at assessment time and their career progression measured against their peers, particularly since promotions are not the same as in the General Schedule system. Comments also indicated that employees did not know how they would be assessed if they were on extended sick leave, Long-Term Full-Time training, or under other special circumstances.

Response. The public comments revealed that these topics were not covered in sufficient detail in the previous version. Additional information has been added to this plan to explain these features.

(4) Reduction-in-Force (RIF)

The FY97 Authorization Act, signed September 23, 1996, included wording which affects the external hiring and reduction-in-force provisions of the Air Force demonstration project; the Air Force has opted to exclude these two sections of their original proposal from their initial implementation. The CCS assessment score will be used as additional service credit during reduction-in-force.

(5) Trial Period

Comments. Several commentors requested that a trial demonstration project period be run parallel to the current system in order to ''work out'' any difficulty with the new system.

Response. Demonstration authority is the authority to experiment with personnel system changes. During the last two years, significant project design and development by teams of laboratory

employees have produced a sound system for implementation. With yearly formative evaluations and the ability to make major changes based on that evaluation, the demonstration can, and will, be altered in future years to ensure a final system that works well into the future.

(6) Project Evaluation and Human Use

Comments. Some commentors did not find enough material in the project evaluation section to understand how each demonstration initiative was going to be measured. Specifically, they inquired as to how they would know if CCS was working as a system. In addition, a comment was received asking if the demonstration project had fulfilled its requirements to protect human subjects by obtaining necessary waivers regarding human experimentation.

Response. Both the external evaluation, planned and conducted by OPM, and the internal evaluation, planned and conducted by the Air Force, are comprehensive in nature and more detailed than practical for publication in the Federal Register. This plan ensures employees and interested parties that a comprehensive evaluation will be conducted, but it cannot detail all the proposed measures for each initiative, the hypotheses, or show the data collection instruments. This is available in a project evaluation plan. That plan and, once underway, the results from the project evaluation will be available upon request from the addresses listed under **FOR FURTHER INFORMATION CONTACT** in this document. Regarding human use, investigation revealed that 32 CFR 219.102 (e) ''Protection of Human Subjects'' specifically excludes research activities regulated by a federal agency from the requirements relating to human experimentation where the regulating agency has a broader responsibility to regulate, such as pay and classification by OPM. As such, personnel demonstrations under OPM are not subject to these authorities.

(7) Armstrong Laboratory Program 8 Employees

Comments. Several employees commented that their positions were not research oriented and should be excluded from the demonstration project. These employees believe their work is a clinical diagnostic service and does not lend itself well to assessment under the six factors of CCS.

Response. During the development process, several steps were taken to determine whether or not CCS should apply to Program 8 employees at Armstrong Laboratory. The development team for classification and CCS included a supervisor from the Program 8 area for the express purpose of ensuring that the factor levels adequately portrayed contributions available to these employees. Additionally, position descriptions for these employees were reviewed and determined to include research and development activities. However, due to the public comments received, a review of the existing classification of employees assigned to Program 8 at Armstrong Laboratory will be completed prior to implementation. Once the accuracy of their classification has been verified, a separate determination on inclusion or exclusion from the demonstration project will be made on a case by case basis.

4. Demonstration Project System Changes

The following directs a reader to the substantive changes and clarifications to the project plan. The page numbers below refer to the pages of the proposed plan, published in the Federal Register on May 15, 1996.

(1) On pages 24624 and 24625, the FY97 Authorization Act included wording which affects the external hiring provisions of the demonstration project; categorical hiring procedures proposed in the original proposal have been excluded. In addition, provisions for contingent appointments have been clarified to state that these appointments are competitive; are limited to 4 years; and include most benefits.

(2) On pages 24625 and 24639, the definition of ''current'' GS/GM grade for purposes of conversion into the demonstration has been clarified as being the official permanent GS/GM grade of record.

(3) On pages 24631 and 24633, a factor assessment score of 5.9 has been added for those employees who have demonstrated contributions exceeding the maximum of level IV. The maximum total CCS score, however, remains at 4.9.

(4) On pages 24631 and 24632, the provisions for a midyear feedback have been extended to include an assessment, from both employees and higher level management, of supervisory qualities and skills for all supervisors, military and civilian.

(5) On pages 24631 and 24632, the section headed ''The 'Standard Pay Line' (SPL)'' has been clarified to more explicitly state the constraints of the broadband system, analyses and selection of a linear equation for the SPL, and derivation of the equation. An explicit statement has been added that employees will not have CCS scores until after the first CCS assessment process which occurs in October 1997.

(6) On page 24633, provisions for reporting CCS data and providing employee feedback on their relative standing within the pay pool have been adopted.

(7) On page 24633, processes for providing annual CCS scores for employees under special circumstances have been stated.

(8) On page 24634, provisions for the equitable treatment of employees affected by high grade restrictions have been clarified in the section headed ''Salary Adjustment Guidelines.''

(9) On page 24635, the ''E-Zones'' have been expanded to + and −0.25 CCS to capture the full range of the broadband level salaries.

(10) On page 24637, an explanation that the procedures for contribution-based reduction in pay or removal actions, similar to those established under the traditional civil service system, has been added.

(11) On page 24637, provisions for local Staff Judge Advocate review of Voluntary Emeritus Corps agreements have been adopted.

(12) On page 24638, the FY97 Authorization Act included wording which affects the reduction-in-force provisions of the demonstration project. The new RIF procedures proposed in the original proposal have been excluded. Provisions for using the CCS assessment rating to credit additional service under RIF have been added.

(13) On pages 24639 through 24641, the section ''Evaluation Plan'' has been replaced with a clearer, more concise statement. A formal evaluation plan, which is not practical for publication in the Federal Register, will be made available to employees upon request.

(14) On page 24641, the section ''Cost Neutrality'' has been replaced with a section on out year project costs to better describe the strategy for evaluating project costs.

Dated: November 22, 1996.

Office of Personnel Management

James B. King,

Director.

Table of Contents

I. Executive Summary

The project was designed by the Department of the Air Force with participation of and review by the Department of Defense (DoD) and the Office of Personnel Management (OPM). The purpose of the project is to achieve the best workforce for the laboratory mission, adjust the workforce for change, and improve workforce quality. The project framework addresses all aspects of the human resources life cycle model. There are three major areas of change: (a) Laboratory-controlled rapid hiring; (b) a contribution-based compensation system; and (c) a streamlined removal process.

Initially, the project will cover only Scientists and Engineers (S&Es) assigned to the laboratories. A decision point has been programmed for the end of the second year of the demonstration project to determine whether or not to expand coverage to other occupational groups within the laboratory. In the event of expansion to non-S&E employees, full approval of the expansion plan will be obtained by AF, DOD, and OPM.

Cost neutrality is a basic requirement of the project. Extensive evaluation of the project will be performed by both OPM and Air Force. The Air Force has programmed a decision point 5 years into the project for continuance, modification, or rejection of the demonstration initiatives.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of Department of Defense (DOD) laboratories can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expanding the opportunities available to employees through a more responsive and flexible personnel system. The quality of DOD laboratories, their people, and products has been under intense scrutiny in recent years. The perceived deterioration of quality is believed to be due, in substantial part, to the erosion of control which line managers have over their human resources. This demonstration project, in its entirety, attempts to provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve quality laboratories and quality products.

B. Problems with the Present System

Air Force laboratory products contribute to the readiness of U.S. forces. To do this, laboratories must employ enthusiastic, innovative, highly educated scientists and engineers to meet their mission. They must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract topnotch researchers. Today, industry laboratories can make an offer of employment and two counteroffers to a promising new hire before the government can get the first offer on the table. When filling vacancies internally, managers are forced into employee choices based not on research expertise, but on career program membership or special placement programs. Currently, positions are described using a cumbersome classification system that is overly complex and specialized. This hampers a manager's ability to shape the workforce and match positions with employees so as to maximize their productivity and effectiveness. Managers must be given local control of positions and their classification to move both their employees and vacancies freely within their organization to other lines of research when business or technology demands. These issues work together to hamper supervisors in all areas of human resource management. Hiring restrictions and overly complex job classifications, coupled with poor tools for rewarding and motivating employees and a system that does not assist managers in removing poor performers builds stagnation in the workforce and wastes valuable time.

C. Changes Required/Expected Benefits

This project is expected to demonstrate that a human resource system tailored to the mission and needs of the laboratory will result in: (a) Increased quality in the science and engineering workforce and the laboratory products they produce; (b) increased timeliness of key personnel processes; (c) trended workforce data that reveals increased retention of ''excellent contributors'' and separation rates of ''poor contributors''; and (d) increased satisfaction with the laboratory and its products by those Air Force and DOD customers they service.

The Air Force demonstration program builds on the successful features of demonstration projects at China Lake and the National Institute of Standards and Technology (NIST). These demonstration projects have produced impressive statistics on job satisfaction for their employees versus that for the federal workforce in general. Therefore, in addition to the expected benefits mentioned above, it is anticipated that the Air Force demonstration project will result in more satisfied employees as a consequence of the demonstration's pay equity, classification accuracy, and fairness of performance management. A full range of measures will be collected during project evaluation (section VII).

D. Participating Organizations

The four Air Force Materiel Command (AFMC) laboratory directors/commanders are located as follows:

Armstrong Laboratory—Brooks AFB, Texas
Phillips Laboratory—Kirtland AFB, New Mexico
Rome Laboratory—Rome, New York
Wright Laboratory—Wright-Patterson AFB, Ohio

Scientists and Engineers (S&Es) assigned to the laboratories work at the locations shown in Table 1.

TABLE 1.—S&E DUTY LOCATIONS BY LABORATORY

[As of 31 Dec. 95]

Laboratory	Duty Location	S&Es
Armstrong	Aberdeen Proving Ground, MD.	3
	Brooks AFB, TX	167
	San Diego, CA	1
	Tyndall AFB, FL	27
	Williams AFB, AZ	14
	Wright-Patterson AFB, OH.	97
Phillips	Edwards AFB, CA	120
	Hanscom AFB, MA	188
	Kirtland AFB, NM	246
	Malabar, FL	1
	Maui Island, HI	1
	Sunspot, NM	5
Rome	Rome, NY	424
	Hanscom AFB, MA	82
Wright	Eglin AFB, FL	177
	Kelly AFB, TX	5
	McClellan AFB, CA	10
	Robins AFB, GA	4
	Tyndall AFB, FL	12
	Wright-Patterson AFB, OH.	1207

E. Participating Employees

In determining the scope of the demonstration project, primary considerations were given to the

number and diversity of occupations within the laboratories and the need for adequate development and testing of the Contribution-based Compensation System (CCS). Additionally, current DoD human resource management design goals and priorities for the entire civilian workforce were considered. While the intent of this project is to provide the laboratory directors/commanders with increased control and accountability for their total workforce, the decision was made to initially restrict development efforts to General Schedule (GS/GM) positions within the scientific and engineering specialties. Research Medical Officers (GS–0602) have been excluded from the project because of special pay provisions for their occupation which exceed the upper limits of the broadband. The series to be included in the project are identified in Table 2.

TABLE 2.—SERIES INCLUDED IN THE AIR FORCE DEMONSTRATION PROPOSAL

[As of 31 Dec 95]

0180	Psychology.
0190	General Anthropology.
0401	General Biological Science.
0403	Microbiology.
0413	Physiology.
0414	Entomology.
0415	Toxicology.
0665	Speech Pathology & Audiology.
0701	Veterinary Medical Science.
0801	General Engineering.
0803	Safety Engineering.
0804	Fire Protection Engineering.
0806	Materials Engineering.
0808	Architecture.
0810	Civil Engineering.
0819	Environmental Engineering.
0830	Mechanical Engineering.
0840	Nuclear Engineering.
0850	Electrical Engineering.
0854	Computer Engineering.
0855	Electronics Engineering.
0858	Biomedical Engineering.
0861	Aerospace Engineering.
0892	Ceramic Engineering.
0893	Chemical Engineering.
0896	Industrial Engineering.
1301	General Physical Science.
1306	Health Physics.
1310	Physics.
1313	Geophysics.
1320	Chemistry.
1321	Metallurgy.
1330	Astronomy & Space Science.
1340	Meteorology.
1370	Cartography.
1515	Operations Research.
1520	Mathematics.
1529	Mathematical Statistician.
1530	Statistician.
1550	Computer Science.

Other positions may be phased in during the course of the project. A decision point for expanded employee coverage has been programmed for the end of the second year of the demonstration project. In the event of expansion to non-S&E employees, full approval of the expansion plan will be obtained by AF, DoD, and OPM.

Current demographics and union representation for the S&E positions are shown in Table 3.

TABLE 3.—S&E DEMOGRAPHICS AND UNION REPRESENTATION

[As of 31 Dec. 95]

GS/GM 13 and above	1965
GS–12 and below	826
Total	2791
Occupational Series	40
Duty Location	17
Veterans	19.78%
Union Representation	
NFFE	
Eglin AFB, Florida	145
Hanscom AFB, Massachusetts	233
Tyndall AFB, Florida	33
IFPTE	
McClellan AFB, California	9

Of the 2,791 scientists and engineers assigned to the laboratories, 420 are represented by labor unions. Employees at Hanscom AFB, Massachusetts, are represented by the National Federation of Federal Employees (NFFE) Local 1384. Employees at Eglin AFB, Florida, are represented by NFFE Local 1940. Employees at Tyndall AFB, Florida, are represented by NFFE Local 1113. Employees at McClellan AFB, California, are represented by the International Federation of Professional and Technical Engineers (IFPTE) Local 330. Union representatives have been separately notified about the project. The Air Force is proceeding to fulfill its obligation to consult or negotiate with the unions, as appropriate, in accordance with 5 U.S.C. 4703(f).

F. Project Design

In August 1994, a special action ''tiger team'' was formed by the Director of Science and Technology for Air Force Materiel Command in response to the proposed DoD legislation allowing reinvention laboratories to conduct personnel demonstrations. The team was chartered to take full opportunity of this legislation and try to develop solutions that would solve many of the laboratory personnel issues that have been so prevalent and well documented. The team composition included current managers from the four Air Force laboratories, retired and current laboratory directors, and subject matter experts from civilian personnel and manpower. This team developed 27 initiatives which together represented sweeping changes in the entire spectrum of human resource management for the laboratories. Several initiatives were designed to assist the laboratories in hiring and placing the best people to fulfill mission requirements. Others focused on developing, motivating, and equitably compensating employees based on their contribution to the mission. Initiatives to effectively manage workforce turnover and maintain organizational excellence were also developed. These 27 initiatives were endorsed and accepted in total by the laboratory directors/commanders.

After the authorizing legislation passed, a project office with four employees was established in September 1994. Under the guidance of the Director of Science and Technology, the office was charged with further developing the demonstration concept and bringing it to implementation. As a first task, the project office asked the four laboratories and the civilian personnel offices that service them for volunteers to staff six Integrated Product Teams (IPTs). Sixty civilian managers and employees from all laboratories in most geographic locations and from appropriate base level personnel offices came together and have worked for 9 months to develop the detailed concept and implementation for each initiative.

After thorough study, the original 27 initiatives were reduced to 20. Seven of the original initiatives appear herein. The remainder are subject to either DoD or Air Force regulation, and waivers are being sought at those levels.

III. Personnel System Changes

A. Hiring and Appointment Authorities

1. Hiring Authority

A candidate's basic eligibility will be determined using OPM's ''Qualification Standards Handbook For General Schedule Positions.'' Broadband level I minimum eligibility requirements will be the GS–07 qualifications. Broadband level II minimum eligibility requirements will be the GS–12 qualifications. Broadband levels III and IV are single-grade broadband levels and will mirror the minimum qualifications for the respective General Schedule grades of 14 and 15. Selective placement factors may be established in accordance with OPM's Qualification Handbook when judged to be critical to successful job performance. These factors will be communicated to all candidates for particular position vacancies and must be met for basic eligibility.

2. Appointment Authority

Under the demonstration project, there will be two appointment options: Regular career and contingent. The career-conditional appointment authority will not be used under the demonstration project. Regular career appointments will continue to use existing authorities and entitlements, and employees will serve a probationary period. Contingent appointments will use the existing term appointment authority which includes a limit of 4 years and most benefits. This contingent appointment will be competitive and is designed to attract high quality new scientists and engineers and post-doctoral students who may wish to choose an Air Force laboratory experience for a few years, accruing some portable retirement and receiving benefits during this tenure.

3. Extended Probationary Period

A new employee needs to demonstrate adequate contribution during all cycles of a research effort for a laboratory manager to render a thorough evaluation. The current 1 year probationary period will be extended to 3 years for all newly hired regular career employees. The purpose of extending the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's contribution and conduct.

Aside from extending the time period, all other features of the current probationary period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. Any employee appointed prior to the implementation date will not be affected. The 3 year probation will apply to non-status hires. That is, it will apply only to new hires or those who do not have reemployment or reinstatement rights. Air Force Palace Knight and Senior Knight appointments must complete 3 years of directly supervised employment in the laboratory to complete the probationary period (i.e., time spent at school does not count toward fulfilling the probationary period requirement).

Probationary employees will be terminated when the employee fails to demonstrate proper conduct, technical competency, and/or adequate contribution for continued employment. When a laboratory decides to terminate an employee serving a probationary period because their work contribution or conduct during this period fails to demonstrate their fitness or qualifications for continued employment, it shall terminate their services by written notification of the reasons for separation and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of the laboratory's conclusions as to the inadequacies of their contribution or conduct.

B. Broadbanding

The broadbanding system will replace the current General Schedule (GS) structure. Currently, the 15 grades of the General Schedule are used to classify positions and, therefore, to set pay. The General Schedule covers all white collar work—administrative, technical, clerical, and professional. This system will initially cover only scientific and engineering (S&E) positions in the Air Force laboratories. Scientific and Professional (ST) and Senior Executive Service (SES) employees are not covered.

The broadband levels are designed to facilitate pay progression and to allow for more competitive recruitment of quality candidates at differing rates within the appropriate broadband level(s). Competitive promotions will be less frequent and movement through the broadband levels will be a more seamless process than today's procedure. Like the previous broadband systems used at China Lake and the National Institute of Standards and Technology (NIST), advancement within the system is contingent on merit.

There will be four broadband levels in the demonstration project, labeled I, II, III, and IV. They will include the current grades of GS–7 through GS/GM–15. These are the grades in which the S&E employees in the Air Force laboratories are found. Broadband level I includes the current GS–7 through GS–11; level II, GS–12 and GS/GM–13; level III, GS/GM–14; and level IV, GS/GM–15. Comparison to the GS grades was useful in setting the upper and lower dollar limits of the broadband; however, once the employees are moved into the demonstration project, General Schedule grades will no longer apply.

The titles associated with each broadband level are as follows:

Level	Title(s)
I	Associate (Electronics Engineer, Chemist, etc.).
II	Title of Appropriate Series (Physicist, Biologist, etc.) or Supervisory (Nuclear Engineer, etc.).
III	Senior (Mathematician, Computer Scientist, etc.) or Supervisory Senior (Physical Scientist, etc.).
IV	Principal (Microbiologist, Psychologist, etc.) or Supervisory Principal (Aerospace Engineer, etc.).

Generally, employees will be converted into the broadband level which includes their permanent GS/GM grade of record. Each employee is assured an initial place in the system without loss of pay. As the rates of the General Schedule are increased due to general pay increases, the minimum and maximum rates of the four broadband levels will also move up. Individual employees receive pay increases based on their assessments under the Contribution-based Compensation System. Since pay progression through the levels depends on merit, there will be no scheduled Within-Grade Increases (WGIs) for employees once the broadbanding system is in place. Special Salary Rates will no longer be applicable to demonstration project employees. All employees will be eligible for the future locality pay increases of their geographical area.

Newly hired personnel entering the system will be employed at a level consistent with the expected contribution of the position and individual basic qualifications for the level, as determined by rating against qualification standards. Salaries of individual candidates will be based on academic qualifications and experience. In addition to the flexibilities available under the broadbanding system, the authorities for retention, recruitment, and relocation payments granted under the Federal Employees' Pay Comparability Act of 1990 (FEPCA) can also be used.

Employees who leave the Air Force broadbanding system to accept federal employment in the traditional Civil Service system will have their pay set by the gaining activity. Where a broadband level includes a single GS grade, the employees are considered to have attained the grade commensurate with the broadband level they are leaving. Where broadband levels include multiple grades, employees are considered to have progressed to the next higher grade within that broadband level when they have been in the level for 1 year and their salary equals or exceeds the minimum salary of the higher grade. For employees who are entitled to a special rate upon return to the General Schedule, the demonstration project locality rate must equal or exceed the minimum special rate of the higher grade. Refer to section V for information concerning

conversion to and from the demonstration project.

The use of broadbanding provides a stronger link between pay and contribution to the mission of the laboratory. It is simpler, less time consuming, and less costly to maintain. In addition, such a system is more easily understood by managers and employees, is easily delegated to managers, coincides with recognized career paths, and complements the other personnel management aspects of the demonstration project.

C. Classification

1. Occupational Series

The present General Schedule classification system has 434 occupational series which are divided into 22 groups. The Air Force laboratories currently have scientific and engineering (S&E) positions in 40 series which fall into 7 groups. The occupational series, which frequently provide well-recognized disciplines with which employees wish to be identified, will be maintained. This will facilitate movement of personnel into and out of the demonstration project. Other scientific and engineering series may be added to the project as the need for new professional skills emerges within the laboratory environment.

2. Classification Standards

The present system of OPM classification standards will be used for the identification of proper series and occupational titles of positions within the demonstration project. References in the position classification standards to grade criteria will not be used as part of the demonstration project. Rather, the CCS broadband level descriptors will be used for the purpose of broadband level determination. Under the demonstration project, each broadband level is represented by a set of level descriptors. Based on a yearly assessment of the employee's level of contribution to the organization in relation to these descriptors, the broadband level and salary are reviewed and appropriately adjusted. This eliminates the need for the use of grading criteria in OPM classification standards.

The broadband level descriptors are:

Level I Descriptors

Technical Problem Solving: Conducts in-house technical activities and/or may provide contract technical direction with guidance from supervisor or higher level scientist or engineer. Works closely with peers in collectively solving problems of moderate complexity involving: limited variables, precedents established in related projects, and minor adaptations to well-established methods and techniques. Recognized within own organization for technical ability in assigned areas.

Communications/Reporting: Provides data and written analysis for input to scientific papers, journal articles, and reports and/or assists in preparing contractual documents and/or reviews technical reports; work is acknowledged in team publications. Effectively presents technical results of own studies, tasks, or contract results. Material is presented either orally or in writing, within own organization or to limited external contacts. Conducts these activities under the guidance of a supervisor and/or team leader.

Corporate Resource Management: May coordinate elements of in-house work units or assist in managing a scientific or support contract. Uses personal and assigned resources efficiently under the guidance of a supervisor or team leader. As an understanding of organizational activities, policies, and objectives is gained, participates in team planning.

Technology Transition/Technology Transfer: Participates as a team member in demonstrating technology and in interacting with internal/external customers. With guidance, contributes to technical content of partnerships for technology transition and/or transfer (Advanced Technology Demonstrations, Memorandums of Understanding, Joint Director of Labs/Project Reliance, Cooperative Research and Development Agreements, and other dual-use vehicles). Seeks out and uses relevant outside technologies in assigned projects.

R&D Business Development: As a team member, communicates with customers to understand customer requirements. By maintaining currency in area of expertise, contributes as a team member to new program development. May technically participate in writing proposals to establish new business opportunities.

Cooperation and Supervision: Contributes to all aspects of teams' responsibilities. May technically guide or mentor less experienced personnel on limited aspects of scientific or engineering efforts. Receives close guidance from supervisor and/or higher level scientist or engineer. Performs duties in a professional, responsive, and cooperative manner in accordance with established policies and procedures.

Level II Descriptors

Technical Problem Solving: Conducts in-house technical activities and/or provides contract technical direction to programs of moderate size and complexity with minimal oversight. Contributes technical ideas and conceives and defines solutions to technical problems of moderate size or complexity. Recognized internally and externally by peers, both in governmental and industrial activities, for technical expertise.

Communications/Reporting: Writes or is a major contributing author on scientific papers, journal articles, or reports and/or prepares contract documents and reviews reports pertaining to area of technical expertise. May assist in filing innovation disclosures, inventions, and patents. Effectively prepares and presents own and/or team technical results. Communicates work to varied laboratory, scientific, industry, and other government audiences. May prepare and present presentations on critical program for use at higher levels with some guidance.

Corporate Resource Management: Manages all aspects of technically complex in-house work units or one or more contractual efforts in assigned program area. Effectively plans and controls all assigned resources. Makes and meets time and budget estimates on assigned projects or takes appropriate corrective action. Participates in organizational or strategic planning at team level, taking cognizance of complementary projects elsewhere to ensure optimal use of resources.

Technology Transition/Technology Transfer: Develops demonstrations and interacts independently with internal/external customers. As a team member, implements partnerships for transition and/or transfer of technology (Advanced Technology Demonstrations, Memorandums of Understanding, Joint Director of Labs/Project Reliance, Cooperative Research and Development Agreements, and other dual-use vehicles). Evaluates and incorporates appropriate outside technology in individual or team activities.

R&D Business Development: Initiates meetings and interactions with customers to understand customer needs. Generates key ideas for program development based on understanding of technology and customer needs. Demonstrates expertise to internal/external customers. Contributes technically to proposal preparation and marketing to establish new business opportunities.

Cooperation and Supervision: Contributes as a technical task or team leader; is sought out for expertise by peers; and participates in mentoring of team members. May guide on a daily basis, technical, programmatic, and administrative efforts of individuals or team members. May recommend selection or may select staff and/or team members. Assists in the development and training of individuals or team members. May participate in position and performance management. Receives general guidance in terms of policies, program objectives, and/or funding issues from supervisor and/or higher level scientist or engineer. Discusses novel concepts and significant departures from previous practices with supervisor or team leader.

Level III Descriptors

Technical Problem Solving: Conducts and/or directs technical activities and/or assists higher levels on challenging and innovative projects or technical program development with only broad guidance. Develops solutions to diverse, complex problems involving various functional areas and disciplines. Conducts and/or directs large programs in technically complex areas. Recognized within the laboratory, service, DoD, industry, and academia for technical expertise and has established a professional reputation in national technical community.

Communications/Reporting: Lead author on major scientific papers, refereed journal articles, and reports and/or prepares and reviews contract documents and reviews reports of others pertaining to overall program. May document or file inventions, patents, and innovation disclosures relevant

to subject area. Prepares and presents technical and/or financial and programmatic briefings and documentation for team, organization, or technical area. Prepares and delivers presentations for major projects and technology areas to scientific and/or government audiences. Reviews oral presentation of others. Communication and reporting functions conducted with minimal higher level oversight.

Corporate Resource Management: Defines program strategy and resource allocations for in-house and/or contractual programs. For assigned technical areas, conducts program planning, coordination, and/or documentation (master plans, roadmaps, Joint Director of Labs/Reliance, etc.). Advocates to laboratory and/or higher headquarters on budgetary and programmatic issues for resources. Based on knowledge of analytical and evaluative methods and techniques, participates in strategic planning at branch and/or division level. Considers and consults on technical programs of other organizations working in the field to ensure optimal use of resources.

Technology Transition/Technology Transfer: Develops customer base and expands opportunities for technology transition and transfer. Leads or serves as a key technical member of teams implementing partnerships for transition or transfer of technology (Advanced Technology Demonstrations, Memorandums of Understanding, Joint Director of Labs/Project Reliance, Cooperative Research and Development Agreements, and other dual-use vehicles). Ensures incorporation of outside technology within laboratory programs.

R&D Business Development: Works to establish customer alliances and translates customer needs to programs in a particular technical area. Develops feasible research strategies and/or business strategies for new technical activities. Seeks joint program coalitions with other agencies and funding opportunities from outside organizations. Pursues near-term business opportunities through proposals.

Cooperation and Supervision: Is sought out for consultation and mentors team members. Guides the research, technical and/or programmatic, and administrative efforts of individuals or teams with accountability for focus and quality. Recommends selection or selects staff and/or team members. Supports development and training of subordinates and/or team members. Participates in position and performance management. Receives only broad policy and administrative guidance from supervisor, such as initiation and curtailment of programs.

Level IV Descriptors

Technical Problem Solving: Independently defines, leads, and manages the most challenging, innovative, and complex technical activities/programs consistent with general guidance or independently directs overall R&D program. Conceives and develops creative solutions to the most complex problems requiring highly specialized areas of technical expertise. Recognized within the laboratory, service, DoD, and other agencies for broad technical area expertise and has established a professional reputation in national and international technical communities.

Communications/Reporting: Lead or sole author on scientific papers, refereed journal articles, reports, or review articles which are recognized as major advances or resolutions in the technical area and/or reviews and approves reporting of all technical products of mission area. May exploit innovations which normally lead to inventions, disclosures, and patents. Prepares and presents technical and/or financial and programmatic briefings and documentation for breadth of programs at or above own level. As subject matter expert, prepares and delivers invited or contributed presentations, papers at national or international conferences on technical area, or gives policy level briefings. Singularly responsible for overall quality and timeliness of technical/ scientific/ programmatic reports and presentations of group and self.

Corporate Resource Management: Defines technology area strategy and resource allocations for in-house and contractual programs. For multiple technical areas, conducts overall program planning and coordination, and/or program documentation (master plans, roadmaps, Joint Director of Labs/Project Reliance, etc.). Advocates to command, service, and agency levels on budgetary and programmatic issues for resources. Utilizing advanced analytical and evaluative methods and techniques, leads strategic planning and prioritization processes. Develops strategy to leverage resources from other agencies and ensures equitable distribution and appropriate use of internal resources.

Technology Transition/Technology Transfer: Organizes, leads, and markets overall technology transition and transfer activities for organization at senior management levels. Leads in formulation and oversight of Advanced Technology Demonstrations, Memorandums of Understanding, Joint Director of Labs/Project Reliance, Cooperative Research and Development Agreements, and other dual-use vehicles. Creates an environment that encourages widespread exploitation of both national and international technologies.

R&D Business Development: Works with the senior management level to stimulate development of customer alliances for several technical areas. Generates strategic research and/or business objectives for core technical areas. Recognizes warfighting trends, relates business opportunities, and convinces laboratory management to develop and/or acquire expertise and commit funds. Secures business opportunities supporting long-term mission relevancy through targeted proposals and processes.

Cooperation and Supervision: Establishes team charters and develops future team leaders and supervisors. Leads and manages all aspects of subordinates' or team members' efforts with complete accountability for mission and programmatic success. Recommends selection or selects staff, team leaders, and team members; fosters development and training of supervisory and non-supervisory individuals. Directs or recommends position and performance management. Works within the framework of agency policies, mission objectives, and time and funding limitations.

3. Classification Authority

Laboratory directors/commanders will have delegated classification authority and may, in turn, redelegate this authority no lower than two management levels below the director/ commander. Classification approval, however, must be exercised at least one management level above the first level supervisor of the employee or position under review. Supervisors at the lower levels will provide classification recommendations. Personnel specialists will provide on-going consultation and guidance to managers and supervisors throughout the classification process.

4. Statement of Duties and Experience (SDE)

Under the demonstration project's classification system, the automated Statement of Duties and Experience (SDE) will replace the current AF Form 1378, Civilian Personnel Position Description. The SDE will include a description of job-specific information, reference the CCS broadband level descriptors for the assigned broadband level, and provide data element information pertinent to the job. Laboratory supervisors will follow a computer assisted process to produce the SDE. The objectives in developing the new SDE are to: (a) Simplify the descriptions and the preparation process through automation, (b) make the SDE specific to the employee, and (c) make the SDE a more useful tool for other functions of personnel management, e.g., recruiting, reduction-in-force, assessment of contribution, and employee development.

5. Skill Codes

The Air Force presently uses skill code sets within the Defense Civilian Personnel Data System (DCPDS) as a means to reflect duties of current positions and employees' previous experiences. Each code represents a specialization within the occupation. Specializations are those described in classification or qualification standards and those agreed upon by functional managers and personnel specialists to be important to staffing patterns and career paths. These codes are used to refer candidates for employment with the Air Force, placement of current employees into other positions, and selection for training under competitive procedures. To facilitate the movement of personnel into and out of the demonstration project, the Air Force system of skills coding will continue to

be used. Laboratory supervisors will select appropriate skill code sets to describe the work of each employee through the automated SDE process.

6. Classification Process

The SDE is accomplished by completion of the following steps utilizing an automated system:

(a) The supervisor enters, by typing free-form, the organizational location, SDE number, and the employee's name. From the menu, the supervisor selects the appropriate occupational series and title, the level descriptors corresponding to the broadband level that is most commensurate with an employee's anticipated level of contribution, the CCS job category, the functional classification code, and the supervisory level. The supervisor then fills in the blanks in a standard statement relating to the level of certification and functional area for the Acquisition Professional Development Program (APDP).

(b) The supervisor creates a brief description of job-specific information by typing free-form at the appropriate point. From a menu, the supervisor will choose statements pertaining to physical requirements; knowledges, skills, and abilities required to perform the work; and special licenses or certifications needed (other than APDP). Based on the supervisory level code selected above, the system will produce mandatory statements pertaining to affirmative employment, safety, and security programs. The system will also produce a statement pertaining to positive education requirements, or their equivalencies, based on the occupational series selected.

(c) The supervisor selects up to three skill code sets from the listing provided which are appropriate to the job. From the menu, the supervisor also selects the position sensitivity; Fair Labor Standards Act (FLSA) status; drug testing requirements; emergency essential and key position information; the career program to which the position belongs; the bargaining unit status code; the contribution factor weights which apply to the job category previously selected; and other relevant position description elements. This information, along with the supervisory level and the competitive level code, constitutes the SDE addendum. These data elements will be maintained as a separate page of the SDE (i.e., an addendum) as this information can change frequently. By maintaining this information as an addendum, the need to create and classify a new SDE each time one of these elements must be updated is alleviated.

(d) The supervisor accomplishes the SDE with a recommended classification, then signs and dates the document. The SDE is sent to the individual in the organization with delegated classification authority for approval and classification, which is indicated by that person signing and dating the SDE.

The computer assisted system will incorporate definitions for the CCS job categories, supervisory levels, all S&E occupational series, as well as their corresponding skill code sets and the functional classification codes. The functional classification codes are those currently found in OPM's ''Introduction to the Classification Standards'' which define certain kinds of activities, e.g., research, development, test and evaluation, etc. The FLSA status selection must be in accordance with OPM guidance. Throughout the above process, manpower analysts and personnel specialists will be available to advise laboratory management.

D. Contribution-based Compensation System

1. Overview

The purpose of the Contribution-based Compensation System (CCS) is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the laboratory S&E workforce. It is essential for the development of a highly productive workforce and to provide management, at the lowest practical level, the authority, control, and flexibility needed to achieve quality laboratories and quality products. CCS allows for more employee involvement in the assessment process, increases communication between supervisor and employee, promotes a clear accountability of contribution, facilitates employee career progression, provides an understandable basis for salary changes, and delinks awards from the annual assessment process. Funds previously allocated for performance-based awards will be reserved for distribution under a separate laboratory awards program.

CCS is a contribution-based assessment system that goes beyond a performance- based rating system. That is, it measures the employee's contribution to the organization rather than how well the employee performed a job as defined by a performance plan; one which may represent a lower level of responsibility and expectation based on the employee's previous performance. CCS promotes proactive salary adjustment decisions to be made on the basis of an individual's overall contribution to the organization.

Contribution is measured by factors, each of which is relevant to the success of a Research and Development (R&D) laboratory. Six factors have been developed for evaluating the yearly contribution of S&E personnel covered by this initiative: Technical Problem Solving, Communications/Reporting, Corporate Resource Management, Technology Transition/Technology Transfer, R&D Business Development, and Cooperation and Supervision.

Each factor has four levels of increasing contribution corresponding to the four broadband levels. These factors use the same descriptors as those presented under classification (section III C). Under classification, for example, only level I descriptors are applied for each of the six factors for a level I employee. For the CCS assessment process, the six factors are presented with all four levels of contribution to better assist supervisor assessment. Therefore, for classification, the factors are sorted first by level and then by factor as shown in section III C 2. For the CCS assessment process, the level descriptors are sorted first by factor and then by level as shown below.

FACTOR 1.—TECHNICAL PROBLEM SOLVING

Level	Descriptor	Key elements
I	Conducts in-house technical activities and/or may provide contract technical direction with guidance from supervisor or higher level scientist or engineer.	Scope of Project/Level of Impact.
	Works closely with peers in collectively solving problems of moderate complexity involving: limited variables, precedents established in related projects, and minor adaptations to well-established methods and techniques.	Technical Complexity/Creativity.
	Recognized within own organization for technical ability in assigned areas	Recognition.
II	Conducts in-house technical activities and/or provides contract technical direction to programs of moderate size and complexity with minimal oversight.	Scope of Project/Level of Impact.

FACTOR 1.—TECHNICAL PROBLEM SOLVING—Continued

Level	Descriptor	Key elements
	Contributes technical ideas and conceives and defines solutions to technical problems of moderate size or complexity.	Technical Complexity/Creativity
	Recognized internally and externally by peers, both in governmental and industrial activities, for technical expertise.	Recognition.
III	Conducts and/or directs technical activities and/or assists higher levels on challenging and innovative projects or technical program development with only broad guidance.	Scope of Project/Level of Impact.
	Develops solutions to diverse, complex problems involving various functional areas and disciplines. Conducts and/or directs large programs in technically complex areas.	Technical Complexity/Creativity.
	Recognized within the laboratory, service, DoD, industry, and academia for technical expertise and has established a professional reputation in national technical community.	Recognition.
IV	Independently defines, leads, and manages the most challenging, innovative, and complex technical activities/programs consistent with general guidance or independently directs overall R&D program.	Scope of Project/Level of Impact.
	Conceives and develops creative solutions to the most complex problems requiring highly specialized areas of technical expertise.	Technical Complexity/Creativity.
	Recognized within the laboratory, service, DoD, and other agencies for broad technical area expertise and has established a professional reputation in national and international technical communities.	Recognition.

FACTOR 2.—COMMUNICATIONS/REPORTING

Level	Descriptor	Key elements
I	Provides data and written analysis for input to scientific papers, journal articles, and reports and/or assists in preparing contractual documents and/or reviews technical reports; work is acknowledged in team publications.	Written and Oral.
	Effectively presents technical results of own studies, tasks, or contract results	Breadth of Responsibility.
	Material is presented either orally or in writing, within own organization or to limited external contacts.	Level/Diversity of Audiences.
	Conducts these activities under the guidance of a supervisor and/or team leader	Oversight Required.
II	Writes or is a major contributing author on scientific papers, journal articles, or reports and/or prepares contract documents and reviews reports pertaining to area of technical expertise. May assist in filing innovation disclosures, inventions, and patents.	Written and Oral.
	Effectively prepares and presents own and/or team technical results.	Breadth of Responsibility.
	Communicates work to varied laboratory, scientific, industry, and other government audiences.	Level/Diversity of Audiences.
	May prepare and present presentations on critical program for use at higher levels with some guidance.	Oversight Required.
III	Lead author on major scientific papers, refereed journal articles, and reports and/or prepares and reviews contract documents and reviews reports of others pertaining to overall program. May document or file inventions, patents, and innovation disclosures relevant to subject area.	Written and Oral.
	Prepares and presents technical and/or financial and programmatic briefings and documentation for team, organization, or technical area.	Breadth of Responsibility.
	Prepares and delivers presentations for major projects and technology areas to scientific and/or government audiences.	Level/Diversity of Audiences.
	Reviews oral presentation of others. Communication and reporting functions conducted with minimal higher level oversight.	Oversight Required.
IV	Lead or sole author on scientific papers, refereed journal articles, reports, or review articles which are recognized as major advances or resolutions in the technical area and/or reviews and approves reporting of all technical products of mission area. May exploit innovations which normally lead to inventions, disclosures, and patents.	Written and Oral.
	Prepares and presents technical and/or financial and programmatic briefings and documentation for breadth of programs at or above own level.	Breadth of Responsibility.
	As subject matter expert, prepares and delivers invited or contributed presentations, papers at national or international conferences on technical area, or gives policy level briefings.	Level/Diversity of Audiences.
	Singularly responsible for overall quality and timeliness of technical/scientific/programmatic reports and presentations of group and self.	Oversight Required.

FACTOR 3.—CORPORATE RESOURCE MANAGEMENT

Level	Descriptor	Key elements
I	May coordinate elements of in-house work units or assist in managing a scientific or support contract.	In-House/Contract Managing.
	Uses personal and assigned resources efficiently under the guidance of a supervisor or team leader.	Size and Complexity.

FACTOR 3.—CORPORATE RESOURCE MANAGEMENT—Continued

Level	Descriptor	Key elements
	As an understanding of organizational activities, policies, and objectives is gained, participates in team planning.	Make/Buy/Rely.
II	Manages all aspects of technically complex in-house work units or one or more contractual efforts in assigned program area.	In-House/Contract Managing.
	Effectively plans and controls all assigned resources. Makes and meets time and budget estimates on assigned projects or takes appropriate corrective action.	Size and Complexity.
	Participates in organizational or strategic planning at team level, taking cognizance of complementary projects elsewhere to ensure optimal use of resources.	Make/Buy/Rely
III	Defines program strategy and resource allocations for in-house and/or contractual programs.	In-House/Contract Managing.
	For assigned technical areas, conducts program planning, coordination, and/or documentation (master plans, roadmaps, Joint Director of Labs/Reliance, etc.). Advocates to laboratory and/or higher headquarters on budgetary and programmatic issues for resources.	Size and Complexity.
	Based on knowledge of analytical and evaluative methods and techniques, participates in strategic planning at branch and/or division level. Considers and consults on technical programs of other organizations working in the field to ensure optimal use of resources.	Make/Buy/Rely.
IV	Defines technology area strategy and resource allocations for in-house and contractual programs.	In-House/Contract Managing.
	For multiple technical areas, conducts overall program planning and coordination, and/or program documentation (master plans, roadmaps, Joint Director of Labs/Project Reliance, etc.). Advocates to command, service, and agency levels on budgetary and programmatic issues for resources.	Size and Complexity.
	Utilizing advanced analytical and evaluative methods and techniques, leads strategic planning and prioritization processes. Develops strategy to leverage resources from other agencies and ensures equitable distribution and appropriate use of internal resources.	Make/Buy/Rely.

FACTOR 4.—TECHNOLOGY TRANSITION/TECHNOLOGY TRANSFER

Level	Descriptor	Key elements
I	Participates as a team member in demonstrating technology and in interacting with internal/external customers.	Customer Interaction Level.
	With guidance, contributes to technical content of partnerships for technology transition and/or transfer (Advanced Technology Demonstrations, Memorandums of Understanding, Joint Director of Labs/Project Reliance, Cooperative Research and Development Agreements, and other dual-use vehicles).	Partnership/Level of Independence.
	Seeks out and uses relevant outside technologies in assigned projects	Leveraging Outside Technology.
II	Develops demonstrations and interacts independently with internal/external customers	Customer Interaction Level.
	As a team member, implements partnerships for transition and/or transfer of technology (Advanced Technology Demonstrations, Memorandums of Understanding, Joint Director of Labs/Project Reliance, Cooperative Research and Development Agreements, and other dual-use vehicles).	Partnership/Level of Independence.
	Evaluates and incorporates appropriate outside technology in individual or team activities	Leveraging Outside Technology.
III	Develops customer base and expands opportunities for technology transition and transfer.	Customer Interaction Level.
	Leads or serves as a key technical member of teams implementing partnerships for transition or transfer of technology (Advanced Technology Demonstrations, Memorandums of Understanding, Joint Director of Labs/Project Reliance, Cooperative Research and Development Agreements, and other dual-use vehicles).	Partnership/Level of Independence.
	Ensures incorporation of outside technology within laboratory programs	Leveraging Outside Technology.
IV	Organizes, leads, and markets overall technology transition and transfer activities for organization at senior management levels.	Customer Interaction Level.
	Leads in formulation and oversight of Advanced Technology Demonstrations, Memorandums of Understanding, Joint Director of Labs/Project Reliance, Cooperative Research and Development Agreements, and other dual-use vehicles.	Partnership/Level of Independence.
	Creates an environment that encourages widespread exploitation of both national and international technologies.	Leveraging Outside Technology.

FACTOR 5.—R&D BUSINESS DEVELOPMENT

Level	Descriptor	Key elements
I	As a team member, communicates with customers to understand customer requirements	Customer Interaction Level.
	By maintaining currency in area of expertise, contributes as a team member to new program development.	Knowledge and Level of Planning.
	May technically participate in writing proposals to establish new business opportunities ...	Knowledge of Market/Success in Getting Funds.

FACTOR 5.—R&D BUSINESS DEVELOPMENT—Continued

Level	Descriptor	Key elements
II	Initiates meetings and interactions with customers to understand customer needs	Customer Interaction Level.
	Generates key ideas for program development based on understanding of technology and customer needs. Demonstrates expertise to internal/external customers.	Knowledge and Level of Planning.
	Contributes technically to proposal preparation and marketing to establish new business opportunities.	Knowledge of Market/Success in Getting Funds.
III	Works to establish customer alliances and translates customer needs to programs in a particular technical area.	Customer Interaction Level.
	Develops feasible research strategies and/or business strategies for new technical activities.	Knowledge and Level of Planning.
	Seeks joint program coalitions with other agencies and funding opportunities from outside organizations. Pursues near-term business opportunities through proposals.	Knowledge of Market/Success in Getting Funds.
IV	Works with the senior management level to stimulate development of customer alliances for several technical areas.	Customer Interaction Level.
	Generates strategic research and/or business objectives for core technical areas. Recognizes war-fighting trends, relates business opportunities, and convinces laboratory management to develop and/or acquire expertise and commit funds.	Knowledge and Level of Planning.
	Secures business opportunities supporting long-term mission relevancy through targeted proposals and processes.	Knowledge of Market/Success in Getting Funds.

FACTOR 6.—COOPERATION AND SUPERVISION

Level	Descriptor	Key elements
I	Contributes to all aspects of teams' responsibilities	Team Role.
	May technically guide or mentor less experienced personnel on limited aspects of scientific or engineering efforts.	Breadth of Influence.
	Receives close guidance from supervisor and/or higher level scientist or engineer. Performs duties in a professional, responsive, and cooperative manner in accordance with established policies and procedures.	Supervision and Guidance Received.
II	Contributes as a technical task or team leader; is sought out for expertise by peers; and participates in mentoring of team members.	Team Role.
	May guide on a daily basis, technical, programmatic, and administrative efforts of individuals or team members.	Breadth of Influence.
	May recommend selection or may select staff and/or team members. Assists in the development and training of individuals or team members. May participate in position and performance management.	Supervision and Subordinate Development.
	Receives general guidance in terms of policies, program objectives, and/or funding issues from supervisor and/or higher level scientist or engineer. Discusses novel concepts and significant departures from previous practices with supervisor or team leader.	Supervision and Guidance Received.
III	Is sought out for consultation and mentors team members	Team Role.
	Guides the research, technical and/or programmatic, and administrative efforts of individuals or teams with accountability for focus and quality.	Breadth of Influence.
	Recommends selection or selects staff and/or team members. Supports development and training of subordinates and/or team members. Participates in position and performance management.	Supervision and Subordinate Development.
	Receives only broad policy and administrative guidance from supervisor, such as initiation and curtailment of programs.	Supervision and Guidance Received.
IV	Establishes team charters and develops future team leaders and supervisors	Team Role.
	Leads and manages all aspects of subordinates' or team members' efforts with complete accountability for mission and programmatic success.	Breadth of Influence.
	Recommends selection or selects staff, team leaders, and team members; fosters development and training of supervisory and non-supervisory individuals. Directs or recommends position and performance management.	Supervision and Subordinate Development.
	Works within the framework of agency policies, mission objectives, and time and funding limitations.	Supervision and Guidance Received.

The assessment process (section III D 3) begins with employee input which provides an opportunity to state the accomplishments and level of contribution perceived. To determine the employee's yearly contribution, the six factors will then be assessed by the immediate supervisor. For each factor, the supervisor places the employee's contribution at a particular level. If the contribution level for a factor is at the lowest level of level I, a score of 1.0 is assigned. Higher levels of contribution are assigned scores increasing in 0.1 increments up to 4.9. A factor score of 0.0 can be assigned if the employee's contribution does not demonstrate a minimum level I contribution. Likewise, a factor score of 5.9 can be assigned if the employee's contribution exceeds the maximum level IV contribution. Under CCS, immediate supervisors will work with other supervisors in a group setting to render final scores. Weights may be applied to the six factors for different job categories of S&Es (section III D 7). CCS will also incorporate a midyear feedback session that will address employees' professional qualities including, for supervisors, supervisory qualities and skills. The supervisory feedback will include input from both

employees and higher level management.

Employees within organizations are placed into pay pools (section III D 4). Salary adjustments, i.e., decisions to give or withhold salary increases, (section III D 5) are based on the relationship between contribution scores and present salaries. The maximum available pay rate under this demonstration project will be the rate for GS–15/Step–10. Decisions for broadband movement (section III D 6) are also based on this relationship.

Salary increase dollars to fund the pay pool are based on funds available from general pay increases, step increases, and promotions. Pay pool dollars are not transferable between pay pools. No changes will be made to locality pay under the demonstration project.

2. The ''Standard Pay Line'' (SPL)

A mathematical relationship between assessed contribution and compensation must be defined in order to have a Contribution-based Compensation System. Various mathematical relationships between each CCS score and the appropriate corresponding salary rate were examined and analyzed given the following systemic constraints. First, CCS necessitates that the relationship be described by a single equation that yields a reasonable correlation between salaries in the broadband levels and those of the corresponding GS grade(s). Second, neither the equation nor its derivative(s) can exhibit singularities within or between levels. That is, the equation must be continuous, smooth, and well-defined across the four broadband levels. Third, the relationship may not yield disincentives or inequities between employees or groups of employees; it must demonstrate equitable (i.e., consistent) growth at each CCS score. Mathematical analysis demonstrated that the most reasonable relationship is a straight line—''the standard pay line'' (SPL).

Derivation of the SPL was based on distributing the General Schedule grades and steps across the corresponding broadband levels and plotting these against the GS salaries. Although the data are not continuous, there is a linear trend. Each of these data points was weighted by the actual calendar year 1995 (CY95) population data for the demonstration laboratories. Using a ''least squares error fit'' analysis, the best straight line fit to this weighted data was computed and is illustrated in Figure 1.

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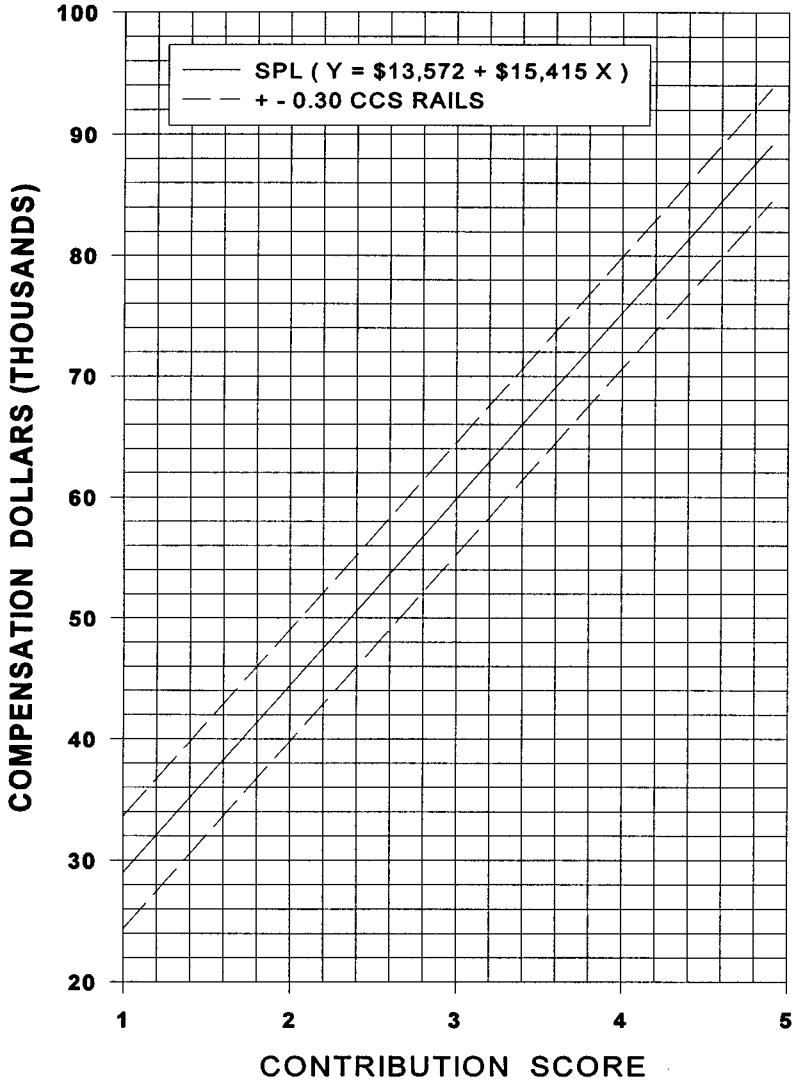
FIGURE 1 - CCS RELATIONSHIP



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Equation of the Standard Pay Line (without locality) for CY95

COMPENSATION=$13,572 +$15,415 ×CCS SCORE.

The SPL defined in Figure 1 is tied to the basic GS pay scale for CY95. The SPL for CY96 was calculated from the SPL for CY95 and the general increase (G) given to GS employees in January 1996. The equation for the CY96 SPL is: COMPENSATION = $13,843 + $15,723 × CCS SCORE. The CY97 SPL will be the CY96 SPL increased by the ''G'' for CY97. Continuing this calculation of SPL will maintain the same relationships between the basic GS pay-scale and the SPL in the demonstration project. Locality salary adjustments are not included in the SPL.

Although a correlation with the GS system was used in the derivation of the SPL, employees will enter the demonstration project without a loss of pay (as detailed later in the ''Conversion to the Demonstration Project'' section) and without a CCS score. The first CCS score will result from the first annual CCS assessment process in October 1997. Until then, no employee is either undercompensated or overcompensated. Employees, however, may determine their expected contribution level by locating the intersection of their salary with the SPL. Rails were constructed at + and − 0.3 CCS around the SPL. The area encompassed by the rails denotes the acceptable contribution and compensation relationship. Future CCS assessments will likely alter an employee's position relative to these rails.

3. The CCS Assessment Process

The annual assessment cycle begins on October 1 and ends on September 30 of the following year. At the beginning of the annual assessment period, the broadband level descriptors and weights (section III D 7) will be provided to employees so that they know the basis on which their contribution will be assessed. A midyear review, in the March to April time frame, will be conducted for all S&Es, both supervisory and non-supervisory employees. At this time, the employee's professional qualities will be discussed as well as future professional development and career opportunities. Additionally, this midyear review will include feedback of supervisory qualities and skills for all supervisors, military and civilian. The supervisor

conducting the feedback session with subordinate supervisors will solicit employee input on the supervisor's qualities and skills. This enables supervisors to receive feedback from higher level management as well as from those they supervise for the purpose of future professional development. To highlight its importance, all feedback sessions will be certified as completed by the supervisor conducting the feedback session.

At the end of the annual assessment period, employees will summarize their contributions in each factor for their immediate supervisor. The supervisor will determine initial CCS scores using the employee input and the supervisor's assessment of the overall contribution to the laboratory mission. For each factor, the supervisor places the employee's contribution at a particular level (I, II, III, or IV). If the contribution for a factor is at the lowest end of a level, a score of 1.0, 2.0, 3.0, or 4.0 is assigned. Greater contributions in each level are assigned scores increasing in 0.1 increments up to 1.9, 2.9, 3.9, or 4.9. A factor score of 0.0 can be assigned if the employee does not demonstrate a minimum level I contribution. Likewise, a factor score of 5.9 can be assigned if the employee demonstrates a contribution that exceeds the maximum for level IV. Supervisors must document adequate justification for each proposed factor score of either 0.0 or 5.9.

Factor scores are then averaged to give a total CCS score. The broadband is well defined for total CCS scores from 1.0 to 4.9. Differing degrees of ''exceeded'' or ''failed'' contributions, reflective of total CCS scores outside this range, have no impact on CCS payouts. The maximum compensation for the broadband is the GS–15/Step-10 salary and equates to a total CCS score of just below 4.9. Therefore, when the average of CCS factor scores exceed 4.9, the total CCS score will be set to 4.9 with the individual identified to upper management as having exceeded the maximum contribution defined by the broadband. Employees with a total CCS score below 1.0 are automatically deemed to be above the upper rail for purposes of CCS assessment and associated salary adjustments.

The immediate supervisors (for instance, branch chiefs) and the next level supervisors (for instance, division chiefs) for a pay pool then meet as a group to review and discuss all proposed employee assessments and adjust individual CCS scores, if necessary. Giving authority to the group of managers to make minor score adjustments ensures that contributions will have been assessed and measured similarly for all employees. Once the scores have been finalized, the results and any training and/or career development needs will be discussed with the individual employees. The employee will also be given a statistical correlation (e.g., quartile, etc.) pertaining to their relative standing within the pay pool.

When S&E employees are newly hired or transferred into the demonstration, their contribution score is presumed to be at the location of the intersection of their salary with the SPL. If on October 1, the employee has served under CCS for less than 6 months, the supervisor will wait for the subsequent annual cycle to assess the employee. The first CCS assessment must be rendered within 18 months after entering the demonstration project.

When an employee cannot be evaluated readily by the normal CCS assessment process due to special circumstances that take the individual away from normal duties or duty station (e.g., long-term full-time training, active military duty, extended sick leave, leave without pay, etc.), the supervisor will document the special circumstances on the assessment form. The supervisor will then assess the employee using one of the following options:

(a) Recertify the employee's last contribution assessment; or

(b) Assign an assessment which places the employee on the SPL at the employee's current salary.

Pay adjustments will be made on the basis of this CCS assessment and the employee's current salary. Pay adjustments are subject to a few payout rules discussed in section III D 5. Final pay determinations will be made at a management level above the group of supervisors who rendered final CCS assessments. CCS scores, however, cannot be changed by managerial levels above the original group of supervisors. Decisions for any broadband level changes (section III D 6) will be submitted to at least one level of management higher than the group of supervisors (for instance, directorate chief) for approval. Pay adjustments and broadband level changes will then be documented by SF–50, Notification of Personnel Action. For historical and analytical purposes, the effective date of CCS assessments; actual assessment scores; SPL coordinate scores prior to salary adjustments; actual salary increases; amounts contributed to the pay pool; individual ΔXs; and applicable ''bonus'' amounts will be maintained for each demonstration project employee.

4. Pay Pools

Pay pool structure is under the authority of the laboratory directors/commanders. The following minimal guidelines, however, will apply: (a) A pay pool is based on the organizational structure and should include a range of S&E salaries and contribution levels; (b) a pay pool must be large enough to constitute a reasonable statistical sample, i.e., 35 or more; (c) a pay pool must be large enough to encompass a second level of supervision since the CCS process uses a group of supervisors in the pay pool to determine assessments and recommend salary adjustments; (d) the pay pool manager (for instance, a division chief or directorate chief) holds yearly pay adjustment authority; and (e) neither the pay pool manager nor supervisors within the pay pool will recommend or set their own individual pay. Pay pool managers' pay determinations, however, may still be subject to higher management review.

The amount of money available for salary increases within a pay pool is determined by the general increase (G) and money that would have been available for step increases and promotions (I). The latter will be set at 2.4% upon implementing the demonstration project and is considered adjustable to ensure cost neutrality over the life of the demonstration project. The dollars derived from ''G'' and ''I'' to be included in the pay pool will be computed based on the salaries of employees in the pay pool as of September 30 each year.

5. Salary Adjustment Guidelines

After the initial assignment into the CCS system, employees' yearly contributions will be determined by the CCS process described above, and their CCS scores versus their current salaries will be plotted on a graph along with the SPL (see Figure 2). The position of those points relative to the SPL gives a relative measure (ΔY) of the degree of overcompensation or undercompensation for the employees. This permits all employees within a pay pool to be rank-ordered by ΔY, from the most undercompensated employee to the most overcompensated.

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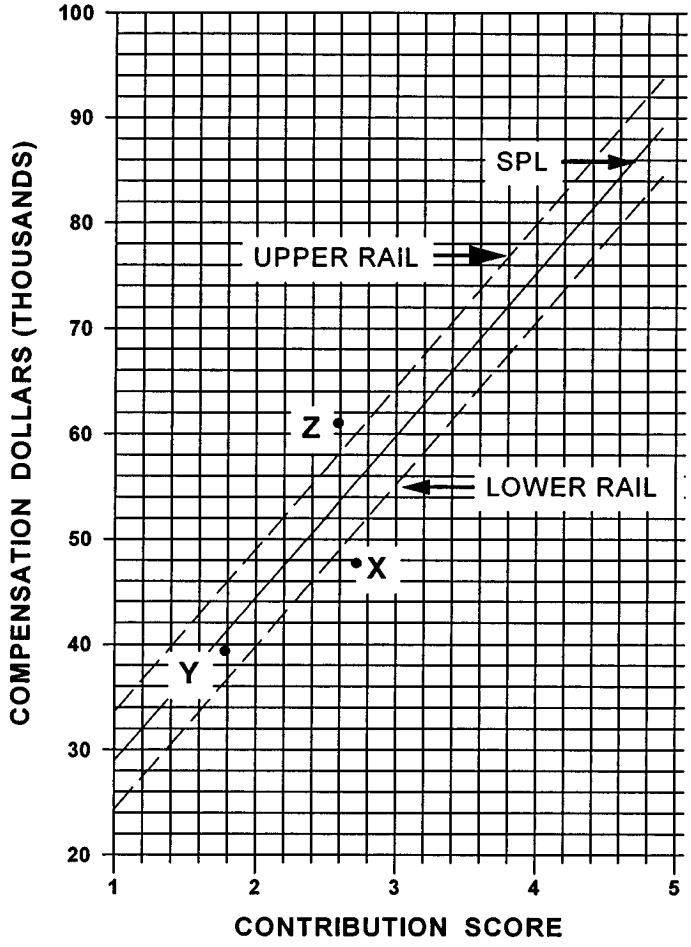
FIGURE 2 - EMPLOYEE POSITIONING



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In general, those employees who fall below the SPL (indicating undercompensation, for example, employee X in Figure 2) should expect to receive greater salary increases than those who fall above the line (indicating overcompensation, for example, employee Z). Over time, people will migrate closer to the standard pay line and receive a salary appropriate to their level of contribution. The following are more specific guidelines: (a) Those who fall above the upper rail (for example, employee Z) will be given an increase ranging from zero to a maximum of ''G''; (b) Those who fall within the rails (for example, employee Y) will be given a minimum of ''G''; and (c) Those who fall below the lower rail (for example, employee X) will be given at least their base pay times ''G'' plus the percentage of funds set aside for step increases and promotions which will no longer take place (I). Should an employee's CCS assessment fall on either rail, it will be considered to be within the rails.

Employees whose CCS score would result in awarding of ''I'' money such that the salary exceeds the maximum salary for broadband level II would be eligible for one of the following: movement into level III if a high grade allocation exists (section III D 6), or salary adjustment to the maximum salary in level II and a ''bonus'' payout of the additional ''I'' funds warranted by the assessment.

Initially, the value of ''I'' will be 2.4%; the percentage, however, may be changed to ensure cost neutrality in future years. Each pay pool manager will set the necessary guidelines for the gradation of pay adjustments in the pay pool within these general rules. Decisions made will be standard and consistent within the pay pool, be fair and equitable to all stakeholders, maintain cost neutrality over the project life, and be subject to review. The maximum available pay rate under this demonstration project will be the rate for GS-15/Step-10.

6. Movement Between Broadband Levels

It is the intent of the demonstration project to have S&E career growth be accomplished through unrestricted movement through the broadband levels. Movement through the broadband levels will be determined by contribution and salary following the CCS payout calculation. Resulting changes in broadband levels are not accompanied by traditional promotion dollars, but rather, they will be documented as a change in title, change in broadband level, and reaccomplishment of a Statement of Duties and Experience (SDE) (section III C 6). The terms Promotion and Demotion will not be used in connection with the CCS process. Rather, these terms will be reserved for competitive placement and adverse actions.

Broadband levels are derived from an initial grouping of one or more GS grades. Salary overlap between adjacent levels is desirable for broadband level movement. It is more convenient, however, to redefine these overlaps (that is, the top and bottom salary ranges of the broadband levels which produce the overlaps) in terms of the SPL. Specifically, the salary overlap between two levels is defined by the salaries at − to + 0.25 CCS around the whole number score defining the boundary between the contribution levels. For example, the maximum salary for level II would be that salary from the SPL corresponding to a CCS score of 3.25. Likewise, the minimum salary for level III would be the salary from the SPL corresponding to a CCS score of 2.75. This definition provides a salary overlap between broadband levels that is consistent and similar to salary overlaps in the GS schedule.

Figure 3 shows the salary overlap areas between broadband contribution levels. These salary overlap areas are divided into three zones designated as CL (consideration for change to lower level), CH (consideration for change to higher level), and E (eligible for change to higher or lower level). All the E zones have the same width, 0.5 CCS, and height. The E zone is described as the box formed by the intersection of the integer + and − 0.25 CCS lines and the SPL.

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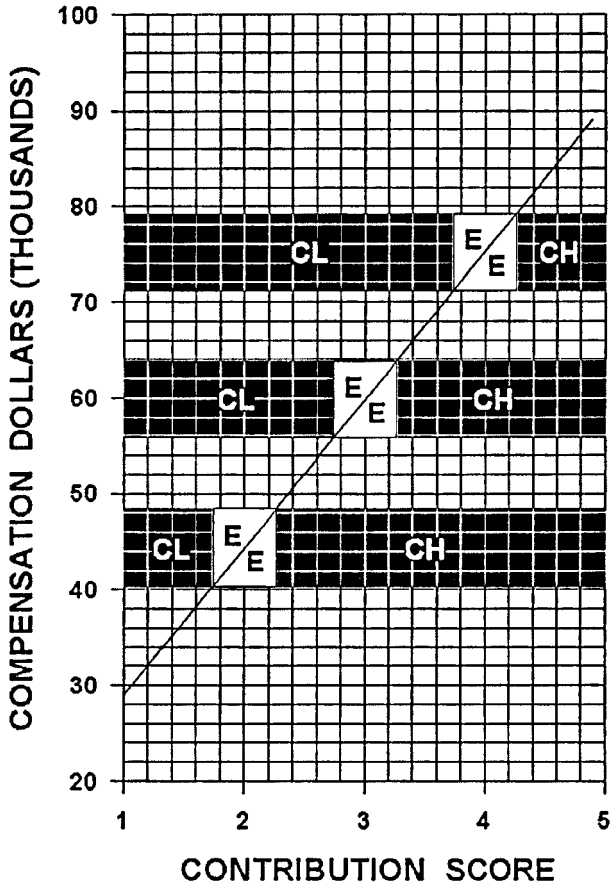
FIGURE 3 - OVERLAP AREAS



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The E zones serve to stabilize the movement between adjacent broadband levels. This allows for annual fluctuations in contribution scores for people near the top or bottom of a level, without creating the need for repeated changes of their titles. An employee whose contribution score falls within an E zone is eligible for a change in broadband level (with the associated title change), but one should not be given unless the supervisor has a compelling reason to advance or reduce the employee's level. Under normal circumstances, pay adjustments under CCS will follow contribution scores. Those who consistently achieve increased contribution assessments will progress through their broadband level and will find their salary climbing into the corresponding CH zone. Once the employee's CCS score is demonstrated to be consistently within the CH zone, the employee should be moved to the higher broadband level unless the supervisor has a compelling reason not to request the change. Conversely, regression through the broadband levels works the same way in the opposite direction. Those who consistently receive decreasing contribution assessments will regress through their broadband level and would not have been receiving any salary adjustments greater than ''G''. They will find that the CL zone at the bottom of their current broadband level will catch up with their current salary. Once the employee's CCS score is demonstrated to be consistently within the CL zone, the employee should be moved to the lower broadband level unless the supervisor has a compelling reason not to request the change. Compelling reasons for retaining broadband levels in the presence of consistent assessments in the CH or CL range must be documented in writing and provided to the employee. If an employee moves totally above the CH zone or below the CL zone, the employee will be changed in broadband level without supervisory action.

At the present time, high grade controls within the agency restrict movement between broadband level II and broadband level III. Until the high grade controls are lifted, demonstration project employees will not be able to advance from broadband level II to broadband level III unless a high grade authorization is available. To accommodate this, level II employees whose salary adjustment would place them above the CH zone for level II in organizations where high grade authorizations are unavailable will receive permanent adjustments to basic salary up to an amount equivalent to the top of broadband level II. Any additional amount granted under CCS will be paid as a ''bonus'' payment from pay pool funds and not permanently increase base salary. This pattern of payout will continue until high grade authorizations become available.

Movement under CCS happens once a year. Under the demonstration project, managers are provided greater flexibility in assigning duties by moving employees between positions within their broadband level. If, throughout the year, there are vacancies at higher levels (typically supervisory positions), employees may be considered for promotion to those positions according to the demonstration project competitive selection procedures approved by the Air Force. Demonstration project employees selected for positions at a higher broadband level will receive the salary corresponding to the minimum of the new broadband level or their existing salary, whichever is greater. Under the approved competitive selection procedures, the selecting official may consider candidates from any source based on viable and supportable job related merit-based methodology. Similarly, if there is sufficient cause, an employee may be demoted to a lower level position according to the contribution-based reduction in pay or removal procedures discussed in section III E or the existing procedures related to disciplinary actions.

7. Weights

Employees under the demonstration project will be assigned to one of five job categories:

(a) Supervisor & Manager, primary function is to supervise other employees and/or to direct the work of an organization or organizational segment;

(b) Plans & Programs S&E, primary function is to formulate plans and policies to further the organizational mission;

(c) Program Manager, primary function is to run/direct research and development (R&D) programs;

(d) Support S&E, primary function is to support the research efforts of the laboratory; and

(e) Bench-Level S&E, primary function is to perform R&D within the mission focus of the laboratory.

Laboratory directors/commanders will have the authority to determine if varying weights should be applied to the six CCS factors based on these job categories. As an example, Technical Problem Solving may be more heavily weighted for Bench-Level S&Es than the factor of Technology Transition/ Technology Transfer.

The authority to use weights and the authority to set weights may be delegated below the laboratory director/ commander, but weights must be the same for all employees in a particular job category in a pay pool. This ensures that a fair comparison of employees is made, without having the weights tailored to specific individuals. The overall CCS score is determined by multiplying the score for each factor by the weight, adding the results, and then dividing by the sum of the weights.

This demonstration project, in part, is predicated on the belief that the continued success and viability of the laboratories depends on all employees seeking to contribute in each of the areas defined by the six factors. Making all employees accountable for all factors shifts organizational values in new directions. For this reason, no factor can be given a weight of zero. Laboratory directors/commanders should annually review the weightings for the various job categories to see if they can be increased toward a weighting of 1.0 to encourage and allow employees to raise their CCS contribution assessment by contributing in a broader range of activities. Contribution in all six factors is important to ensure both the overall success of DoD laboratories and individual S&E career growth. Hence, the weights should be reviewed frequently, and an effort made to move away from them in later years of the demonstration project.

Other guidelines for setting weights for the six factors are: (a) Weights may be assigned any value, in increments of 0.1, from 0.1 to 1.0; (b) At least three factors must have a weight of 1.0; and (c) No more than one factor can have a weight of less than 0.5. For all six factors, therefore, the weights must sum from 4.1 to 6.0.

8. Voluntary Pay Reduction and Pay Raise Declination

A provision exists today for an employee to request a change to lower grade. If that request is totally the employee's choice, then the employee's salary is lowered accordingly. Although the rationale behind such a voluntary request varies, under CCS a voluntary request for a pay reduction or a voluntary declination of a pay raise would effectively put an overcompensated employee's pay closer to or below the standard pay line. Since an objective of CCS is to properly compensate employees for their contribution, the granting of such requests is consistent with this goal. Under normal circumstances, all

employees should be encouraged to advance their careers through increasing contribution rather than trying to be undercompensated at a fixed level of contribution.

To handle these special circumstances, employees must submit a request for voluntary pay reduction or pay raise declination during the 30-day period immediately following the annual payout, and show reasons for the request. All actions will be appropriately documented.

9. Implementation Schedule

The 1996 employee annual appraisal will be done according to Air Force performance plan rules in effect at the time of the 1996 close-out. The 1997 appraisal cycle will also begin, but it is not anticipated to be completed due to the implementation schedule of this demonstration project. The first assessment cycle under CCS will commence the day the demonstration project is implemented and run through September 30, 1997. The first CCS payout will be given in the traditional first full pay period in calendar year 1998.

10. CCS Grievance Procedures

An employee may grieve the assessment received under CCS. Nonbargaining unit employees, and bargaining unit employees covered by a negotiated grievance procedure which does not permit grievances over performance ratings, must file assessment grievances under administrative grievance procedures. Bargaining unit employees, whose negotiated grievance procedures cover performance rating grievances, must file assessment grievances under those negotiated procedures.

11. Using the CCS Assessment Score as Additional Service Credit During Reduction-in-Force

For broadband levels I through III, CCS assessment scores below the lower rail (a ΔX greater than +0.30) will equate to 20 additional years of service. Scores within the rails but on or below the SPL (a ΔX equal to or greater than 0.00 and less than or equal to +0.30) will equate to 16 years of service. Scores within the rails but above the SPL (a ΔX equal to or greater than -0.30 and less than 0.00) will be credited with 12 years of service. No additional years of service will be given for assessment scores above the upper rail (a ΔX less than -0.30).

Because of the upper pay limit imposed on broadband level IV and the slope of the SPL, employees at the top salaries of that level have no opportunity to score below the lower rail. Therefore, three categories of additional service credit will be defined for RIF purposes within broadband level IV: (1) Employees with CCS assessments on or below the SPL (a ΔX equal to or greater than 0.00), (2) those with CCS assessments above the SPL but on or below the upper rail (a ΔX equal to or greater than -0.30 and less than 0.00), and (3) those with CCS assessments above the upper rail (a ΔX less than -0.30). For broadband level IV, CCS assessment scores on or below the SPL (a ΔX equal to or greater than 0.00) will equate to 20 years of service. Scores above the SPL but on or below the upper rail (a ΔX equal to or greater than -0.30 and less than 0.00) will be credited with 12 years of service. No additional years of service will be given for assessment scores above the upper rail (a ΔX less than -0.30).

E. Contribution-based Reduction in Pay or Removal Actions

CCS is a contribution-based assessment system that goes beyond a performance-based rating system. Contribution is measured against six factors each having four levels of increasing contribution corresponding to the four broadband levels. This section applies to reduction in pay or removal of demonstration project employees based solely on inadequate contribution. The following procedures are similar to and replace those established in 5 CFR 432 pertaining to performance-based reduction in grade and removal actions. Adverse action procedures under 5 CFR 752 remain unchanged.

When an employee's contribution plots in the area above the upper rail of the SPL (section III D 3) the employee is considered to be in the Automatic Attention Zone (AAZ). In this case, the supervisor has two options. The first is to take no action but to document this decision in a memorandum for record. A copy of this memorandum will be provided to the employee and to higher levels of management. The second option is to inform the employee, in writing, that unless the contribution increases to, and is sustained at, a higher level, the employee may be reduced in pay or removed.

These provisions also apply to an employee whose contribution deteriorates during the year. In such instances, the group of supervisors who meet during the CCS assessment process may reconvene any time during the year to review the circumstances warranting the recommendation to take further action on the employee.

The supervisor will afford the employee a reasonable opportunity (a minimum of 60 days) to demonstrate increased contribution commensurate with the duties and responsibilities of the employee's position. As part of the employee's opportunity to demonstrate increased contribution, the laboratory will offer assistance to the employee.

Once an employee has been afforded a reasonable opportunity to demonstrate increased contribution, but fails to do so, the laboratory may propose a reduction in pay or removal action. If the employee's contribution increases to a higher level and is again determined to deteriorate in any area within 2 years from the beginning of the opportunity period, the laboratory may initiate reduction in pay or removal with no additional opportunity to improve. If an employee has contributed appropriately for 2 years from the beginning of an opportunity period and the employee's overall contribution once again declines, the laboratory will afford the employee an additional opportunity to demonstrate increased contribution before determining whether or not to propose a reduction in pay or removal.

An employee whose reduction in pay or removal is proposed is entitled to a 30 day advance notice of the proposed action that identifies specific instances of inadequate contribution by the employee on which the action is based. The laboratory may extend this advance notice for a period not to exceed an additional 30 days. The laboratory will afford the employee a reasonable time to answer the laboratory's notice of proposed action orally and/or in writing.

A decision to reduce in pay or remove an employee for inadequate contribution may be based only on those instances of inadequate contribution that occurred during the 2 year period ending on the date of issuance of the advance notice of proposed action. The laboratory will issue written notice of its decision to the employee at or before the time the action will be effective. Such notice will specify the instances of inadequate contribution by the employee on which the action is based and will inform the employee of any applicable appeal or grievance rights as specified in 5 CFR 432.106.

The laboratory will preserve all relevant documentation concerning a reduction in pay or removal which is based on inadequate contribution and make it available for review by the affected employee or designated representative. At a minimum, the laboratory's records will consist of a copy of the notice of proposed action; the written answer of the employee or

a summary thereof when the employee makes an oral reply; and the written notice of decision and the reasons therefor, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate increased contribution.

When the action is not taken because of contribution improvement by the employee during the notice period, the employee is not reduced in pay or removed, and the employee's contribution continues to be deemed adequate for 2 years from the date of the advanced written notice, any entry or other notation of the proposed action will be removed from all laboratory records relating to the employee.

F. Voluntary Emeritus Corps

Under the demonstration project, laboratory directors/commanders will have the authority to offer retired or separated employees voluntary assignments in the laboratories. This authority will include employees who have retired or separated from Federal service, including those who have accepted a buy-out. The voluntary emeritus corps will ensure continued quality research while reducing the overall salary line by allowing higher paid employees to accept retirement incentives with the opportunity to retain a presence in the scientific community. The program will be of most benefit during manpower reductions as senior S&Es could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced employees.

To be accepted into the emeritus corps, a volunteer must be recommended by laboratory managers to the laboratory director/commander. Everyone who applies is not entitled to a voluntary assignment. The laboratory director/commander must clearly document the decision process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment. Documentation of rejections will be maintained for 2 years.

To encourage participation, the volunteer's federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity.

Volunteers will not be permitted to monitor contracts on behalf of the government or to participate on any contracts or solicitations where a conflict of interest exists.

An agreement will be established between the volunteer, the laboratory director/commander, and the Civilian Personnel Flight. The agreement will be reviewed by the local Staff Judge Advocate representative responsible for ethics determinations under the Joint Ethics Regulation. The agreement must be finalized in advance and shall include as a minimum:

(a) A statement that the voluntary assignment does not constitute an appointment in the civil service and is without compensation,

(b) The volunteer waives any and all claims against the Government because of the voluntary assignment except for purposes of on-the-job injury compensation as provided in 5 U.S.C. 8101(1)(B),

(c) Volunteer's work schedule,

(d) Length of agreement (defined by length of project or time defined by weeks, months, or years),

(e) Support provided by the laboratory (travel, administrative, office space, supplies),

(f) A one page SDE,

(g) A provision that states no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a member of the voluntary emeritus corps,

(h) A provision allowing either party to void the agreement with 10 working days written notice, and

(i) The level of security access required (any security clearance required by the assignment will be managed by the laboratory while the volunteer is a member of the emeritus corps).

G. Revised Reduction-In-Force (RIF) Procedures

A separate competitive area will be established by geographic location for all laboratory personnel included in the demonstration project.

Each laboratory shall establish competitive levels consisting of all positions in a competitive area which are in the same broadband level and occupational family and which are similar enough that the incumbent of one position could succeed in the new position without any loss of productivity beyond that normally expected in the orientation of any new, but fully qualified, employee. The laboratory directors/commanders, or their designees, will observe and participate with the appropriate Civilian Personnel representative in all placement actions.

IV. Training

An extensive training program is planned for support personnel and every employee in the demonstration project including managers, supervisors, and S&Es. Training will be tailored to fit the requirements of every employee included and will fully address employee concerns to ensure that everyone has a comprehensive understanding of the program and to emphasize the benefits to employees. Additional supervisory training will be provided to all managers and supervisors as the new system places more responsibility and decision making authority on their shoulders.

Using an existing task order contract through Armstrong Laboratory, the training packages will be developed to encompass all aspects of the project and validated prior to training the workforce. Specifically, training is being developed for the following groups of employees:

(a) Laboratory S&Es included in the demonstration,

(b) Civilian and military supervisors and managers, and

(c) Administrative support and civilian personnel office personnel who must understand laboratory operations under the demonstration project.

Training requirements will vary from an overview of the new system; to a more detailed package for laboratory S&Es; to very specific instructions for both civilian and military supervisors, managers, and others who provide personnel and payroll support.

Base level training personnel will provide local training management, facilities, and support to laboratory directors/commanders. Contract training personnel will be utilized where organic capabilities are not available or not economically feasible. The training will begin, and be completed, within the 90 days prior to implementation.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate broadband level without loss of pay. An automatic conversion from the permanent GS/GM grade and step of record into the new broadband system will be accomplished. Special Salary Rates will no longer be applicable to demonstration project employees. All employees will be eligible for the future locality pay increases of their geographical areas. Employees on Special Salary Rates at the time of conversion will receive a new basic pay rate computed by dividing their highest adjusted basic pay (i.e., special pay rate or, if higher, the

locality rate) by the locality pay factor for their area. A full locality adjustment will then be added to the new basic pay rate. Adverse action and pay retention provisions will not apply to the conversion process as there will be no change in total salary. Employees who enter the demonstration project later by lateral reassignment or transfer will be subject to parallel pay conversion rules.

B. Conversion Back to the Former System

In the event the project ends, a conversion back to the former (regular) Federal civil service system will be required. All employees in a broadband level corresponding to a single General Schedule (GS) grade will be converted to that grade. Employees in a multiple grade broadband level will be considered to have attained the next higher grade when they have been in the level at least 1 year and their salary equals or exceeds the minimum salary of the higher grade. For employees who are entitled to a special rate upon return to the General Schedule, the demonstration project locality rate must equal or exceed the minimum special rate of the higher grade. To set GS pay upon conversion, an employee's demonstration project locality rate would be converted (prior to leaving the project) to the highest General Schedule rate range (i.e., locality rate range or special rate range) applicable to the employee. If the employee's rate falls between the fixed rates for the applicable range, it will be raised to the next higher rate. The employee's GS basic rate (excluding special rates or locality payments) would then be derived based on the grade and step associated with this converted rate. Employees who leave the demonstration project and return to the General Schedule pay system via reassignment, promotion, demotion, or transfer are subject to parallel pay conversion rules to determine the converted GS rates under the demonstration project to be used in applying GS pay administration rules (e.g., promotion rule or maximum payable rate rule) in setting pay at the gaining agency.

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for this demonstration project. The project evaluation plan adequately addresses how each intervention will be comprehensively evaluated for at least the first 5 years of the demonstration project. Major changes and modifications to the interventions can be made through announcement in the Federal Register and would be made if formative evaluation data warranted. At the 5 year point, the entire demonstration project will be reexamined for either: (a) Permanent implementation, (b) change and another 3–5 year test period, or (c) expiration.

VII. Evaluation Plan

Authorizing legislation mandates evaluation of the demonstration project to assess the merits of project outcomes and to evaluate the feasibility of applications to other federal organizations. The overall evaluation consists of two components—external and internal evaluation. The external evaluation for the four Air Force laboratories is part of a larger effort involving evaluation of demonstration projects in a total of 24 reinvention laboratories in three military services. External evaluation will be overseen by the Office of Merit Systems Oversight and Effectiveness, OPM, and the Director Defense Research and Engineering (DDR&E) and Civilian Personnel Policy (CPP), DoD. OPM's Personnel Resources and Development Center (DPRC) will serve in the role of external evaluator to ensure the integrity of the evaluation process, outcomes, and interpretation of results. The internal evaluation will be accomplished by the staff of the Air Force laboratories.

The main purpose of the evaluation is to determine the effectiveness of the personnel system changes to be undertaken by the laboratories. To the extent possible, cause-and-effect relationships between the changes and personnel system effectiveness criteria will be established. The evaluation approach uses an intervention impact model which specifies each personnel system change as an intervention, the expected effects of each intervention, the corresponding measures, and the data sources for obtaining the measures. Table 4 presents an example of the intervention impact model.

TABLE 4.—INTERVENTION IMPACT EVALUATION MODEL

Interventions	Expected effects	Measures	Data sources
1. Compensation			
a. Broadbanding	A. Increased organizational flexibility	1. Perceived flexibility	Attitude survey.
	B. Reduced administrative work load, paperwork reduction.	1. Actual/perceived time savings	Personnel office data, PME results, attitude survey.
	C. Advanced in-hire rates	1. Starting salaries of banded vs non-banded employees.	Work force data.
	D. More gradual pay progression at entry levels.	1. Progression of new hires over time by band, career path.	Work force data.
	E. Increased pay potential	1. Mean salaries by band, career path, demographics.	Work force data.
	F. Higher average salaries	1. Total payroll cost	Work force data.
	G. Increased satisfaction with advancement.	1. Employee perceptions of advancement.	Attitude survey.
	H. Increased pay satisfaction	1. Pay satisfaction, internal/external equity.	Attitude survey.
	I. Improved recruitment	1. Offer/acceptance ratios	Personnel office data.
		2. Percent declinations	Personnel office data.
	J. No change in high grade (GS–14+) distribution.	1. Number/percentage of employees at high grade salaries pre/post banding.	Work force data.
2. Contribution/Performance Management and Assessment			

TABLE 4.—INTERVENTION IMPACT EVALUATION MODEL—Continued

Interventions	Expected effects	Measures	Data sources
a. Cash awards/bonuses	A. Reward/motivate contribution/performance.	1. Amount and number of awards by career path, demographics performance.	Work force data.
		2. Perceived motivational power	Attitude survey.
		3. Perceived fairness of awards	Attitude survey.
b. Contribution-based pay progression	A. Increased pay-contribution link	1. Pay-contribution correlations	Work force data.
		2. Perceived pay-contribution link	Attitude survey.
		3. Perceived fairness of ratings	Attitude survey.
		4. Satisfaction with ratings	Attitude survey.
		5. Employee trust in supervisors	Attitude survey.
	B. Improved contribution/performance feedback.	1. Adequacy of contribution/performance feedback.	Attitude survey.
	C. Increased retention of high contributors.	1. Turnover by contribution assessment.	Work force data.
	D. Increased turnover of low contributors.	1. Turnover by contribution assessment.	Work force data.

The specific measures to be collected using the different methods are determined from the goals and objectives stated for each intervention. Both quantitative and qualitative measures will be obtained. Most of the potential measures can be grouped around three major effectiveness criteria: speed, cost, and quality. Collectively, the outcomes of the interventions are hypothesized to lead to laboratory personnel management improvements, as reflected by timeliness, cost-effectiveness, and quality.

A quasi-experimental design with pre- and post-implementation comparisons will be employed. Baseline measures are being taken prior to project implementation. Then, repeated measurements will be taken post-implementation to allow longitudinal comparisons by intervention within and across the four Air Force laboratories. Additional features of the design call for comparisons of Air Force results to those for the other 20 service laboratories that are expected to be part of the demonstration program, as well as to those for the original Navy demonstration project conducted at China Lake and San Diego. Further comparisons for pay purposes will be conducted with a composite comparison group covering similar occupations and job series to be constructed from OPM's Central Personnel Data File.

The effectiveness of each intervention and the project as a whole in meeting stated objectives will be addressed using a multi-method approach. Some methods will be unobtrusive in that they do not require reactions or inputs from employees or managers. These methods include analysis of archival workforce data and personnel office data, review of logs maintained by site historians documenting contextual events, and assessment of external economic and legislative changes. Other methods such as periodic attitude surveys, structured interviews, and focus groups will be used to assess the perceptions of laboratory managers, supervisors, scientists, and engineers regarding the personnel system changes and the performance of their organizations in general.

In addition to the intervention impact model, a general context model will be used to determine the effects of potential intervening variables, e.g., downsizing, regionalization of the personnel function, and the state of the economy in general. Potential unintended outcomes will also be monitored, and an attempt will be made by the external evaluation team to link the outcomes of project interventions to organizational effectiveness.

The evaluation effort will consist of two main phases: formative and summative evaluation covering 5 years. The formative evaluation phase will include baseline data collection and analyses, implementation evaluation, and interim assessments.

Periodic reports and annual summaries will be prepared to document the findings. The summative evaluation phase will focus on an overall assessment of project outcomes after 5 years.

VIII. Demonstration Project Costs

A. Step Buy-Ins

Under the current pay structure, employees progress through their assigned grade in step increments. Since this system is being replaced under the demonstration project, employees will be awarded that portion of the next higher step they have completed up until the effective date of implementation. As under the current system, supervisors will be able to withhold these partial step increases if the employee's performance has fallen below fully successful.

Rules governing Within-Grade Increases (WGI) under the current Air Force performance plan will continue in effect until the implementation date. Adjustments to the employees base salary for WGI equity will be computed effective the date of implementation to coincide with the beginning of the first formal CCS assessment cycle. WGI equity will be acknowledged by increasing base salaries by a prorated share based upon the number of days an employee has completed towards the next higher step. Employees at step 10 on the date of implementation will not be eligible for WGI equity adjustments since they are already at the top of the step scale.

The 1996 annual appraisal will be closed on the normal close-out date of June 30, 1996. The first formal CCS assessment cycle will begin on the effective date of implementation of the demonstration project and will end on September 30, 1997. The general increase to employee's base pay in January 1997 will be handled under existing procedures. The first CCS pay adjustments will be made during the first full pay period of CY98. Future CCS pay adjustments will be effective the beginning of the first full pay period of subsequent calendar years.

B. Out Year Project Costs

The overall demonstration cost strategy will be to balance project costs with benefits of the demonstration project to bring about the projected improvements to the Air Force laboratories. The project evaluation results will be used to ensure that out year project costs remain neutral over the life of the project. A baseline will be established at the start of the project and

salary expenditures will be tracked yearly. Implementation costs, including the step buy-in costs detailed above, will not be included in the cost evaluations. In addition, simulations and models will be run to estimate future workforce and cost trends.

The amount of the ''I'' value in the out years will be determined as part of the yearly project evaluation process, starting with a review of the prior year's data by the Air Force Laboratory Demonstration Project Executive Steering Committee. The ''I'' value determination will be based on a balancing of appropriate factors, including the following: (1) Historical spending for within-grade increases, quality step increases, and in-level career promotions (with dynamic adjustments to account for changes in law or in staffing factors—e.g., average starting salaries and the distribution of employees among job categories and broadband levels); (2) labor market conditions and the need to recruit and retain a skilled workforce to meet the business needs of the organization; and (3) the fiscal condition of the organization. Given the implications of base pay increases on long-term pay and benefit costs, the ''I'' value will be determined after cost analysis with documentation of the mission-driven rationale for the amount. As part of the evaluation of the project by AF, DoD, and OPM, the base pay costs (including average salaries) under the demonstration project will be tracked and compared to the base pay costs under similar demonstration projects and under a simulation model that replicates General Schedule spending. These evaluations will balance costs incurred against benefits gained so that both fiscal responsibility and project success are given appropriate weight.

C. Personnel Policy Boards

Each laboratory shall establish a Personnel Policy Board for the demonstration project that will consist of the senior civilian in each directorate within the laboratory and be chaired by the laboratory executive director. The board is tasked with the following:

(a) Overseeing the civilian pay budget,

(b) Addressing issues associated with two separate pay systems (CCS and GS) during the first phase of the demonstration,

(c) Determining the composition of the CCS pay pools in accordance with the established guidelines,

(d) Reviewing operation of the laboratory CCS pay pools,

(e) Providing guidance to pay pool managers,

(f) Administering funds to CCS pay pool managers,

(g) Integrating CCS with the free-market model,

(h) Reviewing hiring and promotion salaries, and

(i) Monitoring award pool distribution by organization and by S&E versus non-S&E.

Should the laboratory elect not to establish a Personnel Policy Board, the charter of an existing group within each laboratory must be modified to include the duties detailed above.

D. Developmental Costs

Costs associated with the development of the demonstration system include software automation, simulation, training, and project evaluation. All funding will be provided through the Air Force Science and Technology budget. The projected annual expenses for each area is summarized in Table 5. Project evaluation costs will continue for at least the first 5 years and may continue beyond.

TABLE 5—PROJECTED DEVELOPMENTAL COSTS

[Then Year Dollars]

	FY95	FY96	FY97	FY98	FY99
Training	$170K	$120K	.....	.....	.....
Project Evaluation	20K	192K	280K	280K	280K
Automation/Simulation	.....	150K	240K	125K	75K
Data Systems	.....	260K	.....	.....	.....
Totals	190K	722K	520K	405K	355K

IX. Required Waivers to Law and Regulation*

A. Waivers to Title 5, United States Code

Chapter 31, Section 3111: Acceptance of volunteer service.

Chapter 43, Sections 4301–4305: Related to performance appraisal.

Chapter 51, Sections 5101–5102 and Sections 5104–5107: Related to classification standards and grading.

Chapter 53, Sections 5301; 5302 (8) and (9); 5303–5305; 5331–5336; and 5361–5366: Related to special pay; pay rates and systems; grade and pay retention (Sections 5301, 5302 (8) and (9), and 5304 are waived only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees and to allow basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay).

Chapter 55, Section 5545 (d): Related to hazardous duty premium pay (only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees).

Chapter 57, Sections 5753, 5754, and 5755: Related to recruitment, relocation, and retention payments; supervisory differential (only to the extent necessary to allow employees and positions under the demonstration project to be treated as employees and positions under the General Schedule).

Chapter 75, Sections 7512 (3): Related to adverse action (but only to the extent necessary to exclude reductions in broadband level not accompanied by a reduction in pay) and 7512 (4): Related to adverse action (but only to the extent necessary to exclude conversions from a General Schedule special rate to demonstration project pay that do not result in a reduction in the employee's total rate of pay).

B. Waivers to Title 5, Code of Federal Regulations

Part 300, Sections 300.601 through 300.605: Time-in-grade restrictions.

Part 308, Sections 308.101 through 308.103: Volunteer service.

Part 315, Sections 315.801 and 315.802: Probationary period.

Part 334, Section 334.102 : Temporary assignment of employees outside agency.

Part 340: Other than full-time career employment.

Part 430, Subpart A and Subpart B: Performance management; performance appraisal.

Part 432, Sections 432.103 through 432.105: Performance-based reduction-in-grade and removal actions.

* Waiver required only to the extent that the project conflicts with pertinent provision of law and regulation.

Part 511, Subpart A, Subpart B, and Subpart F, sections 511.601 through 511.612: Classification within the General Schedule.

Part 530, Subpart C: Special salary rates.

Part 531, Subpart B, Subpart D, Subpart E, and Subpart F: Determining rate of pay; within-grade increases; quality step increases; locality payments (only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees and to allow basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay).

Part 536, Subpart A, Subpart B, and Subpart C: Grade and pay retention.

Part 550, Sections 550.703: Severance Pay, definition of ''reasonable offer'' (by replacing ''two grade or pay levels'' with ''one broadband level'' and ''grade or pay level'' with ''broadband level'') and 550.902: Hazard Pay, definition of ''employee'' (only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees).

Part 575, Sections 575.102 (a)(1), 575.202 (a)(1), 575.302 (a)(1), and Subpart D: Recruitment and relocation bonuses; retention allowances; supervisory differentials (only to the extent necessary to allow employees and positions under the demonstration project to be treated as employees and positions under the General Schedule positions).

Part 752, Sections 752.401 (a)(3): Reduction in grade and pay (but only to the extent necessary to exclude reductions in broadband level not accompanied by a reduction in pay) and 752.401 (a)(4) (but only to the extent necessary to exclude conversions from a General Schedule special rate to demonstration project pay that do not result in a reduction in the employee's total rate of pay).

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November 27, 1996

Part VI

Department of Education

34 CFR Part 682

Postsecondary Education: Federal Family Educational Loan Program; Guaranty Agencies—Conflicts of Interest; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AC33

Federal Family Education Loan (FFEL) Program; Guaranty Agencies—Conflicts of Interest

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Family Education Loan (FFEL) Program regulations. These final regulations are needed to implement changes to the Higher Education Act of 1965, as amended (HEA) giving the Secretary additional powers to assure the safety of Federal reserve funds and assets maintained by guaranty agencies insuring educational loans under the FFEL Program. The regulations establish conflicts of interest restrictions for guaranty agency staff and affiliated individuals and prohibit agencies from using Federal reserve funds for certain purposes.

DATES: Effective date: These regulations take effect on July 1, 1997. However, affected parties do not have to comply with the information collection requirement in § 682.418(c) until the Department of Education publishes in the Federal Register the control number assigned by the Office of Management and Budget (OMB) to this information collection requirement. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Mr. George Harris, Senior Policy Specialist, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3045, Regional Office Building 3, Washington, DC 20202–5449. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1996 the Secretary published a notice of proposed rulemaking (NPRM) for this part in the Federal Register (61 FR 49382). The NPRM included a discussion of the major issues surrounding the proposed changes, which will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble of the NPRM on which a discussion of those issues may be found:

- The use of FFEL reserve funds to pay a lender's claim if a guaranty agency fails to comply with Federal reinsurance requirements. (page 49383)
- The addition of a requirement that guaranty agencies prohibit conflicts of interest by guaranty agency staff and affiliated individuals. (page 49383)
- Prohibition of certain uses of a guaranty agency's reserve fund. (page 49384)

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the final regulations justify the costs.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the following heading: Analysis of Comments and Changes.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 53 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Other substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—generally are not addressed.

Paperwork Reduction Act of 1995

Section 682.418(c) contains information collection requirements. As required by the Paperwork Reduction Act of 1995, the U.S. Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)). In response to the Secretary's invitation in the NPRM to comment on any potential paperwork burden associated with this regulation, the following comments were received.

Role of a Guaranty Agency as a Trustee or Fiduciary

Comment: A number of guaranty agencies questioned the Secretary's discussion of the role of guaranty agencies in the preamble to the NPRM. In particular, the commenters argued that the Secretary was overstating the holdings of the court decisions cited in the preamble. The commenters suggested that these decisions did not hold them to be trustees or fiduciaries for the Federal Government. In addition, they noted that neither the HEA nor the agreements between the Department and the agencies use the term ''fiduciary'' or ''trustee'' and argued that the Secretary's description of their role was not supported by legal authority.

Discussion: The Secretary's position that ''the guaranty agencies' role is best characterized as that of a trustee holding money for the benefit of another'' is firmly rooted in the HEA. Under section 422(e) of the HEA, the reserve funds of the guaranty agencies and any assets purchased with those funds are the property of the United States. This statute is consistent with court decisions that describe the guaranty agency as ''akin to that of a trustee,'' *Ohio Student Loan Com'n v. Cavazos,* 900 F.2d 894, 899 (6th Cir. 1990), *cert. denied* 111 S.Ct. 245 (1990) or ''analogous to that of a trustee holding money for the benefit of another,'' *Education Assistance Corp. v. Cavazos,* 902 F.2d 617, 627 (8th Cir. 1990), *cert. denied* 111 S.Ct. 246 (1990). Other courts have specifically concluded that the guaranty agency does not have an ownership interest or property right in its reserve fund and that the reserve funds are ultimately under the control of the United States. *Puerto Rico Higher Education Assistance Corp. v. Riley,* 10 F.3d 847, 851 (D.C. Cir. 1993); *State of Colorado v. Cavazos,* 962 F.2d 968, 971 (10th Cir. 1992); *Rhode Island Higher Education Assistance Auth. v. Secretary, U.S. Dep't of Education,* 929 F.2d 844 (1st Cir. 1991); *Great Lakes Higher Education Corp. v. Cavazos,* 911 F.2d 10 (7th Cir. 1990); *South Carolina State Education Assistance Auth Corp. v. Cavazos,* 897, F.2d 1272 (4th Cir. 1990), *cert. denied* 111 S.Ct 243; *Delaware v. Cavazos,* 723 F.Supp. 234 (D.Del. 1989), *aff'd without opinion,* 919 F.2d 137 (3d Cir. 1990); *Student Loan Fund of Idaho v. Riley,* Case No. CV 94–0413–S–LMB (D.Ida., Memo. Decision, Sept. 14, 1995), *appeal pending,* No. 95–36179

(9th. Cir.); *Connecticut Student Loan Foundation v. Riley,* Case No. 3:93CV02570 (JBA) (D.Conn., Oct. 31, 1996). The guaranty agency commenters who challenged the Secretary's reading of the law in this area failed to cite any statutes or court decisions that counter this authority. A party who holds property for the benefit of another and who must carry out specific duties with regard to that property falls clearly within the legal definition of a trustee. *Black's Law Dictionary* 1514 (6th ed. 1990). A trustee owes a fiduciary duty to the beneficiary. *Id.* at 1508 (''trust'') and 1514. In the case of guaranty agencies, the Secretary (who provides the funds used to maintain the reserve funds and reserve funds assets) is the beneficiary and is entitled to issue appropriate rules to protect the Federal Government's interests in those funds and assets by prohibiting inappropriate uses and protecting against conflicts of interest.

Guaranty agencies are State or private non-private organizations, that are required to serve the public good. Thus, even outside the legal obligations governing the agencies' relationship to the reserve fund and assets, the agencies should have been held to a high standard in protecting the public trust. While these regulations provide further protection for the Secretary in regard to the agencies' role in the FFEL Program and maintenance of Federal property and assets, they are consistent with the agencies' long-standing obligations under State and common law.

Changes: None.

Separate Non-FFEL Funds

Comment: Some guaranty agencies questioned the discussion in the preamble to the NPRM that distinguished between funds that are subject to these regulations and funds that were consistently funded and maintained separate from their reserve funds and that are not covered by these regulations. These commenters argued that the requirement that non-FFEL program activities must be funded exclusively from sources unrelated to the FFEL guaranty agency activities exceeded the Secretary's authority. These commenters also contended that the prohibition on the use of FFEL funds for non-FFEL purposes was only established in regulations issued by the Secretary in 1986 and should not be applied prior to the effective date of those rules.

Discussion: The court decisions cited above reaffirmed that a guaranty agency had no legitimate expectation or right at the time it joined the FFEL Program that it could use Federal reserve funds for other than FFEL purposes. *Delaware* v. *Cavazos,* 723 F.Supp. at 240. Thus, an agency that wanted to engage in non-FFEL program activities has always been required to maintain separate funds. The discussion in the preamble to the NPRM is consistent with this requirement. Moreover, a guaranty agency has a fiduciary responsibility to protect the reserve funds and assets held by it for the Federal Government from uses inconsistent with the purposes for which they were provided.

Changes: None.

Classification of Guaranty Agencies Under the Regulatory Flexibility Act

Comment: Several commenters stated that the basis for determining that guaranty agencies are not small entities for the purposes of Regulatory Flexibility Analysis has not been provided. The commenters asserted that there are a substantial number of guaranty agencies with assets below $100 million. The commenters further recommended that the regulations be reviewed by the Small Business Administration.

Discussion: The Secretary analyzed the assets of the 12 private non-profit guaranty agencies that will be covered under these regulations. This analysis follows the letter and the spirit of the Regulatory Flexibility Act, which dictates the terms of the analysis. The analysis of asset levels of the 12 agencies is based on the latest audited financial statements that the agencies have provided to the Secretary. The analysis used generally accepted accounting principles and found that all 12 had asset levels above $100 million. Thus, for the purposes of Regulatory Flexibility Analysis, the certification that these regulations will not have a substantial impact on a significant number of small entities is affirmed.

On September 16, 1996, a copy of the proposed regulations was provided to the Small Business Administration (SBA). The SBA did not comment on the proposed regulations.

Changes: None.

Analysis of Burden Under the Paperwork Reduction Act of 1995

Comment: Several commenters representing guaranty agencies disputed the estimate of one hour recordkeeping burden required by the development of a cost allocation plan and maintenance of documentation for audit. The commenters believed this analysis of the burden grossly understated the amount of time necessary to analyze and comply with OMB Circular A–87. One commenter estimated that it would require three or four people years of work for an agency to develop and maintain a cost allocation system. Another commenter estimated that it would take at least 1,000 hours for an agency to develop a cost allocation plan and an additional two employees annually to manage it properly. The commenters acknowledged that the recordkeeping burden is already established in § 682.410(a) of the current regulations and guaranty agencies already have established cost allocation plans. However, they argued that the scope of the cost allocation provisions in OMB Circular A–87 is different in many respects from what is required in the regulations and what guaranty agencies have developed to comply with applicable Federal and State laws and would involve in most instances the development or update, or both, of a different method of cost allocation. The commenters stated that this provision would also require guaranty agencies in many instances to maintain an additional set of financial accounting records.

Discussion: Since publishing the NPRM, the Secretary has received information that indicates that the one-hour estimate given in the NPRM was not an accurate estimate of the recordkeeping burden associated with the modified requirements. The Secretary continues to believe that the scope of the cost allocation provisions in OMB Circular A–87 is not radically different, at least not to the extent suggested by some of the commenters, from what is already required in existing regulations.

The Secretary has sought to minimize burden to the extent possible. However, in light of the comments received, the Secretary now believes that a more appropriate estimate would be 100 hours. The Secretary will continue to look at this issue and welcomes additional input from guaranty agencies concerning the burden associated with the cost allocation plan requirement.

Changes: See discussion above.

Section 682.401 Basic Program Agreement

Comment: Several commenters representing guaranty agencies objected to § 682.401(b)(28) on the grounds that it was an unnecessary attempt to micromanage the operations of a guaranty agency and would serve to hamper the effective operations of the guaranty agency. The commenters stated that existing regulations mandating a specified level of reserves, coupled with the regulations proposed in the NPRM mandating reasonable costs, would provide adequate protection of the Federal fiscal interest. The commenters

recommended that, at the very least, the transfer of default records by a guaranty agency to third party contractors should be exempted from this requirement. One commenter stated that guaranty agencies should be encouraged to reduce costs where possible and that the main area in which a guarantor could reduce costs was in computer software, hardware, and development. One commenter agreed that the Secretary should be notified of a conversion to another information or computer system, but recommended that the 30-day notification period be increased to 45 days so that a guaranty agency could more properly prepare its notification to the Secretary and the Secretary would have more time to respond. The same commenter opposed the requirement that notice must be given in the case of a proposed conversion.

Discussion: The Secretary does not agree that a notification requirement is an attempt to micromanage the operations of a guaranty agency. A guarantor's decision to place new guarantees or to convert records relating to its existing guarantees to an information or computer system that is owned by or otherwise under the control of an entity that is different than the party that owns or controls the agency's existing system is a major decision that could have significant impact on program participants, especially borrowers. The Secretary needs advance notification of such proposed conversions because the Secretary's statutory duty to administer the FFEL Program properly would be hindered if information relating to major changes planned by a guaranty agency is not known by the Secretary until after the fact. If an agency experiences an emergency situation that would make it impossible for the agency to provide that notification to the Secretary at least 30 days before a planned conversion, the agency should notify the Secretary as soon as practicable before the date of the planned conversion.

As for the comment about reducing costs, the notification requirement contained in § 682.401(b)(28) has no effect on an agency's attempt to reduce costs. The Secretary encourages guarantors to find ways to reduce costs while preserving high quality services, and that goal can be achieved simultaneously with the notification requirement.

When developing these regulations, the Secretary did not want to require a guaranty agency to provide the notification more than 30 days before a planned conversion from one system to another, or before solicitation of bids begins. However, if an agency wishes to provide that notification more than 30 days before a planned conversion or before solicitation of bids begins, it may do so.

Changes: Section 682.401(b)(28) has been revised to clarify that the notification must be provided to the Secretary at least 30 days prior to the conversion or before solicitation of bids begins.

Comment: One commenter representing a collection contractor asked the Secretary to clarify that the notification requirement contained in § 682.401(b)(28) did not apply to the transfer of copies of records from a guaranty agency to a collection contractor.

Discussion: The commenter's understanding is correct.

Changes: None.

Section 682.410 Fiscal, Administrative, and Enforcement Requirements

Comment: Many commenters expressed concern that the provision in § 682.410(a)(2) would cause lenders to end their participation with any guaranty agency that did not have non-FFEL reserve fund assets available to pay lender claims in cases in which the claims did not qualify for Federal reinsurance because the agency did not meet its Federal requirements. The commenters believed that a lender that performs all of the required regulatory and statutory activities should be entitled to an insurance payment from the guaranty agency for a properly filed claim, even if the agency would not be eligible to receive or retain a reinsurance payment from the Secretary because the agency failed to meet a reinsurance requirement prescribed under § 682.406. The majority of the commenters recommended that the Secretary require a guaranty agency to pay all insurance claims that qualify for insurance under the terms of the guaranty agency's program, even if it meant that the reserve fund would be used to pay claims for which the agency could not receive or retain Federal reinsurance payments. One guaranty agency went further by stating that all claims paid by an agency should be considered proper uses of the reserve fund.

Most of the commenters recommended the addition of language that would permit the payment of a claim if the agency made a good faith determination that the claim met the requirements of § 682.406 at the time the claim was paid or if the only violation was the guaranty agency's inability to meet the claim payment deadlines. Otherwise, the commenters believe, the guarantor would be penalized for paying a claim that appeared in good faith to be reinsurable but only to discover at a later date that it was not (*e.g.,* due to nonpayment of origination fees). The suggested language would prevent the penalizing of lenders or servicers in the instances where they have done nothing wrong. The addition of the language ''in good faith'' would allow for a level of tolerance that would be consistent with the provisions of section 432(g) of the HEA, and would reflect the practicalities of high volume claims processing and the situations where critical data not in the hands of the guarantor is unavailable or unreliable. The commenters stated that section 432(g) only imposes a fine or penalty after a hearing upon a showing that a violation was material and knowing and would not penalize a guaranty agency for multiple infractions involving systemic errors.

The commenters asked the Secretary to consider that other sources of funds are often not available to guaranty agencies or may be earmarked for other expenditures by the provisions of State law. One commenter noted that the Secretary has repeatedly viewed funds received by a guaranty agency for its FFEL Program to be part of the reserve fund. The commenter wondered how the Secretary could recommend that an agency obtain non-FFEL funding to honor its insurance agreements with lenders, while at the same time considering those funds to be part of the reserve fund. The commenter believed that by definition, those outside funds would become part of the reserve fund and thus would be unusable by the guaranty agency for paying claims that did not meet the requirements of § 682.406. One commenter objected to the restriction in § 682.410(a)(2)(i) and stated that the outcome of such a restriction would mean that the fund into which insurance premiums have been paid cannot be used to pay a valid insurance claim submitted by the holder. One commenter from a State guaranty agency was concerned that if a State agency was required to obtain non-FFEL funds to pay lender claims that did not meet the requirements of § 682.406, the agency would expose the State to a financial liability that had previously not existed. The commenter speculated that some State guarantors would be forced to look towards privatization as a means of maintaining the State's fiscal interests. One commenter from a guaranty agency recommended that a guarantor be permitted to use the reserve fund to pay

lender claims that did not meet the requirements of § 682.406, unless this category of claims exceeds a specified percentage of the agency's total claim payments in the fiscal year in question. One commenter believed that section 432(o) of the HEA would entitle the lender to a claim payment from the Secretary if the guaranty agency failed to pay a claim. In addition, one commenter representing a State guaranty agency said that under State law, the State was prohibited from using State funds to cover the expenses incurred by the State guaranty agency. In effect, the commenter argued, the Secretary's restriction in § 682.410(a)(2)(i) would prohibit the agency from honoring its contractual obligations.

Discussion: The Secretary agrees that a lender that performs all of the regulatory and statutory activities required of the lender should be entitled to an insurance payment from the guaranty agency for a properly filed claim. Therefore, the Secretary is withdrawing this provision of the regulations, and will permit guaranty agencies to use reserve funds to pay such claims. However, the Secretary will take appropriate action against a guaranty agency that violates regulatory requirements.

Changes: The Secretary is returning this provision of the regulations to its current published form.

Comment: One commenter recommended that the list of costs in § 682.410(a)(2)(ii) deemed to be ordinary and necessary for the agency to fulfill its responsibilities under the HEA be expanded to include costs of customer assistance and education and training on laws, regulations, and guarantor policies, procedures, and services. The commenter stated that these are basic services provided by guaranty agencies.

Discussion: The use of examples following the word ''including'' in § 682.410(a)(2)(ii) does not mean that other examples are not applicable. While the Secretary does not disagree that the type of costs suggested by the commenter may be ordinary and necessary for the agency to fulfill its responsibilities under the HEA, the Secretary sees no need to add them to the brief list of examples given in the regulations.

Changes: None.

Section 682.410(a)(11)(iii) Reasonable Cost

Comment: Some commenters, while not significantly opposed to the definition of ''reasonable cost'' contained in § 682.410(a)(11)(iii), nevertheless thought the provisions in § 682.410(a)(2)(ii)(B), (C), and (D) were overly broad, vague, and duplicative of the definition of ''reasonable cost.'' The commenters believed that the reasonable cost definition, together with the existing audit requirements for guaranty agencies was sufficient, and recommended the deletion of § 682.410(a)(2)(ii)(B), (C), and (D).

Discussion: The Secretary believes the requirements in § 682.410(a)(2)(ii)(B), (C), and (D) are clear, but agrees that the provisions in (B) and (C) are addressed in paragraph § 682.410(a)(11)(iii)(B) of the ''reasonable cost'' definition. However, § 682.410(a)(2)(ii)(D) is intended to apply a specific test to determine if a cost, though reasonable for other purposes, can be considered an expenditure that is ordinary and necessary for the agency to fulfill its responsibilities under the HEA.

Changes: The provisions in § 682.410(a)(2)(ii)(B) and (C) have been removed, and § 682.410(a)(2)(ii)(A)–(G) has been renumbered § 682.410(a)(2)(ii)(A)–(E).

Comment: One commenter stated that in some cases (*e.g.*, collections activities) the Secretary's specific requirements may increase costs beyond those that would otherwise be required. Therefore, the commenter recommended that additional language be added to § 682.410(a)(2)(ii)(D) to provide an exception for costs to the extent that applicable Federal requirements increase the costs of the activities beyond those of equivalent non-Federal activities.

Discussion: The requirement that costs must not be higher than the agency would incur under established policies, regulations, and procedures that apply to any non-Federal activities of the guaranty agency is intended to apply to expenditures for activities or items that are roughly equivalent in both the agency's FFEL and non-FFEL activities. This requirement has no effect on the comparison of disparate activities or items. For example, if an agency operates a non-FFEL loan program which has less stringent due diligence standards than found in the FFEL Program, the agency's servicing costs for its non-FFEL loan program could be lower than its servicing costs relating to the FFEL Program. In this example (and for other similar cost areas) the Secretary did not intend for § 682.410(a)(2)(ii)(D) to be interpreted to limit the agency's FFEL servicing costs to no more than that paid for the agency's non-FFEL loan program, if the services provided are not comparable.

Changes: The Secretary has added the word ''comparable'' before ''non-Federal activities'' in § 682.410(a)(2)(ii)(D).

Comment: Some commenters vigorously objected to the provision in § 682.410(a)(11)(iii) that requires a guaranty agency to prove that costs are reasonable, although one guaranty agency commenter agreed with the regulatory language in the NPRM. The objecting commenters argued that this provision would stifle the activities of the guaranty agency. The commenters feared that every single agency expenditure will be subject to retroactive challenge at the Secretary's discretion and that the burden of reasonableness will be on the guaranty agency without any ''safe harbor'' or ''de minimis'' rule. The commenters believed that this requirement would make it difficult, if not impossible, to know the standard of duty involved in planning and making expenditures and would disrupt the delivery of services to students and schools. The commenters recommended a deletion of the language placing the burden of proof on the guaranty agency and proposed placing the burden of proof on the Secretary to challenge the reasonableness of the cost. In addition, the commenters suggested that the Secretary's authority to challenge the expenditure should be limited to one year from the date of the expenditure, absent a showing of fraud and abuse by the agency, and wanted the regulations to be prospective in their effect.

Discussion: These regulations establish clear principles for determining if a cost is reasonable. The guaranty agency commenters want the Secretary to presume that expenditures made by a guaranty agency from the reserve fund reflect costs that the guaranty agency believes are reasonable. The Secretary notes that it is the guarantor, not the Secretary, that has the information and documentation to show that it has complied with the reasonable cost principles prescribed in these regulations. In the event the Secretary questions the reasonableness of a particular expenditure, the Secretary believes the guarantor's unique role as the front-line steward responsible for the use of the reserve fund carries with it the obligation to document that its use of Federal funds has been appropriate. It is not the Secretary's role either to prove or disprove; rather, it is the Secretary's role to consider the agency's documentation and rationale for a questioned cost and, on behalf of the taxpayers, decide if the agency has complied with the Federal requirements.

Changes: None.

Comment: A few commenters recommended that § 682.410(a)(11)(iii)(A) be modified to

recognize differences in costs as affected by the differences in guaranty agencies. The commenters suggested that what may be reasonable, ordinary, and necessary for the operation of a large guaranty agency in a low cost geographic area may not be reasonable for a smaller guaranty agency in an area with a labor shortage and high cost of living. The commenters believed that the regulatory provision, as written, would interfere with the intent of § 421(a)(1)(A) of the HEA, which recognizes and encourages guaranty agencies to operate within different States pursuant to State charters. The commenters recommended the regulations take into account the geographic area, demographics, higher education community, size, and nature of the guaranty agency. Several commenters suggested that § 682.410(a)(11)(iii)(B) be expanded to include a balancing of the risks and benefits of a particular action as well as an evaluation of price, quality, and service. One guaranty agency commenter agreed with the regulatory language that was presented in the NPRM.

Discussion: The regulations do not prohibit a guaranty agency from considering reasonable factors, including those presented by the commenters, when deciding if a particular expenditure would meet the reasonable cost definition in § 682.410(a)(11)(iii). The Secretary reminds the commenters that the burden of proof is upon the guaranty agency, as a fiduciary, to establish that costs are reasonable.

Changes: None.

Comment: Several commenters were concerned about the extent to which an agency would be required to go to prove an expenditure was reasonable if it was required to document the market prices of comparable goods or services under § 682.410(a)(11)(iii)(C). The commenters noted that guaranty agencies are involved in numerous purchases of goods and services for which the price is not always the most important consideration. The commenters recommended that the regulations permit an agency to exercise its judgment concerning other factors, including the quality of the goods or services or their timely delivery. One guaranty agency commenter agreed with the regulatory language that was presented in the NPRM.

Discussion: As discussed above, the regulations do not prohibit a guaranty agency from considering reasonable factors, including those presented by the commenters, when deciding if a particular expenditure would meet the reasonable cost definition in § 682.410(a)(11)(iii). However, it is inconceivable that a reasonable cost determination could be made without considering the market prices for comparable goods or services.

Changes: None.

Section 682.410(b)(11) Conflicts of Interest

Comment: One commenter rejected what the commenter perceived to be the underlying premise of § 682.410(b)(11), that the sharing by a guaranty agency of a corporate management structure with affiliates would necessarily raise issues of self-dealing and conflicts of interest. The commenter stated that guaranty agencies, through the provisions of the Internal Revenue Code governing section 501(c)(3) organizations, State ethics codes, and State non-stock corporation provisions, as well as other provisions of State law, are already prevented from engaging in the type of conduct being regulated in the NPRM. The commenter stated that the Internal Revenue Code explicitly forbids a section 501(c)(3) organization from having any part of its net earnings inure to the benefit of those who control it or who financially support it. The commenter stated that although section 432(p) of the HEA empowers the Secretary to act when there is a conflict of interest, the commenter was unaware of any instance when the Secretary exercised that power. Thus, the commenter concluded, the regulations proposed by the Secretary are too broad and unnecessary. In the commenter's view, the Secretary should instead draft ''firewall'' regulations focusing on conflicts of interest between guarantor staff and lender/secondary market staff. Another commenter disagreed with the scope of the proposed conflicts of interest regulations and recommended they be limited, if imposed at all, to decision-making employees.

Discussion: The Secretary has taken steps in the past to address specific instances of actual or potential conflicts of interests involving guaranty agencies. However, those steps generally have not been completely successful in eliminating or preventing conflicts of interests at those specific agencies, nor do those specific steps have general applicability to all guaranty agencies. Therefore, the Secretary has decided that stronger measures, in the form of these comprehensive regulations, are needed to protect the Federal reserve funds and assets. The Secretary believes that these FFEL-specific regulations should impose no significant additional burdens on any guaranty agency covered under the more generic rules of the Internal Revenue Code and other requirements that restrict entities and individuals from engaging in the type of conduct addressed in the Secretary's regulations.

Furthermore, there is a unique role for the Secretary. The existence of a Federal reserve fund in agencies with activities outside of the guaranty agency role creates a dangerous incentive for managers to find ways to move funds from the restricted-use reserve fund into a less regulated operation or affiliate. For example, agencies have been found to be enriching their affiliates by moving operations to the affiliate, on paper, and then charging the reserve fund a mark-up for the services performed. The Inspector General found evidence of agencies protecting their affiliates from fines and losses related to due diligence violations. The Secretary has responsibility to protect the Federal reserve funds entrusted to guaranty agencies. That is the Secretary's role, a role that has been clearly defined by Congress when it directed the Secretary, in section 422(g)(1)(C) of the HEA, to prevent the ''misapplication, misuse, or improper expenditure of reserve funds and assets.'' Finally, in response to the comment about decision-making employees, the Secretary notes the NPRM proposed to apply the conflicts of interest rules only to guaranty agency employees who had decision-making authority as to the administration of a contract or agreement supported by the reserve fund.

Changes: None.

Comment: One commenter opposed the restrictions in § 682.410(b)(11)(i) on the grounds that they were too sweeping. The commenter recommended that, instead of applying the disclosure requirement to financial or other interests in any entity, the regulations should limit it to entities ''related to student financial aid.''

Discussion: The regulations are meant to be sweeping, because the types of organizations with which a guaranty agency could have actual or potential conflicts of interest are not limited to those organizations involved in student financial aid.

Changes: None.

Comment: A few commenters were concerned that the conflict of interest restrictions in § 682.410(b)(11) would force some guaranty agencies to modify or abandon affiliation relationships that had been in place for years and that they believed were beneficial to the FFEL Program. Some commenters suggested that the Secretary's underlying motive was to interfere with the ability of guaranty agencies to compete with the Federal Direct Loan Program. Several

guaranty agency commenters agreed with the regulatory language that was presented in the NPRM. One commenter representing schools recommended that the Secretary prohibit a guaranty agency from having any affiliated business activities.

Discussion: The Secretary recognizes that some affiliate relationships may result in improved services and economies of scale that benefit the affiliated parties, including the guaranty agency. Thus, the regulations do not require a strict separation of those entities. Instead, the regulations require that appropriate safeguards be established to ensure that the Federal fiscal interest is not jeopardized as a result of those affiliate relationships. The Secretary will continue to monitor these relationships closely to ensure that the programmatic and other costs of these relationships do not exceed the benefits.

Changes: None.

Comment: One commenter noted that Congress has continually given guaranty agencies authority to expand their participation in the FFEL Program. The commenter stated that guarantors have been asked to be lenders, lenders of last resort, and escrow agents. The commenter believed the Secretary had no authority to regulate a guaranty agency's affiliations.

Discussion: The Secretary has not said that all affiliations are prohibited. Only those that result in a real or potential conflict of interest are the subject of these regulations. Moreover, the various obligations placed on the guaranty agencies are the responsibilities of those agencies. Nothing in the HEA authorizes or suggests that the agency may shift its responsibilities to an affiliate.

Changes: None.

Comment: One commenter suggested that § 682.410(b)(11)(i)(A) should be applied to all guaranty agencies, without a special exemption for employees of a State agency covered by State codes of conduct. The commenter believed that most State codes of conduct are generic and focus on preventing individual transgressions that might be committed by employees with limited decision-making authority operating within well established procurement, contracting, or other decision-making parameters. The commenter doubted that many State codes of conduct address the broad, more subtle policy issues that the Secretary intended to address in the regulations. Several guaranty agency commenters agreed with the regulatory language that was presented in the NPRM.

Discussion: The Secretary believes that State codes of conduct provide sufficient safeguards to protect the interests of the FFEL Program. If that assumption turns out to be invalid, the Secretary will consider additional action.

Changes: None.

Comment: Several commenters representing guaranty agencies recommended the word ''trustee'' be replaced with ''director'' and that the word ''agents'' be deleted. The commenters recommended this change wherever the words ''trustee'' and ''agents'' are used. Some guaranty agency commenters agreed with the regulatory language that was presented in the NPRM.

Discussion: The Secretary acknowledges that the title ''director'' appears to be commonly used by guaranty agencies.

Changes: The Secretary has added the title ''director'' to the list of individuals designated in the regulations.

Comment: One commenter argued that the prohibitions in § 682.410(b)(11)(i)(A) should apply only to guarantor employees who have financial interests in non-affiliated organizations, not in affiliated State agencies or not-for-profit corporations. The commenter recommended that the exemption in § 682.410(b)(11)(i)(A) be revised to include employees of multiple State agencies within the State covered by codes of conduct established under State law or to employees, officers, trustees, or agents employed by a not-for-profit guarantor and its not-for-profit affiliates covered by a published code of conduct that, among other standards, requires disclosures of the interests specified in § 682.410(b)(11)(i)(A). One commenter stated that some private, not-for-profit guarantors are not State agencies, but are nevertheless subject to State statutory codes of conduct. The commenter recommended that the exemption in § 682.410(b)(11)(i)(A) be expanded to cover those agencies.

Discussion: The Secretary has seen no evidence showing that private, not-for-profit guarantors and their employees, officers, directors, trustees, and agents, are covered under State ethics codes to the extent that State guaranty agencies are covered. The Secretary believes that State guaranty agencies have sufficient authorities and responsibilities that allow the Secretary to provide greater deference to them than to private, not-for-profit guarantors.

Changes: None.

Comment: Several guaranty agency commenters agreed with the regulatory language that was presented in § 682.410(b)(11)(i)(A) of the NPRM. Another commenter also agreed, but asked that the Secretary define the term ''nominal'' with respect to unsolicited favors, gratuities, or other items that may be accepted.

Discussion: Minor and low cost unsolicited favors, gratuities, or other items generally may be accepted. The Secretary is reluctant to place an absolute dollar value on the unsolicited favors, gratuities, or other items that may be accepted, but it would be highly unlikely that the agency could justify any case where the value exceeded $25.

Changes: None.

Comment: Several commenters objected to the provisions of proposed § 682.410(b)(11)(ii). That section proposed that if a guaranty agency fails to meet the conflict of interest requirements in the regulations, the Secretary may require the agency to comply with additional appropriate measures to protect the Federal fiscal interest, including the divestiture of the agency's non-FFEL functions and its interests in any affiliated organization. The commenters argued that this provision exceeded the Secretary's statutory authority. In addition, they argued that any divestiture authority that arguably exists could only be exercised after providing the affected guaranty agency with appropriate due process. In contrast, one commenter agreed with the proposed rule and another commenter suggested only that divestiture not be required in situations in which the agency failed to enforce the prohibition on gifts and gratuities in proposed § 682.410(b)(11)(i)(C).

Discussion: The Secretary notes that divestiture of the agency's non-FFEL functions is only one possible measure that may be required to protect the Federal fiscal interest. The Secretary acknowledges that divestiture might have a significant impact on the guaranty agency's operations. However, divestiture would clearly be appropriate if the guaranty agency organization had otherwise failed to protect the Federal fiscal interest against the impact of conflicts of interest among its various activities and among its employees. Before requiring this step, the Secretary will provide the agency with an appropriate opportunity, consistent with applicable due process requirements, to show why the action should not be required. The Secretary further notes that the requirement for divestiture to protect the Federal fiscal interest is an appropriate limitation of the guaranty agency's participation in the FFEL program as authorized by 34 CFR 682.413(c)(1).

Changes: None.

Section 682.418 Prohibited Uses of Reserve Fund Assets

Comment: Several commenters representing guaranty agencies objected to the provisions of § 682.418(a)(1). The commenters stated that pre-approval for costs such as professional services is impractical and suggested that the pre-approval process will seriously interrupt the delivery of services to students and financial aid officials. The commenters wanted State agencies to be exempt from this requirement because they believed it was redundant for State agencies with State contractual regulations. One commenter from a guaranty agency objected to the absence of any reference in § 682.418(a)(1) to the Secretary taking into consideration the differences in guaranty agencies, or the standards by which the Secretary's approval will be granted. Some commenters recommended that § 682.418(a)(1) be deleted, or that an exception be carved out for contracts awarded by way of a competitive bidding process. Otherwise, they suggest, a guaranty agency could end up paying more for services provided by a non-affiliate than by its affiliate.

Discussion: The Secretary's pre-approval is only required in those rare instances where the agency demonstrates that an unusual circumstance exists that warrants paying an affiliate more than cost for services rendered. The commenters can be assured that the Secretary will take all relevant information into account when deciding if the Federal interests would be served if a guaranty agency paid more than cost for goods, property, or services provided by its affiliate. The Secretary believes that under an affiliation relationship, a guaranty agency should be able to obtain goods, property, or services from its affiliate at cost.

The Secretary does not agree that State rules will fully protect Federal reserve funds maintained by a State guaranty agency which has an affiliated organization.

Changes: None.

Comment: One commenter suggested that the Secretary define the term ''affiliated organization,'' as used in § 682.418(a)(1).

Discussion: The Secretary believes that a regulatory definition of ''affiliated organization'' would limit the ability to apply the regulations to new forms of affiliations devised in the future. The Secretary will determine whether a guaranty agency has a relationship with an ''affiliated organization'' based on all the facts and circumstances in the particular case. In making this determination, the Secretary intends to utilize a working definition of ''affiliated organization'' as any organization controlling, controlled by, or under common control with, the guaranty agency. A guaranty agency and its affiliate may be under common control if they share common board members or officers, or if their activities are otherwise directed by the same individuals. This definition is based on the definition of ''affiliate'' generally used by the Securities and Exchange Commission. *See,* for example, 17 CFR 240.12b–2 and 260.0–2(a).

Changes: None.

Comment: Some commenters objected that the blanket use of the term ''assets'' in § 682.418(a)(2) exceeds the statutory language found in section 422(g) of the HEA because it is not limited to assets purchased with the reserve funds but refers simply to ''assets.'' The commenters recommended that this provision specify that it applies only to assets purchased with the reserve fund. Other commenters believed that the HEA gave the Secretary limited authority in this area, and believed the regulations should exempt insurance agreements with lenders, agreements with schools, and third party contracts with private collection agencies. One commenter was concerned that this provision would infringe on the rights of parties to enter into legally binding contracts with a guaranty agency.

Discussion: The Secretary is not regulating how a guarantor handles its non-FFEL assets or funds. On the other hand, the Secretary fully intends to take steps to protect the Federal reserve fund. Accordingly, guarantor contracts with other parties that require the use of Federal reserve funds or assets are subject to the 30-day notification requirement.

Changes: None.

Comment: One commenter from a guaranty agency agreed that the Secretary should actively seek to prevent improper depletion of the reserve fund, but considered the Secretary's proposed regulations to be inadequate for that purpose. In the commenter's judgment, the protection of reserve funds cannot be achieved merely by prohibiting a limited number of specific types of expenditures which, in the aggregate, represent an insignificant share of overall guaranty agency costs. Instead, the commenter recommended that the Secretary focus on the relative cost effectiveness of individual guarantors in carrying out their primary responsibilities under the HEA. The commenter suggested an alternative approach that would enable the Secretary to focus on whether proper value is being received for reserve funds expended. The commenter additionally stated that the alternative approach would avoid what the commenter viewed to be ''inevitable, tedious, and diversionary arguments'' that the measures proposed by the Secretary to restrict specific types of expenditures are punitive in nature, represent micromanagement, and are designed to hamper the ability of guarantors to compete effectively with the Direct Lending Program. The commenter recommended that the regulations be revised to require: (1) the expansion of the Secretary's current guarantor evaluation model to provide a ''fully loaded'' (all overhead costs allocated) analysis of each guarantor's unit costs of delivering its services; (2) on-going monitoring of each guarantor's performance relative to the model by requiring Part E 1130 data to be submitted quarterly rather than annually; (3) establishment of maximum acceptable unit cost standards for each primary guarantor service (*e.g.,* 125 percent of national mean cost); (4) the identification and correction of specific factors that result in a guaranty agency exceeding the acceptable unit costs in one or more areas; (5) the taking of corrective action by a guaranty agency where overall costs exceed current revenues (exclusive of investment income); and (6) a targeted program review effort designed to ensure that acceptable unit costs are not being achieved at the expense of program integrity. The commenter believed that under the alternative approach, guaranty agencies that manage their operations in a cost-effective manner would be able to exercise management discretion and flexibility, and that the alternative approach would be consistent with the Secretary's recent initiatives to provide incentives for work well done and to encourage common sense and good business practices by guarantors.

Discussion: Although the commenter has presented an interesting proposal, the Secretary must decline to pursue it as an alternative to fiduciary standards. As long as a guaranty agency holds Federal funds, the Secretary believes it is appropriate to hold the agency accountable under those standards.

Changes: None.

Comment: One commenter thought that all of the prohibitions and limitations in § 682.418(b) were unnecessary because the Secretary could simply rely on the definition of ''reasonable cost'' found in § 682.410(a)(11)(iii). Thus, for example, contributions and donations would only

be prohibited to the extent that they were not reasonable.

Discussion: The commenter's proposal ignores the limited purpose of the Federal reserve funds and assets. Those funds and assets are provided solely to serve FFEL Program purposes. The Secretary has determined that certain uses of those funds and assets are simply unreasonable, in light of their intended purpose.

Changes: None.

Section 682.418(b)(1) Advertising

Comment: Some commenters objected to the restrictions on advertising in § 682.418(b)(1) and recommended that a guaranty agency should be permitted to use reserve funds to advertise the types of services that the agency provides. The commenters mentioned many types of services, including default prevention software, training programs, and Internet sites. A few commenters questioned how an agency could perform its customer service functions under § 682.418(b)(9), ''public relations,'' if the agency was prohibited from advertising about those customer service functions.

The commenters also generally stated that provisions on reasonable costs contained in § 682.410(a)(11) and existing provisions on guaranty agency reserve levels adequately protect the Federal fiscal interest. The commenters noted that OMB Circulars A–87 and A–122 allow for advertising costs ''necessary to meet the requirements of the Federal award.'' The commenters recommended that guarantors not be prohibited from using advertising that was related to the guaranty agency's purposes under the HEA. Other commenters believed the restrictions on advertising ran counter to the Secretary's, the President's, and the Congress' stated support of competition for better education loan services and school choice between the FFEL and the Direct Loan programs.

Discussion: A guaranty agency may use the reserve fund to pay for activities that are ordinary and necessary for the fulfillment of its FFEL guaranty responsibilities under the HEA. In § 682.418(b)(9), several examples of these activities are given, such as training of program participants and secondary school personnel, dissemination of FFEL-related information and materials to schools, loan holders, prospective loan applicants, and their parents, and training at workshops, conferences, or other forums. When developing the NPRM, the Secretary did not intend to bar the use of reserve funds to provide notices about those activities and meetings. However, a number of commenters believed that this type of notification would be prohibited because it was not specifically listed in either § 682.418 (b)(1) or (b)(9). To clarify this rule, the Secretary has decided to include such notices as an allowable activity related to ''public relations,'' under § 682.418(b)(9). The Secretary believes that this clarification, together with the overall requirement that advertising costs must be ordinary and necessary for the fulfillment of the agency's FFEL guaranty responsibilities under the HEA, eliminates the need to have a separate regulatory provision devoted solely to advertising.

Changes: Section 682.418(b)(1) is deleted and sections 682.418 (b)(2) through (b)(11) will be renumbered (b)(1) through (b)(10). The definition of the term ''public relations'' under renumbered § 682.418(b)(8) will permit the use of reserve funds to pay advertising costs related to providing notice about training of program participants and secondary school personnel, customer service functions that disseminate FFEL-related information and materials to schools, loan holders, prospective loan applicants, and their parents, and training at workshops, conferences, or other forums.

Section 682.418(b)(2) Compensation for Personnel Services

Comment: Many commenters asked for an explanation of how the Secretary's total compensation in § 682.418(b)(2) was calculated to be 118.05 percent of the Secretary's salary. The commenters generally believed that the calculation did not include all of the Secretary's compensation. Several commenters believed the Secretary has no authority to put a limit on compensation that is contained in § 682.418(b)(2). However, one guaranty agency commenter agreed with the regulatory language that was presented in the NPRM.

The commenters also argued that 18.05 percent would not cover the average percentage of a salary attributable to benefits in the non-profit sector. Some commenters argued that in order to attract and retain qualified individuals, particularly those for information systems type positions, it is critical for the guaranty agency to be able to provide competitive compensation packages to its employees. One commenter stated that many other organizations, such as universities and hospitals, receive or administer Federal funds, including funds issued by the Secretary, yet neither the Secretary or any other Federal agency has claimed authority for establishing maximum compensation for employees of those entities. Most of the commenters recommended that § 682.418(b)(2) be deleted, or if not entirely deleted, the reference to compensation and benefits should be deleted and the regulations should refer only to salary when discussing the cap.

Discussion: The Federal reserve funds are provided to guaranty agencies to be used for specific program purposes. The Secretary is not convinced that paying compensation in excess of the reasonable amounts proposed in the NPRM is a necessary or appropriate use of those funds. A guaranty agency that chooses to pay compensation that exceeds the amounts allowable under § 682.418(b)(1) (as renumbered) may use non-FFEL resources to fund those excess amounts of compensation.

Overall responsibility for the FFEL Program is one of the Secretary's many duties, whereas the administration of a guaranty agency is, by comparison, the logical equivalent of a subset of the Secretary's overall duties. The Secretary, as the overall administrator of the entire FFEL Program, in addition to many other duties, has a wider area of responsibility than any individual associated with any guaranty agency. Therefore, the most appropriate salary amount to base the compensation restrictions upon is the Secretary's total salary paid (as calculated on an hourly basis) under section 5312 of title 5, United States Code (relating to Level I of the Executive Schedule). Further, the sum of all of the components making up the annual compensation received by the Secretary resulted in the calculation that all of the benefits received by the Secretary represented a dollar value equal to 18.05 percent of the Secretary's annual salary.

Changes: None.

Section 682.418(b)(3) Contributions and Donations

Comment: Some commenters believed that § 682.418(b)(3) would prohibit charitable activities by guaranty agency employees and the training programs that guaranty agencies provide for the State financial aid organizations. The commenters stated that this training is an essential element of a guaranty agency function and should not be prohibited. They also noted that the OMB Circulars allow expenditures for the morale, health, and welfare of employees. The commenters recommended that the regulations be revised to comply with the OMB Circulars, and that the regulations allow a guaranty agency to make contributions

and donations from the reserve fund if they are for the purpose of meeting the agency's functions under the HEA. One commenter recommended that the regulations establish a maximum allowable amount to allow a reasonable level of guarantor external involvement and support for such activities, without prior approval from the Secretary. Another commenter recommended that the regulations permit minor contributions, especially in the context of matching donations of money by employees and allowing employees to volunteer small amounts of time during work hours. The commenter stated that these are reasonable and ordinary activities engaged in by reasonable organizations, and that guaranty agencies should not be prohibited from contributing to their communities.

Discussion: The prohibition against contributions and donations does not prohibit guaranty agencies from continuing to provide education and information dissemination services to schools, nor does it interfere with the ability of a guaranty agency to perform activities that are ordinary and necessary for the fulfillment of its FFEL guaranty responsibilities under the HEA. However, contributions or donations, including the volunteer services of employees during working hours, are prohibited, unless the Secretary decides that the Federal interests would benefit. In that event, the Secretary will provide specific written authorization to the agency. The Secretary also notes that, except for the reference to ''guaranty agency'' instead of ''government unit,'' the prohibition in § 682.418(b)(3) contains the exact language found in OMB Circular A–87.

Changes: None.

Section 682.418(b)(4) Entertainment

Comment: Commenters representing guaranty agencies objected to the prohibition in § 682.418(b)(4) against the use of the reserve fund for entertainment, although one guaranty agency commenter agreed with the regulatory language that was presented in the NPRM. The commenters argued that guaranty agencies should be allowed to use the reserve fund for entertainment that would improve the morale, health, and welfare of their employees. Other commenters also wanted agencies to be allowed to use the reserve fund for entertainment costs at meetings, conferences, and workshops related to the guaranty agency's responsibilities under the HEA.

Discussion: The FFEL reserve fund is intended to be used only for the purpose of ensuring that all eligible students and their parents have access to FFEL loans. In carrying out its responsibilities under the HEA, a guaranty agency, like any other organization, would need to provide for the adequate morale, health, and welfare of its employees. Such expenditures may include the reasonable costs of health or first-aid clinics, recreational facilities, employee counseling services, child care services, employee information publications, or similar activities or services. Those costs are not prohibited, and would fall under the ''ordinary and necessary'' rule with respect to reasonable costs in § 682.410(a)(11)(iii)(A). However, the Secretary does not view the types of activities specified under ''entertainment'' in § 682.418(b)(4) of the NPRM to be ordinary and necessary for the adequate morale, health, and welfare of a guaranty agency's employees.

The Secretary does not believe that the entertainment activities prohibited by these regulations are necessary to an agency's ability to conduct meetings, conferences, and workshops related to the guaranty agency's responsibilities under the HEA. The Secretary believes that such entertainment costs would divert FFEL resources from the goal of ensuring that all eligible students and their parents have access to FFEL loans.

Changes: None.

Section 682.418(b)(5) Fines, Penalties, Damages, and Other Settlements

Comment: Several commenters opposed the restrictions in § 682.418(b)(5) on the use of reserve funds to pay fines, penalties, damages, or settlements against the agency because of the agency's violation or alleged violation of a Federal, State, or local law or regulation unrelated to the FFEL Program. The commenters believed those restrictions would be unfair to the agencies that had no access to funds other than the FFEL reserves, and would effectively cut off their ability to defend themselves against lawsuits. The commenters argued that this provision is unnecessary, especially where a guaranty agency makes good faith efforts to comply with Federal and State laws unrelated to the FFEL Program.

The commenters also believed that the provisions in § 682.418(b)(5) are more restrictive than the OMB Circulars. They recommended that costs needed to defend a guaranty agency for non-FFEL related claims where the guaranty agency acted in good faith should be allowed, and that the language contained in the OMB Circulars allowing legal expenses required in the administration of a Federal program should be adopted here. A number of commenters suggested that this restriction would actually be contrary to the Federal fiscal interest since they believed it would encourage agencies to avoid litigation at all costs.

Discussion: The Secretary has decided to modify this restriction so that the interests of the taxpayer will be protected while, at the same time, guaranty agency operations will not be jeopardized because the agency is unable to use reserve funds or obtain non-FFEL funding to pay fines, penalties, damages, and settlements. The Secretary believes that a guaranty agency should be permitted to use the reserve fund to pay fines for such violations or alleged violations as long as they have been assessed against the guaranty agency, do not involve the reimbursement of agency employees, do not exceed $1,000, and result from non-criminal charges. This approach is in accord with the Secretary's understanding of normal business practices. If the penalty exceeds $1,000 or involves an actual or alleged criminal violation, the agency must receive specific prior approval from the Secretary before using the reserve fund.

Changes: The regulations have been revised accordingly, as discussed above.

Section 682.418(b)(6) Legal Expenses

Comment: Some commenters believed the prohibition in § 682.418(b)(6) of the use of the reserve fund to prosecute claims against the Federal Government would violate a guaranty agency's right to due process in the case of an agency that had no access to funds other than the FFEL reserves. The commenters recommended that, at a minimum, actions based on good faith challenges, or where a reasonable chance of success can be demonstrated based on precedent, or where there is no known precedent to the contrary, should be allowed. The commenters recommended the deletion of the Secretary's approval prior to reimbursement for legal expenses when the guaranty agency has substantially prevailed.

One commenter stated that if the Secretary was concerned with the use of Federal funds for the prosecution of frivolous matters, or initiation of legal action purely to avoid compliance, then that concern is addressed by existing ethical and court standards that prohibit the assertion of a claim by an attorney, that is unwarranted under existing law, or which cannot be supported by a good faith argument for a revision or change in existing law.

Discussion: The regulations allow a guaranty agency to use reserve funds to appeal findings and determinations of

the Department by presenting its position in administrative hearings. However, the Secretary does not believe that it is an appropriate use of taxpayer funds to pay for the agencies' unsuccessful court challenges. The Secretary notes that the right to sue the Federal Government does not include the right to use Federal property to do so.

Changes: None.

Comment: Some commenters questioned the provision in § 682.418(b)(6) that, even if the guarantor prevails in its litigation, the Secretary will determine the amount of funds to be used to reimburse the guarantor. The commenters argued that this provision would make it practically impossible for an agency to hire counsel.

Discussion: The Secretary will reimburse a guaranty agency for all documented and reasonable legal expenses incurred by the agency if the agency substantially prevails in its claim against the Secretary.

Changes: None.

Section 682.418(b)(7) Lobbying Activities

Comment: Some commenters recommended a revision so that the restrictions in § 682.418(b)(7) would not prohibit dues paid to membership organizations that do not have lobbying as their principal purpose and activity. One guaranty agency commenter agreed with the regulatory language that was presented in the NPRM. Another commenter asked if the Secretary would consider a guaranty agency's response to an inquiry from a legislator to be lobbying. Some commenters misinterpreted the restriction in § 682.418(b)(7) to mean that a guaranty agency could not be a member of an organization that engages in lobbying, even if only to a minor extent.

Discussion: The regulations do not prohibit guaranty agencies from being members of organizations that engage in lobbying. The regulations simply prohibit Federal reserve funds from being used to pay that portion of the membership dues that would be used for lobbying. This restriction is similar to existing restrictions on the activities of charitable organizations under the Internal Revenue Code.

Changes: None.

Section 682.418(b)(8) Major Expenditures

Comment: Several commenters representing guaranty agencies objected to requirements in § 682.418(b)(8) restricting the use of reserve funds to pay for major expenditures on the grounds that it was an unnecessary attempt to micromanage the operations of a guaranty agency and would serve to hamper the effective operations of the guaranty agency. However, one guaranty agency commenter agreed with the regulatory language that was presented in the NPRM. One commenter acknowledged the Secretary's obligation to regulate and review a guaranty agency's investment of Federal reserve funds in major assets such as systems or facilities, but did not believe the regulations proposed by the Secretary provided enough guidance for how such proposed investments should be justified by the guaranty agencies. Another commenter recommended a more precise definition of the term ''major expenditure.'' The commenter stated that such costs as claim payments and personnel compensation are surely ''major'' expenditures, but doubted that the Secretary intended those expenditures to be included in the notification requirement under § 682.418(b)(8).

Discussion: The use of the term ''such as'' followed by some examples of costs to be considered does not mean that costs similar to those suggested by the commenters could not be evaluated. The Secretary will not require notification of an agency's intended lender claim payment. However, the Secretary would want to know about, and would be concerned if a guaranty agency intended to pay personnel compensation (presumably, a biweekly or monthly payroll) that exceeds 5 percent of the agency's reserve fund balance at the time the compensation is paid.

Changes: None.

Comment: One commenter representing a collection agency stated that it would not be easy to determine if payments made to a collection contractor would exceed the 5 percent criterion specified in the regulations. The commenter noted that a collection contractor works on a contingency basis, therefore, potential expenditures would be difficult to predict. The commenter also observed that a collection contractor is paid only if it successfully collects a debt, so the payment to the contractor may not be a true ''expenditure'' of funds, but is simply a fee paid for increasing the balance of the agency's Federal reserve fund.

Discussion: The commenter's point is well taken, but the Secretary sees no need to revise the regulations. If a guaranty agency believes that its payment to a collection contractor would exceed the 5 percent threshold, the Secretary expects to be notified.

Changes: None.

Section 682.418(b)(9) Public Relations.

Comment: One commenter from a school was opposed to the restrictions on public relations costs in § 682.418(b)(9). The commenter believed that it was appropriate for guaranty agencies to sponsor school training sessions, workshops, and conferences on all aspects of the title IV programs. The commenter stated that schools generally had insufficient resources available for funding such training, and without the financial assistance of guaranty agencies, it would be severely curtailed or eliminated.

Discussion: A guaranty agency is permitted to use the reserve fund to pay for activities that are ordinary and necessary for the fulfillment of the agency's FFEL guaranty responsibilities under the HEA, such as training of program participants and secondary school personnel, customer service functions that disseminate FFEL-related information and materials to schools, loan holders, prospective loan applicants, and their parents, and training at workshops and conferences. The Secretary does not believe it is appropriate for a guaranty agency to use Federal reserve funds to pay for an activity that is not necessary for the agency's fulfillment of its FFEL guaranty responsibilities.

Changes: None.

Comment: Commenters representing guaranty agencies recommended that the list of permissible public relations expenditures needs to include the furnishing of lodging, transportation, and honorarium to participants in FFEL related functions. Otherwise, according to the commenters, the performance of a guaranty agency's functions under the HEA will be hindered. They also recommended the addition of language prohibiting such expenditures where the sole purpose of the expenditure is to promote a favorable image of the guaranty agency. One guaranty agency commenter agreed with the regulatory language that was presented in the NPRM.

Discussion: Allowable public relations costs may include associated costs that are reasonable, including costs of the nature discussed by the commenters. The Secretary declines to list specific costs items in the regulations because of the number of different items that can be associated with allowable public relations costs. The Secretary also believes it would be superfluous to add language prohibiting such expenditures if the sole purpose of the expenditure is to promote a favorable image of the guaranty agency, because such expenditures already

would fail to meet the regulatory requirements pertaining to allowable public relations costs.

Changes: None.

Comment: One commenter asked if the restrictions on the use of reserve funds for public relations costs would mean that a guaranty agency could not publish an annual report.

Discussion: The Secretary does not consider a guaranty agency's annual report to be a public relations activity. In the Secretary's view, an annual report is a normal and customary business document. The key test concerning such a report would be for the agency to be able to document that the cost of the report was reasonable.

Changes: None.

Section 682.418(b)(10) Relocation of Employees

Comment: One commenter believed that § 682.418(b)(10) should be deleted because, in the commenter's opinion, the IRS rules regarding relocation expenses are sufficient.

Discussion: The issue of whether relocation expenses are income to a taxpayer for IRS purposes is irrelevant to the issue of whether the Federal reserve funds should pay for those costs.

Changes: None.

Section 682.410(b)(11) Travel Expenses

Comment: Commenters representing guaranty agencies stated that travel rates available to Federal employees are not available to guaranty agency employees and, therefore, § 682.418(b)(11) is not workable, but one guaranty agency commenter agreed with the regulatory language that was presented in the NPRM. The commenters also stated there are no standards provided by which a guaranty agency can develop a travel policy that will be approved by the Secretary. The commenters recommended a deletion of § 682.418(b)(11), and suggested that a guaranty agency should submit its travel plan and be able to use it unless expressly disallowed by the Secretary. Several commenters believed the restrictions on travel costs in § 682.418(b)(11) were unnecessary because the general rules governing reasonable costs would be sufficient.

Discussion: The Secretary has an obligation to protect diligently the Federal reserve funds and assets administered by guaranty agencies. Although there may be a number of alternative approaches that could be taken to protect those reserve funds and assets, the Secretary has not been persuaded by the commenters that the approach proposed in the NPRM was unreasonable, burdensome, or failed to protect the Federal interests.

Changes: None.

Section 682.418(c) Cost Allocation

Comment: One commenter supported the requirement that guarantors be required to develop cost allocation plans subject to audit, and also supported the requirement that the plans be reasonable, as that term is used in § 682.410, specifically that the plan pass the ''prudent person'' test. However, the commenter disagreed with the requirement that the plan must be consistent with OMB Circular A–87. In the commenter's view, OMB Circular A–87 is designed for a different class of entities than guaranty agencies, thus, the required application of it to guarantors would create ambiguities and contradictions that will be difficult to resolve. The commenter stated that the guarantor agreements with the Secretary are neither grants nor cost-reimbursement contracts; they are fee-for-service contracts, with the Secretary paying the guarantor a fee for each loan guaranteed, for each loan successfully prevented from default, and for each defaulted loan collected. The commenter believed the only element of the guarantor's agreement with the Secretary that resembles cost reimbursement is the partial reimbursement of claims paid by the guarantor to lenders.

Discussion: The Secretary has stated that OMB Circular A–87 applies to guaranty agencies. The Secretary does not agree that the fee-for-service rules apply to guaranty agencies. The guaranty agencies are not paid for services provided, but instead receive Federal funds to use in performing certain roles in the FFEL Program.

Changes: None.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan Programs, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032 Federal Family Education Loan Program)

Dated: November 21, 1996.

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising Part 682 as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.401 is amended by adding a new paragraph (b)(28) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(28) *Change in agency's records system.* The agency shall provide written notification to the Secretary at least 30 days prior to placing its new guarantees or converting the records relating to its existing guaranty portfolio to an information or computer system that is owned by, or otherwise under the control of, an entity that is different than the party that owns or controls the agency's existing information or computer system. If the agency is soliciting bids from third parties with respect to a proposed conversion, the agency shall provide written notice to the Secretary as soon as the solicitation begins. The notifications described in this paragraph must include a concise description of the agency's conversion project and the actual or estimated cost of the project.

* * * * *

3. Section 682.410 is amended by revising the introductory text in paragraph (a)(2), revising paragraphs (a)(2)(ii) and (x), and adding new paragraphs (a)(11)(iii) and (b)(11) to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) * * *

(2) *Uses of reserve fund assets.* A guaranty agency may not use the assets of the reserve fund established under paragraph (a)(1) of this section to pay costs prohibited under § 682.418, but shall use the assets of the reserve fund to pay only—

* * * * *

(ii) Costs that are reasonable, as defined under § 682.410(a)(11)(iii), and

that are ordinary and necessary for the agency to fulfill its responsibilities under the HEA, including costs of collecting loans, providing preclaims assistance, monitoring enrollment and repayment status, and carrying out any other guaranty activities. Those costs must be—

(A) Allocable to the FFEL Program;

(B) Not higher than the agency would incur under established policies, regulations, and procedures that apply to any comparable non-Federal activities of the guaranty agency;

(C) Not included as a cost or used to meet cost sharing or matching requirements of any other federally supported activity, except as specifically provided by Federal law;

(D) Net of all applicable credits; and

(E) Documented in accordance with applicable legal and accounting standards;

* * * * *

(x) Any other costs or payments ordinary and necessary to perform functions directly related to the agency's responsibilities under the HEA and for their proper and efficient administration;

* * * * *

(11) * * *

(iii) *Reasonable cost* means a cost that, in its nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The burden of proof is upon the guaranty agency, as a fiduciary under its agreements with the Secretary, to establish that costs are reasonable. In determining reasonableness of a given cost, consideration must be given to—

(A) Whether the cost is of a type generally recognized as ordinary and necessary for the proper and efficient performance and administration of the guaranty agency's responsibilities under the HEA;

(B) The restraints or requirements imposed by factors such as sound business practices, arms-length bargaining, Federal, State, and other laws and regulations, and the terms and conditions of the guaranty agency's agreements with the Secretary; and

(C) Market prices of comparable goods or services.

* * * * *

(b) * * *

(11) *Conflicts of interest.* (i) A guaranty agency shall maintain and enforce written standards of conduct governing the performance of its employees, officers, directors, trustees, and agents engaged in the selection, award, and administration of contracts or agreements. The standards of conduct must, at a minimum, require disclosure of financial or other interests and must mandate disinterested decision-making. The standards must provide for appropriate disciplinary actions to be applied for violations of the standards by employees, officers, directors, trustees, or agents of the guaranty agency, and must include provisions to—

(A) Prohibit any employee, officer, director, trustee, or agent from participating in the selection, award, or decision-making related to the administration of a contract or agreement supported by the reserve fund described in paragraph (a) of this section, if that participation would create a conflict of interest. Such a conflict would arise if the employee, officer, director, trustee, or agent, or any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of those parties has a financial or ownership interest in the organization selected for an award or would benefit from the decision made in the administration of the contract or agreement. The prohibitions described in this paragraph do not apply to employees of a State agency covered by codes of conduct established under State law;

(B) Ensure sufficient separation of responsibility and authority between its lender claims processing as a guaranty agency and its lending or loan servicing activities, or both, within the guaranty agency or between that agency and one or more affiliates, including independence in direct reporting requirements and such management and systems controls as may be necessary to demonstrate, in the independent audit required under § 682.410(b)(1), that claims filed by another arm of the guaranty agency or by an affiliate of that agency receive no more favorable treatment than that accorded the claims filed by a lender or servicer that is not an affiliate or part of the guaranty agency; and

(C) Prohibit the employees, officers, directors, trustees, and agents of the guaranty agency, his or her partner, or any member of his or her immediate family, from soliciting or accepting gratuities, favors, or anything of monetary value from contractors or parties to agreements, except that nominal and unsolicited gratuities, favors, or items may be accepted.

(ii) *Guaranty agency restructuring.* If the Secretary determines that action is necessary to protect the Federal fiscal interest because of an agency's failure to meet the requirements of § 682.410(b)(11)(i), the Secretary may require the agency to comply with any additional measures that the Secretary believes are appropriate, including the total divestiture of the agency's non-FFEL functions and the agency's interests in any affiliated organization.

* * * * *

4. A new § 682.418 is added to subpart D to read as follows:

§ 682.418 Prohibited uses of reserve fund assets.

(a) *General.* (1) A guaranty agency may not use the assets of the reserve fund established under § 682.410(a)(1) to pay costs prohibited under paragraph (b) of this section and may not use the assets of the reserve fund to pay for goods, property, or services provided by an affiliated organization that would exceed the affiliated organization's actual and reasonable cost of providing those goods, property, or services, unless the agency demonstrates to the Secretary, and receives the Secretary's concurrence, that such a payment would be in the Federal fiscal interest.

(2) All guaranty agency contracts with respect to its reserve fund or assets must include a provision stating that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that the contract includes an impermissible transfer of the reserve fund or assets or is otherwise inconsistent with the terms and purposes of section 422 of the HEA.

(b) *Prohibited uses of reserve fund assets.* A guaranty agency may use the assets of the reserve fund established under § 682.410(a)(1) only as prescribed in § 682.410(a)(2). Uses of the reserve fund that are not allowable under § 682.410(a)(2) include, but are not limited to—

(1) *Compensation for personnel services,* including wages, salaries, pension plan costs, post-retirement health benefits, employee life insurance, unemployment benefit plans, severance pay, costs of leave, and other benefits, to the extent that total compensation to an employee, officer, director, trustee, or agent of the guaranty agency is not reasonable for the services rendered. Compensation is considered reasonable to the extent that it is comparable to that paid in the labor market in which the guaranty agency competes for the kind of employees involved. Costs that are otherwise unallowable may not be considered allowable solely on the basis that they constitute personnel compensation. In no case may the reserve fund be used to pay any compensation, whether calculated on an hourly basis or otherwise, that would be proportionately greater than 118.05

percent of the total salary paid (as calculated on an hourly basis) under section 5312 of title 5, United States Code (relating to Level I of the Executive Schedule).

(2) *Contributions and donations,* including cash, property, and services, by the guaranty agency to others, regardless of the recipient or purpose, unless pursuant to written authorization from the Secretary;

(3) *Entertainment,* including amusement, diversion, hospitality suites, and social activities, and any costs associated with those activities, such as tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation, and gratuities;

(4) *Fines, penalties, damages, and other settlements* resulting from violations or alleged violations of the guaranty agency's failure to comply with Federal, State, or local laws and regulations that are unrelated to the FFEL Program, unless specifically approved by the Secretary. This prohibition does not apply if a non-criminal violation or alleged violation has been assessed against the guaranty agency, the payment does not reimburse an agency employee, and the payment does not exceed $1,000, or if it occurred as a result of compliance with specific requirements of the FFEL Program or in accordance with written instructions from the Secretary. The use of the reserve fund in any other case must be requested by the agency and specifically approved in advance by the Secretary;

(5) *Legal expenses* for prosecution of claims against the Federal Government, unless the guaranty agency substantially prevails on those claims. In that event, the Secretary approves the reimbursement of reasonable legal expenses incurred by the guaranty agency;

(6) *Lobbying activities,* as defined in section 501(h) of the Internal Revenue Code, including dues to membership organizations to the extent that those dues are used for lobbying;

(7) *Major expenditures,* including those for land, buildings, equipment, or information systems, whether singly or as a related group of expenditures, that exceed 5 percent of the guaranty agency's reserve fund balance at the time the expenditures are made, unless the agency has provided written notice of the intended expenditure to the Secretary 30 days before the agency makes or commits itself to the expenditure. For those expenditures involving the purchase of an asset, the term ''major expenditure'' applies to costs such as the cost of purchasing the asset and making improvements to it, the cost to put it in place, the net invoice price of the asset, ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation costs, and the costs of any modifications, attachments, accessories, or auxiliary apparatus necessary to make the asset usable for the purpose for which it was acquired, whether the expenditures are classified as capital or operating expenses;

(8) *Public relations,* and all associated costs, paid directly or through a third party, to the extent that those costs are used to promote or maintain a favorable image of the guaranty agency. The term ''public relations'' does not include any activity that is ordinary and necessary for the fulfillment of the agency's FFEL guaranty responsibilities under the HEA, including appropriate and reasonable advertising designed specifically to communicate with the public and program participants for the purpose of facilitating the agency's ability to fulfill its FFEL guaranty responsibilities under the HEA. Ordinary and necessary public relations activities include training of program participants and secondary school personnel and customer service functions that disseminate FFEL-related information and materials to schools, loan holders, prospective loan applicants, and their parents. In providing that training at workshops, conferences, or other ordinary and necessary forums customarily used by the agency to fulfill its responsibilities under the HEA, the agency may provide light meals and refreshments of a reasonable nature and amount to the participants;

(9) *Relocation of employees* in excess of an employee's actual or reasonably estimated expenses or for purposes that do not benefit the administration of the guaranty agency's FFEL program. Except as approved by the Secretary, reimbursement must be in accordance with an established written policy; and

(10) *Travel expenses* that are not in accordance with a written policy approved by the Secretary or a State policy. If the guaranty agency does not have such a policy, it may not use the assets of the reserve fund to pay for travel expenses that exceed those allowed for lodging and subsistence under subchapter I of Chapter 57 of title 5, United States Code, or in excess of commercial airfare costs for standard coach airfare, unless those accommodations would require circuitous routing, travel during unreasonable hours, excessively prolonged travel, would result in increased cost that would offset transportation savings, or would offer accommodations not reasonably adequate for the medical needs of the traveler.

(c) *Cost allocation.* Each guaranty agency that shares costs with any other program, agency, or organization shall develop a cost allocation plan consistent with the requirements described in OMB Circular A–87 and maintain the plan and related supporting documentation for audit. A guaranty agency is required to submit its cost allocation plans for the Secretary's approval if it is specifically requested to do so by the Secretary.

(Authority: 20 U.S.C. 1078)

[FR Doc. 96–30360 Filed 11–26–96; 8:45 am]

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Part VII

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures, Labeling and Certification Requirements for Electric Motors; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM–96–400]

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures, Labeling, and Certification Requirements for Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed Rule and Public Hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended, (the Act or EPCA) establishes energy efficiency standards and test procedures for commercial and industrial electric motors. EPCA also directs the Department of Energy (DOE or Department) to establish efficiency labeling requirements and compliance certification requirements for motors. Today, DOE proposes regulations to implement these requirements.

DATES: The Department will accept written statements, comments, data, and information regarding this notice no later than February 17, 1997.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, D.C., on January 15–16, 1997. Requests to speak at the hearing must be received by the Department no later than 4 p.m., January 6, 1997. Ten (10) copies of statements to be given at the public hearing must be received by the Department no later than 4 p.m., January 6, 1997. (See Section XIII–B below for further details.)

ADDRESSES: Written comments, written statements, and requests to speak at the public hearing, should be labeled ''Electric Motor Rulemaking'' (Docket No. EE–RM–96–400), and submitted to: U.S. Department of Energy, Office of Codes and Standards, EE–43, 1000 Independence Avenue, SW, Room 1J–018, Washington, DC 20585–0121. Telephone: (202) 586–7574.

The hearing will begin at 9:30 a.m. on January 15, 1997, and will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC.

Requests to speak may be hand delivered between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Such requests should be labeled ''Electric Motor Rulemaking,'' Docket No. EE–RM–96–400, both on the document and on the envelope.

Copies of the transcript of the public hearing and public comments received may be read at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585–0101, telephone (202) 586–6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The Department proposes to incorporate by reference, test procedures from the Institute of Electrical and Electronics Engineers/ American National Standards Institute (IEEE/ANSI), the National Electrical Manufacturers Association (NEMA), and the Canadian Standards Association (CSA). These test procedures are set forth in the standards publications listed below:

1. National Electrical Manufacturers Association Standards Publication MG1–1993 with Revision 1, ''Motors and Generators,'' paragraph MG1–12.58.1, ''Determination of Motor Efficiency and Losses.''

2. Institute of Electrical and Electronics Engineers ''Standard Test Procedure for Polyphase Induction Motors and Generators,'' IEEE 112–1991 (ANSI/IEEE 112–1992).

3. Canadian Standards Association ''Energy Efficiency Test Methods for Three-Phase Induction Motors,'' C390–93.

Copies of these standards publications may be viewed at the Department of Energy Freedom of Information Reading Room at the address stated above. Copies of the National Electrical Manufacturers Association standards may also be obtained from the National Electrical Manufacturers Association, 1300 North 17th Street, Suite 1847, Rosslyn, VA 22209. Copies of the Institute of Electrical and Electronics Engineers standards may also be obtained from the Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, or the American National Standards Institute (ANSI), 11 West 42nd Street, 13th Floor, New York, NY 10036 as ANSI/IEEE 112–1992. Copies of Canadian Standards Association standards may also be obtained from the Canadian Standards Association, 178 Rexdale Boulevard, Rexdale (Toronto), Ontario, Canada M9W 1R3.

For more information concerning public participation in this rulemaking proceeding, see section XIII of this notice.

FOR FURTHER INFORMATION CONTACT:

James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, 1000 Independence Avenue, SW., Washington, D.C. 20585–0121, (202) 586–8654

Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, D.C. 20585–0103, (202) 586–9507

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94–163, as amended, by the National Energy Conservation Policy Act of 1978 (NECPA), Pub. L. 95–619, the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357, and the Energy Policy Act of 1992 (EPAct), Pub. L. 102–486, established the Energy Conservation Program for Consumer Products other than Automobiles. Part 3 of Title IV of NECPA amended EPCA to add ''Energy Efficiency of Industrial Equipment,'' which includes electric motors. EPAct also amended EPCA with respect to electric motors, providing definitions in section 122(a), test procedures in section 122(b), labeling provisions in section 122(c), energy efficiency standards in section 122(d), and compliance certification requirements in section 122(e).

EPCA defines ''electric motor'' as any motor which is ''general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction of the National Electrical Manufacturers Association (NEMA) Designs A and B, continuous-rated, operating on 230/460 volts and constant 60 Hertz line power, as defined in NEMA Standards Publication MG1–1987.'' EPCA section 340(13)(A), 42 U.S.C. 6311(13)(A).

EPCA then prescribes efficiency standards for electric motors that are 1 through 200 horsepower, and ''manufactured (alone or as a component of another piece of equipment),'' except for ''definite purpose motors, special purpose motors, and those motors exempted by the Secretary.'' EPCA section 342(b)(1), 42 U.S.C. 6313(b)(1). Furthermore, it provides for exemption of certain types or classes of electric motors. EPCA section 342(b)(2), 42 U.S.C. 6313(b)(2).

The Act also requires that testing procedures for motor efficiency shall be the test procedures specified in NEMA Standards Publication MG1–1987, and the Institute of Electrical and Electronics Engineers (IEEE) Standard 112 Test Method B for motor efficiency, as in effect on October 24, 1992. EPCA section 343(a)(5)(A), 42 U.S.C. 6314(a)(5)(A). If the test procedure requirements of NEMA MG1–1987 and IEEE Standard 112 Test Method B for motor efficiency are amended, the Act directs the Secretary to amend these testing procedures to conform to such amended test procedures in the NEMA and IEEE standards, unless the Secretary determines, by rule, that to do so would not produce results that reflect energy efficiency, energy use, and estimated operating costs, and would be unduly burdensome to conduct. EPCA section 343(a)(5) (B) and (C), 42 U.S.C. 6314(a)(5) (B) and (C).

Additionally, EPCA directs the Secretary, after consultation with the Federal Trade Commission (FTC), to prescribe rules requiring motor labeling to indicate the energy efficiency on the permanent nameplate, to display the motor energy efficiency prominently in catalogs and other marketing materials, and to include other markings to facilitate enforcement of the energy efficiency standards. EPCA section 344(f), 42 U.S.C. 6315(f) and 344(d), 42 U.S.C. 6315(d).

Finally, the Act directs the Secretary to require motor manufacturers to certify compliance with the applicable energy efficiency standards through an independent testing or certification program nationally recognized in the United States. EPCA section 345(c), 42 U.S.C. 6316(c).

B. Background

The Department held a public meeting on June 2, 1995, to discuss issues and gather information related to the energy efficiency requirements for electric motors covered under EPCA, as amended. Comments were sought on the following issues: which equipment is covered by the statute; the nature and scope of required testing; use of independent testing and certification programs to establish compliance with applicable standards; the means of certifying such compliance to DOE; and possible labeling requirements.

Statements received after publication of the Notice of that public meeting in the Federal Register (60 FR 27051, May 22, 1995), and at the public meeting itself, have helped to refine the issues involved in this rulemaking, and have provided information that has contributed to DOE's proposed resolution of these issues. Portions of many of the statements are quoted and summarized in section III., Discussion of Proposed Rule. A parenthetical reference at the end of a quotation or passage in section III provides the location index in the public record of the portion of a statement that is being quoted or discussed.[1]

II. General Discussion

The Department's energy conservation program for consumer products is conducted pursuant to Part B of Title III of EPCA, 42 U.S.C. 6291–6309. Under EPCA, the consumer appliance standards program essentially consists of three parts: Testing; Federal energy conservation standards; and labeling. The appliance products covered by these parts include refrigerators and freezers, room air conditioners, central air conditioners and heat pumps, water heaters, furnaces, dishwashers, clothes washers and dryers, direct heating equipment, ranges and ovens, pool heaters, and fluorescent lamp ballasts. The program is codified in Title 10 of the Code of Federal Regulations, part 430—Energy Conservation Program for Consumer Products.

Since 10 CFR part 430 covers consumer products as distinct from commercial and industrial equipment, the Department proposes to create a new part 431 in the Code of Federal Regulations (10 CFR part 431), Energy Conservation Program for Commercial and Industrial Equipment, to cover certain commercial and industrial equipment covered under the Act. These include commercial heating and air-conditioning equipment, water heaters, certain lighting products, distribution transformers, and electric motors. This new commercial and industrial equipment program will consist of the same elements as the program covering consumer products: Testing; Federal energy efficiency standards; labeling; and certification and enforcement.

The Department of Energy today proposes to incorporate the energy efficiency standards and test procedures prescribed by EPCA for commercial and industrial electric motors, provisions to clarify and implement those requirements, and energy efficiency labeling and certification requirements for such motors into the new part 431. These include: Definitions in accordance with section 340(13)(A) of EPCA, 42 U.S.C. 6311(13)(A); test procedures prescribed by section 343(a)(5)(A) of EPCA, 42 U.S.C. 6314(a)(5)(A); standards prescribed section 342(b)(1) of EPCA, 42 U.S.C.

[1] Example: ''(ACEEE, No. 7 at 3.a.2.)'' refers to (1) a statement that was submitted by the American Council for an Energy Efficient Economy and is recorded in the DOE Freedom of Information Reading Room in the docket under ''Motors Workshop,'' June 2, 1995, as comment number seven; and (2) a passage that appears in paragraph 3.a.2. of that statement.

6313(b)(1); labeling requirements in accordance with section 344(d) of EPCA, 42 U.S.C. 6315(d); compliance certification requirements in accordance with section 345(c) of EPCA, 42 U.S.C. 6316(c).

Among the matters DOE addresses in this Notice are requirements for testing by manufacturers (including provisions as to confidence levels for results and sample size), use of mathematical methods to calculate energy efficiency as an alternative to actual testing, accreditation of testing laboratories, recognition of certification programs, testing during enforcement proceedings, and information to be displayed on a motor nameplate. The Department is incorporating from 10 CFR part 430 procedures for waiver of test procedures, procedures to exempt state regulation from preemption, and provisions for imported and exported equipment.

III. Discussion of Proposed Rule

A. Definitions

1. Electric Motor

EPCA prescribes energy efficiency standards for each ''electric motor'' with a horsepower rating from 1 through 200 horsepower and certain other characteristics. EPCA section 342(b), 42 U.S.C. 6313(b). ''Electric motor'' is defined as any motor which is ''a general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction motor of the National Electrical Manufacturers Association (''NEMA'') Design A and B, continuous-rated, operating on 230/460 volts and constant 60 Hertz line power, as defined in NEMA Standards Publication MG1–1987'' (NEMA MG1–1987). EPCA section 340(13)(A), 42 U.S.C. 6311(13)(A). The Department is concerned, however, that many of the terms in the foregoing definition are not sufficiently clear to identify which motors should be covered by the regulations.

NEMA suggests that DOE adopt a definition of ''electric motor'' which clarifies those terms as follows: (1) ''Continuous rated'' refers to ''continuous duty operation;'' (2) ''Foot-mounting'' encompasses foot-mounting ''motors with flanges and motors with explosion proof construction,'' but flange-mounting motors without feet are not included; and (3) ''Operating on 230/460 volts'' applies to ''motors that are rated at 230 volts, 460 volts, or multi-voltages that include 230 and/or 460 volts,'' and to motors that are ''arbitrarily rated at voltages other than 230 or 460 volts, but that may be operated on 230 and/or 460 volts, or any combination of the two.'' (NEMA, No. 9 at A.1.).

The Department agrees with and is proposing to adopt these NEMA proposals. (NEMA proposals to include metric equivalent motors within the definition of ''electric motor'' are discussed below.) In addition, as to the term ''foot-mounting,'' the Department proposes to make clear that motors with detachable feet are included within the definition of ''electric motor.'' The Department also proposes to add a definition to clarify the term, ''general purpose'' motor. The definition is drawn, in part, from language suggested by NEMA (Reliance, No. 8 at 3.a.3; NEMA, No. 9 at 4.; and Public Meeting, Tr. pgs. 36–41) and is discussed at greater length in section III.A.4. below. The definition of ''general purpose'' motor would give effect to the statutory definitions of both ''electric motor'' and ''definite purpose motor.'' The Department understands that some motors are essentially general purpose motors with, for example, minor modifications such as the addition of temperature sensors or a heater, or modifications in exterior features such as motor housing. Such motors can still be used for most general purpose applications, and the modifications have little or no effect on motor performance. Nor do the modifications affect energy efficiency. DOE does not believe that the modifications justify excluding these motors from meeting statutory energy efficiency levels, or that Congress intended to exclude them from coverage.

2. Metric Equivalents

EPCA defines ''electric motor'' on the basis of NEMA Standards Publication MG1–1987, Motors and Generators. EPCA section 340(13)(A), 42 U.S.C. 6311(13)(A). The definition provides, for example, that the motor must be ''a general purpose T-frame, . . . squirrel-cage . . . motor of the (NEMA) Design A and B . . . as defined in . . . MG1–1987.'' The Act prescribes nominal full load energy efficiency standards for electric motors that have certain combinations of horsepower, number of poles (speed in revolutions per minute), and enclosure type, EPCA section 342(b)(1), 42 U.S.C. 6313(b)(1), all of which are based on the construction and rating system in NEMA MG1–1987 which utilizes English or customary units of measurement. The specific combinations in the statute are the typical motors available in the United States, and such motors constructed in accordance with the standards in MG1 are often referred to as ''NEMA motors.''

By contrast, general purpose electric motors manufactured outside the United States and Canada are defined and described with reference to International Electrotechnical Commission (IEC) Standard 34 series, Rotating electrical machines, which employs terminology and criteria different from those used in the EPCA definition for motors. The performance attributes of these ''IEC motors'' are rated pursuant to IEC Standard 34–1, Rating and performance, which uses metric units of measurement and a different construction and rating system than NEMA MG1–1987. It employs, for example, units such as kilowatts instead of horsepower. As with NEMA motors, standard IEC motors exist, consisting of specific combinations of kilowatts and other IEC rating factors.

Although the statutory definition of ''electric motor'' does not specifically mention IEC motors, the Department believes that the Act covers IEC motors that are identical or equivalent to motors included in the statutory definition.

The Department understands that IEC motors generally can perform the identical functions of NEMA motors. Comparable motors of both types provide virtually identical amounts of rotational mechanical power, and generally can operate or provide power for the same pieces of machinery or equipment. A given industrial central air conditioner, for example, could operate with either an IEC or NEMA motor with little or no effect on performance.

It is also DOE's understanding, however, that small differences between the two types of motors affect their suitability for particular applications. For example, IEC motors tend to be slightly smaller than comparable NEMA motors and the shaft dimensions of the two types of motors are slightly different. Thus, in some situations, differing physical characteristics could render it difficult or impossible to install one type of motor in a piece of machinery designed to be operated by the other type. By way of further example, IEC motors have higher in-rush currents than comparable NEMA motors, and thus will tend to start and reach normal performance levels more slowly than NEMA motors. Consequently, IEC motors will not be suitable for machinery requiring a high torque start, but will be more suitable where a gradual start is appropriate.

As mentioned above, IEC motors are designed and rated according to criteria in IEC Standard 34–1, whereas EPCA defines electric motor in terms of design and rating criteria set forth in NEMA

MG1. It is DOE's understanding that the differences in criteria concern primarily nomenclature, units of measurement, standard motor configurations, and design details, but have little bearing on motor function. For example, under EPCA, an electric motor must be a ''squirrel cage'' motor (i.e., have a certain physical shape) and be ''continuous rated'' (i.e., designed for continuous operation). IEC Standard 34–1 does not use either of these terms, but uses the term ''cage'' to refer to the same shape as is referred to by the term ''squirrel cage,'' and uses the term ''duty type S–1'' to refer to motors designed for continuous operation.

Similarly, the different measures for rating motor power—IEC Standard 34–1 uses kilowatts and NEMA's Publication MG1–1987 uses horsepower—do not affect the quality or quantity of a given motor's power. They are simply different ways to express that power. Under well established rules for conversation, one horsepower equals .746 kilowatts, and one kilowatt equals 1.34 horsepower. Thus, for example, a standard 5 horsepower motor has an output that can also be expressed as 3.73 kilowatts, and a standard 15 kilowatt motor has a horsepower of 20.1.

As commenters indicated, however, the standard power ratings for IEC and NEMA motors are not exactly equal, although the differences are slight. A standard 7.5 horsepower motor, for example, would have an exact metric equivalent of 5.59 kilowatts, but the closest equivalent standard power for an IEC motor is 5.5 kilowatts. (WE, No. 2 at 3a(1); Reliance, No. 8 at 3.a.1). IEC publishes a table of standard kilowatt ratings and equivalent standard horsepower ratings for general purpose motors, in IEC 72–1, Dimensions and output series for rotating electrical machines, (6th ed. 1991–02), section D.5.1, at page 119. (NEMA, No. 9 at Exhibit 1) The table shows a very close match between the two sets of standard ratings. For example, the standard 5 horsepower and 15 kilowatt motors mentioned above equal 3.73 kilowatts and 20.1 horsepower, respectively, and the IEC table shows that corresponding standard IEC and NEMA motors are 3.7 kilowatts and 20 horsepower. This close match between standard power ratings tends to support the conclusion that EPCA requirements cover IEC motors, although the differences do raise an issue, discussed below, as to how EPCA's efficiency standards *apply* to IEC motors.

Several commenters asserted that IEC motors should be covered by EPCA's efficiency standards. (ACEEE, No. 7 at 3.a.1; Brook Hansen, No. 5; Reliance, No. 8 at 3.a.1; NEMA, No. 9 at A.2.). The American Council for an Energy-Efficient Economy (ACEEE) states that ''metric rated motors should be considered covered by the standard, and that the minimum efficiency of the class (open or closed and number of poles) for the corresponding equivalent or next-highest power rating NEMA motors be applied. Efficiency of metric motors must be determined by IEEE method 112(b) or CSA C390.'' (ACEEE, No. 7 at 3.a.1). In explaining its view, Reliance Electric Company (Reliance) states as follows: ''An equivalent IEC motor exists for each NEMA motor identified in the Act. IEC and NEMA motors can be used interchangeably in most general purpose applications. Placing efficiency requirements on NEMA horsepower rated motors but not on IEC equivalent motors may give preferential treatment to the IEC motors which may be offered at lower than the required efficiency levels. It is therefore in the interest of the intended goal of energy conservation to include coverage of IEC or metric motors in the proposed rules to implement the EPAct requirements for motors.'' (Reliance, No. 8 at 3.a.1).

One element of EPCA's definition of ''electric motor'' is that the motor be a NEMA ''T-frame'' motor, meaning that it meets certain dimensional standards. In asserting that IEC motors are covered by the Act, NEMA indicates that certain IEC motors have dimensions comparable to T-frame motors, and states that DOE's regulations should make clear these IEC motors are covered. EPCA also states that an ''electric motor'' must be NEMA ''Design A and B.'' NEMA asserts that IEC Design N motors are comparable to the NEMA Design A and B motors. (NEMA, No. 9 at A.1.).

The Department interprets the Act as requiring that IEC motors satisfy the same energy efficiency requirements that the statute applies to identical or equivalent to NEMA motors. Thus, under the regulation proposed today, the definition of ''electric motor'' includes IEC motors that have physical and performance characteristics which are either identical or equivalent to the characteristics of NEMA motors that fit within the statutory definition. In the Department's view, there can be no question that EPCA's requirements cover any motor whose physical and performance characteristics fit within the statutory definition of ''electric motor.'' This is true regardless of the measuring units used to describe the motor's performance or characteristics, or of the criteria pursuant to which it was designed.

The Department also understands that comparable IEC and NEMA motors typically are closely equivalent but not identical, and that the characteristics of many IEC motors closely match EPCA's definition of ''electric motor'' but deviate from it in minor respects. It also appears that, for most general purpose applications, such IEC motors can be used interchangeably with the NEMA motors. In addition, as discussed below, the efficiency standards prescribed for standard horsepower motors are readily applicable to both standard and non-standard kilowatt motors. The Department believes that a broad exclusion of IEC motors from energy efficiency requirements would conflict with the energy conservation goal of the Act, was not intended by Congress, and would be irrational. Furthermore, the Department agrees with the views of commenters that placing energy efficiency requirements on NEMA motors but not on equivalent IEC motors could have the effect of giving preferential treatment to the IEC motors. Thus, the Department construes the EPCA definition of electric motor to include motors that have characteristics equivalent to those set forth in that definition.

Finally, statements at the public meeting and in written comments addressed whether IEC 100 millimeter frame size motors in particular are covered by energy efficiency requirements. As previously stated, the statutory definition of ''electric motor'' incorporates frame size by requiring a motor to be ''T-frame'' as defined in NEMA MG1–1987. NEMA states that the IEC 100 millimeter frame motor is equivalent to the discontinued NEMA 160 frame size (NEMA, No. 9 at A.2.), and examination of NEMA MG1–1987 confirms that it does not include T-frame motors that are 160 series. Therefore, since the IEC 100 frame motor apparently is not equivalent to any T-frame motor, it appears not to be covered by the Act.

3. Basic Model

It is common for a single motor manufacturer to make numerous models of the electric motors covered by EPCA, and under the Act each model is potentially subject to testing for energy efficiency. Often, however, several models are essentially the same motor, but with each model having some refinement that does not significantly affect the energy efficiency or performance of the motor. One way to meet the EPCA mandate that test procedures ''not be unduly burdensome to conduct,'' EPCA section 343(a)(2), 42 U.S.C. 6314(a)(2), is to determine which

models have electrical and mechanical characteristics, such as horsepower, speed, and enclosure type, that are essentially identical. Each such group of models would be categorized into a family and only representative samples within each family would be tested. The Department proposes to use the term ''basic model'' to identify a family of commercial or industrial motors, following the approach it employs for residential appliance products.

With regard to the residential appliance program, the term ''basic model'' is defined as follows: ''Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer and—. . . [as to dishwashers, for example] which have electrical characteristics that are essentially identical, and which do not have any differing physical or functional characteristics which affect energy consumption.'' 10 CFR 430.2. ''Basic model'' is a term used to describe products or items of equipment whose performance, design, mechanical, and functional characteristics are essentially the same. Components of similar design may be substituted in a basic model without requiring additional testing if the represented measures of energy consumption continue to satisfy applicable provisions for sampling and testing. In the case of electric motors, a manufacturer may produce numerous models that have different model numbers but are essentially the same, all based on variations in design features that do not affect energy consumption.

In the notice of public meeting that solicited comments on issues involved in this rulemaking, the Department stated that it was considering the following definition of ''basic model'' for electric motors:

> all units . . . manufactured by one manufacturer and . . . having the same rating, electrical characteristics that are essentially identical, and no differing physical or functional characteristics which affect energy consumption or efficiency.

60 FR at 27052. Underwriters Laboratories Inc. (UL), ACEEE, and NEMA all support such a definition. (UL, No. 4 at ''Basic Model''; ACEEE, No. 7 at 3.a.2; NEMA, No. 9 at A.3.) The Department proposes to adopt this definition of ''basic model.''

NEMA suggests that the proposed rule require each basic model to consist of units that have one of the 113 combinations of horsepower (or kilowatts), number of poles, and open or closed construction for which section 342(b)(1) of EPCA, 42 U.S.C. 6313(b)(1), specifies an efficiency standard. NEMA, as well as Reliance, suggest that this proposal be implemented by defining the term ''rating,'' which is part of the basic model definition, as being one of the 113 combinations in EPCA section 342(b)(1). (For this purpose, NEMA proposes that motors with a horsepower rating between two levels specified in the Act be treated as having the higher level, i.e. their horsepowers would be ''rounded up.'') The Department agrees with these suggestions by NEMA and Reliance, and in the attached rule proposes to adopt them, with one exception. Rather than ''rounding up'' all horsepowers that are at levels between those specified in section 342(b)(1) of EPCA, DOE would use the rounding method described in Part III–D–1 below.

The Department believes the foregoing approach to defining ''basic model'' is a sound means to reduce the burden of testing. It would apply an approach to electric motors that has proven effective in the residential appliance program, but with appropriate modifications given the nature of these motors.

4. General Purpose Motor, Definite Purpose Motor, and Special Purpose Motor. As already discussed, EPCA prescribes efficiency standards for certain ''electric motors.'' EPCA section 342(b)(1), 42 U.S.C. 6313(b)(1), The standards do not apply to ''definite purpose motors'' or ''special purpose motors.'' These three terms are defined as follows:

> The term ''electric motor'' means any motor which is a *general purpose* T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction motor of the National Electrical Manufacturers Association, Design A and B, continuous rated, operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1–1987. EPCA section 340(13)(A), 42 U.S.C. 6311(13)(A). (Emphasis added.)
>
> The term ''definite purpose motor'' means any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual or for use on a particular type of application and which cannot be used in most general purpose applications. EPCA section 340(13)(B), 42 U.S.C. 6311(13)(B).
>
> The term ''special purpose motor'' means any motor, other than a general purpose motor or definite purpose motor, which has special operating characteristics or special mechanical construction, or both, designed for a particular application. EPCA section 340(13)(C), 42 U.S.C. 6311(13)(C).

The definitions are not straightforward, however, and raise questions as to which motors the efficiency standards apply to. The Department is also concerned about the possibility that a manufacturer could make modifications to an ''electric motor'' subject to efficiency standards, particularly minor modifications, and improperly claim that the motor is an exempt definite or special purpose motor. To address these concerns, the Department proposes (1) a definition of ''general purpose motor,'' which is a term used as part of EPCA's definition of ''electric motor'' but is not itself defined in EPCA, and (2) to define ''special purpose motor'' using language that is different from the wording of the EPCA definition of that term, but that has the same meaning as the statutory definition. The Department also proposes to adopt verbatim the statutory definition of ''definite purpose motor.''

Before discussing these proposals, the Department notes that the terms EPCA uses to refer to particular motors may differ from terms commonly used in the industry. The Department understands, for example, that the term ''stock motor,'' rather than ''general purpose motor,'' is often used to refer to standard motors typically sold through distributors, and that ''custom motor'' refers to a motor designed for use in unusual conditions, or for particular applications or types of applications. As indicated below, depending upon its precise characteristics, such a ''custom motor'' could be either a definite, special or even general purpose motor as those terms are used in EPCA. To avoid confusion, and because this notice concerns rules to implement EPCA, the discussion here uses the terms used in the statute. The industry should keep in mind, however, that the failure here to use a common designation for a type of motor, such as ''stock motor,'' does not mean that such type of motor is not addressed by this notice.

Section 340(13) of EPCA clearly defines electric, definite purpose and special purpose motors as being mutually exclusive. In the definition of ''electric motor,'' relevant for present purposes is that it must be ''a general purpose . . . motor.'' By contrast, ''definite purpose motor'' is defined in part as a motor that ''cannot be used in most general purpose applications,'' and ''special purpose motor'' is defined in part as ''other than a general purpose . . . or definite purpose motor.'' The Act does not clearly spell out, however, the precise distinctions between these different types of motors.

Section 340(13)(A) of EPCA provides that the definition of ''general purpose motor'' shall be drawn from NEMA MG1–1987. That NEMA MG1–1987

definition, in pertinent part, is as follows: [2]

. . . designed in standard ratings with standard operating characteristics and mechanical construction for use under usual service conditions without restriction to a particular application or type of application.

NEMA suggests that the Department adopt this language, with minor modifications, as the sole definition of ''general purpose.'' This definition appears to complement the NEMA MG1–1987 definition of ''definite purpose motor,'' which in essence is *part* of the EPCA definition of that term, and which reads as follows:

. . . any motor designed in standard ratings with standard operating characteristics or mechanical construction for use under service conditions other than usual or for use on a particular type of application.

NEMA MG1–1.09. These two definitions do not overlap, and appear to include virtually all motors with standard designs. They appear to contemplate that a general purpose motor modified so as to be suitable for unusual conditions or a particular type of application would be classified as a definite purpose motor.

But the EPCA definition of ''definite purpose motor'' states in addition that the motor ''cannot be used in most general applications.'' Thus, for example, a general purpose motor modified so as to be suitable for use on a particular application, but that *can* still be used in most general purpose applications, is not a ''definite purpose motor'' under the statute. The same would be true of a motor designed with standard ratings and operating characteristics, but for use under unusual service conditions, and which is also capable of most general purpose uses. Nor would such motors be within the NEMA MG1–1987 definition of ''general purpose motor,'' since they are not designed ''for use under usual service conditions without restriction to a particular application.'' The NEMA MG1–1987 definition of ''general purpose motor,'' therefore, does not closely complement the *statutory* definition of ''definite purpose motor.'' If the Department were to adopt the NEMA MG1–1987 definition of ''general purpose motor,'' as suggested by NEMA, certain motors of standard design would be neither ''general purpose'' nor ''definite purpose'' (nor ''special purpose'') under the regulations. Consequently, they would not be covered by efficiency standards, or excluded from coverage. The Department believes this would be an unsound interpretation of EPCA.

In the Department's view, a motor designed with standard features (i.e. with standard ratings, and standard operating characteristics or mechanical construction) for use under unusual conditions or for a particular type of application, and that can still ''be used in most general purpose applications,'' EPCA section 340(13)(B), 42 U.S.C. 6311(13)(B), is covered by the statute. That type of motor is specifically excluded from the definition of ''definite purpose motor.'' We are aware of no reason why Congress would have created such an exclusion other than to require that such motors meet efficiency standards. The statute states that definite purpose motors need not meet the standards. The sole reason for carving out from that classification a type of motor that would otherwise fall within it, would be to require that the motor meet the efficiency standards.

The Department's interpretation of EPCA also will serve the energy conservation goals of the statute and makes sense as a practical matter. First, there seem to be strong reasons in favor of, and no reasons against, applying the standards to any motor that is designed in standard ratings, has standard operating characteristics or mechanical construction, and is capable of being used in most general purpose applications, even if it is designed for a particular use. The Department understands that the features making such a motor suitable for a particular use have little or no effect on the performance of the motor as such, or on its efficiency. Moreover, it appears that often a particular use motor of a given rating, and a motor of the same rating that meets the definition of ''general purpose'' under NEMA MG1–1987, would be the same ''basic model,'' and be equally capable of meeting efficiency standards. Thus, particular use motors that can be used in general purpose applications should be treated the same under EPCA as general purpose motors, and energy savings achieved under the Act would be enhanced by applying its standards to such particular use motors.

Second, this interpretation of EPCA addresses a possible means of evading the statute, by reducing the risk that general purpose motors that comply with EPCA's efficiency standards will be replaced by definite purpose motors that do not. To manufacture a general purpose motor that complies with EPCA may sometimes be more burdensome than to manufacture a non-complying general purpose motor that has been modified to be suitable for certain definite purpose uses, but that remains capable of satisfying most general purpose applications. For example, a non-complying general purpose motor could be modified by adding a heater to make it suitable for use in certain high humidity conditions, or by adding screening (to an open motor) to protect against invasion by rodents in applications such as agricultural environments. It might be cheaper to manufacture such motors than to manufacture a comparable general purpose motor that meets EPCA's energy efficiency standards. In such a situation, a manufacturer would have an incentive to try to sell the modified, non-complying motor in the general purpose market. The statutory definition of ''definite purpose motor'' appears designed to prevent that result.

Based on the foregoing, the Department proposes a two-part definition of ''general purpose motor.'' The first part in essence provides that a motor is ''general purpose'' if it meets the criteria in NEMA MG1–1987, and largely incorporates the language suggested by NEMA. (NEMA, No. 9 at A.4.). This includes NEMA's suggestion that section 14.02 of NEMA MG1–1993 be cited as providing examples of ''usual service conditions,'' although not its suggestion that the words ''for general purpose applications'' be included in the definition. The latter language is not in the NEMA MG1 definition of ''general purpose,'' and appears to be redundant here. The second part of the Department's proposed definition in effect provides that, alternatively, a motor is also ''general purpose'' if it meets the EPCA criteria for a definite purpose motor except that it can be used in most general purpose applications.

As stated above, the Department is proposing to adopt without change the EPCA definition of ''definite purpose motor.'' One element of that definition is that a motor be designed for ''service conditions other than usual.'' The Department agrees with and accepts the comments that an exhaustive list of such conditions cannot be developed, and should not be included in the regulations. (Reliance, No. 8 at 3.a.3; NEMA, No. 9 at A.4.). ACEEE ''recommends that 'definite purpose' motors be defined as all motors that do not meet the specifications for 'usual service conditions' as defined in NEMA MG1–1993–14.02.'' (ACEEE, No. 7 at 3.a.3). The Department declines to accept that suggestion because it agrees

[2] The definition is contained in section MG 1–1.05 of NEMA MG1–1987. Other parts of the definition are either incorporated directly into the EPCA definition of ''electric motor,'' incorporated into other statutory provisions, or grouped with such elements. The Department believes that those portions of section MG1–1.05 are irrelevant for purposes of defining ''general purpose'' in the DOE regulations.

with NEMA and Reliance that section 14.02 does not provide a conclusive list of ''usual service conditions.''

NEMA recommends that ''motors designed for explosion-proof conditions, which could be considered an unusual service condition under NEMA MG1–1993, be expressly defined as covered products. The Act expressly authorizes a two-year extension of the effective date for efficiency standards for 'motors which require listing or certification by a nationally recognized safety testing laboratory.' EPCA section 342(b)(1), 42 U.S.C. 6313(b)(1). This reference was intended to apply to explosion-proof motors which, despite their use in unusual service conditions, are otherwise general purpose motors.'' (NEMA, No. 9 at A.4.). The Department agrees with NEMA that explosion-proof motors are covered by EPCA, and believes that the proposed definition of ''general purpose motor'' would include such motors and therefore render them subject to the efficiency requirements. Nevertheless, to avoid possible uncertainty, and to address NEMA's concern, the Department proposes to accept NEMA's suggestion that explosion-proof motors be expressly defined as covered products. The proposed definition of ''electric motor,'' therefore, includes such motors.

Finally, the Department believes there is potential for uncertainty as to whether particular motors meet EPCA's definition of ''special purpose motor,'' or instead are ''general purpose'' or ''definite purpose'' motors. Although the definition of ''special purpose motor'' states in part that it is ''other than a general purpose motor or a definite purpose motor,'' the remaining criteria defining a special purpose motor closely resemble certain of the criteria defining a definite purpose motor. Significant potential exists for misclassifying a motor, because fine distinctions must sometimes be made to determine precisely which set of criteria a motor meets. Such determinations can be significant, because if a motor meets the ''definite purpose'' criteria, it would be covered by the standards if it can be used for most general purpose applications. The Department therefore proposes a definition of ''special purpose motor'' that clarifies the EPCA definition but does not alter its substance, i.e., the proposed definition includes the same motors as the statutory definition. As suggested by NEMA, the Department does not attempt to elaborate on the statutory definition of ''special purpose motor.''

5. Enclosed Motor and Open Motor

The Department proposes to incorporate the statutory definitions of the terms ''enclosed motor'' and ''open motor.''

6. Efficiency and Nominal Full Load Efficiency

The Department proposes to incorporate the statutory definition of the term ''efficiency'' into a definition of ''average full load efficiency.'' Under the Act and the proposed regulations, it is the average full load efficiency of a motor that must be measured through test procedures. The proposed rule also defines ''nominal full load efficiency'' in terms that differ from the language used in the statute to define that term, and that clarify and implement, but do not deviate from, the substance of the statutory definition.

B. Test Procedures for the Measurement of Energy Efficiency

EPCA requires that the regulatory test procedures for electric motors shall be the test procedures specified in NEMA MG1–1987 and IEEE Standard 112 Test Method B for motor efficiency, as in effect on the date of the enactment of EPAct. EPCA section 343(a)(5)(A), 42 U.S.C. 6314(a)(5)(A). If the test procedures in NEMA MG1 and IEEE Standard 112 are subsequently amended, the Secretary is required to revise the regulatory test procedures for electric motors to conform to such amendments, unless the Secretary determines by rule, supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures described in sections 343(a) (2) and (3) of EPCA, 42 U.S.C. 6314(a) (2) and (3).[3] EPCA section 343(a)(5)(B), 42 U.S.C. 6314(a)(5)(B).

NEMA MG1–1987 was revised and superseded by NEMA MG1–1993, which was issued on November 19, 1992, and published in October 1993. Revision 1 to NEMA MG1–1993, was added on December 7, 1993. Whereas NEMA MG1–1987 required ''efficiency and losses'' to be determined in accordance with IEEE Standard 112, NEMA MG1–1993 with Revision 1 now permits such determinations based on application of either IEEE Standard 112 or Canadian Standards Association (CSA) Standard C390. In addition, whereas NEMA MG1–1987 was silent on determination of motor efficiency for polyphase motors greater than 125 horsepower covered by the statute, NEMA MG1–1993 with Revision 1 now permits testing such motors in accordance with IEEE 112, with stray-load loss determined by direct measurement or indirect measurement. Since enactment of section 343(a)(5)(B) of EPCA, no other substantive amendments have been made to the test procedures in either NEMA MG1–1987 or IEEE Standard 112 Test Method B.

ACEEE, Reliance, and NEMA support the adoption of NEMA MG1–1993 with Revision 1. ACEEE explains that the CSA Standard C390–93 test procedures are a refinement of the IEEE 112 Test Method B, offering advantages in clarity which can lead to greater reproducibility of test results. (ACEEE, No. 7 at 3.b.1).

The Department will adopt the new test procedure provisions of NEMA MG1–1993 with Revision 1, to permit use of CSA Standard C390–93 Test Method (1) and testing covered motors greater that 125 horsepower. The Department does not intend to determine that these amendments to MG1–1987 fail to meet the requirements of sections 343(a) (2) and (3) of EPCA.

C. Units to be Tested

EPCA requires that the test procedures prescribed for motors by DOE be ''reasonably designed to produce test results which reflect energy efficiency,'' yet not be ''unduly burdensome'' to conduct. EPCA § 343(a)(2), 42 U.S.C. 6314(a)(2). Efficiency testing of each unit of an electric motor covered by EPCA could take ten to twelve hours and cost up to $2,000.00. As discussed above, the classification of motors into ''basic models'' is one step to prevent expenditure of excessive time and money on testing. The Department also proposes to permit use of a statistically meaningful sampling procedure for selecting test specimens, so as to further reduce the testing burden on manufacturers while giving sufficient assurance that the true mean energy efficiency of a basic model meets or exceeds the applicable energy efficiency standard established in EPCA. But

[3] Section 343(a)(2) of EPCA reads as follows: ''Test procedures prescribed in accordance with this section shall be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment (or class thereof) during a representative average use cycle (as determined by the Secretary), and shall not be unduly burdensome to conduct.''

Section 343(a)(3) of EPCA reads as follows: ''If the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use in a representative average-use cycle (as determined by the Secretary), and from representative average unit costs of the energy needed to operate such equipment during such cycle. The Secretary shall provide information to manufacturers of covered equipment respecting representative average unit costs of energy.''

notwithstanding adoption of these measures, because a motor manufacturer sometimes will produce a substantial number of basic models, it could still face a potentially substantial testing burden. Therefore, the Department also proposes to permit use of alternative methods, other than actual testing, for determining the efficiency of some basic models.

ACEEE, Reliance, and NEMA assert that it is impractical to require testing of every motor manufactured, or even of samples of each basic model. They find it acceptable to randomly test representative samples of some motor designs, and to use alternative methods for determining the efficiency of other motors. The purpose of sample testing would be to determine whether the average full load efficiency of the basic model meets or exceeds the EPCA requirement, not to confirm the efficiency level of each individual motor. (ACEEE, No. 7 at 3.b.2 & 3.b.3; Reliance, No. 8 at 3.b.2; and NEMA, No. 9 at B.2). Underwriters Laboratories (UL, No. 4 at ''Testing Sampling Plan''), Reliance and NEMA describe various methods of determining the number of motors to be tested, including 100 percent of production, sampling by attributes according to Military Standard MIL–STD–105E, and sampling a minimum of five units produced over a specified time, such as two months.

The Department reviewed the industry sampling recommendations and other sampling systems that could provide guidance as to how many and which units should be tested to determine compliance. Criteria used by the Department in this process include:

(1) Minimizing manufacturer's testing costs;

(2) Limiting the calendar time required for testing;

(3) Assuring compatibility with the sampling plan promulgated for the Department's commercial labeling program;

(4) Providing a high statistically valid probability that basic models that are tested meet applicable energy efficiency standards; and

(5) Providing a high statistically valid probability that a manufacturer preliminarily found to be in noncompliance will actually be in noncompliance.

Based on a review of the industry statements, three alternatives as to sample size were considered:

(1) Test the total population (100%) of covered equipment;

(2) For each basic model, test a predetermined fixed number of production units; and

(3) For each basic model, test one unit at a time or batches, until a determination can be made that the basic model is in compliance or noncompliance.

Explanations of all three sampling procedures are contained in the ''Final Rulemaking Regarding the Sampling Requirements of Consumer Product; Test Procedures,'' 44 FR 22410–18 (April 13, 1979) and the ''Energy Conservation Program for Consumer Products,'' 45 FR 43976–44087 (June 30, 1980).

The first sampling procedure would test every unit of a covered motor and is the only way to determine with 100 percent certainty that every motor manufactured is in compliance with the statute. Even assuming such approach is authorized by the Act, the cost and time constraints associated with this alternative make it infeasible.

A second alternative is to test a predetermined fixed number of production units for each basic model. In order to use this approach, sufficient numbers of units must be tested to yield results with high levels (e.g. 90 percent) of statistical confidence. The determination of the number of units to be tested is based in part on expected unit-to-unit variability. However, reliable estimates of unit-to-unit variability of motors are often unavailable and significant differences may exist among basic models and manufacturers. Thus, the Department concludes that a single sample size giving sufficiently high assurance of compliance cannot be established that will apply to all motors and manufacturers, and that will not impose unreasonably high testing costs for some manufacturers.

The third alternative considered was testing until a determination can be made that a basic model is in compliance or noncompliance. In this alternative, the size of the total sample is not determined in advance. Instead, after each unit or group of units is tested, a decision is made to (1) accept, (2) reject, or (3) suspend judgment and continue testing additional sample units until a decision is ultimately reached. This method often permits reaching a decision on the basis of fewer tests than fixed number sampling plans. The Department notes that this third alternative is the basis for most of the statistical sampling procedures established for consumer appliance products at 10 CFR 430.24, Units to be Tested. The Department proposes to adapt such sampling procedures to electric motors. The Department believes that motor manufacturers utilizing production techniques that assure low variance among units of a particular basic model could test fewer units to demonstrate compliance.

In the case of actual testing, the proposed procedures require a sample of units of a basic model to be randomly selected and tested. A simple average of the values would be calculated, which would be the actual mean value of the sample. For each basic model of electric motor, a sample of sufficient size would be selected at random and tested to ensure that any represented value of energy efficiency is no greater than the lower of (A) the mean of the sample or (B) the lower 90 percent confidence limit of the mean of the entire population of that basic model, divided by a coefficient applicable to the represented value. The coefficient applicable to a given represented value would be the ratio of the minimum efficiency, as provided in NEMA MG1–1993, Table 12–8, to the corresponding nominal full load efficiency in Table 12–8 that (1) equals the represented value, or (2) is the closest lower value to the represented value. Thus, the coefficient would be derived from the 20 percent loss difference on which NEMA bases the minimum efficiency in Table 12–8.

This approach is similar to the methodology used in the Department's consumer appliance program, which is intended to provide an acceptable level of assurance that test results will be applicable to all units of a basic model, without creating an undue testing burden for manufacturers. Like the consumer appliance program, the sampling plan for electric motors incorporates a confidence limit approach, which would give assurance at a specified level of confidence that the mean efficiency of the total population of units being manufactured and sold is at or above the represented value of energy efficiency (e.g., the efficiency set forth in a certification of compliance or on a label). The proposed rule, however, takes a slightly different approach than is used in the appliance program, at 10 CFR 430.24, for calculating an ''adjusted lower 90 percent confidence limit.'' Under § 430.24, a single factor is specified for each product, and the ''adjusted confidence limit'' for each basic model of that product is calculated by dividing the lower confidence limit for all units of that basic model by the specified factor. Under the proposed rule, by contrast, the divisor is a factor that relates to the efficiency level of the particular motor being analyzed. As with the sampling plans for consumer appliances, this factor and other elements of the statistical sampling plan

for electric motors are intended to reasonably reflect variations in materials, and in the manufacturing and testing processes.

NEMA has recommended that the confidence limit constraint for representations of motor efficiency be the lower 90 percent confidence limit of the true mean divided by 0.95. (NEMA, No. 9 at B.2.). It appears that NEMA is proposing the same methodology used in the appliance program to account for measurement uncertainties and product variability. The Department agrees with the apparent intent of the NEMA recommendation, as well as its goal that, ''. . . the confidence limit [of the represented energy efficiency] should be chosen so that it is consistent with MGl's tolerance factor for losses.'' However, the Department believes that the method NEMA puts forth does not best achieve these objectives.

Electric motors differ substantially from the products covered under part 430. For each of 113 ratings of electric motor, EPCA specifies a minimum nominal efficiency. By contrast, under Part 430 minimum efficiencies are set forth at most for 16 different types of a product (in the case of direct heating equipment), and for most covered products efficiencies are specified for two to five types of the product. 10 CFR § 430.32. For central air conditioners, which NEMA cites as an example in support of its confidence limit methodology, energy conservation standards are specified for only two types of the product: the Seasonal Energy Efficiency Ratio (SEER) must be equal to or greater than 10 for split systems and 9.7 for single package systems. The Air-Conditioning and Refrigeration Institute (ARI), which in some respects functions for that industry as NEMA does for the motors industry, has prescribed performance criteria that these classes of central air conditioners must meet in order to use the ARI certification symbol and to be listed in the *ARI Directory of Certified Unitary Air-Conditioner Equipment.* Specifically, the SEER determined by laboratory testing may not be less than .95 of the SEER represented by the manufacturer. Thus, in specifying a divisor of .95 for central air conditioners, part 430 conforms with industry guidelines regarding measurement uncertainties and product variability for that product.

For electric motors, NEMA uses a maximum 20 percent loss difference to establish the minimum efficiencies that are associated with the standard nominal efficiencies. See MG1–1993, Table 12.8. This 20 percent loss tolerance is the motor industry's benchmark for taking into account measurement uncertainty and product variability. It is a constant fraction of the total percentage of energy losses. Thus, because the percentage of energy losses decreases as efficiency increases, it appears that the percentage of losses allowable as a tolerance also decreases with increasing efficiency. This would mean, for example, that the measurement uncertainty and product variability for a motor with a nominal full load efficiency of 95 percent may be expected to differ substantially from those for a motor with a nominal full load efficiency of 75.5 percent.

The Department believes that the use of a single factor for all motors covered under part 431, as proposed by NEMA, does not adequately differentiate among the levels of efficiency established by the Act. The Department proposes, therefore, to establish coefficients, based on the NEMA MG1 minimum efficiency standards, for each nominal full load efficiency established by the Act and to include these in tabular form in new part 431.

In incorporating this method, it should be noted that the proposed part 431 would not set or enforce minimum energy efficiency standards. Since a unit or units of a basic model could fall below the NEMA minimum efficiency during efficiency testing and the basic model could still be found to meet with the represented energy efficiency, no minimum efficiency is set or enforced. Rather, the NEMA minimum efficiencies are used to provide a reasonable estimate of the measurement uncertainties and product variabilities that are likely to be encountered during actual testing.

The proposed 90 percent confidence limit was recommended by NEMA, and appears to the Department to be appropriate for electric motors. As just discussed, however, the divisor proposed by the Department differs from that proposed by NEMA. The Department specifically seeks comment on both of these proposals, including its proposed table of divisor coefficients, and on whether alternatives will better serve the objectives of providing both reasonable assurance that test results will apply to all units of a basic model, and reasonable allowance for product variability and measurement uncertainty.

In sum, the Department proposes that when an electric motor is subjected to actual testing to determine whether it complies with EPCA's efficiency standards, a sample shall be selected and tested comprised of units which are production units, or representative of production units, of the basic model being tested. The sample must be of sufficient size, selected at random, and tested in accordance with the DOE test procedures adopted pursuant to section 343 of EPCA, 42 U.S.C. 6314. The test sample results would have to be within prescribed confidence limits.

The Department also proposes to permit manufacturers of electric motors to determine motor efficiency through predictive mathematical calculations developed from engineering analyses of design data and substantiated by actual test data. This would be similar to the approach found at 10 CFR part 430, § 430.24(m)(2)(ii), which permits manufacturers of central air conditioners to use ''alternative rating methods.'' Statements from Reliance and NEMA support the use of such alternative efficiency determination methods. They assert it would be prohibitively expensive and time consuming to test all the many basic models that manufacturers produce. In addition, the Department understands that the manufacturers and independent testing laboratories do not have sufficient resources to test so many basic models. NEMA advocates use of ''alternative correlation methods'' (synonymous with the Department's term ''alternative efficiency determination methods'') that are based on engineering or statistical analyses, computer simulation, mathematical modeling, or other analytical evaluation of performance data. Furthermore, NEMA proposes using actual testing to substantiate such alternative methods.

According to NEMA, ''A manufacturer must substantiate an alternative correlation method by actual testing of at least five basic models, using DOE-prescribed test procedures. Substantiation would require testing that demonstrates that predicted total power losses of a basic model design are within plus or minus ten (10) percent of the mean actual total power losses for the sample of each of the basic models tested.'' NEMA further states that manufacturers would be required to test ''two among the five basic models with the highest unit-volume of production and that at least two [of the five] models have predicted total losses which differ by at least 20 percent. Each of the five basic models should be of a different rating.''

''In lieu of advance approval, each manufacturer would be required to notify DOE of its use of alternative correlation methods in its compliance certification. Each manufacturer would stand ready to submit its alternative correlation test results (and underlying models and simulations) to DOE for review.'' (NEMA, No. 9 at B.3.).

Based on the information discussed above, the Department agrees that it would be very difficult, if not impossible, for each manufacturer to do actual testing, to determine energy efficiency, for each basic model of motor it manufactures. The Department proposes to adopt procedures whereby a manufacturer would certify compliance for basic models through an alternative efficiency determination method (AEDM). The Department's proposal largely incorporates the criteria and procedures suggested by NEMA for use of such alternative methods. For example, a manufacturer would be required to do actual testing of at least five basic models.

The models selected for testing should be selected at random, subject to the following selection criteria: Two of the basic models tested would be required to be among the five basic models with the highest unit volumes of production by the manufacturer. Within any limitation imposed by that criterion, the basic models tested should be of different horsepower without duplication. The next priority would be to select basic models of different frame sizes without duplication. And finally, to the extent possible, each basic model selected should have the lowest full load efficiency among the basic models with the same rating.

A manufacturer could use only AEDMs that it had substantiated. Prior to using the AEDM, the manufacturer would be required to apply it to at least five motors on which the manufacturer had performed actual tests in accordance with DOE test procedures. The AEDM would be ''substantiated,'' and could be used by the manufacturer, only if, for each of the tested basic models to which it was applied, the predicted total power losses upon application of the AEDM are within plus or minus ten percent of the total power losses that were measured for that basic model during the actual testing. (''Total power loss'' here refers not to the arithmetic total of the losses for all of the units tested, but rather to average total losses for the tested units.)

The Department believes that the foregoing approach to permitting use of AEDMs for motors would ensure compliance with EPCA, while avoiding imposition of an undue burden on the industry.

D. Energy Efficiency Standards

EPCA prescribes standards for electric motors that are 1 through 200 horsepower, and manufactured ''alone or as a component of another piece of equipment,'' except for ''definite purpose motors, special purpose motors, and those motors exempted by the Secretary.'' EPCA section 342(b)(1), 42 U.S.C. 6313(b)(1). The Department proposes to incorporate these standards into 10 CFR part 431.

1. Standards for Metric Motors

As discussed above, a table in IEC 72–1 matches each standard kilowatt rating to the equivalent standard horsepower rating. Section 342(b)(1) of EPCA, 42 U.S.C. 6313(b)(1), specifies efficiency standards for many of these standard horsepower ratings. The matching kilowatt and horsepower values in IEC 72–1 are not exact conversion values, but in each instance are virtually equal. The Department proposes in § 431.42, to utilize the horsepower to standard kilowatt equivalents prescribed in IEC 72–1 in order to determine the required energy efficiency of a covered motor when such motor is rated in kilowatts.

Wisconsin Electric Power Company asserts that ''the kilowatt ratings established by international standards (cf IEC 34) are based on a different numerical progression than the NEMA horsepower ratings standard in the United States. Thus, there is no true 'equivalence' between those NEMA horsepower ratings and corresponding kilowatt values.'' (WE, No. 2 at 3a 1)).

The Department agrees that such IEC motors are manufactured according to a standard series of kilowatt output ratings that do not mathematically synchronize exactly with the North American standard series of horsepower output ratings. When the standard IEC kilowatt ratings are directly converted into horsepower using the formula, 1 kilowatt = (1/0.746) horsepower, the standard IEC ratings fall between the standard horsepower ratings specified in EPCA section 342(b)(1), although they are very close to the standard horsepower ratings.

ACEEE states that a metric rated motor should be required to meet the efficiency rating for its corresponding equivalent horsepower rating, or the next-highest efficiency rating. (ACEEE, No. 7 at 3.a.1). The Department agrees with ACEEE to the extent that a motor rated in kilowatts should meet the same nominal full load energy efficiency as an equivalent motor rated in horsepower.

Reliance advocates use of ''the primary series of standardized IEC kW [''kilowatt''] equivalents to the hp [''horsepower''] ratings given in IEC Standard 72–1, Clause D.5.1 when referring to the values of horsepower specified in the Act. These equivalents are:

Horsepower	Kilowatts
1	.75
1.5	1.1
2	1.5
3	2.2
5	3.7
7.5	5.5
10	7.5
15	11
20	15
25	18.5
30	22
40	30
50	37
60	45
75	55
100	75
125	90
150	110
200	150

''While the above suggestion should include the majority of motors rated in kilowatt, it is possible for motors to be rated in kilowatt values other than those indicated based on a secondary series of standardized kilowatt ratings given in IEC Standard 72–1.''

''The metric equivalent kilowatt ratings could then be incorporated by a definition that the table of efficiency values also apply to the exact kilowatt equivalent rating to each reference horsepower rating by the relationship that 1 horsepower is equal to .746 kilowatts. For reference this conversion would give the following results:

Horsepower	Kilowatts
1	.746
1.5	1.12
2	1.49
3	2.24
5	3.73
7.5	5.60
10	7.46
15	11.2
20	14.9
25	18.7
30	22.4
40	29.8
50	37.3
60	44.8
75	56.0
100	74.6
125	93.3
150	112
200	149

An advantage of using the first set of kilowatt versus horsepower relationship values based on recommended kilowatt ratings in IEC Standard 72–1 would be the convenience of easily identifying standard kilowatt rated motors in the resulting table to find the required efficiency value rather than having to locate every standard kilowatt rating between two values of the exact kilowatt equivalents.'' (Reliance, No. 8 at 3.a.1).

''NEMA recommends that the IEC standard kilowatt equivalents be used for specifying efficiency standards, rather than an exact metric conversion from round-number English measurements to fractional metric measurements. Metric-denominated general purpose motors are generally manufactured with standard kilowatt ratings, which should provide the basis for classification of motors and the specification of class-specific energy efficiency standards.'' (NEMA, No. 9 at A.2.).

The Department agrees with NEMA and Reliance, and believes that kilowatt to horsepower equivalency could be addressed without confusion by utilizing the series of standardized equivalents given in IEC Standard 72–1, annex D.5., *Preferred rated output values.* The Department proposes, at 10 CFR 431.42, that the efficiency standard applicable to a standard horsepower rating as specified in section 342(b)(1) of EPCA, 42 U.S.C. § 6313(b)(1), applies to the corresponding standard kilowatt equivalent rating.

2. Standards for Horsepowers Not Listed in Statute, and for Non-standard Kilowatt Ratings

EPCA specifies efficiency standards only for electric motors with 19 specific horsepower ratings, all of which fall within the range of 1 through 200 horsepower. EPCA section 342(b)(1), 42 U.S.C. 6313(b)(1). NEMA asserts that efficiency standards should apply to all ''electric motors'' motors that have ratings from 1 through 200 horsepower (or standard kilowatt equivalents). According to NEMA, a motor with a rating between two of the horsepower ratings specified in EPCA section 342(b)(1), or between two of the ratings specified in standard kilowatt equivalents, should be required to meet the efficiency standard set forth for the next highest horsepower (or kilowatt) rating specified in the statutory table. NEMA states that this would prevent circumvention of statutory efficiency requirements by designating a horsepower rating that is fractionally different from the standard ratings in the statute. (NEMA, No. 9 at A.1.).

The Department understands that the statute's table of motor horsepowers is based on the preferred or standardized horsepower ratings established at NEMA Standards Publication MG1–1993, paragraph 10.32.4, *Polyphase Medium Induction Motors.* NEMA recognizes that it is not practical to build motors of all horsepower ratings for all of the standard voltages (cite NEMA MG1–1993, paragraph 10.30 NOTE). However, an ''electric motor'' could be built and, for example, rated 35 horsepower, or 90 horsepower, or 175 horsepower, and so forth.

The Department agrees with NEMA that efficiency standards apply to all electric motors that have ratings from 1 through 200 horsepower (or standard kilowatt equivalents), including motors with a rating between two of the horsepower ratings specified in section 342(b)(1) of EPCA. The Department disagrees, however, that a motor with a rating between two of the horsepower ratings specified in section 342(b)(1) of EPCA, or between two of the ratings specified in a standard kilowatt equivalent table, should be treated as having the horsepower (or kilowatt) rating equal to the next highest rating specified in the statutory table (or standard kilowatt equivalent table) for purposes of determining the efficiency standard applicable to such motor.

Applying NEMA's position to a hypothetical situation, a 32 horsepower electric motor would be required to meet the energy efficiency level prescribed for a 40 horsepower motor. To meet that energy efficiency level could require significant changes in design of the 32 horsepower motor, including the addition of electrical steel and copper, which in turn could result in changes to the motor's physical dimensions to such a degree that it would no longer fit its normal applications. Rounding up presents a particular problem with respect to IEC motors, because they are generally smaller or more compact than the NEMA ''T'' frame sizes. Rounding up would make it very difficult for some sizes of motors to meet the statutory energy efficiency levels. Thus, the practice of rounding up could have the effect of banning or limiting the use of certain motors, because motors that meet the next higher energy efficiency level may be physically larger and may not fit into machines or packages which have been designed for more compact motors. The Department believes that use of such a rounding up procedure could result in an undue burden on manufacturers.

Other interpolative methods could include a sliding scale of energy efficiencies that correspond to intermediate horsepowers, or arbitrarily rounding down to the next lower horsepower. The Department believes neither method is sound. The sliding scale approach implies a degree of accuracy in achieving and measuring motor efficiency, and significant differences in the required efficiency levels between different horsepowers, that do not exist. In addition, EPCA's efficiency standards for motors, EPCA section 342(b)(1), 42 U.S.C. 6313(b)(1), are nominal full load efficiencies taken from a table of standardized values in MG1–1987, and standardized values would not be available to be the efficiency standards for intermediate horsepower motors. In addition, EPCA section 342(b)(1) prescribes, for example, identical efficiency levels for certain 40 and 50 horsepower motors, and levels that differ by only .6 for 30 and 40 horsepower motors. As to rounding a horsepower down to the next lower horsepower, that approach could encourage production of less efficient motors and thus conflict with EPCA's purpose to save energy. It would create an incentive to manufacture motors with horsepowers just below the horsepower levels at which efficiency levels are specified in the Act, so that the motors would then be required to comply with the efficiency standard prescribed for the lower level.

The Department proposes to utilize simple mathematical rules of rounding to determine the required energy efficiency of a motor whose horsepower (or equivalent kilowatt) rating is between two of the ratings specified in EPCA section 342(b)(1). Horsepower values that fall at or above the midpoint between two horsepower ratings specified in EPCA section 342(b)(1) should be rounded up to the next higher specified horsepower rating to determine the required energy efficiency. Horsepower values that fall below the midpoint between two specified horsepower ratings should be rounded down to the next lower specified horsepower rating to determine the required energy efficiency. Motor kilowatt ratings that fall between standard kilowatt equivalents would be arithmetically converted directly into horsepower using the formula: 1 kilowatt = (1/0.746) horsepower. (In making such arithmetic conversions, no rounding would be permitted.) Resultant horsepower values would then be rounded using the rules of rounding just described, to determine the next higher or lower statutory horsepower and corresponding energy efficiency. The Department believes such procedures are appropriate to the design and application considerations of energy efficient motors, and would tend to cluster a family of motor horsepowers (or kilowatt ratings) and corresponding energy efficiencies around the family of applications for which the motors are designed without undue burden to the manufacturer. Nevertheless, in light of NEMA's advocacy of the ''rounding up'' procedure, the Department specifically seeks further comments on its rounding

proposal and will consider alternative approaches.

3. Electric Motors as Components of Systems

The question of how this regulation would affect motors that are components of other equipment that is also covered under the Act is raised by the Air-Conditioning & Refrigeration Institute (ARI). ARI believes that the standards for electric motors at section 342(b) of EPCA should not apply to motors used as components in commercial air-conditioners, for example, because such air-conditioners are already covered by efficiency standards at section 342(a) of EPCA. ARI interprets section 342(a) of EPCA to mean that standards established for a system should take precedence over standards established for a component of that system. Further, ARI expresses concern that frequent changes in standards could lead to premature redesigns of equipment. (ARI, No. 3).

The Department understands that air-conditioning equipment components, such as the compressor, the condenser, and the motor, must be designed and built to function integrally with each other in order to meet overall system efficiency requirements. Nevertheless, section 342(b)(1) of EPCA explicitly imposes efficiency standards for ''*each* electric motor manufactured (*alone or as a component of another piece of equipment*).'' (Emphasis added.) Thus, every ''electric motor'' that is manufactured must meet the standards imposed by section 342(b)(1) of EPCA, regardless of whether it is manufactured ''alone,'' and then inserted into another piece of equipment, or manufactured ''as a component of another piece of equipment.'' The Department finds no language in the requirements for system efficiency at section 342(a) that explicitly or implicitly renders the efficiency standards in section 342(b)(1) inapplicable to motors used in air conditioning or other equipment covered by section 342(a).

Section 342(b)(1) sharply contrasts in this respect with section 346(b)(3) of EPCA. EPCA authorizes, but does not require, efficiency standards for ''small electric motors.'' Section 346(b)(3) states that such standards ''shall not apply to any small electric motor which is a component of'' another product or piece of equipment to which standards apply.

In summary, contrary to ARI's position, EPCA cannot be construed so that the efficiency standards for electric motors do not apply to such motors when used in air conditioners also covered by standards. The Department is sympathetic to ARI's concern about the possibility that manufacturers might have to increase the frequency with which they modify the air conditioning equipment they manufacture to accommodate new motors that have been re-designed to comply with efficiency standards for motors and to comply with standards applicable to the equipment itself. But this concern cannot be addressed by the creation of an unauthorized exemption from the statutory standards for electric motors.

E. Labeling

1. Statutory Provisions

Under section 344(a) of EPCA, 42 U.S.C. 6315(a), if the Department has adopted test procedures for a type of ''covered equipment,'' such as motors, it must prescribe a labeling rule for that equipment. Section 344(b) provides that such rule must require disclosure of the motor's energy efficiency, and may require disclosure of estimated operating cost and energy use, determined in accordance with the test procedures. Section 344(c) authorizes inclusion in the rule of additional requirements ''likely to assist purchasers in making purchasing decisions.'' Statutory examples of such additional requirements concern display of the label, providing information as to energy consumption, and disclosing in printed matter efficiency information required to be on labels.

Section 344(d) of EPCA, 42 U.S.C. 6315(d), requires that within 12 months of establishing test procedures, ''the Secretary shall prescribe labeling rules . . . applicable to electric motors taking into consideration NEMA Standards Publication MG1–1987.'' Such rules shall require that electric motors be labeled to: ''(1) Indicate the energy efficiency of the motor on the permanent nameplate attached to such motor; (2) prominently display the energy efficiency of the motor in equipment catalogs and other material used to market the equipment; and (3) include such other markings as the Secretary determines necessary, solely to facilitate enforcement of the standards established for electric motors under section 342.''

All of the foregoing provisions are subject to section 344(h) of EPCA, 42 U.S.C. 6315(h), which states in essence that no labeling rule shall be promulgated for a type of covered equipment unless: (1) Such labeling is technologically and economically feasible with respect to such class; (2) significant energy savings will likely result from the labeling; and (3) the labeling is likely to assist consumers in making purchasing decisions.

2. Information on Motor Nameplate

Nominal full load efficiency. The Department understands that current, typical industry practice is to mark on each motor nameplate the motor's nominal full load efficiency, which is a value selected from the standardized values in NEMA MG1–1993, Table 12–8, column A. To determine the nominal full load efficiency for a particular motor, the manufacturer first determines the average efficiency of the motors it produces of that same design. It then selects from Table 12–8, Column A, the standardized value that is the closest lower value to, or that equals, such average efficiency figure. Each of the required efficiency values in section 342(b)(1) of EPCA is identical to one of these standardized values.

The Department proposes that each motor nameplate include a standardized value contained in Table 12–8. The manufacturer would determine the average efficiency for a basic model of motor through actual testing or application of an AEDM, as required under DOE test procedure regulations, would select the nominal efficiency for each motor in the same manner currently used by the industry, and would place that value on the nameplate.

This approach would satisfy the statutory requirements that the label of each electric motor disclose ''the energy efficiency'' of such motor, ''determined in accordance with test procedures'' promulgated under EPCA. EPCA sections 344 (b) and (d)(1), 42 U.S.C. 6315 (b) and (d)(1). Although the efficiencies stated on the labels would be standardized values, and often would not match precisely the test procedure results for the type of motor being labeled, the intervals between standardized values are small, and differences among efficiency values within a given interval are not significant. The Department believes, therefore, that such standardized values would accurately represent both the energy efficiency of a given motor, and the differences in efficiency among motors. The Act also requires the Secretary to consider NEMA Standards Publication MG1–1987 in prescribing labeling rules for electric motors. EPCA section 344(d), 42 U.S.C. 6315(d). This requirement would be met because the Department proposes to use the approach and the standardized values in NEMA MG1–1993, which, as relevant here, are identical to those in NEMA MG1–1987.

Because the proposed labeling requirement adopts current industry practice, the Department concludes that

such labeling would be technically feasible and economically justified. The Department also believes that such labeling would be likely to assist consumers in making purchasing decisions by distinguishing motors of greater and lesser efficiency, enabling consumers to make comparisons among competing manufacturers and to confirm their selection upon delivery, all of which can lead to significant energy savings. As suggested by NEMA, the information in the proposed efficiency label would describe the motor as manufactured.

Manufacturer number and ''ee'' logo. NEMA and Reliance recommend that, to identify motors that comply with EPCA, the nameplate also be required to include an encircled ''ee,'' or other logo, and an identification number supplied by DOE upon receipt of the manufacturer's compliance certification. (NEMA, No. 9 at C.; Reliance, No. 8 at 3.c). ACEEE and UL support use of the logo, but do not address requirement of an identification number. (UL, No. 4 at Labeling; ACEEE, No. 7 at 3.c). The Department proposes to require that the nameplate of every motor that has been certified as complying with EPCA include a manufacturer compliance certification number, essentially as recommended by NEMA and Reliance, and to permit but not require nameplates of complying motors to include an ''ee'' logo.

With respect to the required identification number, the Department contemplates that it would issue an identification number to each motor manufacturer upon determining that the manufacturer had certified, in a form that satisfies the regulations, that its motors comply with EPCA. The manufacturer would then be required, within 90 days or upon the effective date of the labeling regulations, whichever is later, to include the number on its motor nameplates. The proposal also makes provision for including the number on motors certified subsequent to a manufacturer's initial certification.

The Department believes that such a number is necessary to help enforce the efficiency standards. Reliance asserts that requiring the number on a motor would discourage a manufacturer from attaching an ''ee'' mark to a non-complying motor. (Reliance, No. 8 at 3.c). DOE agrees. In addition, requirement of the ID number would discourage manufacture of non-complying motors. For example, a manufacturer or distributor would not be allowed to ship covered motors into or within the United States unless the nameplate contains such an identification number. (The identification number would not be required when a covered motor is exported from the United States.) Moreover, use of a fraudulent number on a non-complying motor could easily be traced, since only DOE would issue the numbers and each manufacturer would have a unique number.

Based on the statements of support by NEMA and Reliance, the Department concludes that such an identification number would be technologically feasible and economically justified. Energy savings would likely occur as a result of deterring the manufacture and shipment of covered motors that are not in compliance with the statute, and of facilitating identification of any non-complying motors sold in violation of the statute. Moreover, as NEMA points out, covered motors are sold almost entirely to highly sophisticated purchasers. These purchasers would be aware that the identification number connotes that the motor has been certified as complying with EPCA's efficiency standards. Thus, the number would aid consumers in making purchasing decisions, by calling attention to motors for which required certification have been submitted.

The Department is concerned, however, about possible abuse of the manufacturer's identification number. An unscrupulous manufacturer could certify one or a few motors as being in compliance, obtain a number from DOE, and then use that number on the nameplate of motors for which it did not properly certify compliance. In such an instance, the number would provide a misleading indication of compliance. Moreover, even absent a requirement that each motor bear an ID number, an inquiry to the Department could easily determine whether a particular manufacturer had certified a given motor. The Department seeks comment on the validity of such concerns, and on whether they outweigh the value of requiring the number on the motor nameplate.

As to inclusion of the ''ee'' logo or similar designation on the nameplate of a motor that complies with EPCA, there are considerations militating for and against such a requirement. On the one hand, as stated above, the purchasers of covered motors are almost entirely industrial and commercial consumers who are sophisticated purchasers and highly aware of energy efficiency concerns. The benefit to them of an ''ee'' logo seems limited, since they will be aware that general purpose motors must comply with EPCA's efficiency standards. On the other hand, the ''ee'' logo would distinguish such motors from definite and special purpose motors that need not and do not comply, its voluntary use on non-covered motors could encourage their compliance with efficiency standards, and both the motor industry and energy efficiency advocates support use of the logo.

The Department is also concerned that inclusion of the ''ee'' logo on motors that comply with EPCA's nominal full load efficiency standards might be misleading. Under NEMA MG1–1993, to be classified as ''energy efficient'' a motor must meet both a nominal efficiency identical to the efficiency level required by EPCA, and the applicable minimum efficiency prescribed by Table 12–10 of NEMA MG1–1993. NEMA MG1–1987 had a similar requirement. Given the practice under NEMA MG1, if the Department were to require or permit the ''ee'' logo on motors based solely on their meeting only the EPCA standards, purchasers might assume that such motors necessarily meet corresponding minimums for energy efficiency even though EPCA does not require motors to meet such minimums.

One way to avoid such confusion would be for the Department to require that a motor labeled with the ''ee'' logo, or as ''energy efficient,'' meet the minimum efficiency associated with its nominal efficiency. Another possibility would be to follow ACEEE's recommendation that, in addition to nominal efficiency, minimum efficiency be required on the motor nameplate, in catalogs, and in other marketing materials (ACEEE, No. 7 at 3.c). NEMA, however, opposes any requirement that nameplates or promotional materials disclose a motor's minimum efficiency. (NEMA, No. 9 at C.)

Clearly, to mark the minimum efficiency on a motor nameplate, and in marketing materials, would provide a more complete picture of the energy efficiency characteristics of that motor. EPCA, however, prescribes standards for a motor's ''nominal full load efficiency.'' EPCA section 342(b)(1), 42 U.S.C. 6313(b)(1). As explained above, the nominal efficiency is based on the average efficiency for that type of motor. The term ''nominal full load efficiency'' neither implies nor subsumes a minimum efficiency level; nor do EPCA's standards explicitly state that a motor must have a minimum efficiency. Thus, because motors can, in theory, comply with EPCA without meeting minimum efficiency levels, the Department does not believe it can *require* such levels to be met or be displayed on labels or in marketing materials.

Nevertheless, it is the Department's understanding that, as a practical matter, it would be very unlikely that a manufacturer could meet EPCA's nominal efficiency standard for a motor if it produces some motors of that design with efficiencies below the corresponding minimum in Table 12–10 of NEMA MG1–1993. Moreover, DOE understands that the provisions of NEMA MG1 will continue to exist and be in force alongside EPCA, and the Department has received no indication that NEMA MG1 will be modified to eliminate the requirement that each motor have a nominal efficiency as well as an associated minimum. Thus, DOE assumes that, independent of DOE requirements under EPCA, under NEMA MG1–1993 a motor could not be labeled as ''energy efficient'' or have an ''ee'' logo or other similar designation, unless it meets both the applicable nominal efficiency specified in Table 12–10 of MG1–1993 (which would be the same as the applicable EPCA standard), as well as the associated minimum efficiency specified in Table 12–10. In effect, therefore, motors complying with EPCA standards can be expected to have an appropriate minimum efficiency.

Based on these understandings, the Department proposes that manufacturers be *permitted* to label covered motors as ''energy efficient,'' or with the ''ee'' logo, or with some comparable designation or logo, when a motor meets the applicable nominal full load efficiency standard in section 342(b)(1) of EPCA. The Department assumes that this would, in effect, authorize manufacturers to continue to follow the industry practice of classifying a motor as ''energy efficient'' only when it meets both the applicable nominal and the applicable minimum efficiency level prescribed in Table 12–10 of MG1–1993 with Revision 1. The Department sees considerable merit in such an approach, which might also partially satisfy ACEEE's concern about including minimum efficiency levels in labels. Moreover, the fact that industry is following this approach indicates that it is technologically and economically feasible. This proposal, if adopted, would not *require* a manufacturer to include an ''ee'' or ''energy efficient'' designation on its nameplates. A manufacturer that made a complying motor would be free not to place an ''ee'' logo or similar designation on its motor nameplates.

The Department continues to consider the option, however, of requiring that a manufacturer, in conjunction with using a label with the ''ee'' logo or ''energy efficient'' designation, display the minimum efficiency of the motor on the motor nameplate, and/or include such minimum efficiency in its compliance certification. The Department solicits comments on these approaches.

Finally, presumably anticipating required use of the ''ee'' logo, Reliance recommends that the Department consider recognizing marks of energy efficiency from other countries when such marks are equivalent to the mark required by the Department. (Reliance, No. 8 at 3.c). As discussed below, the Department does not propose to require the use of any such mark. But in light of the National Voluntary Laboratory Accreditation Program discussed below, the Department understands the principle advanced by Reliance of mutual recognition between the U.S. and other countries. The Department contemplates that its proposal permitting use of the ''ee'' logo or other ''energy efficiency'' designation would permit use of the energy efficiency mark from another country. In other words, where a motor meets the requirements for use of the ''ee'' or other ''energy efficiency'' designation, it can display a foreign energy efficiency mark.

3. Disclosure of Efficiency Information in Marketing Materials.

EPCA directs the Secretary to require that the energy efficiency of each electric motor be ''prominently'' displayed ''in equipment catalogs and other material used to market the equipment.'' EPCA section 344(d)(2), 42 U.S.C. 6315(d)(2)). To implement this provision, the Department proposes to require that catalogs and other marketing materials for a motor prominently display the same nominal full load efficiency rating that must appear on the motor's label. Further authority for such a requirement is provided by section 344(c)(3) of EPCA, which authorizes adoption of requirements ''likely to assist purchasers in making purchasing decisions,'' including required disclosure in ''printed matter which is displayed or distributed at the point of sale'' of the motor of efficiency information required to be on the label of the motor. The Department also proposes (1) To require that catalogs and other marketing materials for a complying motor display the manufacturer number required to be placed on the label of such motor, and (2) that the provisions concerning inclusion on a label of the ''ee'' logo, the ''energy efficiency'' designation, or other similar logo or designation, also apply to printed materials.

NEMA asserts that Congress intended the labeling rules for electric motors to ''facilitate enforcement of the efficiency standards,'' not to educate consumers. The language of the Act does not support this claim. Section 344(d) of EPCA, after directing the Secretary to promulgate requirements for disclosure of a motor's energy efficiency, directs that ''such other markings'' shall be required ''as the Secretary determines necessary, solely to facilitate enforcement of the standards established for electric motors.'' The ''facilitate enforcement'' criterion applies only to ''such other markings'' required by the Secretary. It does not apply either to section 344(d)'s specific requirements concerning disclosure of a motor's efficiency, or to its general directive to ''prescribe labeling rules . . . applicable to electric motors.'' Furthermore, section 344(c) lists examples of labeling requirements that are authorized for ''covered equipment,'' including motors, clearly stating in language that precedes such requirements that they should be ''likely to assist purchasers in making purchasing decisions.'' In summary, the ''facilitate enforcement'' language quoted by NEMA governs neither most of the labeling provisions applicable to motors specifically, nor any of the labeling provisions in sections 344 (a)–(c) that are generally applicable both to motors and to other covered equipment.

The Department believes that the nominal full load efficiency and the manufacturer's number ''prominently displayed'' in catalogs and other marketing material would likely assist even knowledgeable purchasers by clearly identifying an electric motor that is in compliance with the EPCA. Reliance Electric expresses concern that inclusion of such markings in catalogs could be unduly burdensome, given the length of time it takes to update catalog information to include new or modified motors. The Department believes that this concern is addressed by the provisions of proposed § 431.122(a)(4), which provide in effect that the labeling provisions applicable to catalogs do not apply to catalogs distributed before the effective date of the labeling rule. In addition, under the proposed § 431.82(b)(1), the requirement that marketing material include information concerning a particular motor would apply only to the extent that the motor is mentioned in such material. Thus, for example, catalogs would have to be updated to include the nominal full load efficiency and the manufacturer's number applicable to a motor only when the catalog is revised to include that motor. This would be a technically feasible and economically justifiable means to satisfy the requirement in

section 344(d)(2) of EPCA to ''prominently display the energy efficiency of the motor in equipment catalogs and other materials to market the equipment.''

Both Reliance and NEMA assert that energy efficiency markings should be required on import documents to assist Customs officials with identifying motors that comply with EPCA. (Reliance, No. 8 at 3.c and NEMA, No. 9 at C). The Department understands that Customs inspectors may not be able to directly examine an imported motor that is packaged for shipping, or one that is a component in a larger piece of equipment. Therefore, the Department proposes that import documents for any covered electric motor disclose the date of the Compliance Certification and the DOE number for that motor, whether the motor is imported alone or as a component of another piece of equipment. The Department believes such identification information is consistent with requirements placed on U.S. manufacturers and would facilitate enforcement by Customs officials.

The Department does not propose to require that Customs documents include a motor's nominal full load efficiency. The Department has doubts about whether it will be practical for Customs officials to check during the import process on whether a motor complies the applicable minimum efficiency standard. The Department is still considering, however, whether such a requirement is warranted and requests comment on this point.

4. Other Matters

EPCA authorizes required displays of information about electric motor energy efficiency which are likely to assist purchasers in making purchasing decisions, including instructions for maintenance, use, or repair of the motor, and information on energy use. EPCA section 344(c), 42 U.S.C. 6315(c). Most commenters agree that displays of such information would often be impractical and should be optional, not required. (Nailen, No. 2 at 3c; UL, No. 4 at Labeling; ACEEE, No. 7 at 3.c; Reliance, No. 8 at 3.c; and NEMA, No. 9 at C). The Department has no information to the contrary, and therefore does not propose to require display of such information.

Baldor Electric Company (''Baldor'') raises a concern about the need for performance warnings on motors that will comply with EPCA's efficiency standards, and about the potential waste of energy when such a motor is misapplied. Since these motors typically run faster, and might have less starting torque than less efficient motors, Baldor recommends that a warning label be required on each covered motor to alert users to verify load requirements before installation, and to prevent possible misapplication and wasted energy. (Baldor, at 10).

The Department believes that Baldor's concerns have some merit, but do not warrant a labeling requirement. As to starting torque, EPCA does not require manufacturers to reduce starting torque to meet the required levels of efficiency. The Department understands that manufacturers are already offering for sale NEMA Design A and B motors that meet EPCA efficiency standards and that have the same starting torque capabilities as existing, less efficient NEMA Design A and B motors. In any event, the Department believes that any performance differences between covered motors that will comply with EPCA, and less efficient versions of such motors, are minor and will affect only a relatively small number of specific applications. Those situations would appear to be best addressed not by general labeling requirements, but rather by consultation between the motor user and seller during the process of selecting a motor, to assure that particular application requirements are satisfied by the performance capabilities of the motor purchased. DOE concludes that the addition of a warning label should be at the discretion of the manufacturer.

EPCA authorizes the Secretary to test the accuracy of information disclosed pursuant to labeling requirements for covered equipment. EPCA section344(i), 42 U.S.C. 6315(i). NEMA recommends that DOE not exercise its authority to test the accuracy of the efficiency marked on a motor nameplate, so long as such marking is based on a substantiated alternative correlation method, or, apparently, on actual testing. NEMA suggests that any DOE enforcement testing be limited to auditing the substantiation of the alternative correlation method. (NEMA, No. 9 at C.).

The Department understands that the efficiency marked on the nameplate of a motor identifies the average efficiency of a population of motors, and may not be the exact efficiency of that particular motor. Therefore, parallel with provisions applicable in the appliance efficiency program, the enforcement provisions proposed here would require examination of a manufacturer's prior compliance determinations before enforcement testing may proceed, and any such testing would determine compliance through tests of a sample of units of the motor. Presumably, in some instances, examination of the prior compliance determinations would obviate the need for further testing and establish the validity of the energy efficiency marked on a label. But the Department's proposal permits further testing, at its discretion, to determine the accuracy of a manufacturer's required information disclosures. The Department sees no basis for agreeing to relinquish or limit its authority under section 344(i) of EPCA to perform such further testing.

The Federal Trade Commission (FTC) regulates energy efficiency labeling for appliances, and the approach the Department proposes here is similar to that adopted by the FTC in 16 CFR 305.15(b) and 305.16. These provisions implement section 326(b)(3)(B) of EPCA, 42 U.S.C. 6296(b)(3)(B), which, in language similar to section 344(i), authorizes the FTC to test products to determine the accuracy of label information. As in the Department's proposal here, the FTC procedures require examination of a manufacturer's prior compliance determinations before enforcement testing may proceed. But the FTC has not relinquished its authority to conduct further testing that it deems appropriate.

NEMA also suggests that manufacturers be permitted to use the encircled ''ee'' logo for motors that meet EPCA efficiency standards, even if such motors are manufactured before the effective date of the standards, or are definite or special purpose motors. (NEMA, No. 9 at C.). The Department finds substantial merit in NEMA's proposal. The Department believes it is in the national interest to save energy both through regulatory programs and voluntary programs, and understands that the statute does not prohibit voluntary compliance. Therefore, the Department proposes that, where an electric motor is in compliance with the energy efficiency testing and standards requirements of the statute, even though it is not covered equipment, a manufacturer may voluntarily comply with the proposed labeling provisions. The manufacturer could comply with one or more of these provisions. It would have to meet the requirements of any provision that it purports to comply with, and it would be subject to enforcement action if it fails to meet such requirements. For example, if the label of a special purpose motor were to include the nominal full load efficiency of the motor, such efficiency rating would have to be derived in accordance with application of the DOE test procedures prescribed in § 431.82(a)(1)(i) of the proposed labeling rule.

F. Certification

1. Statutory Provisions

EPCA requires ''manufacturers to certify, through an independent testing or certification program nationally recognized in the United States, that such motor meets the applicable [nominal full load efficiency standard].'' EPCA section 345(c), 42 U.S.C. 6316(c). The Department understands the statutory language to provide manufacturers with two separate ways to fulfill the certification requirement: (1) Manufacturers may certify, through an independent testing program nationally recognized in the United States, that such motor meets the standards; or (2) manufacturers may certify, through an independent certification program nationally recognized in the United States, that such motor meets the standards. Section 345(c) does not specify what is meant by ''independent testing,'' ''certification program,'' or ''nationally recognized.'' Moreover, little insight into the meaning of the latter two terms is provided by other provisions of EPCA or by operation of the consumer appliance energy efficiency program. The term ''independent testing'' also is not used elsewhere in the Act. EPCA requirements concerning test procedures, however, make clear that ''testing'' refers to tests of products (in this case motors) to determine whether they satisfy efficiency requirements. Such tests to certify compliance with EPCA's efficiency standards have commonly been performed in manufacturers' own facilities, and no other provision of EPCA or the DOE regulations calls for ''independent'' testing. By stating that a compliance certification based on testing shall be through an ''independent testing'' program, section 345(c) of EPCA appears to require a different approach. Given the normal meaning of ''independent,'' section 345(c) may call for testing to be conducted at a facility not under the control of or affiliated with the manufacturer.

2. Basis for Certification

a. Independent Testing Program. The Department conducted an informal investigation and, in addition, solicited statements during the aforementioned public meeting held June 2, 1995, in order to understand the nature of ''independent testing'' and ''certification'' programs, and to learn what programs exist that manufacturers could use to certify compliance with the energy efficiency requirements of the statute. The question of who should conduct the required testing for the program elicited considerable comment, especially concerning the adequacy of the number of independent testing facilities. Statements provided by Wisconsin Electric, Reliance, ACEEE, NEMA, Nielsen Engineering Inc., and UL indicate that only a few independent facilities in the United States and Canada have the capability to test motor efficiency as required by EPCA. According to Reliance, for example, the number of third party test facilities available in North America is so limited that reliance on such facilities to conduct an independent testing program would present a major roadblock to compliance certification by the electric motor industry. (Reliance, No. 8 at 3.d.2). ACEEE adds that it is unlikely that the number of independent test facilities could be rapidly increased, since there are very few experts familiar with the design of test facilities and the details of performing such tests. It would likely take ten years to construct the facilities, install the equipment, and train staff for the testing capacity necessary to independently certify all motor models covered by EPCA. (ACEEE letter to DOE, 11/20/95).

The Department understands there are considerable variations in the primary components of electric motors, which include the stator assembly; the rotor assembly; the enclosure, which includes bearings, a lubrication system and other mechanical or small electrical assemblies; and the shaft. Such variations are part of the means by which motors are classified. For example, the enclosure may be open or totally-enclosed; the motor may operate from an alternating current power supply at any one of several voltage levels; or the motor may operate at any one of several speeds. The number of different motor configurations increases rapidly due to the numerous combinations of other electrical and physical characteristics possible. These characteristics relate to method of starting, enclosure type, horsepower rating, speed, torque, voltage, and temperature rise. The list of such variations is significant. According to one DOE study,[4] for example, considering only motors above 5 horsepower, there are approximately 5,300 different possible covered motors. The potential number of motors requiring testing, however, would be reduced under the statutory definition of ''basic model.'' Even so, testimony from the June 2, 1995, public meeting and written statements from manufacturers and NEMA speak of different basic models still numbering in the thousands that are being manufactured and could potentially be required to undergo testing for efficiency. (Public Meeting, Tr. pgs. 33, 63, and 88;[5] Reliance, No. 8 at 3.b.3; and NEMA, No. 9 at B.3.).

The foregoing indicates that only a small number of existing independent laboratories are capable of testing electric motors for energy efficiency, and that a very substantial volume of motors will require testing. Because of the insufficient testing capacity, the Department believes it will be impossible for all or most manufacturers to test their motors in test facilities other than their own laboratories. Thus, manufacturers would not be able to comply with a narrow reading of the ''independent testing'' aspect of the statute.

The Department believes that the goal and intent of this provision of the statute, however, is to provide assurance that test results are accurate, valid, and capable of being replicated. Tests must be performed, for example, with a degree of independence so that the results are not influenced by marketing and production concerns. The issue of how to assure that test results are comparable to those conducted in an independent testing laboratory is fundamental to this program. This question is addressed in many of the statements received as a result of the aforementioned informal investigation and the June 2, 1995, public meeting.

NEMA, for example, asserts that the statutory provision for ''independent testing'' must be interpreted in light of the reality that there is insufficient capacity in independent test laboratories. NEMA believes the only technically feasible and economically justifiable means to comply is by using manufacturers' own laboratories. (NEMA, No. 9 at D.2.). In its November 20, 1995, letter to the Department, ACEEE agrees with this position, adding that ''the only way to make the required testing capacity available would be to accredit the testing facilities of motor manufacturers and allow them to certify the efficiency of motors.'' (ACEEE letter to DOE, 11/20/95).

Both Reliance and NEMA describe two possible options for programs which could fulfill the requirements of ''independent testing'': Testing performed at a third party independent accredited facility which has some type

[4] ''Classification and Evaluation of Electric Motors and Pumps,'' DOE/TIC–11339, 9/80, sec. III.

[5] ''Public Meeting, Tr. pgs. 33, 63 and 88,'' refers to the page numbers of the transcript of the ''Public Meeting on Energy Efficiency Standards, Test Procedures, Labeling and Certification Reporting for Certain Commercial and Industrial Electric Motors,'' held in Washington, DC, June 2, 1995.

of national recognition; or testing at an accredited manufacturer's facility that is considered independent under the requirements for accreditation. (Reliance, No. 8 at 3.d.2 and NEMA, No. 9 at D.2.). As mentioned above, manufacturers' laboratories have been widely used to test products for compliance with efficiency requirements imposed under section 325 of EPCA, 42 U.S.C. 6295. A laboratory accreditation program could also play a role for electric motors, provided the laboratory is accredited to test electric motors for energy efficiency according to the procedures in IEEE Standard 112 Test Method B and CSA Standard C390 Test Method 1.

b. Laboratory Accreditation. In researching how laboratory accreditation programs could satisfy the independent testing provision of the statute, the Department has reviewed a number of publications, directories, and programs.[6] Such documents frame the qualities of a laboratory accreditation program, which include: Assessment criteria or procedures which determine, for example, the laboratory's independence within the manufacturer's organizational structure so that test results are not influenced by such factors as marketing and production sides; on-site inspection of the laboratories; qualification requirements for laboratory staff; requirements to ensure the identity and integrity of test samples; periodic re-audit of facilities; laboratory participation in a proficiency testing program; and requirements for the adequacy, maintenance, and calibration of equipment.

The ACEEE states that the Department should ''facilitate the development of independent, accredited motor testing capability in the United States to allow for independent verification of manufacturer test results.'' According to ACEEE, such accreditation increases confidence in the validity of manufacturer test results, and provides an alternate means of testing for manufacturers who do not operate their own accredited test laboratory. (ACEEE, No. 7 at 3.d).

Statements received from ACEEE, the National Institute of Standards and Technology (NIST), Reliance, and NEMA support laboratory accreditation as a means to augment the number of existing independent laboratories in order to comply with the ''independent testing'' aspect of the statute, and recommend the NIST National Voluntary Laboratory Accreditation Program (NVLAP) as a source of accrediting laboratories to test motors for energy efficiency. (ACEEE, No. 7 at 3.d; NIST, No. 1; Reliance, No. 8 at 3.d.2; and NEMA, No. 9 at D.2.).

According to NIST, NVLAP is the only general accreditation program in the Federal system. It is a completely independent third party accreditation program that operates under the Procedures and Requirements published in 15 CFR part 285, and has mutual recognition agreements with national accreditation organizations in other countries, including Canada. Both the U.S. and Canada use one procedures handbook (the NIST Handbook 150–10, *Efficiency of Electric Motors*), and NVLAP's proficiency testing program. Under NIST Handbook 150–10, § 285.33(h)(1), laboratories are accredited to use both the IEEE 112 Test Method B, the motor efficiency test procedure prescribed by the Act, and CSA Standard C390 Test Method 1, which MG1–1993 incorporated as an alternative test procedure. (As discussed above, the Department proposes, in accordance with EPCA, to allow use of this alternative.) NIST adds that industry representatives support NVLAP and its mutual recognition agreements with other countries. (NIST, No. 1). ACEEE adds that it sees no problem with accepting test results from laboratories in Canada or other countries if the laboratories receive NVLAP accreditation or if accreditation from their national body is accepted by the NIST as meeting NVLAP standards. (ACEEE, No. 7 at 3.d).

Reliance notes that at present, NVLAP is the only accreditation program which has established a complete manual on the requirements for laboratory accreditation for determining the efficiency of electric motors. This accreditation program was created by NVLAP with the cooperation of motor manufacturers. Reliance points out, however, that since there are over 300 accrediting bodies in the United States, it is possible that several could conduct a program to accredit laboratories for performing motor efficiency testing described in IEEE 112 or CSA C390. Reliance asserts that recognition of any test facility which has been accredited by a national accrediting body as an ''independent test facility'' should be considered, and that international standards provide a precedent for this. ''To receive accreditation under international standards for laboratory accreditation a facility must meet certain requirements for classification as an independent facility, even if it is within the manufacturing complex for which it would be performing the product testing. To quote from Clause 4.2 of ISO/IEC Guide 25, *General requirements for the competence of calibration and testing laboratories*, '(b) the laboratory shall have arrangements to ensure that its personnel are free from any commercial, financial, and other pressures which might adversely affect the quality of their work and (c) be organized in such a way that confidence in its *independence* (emphasis added) of judgment and integrity is maintained at all times.' In short, accreditation to standards of recognized accreditation organizations is equivalent to a recognition of independence. This could provide the independence needed to meet the requirements of an independent testing or certification program.'' (Reliance, No. 8 at 3.d.2).

The Department recognizes the possibility that accreditation bodies other than NVLAP could accredit motor testing laboratories. For example, the American Association for Laboratory Accreditation (A2LA) is a nonprofit, scientific, membership organization dedicated to the formal recognition of testing laboratories and related organizations which have achieved a demonstrated level of competence. According to literature published by A2LA, accreditation is available to all laboratories regardless of whether they are owned by private companies or government bodies. One essential requirement, of course, is that laboratories be accredited competent to perform testing in accordance with the test procedures prescribed pursuant to EPCA for electric motors. A2LA accreditation can be obtained for all types of tests, measurements and observations that are reproducible, properly documented, and generally available to everyone. A2LA's general accreditation criteria are those of ISO/IEC Guide 25: 1990, *General requirements for the competence of calibration and testing laboratories.* Guide 25 is followed by NVLAP and other accrediting bodies.

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[6] *Laboratory Accreditation in the United States, Maureen A. Breitenberg, May 1991, NISTIR 4576.*

Director of State and Local Government Laboratory Accreditation/Designation Programs, Charles W. Hyer, Editor, July 1991, NIST Special Publication 815.

Directory of Professional/Trade Organization Laboratory Accreditation/Designation Programs, Charles W. Hyer, Editor, March 1992, NIST Special Publication 831.

Test laboratory accreditation criteria published in 15 CFR part 285.

National Voluntary Laboratory Accreditation Program Handbook 150, Procedures and General Requirements.

ISO/IEC Guide 25, General requirements for the competence of calibration and testing laboratories.

The Occupational Safety and Health Administration (OSHA) laboratory accreditation program conducted in accordance with 29 CFR 1910.7.

c. Certification Program. EPCA also provides that a manufacturer can use a ''certification program nationally recognized in the United States,'' instead of an independent testing program, to certify that its motors meet EPCA efficiency standards. EPCA section 345(c), 42 U.S.C. 6316(c). The Department understands the word ''certification'' to mean a procedure by which a third party gives written assurance that a product, process or service conforms to specified requirements.

With regard to the nature, identity, and capabilities of any nationally recognized program or programs for the certification of electric motors for energy efficiency, Reliance describes two existing certification programs in North America, one conducted by CSA, and the other by UL. Reliance states that both are generally regarded by industry as ''nationally recognized.'' Reliance notes that these programs are in place now and are independently verifying motor efficiency. Reliance suggests that these programs could directly fulfill the requirements of EPCA without modification. Both programs entail (1) submittal by the manufacturer of the declared nominal efficiency of the motors to be certified at the time of application into the program, (2) examination of the manufacturer's testing facility to determine that it is competent in performing the test procedure in the IEEE 112 or CSA C390 Standards, (3) random selection by the certification agency of the ratings of some motors to be tested in the presence of an assessor from the certification agency, (4) testing of the selected motors in the manufacturer's test facility, (5) testing the same motors at an independent laboratory for comparison of the results of the two tests, and (6) yearly follow-up audits which include additional random sample testing to determine that the test facility maintains its ability to perform the test and that the manufacturer has not changed the motor design in any way that affects the efficiency. (Reliance, No. 8 at 3.d.2). Reliance adds that it is not necessary to limit independent certification to CSA or UL. What is necessary is that the certification program be conducted by an organization in which the consumer will have full faith and confidence.

UL asserts that the Act's requirements are met by its Energy Verification Service, wherein a motor manufacturer's production and testing operations are evaluated and representative samples are tested to applicable standards. Following initial verification, follow-up audits of products and on-going testing by the manufacturer is required. Essentially the steps set forth in the above paragraph are followed. UL notes that its Energy Verification Service is in compliance with Federal law in Canada, and is accredited by the Standards Council of Canada. As an alternative to DOE developing criteria for the acceptance of testing laboratories and certification bodies, UL recommends that established ISO/IEC international criteria be utilized. (UL, No. 4 at Certification).

The UL statement then lists the following ISO/IEC international criteria applicable to testing laboratories and certification bodies: ISO/IEC Guide 25, *General requirements for the competence of calibration and testing laboratories;* ISO Guide 27, *Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk;* ISO/IEC Guide 28, *General rules for a model third-party certification system for products;* and ISO/IEC Guide 40, *General requirements for the acceptance of certification bodies.*[7] UL recommends that DOE use the criteria in the foregoing Guides as the basis for recognizing that a test laboratory or certification organization is competent to perform required tests or operate a certification program. The Department understands that these are internationally recognized documents utilized by testing laboratories, accreditation bodies, and certification bodies in the U.S.

d. National Recognition. Under EPCA, a testing or certification program used to certify compliance must be ''nationally recognized.'' EPCA section 345(c), 42 U.S.C. 6316(c).

The question of national recognition has been addressed at 29 CFR part 1910, by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA), which uses third-party (or independent) testing laboratories to ensure that certain equipment and materials are safe for workplace use. The OSHA final rule at 53 FR 12102–12125 (April 12, 1988) includes a requirement that testing laboratories listing or approving products or equipment required to be approved under Part 1910 be recognized as Nationally Recognized Testing Laboratories (NRTL) by OSHA. Under that rule, OSHA evaluates applicant testing and control programs against the NRTL definitional requirements, and issues a written ''recognition'' letter. This is done in accordance with 29 CFR 1910.7 appendix A. OSHA also provides for continuing surveillance over OSHA-recognized NRTLs to assure conformance with the requirements of its rule. The definition of NRTL includes the following requirements:

(1) Capability to examine specific equipment for workplace safety;

(2) Provision of controls and services necessary for assuring and demonstrating original conformity of equipment to appropriate test standards;

(3) Independence from manufacturers, suppliers and vendors of products, and from other employers; and

(4) Procedures for producing creditable findings and reports and for handling complaints and disputes. (Department of Labor, No. 11).

The Association of Independent Scientific, Engineering and Testing Firms (formerly the American Council of Independent Laboratories (ACIL)) appears to claim that section 345(c) of EPCA, 42 U.S.C. 6316(c), does not allow a manufacturer to certify compliance with efficiency standards through testing in its own laboratory, even if the laboratory is accredited. ACIL asserts that section 345(c) must be interpreted consistently with sections 342(b) and 346(b)(3) of the statute, which refer to listing or certifying motors by a nationally recognized testing laboratory (NRTL). ACIL recommends that DOE reference the OSHA program to accredit such laboratories, and ''codify reliance on these NRTLs to certify electric motors.'' (ACIL, No. 6). Although ACIL does not so state, the Department understands that these laboratories are independent, and not controlled by a manufacturer of the product being tested.

The Department cannot agree with ACIL's apparent view that, because manufacturers do not control the safety testing laboratories referred to in sections 342(b) and 346(b)(3) of EPCA, the efficiency testing programs required to be used under section 345(c) also must be free of manufacturer control. First, different considerations may apply to safety testing and to efficiency testing in determining the required degree of independence of a testing facility. Second, EPCA's references to safety testing laboratories are incidental to EPCA's efficiency requirements, and unrelated to the requirements of section 345(c). Those references provide little guidance in interpreting section 345(c). Finally, as discussed above, implementation of section 345(c) would be impossible if it were construed as prohibiting compliance certification

[7] ISO/IEC Guide 40 has been superseded by ISO/IEC 65–1996, *General requirements for bodies operating product certification systems.*

based on testing in manufacturers' own laboratories.

Substantial potential may exist for NRTLs to make future contributions to the EPCA program by performing energy efficiency testing. But contrary to ACIL's recommendation, the Department cannot yet rely on these laboratories to meet EPCA requirements, because it has no indication that they currently are qualified to do efficiency testing. And certainly the Department cannot rely on OSHA's NRTL recognition process. The references to test laboratories in sections 342(b) and 346(b)(3) of EPCA, as well as OSHA's accreditation of NRTLs, address safety testing. The procedures and equipment for efficiency testing are different from the procedures and equipment for testing whether a motor will operate safely.

The Department believes that the NRTL program does, however, provide an approach for determining when a program is ''nationally recognized.'' As further discussed below, the Department proposes to adopt formal procedures similar to those utilized by the OSHA NRTL program for purposes of establishing when a certification program is ''nationally recognized'' within the meaning of section 345(c).

e. Proposal. The Department proposes that the statutory requirement for certification through an ''independent testing program'' be met by using a laboratory, operated by either a third party or a manufacturer, that has been accredited to perform the DOE test procedures. Given the paucity of test facilities not controlled by manufacturers, the Department believes that testing at manufacturers' laboratories that have been accredited would satisfy the intent of the ''independent testing'' aspect of EPCA section 345(c). Such accreditation would provide many of the protections as to accuracy, bias, and independence of judgment that would be provided by testing at non-manufacturer facilities. Accreditation would also give additional assurance that the laboratory is fully capable of testing a motor's energy efficiency, and would reduce concerns with respect to variability and repeatability of testing and test results. Accreditation of non-manufacturer laboratories is proposed to assure an equal degree of reliability with manufacturers' laboratories, and, as discussed below, to satisfy the section 345(c) requirement that testing programs be nationally recognized.

In accordance with section 345(c), the Department's proposed regulation also permits a manufacturer to certify compliance through an independent certification program. Such a program would have to be essentially as described above by UL and Reliance. Manufacturers that elect to use a certification program would not be required to have their own laboratory accredited.

Finally, section 345(c) requires that compliance be certified through a testing or certification program that is ''nationally recognized.'' The Department proposes that this requirement shall be met (1) by a testing facility that has been accredited either by NVLAP or by an accrediting body that DOE classifies as nationally recognized to accredit facilities to test motors for efficiency, or (2) by a certification program that DOE has classified as nationally recognized. The Department proposes criteria and procedures under which it would make such classifications. Included would be the application of appropriate ISO/IEC criteria. Accrediting bodies and certification programs would seek such classification by submitting a petition to the Department, accompanied by supporting documentation.

Under the Department's proposal, NVLAP accreditation of motor testing laboratories would be pursuant to NVLAP's existing approach to granting such accreditation, set forth in 15 CFR part 285 and NIST Handbook 150–10. The Department is reviewing, and requests comment on, whether these provisions are in any way inconsistent with EPCA requirements or any portion of the proposed part 431. The Department also proposes that if NVLAP alters its approach to accrediting motor testing laboratories, subsequent to DOE adoption of a final rule in this proceeding, such changes would become applicable to accreditation under part 431 only if approved by DOE. The Department seeks comment on whether such a provision is needed, and will suffice, to assure that NVLAP accreditation methods will continue to be consistent with the DOE energy efficiency program for motors.

In summary, the Department proposes implementation of the requirement for ''manufacturers to certify, through an independent testing or certification program nationally recognized in the United States, that such motor meets the applicable [energy efficiency standards],'' by either (i) testing at a third party independent laboratory accredited by a nationally recognized accrediting body, such as NVLAP, (ii) testing at the manufacturer's own laboratory if it is accredited by a nationally recognized accrediting body, such as NVLAP,[8] or (iii) certification by a nationally recognized third-party certification program.

3. Form of Certification

a. Compliance Statement. EPCA states that, ''the Secretary shall require manufacturers to certify'' that each electric motor meets applicable efficiency standards. EPCA section 345(c), 42 U.S.C. 6316(c). An example of how such language can be applied is found at 10 CFR 430.62, Submission of data, which requires manufacturers of consumer appliance products to submit a compliance statement, as well as a certification report that provides information for each basic model of a product. It appears, however, that there are many more basic models of electric motors than of each consumer appliance, and strictly applying the § 430.62 requirements to electric motors could be unduly burdensome to manufacturers and to the Department. The Department is aware of at least one manufacturer that claims to manufacture thousands of basic models of electric motors covered by the statute.

Statements from Reliance and NEMA address the difficulty of requiring compliance statements for all basic models a manufacturer produces. Reliance emphasizes that a manufacturer is likely to make a very large number of basic models. (Reliance, No. 8 at 3.b.3 and 3.d.1). Reliance also asserts that the Act requires manufacturers to certify that the nominal efficiency of the basic model meets or exceeds the level specified at section 342(b)(1) of EPCA for its rating, not the actual value of nominal efficiency for the motor. Reliance and NEMA recommend that each manufacturer submit a simplified compliance statement to certify that all its basic models of covered electric motors have a nominal full load efficiency equal to or in excess of the statutory nominal full load efficiency standards, as determined by actual testing or application of a substantiated alternative correlation method. (Reliance, No. 8 at 3.d.1 and NEMA, No. 9 at D.).

NEMA proposes as an alternative, that each manufacturer submit a compliance statement along with a certification report that provides information on each of the 113 ratings within which it produces motors. The 113 ratings refers

[8] The proposed regulations would permit testing at a laboratory accredited by a foreign organization recognized by NVLAP. Any test results produced by such laboratory would, of course, establish compliance with the Act and DOE's regulations only if the underlying testing were performed in accordance with the DOE test procedures.

to the combinations of horsepowers, number of poles, and types of enclosure in the table of nominal full load efficiencies at section 342(b)(1) of EPCA, 42 U.S.C. 6313(b)(1). According to NEMA, the certification report would include, for each rating of electric motor which a manufacturer or private labeler manufactures, the nominal full load efficiency of the least efficient basic model with that rating. (NEMA, No. 9 at D.).

The Department believes that, contrary to the assertion by Reliance, it has the authority under the Act to require motor manufacturers to certify the nominal full load efficiency of a motor. But because there are so many basic models of electric motors, the Department proposes to require a single Compliance Certification that is quite similar to NEMA's alternative suggestion for certification. The proposed approach is designed to minimize the reporting burden on manufacturers, while fulfilling the purposes served by the statement of compliance and certification report required for appliances at 10 CFR 430.62. The proposed Compliance Certification at 10 CFR 431.123 would be a one-time statement which affirms that each basic model of electric motor meets the energy efficiency requirements of the statute, based upon actual testing or application of a substantiated alternative efficiency determination method. For each of the 113 ratings within which the manufacturer produces electric motors, it would identify the nominal full load efficiency of the basic model that has the lowest efficiency. At most, efficiencies would be included for 113 ratings. The Compliance Certification would also, in effect, certify that all basic models produced within each rating have a nominal full load efficiency equal to or in excess of the efficiency represented in the Compliance Certification for that rating.

b. New Models. EPCA requires each electric motor manufactured after the 60-month period beginning on the date of the enactment of this subsection, or in the case of an electric motor which requires listing or certification by a nationally recognized safety testing laboratory, after the 84-month period beginning on such date, to meet a prescribed nominal full load efficiency level. EPCA section 342(b)(1), 42 U.S.C. 6313(b)(1). A manufacturer is required to comply with the statutory efficiency standards both for each motor it manufacturers as of the statutory effective dates, and for each new basic model it begins to manufacture thereafter.

In order to comply with the statutory certification requirements, NEMA proposes that a manufacturer be required to submit a new certificate of compliance for a new basic model only if the new model's nominal full load efficiency is less than the nominal full load efficiency of other basic models, within the same rating, that are already being produced by the manufacturer and that have been previously certified to be in compliance with EPCA and DOE regulations. NEMA reasons that, ''If a manufacturer's original certification reports only compliance by each class of 113 ratings, there is no need to require detailed reporting on the nominal efficiency of each new basic model, provided that such new basic model has a nominal full load efficiency in excess of the statutory standard and the efficiency certificated on the compliance statement for the relevant rating.'' (NEMA, No. 9 at D.3.).

Given the Department's proposal as to the initial Compliance Certification, NEMA's reasoning is persuasive. Moreover, based on information provided by manufacturers, there appears to be a potential for the introduction of numerous new basic models having the same ratings as motors already being manufactured. The Department seeks to avoid imposing a possible undue burden of excessive reporting of compliance of such new basic models. Therefore, it is proposed that submission of a Compliance Certification for a new basic model would be required only if (1) the manufacturer has not previously submitted to DOE a Compliance Statement for a motor having the same rating as the new basic model, or (2) the new model has the same rating as one or more of the basic models that have previously been produced and certified by the same manufacturer, but has a lower nominal full load efficiency than any of those previously certified basic models.

G. Enforcement

The Department proposes to establish procedures for enforcement testing which are appropriate for the equipment being tested for energy efficiency, in this case 1 through 200 horsepower alternating current electric motors. The proposed sampling plan for enforcement testing at appendix C to subpart G of this part is a departure from the procedures established at appendix B to subpart F of 10 CFR part 430—Sampling Plan for Enforcement Testing. The proposed sampling plan for enforcement testing is based upon NEMA MG1–12.58.2, Efficiency of Polyphase Squirrel-cage Medium Motors with Continuous Ratings, and NEMA MG1 Table 12–8, Efficiency Levels, which establish a logical series of nominal motor efficiencies and the minimum associated with each nominal based on 20 percent loss difference. NIST formulated the proposed sampling plan for enforcement testing.

The sampling plan for enforcement testing of electric motors would aid the Department in performing actual testing pursuant to the test procedures prescribed in 10 CFR 431.23, and in achieving uniform application of enforcement testing. The objectives of the sampling plan for enforcement testing are (1) to provide for each motor an estimate of the true mean full load efficiency, (2) to establish reasonable measurement tolerances for motor efficiencies, and (3) to ensure that the result of the test is significant within these tolerances.

The sampling plan for enforcement testing assumes that the efficiencies of the entire population of motors are normally distributed about the true mean and that the true mean full load efficiency and standard deviation of the motor efficiencies are not known. Compliance (or non-compliance) can be determined when the mean efficiency of the basic model is not less than the statutory full load efficiency (SFE), thus only a lower bound for the mean efficiency must be specified. The proposed sampling plan for enforcement testing seeks to estimate the true mean efficiency of the basic model and to ensure that this mean efficiency is not less than the SFE, with high probability.

The Department believes that the best estimate of the true mean efficiency that may be obtained by tests conducted on a random sample is the mean efficiency of that sample ($\bar{X}$). The reliability of this estimate depends on two factors: (1) the size of the sample, i.e., the number of motors tested, and (2) the underlying variability of the entire population. The standard error in the mean ($SE(\bar{X})$), i.e., the standard deviation of the sample divided by the square root of the sample size, is one measure of the variability of the sample mean. In general, the ratio of the difference between $\bar{X}$ and the true mean to $SE(\bar{X})$ is distributed according to a probability density function known in statistics literature as the t-distribution. Percentiles of this distribution are to determine confidence intervals and, in this case, to establish a lower bound. These percentiles are readily available and are included in many references on statistics.

The lower bound benchmark is calculated by determining the figure that would result if a population of motors meets the statutory standard

(i.e., the mean full load efficiency for the population meets or exceeds the statutory full load efficiency). If this is the case, and if *t* is the 90th percentile of the *t*-distribution appropriate for the sample size, then at least 90 percent of the time the average efficiency will be greater than the lower control limit, where:

$$LCL = SFE - tSE(\overline{X}).$$

The Department understands that in any statistical test there is a possibility of obtaining a false result by chance. In this case, by assumption, the basic model is in compliance and the sampling plan for enforcement testing should, with high probability, correctly demonstrate compliance or non-compliance. By design, the probability that the mean efficiency of a random sample drawn from this population would fall below the lower control limit and, hence, the risk of incorrectly concluding non-compliance, is no greater than 10 percent.

To apply this method, a random sample is tested and the mean and standard error in the mean are calculated. Based on the size of the sample and the confidence desired the appropriate *t* value is selected and the lower control limit calculated. For example, for 90 percent confidence and a sample of five units *t* equals 1.533. Provided the mean efficiency obtained from the random sample is not less than the lower control limit, the Department can determine with 90 percent confidence that the true mean efficiency of the entire population is not less than the statutory level.

Following this procedure, there is some probability that the estimate of the standard deviation and, therefore, the estimated standard error in the mean is too large and that the lower control limit may be set, by chance, to a value that defeats the purpose of the sampling plan for enforcement testing. To avoid this circumstance, it is sufficient to establish an upper limit for the standard error in the mean. The tolerance in the standard error should be chosen to be appropriate for the size and type of motor.

The strategy proposed here is to establish reasonable benchmarks for the standard error in the mean. One possible solution is to base these tolerances on the existing NEMA guidelines for identifying motor efficiency levels at NEMA MG1–12.58.2 and NEMA Table 12–8. Such guidelines were developed by consensus among motor manufacturers and they are followed, on a voluntary basis, by a large segment of the motor manufacturers. Under the NEMA guidelines, no single unit can have energy losses more than 20 percent greater than the average losses for that type of motor, i.e., a 20 percent loss tolerance is permitted for a given unit but the average must still be met.

The NEMA guidelines serve to provide uniformity in motor efficiency labeling and can be used for purposes of quality control by manufacturers, and may, therefore, provide a reasonable basis for estimating efficiency tolerances among motors of different size and type. The Department believes that the 20 percent loss tolerance is reasonable and meaningful.

The variability in the motor efficiencies allowed, when $\overline{X}$=SFE, may be calculated by setting the true mean efficiency equal to the statutory value. The results of this procedure are presented below in Table 1. The Department assumes for these data that the sample size is five, and uses a single sided *t*-test and a 90% confidence level, i.e., *t* has been set to 1.533. Comparison of the standard deviation allowed by the sampling plan for enforcement testing with the NEMA 20 percent loss tolerance shows that the variability allowed corresponds to the NEMA guidelines.

To determine compliance (or non-compliance) for the purpose of enforcement testing, (a) the sample mean shall not be less than the LCL, as defined above, and (b) the product of the *t* percentile and the standard error in the mean may not exceed a 20 percent loss tolerance.

TABLE 1.—COMPARISON OF THE NEMA 20 PERCENT LOSS TOLERANCE AND THE STANDARD DEVIATIONS ALLOWED BY THE SAMPLING PLAN FOR ENFORCEMENT TESTING

Statutory efficiency	NEMA minimum efficiency	NEMA 20% loss tolerance	Enforcement standard deviation
75.5	72.0	3.5	5.1
80.0	77.0	3.0	4.4
82.5	80.0	2.5	3.6
84.0	81.5	2.5	3.6
85.5	82.5	3.0	4.4
86.5	84.0	2.5	2.5
87.5	85.5	2.0	3.0
88.5	86.5	2.0	3.0
89.5	87.5	2.0	3.0
90.2	88.5	1.7	2.5
91.0	89.5	1.5	2.2
91.7	90.2	1.5	2.2
92.4	91.0	1.4	2.0
93.0	91.7	1.3	1.9
93.6	92.4	1.2	1.8
94.1	93.0	1.1	1.6
94.5	93.6	0.9	1.3
95.0	94.1	0.9	1.3

IV. Review Under the National Environmental Policy Act of 1969

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 766(a)), a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for comments concerning the impact of this proposed rulemaking on the quality of the environment.

In this rule, the Department proposes provisions to implement statutorily mandated energy efficiency standards and test procedures for electric motors. Implementation of the proposed rule would not result in environmental impacts. The Department has therefore determined that the proposed rule is covered under the Categorical Exclusion found at paragraph A.6 of appendix A to subpart D, 10 CFR part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

V. Review Under Executive Order 12866, ''Regulatory Planning and Review''

This regulatory action is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' October 4, 1993. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

VI. Review Under the Regulatory Flexibility Act 1980

The Regulatory Flexibility Act of 1980, 5 U.S.C. 603, requires the preparation of an initial regulatory flexibility analysis for every rule which by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts.

The Department used the small business size standards published on January 31, 1996 by the Small Business Administration to determine whether any small entities would be required to comply with the proposed rule. 61 FR 3280 (to be codified at 13 CFR part 121). The size standards are listed by Standard Industrial Classification (SIC) code and industry description. Electric motor manufacturing is SIC 3621. To be considered a small business, a manufacturer of electric motors and its

affiliates may employ a maximum of 1,000 employees.

The Department estimates there are approximately 27 domestic firms and 14 foreign firms which manufacture electric motors covered under EPCA. Many of the domestic motor manufacturers are affiliated with larger U.S. or foreign firms. The sizes of motor manufacturing companies in the U.S. range from fewer than 100 employees to several thousand employees. The Department estimates that there are four to six firms in the United States that both manufacture electric motors covered by EPCA, and have, together with their affiliates, 1,000 or fewer employees.

EPCA prescribes efficiency standards for electric motors of specified horsepowers, with some exceptions permitted. 42 U.S.C. 6313(b) (1) and (2). The statutory energy efficiency standards are incorporated in the proposed rule, although the standards do not depend on rulemaking for their implementation. The Act also requires DOE to prescribe test procedures for measuring motor efficiency, and it further requires the use, initially, of the test procedures in NEMA Standards Publication MG1–1987 and IEEE Standard 112 Test Method B, as in effect on October 24, 1992. 42 U.S.C. 6314(a)(5)(A). If the test procedures for motor efficiency are amended by those standards bodies, DOE is required to amend its test procedures accordingly unless to do so would not meet certain statutory criteria for test procedures. 42 U.S.C. 6314(a)(5)(B). The Act also requires DOE, by rule, to require motor manufacturers to include the energy efficiency of the motor on the permanent nameplate; to display the motor energy efficiency prominently in any catalogs and other materials used to market motors; and to include other markings DOE determines are necessary to facilitate enforcement of the energy efficiency standards. 42 U.S.C. 6315 (a) and (d). DOE also is directed by the Act to require manufacturers of covered motors to certify that the motor meets the applicable energy efficiency standard, through an independent testing program or certification program that is nationally recognized in the United States. 42 U.S.C. 6316(c).

Since approximately 1992, many manufacturers have been redesigning electric motors and testing them for compliance with the industry-developed energy efficiency performance standards that are the basis for the standards in the Act. Some manufacturers, including some small manufacturers, will need to make additional design changes and conduct verification testing to bring all of their basic models into compliance with EPCA standards. DOE believes that the cost of complying with the proposed rule (excluding the cost of compliance with the energy efficiency standards and test procedures directly imposed by EPCA) would not impose significant economic costs on a significant number of small manufacturers.

The test procedures mandated by EPCA are test procedures already in general use in the industry. Small manufacturers contacted by the Department stated that they currently test electric motors in accordance with IEEE Standard 112, Test Method B. The proposed rule has been drafted to minimize the burden of testing for manufacturers, and the proposed rule relies heavily on industry practice and recommendations that have been submitted by manufacturers. Because there are so many basic models of electric motors, the Department proposes to require a compliance certification that includes listing, for each rating of electric motor, of the average efficiency only of the basic model that has the lowest efficiency. Consequently, efficiencies would be included for 113 ratings, at most. The proposed statistical sampling procedures are based on statistical sampling procedures established for consumer appliance products at 10 CFR 430.24, and recommendations submitted by the National Electrical Manufacturers Association (NEMA). The sampling procedures are designed to keep the testing burden on manufacturers as low as possible, while still providing confidence that the test results of units tested can be applied to units of the same basic model. The proposed maintenance of records and compliance reporting requirements are based largely on the statements and recommendations of NEMA.

DOE proposed labeling rules, required by the Act, also follow current practice and recommendations submitted by manufacturers through NEMA. The Department believes that the cost of including the energy efficiency and a Compliance Certification number on the permanent nameplate of electric motors covered under the Act would be negligible. Nameplates already are attached to motors, and standards generally followed in the industry require the energy efficiency to be marked on the nameplate. The proposed requirement to display the energy efficiency of motors in marketing materials only applies to materials the manufacturer otherwise chooses to distribute or publish. Thus, for example, catalogs would have to be updated to include the energy efficiency number and the Compliance Certification number applicable to a motor only when the catalog is revised to include that motor.

Some manufacturers may not be able to certify compliance by October 24, 1997, the effective date as to most basic models for the standards and test procedures. The proposed rule eases the burden of compliance for such manufacturers of electric motors, including small manufacturers, by providing that the compliance certification requirement would not become effective until 24 months after the effective date of the rule. Furthermore, disclosure in a catalog of energy efficiency information concerning a particular motor would not be required until either the re-publication of the catalog after the rule becomes effective, or until the motor is subsequently included in the catalog.

It should be pointed out that DOE has limited discretion to apply different requirements to small manufacturers. EPCA mandates the use of uniform standards and testing procedures for all electric motors. EPCA also contains the basic requirements for labeling and certification. In this regard, it is noteworthy that although EPCA contains a ''small manufacturer exemption'' for consumer appliance product manufacturers (42 U.S.C. 6295(t)), no such exemption is included for manufacturers of commercial and industrial equipment.

The Department invites public comment on its conclusion that the incremental costs of complying with the proposed rule (not including the cost of requirements that are directly imposed by EPCA, such as the energy efficiency standards) would neither affect a substantial number of small businesses, nor impose a significant economic impact on such businesses.

VII. Review Under Executive Order 12612, ''Federalism''

Executive Order 12612, ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on States, on the relationship between the National Government and States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The proposed rules published today would not regulate the States. They

primarily would affect the manner in which DOE promulgates commercial and industrial equipment energy efficiency standards, test procedures, labeling, and certification of compliance by manufacturers, prescribed under the Energy Conservation and Policy Act. State regulation in this area is largely preempted by the Energy Policy and Conservation Act. The proposed rules published today would not alter the distribution of authority and responsibility to regulate in this area. Accordingly, DOE has determined that preparation of a federalism assessment is unnecessary.

VIII. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

It has been determined pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

IX. Review Under the Paperwork Reduction Act of 1980

As explained above, the proposed rule includes certain labeling requirements, requires manufacturers to maintain records concerning their determinations of the energy efficiency of electric motors, and precludes distribution of any electric motor not covered by a certification of compliance submitted to the Department. These proposed information collection and recordkeeping requirements have been submitted to the Office of Management and Budget for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. The proposed collections of information are necessary for implementing and monitoring compliance with the efficiency standards, testing, labeling and certification requirements for commercial and industrial electric motors mandated by EPCA. In developing the proposed information collection requirements, DOE considered the views of stakeholders that were received at a public meeting held in May of 1995, in written comments solicited in the notice of that meeting, and in subsequent informal contacts.

DOE estimates the number of covered manufacturing firms to be 41 and the number of hours required to comply with the reporting and recordkeeping requirements in the proposed rule to be approximately 200 to 300 hours per year per firm. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be from 8,200 to 12,300 hours (41×200–300 hours per year). These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

In developing the burden estimates, DOE considered that each manufacturer is required to comply with the statutory energy efficiency standards for each motor it is manufacturing on the effective date of the Act, and for each model it begins to manufacture after that date. The required certification would be a one-time submission stating that the manufacturer has determined, by employing actual testing or an alternative method, that the basic model of electric motor meets the applicable energy efficiency standard. The certification also includes the energy efficiency for the least efficient basic model within each rating, and identifies those basic models that have undergone actual testing. Under the proposed rule, a compliance certification for a new basic model would be required only if (1) the manufacturer has not previously certified a motor having the same rating as the new basic model, or (2) the energy efficiency of the new model is less than the efficiency of previously-certified basic models of the same rating produced by the same manufacturer. Many manufacturers already submit this type of information to voluntary national electronic marketing programs, such as the Washington State Energy Office's ''Motor Master'' program, or develop it for the design or marketing of energy efficient motors. Those manufacturers should be able to comply with the certification required by the proposed rule without much additional burden.

Similarly, the remaining information collection requirements in the proposed rule would also impose little additional burden. Most manufacturers already voluntarily provide the energy efficiency of an electric motor on a motor's permanent nameplate and in their catalogs and other marketing materials, as would be required under the proposed rule. Inclusion of the CC number on motor nameplates was advocated by motor manufacturers, and this number could easily be included on nameplates and in marketing materials. A very limited amount of additional information would be required on import documents, at what the Department believes would be negligible cost. And, finally, the Department understands that manufacturers already maintain the records the proposed rule would require them to keep.

The collections of information contained in this proposed rule are considered the least burdensome for meeting the legal requirements and achieving the program objectives of the DOE compliance certification program for electric motors. However, public comments are requested concerning the accuracy of the estimated paperwork reporting burden. Send comments regarding the recordkeeping and reporting burden estimate, or any other aspect of this collection of information, to the Department in accordance with the instructions in the **DATES** and **ADDRESSES** sections of this notice, as well as Section XIII, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for DOE.''

X. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirement: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's final regulations under the standards of section 3 of the Executive Order and determined that, to the extent permitted

by law, they meet the requirements of those standards.

XI. Review Under Section 32 of the Federal Energy Administration Act of 1974

Pursuant to section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy is required to comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788. Section 32 provides in essence that, where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards.

The rule proposed in this notice incorporates a number of commercial standards which the Act requires to be used. For example, the procedures required for measuring the efficiency of electric motors come from the NEMA Publication ''Motors and Generators,'' MG1–1993 Revision 1; the Institute of Electrical and Electronics Engineers ''Standard Test Procedure for Polyphase Induction Motors and Generators,'' IEEE Standard 112–1991 Test Method B for motor efficiency; and the Canadian Standards Association Standard C390–93 ''Energy Efficiency Test Methods for Three-Phase Induction Motors.'' By way of further example, certain definitions in the proposed rule are drawn from NEMA Publication MG1. Because DOE has no discretion to not include these standards, section 32 of the FEAA has no application to them.

As part of its definition of electric motor, however, the proposed rule does employ one commercial standard, the International Electrotechnical Commission Standard 34–1, that the Act does not direct the Department to adopt. The Department has evaluated this Standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the Federal Energy Administration Act, i.e., that it was developed in a manner which fully provides for public participation, comment, and review.

As required by section 32(c) of the Act, the FEAA, Department will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of this standard on competition, prior to prescribing a final rule.

XII. Review Under Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

The Department has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

XIII. Public Comment

A. Written Comment Procedures

Interested persons are invited to participate in the rulemaking by submitting data, comments, or information with respect to the proposed test procedures set forth in this notice to the address indicated at the beginning of the notice.

Comments should be identified both on the envelope and on the documents as ''Test Procedures and Certification Requirements for Electric Motors, Docket No. EE–RM–96–400.'' Ten (10) copies are requested to be submitted. In addition, the Department requests that an electronic copy (3½″ diskette) of the comments on WordPerfect™ 6.1 be provided. All submittals received by the date specified at the beginning of this notice will be considered by the Department in developing the final rule.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Public Hearing

1. Procedures for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this notice. The Department invites any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these proposed test procedures, to make a request for an opportunity to make an oral presentation. Such requests should be directed to the address indicated at the beginning of this notice. Requests may be hand delivered to such address between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests should be labeled ''Test Procedures and Certification Requirements for Electric Motors, Docket No. EE–RM–96–400,'' both on the document and on the envelope.

The person making the request should briefly describe the interest concerned and state why he or she, either individually or as a representative of a group or class of persons that have such an interest, is an appropriate spokesperson, and give a telephone number where he or she may be contacted.

Each person selected to be heard is requested to submit advance copies of his or her statement prior to the hearing,

as indicated at the beginning of this notice. Any person wishing to testify who cannot meet this requirement, may at the Department's discretion be permitted to testify if that person has made alternative arrangements with the Office of Codes and Standards in advance. The letter making a request to give an oral presentation shall ask that such alternative arrangements be made.

2. Conduct of Hearing

A Department of Energy official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and section 336 of the Act. The Department of Energy reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing.

Each participant will be permitted to make a prepared general statement, limited to five (5) minutes, prior to the discussion of specific topics. The general statement should not address these specific topics. Other participants will be permitted to briefly comment on any general statements. The hearing will then be divided into segments, with each segment consisting of one or more topics covered by this notice, as follows: (1) Test procedures; (2) coverage and application of efficiency standards; (3) labeling; (4) certification; (5) enforcement; and (6) general statutory requirements (the matters in sections IV–XII above). Any issue concerning a definition in the proposed rule should be addressed during the discussion of the topic(s) to which that issue pertains.

The Department will introduce each topic with a brief summary of the relevant provisions of the proposed rule, and the significant issues involved. Participants in the hearing will then be permitted to make a prepared statement limited to five (5) minutes on that topic. At the end of all prepared statements on a topic, each participant will be permitted to briefly clarify his or her statement and comment on statements made by others. The Department is particularly interested in having participants address in their statements the specific issues set forth below in Section XIII–C, ''Issues for Public Comment,'' and participants should be prepared to answer questions by the Department concerning these issues. Representatives of the Department may also ask questions of participants concerning other matters relevant to the hearing. The total cumulative amount of time allowed for each participant to make prepared statements shall be 20 minutes.

The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any further procedural rules, or modification of the above procedures, needed for the proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by the Department of Energy and made available for inspection at the Department of Energy Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585–0101, (202) 586–6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the transcribing reporter.

C. Issues for Public Comment

The Department of Energy is interested in receiving comments and data concerning the accuracy and workability of these proposals and welcomes discussion on improvements or alternatives to these approaches. In particular, the Department is interested in gathering comments on the following:

1. Does the definition of ''basic model'' appropriately delineate motors with similar or different characteristics, and which should be grouped together or distinguished for purposes of measuring efficiency? What constitutes a difference between ''basic models?'' What are some examples of different basic models? Within a given rating, what is the likelihood of having different basic models?

2. Which electric motors are covered and which are not covered under the Act's definitions of ''electric motor,'' ''definite purpose motor,'' and ''special purpose motor?'' Comments are also sought on the Department's interpretation of these definitions, as expressed in this notice, and on whether the proposed definitions should be modified in any way. Do the definitions in the proposed regulation pose any practical problems, and are there particular motors that appear to be excluded from coverage that should be covered, and vice versa?

3. Is the proposed statistical sampling plan for testing appropriate for electric motors? Should a confidence limit higher than 90 percent be adopted? Should a different approach, or different figures, be adopted in place of the proposed divisor/coefficient?

4. In conjunction with using a label with the ''ee'' logo or ''energy efficient'' designation, should a manufacturer be required to display the minimum efficiency of the motor on the motor nameplate, and/or include such minimum efficiency in its compliance certification? Should the ''ee'' logo be *required* for complying motors, and if so, under what conditions?

5. Should the Department require that a Compliance Certification number be displayed on the nameplate of an electric motor, and in marketing materials for that motor? What are the benefits of such requirement(s)?

6. In addition to the proposal that import documents disclose the date of the Compliance Certification and the CC number for that motor, should import documents include a motor's nominal full load efficiency or other information? What will be the practical effect of requiring information on import documents?

7. What ''independent testing'' and ''certification'' programs exist or could come into existence within the next several years? Comments are also sought on the proposed provisions concerning recognition of accrediting bodies and certification organizations by the Department.

8. Does the sampling plan for enforcement testing: (1) Permit the Department to obtain an estimate of the true mean full load efficiency of the population of motors; (2) establish reasonable measurement tolerances for motor efficiencies; and (3) ensure that the results obtained by actual testing are significant within these tolerances?

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Energy conservation, Incorporation by reference.

Issued in Washington, DC, October 30, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Chapter II of Title 10, Code of Federal Regulations (CFR), is proposed to be amended by adding new part 431 to read as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT: TEST PROCEDURES, LABELING, AND CERTIFICATION REQUIREMENTS FOR ELECTRIC MOTORS

Subpart A—General Provisions

Subpart B—Test Procedures and Materials Incorporated

Subpart C—Energy Efficiency Standards

Subpart D—Petitions to Exempt State Regulation from Preemption; Petitions to Withdraw Exemption of State Regulation

Subpart E—Labeling

Subpart F—[Reserved]

Subpart G—Certification and Enforcement

Appendix A to Subpart G of Part 431—Compliance Certification

Authority: 42 U.S.C. 6311–6316.

Subpart A—General Provisions

§ 431.1 Purpose and scope.

This part establishes the regulations for the implementation of Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C 6311–6316, which establishes an energy conservation program for certain industrial equipment.

§ 431.2 Definitions.

For purposes of this part, words shall be defined as provided for in section 340 of the Act and as follows—

Accreditation means recognition by an authoritative body that a laboratory is competent to perform all of the specific test procedures that are required by or incorporated into this part.

Accreditation body means an organization or entity that conducts and administers an accreditation system and grants accreditation.

Accreditation system means a set of requirements to be fulfilled by a testing laboratory, as well as rules of procedure and management, that are used to accredit laboratories.

Accredited laboratory means a testing laboratory to which accreditation has been granted.

Act means the Energy Policy and Conservation Act of 1975, as amended (42 U.S.C. 6311 et seq.).

Alternative efficiency determination method or *AEDM* means a method of calculating the total power loss and average full load efficiency of an electric motor.

ANSI means American National Standards Institute.

Average full load efficiency means the average efficiency of a population of electric motors of duplicate design, where the efficiency of each motor in the population is the ratio (expressed as a percentage) of the motor's useful power output to its total power input when the motor is operated at its full rated load.

Basic model means all units of a given type of covered equipment (or class thereof) manufactured by a single manufacturer, and, with respect to electric motors, which have the same rating, have electrical characteristics that are essentially identical, and do not have any differing physical or functional characteristics which affect energy consumption or efficiency. For purpose of this definition, ''rating'' means one of the 113 combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to which § 431.42 prescribes nominal full load efficiency standards.

Certificate of conformity means a document that is issued by a certification program, and that gives written assurance that an electric motor complies with the energy efficiency standard applicable to that motor, as specified in 10 CFR 431.42.

Certification program means a certification system that determines conformity by electric motors with the energy efficiency standards prescribed by and pursuant to the Act.

Certification system means a system, that has its own rules of procedure and management, for giving written assurance that a product, process, or service conforms to a specific standard or other specified requirements, and that is operated by an entity independent of both the party seeking the written assurance and the party providing the product, process or service.

Covered equipment means industrial equipment of a type specified in section 340 of the Act.

CSA means the Canadian Standards Association.

Definite purpose motor means any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual, or for use on a particular type of application, and which cannot be used in most general purpose applications.

Electric motor means a machine which converts electrical power into rotational mechanical power and which:

(1) Is a general purpose motor, including but not limited to motors with explosion-proof construction;

(2) Is a single speed, induction motor;

(3) Is rated for continuous duty operation, or is rated duty type S–1 (IEC);

(4) Contains a squirrel-cage or cage (IEC) rotor, and has foot-mounting, including foot-mounting with flanges or detachable feet;

(5) Is built in accordance with NEMA T-frame dimensions, or IEC metric equivalents (IEC);

(6) Has performance in accordance with NEMA Design A or B characteristics, or equivalent designs such as IEC Design N (IEC); and

(7) Operates on polyphase alternating current 60-Hertz sinusoidal power, and is:

(i) Rated 230 volts or 460 volts, or both, including any motor that is rated at multi-voltages that include 230 volts or 460 volts, or

(ii) Can be operated on 230 volts or 460 volts, or both.

(Terms in this definition followed by the parenthetical ''IEC'' shall be construed with reference to IEC Standard 34–1. Other terms in this definition, if not defined in this § 431.2, shall be construed with reference to NEMA Standards Publication MG1–1987.)

Enclosed motor means an electric motor so constructed as to prevent the free exchange of air between the inside and outside of the case but not sufficiently enclosed to be termed airtight.

EPCA means the Energy Policy and Conservation Act of 1975, as amended (42 U.S.C. 6311 et seq.).

General purpose motor means any motor which is designed in standard ratings with either:

(1) Standard operating characteristics and mechanical construction for use under usual service conditions, such as those specified in NEMA Standards Publication MG1–1993, paragraph 14.02, ''Usual Service Conditions,'' and without restriction to a particular application or type of application; or

(2) Standard operating characteristics or standard mechanical construction for use under unusual service conditions, or for a particular type of application, and which can be used in most general purpose applications.

IEC means the International Electrotechnical Commission.

I*EEE* means the Institute of Electrical and Electronics Engineers.

NEMA means the National Electrical Manufacturers Association.

Nominal full load efficiency of an electric motor means the nominal efficiency in Column A of Table 12–8, NEMA Standards Publication MG1–1993, that is either the closest lower value to, or that equals, the average full load efficiency of electric motors of the same design.

Open motor means an electric motor having ventilating openings which permit passage of external cooling air over and around the windings of the machine.

Special purpose motor means any motor that is designed for a particular application, and that either:

(1) Is designed in non-standard ratings with special operating characteristics or special mechanical construction, or

(2) Has special operating characteristics and special mechanical construction.

Total power loss means that portion of the energy used by an electric motor not converted to rotational mechanical power, expressed in percent.

Subpart B—Test Procedures and Materials Incorporated

§ 431.21 Purpose and scope.

This subpart contains test procedures for electric motors, required to be prescribed by DOE pursuant to section 343 of EPCA, 42 U.S.C. 6314, and identifies materials incorporated by reference in this Part.

§ 431.22 Reference sources.

(a) Materials Incorporated by Reference—(1) General. The following standards which are not otherwise set forth in this part 431 are incorporated by reference. The material listed in paragraph (a)(2) of this section has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE test procedures unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the Federal Register.

(2) List of standards incorporated by reference.

(i) National Electrical Manufacturers Association Standards Publication MG1–1993 with Revision 1, *Motors and Generators,* section 12.58.1, (''Determination of Motor Efficiency Losses''), Table 12–8 (''Efficiency Levels''), and section 14.02 (''Usual Service Conditions'').

(ii) Institute of Electrical and Electronics Engineers, Inc., Standard 112–1991, *Test Procedure for Polyphase Induction Motors and Generators.*

(iii) Canadian Standards Association Standard C390–93, *Energy Efficiency Test Methods for Three-Phase Induction Motors.*

(3) Inspection of standards. The standards incorporated by reference are available for inspection at:

(i) Office of the Federal Register Information Center, 800 North Capitol Street, NW, Suite 700, Washington, DC;

(ii) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, ''Test Procedures, Labeling, and Certification Requirements for Electric Motors,'' Docket No. EE–RM–96–400, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

(4) Availability of standards. Standards incorporated by reference may be obtained from the following sources:

(i) Copies of IEEE Standard 112–1991 can be obtained from the Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, 1–800–678–IEEE; or the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, NY 10036, (212) 642–4900 as ANSI/IEEE 112–1992;

(ii) Copies of NEMA Standards Publication MG1–1993 can be obtained from the National Electrical Manufacturers Association, 1300 North 17th Street, Suite 1847, Rosslyn, VA 22209, (703) 841–3200;

(iii) Copies of CSA Standard C390–93 can be obtained from the Canadian Standards Association, 178 Rexdale Boulevard, Rexdale (Toronto), Ontario, Canada M9W 1R3, (416) 747–4044.

§ 431.23 Test procedures for the measurement of energy efficiency.

The test procedures for measurement of whether an electric motor complies with the energy efficiency standards in § 431.42 shall be the test procedures specified in appendix A to this subpart B.

§ 431.24 Units to be tested.

When testing of an electric motor is required in order for a manufacturer to comply with an obligation imposed on it by or pursuant to Part C of Title III of EPCA, 42 U.S.C. 6311–6316, this section applies. This section does not apply to enforcement testing conducted pursuant to § 431.127.

(a) General requirements. The average full load efficiency of each basic model of electric motor shall be determined either by testing under paragraph (b)(1) of this section, or by application of an alternative efficiency determination method (AEDM) that meets the requirements of paragraphs (b) (2) and (3) of this section, provided, however, that an AEDM may be used to determine the average full load efficiency of one or more of a manufacturer's basic models only if the average full load efficiency of at least five of its other basic models is determined through testing.

(b) Specific requirements—(1) Testing. (i) Basic models shall be selected for testing in accordance with the following criteria:

(A) Two of the basic models must be among the five basic models with the highest unit volumes of production by the manufacturer in the prior year;

(B) The basic models should be of different horsepowers without duplication;

(C) The basic models should have different frame sizes without duplication; and

(D) Each basic model should be expected to have the lowest nominal full load efficiency among the basic models with the same rating.

(ii) In any instance where it is impossible for a manufacturer to select basic models for testing in accordance with all of the criteria in paragraph (b)(1)(i) of this section, the criteria shall be given priority in the order in which they are listed. Within the limits imposed by the criteria, basic models shall be selected randomly.

(iii) For each basic model selected for testing,[9] a sample of units shall be selected at random and tested in accordance with §§ 431.23 and 431.25, and appendix A, of this subpart. The sample shall be comprised of production units of the basic model, or units that are representative of such production units, and shall be of sufficient size to ensure that any represented value of the nominal or average full load efficiency of the basic model is no greater than the lesser of:

(A) The average full load efficiency of the sample, or

(B) The lower 90 percent confidence limit of the average full load efficiency of the entire population divided by the coefficient ''K'' applicable to the represented value. The coefficients are set forth in appendix B of this subpart.

(2) Alternative efficiency determination method. An AEDM applied to a basic model must be:

(i) Derived from a mathematical model that accurately represents the mechanical and electrical characteristics of that basic model, and

(ii) Based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data.

(3) Substantiation of an alternative efficiency determination method. Before an AEDM is used, its accuracy and reliability must be substantiated as follows:

(i) The AEDM must be applied to at least five basic models that have been selected for testing and tested in accordance with paragraph (b)(1) of this section, and

(ii) The predicted total power loss for each such basic model, calculated by applying the AEDM, must be within plus or minus ten percent of the mean total power loss determined from the actual testing of that basic model.

(4) Subsequent verification of an AEDM. (i) Each manufacturer shall periodically select basic models representative of those to which it has applied an AEDM, and for each basic model selected shall either:

(A) Subject a sample of units to testing in accordance with §§ 431.23 and 431.24(b)(1)(iii) by an accredited laboratory that meets the requirements of § 431.25,

(B) Have a certification body recognized under § 431.27 certify its nominal full load efficiency, or

(C) Have an independent state-registered professional engineer, who is not an employee of the manufacturer, review the manufacturer's representations and certify that the results of the AEDM accurately represent the total power loss and nominal full load efficiency of the basic model.

(ii) Each manufacturer that has used an AEDM under this section shall have available for inspection by the Department of Energy records showing: The method or methods used; the mathematical model, the engineering or statistical analysis, computer simulation or modeling, and other analytic evaluation of performance data on which the AEDM is based; complete test data, product information, and related information that the manufacturer has generated or acquired pursuant to paragraphs (a)(3) and (a)(4)(i) of this section; and the calculations used to determine the average full load efficiency and total power losses of each basic model to which an AEDM was applied.

(iii) If requested by the Department, the manufacturer shall conduct simulations to predict the performance of particular basic models of electric motors specified by the Department, analyses of previous simulations conducted by the manufacturer, sample testing of basic models selected by the Department, or a combination of the foregoing.

§ 431.25 Testing laboratories.

(a) Unless a certificate of conformity for a basic model of an electric motor is obtained from a certification program classified by DOE as nationally recognized under § 431.27, all testing of that basic model to meet the requirements of § 431.24 shall be carried out in an accredited laboratory for which the accreditation body was:

(1) The National Voluntary Laboratory Accreditation Program (NVLAP), or

(2) A foreign organization recognized by NVLAP, or

(3) An organization classified by the Department, pursuant to § 431.26, as an accreditation body.

(b) NVLAP is under the auspices of the National Institute of Standards and Technology (NIST) which is part of the U.S. Department of Commerce. NVLAP accreditation is granted on the basis of conformance with criteria published in 15 CFR part 285, The National Voluntary Laboratory Accreditation Program Procedures and General Requirements. NIST Handbook 150–10, August 1995, presents the technical requirements of the National Voluntary Laboratory Accreditation Program for the Efficiency of Electric Motors field of accreditation. This handbook supplements NIST Handbook 150, National Voluntary Laboratory Accreditation Program Procedures and General Requirements, which contains part 285 of Title 15 of the U.S. Code of Federal Regulations plus all general NVLAP procedures, criteria, and policies. Changes in NVLAP's criteria, procedures, policies, standards or other bases for granting accreditation, occurring subsequent to the initial effective date of 10 CFR part 431, shall not apply to accreditation under this part unless approved in writing by the Department of Energy. Information regarding NVLAP can be obtained from NIST/NVLAP, Building 411, Room A162, Gaithersburg, MD 20899, telephone (301) 975–4016, or telefax (301) 926–2884.

§ 431.26 Department of Energy recognition of accreditation bodies.

(a) Petition. An organization requesting classification by the Department of Energy as an accreditation body must submit a petition to the Department requesting such classification, and must demonstrate that it meets the criteria in paragraph (b) of this section.

(b) Evaluation criteria. To be classified as an accreditation body by the Department, the organization must meet the following criteria:

(1) It must have standards and procedures for conducting and administering an accreditation system and for granting accreditation.

(2) It must be independent of electric motor manufacturers, importers, distributors, private labelers or vendors. It cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity.

(3) It must be qualified to perform the accrediting function in a highly competent manner.

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE Standard 112 Test Method B and CSA Standard C390 Test Method (1), or similar procedures and methodologies for determining the energy efficiency of electric motors.

(c) Petition format. Each petition requesting classification as an

[9] Components of similar design may be substituted without requiring additional testing if the represented measures of energy consumption continue to satisfy the applicable sampling provision.

accreditation body must contain a narrative statement as to why the organization meets the criteria set forth in paragraph (b) of this section, must be signed on behalf of the organization by an authorized representative, and must be accompanied by documentation that supports the narrative statement. The following provides additional guidance:

(1) Standards and procedures. A copy of the organization's standards and procedures for operating an accreditation system and for granting accreditation should accompany the petition.

(2) Independent status. The petitioning organization should identify and describe any relationship, direct or indirect, that it has with an electric motor manufacturer, importer, distributor, private labeler, vendor, trade association or other such entity, as well as any other relationship it believes might appear to create a conflict of interest for it in performing as an accreditation body for electric motor testing laboratories. It should explain why it believes such relationship(s) would not compromise its independence as an accreditation body.

(3) Qualifications to do accrediting. Experience in accrediting should be discussed and substantiated by supporting documents. Of particular relevance would be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 58, *Calibration and testing laboratory accreditation systems—General requirements for operation and recognition,* as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 25, *General Requirements for the Competence of Calibration and Testing Laboratories.*

(4) Expertise in electric motor test procedures. The petition should set forth the organization's experience with the test procedures and methodologies in IEEE Standard 112 Test Method B and CSA Standard C390 Test Method (1), and with similar procedures and methodologies. This part of the petition should include description of prior projects, qualifications of staff members, and the like. Of particular relevance would be documentary evidence that establishes experience in applying the guidelines contained in the ISO/IEC Guide 25, *General Requirements for the Competence of Calibration and Testing Laboratories,* to energy efficiency testing for electric motors.

(d) Disposition. The Department will evaluate the petition, determine whether the applicant meets the criteria in paragraph (b) of this section to be classified as an accrediting body, advise the applicant of its determination, and give public notice of any affirmative determination. The Department's determination may be based solely on the applicant's petition and supporting documents, or may also be based on such additional information as it deems appropriate. The Department may request that the applicant provide additional relevant information to supplement its petition, or may conduct an investigation.

§ 431.27 Department of Energy recognition of nationally recognized certification programs.

(a) Petition. For a certification program to be classified by the Department of Energy as being nationally recognized in the United States for the purposes of section 345 of EPCA (''nationally recognized''), the organization operating the program must demonstrate the program's eligibility for such classification, and must submit a petition to the Department requesting such classification.

(b) Evaluation criteria. For a certification program to be classified by the Department as nationally recognized, it must meet the following criteria:

(1) It must have standards and procedures for conducting and administering a certification system and for granting a certificate of conformity.

(2) It must be independent of electric motor manufacturers, importers, distributors, private labelers or vendors. It cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity.

(3) It must be qualified to operate a certification system in a highly competent manner.

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE Standard 112 Test Method B and CSA Standard C390 Test Method (1), or similar procedures and methodologies for determining the energy efficiency of electric motors.

(c) Petition format. Each petition requesting classification as a nationally recognized certification program must contain a narrative statement as to why the program meets the criteria listed in paragraph (b) of this section, must be signed on behalf of the organization operating the program by an authorized representative, and must be accompanied by documentation that supports the narrative statement. The following provides additional guidance as to the specific criteria:

(1) Standards and procedures. A copy of the standards and procedures for operating a certification system and for granting a certificate of conformity should accompany the petition.

(2) Independent status. The petitioning organization should identify and describe any relationship, direct or indirect, that it or the certification program has with an electric motor manufacturer, importer, distributor, private labeler, vendor, trade association or other such entity, as well as any other relationship it believes might appear to create a conflict of interest for the certification program in operating a certification system for compliance by electric motors with energy efficiency standards. It should explain why it believes such relationship would not compromise its independence in operating a certification program.

(3) Qualifications to operate a certification system. Experience in operating a certification system should be discussed and substantiated by supporting documents. Of particular relevance would be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 65, *General requirements for bodies operating product certification systems,* ISO/IEC Guide 27, *Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk,* and ISO/IEC Guide 28, *General rules for a model third-party certification system for products,* as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 25, *General Requirements for the Competence of Calibration and Testing Laboratories.*

(4) Expertise in electric motor test procedures. The petition should set forth the program's experience with the test procedures and methodologies in IEEE Standard 112 Test Method B and CSA Standard C390 Test Method (1), and with similar procedures and methodologies. This part of the petition should include description of prior projects, qualifications of staff members, and the like. Of particular relevance would be documentary evidence that establishes experience in applying guidelines contained in the ISO/IEC Guide 25, *General Requirements for the Competence of Calibration and Testing Laboratories,* to energy efficiency testing for electric motors.

(d) Disposition. The Department will evaluate the petition, determine whether the applicant meets the criteria

in paragraph (b) of this section for classification as a nationally recognized certification program, advise the applicant of its determination, and give public notice of any affirmative determination. The Department's determination may be based solely on the applicant's petition and supporting documents, or may also be based on such additional information as it deems appropriate. The Department may request that the applicant provide additional relevant information to supplement its petition, or may conduct an investigation.

§ 431.28 Petitions for waiver and applications for interim waiver.

The provisions of 10 CFR 430.27 shall apply with respect to this part 431, to the same extent and in the same manner as they apply in part 430. In applying § 430.27 for purposes of this part, the term ''§ 430.22'' shall be deemed to mean ''section 431.23,'' and the term ''§ 322(a)'' shall be deemed to mean ''section 340(1).''

Appendix A to Subpart B of Part 431—Uniform Test Method for Measuring Nominal Full Load Efficiency of Electric Motors

1. Definitions

Definitions contained in § 431.2 are applicable to this appendix.

2. Test procedures

Efficiency and losses shall be determined in accordance with NEMA MG1–1993 with Revision 1, section 12.58.1, Determination of Motor Efficiency and Losses, and either IEEE Standard 112 Test Method B, Input-Output with Loss Segregation, or Canadian Standards Association Standard C390 Test Method (1), Input-Output Method with Indirect Measurement of the Stray-Load Loss and Direct Measurement of the Stator Winding (I^2R), Rotor Winding (I^2R), Core and Windage-Friction Losses.

3. Amendments to test procedures

Any revision to IEEE Standard 112–1991, Test Method B, to § 12.58.1 of NEMA Standards Publication MG1–1993 with Revision 1, or to CSA Standard C390–93, Test Method (1), subsequent to promulgation of this appendix A, shall not be effective for purposes of test procedures required under part 431 and this appendix A, unless and until part 431 and this appendix A are amended.

Appendix B to Subpart B of Part 431—Nominal Full Load Efficiency and Corresponding Coefficient K

The coefficient K is used for calculating permitted represented values of energy efficiency. From the table below, select the coefficient K for the nominal full load efficiency that is equal to, or is the closest lower value to, the represented value.

Nominal full load efficiency	Coefficient K
99.0	0.998
98.9	0.998
98.8	0.998
98.7	0.998
98.6	0.998
98.5	0.997
98.4	0.996
98.2	0.996
98.0	0.996
97.8	0.996
97.6	0.995
97.4	0.994
97.1	0.994
96.8	0.994
96.5	0.993
96.2	0.992
95.8	0.992
95.4	0.991
95.0	0.990
94.5	0.990
94.1	0.988
93.6	0.987
93.0	0.986
92.4	0.985
91.7	0.984
91.0	0.984
90.2	0.981
89.5	0.978
88.5	0.977
87.5	0.977
86.5	0.971
85.5	0.965
84.0	0.970
82.5	0.970
81.5	0.963
80.0	0.963
78.5	0.962
77.0	0.961
75.5	0.954

Subpart C—Energy Efficiency Standards

§ 431.41 Purpose and scope.

This subpart contains energy efficiency standards for certain types of covered equipment pursuant to Part C—Certain Industrial Equipment, Energy Policy and Conservation Act, as amended (42 U.S.C. 6211 et seq.).

§ 431.42 Energy efficiency standards and effective dates.

(a) Each electric motor manufactured (alone or as a component of another piece of equipment) after October 24, 1997, or in the case of an electric motor which requires listing or certification by a nationally recognized safety testing laboratory, after October 24, 1999, shall have a nominal full load efficiency of not less than the following:

	Nominal full load efficiency					
	Open motors			Enclosed motors		
Number of poles	6	4	2	6	4	2
Motor Horsepower/Standard Kilowatt Equivalent						
1/.75	80.0	82.5	.....	80.0	82.5	75.5
1.5/1.1	84.0	84.0	82.5	85.5	84.0	82.5
2/1.5	85.5	84.0	84.0	86.5	84.0	84.0
3/2.2	86.5	86.5	84.0	87.5	87.5	85.5
5/3.7	87.5	87.5	85.5	87.5	87.5	87.5
7.5/5.5	88.5	88.5	87.5	89.5	89.5	88.5
10/7.5	90.2	89.5	88.5	89.5	89.5	89.5
15/11	90.2	91.0	89.5	90.2	91.0	90.2
20/15	91.0	91.0	90.2	90.2	91.0	90.2
25/18.5	91.7	91.7	91.0	91.7	92.4	91.0
30/22	92.4	92.4	91.0	91.7	92.4	91.0
40/30	93.0	93.0	91.7	93.0	93.0	91.7
50/37	93.0	93.0	92.4	93.0	93.0	92.4
60/45	93.6	93.6	93.0	93.6	93.6	93.0
75/55	93.6	94.1	93.0	93.6	94.1	93.0
100/75	94.1	94.1	93.0	94.1	94.5	93.6
125/90	94.1	94.5	93.6	94.1	94.5	94.5
150/110	94.5	95.0	93.6	95.0	95.0	94.5

Number of poles	Nominal full load efficiency					
	Open motors			Enclosed motors		
	6	4	2	6	4	2
200/150	94.5	95.0	94.5	95.0	95.0	95.0

(b) For purposes of determining the required minimum nominal full load efficiency of an electric motor that has a horsepower or kilowatt rating between two horsepowers or kilowattages listed consecutively in paragraph (a) of this section, each such motor shall be deemed to have a horsepower or kilowatt rating that is listed in paragraph (a) of this section. The rating that the motor is deemed to have shall be determined as follows:

(1) A horsepower at or above the midpoint between the two consecutive horsepowers shall be rounded up to the higher of the two horsepowers;

(2) A horsepower below the midpoint between the two consecutive horsepowers shall be rounded down to the lower of the two horsepowers, or

(3) A kilowatt rating shall be directly converted from kilowatts to horsepower using the formula, 1 kilowatt = (1/0.746) horsepower, without calculating beyond three significant decimal places, and the resulting horsepower shall be rounded in accordance with paragraph (b)(1) or (b)(2) of this section, whichever applies.

(c) This section does not apply to definite purpose motors, special purpose motors, and those motors exempted by the Secretary.

Subpart D—Petitions To Exempt State Regulation From Preemption; Petitions To Withdraw Exemption of State Regulation

§ 431.61 Purpose and scope.

The provisions of 10 CFR 430.40 through 430.49 shall apply with respect to this part 431, to the same extent and in the same manner as they apply in part 430. In applying §§430.40 through 430.49 for purposes of this part, the term ''energy conservation standard'' shall be deemed to mean ''energy efficiency standard,'' and the term ''product'' shall be deemed to mean ''equipment.''

Subpart E—Labeling

§ 431.81 Purpose and scope.

This subpart establishes labeling rules for electric motors pursuant to section 344 of EPCA, 42 U.S.C. 6315. It addresses labeling and marking the equipment with information indicating its energy efficiency and compliance with applicable standards under section 342 of EPCA, 42 U.S.C 6313, and the inclusion of such information in other material used to market the equipment.

§ 431.82 Labeling requirements.

(a) Electric motor nameplate—(1) Required information. The permanent nameplate of an electric motor for which standards are prescribed in § 431.42 shall be marked clearly with the following information:

(i) The motor's nominal full load efficiency (as of the date of manufacture), derived from the motor's average full load efficiency as determined pursuant to subpart B of this part;

(ii) The Compliance Certification (''CC'') number supplied by DOE to the manufacturer pursuant to § 431.123(e), and applicable to that motor. A CC number shall be applicable to a motor 90 days after either:

(A) The manufacturer has received the number upon submitting a Compliance Certification covering that motor, or

(B) The expiration of 21 days from DOE's receipt of a Compliance Certification covering that motor, if the manufacturer has not been advised by DOE that the Compliance Certification fails to satisfy § 431.123.

(2) Display of required information. All orientation, spacing, type sizes, type faces, and line widths to display this required information shall be the same as or similar to the display of the other performance data on the motor's permanent nameplate. The nominal full load efficiency shall be identified either by the term ''Nominal Efficiency'' or ''Nom. Eff.'' or by the terms specified in § 12.58.2 of NEMA MG1–1993, as for example ''NEMA Nom. Eff. _____.'' The DOE number shall be in the form ''CC_____.''

(3) Optional display. The permanent nameplate of an electric motor, a separate plate, or decalcomania, may be marked with the words ''energy efficient,'' or with the encircled lower case letters ''ee'', or with some comparable designation or logo, if the motor meets the applicable standard prescribed in § 431.42, as determined pursuant to subpart B of this part, and is covered by a Compliance Certification that satisfies § 431.123.

(b) Disclosure of efficiency information in marketing materials. (1) The same information that must appear on an electric motor's permanent nameplate pursuant to paragraph (a)(1) of this section, shall be prominently displayed:

(i) On each page of a catalog that lists the motor, and

(ii) In other materials used to market the motor.

(2) The ''ee'' logo, the words ''energy efficient,'' or other similar logo or designations, may also be used in catalogs and other materials to the same extent they may be used on labels under paragraph (a)(3) of this section.

(c) Import documents. Any electric motor imported into the United States shall be accompanied by shipping papers that disclose clearly the date of the Compliance Certification for that motor, and the Compliance Certification number applicable to that motor in accordance with paragraph (a)(1)(ii) of this section.

(d) Other motors. A manufacturer, distributor, retailer, or private labeler may voluntarily comply with or implement any of the subparagraphs of paragraph (a) or (b) of this section with respect to any electric motor manufactured prior to October 24, 1997, any definite purpose motor, or any special purpose motor. Any such motor that is labeled with information required or permitted for electric motors under this section, shall be deemed to be an ''electric motor'' for purposes of:

(1) The provision of this section that requires or permits such labeling information, and

(2) The requirements of this part concerning standards, testing, certification and enforcement that are related to that provision. Any certification of compliance submitted for purposes of this paragraph shall be submitted on a Compliance Certification that covers only non-covered motors, and that is clearly labeled as such on the first page and on the first page of the attachment.

Subpart F—[Reserved]

Subpart G—Certification and Enforcement

§ 431.121 Purpose and scope.

The regulations in this subpart set forth the procedures for manufacturers to certify that electric motors comply

with the applicable energy efficiency standards set forth in subpart C of this part, and set forth standards and procedures for enforcement of this part and the underlying provisions of the Act.

§ 431.122 Prohibited acts.

(a) Each of the following is a prohibited act pursuant to sections 332 and 345 of the Act:

(1) Distribution in commerce by a manufacturer or private labeler of any new covered equipment which is not labeled in accordance with an applicable labeling rule prescribed in accordance with section 344 of the Act, and in this part;

(2) Removal from any new covered equipment or rendering illegible, by a manufacturer, distributor, retailer, or private labeler, of any label required under this part to be provided with such equipment;

(3) Failure to permit access to, or copying of records required to be supplied under the Act and this part, or failure to make reports or provide other information required to be supplied under the Act and this part;

(4) Advertisement of covered equipment, by a manufacturer, distributor, retailer, or private labeler, in a catalog from which the equipment may be purchased, without including in the catalog all information as required by § 431.82(b)(2), provided, however, that this shall not apply to an advertisement of covered equipment in a catalog if distribution of the catalog began before the effective date of the labeling rule applicable to that equipment;

(5) Failure of a manufacturer to supply at his expense a reasonable number of units of an electric motor to a test laboratory designated by the Secretary;

(6) Failure of a manufacturer to permit a representative designated by the Secretary to observe any testing required by the Act and this part, and to inspect the results of such testing; and

(7) Distribution in commerce by a manufacturer or private labeler of any new covered equipment which is not in compliance with an applicable energy efficiency standard prescribed under the Act and this part.

(b) In accordance with sections 333 and 345 of the Act, any person who knowingly violates any provision of paragraph (a) of this section may be subject to assessment of a civil penalty of no more than $100 for each violation. Each violation of paragraphs (a) (1), (2), and (7) of this section shall constitute a separate violation with respect to each unit of covered equipment, and each day of noncompliance with paragraphs (a) (3) through (6) of this section shall constitute a separate violation.

(c) For purposes of this section, the term *new covered equipment* means covered equipment the title of which has not passed to a purchaser who buys such equipment for purposes other than

(1) Reselling such equipment, or

(2) Leasing such equipment for a period in excess of one year.

§ 431.123 Compliance Certification.

(a) General. Beginning 24 months after [effective date of rule], a manufacturer or private labeler shall not distribute in commerce any basic model of an electric motor subject to an energy efficiency standard set forth in subpart C of this part unless it has submitted to the Department a Compliance Certification certifying, in accordance with the provisions of this section, that the basic model meets the requirements of the applicable standard. Such certification must be based upon a determination made in accordance with the applicable requirements of subpart B of this part.

(b) Required contents. (1) General representations. Each Compliance Certification shall certify that:

(i) The nominal full load efficiency for each basic model of electric motor distributed is not less than the minimum nominal full load efficiency required for that motor by § 431.42;

(ii) All required determinations on which the Compliance Certification is based were made in compliance with the applicable requirements prescribed in subpart B of this part;

(iii) All information reported in the Compliance Certification is true, accurate, and complete; and

(iv) The manufacturer or private labeler is aware of the penalties associated with violations of the Act and the regulations thereunder, and 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government.

(2) Specific data. (i) For each rating of electric motor (as the term ''rating'' is defined in the definition of basic model) which a manufacturer or private labeler distributes, the Compliance Certification shall report the average full load efficiency, determined pursuant to §§ 431.23 and 431.24, of the least efficient basic model within that rating.

(ii) The Compliance Certification shall identify the basic models on which actual testing has been performed to meet the requirements of § 431.24.

(iii) The format for a Compliance Certification is set forth in appendix A of this subpart.

(c) Signature and submission. A manufacturer or private labeler shall submit the Compliance Certification either on its own behalf, signed by a corporate officer of the company, or through a third party (for example, a trade association or other authorized representative) acting on its behalf. Where a third party is used, the Compliance Certification shall identify the official of the manufacturer or private labeler who authorized the third party to make representations on the company's behalf, and shall be signed by a corporate official of the third party. The Compliance Certification shall be submitted to the Department by certified mail, to Department of Energy, Assistant Secretary for Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

(d) New basic models. For electric motors, a Compliance Certification shall be submitted for a new basic model only if the manufacturer or private labeler has not previously submitted to DOE a Compliance Certification, that meets the requirements of § 431.123, for a basic model that has the same rating as the new basic model, and that has a lower nominal full load efficiency than the new basic model.

(e) Response to Certification; Certification Number for Electric Motors. Promptly upon receipt of a Compliance Certification, the Department shall determine whether the document contains all of the elements required by this section, and may, in its discretion, determine whether all or part of the information provided in the document is accurate. The Department shall then advise the submitting party in writing either that the Compliance Certification does not satisfy the requirements of this section, in which case the document shall be returned, or that the Compliance Certification satisfies this section, and the basis for the determination. When advising that the initial Compliance Certification submitted by or on behalf of a manufacturer or private labeler is acceptable, DOE shall provide a unique number, ''CC _____,'' to the manufacturer or private labeler.

§ 431.124 Maintenance of records.

(a) The manufacturer of any electric motor subject to energy efficiency standards prescribed under section 342 of the Act shall establish, maintain and retain records of the following: The underlying test data for all actual testing conducted under this part; the development, substantiation, application, and subsequent verification of any AEDM used under this part; and any certificate of conformity relied on

under the provisions of this part. Such records shall be organized and indexed in a fashion which makes them readily accessible for review. The records should include the supporting test data associated with tests performed on any test units to satisfy the requirements of this subpart (except tests performed by the Department directly).

(b) All such records shall be retained by the manufacturer for a period of two years from the date that production of the applicable basic model of electric motor has ceased. Records shall be retained in a form allowing ready access to the Department upon request.

§ 431.125 Imported equipment.

The provisions of 10 CFR 430.64 shall apply with respect to this part 431, to the same extent and in the same manner as they apply in part 430. In applying § 430.64 for purposes of this part, the term ''section 331'' shall be deemed to mean ''sections 331 and 345,'' and the term ''product'' shall be deemed to mean ''equipment.''

§ 431.126 Exported equipment.

The provisions of 10 CFR 430.65 shall apply with respect to this part 431, to the same extent and in the same manner as they apply in part 430. In applying § 430.65 for purposes of this part, the term ''sections 330 and 345'' shall be substituted for the term ''section 330,'' and the term ''equipment'' shall be substituted for the term ''product.''

§ 431.127 Enforcement.

(a) *Test notice.* Upon receiving information in writing, concerning the energy performance of a particular electric motor sold by a particular manufacturer or private labeler, which indicates that the electric motor may not be in compliance with the applicable energy efficiency standard, or upon undertaking to ascertain the accuracy of information disclosed pursuant to subpart E of this part, the Secretary may conduct testing of that covered equipment under this subpart by means of a test notice addressed to the manufacturer in accordance with the following requirements:

(1) The test notice procedure will only be followed after the Secretary or his/her designated representative has examined the underlying test data (or, where appropriate, data as to use of an alternative efficiency determination method) provided by the manufacturer and after the manufacturer has been offered the opportunity to meet with the Department to verify compliance with the applicable efficiency standard. In addition, where compliance of a basic model was certified based on an AEDM, the Department shall have the discretion to pursue the provisions of § 431.24(b)(4)(iii) prior to invoking the test notice procedure. A representative designated by the Secretary shall be permitted to observe any reverification procedures undertaken pursuant to this subpart, and to inspect the results of such reverification.

(2) The test notice will be signed by the Secretary or his/her designee. The test notice will be mailed or delivered by the Department to the plant manager or other responsible official, as designated by the manufacturer.

(3) The test notice will specify the model or basic model to be selected for testing, the method of selecting the test sample, the date and time at which testing shall be initiated, the date by which testing is scheduled to be completed and the facility at which testing will be conducted. The test notice may also provide for situations in which the selected basic model is unavailable for testing, and may include alternative basic models.

(4) The Secretary may require in the test notice that the manufacturer of an electric motor shall ship at his expense a reasonable number of units of a basic model specified in such test notice to a testing laboratory designated by the Secretary. The number of units of a basic model specified in a test notice shall not exceed twenty (20).

(5) Within five working days of the time the units are selected, the manufacturer shall ship the specified test units of a basic model to the testing laboratory.

(b) Testing laboratory. Whenever the Department conducts enforcement testing at a designated laboratory in accordance with a test notice under this section, the resulting test data shall constitute official test data for that basic model. Such test data will be used by the Department to make a determination of compliance or noncompliance if a sufficient number of tests have been conducted to satisfy the requirements of appendix C of this subpart.

(c) Sampling. The determination that a manufacturer's basic model complies with the applicable energy efficiency standard shall be based on the testing conducted in accordance with the statistical sampling procedures set forth in appendix B of this subpart and the test procedures set forth in subpart B of this part.

(d) Test unit selection. A Department inspector shall select a batch, a batch sample, and test units from the batch sample in accordance with the provisions of this paragraph and the conditions specified in the test notice.

(1) The batch may be subdivided by the Department utilizing criteria specified in the test notice.

(2) A batch sample of up to 20 units will then be randomly selected from one or more subdivided groups within the batch. The manufacturer shall keep on hand all units in the batch sample until such time as the basic model is determined to be in compliance or non-compliance.

(3) Individual test units comprising the test sample shall be randomly selected from the batch sample.

(4) All random selection shall be achieved by sequentially numbering all of the units in a batch sample and then using a table of random numbers to select the units to be tested.

(e) Test unit preparation. (1) Prior to and during the testing, a test unit selected in accordance with paragraph (d) of this section shall not be prepared, modified, or adjusted in any manner unless such preparation, modification, or adjustment is allowed by the applicable Department of Energy test procedure. One test shall be conducted for each test unit in accordance with the applicable test procedures prescribed in subpart B of this part.

(2) No quality control, testing, or assembly procedures shall be performed on a test unit, or any parts and sub-assemblies thereof, that is not performed during the production and assembly of all other units included in the basic model.

(3) A test unit shall be considered defective if such unit is inoperative or is found to be in noncompliance due to failure of the unit to operate according to the manufacturer's design and operating instructions. Defective units, including those damaged due to shipping or handling, shall be reported immediately to the Department. The Department shall authorize testing of an additional unit on a case-by-case basis.

(f) Testing at manufacturer's option. (1) If a manufacturer's basic model is determined to be in noncompliance with the applicable energy performance standard at the conclusion of Department testing in accordance with the sampling plan specified in appendix C of this subpart, the manufacturer may request that the Department conduct additional testing of the basic model according to procedures set forth in appendix B of this subpart.

(2) All units tested under this paragraph shall be selected and tested in accordance with the provisions given in paragraphs (a) through (e) of this section.

(3) The manufacturer shall bear the cost of all testing conducted under this paragraph.

(4) The manufacturer shall cease distribution of the basic model tested under the provisions of this paragraph from the time the manufacturer elects to exercise the option provided in this paragraph until the basic model is determined to be in compliance. The Department may seek civil penalties for all units distributed during such period.

(5) If the additional testing results in a determination of compliance, a notice of allowance to resume distribution shall be issued by the Department.

§ 431.128 Cessation of distribution of a basic model.

The provisions of 10 CFR 430.71 shall apply with respect to this part 431, to the same extent and in the same manner they apply in part 430. In applying § 430.71 for purposes of this part, the term ''§ 430.70'' shall be deemed to mean ''§ 431.127.''

§ 431.129 Subpoena.

The provisions of 10 CFR 430.72 shall apply with respect to this part 431, to the same extent and in the same manner as they apply in part 430. In applying § 430.72 for purposes of this part, the term ''section 329(a)'' shall be deemed to mean ''sections 329(a) and 345.''

§ 431.130 Remedies.

The provisions of 10 CFR 430.73 shall apply with respect to this part 431, to the same extent and in the same manner as they apply in part 430. In applying § 430.73 for purposes of this part, the term ''conservation'' shall be deemed to mean ''efficiency,'' the term ''section 334'' shall be deemed to mean ''sections 334 and 345'' and the term ''section 333'' shall be deemed to mean ''sections 333 and 345.''

§ 431.131 Hearings and appeals.

The provisions of 10 CFR 430.74 shall apply with respect to this part 431, to the same extent and in the same manner as they apply in part 430. In applying § 430.74 for purposes of this part, the term ''conservation'' shall be deemed to mean ''efficiency,'' the term ''section 334'' shall be deemed to mean ''sections 334 and 345'' and the term ''section 333'' shall be deemed to mean ''sections 333 and 345.''

§ 431.132 Confidentiality.

The provisions of 10 CFR 430.75 shall apply with respect to this part 431, to the same extent and in the same manner as it applies in part 430.

Appendix A to Subpart G of Part 431—Compliance Certification

Certification of Compliance With Energy Efficiency Standards for Electric Motors

Name and Address of Company (the ''company''):

_____

_____

_____

_____

Type(s) of Electric Motor(s):

_____

_____

Submit by Certified Mail to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

This Compliance Certification reports on and certifies compliance with requirements contained in 10 CFR Part 431 (Energy Conservation Program for Certain Commercial and Industrial Equipment) and Part C of the Energy Policy and Conservation Act (Public Law 94–163), and amendments thereto. It is signed by a responsible official of the above named company. Attached and incorporated as part of this Compliance Certification is a Listing of Electric Motor Efficiencies. For each rating of electric motor * for which the Listing specifies the nominal full load efficiency of a basic model, the company distributes no less efficient basic model with that rating and all basic models with that rating comply with the applicable energy efficiency standard.

Name of Person to Contact for Further Information:

Name: _____

Address: _____

_____

_____

Telephone Number: _____

Facsimile Number: _____

If any part of this Compliance Certification, including the Attachment, was prepared by a third party organization under the provisions of section 431.123 of 10 CFR Part 431, the company official authorizing third party representations:

Name: _____

Address: _____

_____

_____

_____

Telephone Number: _____

Facsimile Number: _____

The third party organization officially acting as representative:

Third Party Organization: _____

_____

Name: _____

Address: _____

_____

_____

_____

Telephone Number: _____

Facsimile Number: _____

All required determinations on which this Compliance Certification is based were made in conformance with the applicable requirements in 10 CFR Part 431, subpart B. All information reported in this Compliance Certification is true, accurate, and complete. The company is aware of the penalties associated with violations of the Act and the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C 1001, which prohibits knowingly making false statements to the Federal Government.

Signature: _____

Date: _____

Name: _____

Title: _____

Firm or Organization: _____

Attachment to Certification of Compliance With Energy Efficiency Standards for Electric Motors Listing of Electric Motor Efficiencies

Date: _____

Name of company _____

Rating of electric motor			Least efficient basic model (model number(s))	Average full load efficiency
Motor horsepower	Number of poles	Open or enclosed motor		
1	6	Open		
1	4	Open		
1	6	Enclosed		
1	4	Enclosed		
1	2	Enclosed		
1.5	6	Open		
1.5	4	Open		

* The term ''rating'' means one of the 113 combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to which section 431.42 of 10 CFR Part 431 prescribes nominal full load efficiency standards.

Rating of electric motor			Least efficient basic model (model number(s))	Average full load efficiency
Motor horsepower	Number of poles	Open or enclosed motor		
1.5	2	Open		
1.5	6	Enclosed		
1.5	4	Enclosed		
1.5	2	Enclosed		
etc	etc	etc		

Rating of electric motor			Least efficient basic model (model number(s))	Average full load efficiency
Motor kilowatts	Number of poles	Open or enclosed motor		
.75	6	Open		
.75	4	Open		
.75	6	Enclosed		
.75	4	Enclosed		
.75	2	Enclosed		
1.1	6	Open		
1.1	4	Open		
1.1	2	Open		
1.1	6	Enclosed		
1.1	4	Enclosed		
1.1	2	Enclosed		
etc	etc	etc		

Note: The manufacturer shall place an asterisk beside each reported nominal full load efficiency that is determined by actual testing rather than by application of an alternative efficiency determination method. The manufacturer shall also list below additional basic models that were subjected to actual testing.

Basic Model means all units of a given type of covered equipment (or class thereof) manufactured by one manufacturer, and, with respect to electric motors, having (i) the same rating, (ii) electrical design characteristics that are essentially identical, and (iii) no differing mechanical or functional characteristics that affect energy consumption or efficiency.

Rating means one of the 113 combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to which section 431.42 of 10 CFR Part 431 prescribes nominal full load efficiency standards.

ADDITIONAL MODELS ACTUALLY TESTED

Rating of electric motor			Least efficient basic model (model number(s))	Average full load efficiency
Motor power output (e.g. 1 hp or .75 kW)	Number of poles	Open or enclosed motor		
etc	etc	etc	etc	etc

Appendix B to Subpart G of Part 431—Sampling Plan for Enforcement Testing

Step 1. The first sample size (n_1) must be five or more units.

Step 2. Compute the mean ($\bar{X}_1$) of the measured energy performance of the n_1 units in the first sample as follows:

$$\bar{X}_1 = \frac{1}{n_1}\sum_{i=1}^{n_1} X_i, \qquad (1)$$

where X_i is the measured full load efficiency of unit i.

Step 3. Compute the sample standard deviation (S_1) of the measured full load efficiency of the n_1 units in the first sample as follows:

$$S_1 = \sqrt{\frac{\sum_{i=1}^{n_1}\left(X_i - \bar{X}_1\right)^2}{n_1 - 1}}. \qquad (2)$$

Step 4. Compute the standard error ($SE(\bar{X}_1)$) of the mean full load efficiency of the first sample as follows:

$$SE\left(\bar{X}_1\right) = \frac{S_1}{\sqrt{n_1}}. \qquad (3)$$

Step 5. Compute the lower control limit (LCL_1) for the mean of the first sample using the applicable statutory full load efficiency (SFE) as the desired mean as follows:

$$LCL_1 = SFE - tSE\left(\bar{X}_1\right). \qquad (4)$$

Here t is 10th percentile of a t-distribution for a sample size of n_1 and yields a 90 percent confidence level for a one-tailed t-test.

Step 6. Compare the mean of the first sample ($\bar{X}_1$) with the lower control limit (LCL_1) to determine one of the following:

(i) If the mean of the first sample is below the lower control limit, then the basic model is in noncompliance and testing is at an end.

(ii) If the mean is equal to or greater than the lower control limit, no final determination of compliance or noncompliance can be made; proceed to Step 7.

Step 7. Determine the recommended sample size (n) as follows:

$$n = \left[\frac{tS_1(120 - 0.2SFE)}{SFE(20 - 0.2SFE)}\right]^2, \qquad (5)$$

where S_1 and t have the values used in Steps 4 and 5, respectively. The factor

$$\frac{(120 - 0.2SFE)}{SFE(20 - 0.2SFE)}$$

is based on a 20 percent tolerance in the total power loss at full load.

Given the value of n, determine one of the following:

(i) If the value of n is less than or equal to n_1 and if the mean energy efficiency of the first sample (X_1) is equal to or greater than the lower control limit (LCL_1), the basic model is in compliance and testing is at an end.

(ii) If the value of n is greater than n_1, the basic model is in noncompliance. The size of a second sample n_2 is determined to be the smallest integer equal to or greater than the difference $n–n_1$. If the value of n_2 so calculated is greater than $20–n_1$, set n_2 equal to $20–n_1$.

Step 8. Compute the combined mean ($\bar{X}_2$) of the measured energy performance of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{X}_2 = \frac{1}{n_1 + n_2} \sum_{i=1}^{n_1+n_2} X_i. \qquad (6)$$

Step 9. Compute the standard error ($SE(\bar{X}_2)$) of the mean full load efficiency of the n_1 and n_2 units in the combined first and second samples as follows:

$$SE(\bar{X}_2) = \frac{S_1}{\sqrt{n_1 + n_2}}. \qquad (7)$$

(Note that S_1 is the value obtained above in Step 3.)

Step 10. Set the lower control limit (LCL_2) to,

$$LCL_2 = SFE - tSE(\bar{X}_2) \qquad (8)$$

and compare the combined sample mean ($\bar{X}_2$) to the lower control limit (LCL_2) to find one of the following:

(i) If the mean of the combined sample ($\bar{X}_2$) is less than the lower control limit (LCL_2), the basic model is in noncompliance and testing is at an end.

(ii) If the mean of the combined sample ($\bar{X}_2$) is equal to or greater than the lower control limit (LCL_2), the basic model is in compliance and testing is at an end.

MANUFACTURER-OPTION TESTING

If a determination of non-compliance is made in Steps 6, 7 or 11, above, the manufacturer may request that additional testing be conducted, in accordance with the following procedures.

Step A. The manufacturer requests that an additional number, n_3, of units be tested, with n_3 chosen such that $n_1 + n_2 + n_3$ does not exceed 20.

Step B. Compute the mean full load efficiency, standard error, and lower control limit of the new combined sample in accordance with the procedures prescribed in Steps 8, 9, and 10, above.

Step C. Compare the mean performance of the new combined sample to the lower control limit (LCL_2) to determine one of the following:

(a) If the new combined sample mean is equal to or greater than the lower control limit, the basic model is in compliance and testing is at an end.

(b) If the new combined sample mean is less than the lower control limit and the value of $n_1 + n_2 + n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

(c) Otherwise, the basic model is determined to be in noncompliance.

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Part VIII

Department of Education

34 CFR Part 682

Postsecondary Education: Federal Family Loan Program; Due Diligence Requirements; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AC35

Federal Family Education Loan Program; Due Diligence Requirements

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL regulations govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan Program and authorized by Title IV, Part B of the Higher Education Act of 1965, as amended (HEA). The Secretary is making changes to the due diligence requirements for lenders and guaranty agencies participating in the FFEL Program.

DATES: *Effective date:* Except for the revision of § 682.404(f), these regulations take effect on July 1, 1997. The revision of § 682.404(f) is effective January 1, 1998 and applicable for payments received on or after January 1, 1998. However, affected parties do not have to comply with the information collection requirement in § 682.411 until the Department of Education publishes in the Federal Register the control number assigned by the Office of Management and Budget (OMB) to this information collection requirement. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ron Streets, Program Specialist, Loans Branch, Policy Development Division, Policy, Training, and Analysis Service, U.S. Department of Education, 600 Independence Avenue, SW. (room 3053, ROB–3), Washington, DC 20202–5449. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Secretary is amending 34 CFR Part 682 of the Department's regulations to improve the administration and the integrity of the FFEL Program. By improving program efficiency, these regulations will reduce burden for lenders and improve the collection of outstanding FFEL loans and potential liabilities owed to the Secretary.

On September 6, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for Part 682 in the Federal Register (61 FR 47398). The NPRM proposed changes needed to improve the due diligence provisions in the FFEL program. The NPRM included a discussion of the major issues surrounding the proposed changes, and the discussion will not be repeated here. The following list summarizes those issues:

- Guaranty agency retention of collection costs of a defaulted FFEL loan that are repaid by a consolidation loan;
- Requiring a guaranty agency to offer preclaims assistance to lenders no later than the 75th day of delinquency;
- Requiring a guaranty agency to provide counseling and written consumer information to the borrower by the 100th day of delinquency;
- Application of payments made by a borrower on a defaulted loan to a guaranty agency;
- Requiring a guaranty agency to assess a defaulted borrower the same amount of collection charges assessed by the Department;
- Initiating wage garnishment proceedings for borrowers with sufficient income;
- Expanding the length of time in which lenders must send the first written notice or collection letter to a delinquent borrower;
- Modifying the requirements for the two collection letters that must be sent to a borrower; and
- Expanding the possible remedial action available to the Secretary if a guaranty agency fails to meet the requirements of § 682.410 to include mandatory assignment of FFEL loans to the Department at the Secretary's discretion.

Substantive Revisions to the Notice of Proposed Rulemaking

Section 682.404 Federal Reinsurance Agreement

The Secretary amends this section of the regulations to require guaranty agencies to provide preclaims assistance to lenders no later than the 90th day of delinquency. The NPRM had proposed a deadline of the 75th day of delinquency.

This section has also been amended to require that a guaranty agency provide counseling and consumer information to a borrower within 10 days following the receipt of a preclaims assistance request from the lender or the servicer. The Secretary has further amended this section to allow guaranty agencies flexibility in using formats other than written ones when providing consumer information to the borrower as part of the guaranty agency's preclaims assistance.

Section 682.410 Fiscal, Administrative, and Enforcement Requirements

The proposal to require a guaranty agency to charge a borrower collection costs equal to the amount the same borrower would be charged for the cost of collection if the loan was held by the Department has been removed. The Secretary has retained the current regulatory requirement which allows a guaranty agency to use the lesser of the amount derived from the formula in 34 CFR 30.60 or the amount charged by the Department.

Section 682.411 Due Diligence by Lenders in the Collection of Guaranty Agency Loans

Section 682.411 is also amended to move the last sentence in paragraph (c) in the NPRM that deals with the contents of the first delinquency notice and insert it in paragraph (d), and to add a modified statement to paragraph (c).

Executive Order 12866

1. Assessment of Costs and Benefits

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently. Potential costs and benefits are also discussed in conjunction with the public comments to which they relate.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 38 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. An analysis of the comments received regarding the

regulatory flexibility certification can be found under the heading *Regulatory Flexibility Act Certification.*

Major issues are grouped according to sections and subject. Other substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 682.401—Basic Program Agreement

Comment: A number of guaranty agency representatives commented on the Secretary's proposal to modify the regulations to reflect his view that guaranty agencies may retain collection costs totaling up to 18.5% of the outstanding principal and accrued interest of a defaulted FFEL Program loan that is repaid by a consolidation loan if the collection costs are included in the payoff amount certified by the guaranty agency. These commenters argued that the HEA allows the guaranty agencies to retain 27 percent of payments received from borrowers on defaulted loans including payoffs provided through consolidation. They also argued that the agency needs to retain these funds to pay certain costs in connection with a consolidation loan. The agency representatives suggested that their view is consistent with Congressional intent as shown by budget ''scoring'' of a budget reconciliation bill in 1996 that included a provision that the agencies believe supports their position.

Other commenters, including school organizations and borrower advocates, supported the proposed regulation limiting collection costs and the retention by guaranty agencies. These commenters noted that the addition of collection costs can be a disincentive for a borrower to consolidate a loan—thus eliminating an important tool to reduce defaults. These commenters also urged the Department to consider eliminating the authority for the guaranty agencies to add any collection costs to a defaulted loan that is consolidated.

Discussion: The comments of the guaranty agency representatives are based on the view that a consolidation loan payoff amount is a ''payment'' for purposes of section 428(c)(6) of the HEA. The Secretary, however, believes that the agencies' interpretation is contrary to the words and intent of the HEA. In defining the ''Secretary's equitable share'' for purposes of the guaranty agency's retention of collections, the HEA specifically refers to ''the Secretary's equitable share of payments made by the borrower''. A consolidation loan payoff amount is not paid by the borrower but instead is paid by a third party (the consolidating lender) and does not reduce the borrower's obligation. Thus, a loan consolidation is not covered by section 428(c)(6).

In addition, in interpreting the HEA, it is appropriate to look at both the specific statutory language and at the language and design of the entire statute. See *Connecticut Student Loan Foundation* v. *Riley,* Case No 3:93CV02570 (JBA) (D.Conn., Oct. 31, 1996). The guaranty agencies' interpretation is also inconsistent with other provisions of the HEA. Under the agencies' approach, a borrower who consolidated a defaulted loan would not be responsible for the collection costs on that loan. Instead, the taxpayer would pick up those costs by allowing the agency to retain a certain portion of the consolidation loan payoff amount. This is contrary to section 484A(b) of the HEA. At the same time, under this approach, the agencies would be allowed to retain an amount far in excess of their actual collection costs. Numerous audits of guaranty agencies show that the guaranty agencies' contracts with collection agencies frequently provided for payments to the collectors of far less than 27 percent when a defaulted loan is included in a consolidation loan. The agencies' comments on the NPRM did not address this issue or provide any supporting information for their claim that they need a greater retention to pay additional costs. Allowing the guaranty agencies to retain an amount far in excess of the amount they have established as the cost of collecting on the loan (in addition to the reinsurance payment the agency received) would provide an unnecessary and inappropriate windfall for the agencies. Finally, the Secretary notes that the agencies' claim that their view is consistent with Congressional intent based on the budget ''scoring'' of a provision in a bill that was ultimately vetoed is unpersuasive.

The Secretary appreciates the concerns of the school and borrower advocates that the addition of collection costs reduces the value of the option of consolidation. The Secretary is continuing to evaluate how to address this issue while protecting the Federal fiscal interest.

Changes: None

Section 682.404(a)(2)(ii)—Federal Reinsurance Agreement Deadline for Preclaims Collection Assistance

Comment: The majority of commenters representing guaranty agencies, lenders, lender servicers, and secondary markets supported the Secretary's effort to promote standardization and simplification, but objected to the proposal that guaranty agencies be required to offer preclaims collection assistance to lenders on delinquent accounts no later than the 75th day of delinquency. These commenters recommended that the deadline be no later than the 90th day of delinquency. Two other guaranty agency commenters strongly objected to the Department establishing any deadline for beginning preclaims assistance on the grounds that many agencies have developed their own default prevention efforts based on portfolio characteristics and what has been shown to work best for their agencies. These commenters believe that agencies should be allowed to continue establishing the beginning date for preclaims assistance. One of these two commenters suggested that if, as the Secretary suggested in the preamble to the NPRM, some agencies have not provided preclaims assistance on a timely basis, the Department should address the problem with those guarantors. The commenters representing school and financial aid officer associations supported the Secretary's proposal, one stating that early intervention can prevent many defaults and the other that this change will ensure that delinquent borrowers are treated in a similar manner regardless of the guaranty agency performing the preclaims activities.

Many commenters indicated that starting preclaims assistance earlier than the 90th day may confuse borrowers and cited studies conducted by several major guaranty agencies showing that about one-third of borrower delinquencies are resolved between the 60th and 90th day. They also cited a similar study conducted by a major lender that showed a 41 percent default aversion rate by the lender during this period. These commenters believe that a ''no later than 90 days'' time frame will afford borrowers with the opportunity to fulfill their commitments to their loan holders and servicers without intervention by guarantors. They also believe such an approach will avoid unnecessary lender and guaranty agency costs.

Discussion: The Secretary continues to believe that early preclaims intervention by a guaranty agency is

critical to default aversion, but agrees with the commenters that how early that intervention takes place may appropriately depend upon a number of factors, such as those mentioned by the commenters. The Secretary has decided that until further discussions with the loan industry and review of servicing data can take place, agencies should be given some flexibility in beginning their preclaims collection activities. However, the Secretary continues to believe that it is appropriate to establish an outer deadline for a guaranty agency to offer preclaims assistance to lenders. After consideration of the comments, the Secretary has decided to accept the suggestion that the 90th day of delinquency is an appropriate deadline.

Changes: The regulations have been amended to require guaranty agencies to offer preclaims assistance to lenders no later than the 90th day of delinquency.

Information and Counseling Requirements

Comment: Several commenters noted that the use of the phrase ''consolidate the defaulted loan'' in the proposal to require guarantors to provide counseling and written consumer information to a delinquent borrower no later than the 100th day of delinquency was not correct within the context of preclaims assistance and recommended that the reference should be to ''delinquent'' rather than ''defaulted'' loan.

Discussion: The Secretary agrees that the use of the word ''defaulted'' is incorrect in the context of preclaims assistance contacts with delinquent borrowers.

Changes: The word ''delinquent'' is substituted for ''defaulted'' in the provision.

Comment: All of the guaranty agency, lender and loan servicer, and secondary market commenters agreed with the Secretary that there should be a consistent time period during the preclaims assistance process for the guaranty agency to provide specific information to the borrower on consolidation and other default prevention options. Because most of these same commenters recommended that guaranty agencies be given flexibility, up to the 90th day of delinquency, to begin the preclaims effort, they recommended that a consistent standard be achieved by requiring that the information be provided to the borrower no later than the 30th day following the agency's receipt of the preclaims assistance request from the lender rather than by the 100th day of delinquency as the Secretary proposed. These commenters indicated that they believed that this time frame will allow a guaranty agency the ability to perform preclaims activities in an orderly and logical sequence even if the lender's request is late. They also pointed out that under the Secretary's proposal, if a lender requests preclaims assistance as early as the 60th day of delinquency, the agency has up to 40 days to provide the required information, whereas if a lender requests preclaims assistance at the 90th day of delinquency, the agency would have only 10 days to provide the information.

Discussion: The Secretary agrees that, in light of the change in the guaranty agency's deadline for offering preclaims assistance, the 100th day of delinquency is no longer an appropriate deadline for requiring the guaranty agency to provide the required consumer information and counseling. The Secretary also agrees with commenters that there should be a consistent time period for agencies to provide this important consumer information. However, the Secretary believes that it is vital that this information be provided to the borrower through the preclaims assistance process as soon as possible after the lender requests preclaims assistance. The borrower should have every opportunity to take steps to remedy the delinquency before the agency undertakes more intensive supplemental preclaims efforts. Under the commenters' proposal that the information be provided to the borrower no later than the 30th day following the agency's receipt of the lender's request for preclaims collection assistance, this goal cannot be met. For example, if an agency offers preclaims assistance on the 90th day of delinquency and the lender uses the full 10 days provided in 34 CFR 682.411(h) to request assistance, the borrower might not receive the information until the 130th day of delinquency, which is well within the supplemental preclaims period. The Secretary believes that this result does not serve the borrowers. To avoid this situation, the Secretary has decided to require the guaranty agency to provide the consumer information and counseling no later than 10 working days after it receives the lender's request for preclaims assistance.

Changes: The regulations have been revised to require a guaranty agency to provide counseling and consumer information to the borrower no later than 10 working days after receiving a lender's request for preclaims assistance.

Comment: The majority of commenters supported providing consumer information on default aversion options to delinquent borrowers as part of preclaims assistance activities. One borrower supported the proposal and noted that information on consolidation was not readily available to him when he encountered difficulties in being able to repay his loan and that he almost defaulted because his lender did not participate in the Consolidation program. However, an overwhelming number of commenters strongly objected to what they perceived as a proposal that the guaranty agency provide consumer information on only the consolidation loan option. The commenters indicated that they believe that loan consolidation is not always the best option for many borrowers because of the potential loss of benefits on the underlying loans being consolidated. They also pointed out that not all borrowers may be eligible for consolidation. All the commenters recommended that the consumer information provided to the borrower include all of the options available to resolve the delinquency, including deferment, forbearance, and the opportunity for an income-sensitive repayment schedule. One commenter recommended that the Department provide the guaranty agencies with a prepared information piece that outlines all the default aversion options and borrower profiles describing which borrowers might benefit from which option.

Discussion: The Secretary agrees with the commenters that the information provided to the borrower should include all default aversion options available to the borrower, not just FFEL and Direct Loan Consolidation. The Secretary's proposal was intended to ensure that consolidation was included as an option in preclaims counseling and information, but it was not intended to suggest that information on other options should be withheld. The borrower's comment supports the Secretary's belief that information on consolidation has not been readily made available to delinquent borrowers. The Department agrees with the suggestion that a prepared information piece providing an overview of available options with borrower profiles would be useful.

Changes: The regulations are amended to clarify that the information provided to the borrower must include all options available to avoid default, including FFEL and Direct Loan Consolidation.

Comment: Many loan industry (guaranty agency, lender, and lender servicer) commenters recommended that the Secretary modify the regulations to allow agencies to provide

the required consumer information in formats other than written ones, such as video and e-mail. The commenters believe that the regulations should not preclude the use of more innovative mediums for providing this information. These same commenters questioned the advisability of requiring both written information and counseling, suggesting that providing both may cause borrower confusion. The commenters also requested clarification as to whether the written consumer information could be provided as part of the letter that is one of the three required preclaims activities and whether there are any situations, such as an invalid address or when the borrower has requested that the agency cease all collection activities, in which the agency would be relieved of the requirement to provide this information.

Discussion: The Secretary agrees that the regulations should not prevent a guaranty agency from providing borrowers with required counseling and consumer information in formats other than written letters. The Department is primarily concerned with ensuring that the borrower receives the information in an appropriate manner. Thus, an agency may use different methods of providing the information to the borrower as long as the agency can show that the delinquent borrower received the information. The Secretary also agrees that this information may be provided as part of a preclaims letter, provided the default aversion options are clearly and prominently presented and not buried in the text of the letter. The Secretary does not agree that reinforcing the written consumer information with counseling will confuse borrowers. The Secretary believes that it is important for the agency to follow up with the borrower to determine that the borrower received and understood the information, to answer any questions the borrower may have about the available options, especially the loan consolidation programs, and to encourage the borrower to act on one of the options to halt the increasing delinquency. The Secretary expects an agency to provide this information to the extent that a valid address or telephone number is available for the borrower.

Changes: The regulations have been modified to specify that an agency may provide written consumer information on default aversion options as part of the required preclaims letter and/or in other written materials or other formats as a separate information piece.

Comment: Loan industry commenters expressed concern about the provision that specifies that an agency's failure to provide the required consumer information and counseling constitutes a violation of the guaranty agency's obligation to perform due diligence in collecting the loan. The commenters objected to what they viewed as the imposition of punitive sanctions on a loan-by-loan basis and requested that the Department withhold assessing penalties for noncompliance with this provision until the major due diligence reform effort previously announced by the Department is started. These commenters also requested clarification that a lender would not be harmed by an agency's failure to comply with this requirement and that any penalties would be paid out of an agency's reserve fund and not passed along to a lender or lender servicer.

Discussion: The Secretary understands that the use of the phrase ''servicing error'' in the preamble and the reference in the regulations to ''due diligence in collecting'' may have confused readers because common usage in the FFEL program has made a distinction between these terms. The Secretary did not intend to make such a distinction by use of these differing terms. The Secretary agrees with commenters that lenders should not be penalized for a guaranty agency's violations in this area. To clarify this, the Secretary has decided to relocate this provision.

Changes: The statement citing violations of preclaims assistance requirements as a due diligence violation of the agency has been relocated to 34 CFR 682.406(a)(12) as a condition of reinsurance.

Section 682.404(f)—Application of Borrower Payments

Comment: Many loan industry commenters agreed that only an appropriate amount from each borrower payment on a defaulted loan should be applied to collection costs, but objected to the proposed language that would prohibit the up-front assessment of collection costs after default claim payment and require that collection costs be assessed on each payment received. The commenters indicated that many guarantor systems are programmed currently to calculate up-front collection costs according to the limits established in § 682.410(b)(2) and would require significant changes to make a per payment assessment. These commenters stated that, at the very least, retroactive recalculation of collection costs should not be required except on accounts on which the agency had not previously assessed fees. In the commenters' view, such reassessment on an account on which a borrower has been making payments may increase the percentage of collection costs assessed as well as increase the total amount paid.

A few guaranty agency commenters strongly objected to any change to this provision of the regulations because they believe that the application of borrower payments as proposed is not in the best interest of the borrower and will require the borrower to pay more interest over the life of the loan because principal is reduced more slowly. These commenters believe that collection costs are a collection tool to be used by the agency and that the proposed regulation weakens this effective tool. One of these commenters also stated that he believes that this proposal would eliminate an agency's ability to compromise the debt. Some legal advocates who represent borrowers also strongly objected to the proposed change, stating that this approach will be counterproductive and will discourage defaulted borrowers from continuing to make payments because they will pay over long periods of time and not see their principal and interest diminish appreciably. The advocates recommended that the current regulations in this area be retained. A school association commenter also objected to the proposal and recommended that agencies be required to apply payments to principal and interest first, then collection and late charges. The commenter believes that the objective should be repaying the loan, not creating additional financial hardship for the borrower.

Discussion: The Secretary understands that some commenters would prefer that defaulted borrowers not be discouraged from repaying on a defaulted loan by having to pay collection costs. However, section 484A of the Higher Education Act requires that these borrowers, rather than the taxpayers, bear reasonable costs of collection. The current regulations giving the guaranty agency the option of determining how payments are to be applied has led in some instances to the borrower paying few if any collection costs and the regulations do not comply with the Federal Claims Collection Standards. Therefore, the Secretary does not believe that retaining the current requirements, as suggested by many commenters, is an option. The Secretary does not agree that this change prevents an agency from compromising a portion of the collection costs if a borrower makes a lump sum payment to satisfy the debt.

The loan industry commenters are correct that the proposed change precludes agencies from continuing to assess collection costs upfront at a time when the agency has not yet incurred

those costs. The Secretary notes that the borrower is not legally obligated to pay costs which have not been incurred. This regulatory change is intended to require the guaranty agencies to charge only those costs that have been incurred and to prohibit the upfront loading of collection costs on a borrower's account because it discourages repayment and does not reflect the agencies' actual collection expenses. In its own collection efforts, the Department calculates and displays in its billing statements the projected contingent fee charges that will be incurred and assessed against the borrower if the full amount of principal and interest owed is not immediately repaid. The Department incurs a contingent fee cost only as the borrower repays and then passes that cost on to the borrower as it is incurred on a payment-by-payment basis. The Department does not assess costs to the borrower it has not incurred and attempts to make this distinction clear in its notices to borrowers.

The Secretary understands that some agencies may be required to make significant systems changes to inform borrowers clearly that they will be assessed collection costs on a per payment basis. Because of the time and complexity involved in making the necessary systems changes, the Secretary agrees that a delayed effective date for implementation of the regulations is appropriate as reflected in the effective date section of this document. The Secretary notes, however, that there has never been a legal basis for an agency to charge collection costs it has not incurred to a borrower and the delayed effective date is not intended to justify failure to conform to the law.

Changes: No changes have been made to the regulations. However, the Secretary has provided a delayed effective date for implementation of this provision of the regulations.

Comment: In response to the Secretary's solicitation on whether a guaranty agency should be allowed to apply borrower payments to incidental charges, after collection costs, rather that only after all principal and interest is satisfied, loan industry commenters overwhelmingly recommended that this decision be the option of the guarantor. They believe guarantors should be allowed to apply payments to incidental charges, such as late charges and court fees, when they are assessed, and as the agency deems appropriate. Some legal advocates for borrowers recommended that the current requirements, which provide that payments be applied to these costs only after the repayment of all principal and interest, be retained.

Discussion: The Secretary has decided that, consistent with 4 CFR Chapter II, section 102.13(f) of the Federal Claims Collection standards, the borrower's payment must be applied to incidental charges (which the Secretary understands will be nominal amounts, such as late charges) after collection costs are paid and before the payment is applied to accrued interest and outstanding principal.

Changes: The regulations have been revised to require that borrower payments on a defaulted loan be applied to any incidental charges after the appropriate amount of collection costs is paid and before the payment is applied to accrued interest and outstanding principal.

Comment: Loan industry commenters proposed that the phrase ''reinsured interest'' in the current regulations be changed to ''accrued interest'' because the borrower owes all accrued interest whether or not the agency paid the lender insurance on the interest or the agency filed for reinsurance with the Secretary. The commenters pointed out that interest that accrues after the lender's claim is paid is not reinsured.

Discussion: The Secretary agrees with the commenters that the regulations should reference accrued interest in this provision.

Changes: The regulations have been revised to provide that borrower payments are applied to ''accrued'' interest rather than to ''reinsured'' interest.

Comment: One commenter pointed out that § 682.404(f) fails to identify that the payments being described are being applied to a defaulted loan and recommends a change to reflect this.

Discussion: The Secretary agrees with the commenter.

Changes: The regulations have been modified to refer to a defaulted loan.

Section 682.410(b)(2)—Assessment of Collection Charges

Comment: An overwhelming number of commenters objected to the proposal that would require a guaranty agency to assess a borrower in default the collection costs that the same borrower would be charged if the loan was held by the Department and recommended that the current regulatory standard be retained. Loan industry commenters, although appreciating the Secretary's goal of standardization, believe that the flat rate proposed in the NPRM is not reasonable if it bears no relation to the actual costs incurred in the collection process. These commenters believe a flat rate is inconsistent with section 428(c)(6)(B)(i) of the HEA which states that collection costs are those costs incurred by a guaranty agency in relation to collecting on defaulted loans. Finally, loan industry commenters contended that fair treatment of borrowers is preferable to uniform treatment if the result would be that borrowers would be assessed more than they otherwise would be charged. They believe a flat rate assessment will also prevent an agency from continuing to compromise collection costs when it deems it appropriate.

Some school associations supported the Secretary's proposal to mandate a maximum amount of collection costs that agencies would be authorized to assess, but strongly recommended that guaranty agencies have the flexibility to assess less than the flat rate when the actual cost is less.

Borrower representatives strongly opposed the Secretary's proposal on the grounds that the imposition of uniform collection rates is not beneficial to borrowers if uniformity means higher collection fees. They recommended that reasonable collection costs be defined as the lesser of the percent limitation in the borrower's promissory note or other repayment agreement or the guarantor's actual costs of collection.

Discussion: After further consideration, the Secretary agrees with the commenters that the assessment of a uniform rate may not be the fairest approach to assessing collection costs, and could prove counterproductive if it creates a disincentive to borrowers continuing to make payments on defaulted loans. In regard to the borrower representatives' recommendation to define reasonable collection costs by referencing the borrower's promissory note, the Secretary notes that the common promissory notes approved by the Secretary do not include any such limitation and may not be changed to provide for one.

Changes: The Secretary has decided to retain current regulations governing the maximum collection costs that may be assessed a defaulted borrower, except specifically to note that such costs are subject to limitations in the borrower's promissory note, if any.

Section 682.410(b)(6)(vii)(A)—Collection Efforts on Defaulted Loans

Comment: Loan industry commenters recommended that the Secretary withdraw the proposed change to post-default collections that would require guaranty agencies to undertake ''administrative wage garnishment'' no later than the 225th day of a borrower's delinquency because it was unclear how that proposal related to the entire text of paragraph (vii) of the current rule that

addresses guaranty agency collection efforts. The commenters noted that the term administrative wage garnishment did not appear in the text of the regulations, but that they understood that the Department's intent was to require the agencies to use administrative wage garnishment exclusively. With that understanding, the commenters strongly objected to the loss of the guaranty agency's option to undertake judicial wage garnishment which they claimed was an efficient and cost-effective means to satisfy the debt in some states. They strongly recommended that agencies be allowed to continue to use judicial wage garnishment as a collection tool and to determine whether administrative wage garnishment or judicial wage garnishment is the most appropriate collection tool in particular cases. Borrower representatives indicated that they believe that the proposal to require administrative wage garnishment may be unworkable and contrary to the borrower's best interest. These commenters believe that difficulties in obtaining accurate employment data through state labor or unemployment insurance departments may result in a high volume of nonproductive and harassing wage garnishment attempts, leading to increased legal challenges to garnishment. They believe that litigation affords a borrower with more due process protection and recommend that the Secretary withdraw the proposal.

Discussion: The Secretary believes that program experience has shown that administrative wage garnishment is a far more efficient and cost-effective collection tool than across-the-board litigation of all defaulted accounts. In regard to the loan industry comments about the alleged benefits features of judicial wage garnishment, the Secretary notes that the administrative wage garnishment authority was added to the HEA only after attempts to promote judicial wage garnishment by guaranty agencies proved ineffective. The guaranty agencies have presented no significant evidence of increased collections through the judicial wage garnishment process to justify the significant expense and complications created by that process. The Secretary also believes that the notice and opportunity for a hearing provisions in the regulations governing administrative wage garnishment afford a defaulted borrower adequate due process and an opportunity to contest the debt or enter into a repayment agreement on the loan with the guaranty agency and avoid the problems identified by the borrower commenters. The Secretary notes that this discussion is not intended to preclude a guaranty agency's use of a state administrative wage garnishment process that would provide similar benefits and protections to the government and the borrower as the HEA. The Secretary invites any agency that believes it has such authority to discuss the use of such authority with the Secretary. The Secretary also notes that this regulation is not intended to prohibit an agency from using state tax refund offset authority that may be available.

The Secretary does agree with the commenters that conforming changes are necessary to § 682.410(b)(6)(vii) and (b)(7) to clarify the use of wage garnishment within the greater context of the 181–545 day due diligence period and has made appropriate changes to these regulations. The Secretary notes that he will review these changes further during the planned consideration of guaranty agency due diligence requirements next year.

Changes: Conforming changes have been made to clarify this requirement within the context of the other provisions of the 181 to 545-day period specified in the regulations. References to required collection activities at the 545th day of delinquency have been deleted from the regulations.

Comment: Guaranty agency commenters overwhelmingly disagreed with the proposal that defaulted borrower accounts be assigned to the Department for litigation by the federal government if the borrower has no income that could be attached through wage garnishment, but has assets which could be attached through a court order. The commenters believe that the agencies should be permitted to choose to litigate or assign the account to the Department. They believe that agencies have the resources and procedures already in place to determine the most appropriate and cost-effective method of recovery and that assignment to the Department will not increase collections.

Discussion: The Secretary disagrees with the commenters. It is the Secretary's experience that the guaranty agencies are frequently inconsistent in pursuing and enforcing judgments.

Moreover, the process for transferring these judgments when a loan is assigned to the Secretary or transferred to another agency when the original agency closes can be complex and confusing for the agencies, the Secretary and the borrower. Thus the Secretary believes that centralized litigation by the federal government is the most cost-effective means of collecting these accounts. The Secretary believes that the number of defaulted accounts where the borrower has no income to be garnished but assets which could be attached will not be an overwhelming number and is convinced that the federal government has sufficient resources to litigate these accounts efficiently.

The Secretary does not intend that guaranty agencies immediately cease collection activity on judgments on which they are collecting. It is the Secretary's intention to eliminate the need for guaranty agency litigation on future defaults. However, the Secretary believes that guaranty agencies should continue to collect on current paying judgments. To avoid confusion, therefore, the Secretary has decided not to delete all references to litigation in the current regulation. The Secretary will make the necessary technical changes to the regulations at a later date.

Changes: None.

Section 682.411—Due Diligence By Lenders in the Collection of Guaranty Agency Loans

Comment: Many loan industry commenters strongly supported the Secretary's effort to change the timing of the first delinquency notice required in § 682.411(c) of the regulations and the resulting change in the timing of the subsequent due diligence period in § 682.411(d), but recommended that the 1- to 15-day period be extended to a 1–20-day period. The commenters indicated that they believe that borrowers assume that a 15-day grace period, similar to that available on many consumer loans, is available on their student loans. They believe that the additional five days they are requesting would allow borrowers to mail payments within 15 days of the due date without adverse consequences. The commenters believe that the use of the 20-day standard will eliminate unnecessary collection letters from being generated. Another commenter recommended that either a 15-day period or a 20-day period be used, depending upon the lender's policy for reporting delinquencies to credit bureaus. The majority of loan industry commenters urged the Secretary to allow lenders to implement the change in the time period for delinquent notices or collection letters ''no later than July 1, 1997.''

Discussion: The Secretary believes that because a student loan may be a borrower's first consumer loan experience, lenders must exercise greater diligence than they might on other consumer loans in order to monitor borrower delinquency and take proactive steps to ensure that a borrower establishes a successful repayment

pattern. The Secretary believes that adopting the 15-day period for the first notice of delinquency will eliminate the possibility of unnecessary collection notices. In response to the request for early implementation of this change, the Secretary notes that, under section 482(c) of the HEA, this change cannot be effective until July 1, 1997.

Changes: A conforming change to reference the 15-day standard for generating the first delinquency notice has been made in § 682.202(f)(2) of the regulations.

Comment: Many loan industry commenters disagreed with the proposal that the first notice of delinquency required by § 682.411(c) provide the borrower with information on loan consolidation, forbearance, and other available options to avoid default. The commenters point out that the borrower's initial delinquency is not necessarily a sign of either financial difficulty in making scheduled payments or of impending default. They believe that the initial notice should simply remind the borrower of the delinquency and that he or she should call the lender or lender servicer if he or she is having difficulty making scheduled payments. They also point out that a first notice of delinquency is generally issued in a billing statement format that is not intended to alienate or intimidate the borrower and that space for providing extensive information is limited.

Many of these same commenters also objected to adding the additional notice to subsequent collection letters required under § 682.411(d). The commenters argued that lenders and lender servicers should be allowed to insert a notice of their own design that they believe will elicit the best response from the borrower and further recommended that the specific references in the notice to wage garnishment, tax offset, and litigation be replaced with a more generic reference to the lender taking ''other actions as authorized by law.'' The commenters believe that many borrowers do not understand what these terms mean and that the lender should be allowed to explain these legal actions in simple language that borrowers will understand. They also indicated that a listing of specific consequences may suggest to the borrower that this list supersedes any right the guarantor or the Secretary has to pursue collection as provided for in the borrower's promissory note.

Discussion: The Secretary disagrees with commenters that informing the borrower that there are various options available to assist the borrower if he or she is having difficulty making scheduled payments is inappropriate in the first notice of delinquency. Given the current due diligence requirements for issuing second and subsequent collection letters, there will be a significant delay before the next collection letter is issued in which this information could be provided. The Secretary notes that he did not intend to require that the first notice of delinquency contain *detailed* information on loan consolidation, forbearance, deferments, and other default aversion options. This sentence was placed in paragraph (c) in error and was intended instead to be included in the 16–180 day delinquency collection timeframe. The Secretary recognizes that not all borrowers may be experiencing difficulties at this stage and that the billing format generally used to issue the first notice has limited space. Therefore, the Secretary has decided that it is sufficient to include on the first notice a prominent statement, which includes the name and a telephone number of a contact person, and that informs the borrower that other options are available if he or she is experiencing difficulties making scheduled payments.

In regard to the later collection letters, however, the Secretary believes that providing information on default aversion options and the proceedings that may be instituted against the borrower are even more critical. The Secretary believes that borrowers are capable of understanding the required notice related to tax offset, wage garnishment, and litigation by the federal government and notes that nothing prevents a lender from explaining these terms in simpler language after providing the notice if the lender believes it is necessary.

Changes: Section 682.411(c) has been modified to require the lender to include a prominent message in the first delinquency notice briefly mentioning that various forms of assistance are available to borrowers experiencing repayment difficulties and providing a telephone contact number for further information. Section 682.411(d) has been modified to incorporate the more complete information disclosure originally proposed in § 682.411(c).

Section 682.413—Remedial Actions

Comment: The majority of guaranty agency commenters stated that the Secretary should only exercise the remedial action of loan assignment in circumstances involving repetitive violations and consistent patterns of noncompliance, not isolated or occasional violations that do not materially impact the collectability of the loan. The commenters also stated that the regulations should define the circumstances under which the assignment option will be used rather than the loss of reinsurance option and provide that it is the guarantor's choice as to which option will be used. These same commenters recommended that guaranty agencies be provided with a ''curing'' process for due diligence violations comparable to that provided for lenders and an appeal process related to any actions taken by the Secretary under this section.

Discussion: The option of assignment is intended as additional discretionary authority that will allow the Secretary to address guaranty agency violations of any of the fiscal, administrative and enforcement requirements of § 682.410 in a manner that best serves the interests of the FFEL program. The Secretary has the responsibility to determine the appropriate sanction and he does not agree that the guaranty agency should be able to choose how its violation should be addressed. The Secretary will determine the appropriate action on a case-by-case basis. Therefore, he also declines to incorporate into the regulations a list of circumstances under which he would decide to use the option of mandatory assignment. The Secretary further notes that 34 CFR 682.413(d) already addresses the procedures the Secretary will follow in imposing a fine or penalties under this section of the regulations and provides guarantors with appropriate due process. The Secretary believes any discussions related to guaranty agency due diligence and proposed cures should be left to the due diligence reform effort that the Department will undertake in 1997.

Changes: None.

Comment: A number of commenters proposed various technical changes to the regulations included in the NPRM.

Discussion: The Secretary appreciates the commenters' suggestions for technical changes and agrees with many of the suggestions. However, in some cases, those suggestions go beyond the scope of this rule. Accordingly, the Secretary will incorporate those changes in a separate publication that will be issued shortly.

Changes: None.

Comment: One commenter asked the Secretary to address the issue of whether the Federal Fair Debt Collection Practices Act (FDCPA) applies to guaranty agency collection activities on defaulted loans.

Discussion: It has been the longstanding view of the Secretary and the Federal Trade Commission that the FDCPA does not apply to guaranty

agencies collecting defaulted FFEL Program loans in their own names and protecting the financial interests of their guarantee programs. The FDCPA does not apply to an entity collecting a debt it is owed. Moreover, application of the FDCPA to the guaranty agencies would potentially penalize them for compliance with the requirements in 34 CFR 682.410 and, thus, is inconsistent with the Secretary's goal of ensuring a minimum standard of collection action. The Secretary notes, however, that the FDCPA clearly applies to a collection contractor acting for the guaranty agency. Such contractors are collecting a debt owed to another and are clearly subject to the FDCPA.

Change: None.

Regulatory Flexibility Act Certification

Comment: Many commenters stated that § 682.404, requiring the guaranty agency to offer preclaims assistance no later than the 75th day of delinquency, could have a significant impact on lenders, particularly small lenders. The commenters also stated that many loans that become 60 to 90 days delinquent are ''self-cured'' through the borrower or other party providing documentation for deferment or forbearance. In addition, the commenters noted that requiring assistance from the guaranty agency earlier in the process could result in unnecessary requests for preclaims assistance and the unnecessary loading and processing of the preclaims assistance request by the guarantor.

Discussion: The Secretary agrees with the commenters and believes that it would be more advantageous for collection assistance to be made available to the lender by the guaranty agency no later than the 90th day of delinquency.

Change: The regulations have been revised to provide that preclaims assistance be made available no later than the 90th day of delinquency.

Comment: Many commenters stated that the § 682.411 provision establishing a minimum of information to be included in the letters sent by lenders to delinquent borrowers during the 1–15 days of delinquency provides too much information and reduces the clarity of the letters making the letters less effective. The commenters expressed concern that requiring additional information in the notice sent during this period could create a significant burden on lenders, since the first notice is generally a billing statement.

Discussion: The Secretary notes that it was not the Department's intent to require that the notice or collection letter sent during the 1–15 days of delinquency contain detailed information for the borrower regarding loan consolidation, forbearance and other available options to avoid default. This sentence was placed in paragraph (c) in error. This requirement should have been included in the collection timeframe of 16–180 days of delinquency. However, the Secretary does want a statement in the collection letter relating to the 1–15 day delinquency that indicates that other options are available if a borrower is having difficulty making payments. The name and telephone number of a contact person should also be included in this letter.

Change: The regulations have been amended to remove this requirement from paragraph (c) and insert it in paragraph (d). A modified statement has been added to paragraph (c).

Paperwork Reduction Act of 1995

Section 682.411 contains information collection requirements. As required by the Paperwork Reduction Act of 1995, the U.S. Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C 3504(h)). In response to the Secretary's invitation in the NPRM to comment on any potential paperwork burden associated with this regulation, the following comments were received.

Comment: Many commenters suggested that the Secretary amend § 682.411(c) to expand the length of the current timeframe that lenders will have to send the first written collection notice or collection letter to a delinquent borrower from 1–10 days (1–15 in NPRM) to 1–20 days. The commenters stated that consumer loans often offer a 15-day grace period on payment due dates. They suggested that many borrowers believe that the student loan has a similar payment grace period and may delay mailing their payment. The commenters believe that many unnecessary collection letters will be eliminated by expanding the timeframe to 20 days.

Discussion: The Secretary declines to extend the timeframe specified in the NPRM (1–15 days) to 1–20 days. The Secretary believes that the expanded timeframe in the NPRM is sufficient to eliminate the majority of unnecessary collection notices that have been generated under the current 10-day period.

Change: None.

Comment: Many commenters stated that the § 682.411 provision establishing a minimum of information to be included in the letters sent by lenders to delinquent borrowers during the 1–15 days of delinquency provides too much information and reduces the clarity of the letters making the letters less effective. The commenters expressed concern that requiring that additional information be added to the notice sent during this period could create a significant burden on lenders, since the first notice is generally a billing statement.

Discussion: The Secretary notes that it was not the Department's intent to require that the notice or collection letter sent during the 1–15 days of delinquency contain detailed information for the borrower regarding loan consolidation, forbearance and other available options to avoid default. This sentence was placed in paragraph (c) in error. This requirement should have been included in the collection timeframe for the 16–180 days of delinquency. However, the Secretary does intend that a statement in the collection letter relating to the day 1–15 delinquency indicate that other options are available if a borrower is having difficulty making payments. The name and telephone number of a contact person should also be included in this letter.

Change: The regulations have been amended to remove the statement in the NPRM from paragraph (c) and insert it in paragraph (d). A modified statement has been inserted in paragraph (c).

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

Dated: November 21, 1996.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.202 is amended by removing the number ''10'' from paragraph (f)(2) and adding in its place the number ''15''.

3. Section 682.401 is amended by revising paragraph (b)(27) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(27) *Collection Charges and Late Fees on Defaulted FFEL loans being Consolidated.* (i) A guaranty agency may add collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest to a defaulted FFEL Program loan that is included in a Federal Consolidation loan.

(ii) When returning the proceeds from the consolidation of a defaulted loan to the Secretary, a guaranty agency may only retain the amount added to the borrower's balance pursuant to paragraph (b)(27)(i) of this section.

* * * * *

4. Section 682.404 is amended by revising paragraph (a)(2)(ii) and paragraph (f) to read as follows:

§ 682.404 Federal reinsurance agreement.

* * * * *

(a) * * *

(2) * * *

(ii) *Preclaims assistance* means collection assistance made available to the lender by the guaranty agency no later than the 90th day of delinquency. This assistance must include collection activities that are at least as forceful as the level of preclaims assistance performed by the guaranty agency as of October 16, 1990, and involves the initiation by the guaranty agency of at least 3 collection activities, one of which is a letter designed to encourage the borrower to begin or resume repayment. As part of their preclaims assistance, guaranty agencies must provide counseling and consumer information (in written or other format) to the borrower by the 10th working day after the agency receives the lender's request for preclaims assistance informing the borrower of all of the borrower's options to avoid default, including the availability of consolidating delinquent loans under the FFEL Program or the Federal Direct Consolidation Loan Program.

* * * * *

(f) *Application of borrower payments.* A payment made to a guaranty agency by a borrower on a defaulted loan must be applied first to the collection costs incurred to collect that amount and then to other incidental charges, such as late charges, then to accrued interest and then to principal.

* * * * *

5. Section 682.406 is amended by revising paragraph (a)(12) to read as follows:

§ 682.406 Conditions of reinsurance coverage.

* * * * *

(a) * * *

(12) The agency and lender complied with all other Federal requirements with respect to the loan including the payment of origination fees and compliance with all preclaims assistance requirements in § 682.404(a)(2)(ii);

* * * * *

6. Section 682.410 is amended by revising paragraphs (b)(2) and(b)(6)(vii)(A) to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(2) *Collection charges.* Whether or not provided for in the borrower's promissory note and subject to any limitation on the amount of those costs in that note, the guaranty agency shall charge a borrower an amount equal to reasonable costs incurred by the agency in collecting a loan on which the agency has paid a default or bankruptcy claim. These costs may include, but are not limited to, all attorney's fees, collection agency charges, and court costs. Except as provided in §§ 682.401(b)(27) and 682.405(b)(1)(iv), the amount charged a borrower must equal the lesser of—

(i) The amount the same borrower would be charged for the cost of collection under the formula in 34 CFR 30.60; or

(ii) The amount the same borrower would be charged for the cost of collection if the loan was held by the U.S. Department of Education.

* * * * *

(6) * * *

(vii) After 181 days:

(A) Except as provided in paragraph (b)(6)(vii)(B) of this section, during this period but not sooner than 30 days after sending the notice described in paragraph (b)(5)(vi) of this section, the agency shall initiate proceedings to offset the borrower's state and federal income tax refunds and other payments made by the federal government to a borrower, and shall initiate administrative wage garnishment proceedings against the borrower by the 225th day. If the agency determines that the borrower has insufficient income to satisfy the debt through wage garnishment, but has assets from which the debt can be satisfied, the agency shall assign the loan to the Department. The agency must not file suit to collect a loan from a borrower unless directed to do so by the Secretary.

* * * * *

7. Section 682.411 is amended by revising paragraphs (c), (d) introductory text, (d)(1), and (d)(2) to read as follows:

§ 682.411 Due diligence by lenders in the collection of guaranty agency loans.

* * * * *

(c) *1–15 days delinquent:* Except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan, the lender during this period shall send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency. The notice or collection letter sent during this period must include, at a minimum, a lender/servicer contact and telephone number, and a prominent statement informing the borrower that assistance may be available if he or she is experiencing difficulty in making a scheduled repayment.

(d) *16–180 days delinquent (16–240 days delinquent for a loan repayable in installments less frequent than monthly):* (1) Unless exempted under paragraph (d)(4) of this section, during this period the lender shall engage in at least four diligent efforts to contact the borrower by telephone and send at least four collection letters urging the borrower to make the required payments on the loan. At least one of the diligent efforts to contact the borrower by phone must occur before, and another one must occur after, the 90th day of delinquency. The notice or collection letter sent during this period must include, at a minimum, information for the borrower regarding deferment, forbearance, income-sensitive repayment and loan consolidation and other available options to avoid default.

(2) At least two of the collection letters required under paragraph (d)(1) of this section must warn the borrower that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus,

and that the agency may institute proceedings to offset the borrower's state and federal income tax refunds and other payments made by the federal government to a borrower or to garnish the borrower's wages, or assign the loan to the federal government for litigation against the borrower.

* * * * *

8. Section 682.413 is amended by redesignating paragraph (b) as paragraph (b)(1) and adding a new paragraph (b)(2) to read as follows:

§ 682.413 Remedial actions.

* * * * *

(b)(1) The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender, third-party servicer, if applicable, or the agency fails to meet the requirements of § 682.406(a).

(2) The Secretary may require a guaranty agency to repay reinsurance payments received on a loan or to assign FFEL loans to the Department if the agency fails to meet the requirements of § 682.410.

* * * * *

[FR Doc. 96–30359 Filed 11–26–96; 8:45 am]

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Federal Register

Wednesday
November 27, 1996

Part IX

Department of Education

34 CFR Part 668, et al.

Postsecondary Education: Student Assistance General Provision; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 675, 676, 682, 685, and 690

RIN 1840–AC39

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations, 34 CFR Part 668, to implement an amendment made to the General Education Provisions Act (GEPA) by the Improving America's Schools Act of 1994 (IASA). That amendment decreased from five years to three years the length of time that a recipient of federal funds is required to maintain records. In addition, the Secretary is consolidating and clarifying existing records retention rules, and reducing administrative burden on institutions.

DATES: *Effective Date:* These regulations take effect July 1, 1997. However, affected parties do not have to comply with the information collection requirements in § 668.24 until the Department of Education publishes in the Federal Register the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. 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: Paula Husselmann or Kenneth Smith, U.S. Department of Education, 600 Independence Avenue, SW, ROB–3, Room 3045, Washington, DC 20202–5346. The telephone number for Paula Husselmann is (202)708–4902. The telephone number for Kenneth Smith is (202)708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) AT 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On September 13, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for the Student Assistance General Provisions (Part 668) in the Federal Register (61 FR 48564–48569). The NPRM included a discussion of the major issues surrounding the proposed changes that will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those changes can be found:

Section 668.24 Record Retention and Examinations

The Secretary proposed to reduce from five years to three years the length of time that a recipient of title IV, HEA program funds must maintain records. (page 48564)

The Secretary proposed that the recordkeeping period should be the same for all programs, to the extent possible. The Secretary proposed as a general rule that, other than records relating to student loans, an institution must keep records relating to its administration of a title IV, HEA program for an award year for three years after the end of that award year. (page 48564)

The Secretary proposed the following requirements for certain types of records that do not fit within the general rule. With regard to records relating to student loans under the FFEL Program and the William D. Ford Federal Direct Loan (Direct Loan) Program, the Secretary proposed that an institution keep those records for three years after the end of the award year in which the student borrower last attended the institution. (page 48564)

The Secretary proposed that an institution keep loan records relating to the repayment of Federal Perkins Loans in accordance with the regulations governing that program, 34 CFR 674.19. (page 48564)

The Secretary proposed that an institution keep the Fiscal Operations Report and Application to Participate in the Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant (FSEOG), and Federal Work-Study (FWS) Programs (FISAP) and the records supporting information contained in a FISAP, including income grid information, for three years after the end of the award year in which the FISAP was submitted. (page 48564)

The Secretary proposed to accommodate new technology by allowing an institution to satisfy its recordkeeping requirements under various electronic formats. The Secretary proposed that all record information, except those records required to be retained in electronic format, be retrievable in a coherent hard copy or in other media format acceptable to the Secretary. (pages 48564–48565)

The Secretary proposed that an institution make its records readily available for review at an institutional location designated by the Secretary. (page 48565)

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, thirty-three parties submitted comments on the proposed regulations. The Secretary notes that many of the commenters are groups representing significant numbers of people and entities. Therefore, when the Secretary refers to a commenter, the Secretary is, in most cases, referring to groups of individuals or entities.

An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—generally are not addressed.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States. This issue is further discussed in the Appendix to these regulations, under the analysis of comments and changes for § 668.24, ''General'' comments, and for § 682.414(a)(3).

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 674

Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 675

Colleges and universities, Employment, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 676

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Programs; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; 84.268 Federal Direct Student Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program. Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship Program has not been assigned.)

Dated: November 20, 1996.

Richard W. Riley,

Secretary of Education.

The Secretary amends Parts 668, 674, 675, 676, 682, 685, and 690 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.24 is revised to read as follows:

§ 668.24 Record retention and examinations.

(a) *Program records.* An institution shall establish and maintain, on a current basis, any application for title IV, HEA program funds and program records that document—

(1) Its eligibility to participate in the title IV, HEA programs;

(2) The eligibility of its educational programs for title IV, HEA program funds;

(3) Its administration of the title IV, HEA programs in accordance with all applicable requirements;

(4) Its financial responsibility, as specified in this part;

(5) Information included in any application for title IV, HEA program funds; and

(6) Its disbursement and delivery of title IV, HEA program funds.

(b) *Fiscal records.* (1) An institution shall account for the receipt and expenditure of title IV, HEA program funds in accordance with generally accepted accounting principles.

(2) An institution shall establish and maintain on a current basis—

(i) Financial records that reflect each HEA, title IV program transaction; and

(ii) General ledger control accounts and related subsidiary accounts that identify each title IV, HEA program transaction and separate those transactions from all other institutional financial activity.

(c) *Required records.* (1) The records that an institution must maintain in order to comply with the provisions of this section include but are not limited to—

(i) The Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine eligibility for title IV, HEA program funds;

(ii) Application data submitted to the Secretary, lender, or guaranty agency by the institution on behalf of the student or parent;

(iii) Documentation of each student's or parent borrower's eligibility for title IV, HEA program funds;

(iv) Documentation relating to each student's or parent borrower's receipt of title IV, HEA program funds, including but not limited to documentation of—

(A) The amount of the grant, loan, or FWS award; its payment period; its loan period, if appropriate; and the calculations used to determine the amount of the grant, loan, or FWS award;

(B) The date and amount of each disbursement or delivery of grant or loan funds, and the date and amount of each payment of FWS wages;

(C) The amount, date, and basis of the institution's calculation of any refunds or overpayments due to or on behalf of the student; and

(D) The payment of any refund or overpayment to the title IV, HEA program fund, a lender, or the Secretary, as appropriate;

(v) Documentation of and information collected at any initial or exit loan counseling required by applicable program regulations;

(vi) Reports and forms used by the institution in its participation in a title IV, HEA program, and any records needed to verify data that appear in those reports and forms; and

(vii) Documentation supporting the institution's calculations of its completion or graduation rates under §§ 668.46 and 668.49.

(2) In addition to the records required under this part—

(i) Participants in the Federal Perkins Loan Program shall follow procedures established in 34 CFR 674.19 for documentation of repayment history for that program;

(ii) Participants in the FWS Program shall follow procedures established in 34 CFR 675.19 for documentation of work, earnings, and payroll transactions for that program; and

(iii) Participants in the FFEL Program shall follow procedures established in 34 CFR 682.610 for documentation of additional loan record requirements for that program.

(d) *General.* (1) An institution shall maintain required records in a systematically organized manner.

(2) An institution shall make its records readily available for review by the Secretary or the Secretary's authorized representative at an institutional location designated by the Secretary or the Secretary's authorized representative.

(3) An institution may keep required records in hard copy or in microform, computer file, optical disk, CD–ROM, or other media formats, provided that—

(i) Except for the records described in paragraph (d)(3)(ii) of this section, all record information must be retrievable in a coherent hard copy format or in other media formats acceptable to the Secretary;

(ii) An institution shall maintain the Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine eligibility for title IV, HEA program funds in the format in which it was received by the institution, except that the SAR may be maintained in an imaged media format;

(iii) Any imaged media format used to maintain required records must be capable of reproducing an accurate, legible, and complete copy of the original document, and, when printed, this copy must be approximately the same size as the original document;

(iv) Any document that contains a signature, seal, certification, or any other image or mark required to validate the authenticity of its information must be maintained in its original hard copy or in an imaged media format; and

(v) Participants in the Federal Perkins Loan Program shall follow procedures established in 34 CFR 674.19 for maintaining the original promissory notes and repayment schedules for that program.

(4) If an institution closes, stops providing educational programs, is terminated or suspended from the title IV, HEA programs, or undergoes a change of ownership that results in a

change of control as described in 34 CFR 600.31, it shall provide for—

(i) The retention of required records; and

(ii) Access to those records, for inspection and copying, by the Secretary or the Secretary's authorized representative, and, for a school participating in the FFEL Program, the appropriate guaranty agency.

(e) *Record retention*. Unless otherwise directed by the Secretary—(1) An institution shall keep records relating to its administration of the Federal Perkins Loan, FWS, FSEOG, or Federal Pell Grant Program for three years after the end of the award year for which the aid was awarded and disbursed under those programs, provided that an institution shall keep—

(i) The Fiscal Operations Report and Application to Participate in the Federal Perkins Loan, FSEOG, and FWS Programs (FISAP), and any records necessary to support the data contained in the FISAP, including ''income grid information,'' for three years after the end of the award year in which the FISAP is submitted; and

(ii) Repayment records for a Federal Perkins loan, including records relating to cancellation and deferment requests, in accordance with the provisions of 34 CFR 674.19;

(2)(i) An institution shall keep records relating to a student or parent borrower's eligibility and participation in the FFEL or Direct Loan Program for three years after the end of the award year in which the student last attended the institution; and

(ii) An institution shall keep all other records relating to its participation in the FFEL or Direct Loan Program, including records of any other reports or forms, for three years after the end of the award year in which the records are submitted; and

(3) An institution shall keep all records involved in any loan, claim, or expenditure questioned by a title IV, HEA program audit, program review, investigation, or other review until the later of—

(i) The resolution of that questioned loan, claim, or expenditure; or

(ii) The end of the retention period applicable to the record.

(f) *Examination of records.* (1) An institution that participates in any title IV, HEA program and the institution's third-party servicer, if any, shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, the Comptroller General of the United States, or their authorized representatives, a guaranty agency in whose program the institution participates, and the institution's accrediting agency, in the conduct of audits, investigations, program reviews, or other reviews authorized by law.

(2) The institution and servicer must cooperate by—

(i) Providing timely access, for examination and copying, to requested records, including but not limited to computerized records and records reflecting transactions with any financial institution with which the institution or servicer deposits or has deposited any title IV, HEA program funds, and to any pertinent books, documents, papers, or computer programs; and

(ii) Providing reasonable access to personnel associated with the institution's or servicer's administration of the title IV, HEA programs for the purpose of obtaining relevant information.

(3) The Secretary considers that an institution or servicer has failed to provide reasonable access to personnel under paragraph (f)(2)(ii) of this section if the institution or servicer—

(i) Refuses to allow those personnel to supply all relevant information;

(ii) Permits interviews with those personnel only if the institution's or servicer's management is present; or

(iii) Permits interviews with those personnel only if the interviews are tape recorded by the institution or servicer.

(4) Upon request of the Secretary, or a lender or guaranty agency in the case of a borrower under the FFEL Program, an institution or servicer promptly shall provide the requester with any information the institution or servicer has respecting the last known address, full name, telephone number, enrollment information, employer, and employer address of a recipient of title IV funds who attends or attended the institution.

(Authority: 20 U.S.C. 1070a, 1070b, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087, 1087a et seq., 1087cc, 1087hh, 1088, 1094, 1099c, 1141, 1232f; 42 U.S.C. 2753; and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

§ 668.25 [Amended]

3. Section 668.25(c)(4)(i) is amended by removing ''§ 668.23(h)'' and adding, in its place, ''§ 668.24''.

§ 668.26 [Amended]

4. Section 668.26(b)(3) is amended by removing the word ''five'' and adding, in its place, the word ''three''.

PART 674—FEDERAL PERKINS LOAN PROGRAM

5. The authority citation for Part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

6. Section 674.19 is amended by revising paragraph (d); removing paragraph (e)(4)(v) and redesignating paragraph (e)(4)(vi) as paragraph (e)(4)(v); and revising paragraphs (e)(1) and (e)(3), and the heading of paragraph (e)(4) to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(d) *Records and reporting.* (1) An institution shall establish and maintain program and fiscal records that are reconciled at least monthly.

(2) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(e) * * *

(1) *Records.* An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

* * * * *

(3) *Period of retention of repayment records.* An institution shall retain repayment records, including cancellation and deferment requests, for at least three years from the date on which a loan is assigned to the Department of Education, canceled, or repaid.

(4) *Manner of retention of promissory notes and repayment schedules.*

* * * * *

PART 675—FEDERAL WORK-STUDY PROGRAMS

7. The authority citation for Part 675 continues to read as follows:

Authority: 42 U.S.C. 2571–2756b, unless otherwise noted.

8. Section 675.19 is amended by removing paragraphs (b)(2)(v) through (b)(2)(vii), (b)(4), (b)(5), and (c); adding the word ''and'' at the end of paragraph (b)(2)(iii); removing the semicolon at the end of paragraph (b)(2)(iv), and adding, in its place, a period; and revising paragraph (b)(1) to read as follows:

§ 675.19 Fiscal procedures and records.

* * * * *

(b) * * *

(1) An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

* * * * *

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

9. The authority citation for Part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b-1070b-3, unless otherwise noted.

10. Section 676.19 is amended by removing paragraph (c); and revising paragraph (b) to read as follows:

§ 676.19 Fiscal procedures and records.

* * * * *

(b) *Records and reporting.* (1) An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(2) An institution shall establish and maintain program and fiscal records that are reconciled at least monthly.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

11. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

12. Section 682.414 is amended by revising paragraph (a)(2); redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively; adding a new paragraph (a)(3); removing the citation ''(a)(3)(iv)'' in redesignated paragraph (a)(4)(iii), and adding, in its place, ''(a)(4)(iv)''; adding the words ''required under § 682.305(c)'' after the words ''audit report'' in redesignated paragraph (a)(4)(iv); removing ''paragraphs (a)(3)(ii)(C)–(K) of this section on microfilm, optical disk, or other machine readable format'' in redesignated paragraph (a)(5)(i), and adding, in its place, ''paragraphs (a)(4)(ii)(C)–(K) of this section in accordance with 34 CFR 668.24(d)(3) (i) through (iv)''; removing paragraph (c) introductory text; removing paragraphs (c)(1) and (c)(2); adding a new paragraph (c)(1); redesignating paragraph (c)(3) as (c)(2); removing ''Sec. 682.401(b) (19) and (20)'' in redesignated paragraph (c)(2), and adding in its place, ''§ 682.401(b) (21) and (22)'' to read as follows:

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(2) The guaranty agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible in accordance with the agency's write-off procedures. However, in particular cases the Secretary may require the retention of records beyond this minimum period. For the purpose of this section, the term ''paid in full'' includes loans paid by the Secretary due to the borrower's death (or student's death in the case of a PLUS loan), the borrower's permanent and total disability or bankruptcy, the discharge of the borrower's loan obligation because of attendance at a closed school, or because the student's eligibility to borrow had been falsely certified by the school.

(3) A guaranty agency shall retain a copy of the audit report required under § 682.410(b) for not less than five years after the report is issued.

* * * * *

(c) *Inspection requirements.* (1) For purposes of examination of records, references to an institution in 34 CFR 668.24(f) (1) through (3) shall mean a guaranty agency or its agent.

* * * * *

13. Section 682.610 is amended by revising paragraphs (a) and (b); removing the word ''or'' at the end of paragraph (c)(2)(ii); removing the period at the end of paragraph (c)(2)(iii), and adding, in its place, ''; or''; redesignating paragraph (f)(2) as paragraph (c)(2)(iv); removing the words ''the school'' the first time they appear in redesignated paragraph (c)(2)(iv), and adding, in their place, ''it''; removing the words ''the school shall notify the holder of the loan within 30 days thereafter, either directly or through the guaranty agency'' in redesignated paragraph (c)(2)(iv); and removing paragraphs (d), (e), and (f) to read as follows:

§ 682.610 Administrative and fiscal requirements for participating schools.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668;

(2) Follow the record retention and examination provisions in this part and in 34 CFR 668.24; and

(3) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Stafford, SLS, or PLUS loan received by or on behalf of its students, a school shall maintain a copy of the loan application or data electronically submitted to the lender, that includes—

(1) The name of the lender;

(2) The address of the lender;

(3) The amount of the loan and the period of enrollment for which the loan was intended;

(4) For loans delivered to the school by check, the date the school endorsed each loan check, if required;

(5) The date or dates of delivery of the loan proceeds by the school to the student or to the parent borrower; and

(6) For loans delivered by electronic funds transfer or master check, a copy of the borrower's written authorization required under § 682.604(c)(3) to deliver the initial and subsequent disbursements of each FFEL program loan.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

14. The authority citation for Part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

15. Section 685.309 is amended by revising paragraphs (a)(1), (c), and (d); removing paragraphs (e), (f), and (g); redesignating paragraphs (h), (i), and (j) as paragraphs (e), (f), and (g), respectively to read as follows:

§ 685.309 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

(a) * * *

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in this part and in 34 CFR part 668; and

* * * * *

(c) *Record retention requirements.* An institution shall follow the record retention and examination requirements in this part and in 34 CFR 668.24.

(d) *Accounting requirements.* A school shall follow accounting requirements in 34 CFR 668.24(b).

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

16. The authority citation for Part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

17. Section 690.81 is amended by revising paragraph (a) to read as follows:

§ 690.81 Fiscal control and fund accounting procedures.

(a) An institution shall follow provisions for maintaining general fiscal

records in this part and in 34 CFR 668.24(b).

* * * * *

18. Section 690.82 is revised to read as follows:

§ 690.82 Maintenance and retention of records.

(a) An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(b) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(Approved by the Office of Management and Budget under control number 1840–0681)

(Authority: 20 U.S.C. 1070a, 1232f)

Appendix—Analysis of Comments and Changes

(Note: This Appendix will not be codified in the Code of Federal Regulations.)

Section 668.24 Record retention and examinations—General

Comments: Most of the commenters applauded the Secretary for his efforts to reduce the record retention requirements for institutions. The commenters encouraged the Secretary to continue to examine regulations for standardization among provisions, and to maintain the dual goals of data and program integrity and burden reduction. Organizations representing institutions and other participants in the title IV, HEA programs expressed their gratitude for the reduction in the amount of time that a recipient of federal funds must maintain records, and for the Secretary's efforts to consolidate and clarify existing record retention rules.

Two commenters indicated that the reduced time period should be accompanied by a reduction in the number of records that institutions are required to retain. The commenters encouraged the Secretary to review the data available in the Department's various databases, identify duplication of data collection, and seek to transfer data maintenance from institutions to the Department in an effort to reduce administrative burden on institutions.

Some commenters preferred that records be retained longer than three years and asked the Secretary to encourage institutions to retain records for a longer period. The commenters believe that the National Student Loan Data System and other technological initiatives will facilitate the retention of records for an indefinite period of time. Some commenters approved of the inclusion of a more comprehensive list of records in the SFA Handbook; one commenter recommended that the Secretary also include the list in the Audit Guide, *Compliance Audits (Attestation Engagements) of Federal Student Financial Assistance Programs at Participating Institutions.*

Discussion: The Secretary appreciates the commenters' responses and will continue to evaluate regulations for burden reduction. The Secretary agrees that a more comprehensive list of records should be included in the Audit Guide. The Secretary does not agree that an institution does not have to maintain records that it has provided to ED databases because institutions are responsible for maintaining the records necessary to show their compliance with applicable statutes and regulations and their expenditure of title IV, HEA program funds.

Changes: None.

Section 668.24(a) Program Records

Comments: One commenter recommended that paragraph (a)(5) of this section be removed. The commenter explained that the application information requirement is provided for in the introductory language of paragraph (a) and is, therefore, redundant under (a)(5).

Discussion: The Secretary does not agree that paragraph (a)(5) repeats the introductory language of paragraph (a). The introductory language refers to the application itself, while paragraph (a)(5) refers to program records that document the information included in an application.

Changes: None.

Section 668.24(c) Required Records

Comments: A few commenters recommended that proof of high school diploma, GED, or documentation of ''ability-to-benefit'' be added to the list of required records under this paragraph. A number of commenters expressed concern over the use of the term ''disbursement'' in paragraph (c)(1)(iv)(B) because of the difference between its use for the FFEL Program and its use for other title IV, HEA programs. (In the FFEL Program, lenders ''disburse'' loan proceeds to a borrower's institution and the institution ''delivers'' those proceeds to the borrower.) One commenter recommended that this provision list various documents currently included in § 682.610 of the FFELP regulations. A few commenters recommended that the Secretary incorporate a reference to the Direct Loan Program regulations. One commenter recommended that the Secretary establish a future effective date for implementation of these regulations.

Discussion: Records documenting that a student has a high school diploma, GED, or the ability-to-benefit are covered in paragraph (c)(1)(iii), student eligibility records. The Secretary believes that it is not necessary to list them separately in this section.

The Secretary agrees with the commenters that the reference to disbursement should be expanded to include FFEL proceeds that are delivered to students and parents. The Secretary did not add the recommended FFELP items to the list of documentation because that would not be in keeping with the intent of these regulations to simplify and consolidate provisions. The Secretary did not reference the Direct Loan Program in this provision because there is no comparable provision under the Direct Loan Program. With respect to the effective date, these regulations will take effect July 1, 1997.

Changes: The Secretary has revised § 668.24(c)(1)(iv)(B) to include delivery of FFELP loan proceeds.

Section 668.24(d) General Requirements

Comments: One commenter requested clarification concerning the retention of records in a systematically organized manner. The commenter requested assurance that the Secretary is simply restating current policy and is not attempting to tell institutions how to keep files.

Discussion: The Secretary is simply restating current requirements and current policy. The Secretary is not attempting to tell institutions how to keep files to comply with this requirement.

Changes: None.

Comments: Many commenters addressed the proposal that an institution maintain an electronic record in the format in which it was originally received or transmitted. The commenters overwhelmingly objected to the proposal, indicating that it was expensive, duplicative, time-consuming, and inconsistent with technological innovation. The commenters suggested that it should be sufficient for institutions to reproduce, on request, the data contained in the records of each title IV transaction that it has sent or received electronically.

Some commenters recommended that the Secretary add lenders and guarantors specifically to § 668.24(d)(4) for access to records.

Discussion: The Secretary agrees with the points made by the commenters with respect to maintaining electronically transmitted records in the original format. However, the Secretary

believes that the Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine eligibility for title IV, HEA program funds should be retained by the institution in the format in which it was received because, for program review purposes and audit purposes, it is essential that these basic eligibility records be available in a consistent, comprehensive, and verifiable format.

Because the SAR is a hard copy document, for the purposes of these regulations it must be maintained in either its original hard copy format or in an imaged format. The ISIR, an electronic record, must be available in its original format, either as it was supplied by the Department to the institution on a magnetic tape or cartridge or as it was archived using EDExpress software supplied to the institution. This enables the Secretary's representative to access the ISIR electronically, to discriminate among data and to authenticate the record. The information contained on the ISIR can be cross-checked or verified against applicant information supplied by the student at the central processor.

The Secretary does not believe that retention of an ISIR is burdensome because by using EDExpress the institution maintains the record during the applicable award year, and, after the award year has ended, the institution has the ability, again using EDExpress, to archive the data to a disk or other computer format. An institution that receives ISIR's on magnetic tapes or cartridges can simply make a copy of the file received from the Secretary.

The Secretary agrees to include guarantors in the provision governing access to title IV, HEA records when an institution closes or ceases providing educational programs. The Secretary does not agree to include lenders in this provision. Lenders do not have the enforcement and monitoring responsibilities which would necessitate their inclusion.

Changes: Proposed § 668.24(d)(3)(ii) has been changed to require only that the SAR or ISIR used to determine eligibility for title IV, HEA funds be retained in the format in which it was received, under the conditions described above. In addition, guarantors have been added to the access provision.

Comments: Several respondents commented on the issue of imaging documents. Several commenters asked the Secretary to remind institutions that an institution is not required to retain an original or imaged copy of a FFELP or Direct Loan Program promissory note, and that a photocopy or electronic record of data elements sent to the lender or the Secretary is permitted under existing regulations. A few commenters requested clarification of the storage requirement for Perkins Loan promissory notes, and student aid records in general, vis-a-vis imaging requirements. One commenter encouraged the Secretary to require the maintenance of hard copy of promissory notes only if imaged copies of promissory notes have not served the Secretary well in court.

Discussion: The commenters are correct that institutions are not required to maintain an original or imaged copy of a promissory note for FFELP or Direct Loan Program loans. The institution may maintain the information needed to recreate the promissory note data in an alternate format. However, the commenters should note that the formats available to institutions for this retention are not restricted to the commenter's list.

With respect to a Perkins promissory note, an institution may image the note for administrative purposes, but retention of the original promissory note is necessary for legal purposes. An institution should refer to § 674.19 of the Federal Perkins Loan regulations for further guidance. The imaging provision applies to all other student aid records.

Changes: None.

Section 668.24(e) Record Retention

Comments: Generally speaking, the commenters strongly supported the reduction in the length of record retention. However, the commenters differed in their approach to records for the loan programs. Some commenters were concerned about the difference in retention requirements among the title IV loan programs. Some commenters recommended a longer retention period for Federal Perkins Loans, while other commenters recommended a shorter retention period; *e.g.* three years from the academic year in which the loan was made. A few commenters suggested that the requirements be the same for all loan programs; for example, bringing the Federal Perkins Loan Program into alignment with the FFEL and Direct Loan Programs, and requiring the retention of records until three years from the student's last day of attendance.

Other commenters objected to the proposed loan retention record requirements and requested that the Secretary remind institutions that loan records may be retained longer than the regulations require, particularly records related to loan proceeds disbursed by electronic fund transfer (EFT). These commenters noted that the shorter period may cause problems. For example, since a lender or guaranty agency may not be aware of problems with a loan until repayment begins, institutions may need to retain records to respond to borrower defenses, and records may be needed to appeal a cohort default rate.

Some commenters contended that the FFELP and Direct Loan requirements essentially nullify the reduction in retention requirements because most institutions purge all records for a student at one time. The commenters indicated that if a student obtained title IV, HEA program grant funds, the record retention requirements for the loan programs would in effect become the record retention requirement for the grant programs because of the interrelation of all the title IV, HEA programs.

One commenter recommended that only the data that the institution used to process a loan application be retained. For example, the institution would retain only the actual expected family contribution (EFC) and estimated financial assistance (EFA); it would not have to retain supporting documentation. One commenter recommended that the Secretary encourage institutions to retain records for a longer period for undergraduate students who are enrolled in extended programs.

Discussion: The Secretary carefully considered the various recommendations by the commenters. While the Secretary would prefer to have uniform requirements among all the title IV, HEA programs, the nature of the FFEL and Direct Loan Programs require a different treatment because problems may arise with regard to a loan many years after the student received the loan. The separate timeframe helps protect students from improper claims for repayment on loans by allowing them access to institutional enrollment, eligibility, and disbursement records; helps protect institutions against claims and liabilities; and provides additional substantiation to the validity of a loan when that loan is challenged.

With respect to the longer retention period for loans records negating the shorter period required for other title IV, HEA programs, this is not a change. This difference in requirements is unavoidable given the interrelationship of the title IV, HEA programs.

The Secretary also reminds institutions that records may always be retained longer than required by regulation.

Changes: None.

Comments: With regard to the retention of FISAP records for the campus-based programs, commenters requested that the Secretary change the retention requirement from three years after the end of the award year in which the institution submits the FISAP to three years after the year for which data are reported. Some commenters viewed the proposed regulations as an increase rather than a decrease in retention time from existing regulations.

Discussion: In the current regulations, institutions are required to maintain the FISAP and the records supporting it for five years after the FISAP's submission. Therefore, under the existing regulations, assuming that an institution submitted its FISAP in October, 1996, to request funds for the 1997–98 award year and to report expenditures for the 1995–96 award year, the institution would have to keep the FISAP and FISAP information until October, 2001.

While reducing the record retention period from five year to three years, the Secretary also determined to standardize the period for which institutions have to keep records and that standard period, to the extent possible, runs from the end of an award year. However, because institutions in a FISAP request funds in one award year, for expenditure in the following award year, based on events in the preceding award year, several alternative were possible to align the FISAP and FISAP records to this standard.

The revised legal standard for keeping records requires an institution to keep records for three years after the activity for which funds are used. Thus, for example, when an institution submitted a FISAP in October, 1996, for funds to be expended in award year 1997–98, the Secretary could have proposed that the institution keep FISAP and FISAP records until three years after the award year in which the requested funds were used, *i.e.* June 30, 2001. However, consistent with the purpose of reducing the record retention period, the Secretary has chosen to require institutions to keep FISAP and FISAP records for three years after the end of the award year in which the funds were requested, *i.e.* June 30, 2000 in this example.

The commenters' suggestion that the record period begin after the end of the award year on which the funds were based, *i.e.* June 30, 1999, three years after June 30, 1996, would amount to only a one-year retention period for the year in which requested funds were expended, and two years and nine months from the date the FISAP was submitted. Moreover, that suggestion would allow the Department only one year after the year in which funds were expended to review whether the institution's income grid information supported the amount the institution received and expended. The Secretary believes that such a short period is inappropriate and unacceptable.

The recommendation that a common date be established for all records created during an award year is available to institutions at their option. An institutions is free to establish its own common date for purging records as long as all minimum regulatory requirements are met.

Changes: None.

Section 668.24(f) Examination of Records

Comments: Some commenters asked the Secretary to provide for a review by guarantors whether or not the institution participates in the FFEL Program when the review occurs. A few commenters asked the Secretary to include a borrower's phone number and enrollment information in the list of information that an institution must provide to a requestor. A few commenters asked the Secretary to include language to clarify that third party servicers must comply with these regulations. One commenter recommended that instead of providing timely access to the Secretary or his representative, the institution should promptly provide that access.

Discussion: The Secretary would encourage an institution that no longer participates in a guaranty agency's program under the FFEL program to cooperate with a review by that guaranty agency, but since the institution no longer participates in the program, the Secretary will not impose this requirement.

Third-party servicers are specifically subject to the provisions of paragraph (f). The requirements contained in paragraphs (a) through (e) apply to participating institutions, and institutions are responsible for complying with those requirements, regardless of whether they use a third-party servicer. It is the responsibility of the institution to make sure that its third-party servicer satisfies all the regulatory requirements contained in paragraphs (a) through (e) because it will suffer the consequence for the servicer's failure to comply.

The Secretary agrees with the suggestion of the commenters regarding the provision of additional information. Finally, the Secretary believes that the term ''timely access'' is sufficient to ensure promptness and has, therefore, not changed the regulation to accommodate this recommendation.

Changes: Section 668.24(f)(4) has been changed to include information about a borrower's telephone number and enrollment status.

Section 682.414 Records, Reports, and Inspection Requirements for Guaranty Agency Programs

Comments: Many commenters noted that while the record retention requirement for institutions was reduced from five to three years, FFEL Program lenders and guaranty agencies must continue to maintain their records for five years under paragraph (a)(2). Commenters stated that a three-year period is sufficient for enforceability, and asked that record retention requirements for lenders and guaranty agencies be the same as those for institutions.

One commenter believed that an inconsistency exists between this NPRM and an FFEL program NPRM that was published in the Federal Register on September 19, 1996 (61 FR 49382). The commenter noted that in the September 19, 1996, NPRM, the Secretary considers guaranty agencies to be trustees of the federal government and fiduciaries, because they receive and process federal funds, but that for the purposes of these regulations, guaranty agencies are not considered recipients of program funds.

Other commenters stated that they understood that the amended GEPA provisions did not apply to guaranty agencies and lenders. However they indicated that the five-year record retention requirement imposed on lenders and guaranty agencies was not statutorily required and therefore the Secretary could reduce that period by regulation. Many of the commenters who suggested a reduction in the record retention requirements for lenders and guaranty agencies suggested that this reduction be issued in a separate NPRM.

Discussion: The GEPA provision, 20 U.S.C. § 1232f(a), applies only to entities that receive federal funds through a grant, loan, or similar process and hold federal funds for a period of time. Lenders and guaranty agencies receive contractually required payments and funds to which GEPA does not apply. Moreover, as a fiduciary, a guaranty agency is held to a very strict standard of accountability and would be well advised to maintain records for a long period. On the other hand, the fact that the Secretary considers that a guaranty agency a fiduciary does not make the guaranty agency a recipient of federal funds under GEPA.

The records of lenders and guaranty agencies are critical in enforcing the loan obligations of the borrower and for determining institutional eligibility

under the FFEL Program. For example, a three-year limit on keeping records would not provide adequate documentation for cohort default rate servicing appeals, on which ED and institutions rely.

The Secretary remains committed to reducing burden and intends to continue exploring effective ways of reducing the recordkeeping burden of guaranty agencies and lenders. Though the requested change from five years to three years of record retention is not made in these final regulations, the Secretary will consider this suggestion along with other options for reducing burden, and will propose any resulting changes to regulations in a separate NPRM.

Changes: None.

Comments: Many commenters asked for clarification of the provision that ''in particular cases the Secretary may require the retention of records beyond this minimum period.'' They questioned the purpose of this provision, asked for clarification or examples of the specific records that are intended, and also asked that the requirement either be clarified or dropped.

Several commenters noted that § 682.414(a)(4)(iii) provides a requirement for lenders similar to that in § 682.414(a)(2) and asked that it be either clarified with examples or removed.

Discussion: Any record may be subject to this provision. For the most part, the purpose of this requirement is the same as that for § 668.24(e)(3). It provides an additional retention period for records involved in an audit, review, or investigation. It may also be applied on a case-by-case basis, when the Secretary considers such an extension necessary.

The requirement at § 682.414(a)(2) was added as a technical correction, to conform requirements for guaranty agencies to those of lenders. As several commenters noted, this requirement exists in previous regulations for lenders, and is included in these regulations as § 682.414(a)(4)(iii).

Changes: None.

Comments: Many commenters noted that the citation given in paragraph (a)(3), ''Sec. 682.305(c),'' is a reference to a lender audit, not to an audit of a guaranty agency. As the lender audits are not available to the guaranty agencies, the commenters recommended changing the citation to ''Sec. 682.410(b).''

Several commenters noted that if the citation were not an error, they objected to its requirement. One commenter felt that this requirement was unnecessary, as the audit report is provided to the Secretary, and asked that the requirement be removed.

Discussion: The technical correction recommended is correct. As for the commenter's feeling that the requirement to retain this information caused unnecessary duplication, the Secretary does not agree. The guaranty agency or lender is responsible for maintaining records necessary to show its compliance with applicable statute and regulations.

Changes: The cross-reference in § 682.414(a)(3) to ''Sec. 682.305(c)'' is changed to § 682.410(b).

Comments: One commenter asked that § 682.414(a)(5)(i) be revised to permit all loan records to be stored in electronic or imaged formats. The commenter noted that this would be consistent with the requirements for institutions in § 668.24(d), and would recognize advancements in technology.

Discussion: The records in question are the loan application and the signed promissory note, including the repayment instrument. These original, hard copy documents must be maintained in order to protect the enforceability of the loan. Allowing these documents to be stored in formats other than hard copy would not be consistent with the requirements for other programs. This requirement for FFEL is comparable to that for Federal Perkins Loans (see § 674.19(e)(4)) and to the requirements for maintenance of Direct Loan Program promissory notes by the Direct Loan Servicing Center. However, the Secretary is continuing to monitor Courts' acceptance of other forms and may make changes in this area in the future.

Changes: None.

Comments: Many commenters noted the provision in § 682.414(a)(5)(ii) that a lender or guaranty agency shall either return the original note to the borrower or notify the borrower under an alternate procedure that is acceptable under State law that the loan is paid in full. The commenters asked that the Secretary preempt State law in this instance and state that lenders and guaranty agencies shall inform borrowers that their loans are paid in full through a written notice. Commenters reasoned that this would protect the federal fiscal interest from an enforceability standpoint and would standardize the process.

One commenter asked that this paragraph be revised to allow lenders to choose between the two options, and noted a risk of returning promissory notes, that they might be returned in error, thus damaging the enforceability of the loan, and that promissory notes for one or more loans might be especially prone to this.

Discussion: The Secretary is merely moving this rule, not changing its substance. The Secretary believes that the current rule remains appropriate.

Changes: None.

Section 682.610 Administrative and Fiscal Requirements for Participating Schools

Section 682.610(a) General

Comments: One commenter recommended that ''school'' in the introduction to this paragraph be changed to ''institution,'' for consistency.

Discussion: The word ''school'' is used in 34 CFR 682 to distinguish between schools and other participants that could be considered ''institutions'' (for example, a lender is a financial institution). The use of the word ''school'' in this paragraph creates no inconsistency.

Changes: None.

Section 682.610(b) Loan Record Requirements

Comments: Many commenters noted that PLUS loans are not included in paragraph (b)(4), and believe that they have been omitted unintentionally. The commenters ask that PLUS loans be included in this paragraph, and that other provisions of § 682.610(b)(4) be modified to reflect that change.

Discussion: The Secretary agrees with the commenters.

Changes: Section 682.610(b) is revised to include PLUS loans.

Comments: Many commenters requested that ''master check'' be added to language in § 682.610(b)(6), which was designated as § 682.610(b)(4)(iii) in the NPRM, in order to codify the inclusion of master check records for record retention purposes. One commenter noted that the citation ''§ 682.604(c)(3)'' applies to both EFT and master check.

Discussion: The Secretary agrees with the commenters.

Changes: Section 682.610(b)(6) has been amended to include master checks.

Comments: Many commenters noted that § 682.610(b)(9)(iv), as designated in current regulations, remains unchanged in these regulations, and request that ''master check'' be added to this paragraph in order to codify the inclusion of master check records for record retention.

Discussion: The commenters are in error. All of § 682.610(b) is replaced by new language in these final regulations; § 682.610(b)(9) has become § 682.610(b)(6), which has been discussed earlier.

Changes: None.

[FR Doc. 96–30117 Filed 11–26–96; 8:45 am]

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Part X

Department of Housing and Urban Development

Fiscal Year 1996 NOFA for Research to Improve the Evaluation and Control of Residential Lead-Based Paint Hazards; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4118–N–01]

Fiscal Year 1996 NOFA for Research To Improve the Evaluation and Control of Residential Lead-Based Paint Hazards

AGENCY: Office of the Secretary—Office of Lead Hazard Control, HUD.

ACTION: Notice of funding availability (NOFA) for Fiscal Year (FY) 1996.

SUMMARY: This NOFA announces the availability of approximately $2.5 million for grants or cooperative agreements for research on specified topics related to the evaluation and control of residential lead-based paint hazards. Approximately 5–10 grants or cooperative agreements of approximately $100,000 to $750,000 each will be awarded on a competitive basis. The application kit developed for this NOFA provides details to guide and assist applicants. This NOFA includes information concerning the following: (1) The purpose of the NOFA, eligible applicants, available amounts, and selection criteria; (2) Specified topics on which research grant applications will be accepted; (3) Application processing, including how to apply and how selections will be made; and (4) A checklist of steps and exhibits involved in the application process. An appendix to the NOFA identifies documents referenced in the NOFA.

DATES: An original and five copies of the completed application must be received by HUD no later than 3:00 P.M. (Eastern Time) on February 5, 1997. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after this deadline. Applicants should take this factor into account and make early submission of their materials to avoid loss of eligibility brought about by unanticipated delays or other delivery-related problems. Sections 4 and 5 of this NOFA provide further information on what constitutes proper submission of an application.

ADDRESSES: Application kits may be obtained from the Office of Lead Hazard Control (LS), Department of Housing and Urban Development, 451 7th Street, SW, Room B–133, Washington, DC 20410, or by calling Ms. Gail Ward at (202) 755–1785, ext. 111 (this is not a toll-free number), or by making an e-mail request to: Gail__N.__Ward@hud.gov (use underscore characters). The Department is also planning to make the NOFA and application kit accessible via the Internet World Wide Web (http://www.hud.gov/lea/leahome.html). Completed applications, however, must be submitted in paper copy to the mailing address. Faxed or electronically transmitted applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Dr. Peter Ashley, Office of Lead Hazard Control (LS), Room B–133, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 755–1785, ext. 115 (this is not a toll-free number). For hearing- or speech-impaired persons, the telephone number may be accessed via TTY (text telephone) by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

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Section 1. Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The OMB control number, when assigned, will be announced by separate notice in the Federal Register. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

Section 2. Definitions

The following definitions apply to this grant program:

Abatement—Any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. For the purposes of this definition, permanent means at least 20 years effective life. Abatement includes:

(a) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil; and

(b) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

Cleaning—The process of using a High Efficiency Particulate Air (HEPA) vacuum and/or wet cleaning agents to remove leaded dust. The process includes the removing of bulk debris from a work area.

Clearance examination—The visual examination and collection of environmental samples by an inspector or risk assessor upon completion of an abatement project or an interim control intervention. The clearance examination is conducted to ensure that lead exposure levels do not exceed HUD-recommended clearance standards. These recommended standards will be superseded by standards that are in the process of being established by the EPA Administrator pursuant to Title IV of the Toxic Substances Control Act, or other appropriate standards.

Encapsulation—The application of any covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers, and between the paint and the substrate.

Friction surface—Any painted interior or exterior surface, such as a window or stair tread, subject to abrasion or friction.

Guidelines (The Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995))—HUD's manual of lead hazard control practices which provides detailed, comprehensive, technical information on how to identify lead-based paint hazards in housing and how to control such hazards safely and efficiently. (The *Guidelines* replace the HUD ''Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing.'')

HEPA Vacuum—(High Efficiency Particulate Air)—A vacuum cleaner fitted with a filter capable of removing particles of 0.3 microns or larger at 99.97 percent or greater efficiency from the exhaust air stream.

Impact surface—An interior or exterior surface (such as surfaces on

doors) subject to damage by repeated impact or contact.

Interim Controls—A set of measures designed to temporarily reduce human exposure or possible exposure to lead-based paint hazards. Such measures include specialized cleaning, repairs, maintenance, painting, temporary containment, and management and resident education programs. Interim controls include dust removal; paint film stabilization; treatment of friction and impact surfaces; installation of soil coverings, such as grass or sod; and restricting access to lead-contaminated soil.

Lead-Based Paint—Any paint, varnish, shellac, or other coating that contains lead equal to or greater than 1.0 mg/cm² as measured by XRF or laboratory analysis, or 0.5 percent by weight (5,000 µg/g, 5,000 ppm, or 5,000 mg/kg) as measured by laboratory analysis. (Local definitions may vary.)

Lead-Based Paint Hazard—Any condition which causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-based paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects (as established by the EPA Administrator under Title IV of the Toxic Substances Control Act).

Lead-Based Paint Hazard Control—Activities to control and eliminate lead-based paint hazards, including interim controls and abatement of lead-based paint hazards or lead-based paint.

Lead-Contaminated Dust—Surface dust in residences that contains an area or mass concentration of lead in excess of the standard to be established by the EPA Administrator, pursuant to Title IV of the Toxic Substances Control Act. Until the EPA standards are established, the HUD-recommended clearance and risk assessment standards for leaded dust are 100 µg/ft² on floors, 500 µg/ft² on interior window sills, and 800 µg/ft² on window troughs (wells), exterior concrete or other rough surfaces.

Lead-Contaminated Soil—Bare soil on residential property that contains lead in excess of the standard established by the EPA Administrator, pursuant to Title IV of the Toxic Substances Control Act. The HUD-recommended standard is 400 µg/g for high-contact play areas and 2,000 µg/g in other bare areas of the yard. Soil contaminated with lead at levels greater than or equal to 5,000 µg/g should be abated by removal or paving.

Lead Hazard Screen—A means of determining whether residences in relatively good condition should have a full risk assessment.

*Microgram (*µg)—The prefix micro- means one-millionth. A microgram is one millionth of a gram.

Replacement—A strategy of abatement that entails the removal of building components coated with lead-based paint (such as windows, doors, and trim) and the installation of new components free of lead-based paint.

Residential Dwelling—This term means either:

(1) A single-family dwelling, including attached structures, such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit and in which each unit is, or is intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Risk Assessment—An on-site investigation to determine and report the existence, nature, severity and location of lead-based paint hazards in residential dwellings. Risk assessments include: information gathering regarding the age and history of the housing and occupancy by children under age 6, visual inspection, limited dust wipe sampling or other environmental sampling techniques, other activity as may be appropriate, and provision of a report explaining the results of the investigation.

Substrate—A surface on which paint, varnish, or other coating has been applied or may be applied. Examples of substrates include wood, plaster, metal, and drywall.

Title X—The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992, Pub. L. 102–550, approved October 28, 1992).

Window Trough—For a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. Sometimes called the window ''well''.

Wipe Sampling for Settled Lead-Contaminated Dust—The collection of settled dust samples from surfaces to measure for the presence of lead. Samples must be analyzed by an accredited laboratory.

Section 3. Purpose and Description

Section 3.1. Purpose and Authority

HUD will award, at its discretion, research grants or cooperative agreements to selected applicants in order to fund research activities that address critical gaps in the knowledge of residential lead hazard identification and control. Approximately $2.5 million will be awarded to fund grants or cooperative agreements of approximately $100,000 to $750,000 each. These grants are authorized under sections 1051 and 1052 of Title X.

The purposes of this program include:

(a) Funding research on topics identified in sections 1051 and 1052 of Title X.

(b) Funding research that will be used to update the *Guidelines* and which is anticipated to:

(1) Increase the accuracy and cost-effectiveness of lead hazard evaluation; and

(2) Increase the efficacy and cost-effectiveness of lead hazard reduction.

Section 3.2. Background

Lead is a potent toxicant that targets the central nervous system and is particularly damaging to the neurological development of young children. Lead-based paint is the most widespread and dangerous source of lead in the residential environment. Children can be exposed directly to this source of lead by ingesting paint chips or indirectly through exposure to paint-lead that has entered house dust and soil from the deterioration of interior and/or exterior lead-based paint. Studies have shown that the primary source of lead exposure for most young children is through the contact with and subsequent incidental ingestion of house dust (i.e., through hand-to-mouth activity). The amount of lead found in the ambient air, food and public drinking water has decreased significantly over the last two decades as a result of regulatory action and voluntary process changes.

Of all occupied housing units built before Congress banned the use of lead-based paint in 1978, approximately 83 percent, or 64 million housing units, are estimated to have lead-based paint somewhere on the exterior or interior of the building. Although intact lead-based paint poses little immediate risk to occupants, non-intact paint which is chipping, peeling, or otherwise deteriorating may present an immediate risk. Of particular concern are the housing units that contain deteriorated lead-based paint and/or lead-contaminated dust and are occupied by young children.

HUD has been actively engaged in a number of activities relating to lead-based paint as a result of the Lead-Based Paint Poisoning Prevention Act (LBPPPA) of 1971, as amended (42 U.S.C. 4801–4846). Sections 1051 and 1052 of Title X call for the Secretary of

HUD, in cooperation with other Federal agencies, to conduct research on specific topics related to the evaluation and subsequent mitigation of residential lead hazards.

In June 1995, HUD published the *Guidelines*, which describe state-of-the-art procedures for all aspects of lead-based paint hazard evaluation and control (see Appendix A of this NOFA). The *Guidelines* reflect the Title X framework for lead hazard control, which distinguishes three types of control measures: interim controls, abatement of lead-based paint hazards, and complete abatement of all lead-based paint. Interim controls are designed to address hazards quickly, inexpensively, and temporarily, while abatement is intended to produce a permanent solution. The *Guidelines* recommend procedures that are effective in identifying and controlling lead hazards while protecting the health of abatement workers and occupants.

HUD recognizes that targeted research and field experience will result in future changes to the *Guidelines* that will improve the accuracy of lead hazard evaluation and increase the effectiveness, while possibly reducing costs, of lead hazard control measures. HUD anticipates that increasing the cost-effectiveness of procedures for lead hazard evaluation and control will reduce barriers to the widespread adoption of these measures.

In July, 1995, the Task Force on Lead-Based Paint Hazard Reduction and Financing, which was established pursuant to section 1015 of Title X, presented its final report to HUD and the Environmental Protection Agency (EPA). The Task Force Report, entitled *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing* (see Appendix A of this NOFA for a complete citation), recommended that research be conducted on a number of key topics in order to address significant gaps in our knowledge of lead exposure and hazard control. Key research topics which are to be addressed through this NOFA include the following (each of these topics is discussed in more detail in section 3.5.1 of this NOFA):

(a) The effectiveness of specialized cleaning methods for lead-contaminated dust, with an emphasis on the possible identification of less extensive, but comparably effective, alternatives to procedures recommended in the *Guidelines*.

(b) The most appropriate clearance methods to use following various hazard interventions; efficacy and cost-effectiveness of various protocols.

(c) The hazard posed by lead-contaminated dust in carpets and rugs, and cost-effective hazard control interventions.

(d) The hazard posed by lead-contaminated dust in upholstered furniture, and cost-effective hazard control interventions.

(e) The utility of the lead risk assessment and screening protocols recommended in the *Guidelines*.

(f) Significance of lead-contaminated dust in forced air ducts in childhood lead exposure; appropriate methods for hazard evaluation and control.

Section 3.3. Allocation Amounts

Approximately $2.5 million will be available to fund research proposals in FY 1996. Grants or cooperative agreements will be awarded on a competitive basis following evaluation of all proposals according to the criteria described in section 4.3 of this NOFA. HUD anticipates that individual awards will range from approximately $100,000 to approximately $750,000. HUD reserves the right to grant one or more awards, or no awards, for research in a given topic area, depending on the quality of applications received.

Section 3.4. Eligible Applicants

Academic and not-for-profit institutions located in the U.S., and State and local governments are eligible to apply for funding under this NOFA. For-profit firms are also eligible. However, they are not allowed to earn a fee (i.e., no profit can be made from the project). Federal agencies and Federal employees are not eligible to submit applications.

Section 3.5. Goals, Objectives, and Specific Research Topics

(a) The overall goal of this research is to gain knowledge that will lead to improvements in the efficacy and cost-effectiveness of methods used for lead-based paint hazard evaluation and control. It is anticipated that this will eventually result in a reduction in the magnitude of childhood lead exposure nationwide by reducing barriers to the implementation of widespread lead-based paint hazard reduction interventions and improving the effectiveness of such interventions.

(b) Specific objectives for the individual research topics listed in section 3.2 of this NOFA are provided separately in the expanded discussion of these individual topic areas in section 3.5.1 of this NOFA. Although HUD is soliciting proposals for research on these specific topics, HUD will also consider funding applications for research on topics which, although not specifically listed in section 3.5.1 of this NOFA, are relevant under the overall goals and objectives of this research, as described above. In such instances, the applicant should describe how the proposed research activity addresses these overall goals and objectives.

Section 3.5.1. Background and Objectives for Specific Research Topic Areas

(a) *Cleaning of Hard Surfaces.* (1) *Background.* (i) Lead in house dust has been shown to be a major source of lead exposure for young children. Based on the understanding that lead-contaminated dust may not be visible to the naked eye and can be difficult to clean up, specialized cleaning to remove dust from noncarpeted surfaces is recognized as an essential element of all lead hazard control projects (the topics of leaded dust in carpets and upholstery are addressed separately in this section). The *Guidelines* recommend a cleaning procedure that includes a combination of HEPA vacuuming and wet cleaning with trisodium phosphate (TSP) or another cleaning agent designed for lead removal, or equivalent. Alternative methods are considered acceptable provided that they achieve at least the desired level of cleaning.

(ii) Chapter 14 of the *Guidelines* describes the specialized cleaning procedures recommended as a final pre-clearance step following completion of a lead hazard control project. Chapter 11 of the *Guidelines* presents the recommended specialized cleaning procedure to be employed as an interim control measure to remove lead-contaminated dust from a dwelling. When lead dust removal is used as an interim control measure, the *Guidelines* recommend that horizontal surfaces (e.g., floors, window sills and window troughs) and dust traps (e.g., radiators, registers/vents) be HEPA-vacuumed followed by wet washing with TSP or another specialized lead cleaner. Following lead hazard control activities that involve the disturbance of lead-based paint, the *Guidelines* recommend a more extensive cleaning process in which all ceilings, walls, noncarpeted floors and other horizontal surfaces be cleaned using a three-pass system (HEPA vacuuming, a wet wash, a final HEPA vacuum).

(iii) The specialized cleaning procedures recommended in the *Guidelines* are labor intensive and can contribute significantly to the total cost of a lead hazard intervention. Because relatively little research has been conducted on this topic, the recommended procedures are based primarily on the experience of researchers, the public housing lead abatement program, and the

recommendation of the peer review panel assembled for the *Guidelines*. The identification of comparably effective but less extensive and costly cleaning procedures could result in considerable cost savings, thus removing barriers to the widespread adoption of lead-dust control measures.

(iv) Anecdotal evidence from lead abatement contractors suggests that labor costs can be reduced (while still maintaining cleaning effectiveness) through modifications of the cleaning procedure recommended by the *Guidelines*. For example, some contractors have reported that they do not currently clean ceilings and walls using the three-pass system (HEPA vacuum/wet wash/HEPA vacuum), yet consistently meet HUD dust clearance levels. Contractors have also reported that they meet dust clearance levels by a considerable margin using a two-pass system of HEPA vacuum followed by a wet wash/rinse.

(v) The Canada Mortgage and Housing Corporation recently reported the results of a small-scale study which examined the effectiveness of four different cleaning procedures on hard floors following the creation of lead paint dust. The results from this limited investigation showed adequate floor cleaning following a two-pass procedure consisting of vacuuming with a shop vacuum followed by wet cleaning and rinsing using a specialized lead cleaner. Success was affected by the condition of the surface, however. HUD and the EPA recently sponsored a laboratory study which examined the effectiveness of various cleaning agents in removing leaded dust from different surface types. Although peer review of the study was not yet complete during the writing of this NOFA, preliminary results indicate that observed differences in post-cleaning dust lead loading among substrates and surface types did not depend on which cleaner was used. Common, low phosphate cleaners were equally as effective as TSP in cleaning efficiency. Low surface tension cleaners were associated with slightly better cleaning; however, differences among cleaning agents was small. The study results also suggest that the level of physical effort may have a greater impact on cleaning effectiveness than does choice of cleaner. A study of similar design needs to be conducted under field conditions.

(vi) Another issue that needs to be systematically examined through controlled studies is the necessity of using a HEPA vacuum to achieve effective dust removal. In some situations, such as when cleaning is used as an interim control measure, it may be possible to achieve adequate dust removal using more readily available vacuum cleaners such as shop vacuums that are fitted with collection bags that have a higher capture efficiency than standard bags, thus controlling the emission of lead particles in the exhaust stream. This could lead to additional cost savings and further reduce barriers to the widespread adoption of lead hazard reduction measures.

(vii) It is important to note that cleaning associated with commercial lead hazard reduction interventions beyond the level of custodial activities is covered by the Occupational Safety and Health Administration's (OSHA's) lead standard for the construction industry, which requires that vacuums used in conjunction with construction activities be equipped with a HEPA filter (see 29 CFR 1926.62(h)(4)). For activities that do not fall within OSHA's definition of ''construction,'' other vacuums may be used if workers do not experience elevated exposures and, for work conducted in accordance with the *Guidelines*, if compliance with clearance standards is achieved.

(viii) Factors that need to be specifically addressed in the design of any research in this topic area include but are not limited to:

- The appropriateness for use of a given protocol in occupied vs. unoccupied dwellings;
- The effect of surface type, condition and porosity on achieving the desired level of cleanup;
- The cost and availability of cleaning supplies;
- The availability of electrical power in unoccupied homes;
- The size of the area to be cleaned;
- The presence or absence of adjacent areas that could cause recontamination; and
- Worker exposure to airborne lead particulate.

(2) *Research Goals and Objectives.* The overall goal is to identify the procedures for clean up of leaded dust appropriate for use in various situations (e.g., varying surface types and levels of hazard reduction intervention, degrees of adhesion of dust, particle size) that will result in effective dust removal while minimizing time and/or costs.

Specific research objectives for this topic area include the following:

(i) Determine whether the current recommendations in the *Guidelines* regarding the specific surfaces to be cleaned following lead hazard reduction interventions are necessary in order to reduce lead exposure risk to acceptable levels (e.g., as determined by lead dust loading on accessible surfaces). Of particular interest are data that will clarify whether, and, if so, when, it is necessary to clean ceiling and/or wall surfaces following lead-based paint hazard reduction interventions.

(ii) Assess whether the rate of recontamination of ''cleaned surfaces'' is affected when a room receives only partial cleaning following a lead hazard reduction intervention.

(iii) Determine when the current recommendations in the *Guidelines* regarding the protocols for surface cleaning (i.e., the three-pass system following hazard reduction interventions, and the two-pass system for interim dust control) are necessary in order to consistently achieve desired reductions in lead surface loadings (e.g., as indicated by comparison with appropriate dust-lead clearance standards). When the currently recommended protocols are not necessary, determine what protocols provide sufficient surface cleaning under the various conditions examined.

(iv) Examine the effectiveness of different cleaning agents, including TSP and common low phosphate cleaners, when used in the field on different surface types.

(v) Obtain data on the effectiveness of different vacuum methods in cleaning dust from various surfaces and in controlling worker exposures to airborne lead. Of particular interest are the effectiveness and durability of vacuums that are less expensive and more readily available than HEPA vacuums, such as household or ''shop vacuums'' fitted with collection bags that have a greater particle capture efficiency than standard bags.

(b) *Clearance Testing.* (1) *Background.* (i) Clearance testing (see Chapter 15 of the *Guidelines*) refers to the various environmental evaluation procedures used to determine if lead hazard control work was completed as specified and the area is safe for entry by unprotected workers or reoccupancy by residents.

(ii) The suggested protocol for clearance involves both a visual inspection to ensure that all work has been completed and that no visible dust or paint chips remain on cleaned surfaces, and the collection of environmental samples to ensure that potentially hazardous levels of lead do not remain in dust and soil. The *Guidelines* recommend that wipe samples of settled dust be collected from interior surfaces (hard floors, window sills, window troughs) and that soil samples be collected if exterior lead hazard control work was conducted. They recommend that clearance dust sampling be performed no sooner than one hour following completion of the

final cleanup to permit the settling of airborne dust.

(iii) Research is needed to address the question of which surfaces are the most appropriate to test for dust-lead loading following the completion of lead hazard reduction activities of varying intensity. The currently recommended protocol of collecting wipe samples from floors, window sills, and window troughs may not be the best approach for all situations. Other issues of interest with respect to clearance protocols include:

- The proper use of visual clearance procedures (e.g., Under what circumstances would visual clearance alone be sufficient? What visual clearance inspection procedures and criteria should be used?);
- The most cost-effective use of composite sampling during clearance testing; and
- Field validation of the minimum post-cleanup settling time of one hour that is recommended in the *Guidelines*.

(iv) Because clearance testing closely follows completion of final surface cleaning, applicants are encouraged to consider designing a project that addresses some of the objectives listed below for clearance testing as well as some of the objectives listed in section 3.5.1(a) of this NOFA (''*Cleaning of Hard Surfaces*'').

(2) *Research Goals and Objectives.* The primary goal is to identify the most cost-effective protocols for clearance testing following the completion of lead hazard reduction interventions of varying intensities.

Specific research objectives include the following:

(i) Identify the most appropriate surfaces to test for dust-lead loading following completion of lead hazard reduction activities of varying intensities (and subsequent cleanup);

(ii) Determine under what circumstances (e.g., intervention intensity, project stage) the use of a visual clearance protocol alone would be sufficient;

(iii) Determine the most cost-effective use of composite sampling when conducting clearance testing; and

(iv) Conduct field validation of the minimum post-cleanup settling time of one hour (before clearance samples can be collected) that is currently recommended in the *Guidelines,* as well as alternative settling times.

(c) *Lead Hazard Identification and Control for Rugs and Carpets.* (1) *Background.* (i) Most of the research on the exposure hazard of lead-contaminated floor dust has involved the sampling of floor dust from hard surfaces. Studies have shown that rugs and carpets can act as traps for lead-contaminated dust. However, there is relatively little information on their significance as sources of lead exposure.

(ii) More information is needed on the impact of leaded dust in rugs and carpets on the blood-lead (PbB) levels of children. It is also important that standardized methods be developed to sample dust from carpets and rugs; ideally, such methods should be relatively easy, inexpensive, and predictive of lead exposure hazard (i.e., blood lead level). Finally, more research is also needed on the development of practical and effective measures for reducing the levels of leaded dust in rugs and carpeting.

(iii) In the absence of sufficient quantitative data on the hazards posed by lead in carpets and area rugs, Chapter 5 of the *Guidelines* recommends that the lead clearance standard for hard floors (100 μg/ft^2 with wipe sampling) also be applied to carpeted floors. Chapter 11 of the *Guidelines* provides a recommended protocol for HEPA vacuuming area rugs, carpets, and upholstered furniture as an interim hazard control measure. The *Guidelines* further recommend that, because of the difficulty and cost of cleaning, highly contaminated or badly worn items be discarded.

(iv) Research is needed to identify cost-effective means of reducing the amount of leaded dust in rugs and carpets that would be available to young children. Published studies have reported that vacuum methods can reduce the amount of total dust in carpets and rugs, but it is not known whether vacuuming of these surfaces is effective in reducing the lead exposure of children living in treated homes. Some research has actually shown that limited vacuuming can result in an increase in lead loading levels on the carpet surface.

(v) It is likely that the most effective methods for reducing the amount of leaded dust in rugs and carpets will differ depending on factors such as the type of carpet material and its physical characteristics (e.g., carpet pile type and depth), the degree of contamination, the location of dust within the carpet pile, and degree of wear.

(vi) The results of several published studies have shown a statistically significant correlation between surface dust-lead loading in carpets (as measured by wipe or certain types of vacuum sampling) and the blood-lead levels of children. Vacuum dust samples from carpeted and noncarpeted floors within the same home have shown that carpet dust-lead loadings are generally one to three orders of magnitude greater than those for hard floors. There are limited data from wipe sampling, however, indicating lower amounts of available lead on carpeted vs. noncarpeted surfaces.

(vii) The determination of surface dust-lead loading from carpets/upholstery, as measured by wipe sampling (or some vacuum protocols), may be a better estimate of exposure than total dust-lead loading as determined by vacuum methods which sample dust from below the carpet surface. This deeply embedded dust may be less available for contact by a child, but may be an important factor in determining surface dust-lead loading or rates of surface recontamination following cleaning.

(2) *Research Objectives.*

Specific research objectives include the following:

(i) Assess the lead exposure risk to children posed by leaded dust in rugs and carpets and identify important modifying factors (e.g., type of material, type and depth of pile, location of dust within the pile, condition);

(ii) Identify and evaluate a standard protocol for sampling leaded dust in rugs and carpets, which is practical, relatively inexpensive, and predictive of actual hazard; and

(iii) Identify the most cost-effective methods for cleaning wall-to-wall or area rugs and carpets under various conditions. Relevant factors include, but are not limited to, type of material, depth and characteristics of pile, location of dust within the pile, and condition.

(d) *Lead Hazard Identification and Control for Upholstery.* (1) *Background.* (i) As is true for rugs and carpets, upholstered furniture can also act as a trap for lead-contaminated dust. No significant published research has been identified on the exposure hazard posed by leaded dust in upholstered furniture or on the effectiveness of various hazard reduction interventions.

(ii) Chapter 11 of the *Guidelines* notes that it may be preferable to dispose of upholstered furnishings that are known to be highly contaminated with lead. As an interim dust control measure for upholstered surfaces, the *Guidelines* recommend that the surfaces be HEPA vacuumed with three to five passes over each surface at a total rate of approximately 5 square feet per minute. Upon completion of vacuuming, the *Guidelines* recommend that furniture be covered with a material that can be easily removed and washed.

(iii) Research is needed to determine the level of exposure to lead in upholstered furniture and, when necessary, appropriate and effective means for controlling this hazard. Because of similarities between research

on leaded dust in upholstery and in rugs and carpets (See section 3.5.1(c) of this NOFA), applicants are encouraged to consider research designs that would efficiently address the Department's research goals and objectives for both topic areas.

(2) *Research Objectives.*

Specific research objectives for this topic area include the following:

(i) Assess the lead exposure risk posed by lead-contaminated dust in upholstery and identify important modifying factors (e.g., type of furniture, type of upholstery material, condition).

(ii) Identify a standard protocol for sampling leaded dust in upholstery which is practical, relatively inexpensive, and predictive of actual exposure.

(iii) Identify the most cost-effective methods for cleaning upholstery under various conditions. Relevant factors include, but are not limited to:

- Type and construction of furniture;
- Type of upholstery material;
- Type and depth of pile;
- Surface characteristics;
- Condition; and
- Degree of contamination.

(iv) Evaluate the effectiveness of the protocol for cleaning upholstered furniture (i.e., HEPA vacuum followed by covering) recommended in the Guidelines.

(v) Assess the rate of recontamination of upholstery with leaded dust following cleaning and identify key factors affecting this.

(e) *Utility of Lead Risk Assessment and Screening Protocols.* (1) *Background.* The *Guidelines* provide suggested protocols for conducting both risk assessments and lead hazard screens in both single and multifamily housing. A risk assessment is conducted in order to determine the presence or absence of lead-based paint hazards and suggest appropriate hazard control measures. A lead hazard screen employs a more limited sampling protocol and is intended for dwellings that are in relatively good condition. These protocols incorporate expert judgment and the best information available at the time the *Guidelines* were written. However, research is needed to validate and possibly improve upon the suggested protocols.

(2) *Research Goals and Objectives.* The major goals are to assess under what conditions HUD's risk assessment and lead hazard screening protocols are accurate predictors of children's lead exposure and identify ways to improve the accuracy and increase the cost-effectiveness of these protocols.

Specific objectives for this research include the following:

(i) Determine whether or not the risk assessment approach outlined in the *Guidelines* is actually predictive of children's lead exposure. If the protocol is a valid assessment of lead exposure risk, it would be expected that, after accounting for other factors, children living in ''high risk'' dwellings would, on average, have higher blood-lead levels than those living in ''low risk'' dwellings.

(ii) Assess the utility of the ''lead hazard screen protocol'' set forth in the *Guidelines.* Determine under what conditions the suggested protocol, when used for both single and multifamily housing, is cost-effective and adequate in identifying dwellings that need a more thorough assessment without prompting an excessive number of unnecessary risk assessments.

(iii) Determine whether or not the number and type (e.g., dust sample locations) of environmental samples called for in the protocols under study is appropriate and cost-effective for both single and multifamily housing. Determine whether and, if so, under what conditions, the number and/or type of environmental samples can be reduced. Identify the most appropriate uses of ''sample compositing'' in order to maximize the amount and value of information obtained while minimizing costs.

(iv) Validate the ''paint film quality'' classification system presented in Chapter 5 (Risk Assessment) of the *Guidelines.* Specific points of interest include a determination of whether or not lead surface loadings are highest in dwellings containing paint classified as being in ''poor'' condition, and an evaluation of the appropriateness of the guidance regarding the extent (surface area) of deteriorated lead-based paint that determines the assignment of a surface or dwelling to a paint condition category (i.e., intact, fair, poor).

(v) Obtain and evaluate data on the contribution of leaded dust from friction and impact surfaces (particularly window and door components) to childhood lead exposure. These surfaces are defined as ''lead based paint hazards'' by Title X. However, relatively little research has been conducted on the significance of these surfaces as contributors to the overall dust lead loading of a dwelling or to childhood lead exposure.

(f) *Lead-Contaminated Dust in Forced Air Ducts.* (1) *Background.*

(i) Although some investigators have reported relatively high lead concentrations and loadings on the interior surfaces of forced air ducts, little is known regarding the significance of this dust in contributing to childhood lead exposure. The degree to which this dust is mobile, and thus able to migrate into the living area of a residence, is likely the major factor in determining its significance as a lead exposure source. The mobility of dust in air ducts may be determined by a number of factors, including but not limited to:

- Particle size distribution;
- Chemical composition of the dust;
- The degree of dust-to-surface adhesion;
- Surface characteristics of the duct material; and
- The velocity of air movement within the duct.

(ii) Further research is needed to identify the most cost-effective protocol for cleaning dust from forced air ducts, and whether or not such cleaning and routine sampling are needed. Specific factors of interest include the rate of recontamination of duct surfaces following cleaning and precautions to prevent the contamination of living space during air duct cleaning.

(2) *Research Goals and Objectives.* The major goal is to determine the significance of leaded dust in forced air ducts with respect to childhood lead exposure and, if applicable, identify safe, effective protocols for cleaning leaded dust from surfaces of forced air ducts.

Section 4. Grant Application Process

Section 4.1 Submitting Applications for Grants

(a) Information on NOFA application submission requirements, including deadline dates, is provided in the **DATES** section of the preamble to this NOFA. Information on where application kits may be obtained is provided in the **ADDRESSES** section of the preamble to this NOFA.

(b) Applications must conform to the formatting guidelines specified in the application kit. The kit specifies the sections to be included in the application and provides related formatting and content guidelines.

(c) HUD will review each application to determine whether the applicant is eligible in accordance with section 3.4 of this NOFA (Eligible Applicants). Applications that meet all of the threshold criteria will be eligible to be scored and ranked, based on the total number of points allocated for each of the rating factors described in section 4.2 of this NOFA.

(d) HUD intends to fund the highest ranked applications within topic areas and within the limits of funding availability. However, HUD may grant one or more awards, or no awards, for

research in a given topic area, depending on the quality of applications received. Applicants may address more than one of the research topic areas within their proposal. Also, projects need not address all of the objectives within a given topic area.

(e) HUD encourages applicants to plan projects that can be completed over a relatively short time period (e.g., 12 to 24 months from the date of award) so that any useful information that is generated from the research can be disseminated to the public as quickly as possible.

Section 4.2 Rating Factors

Applicants will be scored according to the following factors:

(a) *Competence of the Research Team (40 points).* Major subfactors include the following:

(1) *The capability and qualifications of the principal investigator and key personnel (20 Points).* Qualifications to design and carry out the proposed study as evidenced by academic background, relevant publications, and recent, relevant research experience that has produced useful results or findings.

(2) *Past performance of the research team in managing similar research (20 Points).* Applicants should demonstrate that the project would have adequate administrative support, including clerical and specialized support in areas such as bookkeeping, accounting and equipment maintenance. Applicants must also demonstrate ability to successfully manage the various aspects of a complex research study in the following areas: logistics, research personnel management, data management, quality control, community research involvement (if applicable), report writing, and overall success in completing projects on time and within budget.

(c) *Quality of the Research Proposal (60 points).* Major subfactors include the following:

(1) *Soundness of the study design (30 Points).* The extent to which the study design is thorough and feasible, and displays a thorough knowledge of the relevant scientific literature. Applicants should include an appropriate plan for managing, analyzing, and archiving data.

(2) *Adequacy of the Project Management Plan (10 Points).* The proposal should include an adequate management plan that provides a reasonable schedule for the completion of major tasks and deliverables, with an indication that there will be adequate resources (e.g., personnel, financial) to successfully meet the proposed schedule.

(3) *Adequacy of quality assurance mechanisms (10 Points).* Quality assurance mechanisms must be well integrated into the study design in order to ensure the validity and quality of the results. Areas to be addressed include:

(i) Acceptance criteria for data quality;

(ii) Procedures for selection of samples/sample sites;

(iii) Sample handling;

(iv) Measurement and analysis; and

(v) Any standard/nonstandard quality assurance/control procedures to be followed.

(4) *Responsiveness to solicitation objectives (10 Points).* The likelihood that the research would make a significant contribution towards achieving some or all of HUD's stated goals and objectives for one or more of the topic areas described in section 3.5.1 of this NOFA.

(c) *Cost (No Points).* The cost of the proposed project, while secondary, will be considered in addition to the factors stated above to determine the proposal most advantageous to the Government. Cost will be the deciding factor when proposals ranked under the above factors are considered acceptable and are substantially equal.

Section 5. Checklist of Application Submission Requirements

Section 5.1 Applicant Data

Applications must be submitted in accordance with the format and instructions contained in the application kit. Informal, incomplete, or unsigned applications will not be considered. The following is a checklist of the application contents that will be specified in the application kit:

(a) Completed Forms HUD–2880, Applicant/Recipient Disclosure/Update Report, and SF–LLL, Disclosure of Lobbying Activities, where applicable (See section 7, *Findings and Certifications,* of this NOFA).

(b) Standard Forms SF–424, 424A, 424B, and other certifications and assurances listed in section 5.2 of this NOFA.

(c) A detailed total budget with supporting cost justification for all budget categories of the Federal grant request (see application kit for details).

(d) An abstract containing the following information (See application kit for formatting instructions):

(1) The project title;

(2) The names and affiliations of all investigators; and

(3) A summary of the study objectives, study design, total estimated cost, and the significance of the expected results.

(e) *A description of the project.* This description must not exceed fifteen (15) pages per topic area (see section 3.5 of this NOFA) (e.g., an applicant whose project addresses two topic areas is limited to a 30 page description), including visual materials such as charts and graphs. (See application kit for format and required elements.)

(f) Any important attachments, appendices, references, or other relevant information may accompany the project description, but must not exceed fifteen (15) pages.

(g) The biographical sketches of the principal investigator and other key personnel. These should be concise and limited to information that is relevant in assessing the qualifications of key personnel to conduct and/or manage the proposed research.

(h) Copy of State Clearing House Approval Notification (see application kit to determine if applicable).

Section 5.2 Certifications and Assurances

The following certifications and assurances are to be included in all applications:

(a) Compliance with all relevant State and Federal regulations regarding exposure to and proper disposal of hazardous materials.

(b) Compliance with relevant Federal civil rights laws and requirements (24 CFR 5.105(a)).

(c) Assurance that the financial management system meets the standards for fund control and accountability (24 CFR 84.21 or 24 CFR 85.20, as applicable).

(d) Assurance, to the extent possible and applicable, that any blood lead testing, blood lead level test results, and medical referral and updating will be conducted for children under six years of age according to the recommendations of the Centers for Disease Control and Prevention (CDC). (See Appendix A of this NOFA—*Preventing Lead Poisoning in Young Children,* October, 1991.)

(e) Assurance that HUD research grant funds will not replace existing resources dedicated to any ongoing project.

(f) The application shall contain any other assurances that HUD includes in the application kit under this NOFA, including certification of compliance with the Drug-Free Workplace Act of 1988 in accordance with the requirements set forth at 24 CFR part 24.

Section 6. Corrections to Deficient Applications

(a) Shortly after the expiration of the NOFA submission deadline date, HUD will notify applicants in writing of any technical deficiencies in the applications. A technical deficiency is

an item that is not necessary for HUD to evaluate for the purpose of scoring an application. Examples include omitted certifications or illegible signatures.

(b) The applicant may submit corrections, which must be received at the Office of Lead Hazard Control within 21 calendar days from the date of HUD's letter notifying the applicant of any minor deficiencies. Electronic or fax transmittal is not an acceptable transmittal mode.

(c) Corrections to technical deficiencies will be accepted within the 21-day time limit. Applicants who do not make timely response to a request for deficiency corrections shall be removed from further consideration for an award.

(d) Applicants shall be permitted to correct only technical deficiencies. Deficiencies determined by HUD to be substantive (i.e., those that would affect the scoring of an application) may not be corrected.

Section 7. Findings and Certifications

Environmental Review. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410.

Federalism Executive Order. The General Counsel, as the Designated Official under section 8(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Under this NOFA, grants or cooperative agreements will be made to support research activities which are anticipated to result in improvements in methods used to assess and mitigate residential lead hazards. Although the Department encourages States and local governments to conduct research in these areas, any such action by a State or local government is voluntary. Because action is not mandatory, this NOFA does not impinge upon the relationships between the Federal government and State and local governments, and the notice is not subject to review under the Order.

Family Executive Order. The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this document will likely have a beneficial impact on family formation, maintenance and general well-being. This NOFA, insofar as it funds research on improved methods for the evaluation and control of residential lead hazards, will assist in preserving decent housing stock for low-income resident families. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

Section 102 of the HUD Reform Act—Documentation and Public Access Requirements—Applicant/Recipient Disclosures

(a) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR part 4 for further information on these documentation and public access requirements.)

(b) *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 4 for further information on these disclosure requirements.)

Prohibition Against Lobbying Activities. The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The ''Byrd Amendment'') and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying.

Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. Indian Housing Authorities established by an Indian Tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under state law are not excluded from coverage.

Procurement Standards. State and local government grantees are governed by and should consult 24 CFR part 85, which implements OMB Circular A–102 and details the procedures for subcontracts and sub-grants by States and local governments. Non-profit organizations are governed by 24 CFR part 84, which implements OMB Circular A–110. Under OMB A–102 and A–110, small purchase procedures can be used for subcontracts up to $100,000, and require price or rate quotations from several sources (three is acceptable); above that threshold, more formal procedures are required. If States or local governments have more restrictive standards for contracts and grants, the State or local government standards can be applied. All grantees should consult and become familiar with either OMB A–102 or A–110, as appropriate, before issuing subcontracts or sub-grants.

Catalog of Federal Domestic Number. The Catalog of Federal Domestic Assistance Number for this program is 14.900.

Davis-Bacon Act. The Davis-Bacon Act does not apply to this program. However, if grant funds are used in conjunction with other Federal programs in which Davis-Bacon prevailing wage rates apply, then Davis-Bacon provisions would apply to the extent required under the other Federal programs.

Section 103 of the HUD Reform Act. HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to

apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Authority: 42 U.S.C. 4854 and 4854a.

Dated: October 18, 1996.

David E. Jacobs,

Director, Office of Lead Hazard Control.

Appendix A—Relevant Publications and Guidelines

To Secure Any Of The Documents Listed, Call The Listed Telephone Number (generally not toll-free).

Regulations

1. Worker Protection: OSHA publication—Telephone: 202–219–4667

OSHA Regulations (available for a charge)—Government Printing Office—Telephone: 202–512–1800

—General Industry Lead Standard, 29 CFR 1910.1025; (Document Number 869022001124)

—Lead Exposure in Construction, 29 CFR 1926.62, and appendices A, B, C, and D; published 58 FR 26590 (May 4, 1993). (Document Number 869022001141)

2. Waste Disposal: 40 CFR parts 260–268 (EPA regulations)—Telephone 1–800–424–9346, or, from the Washington, DC metropolitan area, 1–703–412–9810 (not a toll-free number).

3. Lead; Requirements for Lead-Based Paint Activities; Proposed Rule: 40 CFR Part 745 (EPA) (State Certification and Accreditation Program for those engaged in lead-based paint activities), published on August 29, 1996 (61 FR 45778). Also available on the Internet World Wide Web (http://www.hud.gov/lea/leahome.html).

4. Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Proposed Rule: 24 CFR Parts 35, 36 and 37 (HUD), published on June 7, 1996 (61 FR 29170). Also available on the Internet World Wide Web (http://www.hud.gov/lea/leahome.html).

Guidelines

1. Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing; HUD, June 1995 (available for a charge)—Telephone: 800–245–2691, or on the Internet World Wide Web (http://www.hud.gov/lea/leahome.html).

Post-lead hazard control clearance, no more than:

100 Micrograms/sq.ft. (Bare and carpeted floors)

500 Micrograms/sq.ft. (Window sills)

800 Micrograms/sq.ft. (Window troughs (wells), exterior concrete and other rough surfaces)

2. Preventing Lead Poisoning In Young Children; Centers for Disease Control, October 1991: Telephone: 770–488–7330.

Reports

1. Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing, HUD, (Summary and Full Report), July 1995, (available for a charge)—Telephone 800–245–2691, or on the Internet World Wide Web (http://www.hud.gov/lea/leahome.html).

2. Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing: Report to Congress (HUD, December 7, 1990) (available for a charge)—Telephone 800–245–2691.

3. A Field Test of Lead-Based Paint Testing Technologies: Technical Report (Summary also available). U.S. Environmental Protection Agency, May 1995, EPA 747–R–95–002b. (available at no charge)—Telephone 800–424–5323.

[FR Doc. 96–30296 Filed 11–26–96; 8:45 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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